

No. \_\_\_\_\_

**In the Supreme Court of Wisconsin**

WISCONSIN LEGISLATURE,

*Petitioner,*

v.

ANDREA PALM, JULIE WILLEMS VAN DIJK, AND NICOLE SAFAR,  
IN THEIR OFFICIAL CAPACITIES AS EXECUTIVES OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

*Respondents.*

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**EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

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The Wisconsin Legislature hereby moves this Court, pursuant to Wis. Stat. §§ 813.02, 809.14, for a temporary injunction enjoining Emergency Order 28, which, among other things, mandates that “[a]ll individuals present within the State of Wisconsin ... stay at home or at their place of residence” and

declares that “[n]on-essential business and operations must cease.” Emergency Order 28 at 2–3 (April 16, 2020).<sup>1</sup>

The Legislature has also filed, simultaneous with this motion, an Emergency Petition for Original Action and a single Memorandum in Support of the Emergency Petition for Original Action and Emergency Motion for Temporary Injunction. As explained more fully in the Memorandum, the Department of Health Services (“the Department” or “DHS”) promulgated an administrative “rule,” as defined in Wis. Stat. Ch. 227, even though DHS calls it an “order.” Because Emergency Order 28 is a “rule,” DHS was required to comply with, at least, the procedural requirements of § 227.24 applicable to emergency rules. Yet DHS failed to comply with *any* of the procedures required by § 227.24, including presenting the rule to the Legislature. Moreover, the Department has no constitutional or statutory authority to issue Emergency Order 28 as it currently stands. Wis. Stat. § 252.02 does not vest DHS with the power to close all businesses,

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<sup>1</sup> Emergency Order 28 (April 16, 2020), available at [https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file\\_attachments/1428995/EMO28-SaferAtHome.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file_attachments/1428995/EMO28-SaferAtHome.pdf).

effectively quarantine and isolate every person in Wisconsin, or decide which businesses and operations are “essential.”

Emergency Order 28 is also arbitrary and capricious because DHS provided no rational basis for several of its distinctions, including between “essential” and “nonessential” businesses and activities. The Department also failed to grapple with the collateral consequences of its Order or balance the expected benefits of the Order against its substantial costs.

The Legislature will suffer irreparable harm absent a temporary injunction because DHS’s violation of the Wisconsin Administrative Procedure Act has deprived the Legislature of its statutory oversight and prevented the Legislature from modifying or suspending an administrative rule that has profound consequences for Wisconsin’s people.

The Legislature thus requests that this Court issue a temporary injunction of Emergency Order 28, but that it stay that injunction for six days to allow the Department to promulgate an emergency rule consistent with the Wisconsin Administrative Procedure Act and all other applicable statutes.

Dated: April 21, 2020

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

A copy of this Motion is being served on all opposing parties via electronic mail and first-class mail.

Dated: April 21, 2020

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Ryan J. Walsh  
Counsel for The Wisconsin Legislature