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SUPREME COURT  
STATE OF WISCONSIN

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SAVANNAH WREN, Individually and as Personal  
Representative of the ESTATE OF CALVIN GORDON, Jr.,  
and CALVIN GORDON,

Plaintiffs-Appellants,

v.

Appeal No. 24-AP-126

COLUMBIA ST. MARY’S HOSPITAL  
MILWAUKEE, INC., JESSICA HOELZLE, M.D.,  
JORDAN HAUCK, D.O., and INJURED PATIENTS  
and FAMILIES COMPENSATION FUND,

Defendants-Respondents-Petitioners.

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**JOINT OPENING BRIEF OF DEFENDANTS-RESPONDENTS-  
PETITIONERS COLUMBIA ST. MARY’S HOSPITAL MILWAUKEE,  
INC., JESSICA HOELZLE, M.D., JORDAN HAUCK, D.O., and  
INJURED PATIENTS and FAMILIES COMPENSATION FUND**

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Appeal from the Circuit Court for Milwaukee County, Case No. 23-CV-4960,  
Honorable Kristy Yang, Circuit Judge Presiding

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** . . . . . 5

**INTRODUCTION** . . . . . 9

**STATEMENT OF THE ISSUE** . . . . . 11

**STATEMENT ON ORAL ARGUMENT AND PUBLICATION** . . . . .11

**STATEMENT OF THE CASE** . . . . . 11

**I. Nature of the case.** . . . . . 11

**II. Procedural status in the circuit court.** . . . . . 12

**III. The circuit court granted Columbia St. Mary’s motion to dismiss at a December 6, 2023 hearing.** . . . . . 12

**A. Columbia St. Mary’s supported the constitutionality of Wis. Stat. § 895.4801 at the December 6, 2023 hearing.** . . . . . 12

**B. The circuit court upheld the constitutionality of Wis. Stat. § 895.4801.** . . . . . 13

**IV. The court of appeals declared Wis. Stat. § 895.4801 was unconstitutional on its face and reversed the circuit court.** . . 14

**ARGUMENT.** . . . . . 17

**I. The standard of review, while *de novo*, provides a high bar for a statute to be deemed unconstitutional in light of a facial challenge.** . . . . . 17

**A. Wis. Stat. § 895.4801 does not restrict the fundamental right to a jury trial.** . . . . . 18

**B. Rational basis review should be applied.** . . . . . 21

**C. Even applying strict scrutiny, Wis. Stat. § 895.4801 survives constitutional review. . . . . 23**

**II. The court of appeals decision is bereft of any statutory construction analysis, which also supports a finding of constitutionality. . . 25**

**III. The court of appeals did not provide any analysis of the deference courts provide to the policy choices of a legislature and governor. Instead, it substituted its own judgment for the determination by Wisconsin’s highest elected officials, the legislature and governor. . . . . 28**

**A. *Palm* supports reversal of the court of appeals decision. 29**

**B. The court of appeals’ citation to *Palm* fails to provide the *entire* sentence on which it cites, and the entirety of that citation completely changes the meaning of that sentence. . . . . 30**

**IV. As this Court recently noted, the approval of the legislature and governor in passing Wis. Stat. § 895.4801 meets the constitutional principles of bicameralism and presentment. . . . . 34**

**CONCLUSION . . . . . 35**

**CERTIFICATION PURSUANT TO WIS. STAT. § 809.19(8g)(a) . . . . . 37**

**CERTIFICATION PURSUANT TO WIS. STAT. § 809.19(2)(a) . . . . . 38**

## TABLE OF AUTHORITIES

<i>Cases</i>	<i>Page(s)</i>
<i>Aicher v. Wisconsin Patients and Families Comp. Fund</i> , 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 . . . . .	18, 21, 22, 23, 28
<i>Blake v. Jossart</i> , 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484 . . . . .	21, 23
<i>C.L. v. Olson</i> , 143 Wis. 2d 701, 422 N.W.2d 614 (1988) . . . . .	21
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005). . . . .	30
<i>County of Kenosha v. C &amp; S Mgmt., Inc.</i> , 223 Wis. 2d 373, 588 N.W.2d 236 (1999) . . . . .	17
<i>Dawson v. Town of Jackson</i> , 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316 . . . . .	27
<i>Democratic Nat’l Comm. v. Bostelmann</i> , 2020 WI 80, 394 Wis. 2d 33, 949 N.W.2d 423 . . . . .	18
<i>Evers v. Marklein</i> , 2024 WI 31, 412 Wis. 2d 525, 8 N.W.3d 395 . . . . .	17, 35
<i>Evers v. Marklein</i> , 2025 WI 36, ___ Wis. 2d ___, ___ N.W.3d ___ . . . . .	34, 35
<i>Immigration and Naturalization Service v. Chadha</i> , 462 U.S. 919 (1983) . . . .	34
<i>In re Abbott</i> , 954 F.3d 772 (5th Cir. 2020) . . . . .	30, 31, 32, 33
<i>Jacobson v. Commonwealth of Massachusetts</i> , 19 U.S. 11 (1905) . . . . .	31, 32, 33
<i>Kirk v. Credit Acceptance Corp.</i> , 2013 WI App 32, 346 Wis. 2d 635, 829 N.W.2d 522 . . . . .	14
<i>Kohn v. Darlington Cmty. Sch.</i> , 2005 WI 99, 283 Wis. 2d 1, 698 N.W.2d 794 . . . .	20
<i>Lawton v. Steele</i> , 152 U.S. 133 (1894) . . . . .	32

<b><i>League of Women Voters v. Walker</i></b> , 2014 WI 97, 357 Wis. 2d 360, 851 N.W.2d 302 .....	17
<b><i>Legue v. City of Racine</i></b> , 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837 .....	20
<b><i>Lodl v. Progressive N. Ins. Co.</i></b> , 2002 WI 71, 253 Wis. 2d 323, 646 N.W.2d 314 .....	20
<b><i>Madison Teachers, Inc. v. Walker</i></b> , 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 .....	17
<b><i>Mack v. Joint Sch. Dist. No. 3</i></b> , 92 Wis. 2d 476, 285 N.W.2d 604 (1979) .....	26
<b><i>Marshall v. United States</i></b> , 414 U.S. 417 (1974) .....	33
<b><i>Mayo v. Wisconsin Injured Patients &amp; Families Comp. Fund</i></b> , 2018 WI 78, 383 Wis. 2d 1, 914 N.W.2d 678 .....	17, 21, 24
<b><i>Nat'l Pork Producers v. Ross</i></b> , 598 U.S. 356 (2023) .....	33
<b><i>Planned Parenthood v. Abbott</i></b> , 141 S.Ct. 1261 (2021). .....	30
<b><i>S. Bay United Pentecostal Church v. Newsom</i></b> , 140 S. Ct. 1613 (2020) .....	33
<b><i>Scarpaci v. Milwaukee County</i></b> , 96 Wis. 2d 663, 292 N.W.2d 816 (1980) .....	20
<b><i>SEIU Healthcare Wisconsin v. WERC</i></b> , 2025 WI 29, ___ Wis. 2d ___, ___ N.W.3d ___ .....	25
<b><i>State v. Carpenter</i></b> , 197 Wis. 2d 252, 541 N.W.2d 105 (1995) .....	17
<b><i>State v. Dennis H.</i></b> , 2002 WI 104, 255 Wis. 2d 359, 647 N.W.2d 851 .....	17
<b><i>State ex rel. Kalal v. Cir. Ct. for Dane County</i></b> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110 .....	25, 26
<b><i>State ex rel. Nudo Holdings, LLC v. Board of Review for the City of Kenosha</i></b> , 2022 WI 17, 401 Wis. 2d 27, 972 N.W.2d 544 .....	28
<b><i>State v. Roundtree</i></b> , 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765 .....	24

