Emergency powers a must for health officials to mitigate COVID-19

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Should county health department officials be the ones to put emergency COVID-19 infectious disease mitigation efforts such as masks, physical distancing and restrictions on school activities into place, or should that be left up to a vote from the county board?

It’s a question the Wisconsin Supreme Court is poised to answer after two Dane County residents and an area business filed a lawsuit challenging the county health officer’s authority to issue emergency orders without Dane County Board approval. The court heard oral arguments in the case, Becker v. Dane County, in March.

Citing the importance for experts to assess quickly changing information and then nimbly make decisions to protect people’s health, the Litigation Center of the American Medical Association and State Medical Societies joined the Wisconsin Medical Society (WisMed) in filing a brief supporting the public health department’s right to issue emergency orders. The brief asks the state’s highest court to uphold the circuit court’s decision to allow the health department to issue emergency orders without county board approval.

“Relying on non-expert lay politicians – such as a city council – to make each and every decision about the best way to protect Wisconsinites from the potentially severe consequences of COVID-19 would require an immense learning curve and additional time for consultation with outside experts – time that policymakers may not always have. A local public health officer, however, is uniquely well suited to respond to these challenges quickly,” the brief tells Wisconsin’s highest court.

Similar to other cities, counties and states across the nation, Dane County, where the state’s capital city of Madison is located, lifted its mask mandate and other mitigations March 1 as COVID-19 numbers declined.


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### Legislature’s guidance on-target

The Omicron surge underscored just how quickly the dangers during a pandemic can change, the brief explains. It also showed the importance of a state law that allows local officials to determine how best to protect public health in their jurisdictions.

Throughout the pandemic, health leaders had to go to the primary source of information and then make the best real-time interpretation of the data, and make decisions based on those conclusions.

“That process requires meaningful expertise, particularly as public health professionals consulted cutting-edge studies that had not yet gone through the peer-review process, and therefore required additional scrutiny,” the AMA Litigation Center and WisMed brief tells the court. Further, “in making these quick decisions, public health officers must account for not only the potential case rates and the lives directly affected by contracting COVID-19, but also the entire health care ecosystem, which can be overwhelmed by COVID-19 patients.”

Those who filed the lawsuit complain that the Dane County public health officer “has been issuing ever-changing orders for over a year and a half,” the AMA Litigation Center and WisMed brief notes. The physician organizations’ brief responds by saying “Exactly: ever-changing orders evidence a response attuned to the ever-changing nature of the pandemic.”

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### Mitigations made a difference

While those who filed the lawsuit suggest that Dane County be more like Winnebago, Milwaukee or Eau Claire counties where public health officials took different courses of action, “the numbers tell a different story,” the AMA and WisMed brief says.

Dane County has a much lower mortality rate among those who contract COVID-19, the brief notes, with only 0.39% of cases in the county resulting in death. That figure is 0.72% for Winnebago County; 0.59% for Eau Claire County and 0.83% for Milwaukee County.

“Although each county has its own circumstances, higher COVID-19 rates, and higher mortality rates, are not a model to emulate,” the brief says. “The democratically elected legislature chose to authorize required local health officers to ‘take all measures necessary to prevent, suppress and control


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communicable diseases,’ and Dane County’s local health officer chose measures that likely helped keep the county’s COVID-19 rates below those of its peers. The court should respect those choices.”