STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2017AP1823

LAMAR CENTRAL OUTDOOR, LLC d/b/a LAMAR ADVERTISING OF CENTRAL WISCONSIN and TLC PROPERTIES, INC.,

Petitioners-Appellants-Petitioners,

v.

STATE OF WISCONSIN DIVISION OF HEARINGS AND APPEALS,

Respondent-Respondent,

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION,

Other Party.

APPEAL FROM A JUDGMENT ENTERED JUNE 13, 2017, IN THE PORTAGE COUNTY CIRCUIT COURT, THE HONORABLE JON M. COUNSELL, PRESIDING

RESPONSE BRIEF OF DIVISION OF HEARINGS AND APPEALS

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INTRODUCTION

Respondents Lamar Central Outdoor, LLC, and TLC Properties, Inc. (collectively, "Lamar") own and control an outdoor advertising sign (the "Billboard") that was lawfully erected next to a federal aid highway in 1991. Five years later, the highway became part of the interstate system and the location of the Billboard ceased to be one where a sign could be legally erected. The Billboard then became a legal nonconforming use which could lawfully continue subject to a prohibition against any enlargement.

Contrary to that prohibition, Lamar enlarged the Billboard between 2007 and 2009 by attaching extension panels that expanded the surface on which the advertising message was displayed. The illegal enlargement of the Billboard destroyed its legal nonconforming status and made it an illegal sign, subject to removal. The Wisconsin Department of Transportation (the "Department") issued a removal order in 2012. Following a contested case hearing, respondent State of Wisconsin Division of Hearings and Appeals (DHA) affirmed the removal order, and that decision was subsequently affirmed by the Portage County Circuit Court and the Court of Appeals.

Lamar makes numerous arguments challenging DHA's interpretation of the applicable statutes and administrative rules. For the reasons that follow, all of Lamar's arguments fail and the Court should affirm DHA's decision.

ISSUES PRESENTED

DHA disagrees with Lamar's framing of the issues and believes they should be framed as follows:

1. As a threshold matter, does the newly created Wis. Stat. § 84.30(5)(br) apply to the Billboard in this case?

DHA and the circuit court did not address this issue.

The court of appeals answered no.

This Court should answer no.

2. Does Wis. Admin. Code § Trans 201.10 apply to signs lawfully erected after March 18, 1972?

DHA impliedly answered yes.

The circuit court and court of appeals answered yes.

This Court should answer yes

3. Does Wis. Stat. § 84.30(11) require the Department to provide the owner of a nonconforming sign an opportunity to cure a violation that would cause the sign to lose its legal non-conforming status?

DHA answered no.

The circuit court did not discuss this issue.

The court of appeals answered no.

This Court should answer no.

4. Was the Department required to engage in administrative rulemaking before ordering removal of the Billboard?

DHA, the circuit court, and the court of appeals answered no.

This court should answer no.

5. Given the administrative code's express prohibition of enlarging a nonconforming sign, is the legality of the enlargement of the Billboard here governed by the common law of nonconforming uses?

DHA and the circuit court did not discuss this issue.

The court of appeals answered no.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument has already been scheduled for September 4, 2019. Publication is not requested because the central legal issues in this case have been superseded by intervening changes to the governing statute and thus should not recur in future cases.

STATEMENT OF FACTS AND OF THE CASE

I. Legal background.

Wisconsin's outdoor advertising sign control law, Wis. Stat. § 84.30, and the Department's administrative rules promulgated under that law, Wis. Admin. Code ch. Trans 201, provide a regulatory framework governing the erection, maintenance, and removal of outdoor advertising signs. Section 84.30 was enacted to promote public safety and convenience, preserve scenic beauty, aid commerce, protect public investment in highways, and to comply with the federal Highway Beautification Act, 23 U.S.C. § 131, which established incentives for states to control billboards along federal interstate and primary highways. Wis. Stat. § 84.30(1); *Vivid, Inc. v. Fiedler*, 182 Wis. 2d 71, 75, 78, 512 N.W.2d 771 (1994). Accordingly, § 84.30 and chapter Trans 201 are intended to be interpreted consistently

with the federal requirements. *See Vivid. Inc.*, 182 Wis. 2d at 75–78; Wis. Admin. Code § Trans 201.01.

