SUPREME COURT
STATE OF WISCONSIN

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

Plaintiffs-Appellants,

Appeal No.: 2024AP126

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.

On Appeal from the Circuit Court for Milwaukee County
Case No. 2023CV004960
Honorable Kristy Yang, Circuit Court Judge Presiding

RESPONSE BRIEF OF PLAINTIFFS-APPELLANTS SAVANNAH WREN AND CALVIN GORDON

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STATEMENT OF ISSUES

The Wisconsin legislature enacted a sweeping grant of immunity for healthcare providers ostensibly in response to the COVID-19 pandemic. The statute was not narrowly drawn to address the specific impact of the pandemic, but covered even claims that were wholly unaffected by it, such as this case. The court of appeals concluded that the statute unconstitutionally denied the plaintiffs their day in court. Did the court of appeals properly apply the constitution?

ANSWERED BY THE APPEALS COURT: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiffs-appellants appreciate the opportunity for oral argument in this case, which has been scheduled for October 27, 2025, and request an opinion affirming the Court of Appeals be published.

STATEMENT OF THE CASE

This case arises out of a medical malpractice claim based on the wrongful death of baby Calvin Gordon, Jr. (R. 5). Savannah Wren and Calvin Gordon filed this action on July 6, 2023, after their son died at Columbia St. Mary's Hospital Milwaukee shortly after his birth on May 24, 2020 (R. 5, ¶ 21). At the time of baby Calvin's birth, the country was in the midst of the COVID-19 pandemic. On April 15, 2020, the Wisconsin

legislature passed Wis. Stat. § 895.4801, providing expansive civil immunity to health care providers for any negligent acts and omissions they committed in treating patients until sixty days after the state of emergency ended. The statute was not limited to claims impacted by the pandemic but provided blanket immunity to all health care providers regardless of whether their actions were affected by the consequences of COVID.

Defendants filed a Motion to Dismiss, which was granted by the circuit court (R. 73)(A. App. 178). Wren appealed the circuit court's decision, arguing that Wis. Stat. § 895.4801 is unconstitutional under the U.S. and Wisconsin Constitutions' protections for the right to a jury trial, the right to seek remedy for grievances, and the due process and equal protection clauses. ***Wren v. Columbia St. Mary's Hospital Milwaukee, Inc.***, 2025 WI App 22, ¶ 26, 415 Wis. 2d 758, 775, 19 N.W.3d 614, 623.

The Wisconsin Court of Appeals reversed the circuit court's order, holding that Wis. Stat. § 895.4801 was unconstitutional. ***Wren***, ¶ 40. The court concluded that the statute infringed on the fundamental right to a jury trial and was thus subject to strict scrutiny review. ***Wren***, ¶ 32. Under strict scrutiny, the appeals court found that Wis. Stat. § 895.4801 was not narrowly tailored to address the compelling state interest of responding to the

COVID-19 pandemic, nor the challenges it posed to the health care industry at large, and thus could not stand. ***Wren***, ¶¶ 36-37.

This Court granted review.[1]

STATEMENT OF FACTS

The petitioners' brief contains a recitation of many of the uncontested facts in case. However, plaintiffs-appellants disagree with the statement that the Wisconsin Court of Appeals' holding regarding the unconstitutionality of Wis. Stat. § 895.4801 was solely based on its finding that "the care provided to Ms. Wren was not related to Covid 19." Pet'r br. at 17. Instead, the court addressed multiple grounds for its holding, including the alternative theory asserted by petitioners regarding the compelling state interest they assert Wis. Stat. § 895.4801 was intended to further. *See* ***Wren,*** ¶¶ 35-39. Additional discussion of this issue is included in Section I(B)(1) below.

There are also additional facts the Court should be consider. In September 2019, Savannah Wren and Calvin Gordon sought medical care with Defendant Dr. Jessica Hoelzle after learning that Ms. Wren was

[1] The Court has indicated that it will limit its review to whether Wis. Stat. § 895.4801 complies with Wis. Const. art. I, § 5 (the right to a jury trial). However, should the Court reverse on that constitutional ground, plaintiffs-appellants respectfully request that the case be remanded to the Court of Appeals for consideration of the alternative grounds previously raised on appeal.

pregnant with their first baby. (R. 5, ¶ 16). Wren, a twenty-two-year-old African American woman, had a medical history of Type II diabetes, and thus, Dr. Hoelzle informed her that her pregnancy was considered high-risk and required close monitoring to ensure a safe outcome for both her and her baby. *Id*. at ¶ 17.