*State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 261 N.W.2d 434 (1978) . . . 28

*State v. Smith*, 2010 WI 16, 323 Wis. 2d 377, 780 N.W.2d 90 . . . . . 18

*Tomczak v. Bailey*, 218 Wis. 2d 245, 578 N.W.2d 166 (1998) . . . . . 19

*United States v. Salerno*, 481 U.S. 739 (1987) . . . . . 18

*Vincent v. Voight*, 2000 WI 93, 236 Wis. 2d 588, 614 N.W.2d . . . . . 28

*Wenke v. Gehl Co.*, 2004 WI 103, 274 Wis. 2d 220, 682 N.W.2d 405 . . . . . 20

*Wisconsin Legislature v. Palm*,  
2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900 . . . . . 28, 29, 30, 31

*Wren v. Columbia St. Mary’s Hospital Milwaukee, Inc.*,  
2025 WI App 22, 415 Wis. 2d 758, 19 N.W.3d 614  
. . . . . 10, 14, 15, 16, 17, 27, 30, 31, 33

**Statutes**

Wis. Stat. § 323.10 . . . . . 10

Wis. Stat. § 802.06(1)(b) . . . . . 11

Wis. Stat. § 806.04(11) . . . . . 14

Wis. Stat. § 895.4801 . . . . . *passim*

Wis. Stat. § 895.4801(2) . . . . . 9, 12, 24

Wis. Stat. § 895.476(2) . . . . . 15

Wis. Stat. § 895.48 . . . . . 20

Wis. Stat. § 895.52 . . . . . 20

Wis. Stat. § 893.80. . . . . 20

***Wisconsin Constitution***

Wis. Const. Article I, Section 5. . . . .15, 18, 19

Wis. Const. Article I, Section 9 . . . . . 19

Wis. Const. Article IV, Section 17 . . . . . 34

Wis. Const. Article VI, Section 10 . . . . . 34

Wis. Const. Article XIV, Section 13 . . . . .18, 23

***Wisconsin Acts***

2019 Wis. Act 185. . . . . 10, 14, 26

***Wisconsin Bills***

2019 A.B. 1038 . . . . . 27

***Governor’s Executive Order***

Executive Order 72, dated March 12, 2020 . . . . .9, 10

***U.S. Department of Justice Statement of Interests in a U.S. District Court case***

United States’ Statement of Interests in Support of Plaintiffs in a U.S. District Court for the Northern District of Mississippi . . . . .31

## INTRODUCTION

In response to the just emerging global Covid 19 pandemic, Governor Tony Evers declared a state of emergency on March 12, 2020 in Executive Order No. 72. In order to keep health care facilities open and ensure the people of Wisconsin continued to receive necessary medical care during the state of emergency, the Wisconsin legislature passed, and the governor approved, Wis. Stat. § 895.4801, which granted health care providers limited immunity from civil liability for alleged negligent acts or omissions provided during the state of emergency.

Wis. Stat. § 895.4801(2) provides:

(2) Immunity. Subject to sub. (3), any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following:

(a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020, by executive order 72, or the 60 days following the date that the state of emergency terminates.

(b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following:

1. Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a).

2. Any guidance published by the department of health services, the federal of health and human services, or any divisions or agencies of the federal department of health and human services relied upon in good faith.

(c) The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.

*see also* 2019 Wis. Act 185, § 98. In other words, the legislature granted health care providers immunity for negligence claims arising out of services provided between March 12, 2020 and July 10, 2020.<sup>1</sup>

In July 2023, Savannah Wren and other parties (collectively “Ms. Wren”) commenced this medical malpractice action against Columbia St. Mary’s Hospital Milwaukee, Inc., Jessica Hoelzle, M.D., Jordan Hauck, D.O., and the Injured Patients and Families Compensation Fund (collectively “Columbia St. Mary’s” unless otherwise indicated), alleging wrongful death and negligent infliction of emotional distress claims arising out of medical care provided by Columbia St. Mary’s in May 2020 during the state of emergency. Columbia St. Mary’s moved to dismiss the action, based on Wis. Stat. § 895.4801. The circuit court granted the motion, and dismissed the action with prejudice. Ms. Wren appealed.

Applying strict scrutiny, the court of appeals determined Wis. Stat. § 895.4801 was unconstitutional on its face and the “breadth of immunity” provided by the statute was “not narrowly tailored to the compelling state interest that prompted the statute when it denies the right to a jury trial for claims involving medical care that was provided for a reason other than the treatment of COVID-19.” *Wren v. Columbia St. Mary’s Hospital Milwaukee, Inc.*, 2025 WI App 22, ¶ 37, 415 Wis. 2d 758, 19 N.W.3d 614; (A. App. 101-120).

The issue before this Court is whether the legislature’s time-limited grant of civil liability immunity to health care providers for alleged negligent actions or omissions represents an unconstitutional infringement on the right to a civil jury trial. Columbia St. Mary’s respectfully contends Wis. Stat. § 895.4801 is constitutionally

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Wis. Stat. § 895.4801 cites to 60 days after the termination of the state of emergency declared under the governor’s Executive Order No. 72 on March 12, 2020. By operation of Wis. Stat. § 323.10, Executive Order No. 72 expired on May 11, 2020, so the immunity provision did not expire until July 10, 2020.

valid, bars the present action and, as result, requests this Court reverse the decision of the court of appeals and find Wis. Stat. § 895.4801 constitutional.

### **STATEMENT OF THE ISSUE**

Whether Wis. Stat. § 895.4801 presents a constitutionally valid limitation on civil liability for health care providers who provided medical treatment during the state of emergency?

The circuit court answered this issue “yes.”

The court of appeals answered this issue “no.”

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Oral argument and publication are appropriate.

### **STATEMENT OF THE CASE**

#### **I. Nature of the case.**

The complaint was filed on July 6, 2023. (R. 5). Ms. Wren alleges on May 24, 2020 she gave birth, and on the same day, her child Calvin Gordon Jr. was pronounced deceased. (R. 5, ¶21). Ms. Wren alleges defendant-respondent-petitioner Jessica Hoelzle, M.D. was negligent in providing care and treatment to her and her child. (R. 5, ¶¶ 22-26). Ms. Wren also contends defendant-respondent-petitioner Jordan Hauck, D.O. was negligent in her care and treatment of her and her child. (R. 5, ¶¶ 27-30). Last, she asserts defendant-respondent-petitioner Columbia St. Mary’s Hospital Milwaukee, Inc. was also negligent in its care and treatment of her and her child. (R. 5, ¶¶ 31-35). Ms. Wren also sued defendant-respondent-petitioner Injured Patients and Families Compensation Fund. (R. 5, ¶ 13).