Wisconsin law generally provides that, after March 18, 1972 (the effective date of § 84.30)[1], billboards may not be erected adjacent to federal aid highways, except in limited, specified circumstances. *See* Wis. Stat. § 84.30(3). One of those circumstances is that billboards may be erected in "business areas." Wis. Stat. § 84.30(3)(e).

The statutory definition of "business area" differs depending on whether the highway along which the billboard is located is part of the interstate highway system. *See* Wis. Stat. § 84.30(2)(b), (2)(k). This case involves a sign that was legally constructed in an area that, at the time, qualified as a business area, but that later ceased to qualify as such when the adjacent highway became part of the interstate system.

Signs that were lawfully erected but subsequently cease to conform with the requirements of the law—either because the law changes or because changed conditions make it impossible for the sign to comply with existing law—are categorized as nonconforming signs. *See* Wis. Stat. § 84.30(5); Wis. Admin. Code § Trans 201.02(7). Such nonconforming signs are allowed to continue to exist for a period of time, after which they are to be removed, subject to the payment of just compensation and the availability of sufficient appropriated funds for such compensation. *See* Wis. Stat. § 84.30(6), (15).

The lawful continued existence of a nonconforming sign, however, is subject to conditions set forth in Trans 201.10. Those conditions conform with parallel federal requirements. *See* 23 C.F.R. § 750.707. Any nonconforming sign that subsequently violates those conditions "shall be subject to

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[1] *See* 1971 Wis. Laws ch. 197.

removal as an illegal sign." Wis. Admin. Code § Trans 201.09. An illegal sign is subject to removal without payment of compensation. *See* Wis. Admin. Code § Trans 201.10(1) (compensation to be paid *provided* the sign has complied with all of the conditions in subsection (2)).

II. Factual background.

The Billboard at issue in this case is located adjacent to Interstate Highway 39 (I-39) in the City of Stevens Point. (R. 8:18.) It was originally erected by Orde Advertising Company in 1991.[2] (R. 8:20.) At that time, the Billboard was adjacent to U.S. Highway 51 (US-51). (R. 8:20.) On June 24, 1991, the Department issued a permit authorizing the Billboard as an off-premise, two-sided sign, with each side 14 feet high by 48 feet wide. (R. 8:20.)[3] At that time, the Billboard conformed to the requirements of § 84.30 for an off-premise sign in that location.

On January 11, 1996, the portion of US-51 passing the Billboard became part of the interstate highway system and was designated I-39. (R. 8:18.) Prior to that date, the Billboard was in a "business area" as defined in the first sentence of

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[2] Lamar acquired ownership of the Billboard in September 1999. (R. 8:20.)

[3] The outdoor advertising sign control law gives distinct legal treatment to signs that advertise activities conducted on the property where the sign is located. *See* Wis. Stat. § 84.30(3)(c). Such signs are referred to as on-property or on-premise signs. Other signs—advertising activities conducted somewhere other than at the sign's location—are commonly referred to as off-property or off-premise signs.

Lamar's opening brief includes an argument that Wis. Stat. § 84.30(5)(bm) applies only to on-premise signs, and thus does not apply to the Billboard in this case. (Lamar's Br. 14–16.) It is undisputed that § 84.30(5)(bm) is not applicable here, so that issue will not be further addressed in this brief.

§ 84.30(2)(b). When US-51 became I-39, however, the second sentence of § 84.30(2)(b) became applicable and the land where the Billboard is located ceased to be a "business area" in which a sign could be legally erected. *See* Wis. Stat. § 84.30(2)(b). (*See also* R. 8:18–19.) However, because the Billboard had previously been lawfully erected at that location, it could be maintained as a legal non-conforming sign under § 84.30(5)(b). (R. 8:21.) To continue as a nonconforming sign, the Billboard had to comply with the requirements of Trans 201.10(2), including the requirement that the sign cannot be enlarged. Wis. Admin. Code § Trans 201.10(2)(e).

At various times in 2007 through 2009, Lamar added extension panels of varying sizes and shapes to the 14-by-48-foot rectangular faces of the Billboard. (R. 8:19–22.) Such panels are commonly used in the outdoor advertising industry to make an advertising message more eye-catching, and are intended to be temporary. (R. 8:21, 23.)

