

IN THE SUPREME COURT OF WISCONSIN

No. 2020AP1911-OA

SCHOOL CHOICE WISCONSIN ACTION, WISCONSIN COUNCIL OF
RELIGIOUS & INDEPENDENT SCHOOLS, EVERGREEN ACADEMY,
RACINE CHRISTIAN SCHOOL, RACINE LUTHERAN HIGH SCHOOL,
ST. JOHN'S LUTHERAN CHURCH & SCHOOL, TRINITY LUTHERAN
SCHOOL, ETHAN BICKLE, ANDREA THUNHORST, RYAN
THUNHORST, AND ELAINE WILSON,

Petitioners,

v.

DOTTIE-KAY BOWERSOX, IN HER OFFICIAL CAPACITY AS PUBLIC
HEALTH OFFICER AND PUBLIC HEALTH ADMINISTRATOR OF THE
CITY OF RACINE PUBLIC HEALTH DEPARTMENT

AND

CITY OF RACINE PUBLIC HEALTH DEPARTMENT,

Respondents.

**AFFIDAVIT OF DOTTIE-KAY BOWERSOX IN OPPOSITION
TO THE EMERGENCY PETITION FOR AN ORIGINAL
ACTION AND EMERGENCY MOTION FOR A TEMPORARY
INJUNCTION**

the public health field for more than 30 years. In addition to other positions in local public health, I was the Deputy Health Officer for Jackson County, Michigan from 2000 to 2005, and I was the Health Officer for Calhoun County, Michigan from 2005 to 2008. From 2008 to 2010, I was the Project Director for the Michigan Public Health Institute.

5. As Racine's Public Health Administrator, I am responsible for the operations of the City of Racine Public Health Department, which include Community Health, Environmental Health, Laboratory, and Administrative services.
6. As Racine's Public Health Administrator, I am the duly-empowered local health officer for the City of Racine, as defined by law, including but not limited to, Wisconsin Statutes sections 250.01(5) and 251.06. As local health officer my authority is established by law, including but not limited to, pursuant to Wisconsin Statutes chapters 250 through 257, and pursuant to Racine Ordinances chapter 2, article III, division 2, and chapter 54. By intermunicipal agreement, I also serve as the local health officer for the Villages of Wind Point and Elmwood Park.

7. My office's responsibilities include monitoring communicable disease and investigation services, as well as providing clinical services. For example, we offer STD and HIV screening, pregnancy testing, and birth control services. In addition, we review lead and housing investigations regarding safety and structural complaints. My office also conducts restaurant, tattoo parlor, and tavern/bar inspections. We also sample and analyze water samples, especially as related to shoreline and recreational activity. In our administrative capacity, we focus on emergency preparedness and planning, as well as community coordination and facilitation.
8. Since well before March, 2020, my office has been trying to minimize the risk and threat of contagion related to the ongoing 2019 novel coronavirus (COVID-19) pandemic while enhancing the safety and health of city residents, and mindful of the virus' impact on the local economy.
9. Since the spring of 2020, the City of Racine has become a hot spot for infection related to the novel coronavirus. As of today's date, the total number of cases within my jurisdiction is 5,412; that includes

737 current active cases. Thus far, 48 local residents have succumbed to the virus resulting in death.

10. For context, my department has monitored the relationship between holidays and increased cases of COVID-19 over the course of the year:

- a. There was an increase from 100 to 700 cases following the Easter holiday during the period of April 12, 2020, to May 10, 2020. This was a 700% increase in cases.
- b. After Memorial Day on May 25, 2020, the City implemented the “Forward Racine” order and we experienced a decrease in cases.
- c. Following the July 4, 2020, Independence Day holiday, there was a 500% increase in COVID-19 cases.
- d. Finally, after the Labor Day holiday on Monday, September 7, 2020, we began a period of increasing numbers of cases, which continues to this day. The number of cases since then has increased by 1,600%.
- e. This is an unsustainable intensification in illness in terms of the capacity of our local health and emergency responder

systems available to address the community's growing medical needs as a result of more infections.

11. On November 12, 2020, I issued a public health order directing that all public and private K-12 school buildings within the City of Racine, and Villages of Elmwood Park and Wind Point shall be closed from November 27, 2020, through January 15, 2021. Over the course of the pandemic, we have seen an increase in the number of positives in the days and weeks following a holiday. There are individuals working and visiting those buildings daily: teachers, staff, vendors, and students, who are interacting within the building in person and in groups and thereby exposing and being exposed to the virus in higher incidence.

