

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

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# In the Supreme Court of Wisconsin

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BRYANT STEMPSKI,  
PETITIONER,

v.

JANEL HEINRICH, DANE COUNTY, CITY OF MADISON, AND  
PUBLIC HEALTH OF MADISON & DANE COUNTY,  
RESPONDENTS.

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## **EMERGENCY MOTION FOR A TEMPORARY INJUNCTION**

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Petitioner hereby moves the Court, pursuant to Wis. Stat. §§ 813.02 and 809.14 for an immediate order enjoining enforcement of the August 17, 2021, “Face Covering Emergency Order” issued by Public Health of Madison and Dane County, which is set to go into effect at 12:01 a.m. on Thursday, August 19, 2021.

Petitioner has filed, simultaneous with this motion, an Emergency Petition for an Original Action and Appendix, and a Memorandum in Support of Emergency Petition for an Original Action and Emergency Motion for a Temporary Injunction.

As explained in the Memorandum, as this Court held just sixty days ago, Wis. Stat. § 252.03 only confers a “series of discrete powers”

upon health officials, and if the power is not “specifically conferred,” then “that power is not authorized.” *James v. Heinrich*, 2021 WI 58, ¶18, 960 N.W.2d 350 (citations omitted). Just as “[n]othing in the text of the statute confers upon local health officers the power to close schools,” *Id.* ¶ 22, nothing in the text of the statute confers upon local health officers the authority to issue a countywide mask mandate. And even if Wis. Stat. § 252.03 does authorize such orders, contrary to *James*, then that statute and the related local ordinances would present a serious nondelegation problem.

Given that this order is set to take effect at midnight tonight, Petitioner will suffer irreparable harm if the challenged order is not immediately enjoined. There is no adequate remedy at law available.

The Petitioner requests this Court issue an immediate injunction of the challenged order. Additional grounds for this motion are set forth in the accompanying Memorandum.

DATED this 18th day of August, 2021.

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW AND LIBERTY, INC.

A handwritten signature in black ink, appearing to read "Dan Lenington", written over a horizontal line.

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