On June 12, 2012, Lamar applied to the Department for a permit to remove vegetation obstructing visibility of the Billboard. (R. 8:18, 21.) Department staff reviewed photographic records of the Billboard and determined that, as of September 9, 2008, a scalloped panel—48 feet wide and varying in height up to four feet—had been added to the top of the Billboard's south face. (R. 8:21, 23.)

The Department determined that the addition of the extension panel was an enlargement of the Billboard that caused it to lose its legal non-conforming status and made it an illegal sign. (R. 8:21.) On that basis, the Department denied Lamar's application for a vegetation cutting permit on August 31, 2012, and issued a sign removal order to Lamar on September 4, 2012. (R. 8:18, 21.)

III. Procedural history.

On September 27, 2012, Lamar requested contested case hearings to review the denial of the vegetation permit and the sign removal order.[4] (R. 8:18.) DHA held a hearing on October 7, 2014, and issued a final decision on May 24, 2016, affirming the Department's removal order. (R. 8:18–32.) DHA concluded the Billboard was a nonconforming sign that had been impermissibly enlarged in violation of Trans 201.10(2)(e), causing it to lose its legal nonconforming status and subjecting it to removal. (R. 8:28–30.)

On June 21, 2016, Lamar petitioned for judicial review of DHA's decision under Wis. Stat. ch. 227. (R. 1.) On June 13 and 22, 2017, the circuit court issued a written decision and final order affirming DHA. (R. 100; 103.) Lamar appealed and the court of appeals affirmed on November 29, 2018. *See Lamar Central Outdoor, LLC, et al. v. State of Wisconsin Division of Hearings and Appeals, et al.*, No. 2017AP1823, 2018 WL 6264822 (Wis. Ct. App. Nov. 29, 2018) (unpublished).

STANDARD OF REVIEW

On appeal from a judicial review decision under Wis. Stat. ch. 227, this Court reviews the decision of the administrative agency, not the decisions of the circuit court or the court of appeals. *See Hilton ex rel. Pages Homeowners' Ass'n v. Dep't of Nat. Res.*, 2006 WI 84, ¶ 15, 293 Wis. 2d 1, 717 N.W.2d 166. The scope of review of agency decisions is

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[4] The outcome of Lamar's vegetation permit application is governed by the outcome of its challenge to the removal order. (R. 8:20, 22.) The vegetation permit, therefore, will not be separately discussed.

generally limited to what is in the administrative record. *See* Wis. Stat. § 227.57(1).

The Court must affirm the challenged agency decision unless it finds a ground for setting aside, modifying or remanding that decision for one or more of the reasons specifically enumerated in § 227.57(4)–(8). *See* Wis. Stat. § 227.57(2). The result reached by the agency can be upheld upon any legal rationale, including one not argued to or decided by the agency. *See Cty. of La Crosse v. WERC*, 174 Wis. 2d 444, 455, 497 N.W.2d 455 (Ct. App. 1993), *rev'd on other grounds*, 182 Wis. 2d 15, 513 N.W.2d 579 (1994). The burden of persuasion is on the party petitioning for review. *Sterlingworth Condo. Ass'n, Inc. v. DNR*, 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1996).

In the present case, Lamar challenges DHA's interpretation of § 84.30 and Trans 201.10. Courts apply the same rules of interpretation to statutes and to administrative rules. *DaimlerChrysler v. LIRC*, 2007 WI 15, ¶ 10, 299 Wis. 2d 1, 727 N.W.2d 311. Interpretation begins with the language of the provision; if its meaning is plain, the inquiry stops. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. The language is interpreted "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46. The scope, context, and purpose of a provision thus are relevant to its interpretation, as long as they "are ascertainable from the text and structure of the statute itself." *Id.* ¶ 48. Similarly, an administrative rule is construed together with its governing statute, to make a reasonable, harmonious, and effective piece of legislation, if possible. *DaimlerChrysler*, 299 Wis. 2d 1, ¶ 10.

In reviewing questions of law, "[t]he court shall set aside or modify the agency action if the court finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." *See* Wis. Stat. § 227.57(5); *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶¶ 11, 382 Wis. 2d 496, 914 N.W.2d 21. The agency's interpretations of law are reviewed *de novo* and are entitled to no deference. *See Tetra Tech*, 382 Wis. 2d 496, ¶¶ 16, 76; *see also* Wis. Stat. § 227.57(11) (no deference where agency action restricts owner's free use of property). However, while a reviewing court does not defer to an agency's interpretation of a statute, "due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as the discretionary authority conferred upon it." *See* Wis. Stat. § 227.57(10); *Tetra Tech*, 382 Wis. 2d 496, ¶¶ 71, 75–79.

