



**FOR IMMEDIATE RELEASE**

December 19, 2019

**Contact**

Robert Fassbender

[fassbender@greatlakeslegalfoundation.org](mailto:fassbender@greatlakeslegalfoundation.org)

## **Wisconsin Supreme Court Throws Out Unlawful DOT Order**

*Removing Outdoor Sign Without Compensation Violates State Due Process Procedures*

Madison, WI – On December 19, in a [unanimous decision](#), the Wisconsin Supreme Court said state agencies must promulgate as a rule changes to their policies. In this case, Wisconsin Department of Transportation (DOT) violated Wisconsin law when ordering the uncompensated removal of an outdoor sign because it changed its mind on what the law means.

On behalf of the Wisconsin Manufacturers & Commerce, Midwest Food Products Association, Outdoor Advertising Association of Wisconsin, Wisconsin Cheese Makers Association and Wisconsin Dairy Alliance, the Great Lakes Legal Foundation (GLLF) filed [an amicus brief](#) urging the court to reverse a 2018 appellate court decision creating an expansive exception to rulemaking requirements not otherwise allowed under Wisconsin law. As noted in our brief:

Wisconsin Employers have an interest in assuring that Wisconsin executive branch agencies follow the rulemaking procedures set forth in Wisconsin Statutes Chapter 227. Rulemaking plays a critical role in promoting fairness by providing notice, consistency, and opportunity to comment.

Agreeing with us and writing for the court, Justice Kelly notes that “from time to time an administrative agency changes its interpretation of a statute in a manner that adversely affects a regulated activity.” In this instance, DOT must “promulgate a rule containing the new statutory interpretation before applying it against the sign owner.”

“This is a resounding victory for Wisconsin businesses—and all citizens regulated by state agencies,” says Bob Fassbender, GLLF President. “This isn’t about one sign, or one agency. It is a clear directive to all state agencies that they cannot impose their changing views of the law without providing the due process procedural protections we all deserve.”

GLLF’s interest in this case relates more broadly to agency avoidance of rulemaking that has become a chronic problem with all agencies. Rulemaking takes time, providing opportunities for public comments, with approvals needed from elected official in the legislature and the governor. These procedures are the law. Regulation by agency edicts, as in this case by DOT, are unlawful “workarounds” by agencies wishing to avoid the time and effort needed to develop and promulgate sensible and fair regulatory mandates.

For more information, go to <https://greatlakeslegalfoundation.org/lamar-central-outdoor-llc-v-dha-agency-avoidance-of-rulemaking-the-error-correcting-exception/>

*The Great Lakes Legal Foundation is a non-profit legal foundation providing legal and policy expertise to advance regulatory reform and the rule of law within state agencies.*