Columbia St. Mary’s filed a motion to dismiss on September 5, 2023. (R. 48 and 49). As a result of the filing of the motion to dismiss, discovery was stayed pursuant to Wis. Stat. § 802.06(1)(b).

## II. Procedural status in the circuit court.

In its motion to dismiss, Columbia St. Mary's contended Wis. Stat. § 895.4801(2) expressly provided immunity for the health care providers named in this case as their care and treatment was provided during the immunity time period specified in the statute, and their actions were not alleged to be reckless, wanton, or intentional misconduct. (R. 49, pp. 1-2). Ms. Wren responded, (R. 51), and Columbia St. Mary's replied. (R. 53 and 54). A hearing on the motion to dismiss was originally scheduled to occur on November 10, 2023, but was adjourned. (R. 74, pp. 17-18)(A. App. 123-146). The motion to dismiss hearing occurred on December 6, 2023. (R. 73)(A. App. 147-179).

## III. The circuit court granted Columbia St. Mary's motion to dismiss at a December 6, 2023 hearing.

### A. Columbia St. Mary's supported the constitutionality of Wis. Stat. § 895.4801 at the December 6, 2023 hearing.

At the December 6, 2023 hearing, Columbia St. Mary's argued in support for the constitutionality of Wis. Stat. § 895.4801, including its purpose. Columbia St. Mary's stated the "clear purpose of the statute at issue here 895.4801 was to actually preserve access for all person[s] in Wisconsin to all aspect[s] of health care during the pandemic." (R. 73, p. 19)(A. App. 165). As noted by Columbia St. Mary's, the purpose of section 895.4801 was to encourage health care providers *to remain available during the pandemic. Id.* It applied to not only physicians, but nurses, chiropractors, and other health care providers. *Id.*

The statute permitted the public to receive health care, *even if the patient's condition was not related to a Covid 19 issue. Id.*; (R. 73, pp. 21 and 22)(A. App. 167 and 168). In sum, Columbia St. Mary's contended the purpose of section 895.4801 was to provide health care to all citizens in Wisconsin, no matter what medical issue they were presenting, during the extremely unusual period of time when people were

afraid to go to places for fear of Covid 19, including health care facilities. (R. 73, p. 23)(A. App. 169).

**B. The circuit court upheld the constitutionality of Wis. Stat. § 895.4801.**

The circuit court addressed the constitutionality of Wis. Stat. § 895.4801 at the December 6, 2023 hearing. In assessing whether section 895.4801 was constitutional, the circuit court noted that statutes are presumed to be constitutional, (R. 73, p. 29)(A. App. 175), and that any doubt regarding the constitutionality of a statute must be resolved in favor of finding the statute constitutional. (R. 73, p. 30)(A. App. 176). The Court further noted that “[t]o succeed on a constitutional challenge, a statute must be shown to be unconstitutional beyond a reasonable doubt.” *Id.*

The Court addressed the legislative history of section 895.4801. The Court held that “upon a review of the submissions from the defendants, the legislative history shows that the legislature made a *deliberate choice to provide broad immunity* when the Covid 19 pandemic first started.” (R. 73, p. 30)(A. App. 176)(emphasis added). The Court concluded that Ms. Wren “has not met the heavy burden of proving that a statute is unconstitutional by merely pointing to a more narrowly construed statute because they must prove it beyond a reasonable doubt. Thus, the facts pled in the complaint satisfy the immunity provide[d] by 895.4801.” (R. 73, p. 31)(A. App. 177). The Court granted the motion to dismiss with prejudice. (R. 73, p. 32)(A. App. 178). The Order for Dismissal with prejudice was signed and filed on December 14, 2023. (R. 71)(A.App. 121-122).

**IV. The court of appeals declared Wis. Stat. § 895.4801 was unconstitutional on its face and reversed the circuit court.<sup>2</sup>**

The court of appeals issued its decision on February 11, 2025.<sup>3</sup> *Wren*. Of note, because a motion to dismiss had been filed at the beginning of the case, the court of appeals' recitation of the facts was solely based on the allegations of the complaint. *Wren*, ¶4. Ms. Wren alleges medical malpractice involving the death of her newborn son on May 24, 2020. *Id.* At the time of the birth, the state and nation were in the throes of the start of the Covid 19 pandemic. *Wren*, ¶ 5.

The court of appeals addressed the constitutionality of Wis. Stat. § 895.4801. *Wren*, ¶¶ 24-39. The court noted the legislature passed 2019 Wis. Act 185, a response to the state of emergency created by the Covid 19 pandemic, which included immunity for allegedly negligent care and treatment provided by health care providers during the time period of the allegations at issue. *Wren*, ¶ 24. Along with the immunity provision, 2019 Wis. Act 185 also contained several other provisions assisting health care providers to provide care during the initial stages of the Covid-19 pandemic:

- relaxing credentialing requirements for certain health care professionals;
- suspending credential renewing requirements for emergency medical services personnel;

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The arguments and decision related to the application of Wis. Stat. § 806.04(11) are not being challenged by Columbia St. Mary's in this Court. *Wren*, ¶¶ 12-23.

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The court of appeals issued a "corrected" decision the morning of February 12, 2025, but in comparing the original decision issued on February 11, 2025 and the "corrected" decision issued on February 12, 2025, Columbia St. Mary's could not ascertain any difference. The court of appeals did not note what was "corrected." Regardless, the "corrected" decision is cited in Columbia St. Mary's appendix and throughout this brief. Moreover, the decision on the state court system web site for the appellate courts, CCAP, only references one decision, and it is assumed it is the corrected decision. Courts can take judicial notice of CCAP records. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶ 5 n. 1, 346 Wis. 2d 635, 829 N.W.2d 522.

- provisions providing civil liability exemptions for the manufacture, distribution, and sale of medical supplies; and
- a provision related to insurance coverage for Covid-19 testing.

*Wren*, ¶ 24.

The legislature also passed a broad immunity statute protecting businesses from any tort liability exposure to Covid 19 claims as to “resulting in or relating to exposure, directly or indirectly, to the novel coronavirus identified as SARS-CoV-2 or COVID-19 in the course of or through the performance or provision of the entity’s functions or services.” Wis. Stat. § 895.476(2).

The court of appeals limited its constitutional analysis to Ms. Wren’s contention that section 895.4801 deprived her of a right to a jury trial pursuant to Article I, Section 5 of the Wisconsin Constitution. *Wren*, ¶ 29, n. 11. Ms. Wren did not identify in her briefing in the court of appeals whether she was presenting a facial challenge or an as applied challenge to the constitutionality of section 895.4801, although she did state at the circuit court hearing she was presenting a facial constitutional challenge to Wis. Stat. § 895.4801. (R. 73, p. 16)(A. App. 162); *Wren*, ¶ 28. The court of appeals accepted that Ms. Wren was presenting a facial challenge. *Id.*

The heart of the decision as applied to the right to jury trial that is the issue pending before this Court is the court of appeals’ analysis in paragraphs 31-39 of its decision. *Wren*, ¶¶ 31-39. The court first concluded that Wis. Stat. § 895.4801 “completely eliminates any opportunity for a jury trial on one’s claim related to an act or omission of a health care provider [. . . .]” *Wren*, ¶ 31. The court of appeals believed section 895.4801

is the complete elimination of Wren’s ability to pursue her claims by completely shielding health care professionals and health care providers from liability for anything short of acts or omissions involving reckless or wanton conduct or intentional misconduct.

