

WILL: Wisconsin supreme court strikes down Dane County school closure order

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The News: The Wisconsin Supreme Court issued a 4-3 [decision](#) in [WCRIS v. Heinrich](#) making clear that the Dane County health department lacked the authority to issue an order closing all schools, public and private, in August 2020. The Wisconsin Institute for Law & Liberty (WILL) filed an [original action](#) to the Wisconsin Supreme Court on behalf of 8 Dane County families, 5 private schools, School Choice Wisconsin Action (SCWA), and the Wisconsin Council of Religious and Independent Schools (WCRIS).

The Wisconsin Supreme Court issued a temporary injunction on September 10, 2020, allowing Dane County schools to reopen while the case was under consideration.

The Decision: The [majority opinion](#), authored by Justice Rebecca Grassl Bradley, said, “Local health officers do not have the statutory authority to close schools under Wis. Stat. § 252.03. Article I, Section 18 of the Wisconsin Constitution—not Jacobson—controls the constitutional question. Because Heinrich’s Order violates the Petitioners’ fundamental constitutional right to the free exercise of religion, it cannot stand.”

The Quote: WILL President and General Counsel, Rick Esenberg, said, “The order from Public Health Madison & Dane County closing all county schools was illegal, unnecessary, and unconstitutional. Even as the COVID-19 pandemic recedes, the Court’s decision provides a critical correction that ought to prevent future abuses of power in an emergency.”

Background: On August 21, 2020, Public Health Madison & Dane County [ordered](#) all schools, public and private, to close for in-person learning for grades 3-12. The order came without warning, disrupting several private schools in Dane County that were preparing to start in-person instruction the following week. At least one Dane

County private school had already been open for a week when Order #9 was issued. WILL filed an [original action](#) to the Wisconsin Supreme Court on behalf of 8 Dane County families, 5 private schools, School Choice Wisconsin Action (SCWA), and the Wisconsin Council of Religious and Independent Schools (WCRIS). WILL argued that Wisconsin law does not give county health departments the authority to order the closure of all schools for in-person instruction. Additionally, WILL argued the order unconstitutionally infringes upon the constitutional right of parents to direct the education and upbringing of their children, as well as rights to religious liberty. The decision marks WILL's sixth victory at the Wisconsin Supreme Court.

Read More:

- [Wisconsin Supreme Court Decision](#), June 11, 2021
- [Wisconsin Supreme Court Order](#), September 10, 2020
- [Cover Letter](#), August 26, 2020
- [Emergency Petition for an Original Action and Appendix](#), August 26, 2020
- [Emergency Motion for a Temporary Injunction with Affidavits](#), August 26, 2020