

WILL: Dane County drops most fines against dance studio

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Health department enlisted the wrong attorneys and filed far too many counts

The News: Dane County attorneys, on behalf of Public Health Madison and Dane County, have [significantly reduced](#) the fines they are seeking from A Leap Above dance studio in Oregon, Wisconsin. WILL is representing A Leap Above after the health department fined the dance studio for what it misleadingly characterized as a “performance” of the Nutcracker on December 13, 2020. The initial complaint sought nearly \$24,000 in fines.

WILL attorneys got the City of Madison to [dismiss](#) the initial enforcement action because the Dane County health department illegally enlisted City attorneys to enforce a county ordinance. WILL attorneys also noted that the initial filing’s legal theory—one count per person allegedly at the studio—was inconsistent with both the order and ordinance. Dane County attorneys refiled the action on Friday, but dropped most of the counts.

The Quote: WILL Deputy Counsel, Luke Berg, said, “The health department’s shifting theories illustrate what we’ve been arguing all along; that a single, unelected official cannot have the power to write, reinterpret, and enforce her own municipal code. These were just a few of the flaws with the enforcement action against A Leap Above. We are disappointed the county chose to refile it, but are confident A Leap Above will be vindicated by the courts.”

Background: The Dane County Health Department issued [an order](#) in November with a ban on some in-person gatherings, but the order allowed “child care and youth settings” such as “unregulated youth programs” to continue to host groups of

15 or fewer students. [The Wisconsin Department of Children and Families](#) puts “[g]roup lessons to develop a talent or skill such as dance,” like A Leap Above, into that category.

A Leap Above, in Oregon, Wisconsin, normally hosts a performance of the Nutcracker during the holidays. Due to COVID, A Leap Above owner Natalie Nemeckay realized that a performance would not be possible, so she came up with a safe, innovative way to allow her dancers to do the dances they had been practicing, to bring them some joy during the holidays, while complying with the order. They came to the studio in groups of 6-10, wearing masks, to record their dances. The groups rotated through separate rooms to change and do their dances in a consistent direction and were scheduled over a six-hour period to minimize interactions. There was no audience and even parents were required to wait in their cars.

Public Health Madison and Dane filed a complaint against A Leap Above for this, seeking nearly \$24,000 in fines. The Health Department’s complaint suggests that A Leap Above was warned prior to the event that it would violate the order in place at the time, but this is not true. The event occurred on a Sunday – the Health Department mailed a letter on the Friday before, but it did not arrive until Monday, after the event. The Department also left a voicemail on Friday, while the business was closed, and the studio did not receive it until Monday.

A Leap Above is represented by WILL in the fight against the health department’s fines. In addition, A Leap Above joined a [separate](#) lawsuit, filed in January in Dane County Circuit Court, that challenges the authority of the Dane County health department to issue sweeping restrictions without oversight or permission from local elected officials.

Read More

- [WILL Files Lawsuit Challenging Dane County Health Department’s Authority to Enact COVID Restrictions](#), January 20, 2021
- [WILL Represents Dane County Dance Studio in Fight Against Health Department Fines](#), Orders, February 4, 2021
- [Public Health drops complaint against dance studio, will incorporate allegations into counterclaim in related lawsuit](#), Wisconsin State Journal, February 25, 2021