*Id.*, ¶ 32.

The court of appeals applied strict scrutiny as the standard of review to evaluate the constitutionality of Wis. Stat. § 895.4801.

*The right of access to the courts and the opportunity to have a jury trial has not been preserved in any capacity, and therefore, we consider that Wren’s claim triggers strict scrutiny because it involves the complete and utter elimination of her fundamental right to pursue a jury trial on what would otherwise have been an actionable claim for an allegation of a negligent act or omission absent Wis. Stat. § 895.4801.*

*Wren*, ¶ 32 (emphasis added).

The court of appeals then concluded section 895.4801 was “not narrowly tailored in furtherance of this purpose [the compelling state interest of responding to the Covid 19 pandemic], and therefore, it does not survive strict scrutiny.” *Wren*, ¶ 33. The court determined “[t]here is no requirement [in Wis. Stat. § 895.4801] that the acts or omissions have any nexus to the state of emergency declared in response [to] COVID-19.” *Wren*, ¶ 34.

The court, however, correctly noted Columbia St. Mary’s argued that

*the broad nature of the immunity was necessary in the face of the challenges presented to the health care industry during the state of emergency created by the COVID-19 pandemic - including those related to staffing and supply shortages - and providing immunity for all acts and omissions so long as they were taken in good faith was necessary to ensure the availability of health care services of all kinds during the state of emergency.*

*Wren*, ¶ 36 (emphasis added).

The court of appeals concluded the reason for Ms. Wren’s claims were unrelated to what it believed was the narrow state interest of providing immunity for medical care that treated Covid 19. *Wren*, ¶ 37 (the care provided must have a nexus “to the compelling state interest of responding to COVID-19 that underlies the

statute.”). Because the care provided to Ms. Wren was not related to Covid 19, the court concluded Wis. Stat. § 895.4801 was unconstitutional. *Wren*, ¶ 37.

## ARGUMENT

### I. The standard of review, while *de novo*, provides a high bar for a statute to be deemed unconstitutional in light of a facial challenge.

A facial challenge to the constitutionality of a statute presents a question of law subject to *de novo* review. *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶23, 383 Wis. 2d 1, 914 N.W.2d 678. “Ordinances and statutes normally are the beneficiaries of a presumption of constitutionality which the challenger must refute.” *County of Kenosha v. C & S Mgmt., Inc.*, 223 Wis. 2d 373, 383, 588 N.W.2d 236 (1999). “All legislative acts are presumed constitutional and we must indulge *every presumption* to sustain the law. [citation omitted.] Any doubt that exists regarding the constitutionality of the statute must be resolved in favor of its constitutionality.” *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶13, 358 Wis. 2d 1, 851 N.W.2d 337 (citations omitted)(emphasis added).

Facial constitutional challenges require a showing ““that the statute cannot be enforced “under *any* circumstances.””” *Evers v. Marklein*, 2024 WI 31, ¶ 8, 412 Wis. 2d 525, 8 N.W.3d 395 (citations omitted)(emphasis added). “A facial constitutional challenge to a statute is an uphill endeavor.” *State v. Dennis H.*, 2002 WI 104, ¶5, 255 Wis. 2d 359, 647 N.W.2d 851.

A challenger must meet the highest level of proof, beyond a reasonable doubt, if she is to succeed. *League of Women Voters v. Walker*, 2014 WI 97, ¶ 17, 357 Wis. 2d 360, 851 N.W.2d 302. Because of the strong presumption in favor of constitutionality, a party bringing a constitutional challenge to a statute bears a “heavy burden.” *State v. Carpenter*, 197 Wis. 2d 252, 276, 541 N.W.2d 105 (1995). It is not sufficient for a party to demonstrate “that the statute’s constitutionality is doubtful or

that the statute is probably unconstitutional.” *State v. Smith*, 2010 WI 16, ¶ 8, 323 Wis. 2d 377, 780 N.W.2d 90.

Ms. Wren failed to establish Wis. Stat. § 895.4801 was facially unconstitutional beyond a reasonable doubt. A facial challenge to a legislative act is the most difficult of constitutional challenges to mount successfully because the challenger must prove that “no set of circumstances exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). “In other words, if at least some applications of the law are constitutional, the facial challenge must fail.” *Democratic Nat’l Comm. v. Bostelmann*, 2020 WI 80, ¶ 5, 394 Wis. 2d 33, 949 N.W.2d 423. The court of appeals did not apply this standard and improperly concluded section 895.4801 was subject to strict scrutiny review, as opposed to rational basis review, and could not withstand strict scrutiny. Ms. Wren has failed to establish there are no circumstances under which section 895.4801 could constitutionally be enforced.

**A. Wis. Stat. § 895.4801 does not restrict the right to a jury trial.**

Wis. Stat. § 895.4801 does not restrict the right to a jury trial. The right to a jury trial is not a right of access to the courts or a right to commence a medical malpractice lawsuit. The court of appeals improperly conflated the “right of access to the courts” and the right to a jury trial provided by Article I, Section 5 of the Wisconsin Constitution. The legislature has the authority to regulate, alter, suspend, and even eliminate legal claims by way of statute. Wis. Const. Article XIV, Section 13. The “legislature formulates the statutory law of Wisconsin, pursuant to constitutional authority. The legislature’s authority includes the power to *define and limit causes of action* and to abrogate common law on *policy grounds*.” *Aicher v. Wisconsin Patients and Families Comp. Fund*, 2000 WI 98, ¶ 51, 237 Wis. 2d 99, 613 N.W.2d 849 (emphasis added). The Wisconsin Constitution specifically recognizes this authority by limiting both the right to a jury trial and the right to seek

redress to legally recognized claims. Article I, Section 5 of the Wisconsin Constitution provides that “[t]he right of trial by jury shall remain inviolate, and shall extend to *all cases at law* without regard to the amount in controversy [. . .]” (emphasis added).

In other words, the Wisconsin Constitution preserves the right to a civil jury trial to *legally recognized* claims. Similarly, Article I, Section 9 of the Wisconsin Constitution’s guarantee of a right to a remedy is grounded “in the laws” and may only be had “conformably to the laws.”<sup>4</sup> Neither the right to a jury trial nor the right to a remedy restricts legislative regulation of a cause of action, including the modification, suspension, or elimination of such actions. The legislature’s constitutional authority to limit, suspend, or eliminate causes of action—through a grant of statutory immunity or otherwise—is separate from a litigant’s right to a jury trial on a legally recognized claim.

Wis. Stat. § 895.4801's limitation on medical negligence claims during the state of emergency, like other limitations on actions in Wisconsin law, was a valid exercise of the legislature’s authority to regulate civil actions that did not run violate the constitutional right to a jury trial. The right to a jury trial is guaranteed for qualifying cases and is not violated by a limitation on action, immunity statutes, procedural rules, or any other legislative enactment that results in dismissal of a claim prior to trial. Wis. Stat. § 895.4801 does not impact the right to a jury trial any differently than any other limitation on action or grant of statutory immunity promulgated by the legislature and approved by the governor, which are also subject

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The rights guaranteed by Article I, Section 9 “are not fundamental” *Tomczak v. Bailey*, 218 Wis. 2d 245, ¶37, 578 N.W.2d 166 (1998)(although applying this in the context of equal protection, it remains applicable here). Even if Section 9 provides the “right of access to the courts” referenced by the court of appeals, any limitation on that right of access would be subject to rational basis review.

to motions to dismiss, motions for summary judgment, and motions in limine.

