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**STATE OF WISCONSIN
IN SUPREME COURT**

R..L.B. v. Taylor County Human Services

No. 2020XX461

Emergency Motion from Taylor County Case: 2020GN0003

PETITIONER'S REPLY BRIEF

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**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

Petitioner concurs that oral argument is not necessary to resolve these issues; however, believes publication may assist future litigants to the extent a comprehensive opinion is issued resolving this matter.

This is a unique situation and the criteria under Wis. Stat. § 809.23 are met in that this decision will (1) largely enunciate a new rule of law or clarify the scope of the Supreme Court of Wisconsin's authority in the time of a pandemic; (2) contribute to legal literature in addressing novel issues; and (3) given the liberty interests implicated—substantial and continuing public interests are at stake.

**REPLY TO PROCEDURAL HISTORY OF
RESPONDENT**

Respondent clarifies in its Response that a final hearing was scheduled February 28, 2020. (Respondent's Response, pg. 5.) This is true; however, counsel was appointed on February 25, 2020. (Emergency Motion, Attachment D, Taylor County 20GN03 E-File, Document 33). This was after numerous attempts to appoint private bar on February 14, 2020 through February 24, 2020. All private bar attorneys were contacted indicated they were unable to accept the case or did not respond. Realizing the urgency, the State Public Defender appointed a staff attorney, the undersigned counsel, to represent R.L.B. Counsel determined that it was not feasible to investigate and try a jury trial – R.L.B.'s election – within four days. Accordingly, the stipulation to an adjournment consistent with Wis. Stat. § 55.10(1) should not be construed as a waiver, forfeiture, or consent to not following the timelines required by statutes. R.L.B. has never consented to having further adjournments, which would take the final hearing outside statutory timelines and do not comport with Due Process.

R.L.B. and counsel are ready for trial on the previously scheduled date – April 28, 2020.

REPLY TO ANALYSIS

1. Discussion of impact of proposed change on the rights of litigants, other parties, the courts, and the public.

Respondent faults petitioner for failing to address the impact on the “rights of the litigants, other parties, the courts and the public.” (Respondent’s Response, pg. 5.) The emergency request speaks at length to R.L.B.’s current situation as a litigant – R.L.B. is currently under a *Temporary* Protective Placement order and is being housed in a nursing home despite his wishes to be at home with his family. R.L.B. is in no position to speak to the situation of other litigants; however, would highlight that Respondent’s motion does not indicate in any detail how this would negatively effect Taylor County Human Services.

With regards to the public and the Courts impact, prophylactic measures can be taken to ensure the safety of the proceedings. First, a six-person jury trial has been demanded – not a twelve-person jury trial. Juror’s can be seated in a way that ensures adequate distancing. Further, a limited jury venire can be summoned and isolated during voir dire. While these measures will certainly be cumbersome, they are nevertheless measures that appropriately strike the balance between R.L.B.’s rights and protection of the Court’s and the public. Further, under Wis. Stat. § 55.10(3), R.L.B. can request the hearing be closed – a request he intends to make at this time. This will further protect the public that would otherwise decide to attend.

Finally, this matter was already on the Trial Court’s calendar and scheduling should not be an issue.

2. Applicability of Wis. Stat. §§ 751.12, 757.12

Respondent correctly quotes Wis. Stat. § 757.12, which states a court “may appoint any other time for holding court ‘in the event it is’ deemed unsafe or inexpedient, by reason of war, pestilence, or other public calamity, to hold any court at the time and place appointed therefor.” (Respondent’s Response, pg. 7.) Petitioner is mindful of the analysis set forth in this Court’s order; however, petitioner does not believe this statute should be construed as a blank check to conduct hearings

outside of statutory or constitutional timelines. Further, in the Court's order, in footnote 1, the Court declined to decide whether "this statute applies to the current public health emergency."

Specifically, the Statute gives courts latitude to time and place – but does not expressly grant authority to the Judiciary to suspend or extend timelines explicitly expressed by the legislature. Moreover, it requires the appointment of "time and place," which has not been done in this matter – and presumably would need to be done by the suspending court. In this instance, the suspending court is the Supreme Court of Wisconsin.

If this statute was to be construed as a grant to the judiciary of the ability to suspend all proceedings, which in its sole opinion meet the definition of a "public calamity[,]" it would be an exceptionally broad grant allowing the judiciary to deviate from timelines regardless of impact on liberty or due process. Similarly, a reading of the plain language of the statute does not support the indefinite suspension of jury trials.

Wis. Stat. § 751.12 also does not grant authority to indefinitely suspend jury trials. Subsection (1) of this statute prohibits any modification from being effective "until 60 days after its objection" and proscribes only two effective days – January 1 and July 1. *Id.* The same subsection prohibits rules that "abridge, enlarge, or modify the substantive rights of any litigant." *Id.*

This Court's order and the trial court's extension of the timelines consistent with the order are an timeline enlargement of R.L.B's right to have a timely hearing in order to maintain temporary protective placement. This is not a mere extension of a hearing that has little impact on R.L.B. Instead, his liberty is being curtailed for a period that exceeds that articulated by statute.

CONCLUSION

It is not lost on the petitioner that we are in the midst of a public health crisis and there are risks associated with conducting a jury trial in this matter. These risks, however, are acceptable

risks considering the alternative – the continued deprivation of liberty without process. It is a dangerous game to decide which facets of our Democracy continue and which ones are acceptable to abridge.

This Court has recently balanced these risks as it applies to the ongoing business of our democratic institution's of government. While an opinion is still forthcoming, in *Wisconsin Legislature v. Tony Evers*, 2020AP000608, this Court enjoined an executive order delaying the April primary election. Presumably, this decision, when issued, will address analogous separation powers issues raised by Petitioner's Emergency Motion.

For these reasons, it is respectfully requested that relief be granted as articulated in Petitioner's Emergency Motion.

Dated this 12th day of April, 2020.

Respectfully submitted,

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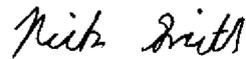
Adversary Counsel for Proposed Ward

CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rule contained in Wis. Stat. § 809.14(4), (8) for a Reply Brief produced with a proportional serif font. The length of the brief is 1,424 words.

Dated this 12th day of April, 2020.

Signed:



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**CERTIFICATION AS TO COMPLIANCE WITH WIS. STAT. §
809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 12th day of April, 2020.

Signed:



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