

WILL: Wisconsin Supreme Court agrees to hear challenge to Dane County school closure order

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The News: The Wisconsin Supreme Court [granted](#) an original action brought by the Wisconsin Institute for Law & Liberty (WILL), consolidating it with two others, challenging the Dane County health department's order closing all Dane County schools for grades 3-12. The Court also ordered a temporary injunction against the order, allowing Dane County schools to open while the case is under review.

The Quote: WILL President and General Counsel Rick Esenberg said, "We are pleased the Court took swift action and agreed to review Dane County's school closure order. We are heartened that the Court concluded that our argument is likely to succeed on the merits and, for now, barred the closing of private schools. Our clients will be able to do what they do - educating children in Dane County."

What's Next: All Dane County schools now have the option to open their doors to in-person learning while the case is under review. The Court asked the three petitioners for original action, including WILL, to file a joint brief. Oral arguments may be scheduled at a later date.

Background: [Order #9](#), issued on Friday August 21, by Public Health Madison & Dane County, closed all schools, public and private, for in-person learning for grades 3-12 in Dane County effective Monday August 24. The order came after 5 pm and without warning for a number of private schools in Dane County that were preparing to start in-person instruction the week of August 24. At least one Dane County private school had already been open for a week when Order #9 was issued.

WILL filed an [original action](#) on August 26, on behalf of 8 Dane County families, 5 private schools, School Choice Wisconsin Action, and the Wisconsin Council of Religious and Independent Schools (WCRIS). All of WILL's private school clients were planning on providing in-person instruction this fall and had invested significant resources into creating a safe environment for their students to return.

The original action asked the Wisconsin Supreme Court to review important questions concerning Order #9 and the authority of Public Health Madison & Dane County to close private schools.

- Wisconsin statutes do not give county health departments the authority to order the closure of schools for in-person instruction.
- Public Health Madison & Dane County cannot meet its burden of showing that school closures are “necessary” to combat COVID-19 based on Dane County’s own data and the less burdensome approach it has taken toward regulating other sectors of society. For instance, childcare in Dane County remains open but schools must close for grades 3-12.
- Order #9 unconstitutionally infringes upon the constitutional right of parents to direct the education and upbringing of their children by sending them to private school to receive in-person instruction.
- Order #9 unconstitutionally infringes upon the constitutional right of parents to freely exercise their religion, which includes sending their children to private, religious schools to receive religious instruction and formation.

Read More:

- [“WILL Asks Wisconsin Supreme Court to Invalidate Dane County School Closure Order”](#), August 26, 2020