The legislature's authority to restrict causes of action or grant immunity is not novel. The legislature often places limitations on actions or grants immunity for activities or persons to limit liability. Statutes of limitation act as a “right as well as a remedy, extinguishing the right on one side and creating a right on the other.” *Wenke v. Gehl Co.*, 2004 WI 103, ¶ 55, 274 Wis. 2d 220, 682 N.W.2d 405 (citation omitted)(emphasis in original). Similarly, a statute of repose extinguishes a party's remedy and any “right of recovery altogether.” *Kohn v. Darlington Cmty. Sch.*, 2005 WI 99, ¶ 38, 283 Wis. 2d 1, 698 N.W.2d 794. Wis. Stat. § 895.4801 is therefore not the first instance of the legislature and governor providing civil immunity. Immunity is present in other areas of the law. The legislature has extended civil immunity to Good Samaritans who render emergency medical assistance, Wis. Stat. § 895.48, to property owners who open their land for recreational purposes, Wis. Stat. § 895.52, and to governmental entities, Wis. Stat. § 893.80.

In *Legue v. City of Racine*, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, this Court analyzed the immunity of municipal government and its officers and employees. *Id.*, ¶ 3. The court noted the reason for governmental immunity was to protect the separation of powers and to avoid judicial intrusion into policy decisions of the other branches of government.

The purpose of [governmental] immunity is to ensure that courts refuse to pass judgment on policy decisions in the province of coordinate branches of government, if such a policy decision, consciously balancing risks and advantages, took place.

*Id.*, ¶ 40, citing *Scarpaci v. Milwaukee County*, 96 Wis. 2d 663, 687, 292 N.W.2d 816 (1980)(internal quotation marks and citations omitted). Even exceptions to municipal and employee immunity represent a judicial balance “struck between ‘the need of public officers to perform their functions freely [and] the right of an aggrieved party to seek redress.’” *Lodl v. Progressive N. Ins. Co.*, 2002 WI 71, ¶ 24,

253 Wis. 2d 323, 646 N.W.2d 314, *citing C.L. v. Olson*, 143 Wis. 2d 701, 710, 422 N.W.2d 614 (1988).

Wis. Stat. § 895.4801 and other statutory limitations are constitutionally valid exercises of legislative authority. As such, Wis. Stat. § 895.4801 does not violate the right to a jury trial because the legislature “expressly chose not to recognize a right based on a claim” arising out of alleged negligent medical care provided during the state of emergency. *Aicher*, ¶ 54. Contrary to the court of appeals’ analysis, there is no evidence Wis. Stat. § 895.4801 restricts or burdens a litigant’s right to a jury trial any differently than any other limitation on action or grant of immunity such that strict scrutiny should be applied. In fact, following the court of appeals’ analysis would unsettle and upend immunity granted by the legislature and governor in the specific instances in which it was granted. It would lead to wholesale changes in the way, for example, land is open to other users, or in the way governmental entities provide services to the public.

**B. Rational basis review should be applied.**

Instead, Wis. Stat. § 895.4801 should be subject to rational basis review. Where a fundamental right has not been implicated, this Court applies the rational basis test. Under the rational basis test, a statute is found unconstitutional if the legislature acted irrationally or arbitrarily when it enacted the provision. *Blake v. Jossart*, 2016 WI 57, ¶32, 370 Wis. 2d 1, 884 N.W.2d 484. The question is whether “there exists any reasonable basis to justify the classification.” *Mayo*, ¶ 40 (citation omitted)(emphasis in original). A legislative classification satisfies the rational basis test if it meets five criteria:

- (1) All classifications must be based upon substantial distinctions which make one class really different from another.
- (2) The classification adopted must be germane to the purpose of the law.
- (3) The classification must not be based upon existing

circumstances only. [It must not be so constituted as to preclude addition to the numbers included within a class.]

(4) To whatever class a law may apply, it must apply equally to each member thereof.

(5) That the characteristics of each class should be so far different from those of other classes as to reasonably suggest at the least the propriety, having regard to the public good, of substantially different legislation.

*Aicher*, ¶ 58 (brackets in original).

Wis. Stat. § 895.4801 satisfies all five criteria. First, the statute grants immunity from civil liability to a discrete class of health care providers providing medical care during the state of emergency, and only to a discrete group of potential plaintiffs who received care during the state of emergency. This class is distinct from potential plaintiffs injured by reckless, wanton, or intentional acts, or who received medical services at any time before or 60 days following the state of emergency.

Second, the classification is germane to the purpose of the law in that it was designed to address the new, emerging, worldwide pandemic and the change in the provision of health care to all patients, not just patients with Covid 19, “in the healthcare field by providing a degree of immunity from [ . . . ] tort liability.” *Aicher*, ¶ 62. Covid 19 was negatively affecting the provision of care in all areas of health care. The immunity of Wis. Stat. § 895.4801 was to encourage hospitals, clinics, and the like to be open and see patients for all medical concerns, not just for Covid 19. The provision of non-Covid 19 medical care was changed during the pandemic. This impacted not only providers, but everyone in the provision of care chain, including staffing and suppliers. This immunity provision was a conscious decision to broaden immunity to allow providers to provide care given the extraordinary circumstances of a novel pandemic.

As to the third and fourth factors, the classification of the statute is constituted

in a way that applies uniformly and applies to any patient requesting medical care during the state of emergency. Last, the need for section 895.4801 for this class of plaintiffs is distinct from other medical malpractice plaintiffs at any other time given the serious and significant crisis that was facing health care providers during the state of emergency, and the need to keep health care facilities open and operating during the very early stages of the Covid 19 pandemic. “[R]ational basis review does not ‘allow us to substitute our personal notions of good public policy for those of the legislature.’” *Blake*, ¶32, n.16 (citation omitted). The statute must be sustained unless it is “‘patently arbitrary’” and “‘bears no rational relationship to a legitimate government interest.’” *Aicher*, ¶ 57 (citation omitted).

Simply put, there is no evidence the legislature acted arbitrarily in extending limited immunity to health care providers during the state of emergency. Like other limitations on actions, Wis. Stat. § 895.4801 created a right to immunity for health care providers and extinguished any right of recovery for medical negligence during the state of emergency. This exercise of the legislature’s Constitutional Article XIV, Section 13 authority cannot be considered arbitrary or irrational, and was clearly tied to a legitimate government interest: ensuring that health care facilities remained open to the public and in operation for all types of care during the state of emergency. Wis. Stat. § 895.4801 was meant to encourage health care providers to remain open and address any health care issues that might arise during the early stages of the pandemic, such as a birth. (R. 73, pp. 20-21)(A. App. 166-167). As a result, Wis. Stat. § 895.4801 does not present an unconstitutional violation of the right to a jury trial as provided in the Wisconsin Constitution.

