

WPHA: Public Health Organizations Oppose Federal Challenge on Local Stay-at-Home Orders

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On May 20, a challenge to the authority of local health departments to issue local stay-at-home orders was filed in federal court in Milwaukee. The Wisconsin Association of Local Health Departments and Boards (WALHDAB) and Wisconsin Public Health Association (WPHA) issue the following joint statement in response to the challenge:

Following the Wisconsin State Supreme Court's ruling striking down Emergency Order #28, legislative leaders, including Assembly Speaker Robin Vos (R - Rochester), expressed their desire to allow an ongoing COVID-19 response strategy to be at the discretion of local authorities. If that strategy is to be successful, then local public health officials need the authority afforded them by Wisconsin State Statute to remain in effect.

According to state statute, and confirmed by the May 15 opinion from Wisconsin Attorney General Josh Kaul, local health officials have the authority under Wis. Stat. § 252.03 to "prevent, suppress and control communicable diseases" and "forbid public gatherings when deemed necessary to control outbreaks or epidemics." Local stay-at-home orders fall well within the bounds of that authority.

This standard of authority is not new. In a recent memo from the Legislative Reference Bureau, the ability of officials to implement policies similar to stay-at-home orders dates back to the creation of the State Board of Health in 1887. The 1887 language says, "...the State Board of Health may from time to time make, alter, modify or revoke rules and regulations for guarding against the introduction of contagious diseases into the state; for the control and suppression thereof if within

the state; for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such diseases...”

Furthermore, the current language found in Wis. Stat. § 252.03 was created by 1981 Assembly Bill 711 and signed into law by Republican Governor Lee Sherman Dreyfus in 1982.

WALHDAB and WPHA oppose this attempt to overturn 133 years of legal precedent and 38 years of statutory authority. The legal authority our members have to implement strategies to combat COVID-19 is clear. Local health officials are using the tools at their legal disposal to address the COVID-19 pandemic at the local level.

The Wisconsin Association of Local Health Departments and Boards and the Wisconsin Public Health Association represent over 1,200 public health professionals statewide and are dedicated to promoting and protecting public health in Wisconsin.