Ms. Wren's pregnancy progressed without complication until May 14, 2020, when Ms. Wren's baby was 38 weeks and 5 days gestation. *Id*. at ¶ 18. During a routine office visit, Dr. Hoelzle noted that the baby's heart rate was elevated at 165bpm and was "nonreactive." *Id*. Despite these findings, as well as lab tests performed at Columbia St. Mary's Hospital showing an elevated blood glucose level present in her urine, Ms. Wren was sent home with instructions to monitor the baby's fetal movement and follow up in one week. *Id*.

On May 22, 2020, at approximately 11:00 p.m., Ms. Wren began to experience contractions every three minutes. *Id*. at ¶ 20. She presented to Columbia St. Mary's Hospital, where her heart rate was found to be elevated and a blood glucose test revealed a high result of 179mg/dl, indicating that her diabetes was not well-controlled. *Id.* Despite these findings, Defendant Dr. Jordan Hauck, D.O., chose to again discharge Ms. Wren home. *Id.* There is no evidence in the record that the COVID pandemic, nor its impact on the

healthcare system in Wisconsin generally, played any role in the treatment decisions made by Defendants.

The following day, May 24, 2020, at approximately 9:00 p.m., Ms. Wren returned to Columbia St. Mary's Hospital. *Id.* at ¶ 21. When a nurse attempted to detect a fetal heart rate on the monitor, it could not be found. *Id.* A bedside ultrasound confirmed little to no fetal heart activity. *Id.* Ms. Wren underwent an emergent caesarean section, and baby Calvin Gordon, Jr., was delivered at 9:14 p.m. limp, apneic with APGARs of 0/0/0. *Id.* Resuscitation was attempted, but baby Calvin was pronounced dead 28 minutes later at 9:42 p.m. *Id.* Placental pathology determined that the cause of baby Calvin's death was placental abruption and acute chorioamnionitis. *Id.*

According to the American College of Obstetrics and Gynecologists (ACOG) guidelines, patients with non-well-controlled diabetes must be scheduled for delivery no later than 38 weeks and 6 days gestation.[2]

[2] American College of Obstetricians and Gynecologists' Committee on Practice Bulletins—Obstetrics. "ACOG Practice Bulletin No. 201: Pregestational Diabetes Mellitus." Obstetrics and gynecology vol. 132,6 (2018): e228-e248, at e235. https://doi.org/10.1097/AOG.0000000000002960. *See also*, American College of Obstetricians and Gynecologists' Committee on Practice Bulletins—Obstetrics. "ACOG Practice Bulletin No. 765: Avoidance of Nonmedically Indicated Early-Term Deliveries and Associated Neonatal Morbidities." Obstetrics and gynecology vol. 133,2 (2019): e156-e162, at e133. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2019/02/avoidance-of-nonmedically-indicated-early-term-deliveries-and-associated-neonatal-morbidities.

Defendants-respondents-petitioners (hereinafter "petitioners") did not do so in Ms. Wren's case. Wren and Gordon have retained medical experts who will opine that petitioners' failure to follow the ACOG guidelines in this case was a breach of the accepted standards of medical care and directly and substantially caused baby Calvin's death and the severe trauma his parents suffered as a result.

STANDARD OF REVIEW

This Court reviews the constitutionality of statutes *de novo*. ***State v. Wood***, 2010 WI 17, ¶ 15, 323 Wis. 2d 321, 780 N.W.2d 63 (Wis. 2010).