12. A copy of my order is attached hereto as Exhibit A.

13. The latest surge in COVID-19 positive cases is currently more than double what this jurisdiction experienced in the beginning surge from May to early June of this year. Our five-day rolling positivity rate as of today is 31%. Also, as of today over the last fourteen days, the case rate per 100,000 residents is 1,593. This means we

are at a critical level of community spread, and coronavirus has taken over this jurisdiction.

14. When a school has a positive case within my jurisdiction, we contact the school staff and administration as part of our contact tracing responsibilities. Through this tracing, we are learning that parents are sending symptomatic children to school including to private institutions. Adult staff and visitors are also presenting at the school facilities with symptoms. In addition, I have received reports of noncompliance within educational facilities, both public and private: adults are not wearing masks, or maintaining physical distance. All of these factors increase the potential for spread. Lack of compliance and the current prevalence of virus in our community required me to address the continued in-person gatherings within school buildings by virtue of this order.

15. A large part of my responsibility to the community in monitoring and addressing spread of the virus is to ensure functioning of public sector systems in the context of stress by a communicable disease like COVID-19. Within the public service sector, the police, fire, healthcare and public health agencies are all limited systems funded

and staffed based on finite considerations, not long term daily crisis response such as war or pandemic.

16. Like law enforcement and healthcare employees, teachers are a finite resource within our community. Additional infection among teachers alone risk the integrity of the educational structures under my jurisdiction. My order to close buildings is not intended to stop school or educational opportunity, but preserve community health and prevent further unmitigated spread of a highly infectious contagion.

17. In terms of the metrics that follow below, the numbers and data collected are for the 2020-2021 academic year as of this date:

- a. There is one private school in the Village of Elmwood Park which is EverGreen Academy. As of this writing, this school building has three positive COVID-19 cases identified. As a result, ten individuals have been identified as close contacts to allow for notification for possible exposure.
- b. There is one private school in the Village of Wind Point which is The Prairie School. As of this writing, this school building has thirteen positive COVID-19 cases identified. As

- a result, sixty individuals have been identified as close contacts to allow for notification for possible exposure.
- c. The Racine Christian School has identified three positive COVID-19 cases to date. As a result, seventeen individuals have been identified as close contacts to allow for notification for possible exposure.
 - d. The Racine Lutheran High School building has sixteen positive COVID-19 cases identified to date. This school has been unable to identify individuals who have been close contacts to allow for notification for possible exposure.
 - e. The St. John's Lutheran School building has seven positive COVID-19 cases identified to date. As a result, twenty-seven individuals have been identified as close contacts to allow for notification for possible exposure.
 - f. The Trinity Lutheran School has two positive COVID-19 cases identified to date. As a result, twenty-three individuals have been identified as close contacts to allow for notification for possible exposure.

- g. Saint Lucy Catholic Parish School building has two positive COVID-19 cases identified to date. As a result, five individuals have been identified as close contacts to allow for notification for possible exposure.
- h. So far within the Racine Unified School District (RUSD), there have been 135 positive cases, which have additionally resulted in 112 individuals receiving notification of potential exposure.

18. The Wisconsin Department of Health Services defines an outbreak as “two or more cases confirmed within a facility by people outside the same household showing symptoms and/or positive test results within 14 days without close contacts outside that facility.” There have been a total of 21 outbreaks within RUSD since the beginning of the academic year.

19. This is not a problem unique to my jurisdictions or to southeast Wisconsin. National and global health leaders have focused concern based on scientific data and verified positive case incidence related to staff and students congregating in school buildings for traditional learning. The World Health Organization (WHO) indicates that risk

rises with age meaning that adult teachers and staff may transmit to children over 10-years old. The WHO stressed that transmission is related to a lack of appropriate health measures.¹ Reports of transmission of COVID-19 in schools around the country include:

- a. In Illinois, Dr. Sandra Martell, the Public Health Administrator with the Winnebago County Health Department, reported an outbreak at Spring Creek Elementary among school staff with at least 5 cases of the virus.²
- b. In Pennsylvania, Lancaster County schools reported more than 460 COVID-19 cases from 16 school districts (elementary & high school), plus a brick-and-mortar charter school in Lancaster city and the county's career and technology center.³ Penns Valley School District had 77

¹ See WORLD HEALTH ORGANIZATION, *What we know about COVID-19 transmission in schools* (21 October 2020), https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update39-covid-and-schools.pdf?sfvrsn=320db233_2.

² Andrew Carrigan, *Health Department: RPS 205 has first school with a COVID-19 outbreak*, WREX 13 (19 November 2020), <https://wrex.com/2020/11/19/health-department-rps-205-has-first-school-with-a-covid-19-outbreak/>.