ARGUMENT

I. Whether newly created Wis. Stat. § 84.30(5)(br) applies to this case is not properly before the Court. Alternatively, the new provision does not apply because Lamar's Billboard became an illegal sign before that provision was enacted.

As a threshold matter, Lamar has asserted at certain points in its petition for review and its opening brief that the sign removal order in this case has been invalidated by a new statutory provision, Wis. Stat. § 84.30(5)(br), which was enacted on April 16, 2017, while the case was pending before

the court of appeals. *See* 2017 Wisconsin Act 320 (Act 320).[5] That issue, however, has not been preserved for review and is not properly before this Court.

Lamar's statement of issues in both its petition and its opening brief failed to identify the applicability of Wis. Stat. § 84.30(5)(br) as an issue to be resolved by the Court. Lamar mentioned the issue in the introductory section of its petition, but the remainder of the petition provided no argument on that issue. Lamar's opening brief mentioned the issue in its introductory summary and discussed it in the context of arguing against DHA's interpretation of a *different* provision, Wis. Stat. § 84.30(11), but did not identify it as a discrete issue to be resolved by this Court. Under these circumstances, the Court should conclude that the applicability of § 84.30(5)(br) has not been preserved for review and is not properly before the Court. *See* Wis. Stat. 809.62(6).

Alternatively, if the Court does address this issue, it should follow the court of appeals, which correctly concluded that § 84.30(5)(br) is inapplicable.

The act that created the new provision expressly said, "This act first applies to nonconforming signs in existence on the effective date of this subsection [April 18, 2018]." Act 320, § 2. Lamar contends that, because the subject Billboard was in existence on April 18, 2018, § 84.30(5)(br) governs this case. Long before that date, however, the Billboard had lost its nonconforming status and become an illegal sign when Lamar

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[5] Under the new provision, the Department can no longer find a nonconforming sign illegal based on "changes to that sign that no longer exist." Wis. Stat. § 84.30(5)(br)4. In addition, where a violation has been found, the Department must give the sign owner 60 days to cure it. *Id.* Lamar suggests these requirements invalidate the removal order in this case because the extension panels that illegally enlarged the Billboard had been removed before that order was issued.

enlarged it starting in 2007. *See* Wis. Admin. Code §§ Trans 201.09, 201.10(2)(e). Moreover, Act 320 contains no indication of legislative intent to transform existing illegal signs into nonconforming signs. *See Lamar Central*, 2018 WL 6264822, ¶¶ 53–55. Because Lamar's Billboard lost its nonconforming status before April 18, 2018, Wis. Stat. § 84.30(5)(br) does not apply. *Id.*

Lamar tries to avoid this conclusion by suggesting that, because the legality of the Billboard is still at issue in this appeal, it currently remains a nonconforming sign. That is incorrect. The initial applicability section of Act 320 refers to the legal status of the sign itself, not to the date on which a court may rule on that status. Lamar's Billboard either lost its legal nonconforming status when it was enlarged in 2007, or it did not. A court acting in 2019 may decide the legal status of what happened in 2007, but the date of the court's decision does not itself affect that legal status. Accordingly, if the Court addresses the applicability of § 84.30(5)(br), it should hold that the provision does not apply here.

II. Nonconforming signs that were lawfully erected after March 18, 1972, are subject to the requirements of Trans 201.10.

A. Trans 201.10(2)(e), reasonably construed, requires that a nonconforming sign remain substantially the same as it was on the date when it became nonconforming.

Lamar argues that the enlargement prohibition in Trans 201.10(2)(e) does not apply to the Billboard here. According to Lamar, that rule only applies to a nonconforming sign in existence on March 18, 1972, and requires such a sign to remain substantially the same as it was on that date. When the rule is reasonably construed in its statutory and regulatory context, however, it clearly applies to a sign

erected after March 18, 1972, and requires such a sign to remain substantially the same as it was on the date when it became nonconforming.