**C. Even applying strict scrutiny, Wis. Stat. § 895.4801 survives constitutional review.**

Even if strict scrutiny was applied, Wis. Stat. § 895.4801 passes constitutional

scrutiny. In order to survive strict scrutiny, a statute must be narrowly tailored to advance a compelling state interest. *State v. Roundtree*, 2021 WI 1, ¶ 27, 395 Wis. 2d 94, 952 N.W.2d 765. “When strict scrutiny is applied, the statute must serve a compelling state interest; the statute must be necessary to serving that interest; and the statute must be narrowly tailored toward furthering that compelling state interest.” *Mayo*, ¶28.

There can be no dispute the government had a compelling interest in ensuring health care facilities remained open during the state of emergency. Covid 19 was negatively affecting the provision of care in all areas of health care. The immunity of Wis. Stat. § 895.4801 encouraged hospitals, clinics, and the like to be open and see patients for all medical concerns, not just for Covid 19. The provision of non-Covid 19 medical care was changed during the pandemic. This impacted not only providers, but everyone in the provision of care chain, including staffing and suppliers. This immunity provision was a conscious decision to broaden immunity to allow providers to provide care given the extraordinary circumstances of a novel pandemic. In contrast, in essence the court of appeals held that access to labor and delivery, kidney dialysis, cardiac catheterizations, organ transplants, and other forms of health care was not compelling enough to ensure access, and immunity for alleged negligent acts and omissions, during the state of emergency.

Wis. Stat. § 895.4801 was thus enacted to serve the compelling state interest to encourage hospitals, clinics, and the like to be open and see patients for *all* medical concerns, not just related to Covid 19. The provision of non-Covid 19 medical care was changed at the start of a worldwide pandemic. The statute was narrowly tailored, providing such immunity for a period of approximately four months and for conduct that was not reckless, wanton, or intentional. The legislature tied the immunity period to the duration of the emergency declaration of the governor, plus 60 days. Wis. Stat. § 895.4801(2). Unlike other immunity statutes, which have no time limitation or any

set period of duration, Wis. Stat. § 895.4801 was narrowly tailored to provide immunity during the crisis it was enacted to address. Accordingly, even if strict scrutiny applies, Wis. Stat. § 895.4801's time-limited grant of immunity was narrowly tailored to address the compelling governmental interest in continuing to provide care to the people of Wisconsin during the state of emergency.

**II. The court of appeals decision is bereft of any statutory construction analysis, which also supports a finding of constitutionality.**

Absent from the court of appeals' analysis of Wis. Stat. § 895.4801 is any discussion of statutory interpretation, which also compels the conclusion the statute is constitutional based on its extrinsic legislative history. It is the "solemn obligation of the judiciary to faithfully give effect to the laws enacted by the legislature [. . .]" *State ex rel. Kalal v. Cir. Ct. for Dane County*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. Thus, when determining what a statute means, a court focuses on "the enacted law, not the unenacted intent" of lawmakers. *Id.* This is what "legislators vote on and binds the public." *SEIU Healthcare Wisconsin v. WERC*, 2025 WI 29, ¶ 7, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.3d \_\_\_.

In *SEIU*, this Court set forth the methodology for statutory construction.

[O]ur cases identify two types of sources for statutory meaning: intrinsic and extrinsic. Intrinsic sources are those based on or derived from the enacted law itself. [citation omitted.] Intrinsic sources include the statutory text at issue, related statutes and phrases, a statute's place within the statutory structure, its stated or textually manifest purpose, and statutory history. *Kalal*, 271 Wis. 2d 633, ¶¶ 45, 46, 48-49, 52 n. 9. Extrinsic sources, by contrast, are 'interpretative resources outside the statutory text - typically items of legislative history. Intrinsic sources are *primary* in determining the plain meaning of a statute, while extrinsic sources are secondary and used to confirm that plain meaning or resolve any ambiguity. *Id.*, ¶ 51.

*SEIU*, ¶ 8 (emphasis added).

In light of this Court's direction as to how statutes are to be interpreted, Wis.

Stat. § 895.4801 and its intrinsic history must first be reviewed. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *Kalal*, ¶ 44. “We assume that the legislature’s intent is expressed in the statutory language.” *Id.* And “[w]hen the legislature enacts a statute, it is presumed to act with full knowledge of the existing laws, including statutes.” *Mack v. Joint Sch. Dist. No. 3*, 92 Wis. 2d 476, 489, 285 N.W.2d 604 (1979).

When interpreting a statute, courts begin with the statutory language. *Kalal*, ¶ 44. The words used by the legislature are to be given their “common, ordinary, and accepted meaning.” *Id.*, ¶ 45. If the meaning of the statute is plain, courts ordinarily stop the inquiry. *Id.*, ¶ 45. Statutory language must be interpreted to avoid absurd or unreasonable results. *Id.*, ¶ 46.

The clear statutory language of Wis. Stat. § 895.4801(2) explicitly provides immunity for any allegations of medical negligence during the state of emergency. But even moving beyond the statutory language, the extrinsic legislative history of section 895.4801 establishes the legislature deliberately chose to expand immunity for all health care providers during the period of time provided in the statute. Wis. Stat. § 895.4801 was enacted on April 15, 2020. 2019 Wis. Act 185. Prior to the statute’s enactment, the legislative history of the bill shows that on April 13, 2020 the Speaker of the State Assembly’s office “want[ed] to make a change to the provider liability language to encompass the changes in the attached PDF (named section 98) with the exception of we do NOT want to change 60 days to 90 days. Leave at 60.” (R. 53, pp. 3-7)(emphasis in original).

The PDF referred to by the Speaker’s office specifically removed the description of immunity for health care providers in Wis. Stat. § 895.4801 “taken in providing services to address or in response to a 2019 novel coronavirus outbreak [. . .]” *Id.* In other words, the legislature, before voting on the bill that became section

895.4801, deliberately chose to remove the limitation on Covid 19 specific care and instead chose to *broaden immunity* to all alleged actions or omissions taken by any health care provider during the time period at issue. *Id.* The court of appeals conceded this in its opinion: “In fact, the original version of the statute introduced in the Assembly as 2019 A.B. 1038 provided immunity for ‘actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak[.]’ This limiting language was struck by a later amendment introduced as Assembly Amendment 4.” *Wren*, ¶ 34 n. 12. But the court of appeals ignored the axiom that courts decline to read into the statute words the legislature did not see fit to write. *Dawson v. Town of Jackson*, 2011 WI 77, ¶ 42, 336 Wis. 2d 318, 801 N.W.2d 316. The court of appeals instead concluded there was not a compelling state interest to provide immunity for care unrelated to the treatment of Covid 19, despite this was what the legislature intended to do. *Wren*, ¶ 37.

In signing the bill into law, the governor acknowledged the final bill broadly expanded civil liability immunity for health care providers.

The final bill was drastically different from anything the governor would have supported as a stand-alone provision. And it is drastically different from what Wisconsin needs. *But despite his serious concerns about this particular provision [the civil immunity provision], the governor signed the bill* because it included critical, time-sensitive provisions, such as waiver authority to obtain more than \$600 million in federal funding (which had a deadline from the federal government of 4/17) and the suspension of the one week unemployment insurance waiting period for folks who need this immediate relief.