Out of deference to the legislature, statutes are generally presumed to be constitutional until demonstrated otherwise. ***Mayo v. Wis. Injured Patients & Families Compensation Fund***, 2018 WI 78, ¶¶ 25-26, 383 Wis.2d 1, 914 N.W.2d 678, 689. Importantly, however, where a statute burdens a fundamental right guaranteed by the Wisconsin and/or U.S. Constitution, the presumption of constitutionality falls away and the burden shifts to the proponent of the statute to show the statute is constitutional. ***San Antonio Indp. Sch. Dist. v. Rodriguez***, 411 U.S. 1, 16-17 (2000); ***James v. Heinrich***, 2021 WI 58, ¶ 39, 397 Wis.2d 517, 960 N.W.2d 350, 369. *See also* ***In re Termination of Parental Rights to Lyle D.E. Jr.***, 2007 WL 602611 at *2 (Wis. Ct. App. 2007)("Fundamental rights are those 'very basic constitutional

rights' that are 'fundamental to the concept of fair and impartial decision making.'") (*quoting* ***State v. Albright***, 96 Wis.2d 122, 130, 291 N.W.2d 487, 491 (1980)).

Where a statute burdens a fundamental right, this Court is required to apply strict scrutiny. *See* ***R.A.V. v. City of St. Paul***, 505 U.S. 377 (1992); ***Gooding v. Wilson***, 405 U.S. 518 (1972); ***Mayo***, 383 Wis.2d at 25; ***State ex rel. Tayr Kilaab al Ghashiyah (Khan) v. Sullivan***, 2000 WI App 109, ¶ 9, 235 Wis.2d 260, 270-71, 613 N.W.2d 203, 208.[3] A "burden" is defined as "a state regulation [that] has the purpose or effect of placing a substantial obstacle in the path" of exercising a fundamental right. ***Planned Parenthood of Southeastern Pennsylvania v. Casey***, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (*overruled on other grounds*). Thus, this standard applies equally where there has been a complete ban on a fundamental right as where there has been a "substantial obstacle" placed. ***U.S. v. Playboy Entertainment Group, Inc.,*** 529 U.S. 803, 812, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000) ("The distinction between laws burdening and laws banning speech is but a matter of degree. The Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.").

[3] This Court abrogated use of the intermediate level of review, also called "rational basis with teeth," in ***Mayo***, 383 Wis.2d at 26.

To withstand strict scrutiny, a statute must meet three conditions: (1) it must further a compelling state interest; (2) it must be necessary to furthering that interest; and (3) it must be narrowly tailored toward furthering that interest. ***R.A.V.***, 505 U.S. 377; ***Gooding,*** 405 U.S. 518; ***Mayo***, 383 Wis.2d at 25. If any one of those three conditions is not met, the statute must be struck down as unconstitutional. *See* ***James***, 397 Wis.2d 517 at ¶ 39. A law survives strict scrutiny only in rare cases. ***State v. Baron***, 2009 WI 58, ¶ 48, 318 Wis. 2d 60, 769 N.W.2d 34.

ARGUMENT

This Court has both the authority and the duty to review the constitutionality of statutes and declare them invalid where provisions of the Wisconsin and/or U.S. Constitution are not honored by the legislature. ***Attorney General ex rel. Bashford v. Barstow,*** 4 Wis. 567, 591 (1855) (establishing the independence of this Court and its duty to adjudicate questions of law under the Constitution). *See also* ***Ferdon ex rel. Petrucelli v. Wis. Patients Compensation Fund***, 2005 WI 125, ¶ 69, 284 Wis.2d 573, 701 N.W.2d 440, 458 (*overruled on other grounds*) ("When a legislative act unreasonably invades rights guaranteed by the state constitution, a court has not only the power but also the duty to strike down the act.").

The Wisconsin Court of Appeals correctly found that Wis. Stat. § 895.4801 directly burdens the fundamental right of Wisconsin citizens to obtain justice through a jury trial and thus subjected the statute to strict scrutiny review. ***Wren***, ¶ 32. Under that heavy burden, petitioners have failed to show that the statute can be upheld, and this Court must therefore affirm the lower court's finding of unconstitutionality.

I. Wis. Stat. § 895.4801 unconstitutionally infringes on the fundamental right to a jury trial.

While acknowledging that the COVID-19 pandemic posed unique challenges to the state's health care system, the Wisconsin Court of Appeals reiterated this Court's holding in ***Wisconsin Legislature v. Palm***, stating, "'[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 (citing 2020 WI 42, ¶ 53, 391 Wis. 2d 497, 942 N.W.2d 900). The sole fact that baby Calvin had the misfortune of being born in the midst of the COVID-19 pandemic did not strip him, nor his parents, of their fundamental rights to obtain justice for negligent medical care through a jury trial. Section 895.4801 violates the Wisconsin and U.S. constitutions and thus cannot stand.

