

DEREK LINDOO,
BRANDON WIDIKER,
and JOHN KRAFT

Case No: 20-CV-219

Plaintiffs,

v.

TONY EVERS, in his official
capacity as Governor of the
State of Wisconsin,

Defendant.

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the Plaintiffs hereby move the Court, pursuant to Wis. Stat. § 802.08, for summary judgment in their favor.

PLEASE TAKE FURTHER NOTICE that this motion will be heard by the Circuit Court for Polk County, the Honorable R. Michael Waterman presiding, on November ____, 2020 at _____ o'clock __m., or as soon thereafter as the matter may be heard via a Zoom call with further instructions for the Zoom call to be issued by the Court.

In support of this motion, the Plaintiffs state as follows:

1. On October 12, 2020, this Court issued its Decision and Order on the Plaintiffs' Motion for a Temporary Injunction. In that Decision and Order the Court determined that the Plaintiffs were not likely to succeed on the merits of their claim because the Court agreed with the Defendant's interpretation of Wis. Stat. § 323.10 and disagreed with the Plaintiffs' interpretation of that statute.

2. The interpretation of Wis. Stat. § 323.10, of course, is a dispositive issue on the Plaintiffs' claim under that statute. But the Plaintiffs' have also alleged in the Complaint that if the Court accepts the Defendant's interpretation of Wis. Stat. § 323.10 (as the Court has done), then that statute is an unconstitutional delegation of legislative power to the Governor. (See, Amended Complaint paragraphs 55-62.)

3. This Court did not address the Plaintiffs' constitutional claim in its October 12, 2020 Decision and Order.

4. The Plaintiffs request that the Court now issue a final judgment with respect to both their statutory claim and their constitutional claim.

5. The Plaintiffs further request that if the Court denies their motion for summary judgment then, pursuant to Wis. Stat. § 802.08(6), the Court grant summary judgment in favor of the Defendant even if he has not moved for summary judgment.

6. That result would be appropriate because there are no material facts in dispute with respect to the proper interpretation of Wis. Stat. § 323.10 or the Plaintiffs' constitutional claim and, therefore, if the Plaintiffs are not entitled to summary judgment based on their interpretation of that statute or on their constitutional claim then the Defendant would be.

7. That result would allow whichever party does not prevail to appeal this Court's decision, as a matter of right, in as prompt a fashion as possible.

This motion is further supported by the Plaintiffs' Brief in Support of Summary Judgment filed herewith. Pursuant to Polk County Circuit Court Local Rule 303, the Plaintiffs have also submitted Proposed Findings of Fact, Conclusions of Law and Judgment herewith. Pursuant to that same local rule, the Plaintiffs understand that the Defendant must file a response brief and supporting documents within 30 days, or waive in writing the right to do so. If no brief or waiver

is filed within the statutory time limit, it shall be presumed that the Defendant has waived this right. The Plaintiffs further understand that their reply brief will be due 15 days after the Defendant's response brief.

Dated this 23rd day of October, 2020.

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, Inc.
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/S/ Signed electronically by Richard M. Esenberg

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