(R. 53, p. 12)(emphasis added).

The Wisconsin Medical Society similarly agreed that Wis. Stat. § 895.4801 broadly expanded immunity for health care providers during the time period.

This provision is critical as physicians are providing care to patients for a diagnosis for which there is currently no approved treatment or vaccine and the standard of care has been dramatically impacted due to recommended changes in practice guidelines.

*Additionally, the language of the provision is intended to be broadly applicable to the temporary changes in practice and standards of care in response to the COVID-19 pandemic.*

(R. 53, p. 16)(emphasis added). The Wisconsin Medical Society acknowledged Wis. Stat. § 895.4801 was intended to be broadly applicable because of temporary changes in the practice and standards of care in medicine in light of the Covid 19 pandemic.

Here, the change of wording prior to final passage of the legislation was a deliberate word choice to broaden the application of immunity. “This [wa]s no mere accident of legislative drafting.” *State ex rel. Nudo Holdings, LLC v. Board of Review for the City of Kenosha*, 2022 WI 17, ¶ 23, 401 Wis. 2d 27, 972 N.W.2d 544.

**III. The court of appeals did not provide any analysis of the deference courts provide to the policy choices of a legislature and governor. Instead, it substituted its own judgment for the determination by Wisconsin’s highest elected officials, the legislature and governor.**

A court defers to the legislature on questions of public policy such as here because it “‘is uniquely equipped to evaluate and respond to such questions of public policy [ . . . ]’” *Vincent v. Voight*, 2000 WI 93, ¶52, 236 Wis. 2d 588, 614 N.W.2d 388 (citation omitted)(emphasis added). A court will not reweigh the policy choices of the legislature. *State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 506, 261 N.W.2d 434 (1978). “The presumption of statutory constitutionality is the product of our recognition that the judiciary is not positioned to make the economic, social, and political decisions that fall within the province of the legislature.” *Aicher*, ¶ 20. Here the legislature and governor chose to enact a policy decision in a statute during the initial stages of a novel pandemic.

The court of appeals ignores the substantial, undisputed evidence that the novel, worldwide pandemic, which had begun in March 2020, presented unprecedented challenges to providing health care. In response, this state’s highest elected officials who determine the policy of the state as set forth in the statutes, the

governor and legislature, enacted the policy choice in providing immunity for non-reckless, wanton, or intentional misconduct of health care providers for a short period of time of approximately four months.

**A. *Palm* supports reversal of the court of appeals decision.**

The court of appeals' reliance on *Wisconsin Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900, the only substantive appellate case on which it relies, actually supports the constitutionality of Wis. Stat. § 895.4801. As noted in the first paragraph of *Palm*, “[t]his case is about the assertion of power by *one unelected official*, Andrea Palm, and her order to all people within Wisconsin to remain in their homes, not to travel and to close all businesses that she declares are not ‘essential’ in Emergency Order 28.” *Palm*, ¶ 1 (emphasis added). The dispute in that case was whether the secretary-designee of the state Department of Health Services issued an order that violated the laws of Wisconsin. *Palm*, ¶ 11. The legislature, the plaintiff in *Palm*, argued that Ms. Palm’s order was promulgated without following required statutory procedures applicable to an emergency and, in so doing, she infringed upon the legislature’s constitutional core power and its functions pursuant to Wis. Stats. §§ 227.24 and 227.26. *Palm*, ¶ 13.

In its analysis, this Court stated that “[r]ulemaking exists precisely to ensure that kind of controlling, subjective judgment asserted by one unelected official, Palm, is not imposed in Wisconsin.” *Palm*, ¶ 28. This is not what is presented here. The legislature passed, and the governor approved, limited immunity for allegedly negligent health care providers in providing care for all types of medical issues, not just restricted to Covid 19, in light of a novel, worldwide pandemic. This was a policy choice by the legislature and governor that should not have been usurped by the court of appeals.

The *Palm* court noted it “employ[ed] the constitutional-doubt principle. That is, we disfavor statutory interpretations that unnecessarily raise serious constitutional

questions about the statute under consideration. *Clark v. Martinez*, 543 U.S. 371, 380-381 (2005).” *Palm*, ¶ 31. “The canon is thus a means of giving effect to congressional intent, not of subverting it.” *Clark*, at 381. As this Court highlighted, an unelected department secretary cannot “impose regulation without going through a process to give the people faith in the justness of the regulation.” *Id.* This is the exact opposite of what occurred in the passage of Wis. Stat. § 895.4801. The court of appeals did not cite, other than a Wisconsin Legislative Council Act memo, *Wren*, ¶ 24, n. 10, the extrinsic legislative history that establishes the governor, the legislature, and interest groups were aware of the legislation they were proposing, passing, and approving, providing civil immunity at the start of the Covid 19 pandemic.

Thus, contrary to *Palm*, in the instant case the governor and legislature approved Wis. Stat. § 895.4801. The *Palm* court provided justification for this significant difference. “The people consent to the Legislature making laws because they have faith that the procedural hurdles required to pass legislation limit the ability of the Legislature to infringe on their rights.” *Palm*, ¶ 32.

**B. The court of appeals’ citation to *Palm* fails to provide the entire sentence on which it cites, and the entirety of that citation completely changes the meaning of that sentence.**

The citation from *Palm*, ¶ 37, on which the court of appeals relies as the legal authority to reach its decision is a reference to *In re Abbott*, 954 F.3d 772 (5th Cir. 2020). *Wren*, ¶ 37. But *In re Abbott* is no longer good law, as on January 25, 2021 the U.S. Supreme Court vacated the case as moot. *See Planned Parenthood v. Abbott*, 141 S.Ct. 1261 (2021).

But even considering *In re Abbott*, it supports Columbia St. Mary’s position for reversal of the court of appeals’ decision. First, the court of appeals does not note part of its citation in paragraph 37 is not based on appellate case law, and also does not provide the entire citation from *In re Abbott*, which is the fulcrum of its

constitutional analysis. The court of appeals cites to paragraph 53 of *Palm*, and copies the following quote from *Palm*:

“[t]here is no pandemic exception . . . to the fundamental liberties the [c]onstitution safeguards. Indeed, ‘individual rights secured by the [c]onstitution do not disappear during a public health crisis.’”

*Wren*, ¶ 37 (citations omitted). There are a litany of problems with this citation.

The court of appeals fails to state that part of the citation is not a reference to appellate case law, but rather what the U.S. Department of Justice stated in the United States’ Statement of Interests in Support of Plaintiffs in a U.S. District Court for the Northern District of Mississippi case involving the free exercise of religion in light of the outbreak of Covid 19. (A. App. 180-193). The U.S. Department of Justice, in essence filing an amicus curiae brief as it was not a party to the case, wrote the following, *not a court*:

There is no pandemic exception, however, to the fundamental liberties the Constitution safeguards. Indeed, “individual rights secured by the Constitution do not disappear during a public health crisis.” *In re Abbott*, – F.3d —, 2020 WL 1685929, at \* 6 (5th Cir. Apr. 7, 2020).

(A. App. 183). Putting aside the obvious factual differences, the U.S. Department of Justice in that case also acknowledged, *in the next paragraph after the citation referred to by the Wren court*, that “[a]t the same time, the Constitution does not hobble government from taking necessary, temporary measures to meet a genuine emergency.” (A. App. 183).