A. Wis. Stat. § 895.4801 burdens the fundamental right to a jury trial and must therefore be subjected to strict scrutiny.

As the Wisconsin Court of Appeals noted[4], there is no dispute that the right to a jury trial is a fundamental right. *See* ***Aetna Ins. Co. v. Kennedy to Use of Bogash,*** 301 U.S. 389, 393, 57 S.Ct. 809, 81 L.Ed. 1177 (1937) (citations omitted) (holding that the right to a jury trial is a fundamental right); ***State ex rel. Strykowski v. Wilkie***, 81 Wis. 2d 491, 507, 261 N.W.2d 434 (1978) (indicating that the right of access to the courts is a fundamental right). *See also* ***Wisconsin Carry, Inc. v. City of Madison***, 2017 WI 19, ¶ 9, 373 Wis.2d 543, 555, 892 N.W.2d 233, 238 (holding that fundamental rights are those rights that find their protection in the constitutions). The United States and Wisconsin Constitutions expressly forbid laws like Wis. Stat. § 895.4801 from preventing citizens from seeking justice through a jury trial. *See* **U.S. Const. Amend. I; Wis. Const. Art. 1, Sec. 5** ("The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy."); **Wis. Const. Art. 1, Sec. 9** ("Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character."). In fact, this Court has struck down laws violating these very provisions on numerous occasions.

[4] ***Wren***, ¶ 29.

See, e.g., ***State v. Hansford***, 219 Wis.2d 226, 580 N.W.2d 171 (1998); ***In Interest of Hezzie R.***, 219 Wis.2d 848, 580 N.W.2d 660 (1998); ***Kallas Millwork Corp. v. Square D Co***., 66 Wis.2d 382, 225 N.W.2d 454 (1975); ***Labowe v. Balthazor***, 180 Wis. 419, 193 N.W. 244 (1923); ***City of Janesville v. Carpenter***, 77 Wis. 288, 46 N.W. 128 (1890); ***Attorney General v. Chicago & N.W. Ry. Co***., 35 Wis. 425 (1874); ***Whittaker v. City of Janesville***, 33 Wis. 76 (1873); ***Lenz v. Charlton***, 23 Wis. 478 (1868); ***In re Booth***, 3 Wis. 1 (1854).

Equally clear is that Wis. Stat. § 895.4801 burdens the fundamental right to a jury trial. On its face, the plain language of the statute completely eliminates plaintiffs' fundamental right to a jury trial by making health care providers "immune from civil liability for the death of or injury to any individual . . . ." Wis. Stat. § 895.4801(2). This is not a "modification, suspension, or elimination" of medical negligence claims, as petitioners argue[5], but rather a pre-emptive pardon to health care providers, shielding them from having answer to a jury for their actions.

Petitioners further argue that "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

[5] Pet'r Br. at 19.

by the governor." Pet'r. Br. at 19. Yet statutes of repose and limitations (like other procedural and evidentiary rules) merely provide boundaries for bringing civil lawsuits, rather than completely eliminating any and all ability to obtain a jury trial. *See, e.g.,* Wis. Stat. §§ 893.55, 893.56, ch. 655. *See also* ***Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund,*** 2000 WI 98, ¶¶44, 53-54, 237 Wis. 2d 99, 613 N.W.2d 849 (addressing the constitutionality of statutes of limitations and statutes of repose for a medical malpractice claim). Likewise, other civil and governmental immunities have limiting principles that restrict their applicability to a narrow set of circumstances and are subject to waiver. *See, e.g.,* Wis. Stat. § 893.80; Wis. Stat. § 895.48; Wis. Stat. § 895.52. Yet Section 895.4801 provides absolute, blanket immunity for all medical negligence committed during the proscribed period—a period which had no set end date at the time the statute was promulgated—regardless of whether that negligence had any relation to the impact of the pandemic on the healthcare system.

It is indisputable that Wis. Stat. § 895.4801 burdens the fundamental right to a jury trial, and it must therefore be subjected to strict scrutiny.

