

Portage County Response to State Supreme Court Ruling on Safer at Home Order

On April 21, 2020, the Wisconsin Legislature filed a lawsuit with the Wisconsin Supreme Court challenging the Department of Health Services' (DHS) extension of Gov. Evers' "Safer at Home" order until May 26, 2020. In the lawsuit, the Legislature argued that the extension of "Safer at Home" failed to follow procedural legal requirements, preventing the legislature from exercising oversight of the DHS order.

In response, DHS argued certain laws empower it to "authorize and implement all emergency measures necessary to control communicable diseases" as well as "close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics." The Legislature requested that the Wisconsin Supreme Court interpret the procedural legal requirements to strike down the currently extended "Safer at Home" order. The Legislature also asked the court to interpret the procedural law to require legislative approval of any replacement order from DHS. The court conducted oral arguments in the case by remote appearances on May 5, 2020.

Late in the day on May 13, 2020, the supreme court ruled 4-3 that Emergency Order 28 is "declared unlawful, invalid, and unenforceable." The ruling is effective immediately. The court ruled that DHS overstepped its authority when it failed to follow the procedural legal requirements when it extended the "Safer at Home" order without consulting the legislature. Chief Justice Roggensack, writing for the majority, reasoned that the order amounts to an emergency rule that DHS cannot enact unilaterally, and creates criminal penalties that DHS has no authority to create.

The legislature had asked the supreme court to allow the extended "Safer at Home" order to stay in place for six days following the decision to give them time to work with Evers' administration on an alternative order. The court refused to grant the stay, saying the two sides have had two weeks to come up with an alternative. According to Justice Ann Walsh Bradley's dissent, the immediate effect of the court's ruling "leav[es] no time for a transitional safety net that a stay could provide."

In response to the supreme court's ruling, Portage County has developed guidance detailing our plan to help county residents and businesses reopen. Tomorrow, the Portage County Division of Public Health will issue a brief follow-up order that will provide guidance for how the Division will assist the public and businesses follow safe practices designed to continue our present success of curbing the spread of COVID-19 within the community.

The county's approach is based on guidance from the Division of Public Health as well as the Wisconsin Economic Development Corporation (WEDC). Regardless of the supreme court's ruling, Portage County's overarching goal has always been to slow the spread of COVID-19 and bring back our economy by using data-driven information designed to safely reopen businesses and organizations throughout the county.

Our community has done a good job practicing social distancing, implementing best practices and taking precautions to keep people safe and our number of active COVID-19 cases in check. After assessing

COVID-19 related data in Portage County and the surrounding region, the Division of Public Health along with municipal officials and representatives from law enforcement collectively determined that Portage County does not presently need to issue an order directing businesses and organizations how to operate.

The most important thing that to stress in the wake of the court's ruling is that none of what has transpired over the last 24 hours changes anything about COVID-19, its presence in the state and our community, or the best practices we should continue in order to mitigate any potential spread of the disease. Although the court's ruling means that the Safer-At-Home order is no longer in place, the recommendations and guidelines that Safer-At-Home contained—which included federal recommendations from the CDC and others—are still safe practices for the public to follow on a volunteer basis.

The Portage County Division of Public Health's recommendations include:

- If businesses or organizations choose to open, they should implement the WEDC Guidelines
- Practice good hygiene and social distancing
- Disinfect frequently used items and surfaces as much as possible
- Strongly consider using cloth face coverings while in public, and particularly when using mass transit
- People who feel sick must stay at home
- Using phased-in capacity limits within non-essential businesses
- People over the age of 60, and those who are medically vulnerable, should continue to shelter at home or avoid interacting with others
- Online education and remote work are encouraged

The prior Wisconsin Safer-At-Home Order worked to help flatten the curve of infections of COVID-19 in Wisconsin. However, as testing ramps up, Portage County anticipates an increase of positive test results in the days and weeks ahead. To be very clear, there is not going to be a "return to normal" as we often hear said these days. Rather, the new normal is on the horizon, and we must all do our part to keep up the effort in containing COVID-19 and to mitigate any potential spread of the disease in our communities.

The Division of Public Health will continue to work with its health care partners and to track data such as the trajectory of positive tests. The Division and health care partners will also strive to increase testing availability for all residents with COVID-19 symptoms, the ability to treat all patients requiring hospitalization, make adequate personal protective equipment available for healthcare personnel and first responders, and maintain the capacity to swiftly trace those who came into contact with persons who tested positive for COVID-19.

Portage County has—along with the rest of the state—made progress in flattening the curve. Congratulations on that achievement. Going forward, however, it is crucial that we all follow the appropriate safety measures and guidelines to keep our families, neighbors, co-workers, and each other safe.

By State law, Portage County has the responsibility to do what is reasonable and necessary to protect its communities from communicable diseases like COVID-19, including limiting public gatherings. The Wisconsin supreme court's decision does not affect this authority. Rather, based on the community's effective track-record of collaboration, relatively small and stable number of active cases, and all the plans and preparations that have been implemented to date, Portage County has chosen to provide strong

guidance rather than orders to help keep citizens safe. The threat of punishment does not encourage anyone to follow the appropriate guidelines in this situation, and knowing that we are going to be dealing with COVID-19 for the months and, most likely, years ahead, it makes sense to build upon our relationships and partnerships in the community for the long-term. We will need those ongoing joint efforts in order to continue the successes we have started.

We have a very thoughtful community with many highly successful businesses. All public and private organizations will need to be mindful of social distancing and other best practices in order to protect their employees and customers alike. We should hold one-another accountable and expect nothing less of ourselves.

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