The Billboard in this case was lawfully erected in 1991. When US-51 became I-39, the Billboard's location ceased to be a "business area" in which a sign could be legally erected. *See* Wis. Stat. § 84.30(2)(b). The Billboard then became a legal nonconforming sign under § 84.30(5)(b).

A legal nonconforming sign is allowed to continue to exist for a period of time, but its continuation is subject to the requirements of Trans 201.10(2), which provides, in pertinent part:

> (2) In order to lawfully maintain and continue a nonconforming sign . . . the following conditions apply: . . .
>
> (e) *the sign* must remain substantially the same as it was on the effective date of the state law, and *may not be enlarged.*

Wis. Admin. Code § Trans 201.10(2)(e). This provision expressly prohibits the enlargement of a nonconforming sign, including the Billboard at issue here. The parallel federal regulation likewise provides that a substantial change to a nonconforming sign terminates its nonconforming rights and that each state must develop its own criteria—like those in Trans 201.10(2)—governing what constitutes a change that will terminate nonconforming rights. 23 C.F.R. § 750.707(d)(5).

If a legal nonconforming sign subsequently violates the conditions in Trans 201.10(2), including the prohibition against enlargement, it is "subject to removal as an illegal sign." Wis. Admin. Code § Trans 201.09. Similarly, under 23 C.F.R. § 750.705(d), once a sign becomes illegal, the state is required to remove it expeditiously. A state's

noncompliance with the federal requirements can result in the loss of federal highway funding under 23 U.S.C. § 131.

Between 2007 and 2009, Lamar's Billboard was enlarged by the addition, at different times, of extension panels of various sizes and shapes that expanded the sign's advertising display surface. (R. 8:21.) That constituted an enlargement, in violation of Trans 201.10(2)(e), which caused the Billboard to lose its legal non-conforming status and made it an illegal sign, subject to removal under Trans 201.09.

Lamar's arguments rest on a misunderstanding of the phrases "at the time the applicable state law became effective," in Trans 201.10(2)(a), and "on the effective date of the state law," in Trans 201.10(2)(d) and (e). According to Lamar, those references denote the effective date of § 84.30: March 18, 1972. Lamar thereby infers that the requirements for lawfully continuing a nonconforming sign in Trans 201.10(2) only apply to nonconforming signs erected before March 18, 1972.

When the phrases on which Lamar relies are construed in the context of the entirety of Trans 201.10 and of § 84.30, however, it is clear that Lamar's inference is invalid. There are two categories of nonconforming off-premise signs under § 84.30(5): (1) signs located outside of business areas that are lawfully in existence on March 18, 1972, but do not conform to statutory requirements, Wis. Stat. § 84.30(5)(a); and (2) signs lawfully erected after March 18, 1972, which later became nonconforming, Wis. Stat. § 84.30(5)(b). *See also* Wis. Admin. Code § 201.02(7) (defining "nonconforming sign" as including (a) any sign that lawfully existed outside of a business area on March 18, 1972; and (b) any sign that was lawfully erected after March 18, 1972, and that subsequently does not conform to the requirements of § 84.30 or of chapter Trans 201). Clearly, then, Trans 201.10(2) is intended to

apply to nonconforming signs erected both before and after March 18, 1972.

Logically, there are two ways in which a sign that was lawfully erected after March 18, 1972, could subsequently cease to comply with a statute or rule, and thereby become nonconforming. First, a new statute or rule might be created, with which the preexisting sign does not conform. Second, the preexisting sign might fail to conform with an existing statute or rule due to changed conditions. These possibilities are expressly reflected in the federal definition of nonconforming sign:

> **Nonconforming signs.** A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

23 C.F.R. § 750.707(b).

There are thus a total of three categories of nonconforming off-premise signs under § 84.30(5) and Trans 201.02(7):

1. any sign that lawfully existed outside of a business area on March 18, 1972;
2. any sign that was lawfully erected after March 18, 1972, and that fails to conform to a newly created statute or rule; and
3. any sign that was lawfully erected after March 18, 1972, and that fails to comply with an existing statute or rule due to changed conditions.

The Billboard in this case falls into the third category—it was lawfully erected after 1972 and was rendered nonconforming not by the creation of a new statute or rule, but by the action that made the adjacent highway part of the interstate system.

For nonconforming signs in the first category above, the references to "the effective date of the state law" in Trans 201.10(2) plainly must refer to March 18, 1972.