B. Neither Columbia St. Mary's nor the State have met their heavy burden to prove that Wis. Stat. § 895.4801 passes strict scrutiny review.

Because Wis. Stat. § 895.4801 burdens a fundamental right, the presumption of constitutionality falls away, and petitioners bear the exceptionally heavy burden to show the statute satisfies all three rigorous prongs of strict scrutiny review. *See* ***San Antonio Indp. Sch. Dist.***, 411 U.S. 1, 16-17 (2000); ***James v. Heinrich***, 397 Wis.2d 517, 960 N.W.2d 350, 369 (2021). They have failed to do so here.

1. The plain language of Wis. Stat. § 895.4801 is unconstitutional on its face, rendering review of subjective legislative intent unnecessary.

The first of the three prongs under strict scrutiny requires that the statute in question further a compelling state interest. *See,* ***Mayo,*** 383 Wis.2d at 25. Here, the Court of Appeals considered two alternative state interests furthered by Wis. Stat. § 895.4801: (1) responding to the COVID-19 pandemic itself, and (2) responding to the challenges the pandemic posed to the health care system more broadly. ***Wren,*** ¶¶ 35-39. The court found both to be compelling.

Petitioners assert that the Court of Appeals failed to consider the "extrinsic legislative history" of Wis. Stat. § 895.4801 in determining whether the statute furthered a compelling state interest. However, this is both demonstrably untrue (as the court of appeals directly addressed the

legislative history in footnote 12 on page 17 of its opinion) but also moot—as the court ultimately found that even under the broader state interest of responding to the "unique challenges" the health care system as a whole faced during the COVID-19 pandemic, the statute ultimately did not satisfy the two remaining prongs of strict scrutiny. ***Wren,*** ¶ 37.

Furthermore, as petitioners acknowledge, "when determining what a statute means, a court focuses on 'the enacted law, not the unenacted intent' of lawmakers." Pet'r br. at 25 (*quoting* ***State ex rel. Kalal v. Cir. Ct. for Dane County***, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110). "This is what 'legislators vote on and binds the public.'" Pet'r br. at 25 (*quoting* ***SEIU Healthcare Wisconsin v. WERC,*** 2025 WI 29, ¶ 7, 416 Wis. 2d 688, 22 N.W.3d 876). Petitioners' appeal to legislative history in support of their argument for taking a broader view of the purported state interest is unavailing when the plain language of the statute speaks for itself. Section 895.4801 unconstitutionally prevents Wisconsin citizens from obtaining justice through a jury trial in direct contravention to Article 1, Section 5 of the Wisconsin Constitution.

2. Petitioners failed to show that the measures utilized by Wis. Stat. § 895.4801 were necessary to achieve the asserted governmental purpose, particularly where the legislature enacted a subsequent statute that protects the same interests.

The second of the three prongs required by strict scrutiny is "necessity." *See,* ***Mayo,*** 383 Wis.2d at 25. This Court has defined necessity as: "[a] thing is necessary in the highest degree, when it is inevitable—when it must be. In a lesser degree that is necessary which cannot be otherwise without preventing the purpose intended; that which is indispensable, requisite or essential." ***Milwaukee & St. P. Ry. Co. v. City of Milwaukee,*** 34 Wis. 271, 277 (1874). Likewise, Black's Law Dictionary defines "necessary" as "[t]hat is needed for some purpose or reason; essential," and "That must exist or happen and cannot be avoided." Black's Law Dictionary (11th ed. 2019), "necessary."

Here, petitioners provided no evidence addressing why or how the broad immunity provided by Wis. Stat. § 895.4801 is necessary, essential, or unavoidable to achieve the asserted broader purpose of encouraging hospitals and clinics to remain open during the COVID-19 pandemic. Indeed, no evidence was introduced to show that, had it not been for the legislature's passage of Wis. Stat. § 895.4801, hospitals and clinics were threatening to, and in fact would have closed.

Instead, the available evidence shows that the subsequently enacted COVID-19 immunity statute—Wis. Stat. § 895.476—provided an alternative means of achieving the asserted goal of keeping hospitals and clinics open, but it did so in a much more narrowly tailored way. This statute provides civil immunity to any entity:

> for the death of or injury to any individual or damages caused by an act or omission 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 (2021).