³ Alex Geli, *More than 500 COVID-19 cases have been reported at Lancaster County schools. Here's where they are [update]*, LNP LANCASTER ONLINE (22 November 2020), https://lancasteronline.com/news/local/more-than-460-covid-19-cases-have-been-reported-at-lancaster-county-schools-heres-where/article_3df9f520-f90e-11ea-a2d4-cb2cf761df4e.html.

students and eight staff members under quarantine, and the district will operate remotely until December 1 as a result.

The individual who tested positive — along with two presumed positive cases — exposed over 28 students and four staff members in the high, intermediate and elementary school buildings.⁴

- c. In Utah, 14 schools statewide have shifted online so far this week, coming after another 25 schools last week as the pandemic spreads into more classrooms. Wednesday also marked the highest single-day increase of cases within the K-12 schools increasing by 598. The previous record was 378 from the last Friday. Since August, 11,000 infections have been connected to students and staff, and a total of 77 Utah schools have temporarily closed buildings due to outbreaks since reopening this fall.⁵

⁴ Marley Parish, *With 85 people in quarantine, Penns Valley temporarily closes for in-person learning*. CENTRE DAILY TIMES (20 November 2020), <https://www.centredaily.com/news/local/community/penns-valley/article247306434.html>.

⁵ Courtney Tanner, *14 more Utah schools shift online this week, including the first elementary to have an outbreak*, THE SALT LAKE TRIBUNE (19 November 2020), <https://www.sltrib.com/news/education/2020/11/18/more-utah-schools-shift/>.

- d. In Texas, the Katy Independent School District COVID-19 Case Dashboard reported on Thursday, November 19, there were 16 active student cases at the elementary school, which triggered a temporary closure. The campus is the third Katy ISD school to temporarily close this fall, after Nottingham Country Elementary and Seven Lakes High School.⁶
- e. Two Augusta-area schools in Maine reported COVID-19 outbreaks over the weekend, according to district officials: Farrington and Whitefield Elementary Schools. After three positive cases, the school obtained “outbreak” status, in accordance with Maine Center for Disease Control & Prevention guidelines. The Augusta Board of Education voted to transition the school system to remote learning the full week after Thanksgiving break to mitigate and minimize potential spread resulting from holiday gatherings.⁷

⁶ Tracy Maness, *Jenks Elementary in Katy temporarily closes amid COVID-19 outbreak*. HOUSTON CHRONICLE (19 November 2020), <https://www.houstonchronicle.com/neighborhood/katy/news/article/Jenks-Elementary-in-Katy-temporarily-closes-amid-15741042.php>.

⁷ Emily Duggan, *Augusta, Whitefield Elementary schools report COVID-19 outbreak*. CENTRAL MAINE (16 November 2020), <https://www.centralmaine.com/2020/11/16/augusta-whitefield-elementary-schools-report-covid-19-outbreaks/>.

f. In Montgomery County, Tennessee on November 20, 2020, seventh and eighth grades switched to remote learning like the sixth-grade classes due to a COVID-19 outbreak at the school, which was impacting staffing. "... We are continuing to struggle with staffing due to the pandemic," said Northeast Middle School principal Laura Boss in an email to parents. "We currently have almost 25% of our faculty and staff on leave through at least Nov. 23." Classes are virtual and remote learning beginning Tuesday, November 17 through the rest of the week to address staffing issues related to illness caused by COVID-19.⁸

20. Overall, the nation, individual schools and districts continue to experience similar health concerns because of COVID-19 and community spread. The narrow timeframe for school building closure from November 27, 2020, through January 15, 2020, is intended to help prevent further growth of community spread in order to protect the health, safety and welfare of teachers, staff and

⁸ See *Northeast Middle School closes due to COVID-19*. MAIN STREET CLARKSVILLE (20 November 2020), https://www.mainstreetclarksville.com/news/northeast-middle-school-closes-due-to-covid-19/article_17a3a2f0-2b35-11eb-8963-7fd29b9d7836.html.

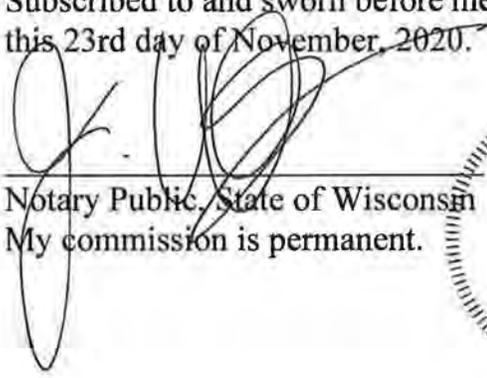
community members. This way, we can avoid additional stress on community systems and essential workers like teachers and healthcare employees currently dealing with the pandemic.

