

IN THE SUPREME COURT OF WISCONSIN
APPEAL NO. 2020AP765-OA

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.

On Emergency Petition for Original Action

MOTION TO INTERVENE BY MILWAUKEE TEACHERS'
EDUCATION ASSOCIATION, MADISON TEACHERS INC.,
SEIU HEALTHCARE WISCONSIN, AND AMALGAMATED
TRANSIT UNION LOCAL 998

Proposed Intervenors Milwaukee Teachers' Education
Association, Madison Teachers Inc., SEIU Healthcare Wisconsin, and
Amalgamated Transit Union Local 998 (collectively, "the Unions,"),
by their attorneys, Pines Bach LLP, hereby move the Wisconsin

Supreme Court pursuant to Wis. Stat. § 803.09(1)&(2) for an order allowing them to participate as Intervening Respondents as to the Emergency Petition for Original Action and Motion for Temporary Injunction filed by the Wisconsin Legislature (“the Legislature”) and, if the Court accepts this matter as an original action, to fully participate in all subsequent proceedings in this Court.

In compliance with Wis. Stat. § 803.09(3), the Unions have filed herewith their combined response to the Legislature’s Emergency Petition for Original Action and Motion for Temporary Injunction (“combined response”).

If the Court denies the Unions’ Motion to Intervene, they respectfully request that the Court accept their combined response as a non-party brief.

As grounds for this motion, the Unions respectfully represent as follows:

1. Milwaukee Teachers Education Association (“MTEA”) is a labor organization that represents over 5,000 employees of the Milwaukee Public Schools (“MPS”), the largest primary and

secondary school system in the state. MTEA members work directly with the students who attend Milwaukee's public schools, and include teachers, paraprofessionals, safety assistants, sign language interpreters, bookkeepers, school counselors, librarians, nurses, social workers, speech pathologists, occupational therapists, physical therapists, CHAs, LPNs, building service helpers, and food service workers.

2. Madison Teachers Incorporated ("MTI") is a labor organization that represents over 4,000 employees of the Madison Metropolitan School District ("MMSD") in three bargaining units. MMSD is the second-largest primary and secondary school system in the state. MTI members include teachers, educational professionals and paraprofessionals, substitute teachers, clerical/technical employees, educational assistants and school security assistants.
3. MTEA and MTI members teach and support the students in the MPS and MMSD systems. This work normally involves

day-to-day interaction with large numbers of students, all in close proximity to one another within the school buildings and classrooms.

4. Schools were identified early on as one of the most dangerous sites for transmission of COVID-19, prompting the Wisconsin Department of Health Services (“DHS”) to issue its first closure order, closing schools for purposes of pupil instruction and extracurricular activities statewide, beginning March 18, 2020, as “a reasonable and necessary step to prevent, suppress, and control this disease.” Wis. Dep’t of Health Servs., Order for Statewide School Closure, March 13, 2020. Since that time, schools have remained closed by DHS Order, including most recently DHS’s April 16, 2020 Emergency Order 28, which is challenged in the Petition before the Court (“Order 28”).
5. SEIU Healthcare Wisconsin (“SEIU HCWI”) is a labor organization that represents approximately 6,000 healthcare workers across the state who work in hospitals and long-term

care facilities, for homecare agencies, and for county public health agencies. SEIU HCWI's members include Registered Nurses, Certified Nursing Assistants, LPNs, environmental services workers, personal care workers, food service workers, and others who make the health care system and health care facilities run. These workers are on Wisconsin's front lines of the COVID-19 pandemic treating the disease and making the health care environment safe for others. In doing so, they put themselves and their families at risk.

6. Amalgamated Transit Union Local 998 ("ATU998") represents more than 1,100 active members in Milwaukee, Waukesha, Kenosha and Sheboygan. ATU998 members are employed by the county transit systems in each of those counties as the bus drivers, light rail operators, maintenance and clerical personnel supporting the transit systems. ATU998 members are committed to providing safe and efficient transit services to customers and promoting transit issues critical to the communities they serve. ATU998 works to safeguard the

rights of its dedicated and hardworking transit worker members. ATU998 members currently provide transportation to a diverse range of essential workers, including the health care workers providing critical services to those in nursing homes, clinics, and hospitals. They also transport students, teachers, and others connected to the public school systems.

7. The Unions are vitally interested in this litigation because their members, the students they teach, the patients they treat, the passengers they transport, and the families they return home to, are all current beneficiaries of Order 28. Order 28 specifically recognizes health care workers and other public servants required to perform face-to-face services as critical, front line workers; the need to protect health care capacity to meet citizens' needs; and the need for available personal protective equipment for these workers on the front lines of the COVID-19 battle; as well as the economic needs of Wisconsin and Wisconsinites.

