

# Wisconsin Institute for Law & Liberty: Challenges authority of health officer to issue orders without legislative approval

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The News: The Wisconsin Supreme Court [granted](#) a motion to bypass in [Becker v. Dane County](#), meaning the Wisconsin Supreme Court will hear and decide the case brought by two Dane County residents and a Dane County business challenging the authority of the county health officer to issue sweeping orders without approval by the Dane County Board. The Wisconsin Institute for Law & Liberty (WILL) [filed](#) this case in January 2021 in response to a series of emergency orders from Public Health of Madison and Dane County (PHMDC) that restricted and regulated life and commerce in Dane County.

The Wisconsin Supreme Court will schedule oral arguments at a later date.

The Quote: WILL Deputy Counsel, Luke Berg, said, "This case presents the Court with an opportunity to clarify that local health officers cannot unilaterally issue orders that restrict daily life without approval from a legislative body. The Dane County Board cannot pass the buck and allow an unelected health officer to issue whatever orders she sees fit."

Background: WILL filed an [original action](#) to the Wisconsin Supreme Court in November 2020 challenging the legal authority of Dane County's health department to issue sweeping emergency orders that restrict life and commerce in Dane County. WILL argued the orders are an overreach of the legal authority granted to local health officers and an unlawful delegation of authority from local elected bodies. In particular, WILL argued the new restrictions were not voted on by the Dane County Board.

The Wisconsin Supreme Court did not grant WILL's original action on a 4-3 vote in December 2020. Justice Hagedorn, who concurred in the denial, agreed with the dissenters that the petition presented "important statutory and constitutional questions that deserve judicial scrutiny," but concluded that the case should begin in circuit court.

WILL [filed](#) [Becker v. Dane County](#) in January 2021 as Dane County's health officer continued to issue successive emergency orders without approval from the county board. The Dane County Circuit Court ruled in the summer in favor of the health department. WILL appealed and filed a petition to bypass to the Wisconsin Supreme Court. The Court granted that petition on December 20.