21. While increased transmission of COVID-19 cases in school buildings across the country are matters of broad alarm, my responsibility and my immediate concern is for the City of Racine and the Villages of Elmwood Park and Wind Point, including for those who may be physically present in the school buildings.

Dated this 23rd day of November, 2020.


Dottie-Kay Bowersox

Subscribed to and sworn before me
this 23rd day of November, 2020.


Notary Public, State of Wisconsin
My commission is permanent.



Department of Public Health

Dottie-Kay Bowersox, MSA
Public Health Administrator

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**RACINE PUBLIC HEALTH DEPARTMENT
SCHOOL BUILDING CLOSURE ORDER
November 12, 2020**

WHEREAS, on December 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world, including every state in the United States; and

WHEREAS, on January 30, 2020, the World Health Organization declared COVID-19 to be a Public Health Emergency of International Concern; and

WHEREAS, on March 13, 2020, the President proclaimed a National Emergency in response to COVID-19; and

WHEREAS, on March 18, 2020, the City of Racine first proclaimed a public health emergency to exist in the City of Racine as a result of the threat of the 2019 novel coronavirus; and

WHEREAS, millions of people around the world have tested positive for COVID-19, including more than ten million people in the United States, and more than 285,000 people in Wisconsin; and

WHEREAS, as a novel disease with uncertain immunity and no vaccination currently available all of the population is at risk; and

WHEREAS, science shows that wearing a face covering can prevent the transmission of the respiratory droplets that spread COVID-19, physical contact and close proximity to other individuals may cause the spread of COVID-19, thereby endangering the public and placing undue strain on the healthcare system; and

WHEREAS, "physical distancing," meaning a distance of six feet is maintained between all individuals, is a public health tool that may be used to limit the spread of disease;

WHEREAS, it is essential to use all available tools as is reasonable and necessary to stop the transmission of COVID-19;

WHEREAS, COVID-19 continues to spread the southeastern Wisconsin region, necessitating updated and more stringent guidance from federal, state, and local governments and public health officials has made assembling groups of any size a threat to public health; and

WHEREAS, protecting the health and safety of City of Racine residents and employees is of paramount importance; and

WHEREAS, Wisconsin State Law provides broad authority and power for local health officials to prevent, control, and suppress COVID-19; and



WHEREAS, Wis. Stat. § 252.03(1) provides that every local health officer “may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition”; and

WHEREAS, Wis. Stat. § 252.03(1) provides that every local health officer “shall promptly take all measures necessary to prevent, suppress and control communicable diseases”;

WHEREAS, Wis. Stat. § 252.03(2) provides that local health officers “may do what is reasonable and necessary for prevention and suppression of disease”;

WHEREAS, Wis. Stat. § 252.03(2) also provides that local health officers “may forbid public gatherings when deemed necessary to control outbreaks or epidemics”;

WHEREAS, Wis. Admin. Code DHS §145.06(6) provides that local health officers “may direct persons who own or supervise real or physical property ... and their environs, which present a threat of transmission of any communicable disease ... to do what is reasonable and necessary to abate the threat of transmission”; and

WHEREAS, based on the specific circumstances in the City of Racine and in the Villages of Elmwood Park and Wind Point, and my investigation of COVID-19 within the City of Racine and in the Villages of Elmwood Park and Wind Point, I have determined that this order is necessary to prevent, suppress, and control COVID-19 in the schools within the City of Racine and within the Villages of Elmwood Park and Wind Point;

WHEREAS, the Racine Public Health Department carefully reviews all public health recommendations from state and local organizations and consider all available state and local data in the consideration of relaxing restrictions.

NOW THEREFORE, I, Dottie-Kay Bowersox, director and health officer for the City of Racine, by the authority vested in me by the Laws of the State of Wisconsin, including but not limited to Section 252.03 of the Wisconsin Statutes, order the following:

1. Public and private K-12 school buildings within the boundaries of the City of Racine and the Villages of Elmwood Park and Wind Point shall be closed from November 27, 2020, through January 15, 2021, inclusive. This closure applies to all students, faculty, staff, and administrative personnel. Schools may continue to facilitate distance learning or virtual learning. Schools may continue to be used for Essential Government Functions, emergency services, building maintenance, and food distribution.
2. Duration. This Order shall become effective at 12:01 AM, November 27, 2020. This Order shall terminate on January 15, 2021, at 11:59 PM.

Signed:



Dottie-Kay Bowersox
Public Health Administrator
City of Racine