The appeals court clearly and forcefully concluded that the Wisconsin Legislature could have—and later did—respond in a much more precise and tailored way to protect the State's interest in ensuring the availability of COVID-19 care and facilitating pandemic response efforts. The overbroad means utilized by the legislature in Wis. Stat. § 895.4801 was—by definition—inessential, avoidable, and unnecessary.

3. No evidence supports the contention that Wis. Stat. § 895.4801 was narrowly tailored.

The third and final requirement of strict scrutiny—narrow tailoring—ensures that "[the State] has selected 'the less drastic means' for effectuating

its objectives" and no "less intrusive means of accomplishing similar purposes … are available." ***San Antonio Indp. Sch. Dist.***, 411 U.S. at 17.

Petitioners assert this prong was satisfied because the immunity enacted by Wis. Stat. § 895.4801 only lasted roughly four months. Yet, they provide no citation to any caselaw holding that "narrow tailoring" is satisfied when an overbroad statute is limited in scope by time. Conversely, existing case law has rejected "a specific, limited-in-time scenario" as "questionable and not relevant." ***Wisconsin Legislature v. Palm***, 2020 WI 42, ¶ 27, 391 Wis. 2d 497, 942 N.W.2d 900).

At the time the statute was enacted, there was no limitation or predetermined date indicating how long the "state of emergency" would last—it could have been four months or forty years. The Wisconsin and U.S. constitutions did not cease to apply for those four months, and the statute remained unconstitutionally overbroad in preventing *all* claims of medical negligence for the entirety of its duration.

Section 895.4801 also fails the narrow tailoring prong of strict scrutiny because it contains no requirement that the claim of negligence have any relation to furthering the governmental interest underlying the statute. As such, cases like this one, that have no relation whatsoever to COVID or its impact on the healthcare system, are barred just as sweepingly as claims

directly related to COVID would be. Conversely, as the subsequently enacted COVID immunity statute—Wis. Stat. § 895.476—shows, the Wisconsin Legislature could have and did respond to COVID and its impact on the healthcare system in a much more narrowly tailored way.

The overbreadth of Wis. Stat. § 895.4801 cannot be saved through the indeterminate time limitations included in the statute. Because the statute fails to fulfill the exacting requirements of strict scrutiny, this Court must uphold the court of appeals' holding invalidating the statute as unconstitutional.

II. Even under rational basis review, Wis. Stat. § 895.4801 is unconstitutional.

Because Wis. Stat. § 895.4801 burdens a fundamental right, strict scrutiny is the only appropriate standard of review applicable here. Petitioners did not dispute this fact at any time before the lower court. *See* ***Wren,*** ¶ 29 ("Columbia St. Mary's accepts Wren's argument that § 895.4801 implicates the fundamental right to a jury trial provided in article I, section 5 of the Wisconsin Constitution and also analyzes the constitutionality of § 895.4801 using strict scrutiny.") However, even under rational basis review, Wis. Stat. § 895.4801 would still fail.

Rational basis review requires that a statute be "rationally related to legitimate government interests." ***Washington v. Glucksberg***, 521 U. S. 702,

728, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). Under this standard, while the same government interests of responding to COVID and the impacts it had on the Wisconsin healthcare system would apply, Section 895.4801 would have to bear some reasonable nexus to achieving those interests. However, the statute cannot pass even this standard because it contains no requirement tying the immunity it provides to COVID or its impact on the healthcare system. Furthermore, there is no evidence that the immunity approach utilized by the statute reasonably addresses the governmental interest of keeping hospitals and clinics open during COVID. Therefore, even under rational basis review, Wis. Stat. § 895.4801 is unconstitutional.

CONCLUSION

Wisconsin Statute Section 895.4801 unconstitutionally burdens the fundamental right to a jury trial, and petitioners have failed to meet their heavy burden to prove that Wis. Stat. § 895.4801 can pass strict scrutiny. Therefore, this Court should uphold the Court of Appeals' decision finding that Wis. Stat. § 895.4801 is unconstitutional as a matter of law.

Dated this 18th day of August 2025.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(8)

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b), (bm), and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13-point body text, 11 point for footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 20 pages and 4,177 words.

Dated this 18th day of August 2025

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