

Private and Catholic Schools, Parents' Rights Victorious in Wisconsin Supreme Court

The Wisconsin Supreme Court handed a major victory to the private schools and parents of Dane County, Wisconsin, on June 11, 2021. Dane County, in which the state capitol of Madison is located, sought to ban private and religious schools from providing in-person, in-classroom education to students and families that desire it.

"This has been an overreach of major proportions by a local health official who ignored the fundamental constitutional right to the free exercise of religion for parents, students and school personnel by ordering these institutions to shut down and prohibiting in-person education," explained Thomas More Society special counsel Erick Kaardal. "It was a slap in the face to educational choice, an affront to families who believe that children should be in school and a direct violation of parental rights."

Kaardal worked directly with St. Ambrose Academy, one of the schools that petitioned for relief, and was part of the legal team representing the independent schools and their constituencies.

Public health officer of Madison and Dane County Janel Heinrich issued Emergency Order No. 9 on Aug. 21, 2020, reacting to fears about the potential spread of COVID-19. As amended on Sept. 1, 2020, that order purported to prohibit schools throughout Dane County from providing in-person instruction to students.

Thomas More Society Executive Vice President and general counsel Andrew Bath responded to the Wisconsin Supreme Court decision, stating, "This was an illegal order by a local

public health officer, and the court saw that right away, first issuing a preliminary injunction in September 2020 that prohibited the county from enforcing it, and now settling the matter decisively. They have declared it both statutorily and constitutionally unlawful and have additionally affirmed that local health officers do not have the statutory authority to close schools.”

The Wisconsin Supreme Court noted in this decision that, “the framers of the [Wisconsin] constitution, backed by Wisconsin residents, chose to describe the religious freedoms that they should be entitled to in greater detail than were given in the federal constitution.”

The court observed that Wisconsin’s framers used “the strongest possible language” in the protection of those freedoms, stating that, “The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed ... nor shall any control of, or interference with, the rights of conscience be permitted.”

The court held that the individuals and schools involved proved that they had a sincerely held religious belief, and that such belief was burdened by the application of the law at issue. The public health office of Madison and Dane County was unable to show that their order to close schools was based on a compelling state interest or that it could not be served by a less restrictive alternative.

Read the Supreme Court of Wisconsin decision issued June 11, 2021, regarding three cases, James v. Heinrich; Wisconsin Council of Religious and Independent Schools, et al. v. Heinrich, et al.; and St. Ambrose Academy Inc., et al. v. Parisi, et al.; vacating public health officer of Madison and Dane County Janel Heinrich’s order restricting or prohibiting in-person instruction, declaring it both statutorily and constitutionally unlawful, and declaring that local health officers do not have the statutory authority to close schools,

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