In addition, the citation to *In re Abbott* is misleading as it cuts off the sentence and leads the reader to think the sentence ends at “crisis.” The complete citation in *In re Abbott*, to which the *Wren* court refers when citing to *Palm* in paragraph 37 of its decision, contains a full change in tone when the entire sentence is stated:

To be sure, individual rights secured by the Constitution do not disappear during a public health crisis, *but the Court plainly stated that rights could be reasonably restricted during those times.*

*Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905)] at 29. Importantly, the Court narrowly described the scope of judicial authority to review rights-claims under these circumstances: review is “only” available

if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has *no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.*

Elsewhere, the Court similarly described this review as asking whether power had been exercised in an “arbitrary, unreasonable manner,” *Id.* at 28, or through “arbitrary and oppressive regulations.” *Id.* at 38. *Accord Lawton v. Steele*, 152 U.S. 133 (1894)] at 137 (“To justify the state in thus interposing its [police power] in behalf of the public, it must appear [1] that the interests of the public generally . . . require such interference; and [2] that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.”)

*In re Abbott*, at 31 (emphasis added for the first italics, subsequent italics in the original)(bracketing in the *Lawton* cite is in the original, but for the case citation). In *Lawton v. Steele*, 152 U.S. 133, 136 (1894), the Court held that “large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.”

Thus, taken in complete context, *In re Abbott* permits reasonable restrictions in the time of a public health crisis. Although Wis. Stat. § 895.4801 does not present a restriction, but rather broadens immunity, given *In re Abbott*’s foundation, the legislative history, and the novel pandemic, section 895.4801 was not an arbitrary and unreasonable statutory response. In fact, *Jacobson* supports the legislature and governor’s approval of immunity for alleged negligence in Wis. Stat. § 895.4801. The *Jacobson* court rejected any judicial power to second guess a state’s policy choices when crafting a state’s emergency public health measures: “Smallpox being prevalent and increasing at Cambridge, the court would *usurp the functions of another branch of government* if it adjudged, as a matter of law, that the mode adopted under the sanction of the state, to protect the people at large was arbitrary, and not justified by

the necessities of the case.” *Jacobson*, 197 U.S. at 28 (emphasis added).

As noted by *In re Abbott*, citing *Jacobson*:

The bottom line is this: when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some “real or substantial relation” to the public health crisis and are not “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Jacobson* at 31. Courts may ask whether the state’s emergency measures lack basic exceptions for ‘extreme cases,’ and whether the measures are pretextual – that is, arbitrary or oppressive. *Id.* at 38. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures. *Id.* at 28, 30.

*In re Abbott*, at 784-785. The legislature and governor chose to implement limited immunity in order for everyone to access health care at the start of the pandemic.

Additionally, the U.S. Supreme Court has held that “[i]n a functioning democracy, policy choices like these usually belong to the people and their elected representatives. They are entitled to [. . .] ‘try novel social and economic experiments’ if they wish [. . .]” *Nat’l Pork Producers v. Ross*, 598 U.S. 356, 382 (2023) (plurality op.)(citation omitted). When the legislature undertakes to act in areas “fraught with medical and scientific uncertainties,” their latitude must be especially broad. *Marshall v. United States*, 414 U.S. 417, 427 (1974). Although in a concurrence, Chief Justice Roberts noted “[o]ur Constitution principally entrusts ‘[t]he safety and the health of the people’ to the *politically accountable officials of the States* ‘to guard and protect.’” *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring)(citing *Jacobson*, 197 U.S. at 38)(emphasis added). This includes by piloting initiatives aimed at promoting public health. *Id.*

The *Wren* court of appeals decision removes the policy choices of the legislature and governor, and substitutes its judgment at the time of a pandemic “fraught with medical and scientific uncertainties.” The decision of elected officials

to permit access for patients to receive health care for all types of medical conditions at the start of a worldwide pandemic is a compelling state interest that must be upheld.

**IV. As this Court recently noted, the approval of the legislature and governor in passing Wis. Stat. § 895.4801 meets the constitutional principles of bicameralism and presentment.**

The Wisconsin Constitution vests the legislature with the authority to write statutes. Wis. Const. Art. IV, Section 17. The Wisconsin Constitution also vests the governor with the authority to approve or veto bills. Wis. Const. Art. VI, Section 10. “The bicameralism and presentment requirements of the Wisconsin Constitution cabin the Legislature’s otherwise vast lawmaking powers. [citation omitted.] Legislative action that alters the legal rights and duties of persons outside of the legislative branch triggers the requirements of these constitutional mandates.” *Evers v. Marklein*, 2025 WI 36, ¶ 45, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.3d \_\_\_. Certainly Wis. Stat. § 895.4801 alters the legal rights of people outside of the legislative branch.

Bicameralism, according to the U.S. Supreme Court in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 951 (1983), “serves the role of ‘assur[ing] that the legislative power would be exercised only after opportunity for full study and debate in separate settings.’” *Id.*, ¶ 33 (citation omitted).

Presentment likewise checks legislative power because “[t]he President’s participation in the legislative process was to protect the Executive Branch from Congress and to protect the whole people from improvident laws.”

*Evers*, ¶ 33, citing *Chada*, at 951. The U.S. Supreme Court noted these procedures have “‘flaws of delay, untidiness, and potential for abuse’ *but they provide ‘carefully crafted restraints’ to the exercise of power which ‘preserve freedom.’*” *Evers*, ¶ 34, citing *Chada*, at 959 (emphasis added).

This Court then applied these principles to the Wisconsin Constitution.

These same principles apply to the Wisconsin Constitution’s

bicameralism and presentment requirements in Articles IV and V. [. . .] “[B]icameralism and presentment “ultimately serve the same fundamental purpose: to restrict the operation of the legislative power to those policies which meet the approval of three constituencies, or a supermajority of two.”

*Evers*, ¶ 35, citing *Evers v. Marklein*, 2024 WI 31, ¶ 8.

Here, the legislature and governor passed and approved Wis. Stat. § 895.4801, meeting the strong constitutional guideposts of bicameralism and presentment. The legislature and governor considered and approved the immunity provision in section 895.4801, consistent with the constitutional principles of bicameralism and presentment.

### CONCLUSION

For the above-stated reasons, defendant-respondents-petitioners Columbia St. Mary’s Hospital Milwaukee, Inc., Jordan Hauck, D.O., Jessica Hoelzle, M.D., and the Injured Patients and Families Compensation Fund respectfully reverse the court of appeals and find Wis. Stat. § 895.4801 constitutional.

Dated this 30th day of July, 2025 at Milwaukee, Wisconsin.

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**CERTIFICATION****Certificate of Compliance with Wis. Stat. § 809.19(8g)(a)**

I hereby certify that this brief conforms to the rules contained in Wis. Stats. §§ 809.19(8)(b), (bm), and (c) for a brief.

The length of this brief is 8,582 words.

Dated this 30th day of July, 2025.

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**CERTIFICATION**Certificate of Compliance with Wis. Stat. § 809.19(2)(a)

I hereby certify that filed with this brief, as a separate document, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under Wis. Stat. § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

Dated this 30th day of July, 2025 at Milwaukee, Wisconsin.

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