8. The outcome of this case will intimately affect all of the Union members and the people they care for and love: they will literally remain healthy, get sick, or die, depending in large part on how this Court rules. They want the risks to themselves, their families, and their communities to be managed sensibly and by public health experts, not by billionaire legislative campaign donors, whose primary concern about the pandemic is its potential damage to their portfolios.
9. If Order 28 is found to be *ultra vires* as alleged by the Wisconsin Legislature, and enjoined to any extent by this Court, protections against transmission of COVID-19 provided by that Order will be lost prematurely. Infection rates, hospitalizations, and deaths from COVID-19 will increase, and the health care system and Wisconsin's economy will be threatened even further as the state experiences a second wave of COVID-19 infections, potentially worse than the first. Such a second wave would unnecessarily increase the

risks to the health and lives of Union members as they perform their jobs on the front lines of this pandemic.

10. The Union members understand that people who are not exposed on the frontlines of this pandemic are suffering mentally, physically and economically. They understand that there has to be careful planning for everyone's needs. And they want that to take place. But they also know that it is nonsense to suggest that Order 28, which extends only through May 26, will cause Wisconsin's economy to be irreparably harmed.

11. Wisconsin Statute Section 803.09(1) sets the standard for intervention as of right, providing that a movant shall be permitted to intervene:

[W]hen the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

12. Thus, the following four criteria must be met for intervention

as of right:

(A) the movant's motion to intervene is timely;

(B) the movant claims an interest sufficiently related to the subject of the action;

(C) disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and

(D) the existing parties do not adequately represent the movant's interest.

Helgeland v. Wisconsin Municipalities, 2008 WI 9, ¶ 38, 307 Wis. 2d 1, 745 N.W.2d 1.

13. The analysis is fact specific and requires the Court to "strik[e]

a balance between allowing the original parties to a lawsuit to

conduct and conclude their own lawsuit and allowing others

to join a lawsuit in the interest of the speedy and economical

resolution of a controversy without rendering the lawsuit

fruitlessly complex or unending." *Id.* at ¶6. The criteria are

not reviewed in isolation; rather, "a movant's strong showing

with respect to one requirement may contribute to the

movant's ability to meet other requirements." *Id.* at ¶39.

14. This motion is timely. Allowing the Unions' intervention will not delay the Court's consideration of this case. It will not prejudice the Petitioners because under the current briefing schedule, the Respondents are required to file their response to the Petition and Motion on or before April 28, 2020 at 4:00 p.m. This motion, along with Proposed Intervenors' Response in Opposition to Emergency Petition for Original Jurisdiction and Motion for Temporary Injunction, are filed by that same deadline.

15. The interest that the Unions and their members have in the disposition of this case surely cannot be questioned: these are the workers who are most exposed to COVID-19 infection through their work, and also especially needed to remain healthy for the duration of this pandemic. The disposition of the Legislature's Petition and Motion for Preliminary Injunction, without the Unions' participation, would most certainly impair or impede their ability to protect their interests.

16. Finally, while the Unions acknowledge that they may be aligned with the existing Respondents' interests in the outcome of this case, those Respondents will not likely make the very strong claim that the Unions assert: that the "Wisconsin Legislature" has neither a constitutional nor statutory basis that allows it to commence this lawsuit. Consequently, the existing Respondents do not adequately represent the Unions' interests, at a minimum, as to that claim.
17. If the Court determines that the criteria for intervention as of right are not fully met, the Court should exercise its discretion and allow the Unions to intervene on a permissive basis.
18. Wisconsin Statute Section 803.09(2) sets the standard for permissive intervention, providing that the Court may, in its discretion, allow a party to intervene:

When a movant's claim or defense and the main action have a question of law or fact in common....In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

19. These criteria are no doubt met, as described above.

Respectfully submitted this 28th day of April 2020.

PINES BACH LLP

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Court's April 21, 2020 Order in the above-captioned case and the Court's April 8, 2020 Administrative Order, on April 28, 2020 I submitted the foregoing document to the Clerk of the Court for filing via electronic mail at this address: clerk@wicourts.gov. On April 28, 2020 I also caused an original and one copy of this document to be delivered by U.S. Mail to the Clerk of Court, and caused this document to be served on all counsel of record via electronic mail and U.S. Mail.

/s/Tamara B. Packard

Tamara B. Packard