For nonconforming signs in the second category, the phrase "on the effective date of the state law" reasonably must be construed as referring to the effective date of the newly created statute or rule that renders the sign nonconforming.

Nonconforming signs in the third category, however, are not rendered nonconforming by the creation of a new statute or rule. Those signs are rendered nonconforming by changed conditions that cause the sign to stop conforming to an existing legal requirement. For this category of signs, the phrase "on the effective date of the state law" cannot refer to the effective date of the already existing statute or rule to which the nonconforming sign fails to conform, because the sign did not become nonconforming due to the creation of that statue or rule, which may well have existed before the sign itself was erected.

In the present case, for example, the Billboard presently does not conform to the requirement in § 84.30(3)(e) that a sign may not be located outside a business area, as defined in the second sentence of § 84.30(2)(b). That requirement went into effect on March 18, 1972, but the Billboard was not erected until 1991 and did not cease to conform to that provision until the adjacent highway became part of the interstate system in 1996. In this type of situation, the phrase "on the effective date of the state law" makes sense only if it

is construed to refer to the date on which the sign ceased to conform to the preexisting statutory requirement. That is the date on which the pertinent statutory requirement became effective with regard to Lamar's Billboard.

Contrary to Lamar's suggestion, therefore, Trans 201.10(2)(e) does not require a nonconforming sign to "remain substantially the same as it was on [March 18, 1972]." (Lamar's Br. at 17 (emphasis omitted).) When that rule is reasonably construed in its statutory and regulatory context, it clearly requires that a nonconforming sign remain substantially the same as it was on the date when it became nonconforming. Applied to this case, that means that the Billboard could not be enlarged beyond its lawful size when it became nonconforming in 1996.

B. Lamar's contrary arguments are unavailing.

Lamar makes several contrary arguments, but all of them fail.

Lamar first argues that the phrase "the effective date of the state law" in Trans 201.10(2) is unambiguous and context, therefore, cannot be relied on when construing it. According to Lamar, context is extrinsic evidence of legislative intent that cannot be used to interpret unambiguous language in a statute or rule. (Lamar's Br. at 18–19.) This argument fails for two reasons.

First, the phrase "the effective date of the state law" cannot reasonably be construed as denoting only § 84.30 and its effective date of March 18, 1972, as Lamar suggests. Provisions in chapter Trans 201 that are intended to refer to that date do so by directly referencing "March 18, 1972," not by generically referring to the effective date of an unspecified state law. *See, e.g.,* Wis. Admin. Code §§ Trans 201.02(4), (5), and (7), and 201.075 (1) and (4). The Legislature, likewise, has

directly referenced "March 18, 1972," where that specific date is intended. *See* Wis. Stat. § 84.30(3)(d) and (e), (4), (5)(a) and (b), (6), (9), and (11). The generic language in Trans 201.10(2) can apply to different state laws with different effective dates and does not uniquely refer to § 84.30's effective date of March 18, 1972, as Lamar suggests.

Second, it is permissible and appropriate to interpret the language of a statute or rule in its intrinsic statutory and regulatory context. Such context is not extrinsic evidence of legislative intent, as Lamar asserts, but instead a normal part of statutory interpretation. It is true that extrinsic, non-statutory sources—such as legislative history, news articles, statements by legislators, etc.—cannot be used as evidence of the meaning of unambiguous statutory language. *See Kalal*, 271 Wis. 2d 633, ¶ 46. But DHA's interpretation of the phrase "the effective date of the state law" does not rely on such extrinsic, unenacted sources. Rather, DHA looks to the intrinsic context of the overall structure of Trans 201.10 and of § 84.30, and the language of related statutory and regulatory provisions. Reliance on such intrinsic context was expressly approved in *Kalal*:

> A statute's purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes—that is, from its context or the structure of the statute as a coherent whole. . . . Accordingly, it cannot be correct to suggest, for example, that an examination of a statute's purpose or scope or context is completely off-limits unless there is ambiguity. It is certainly not inconsistent with the plain-meaning rule to consider the intrinsic context in which statutory language is used; a plain-meaning interpretation cannot contravene a textually or contextually manifest statutory purpose.

Id. ¶ 49. DHA's interpretation of Trans 201.10(2) thus is consistent with the plain meaning rule of *Kalal*.

Lamar also argues that Trans 201.10(2) must be construed in harmony with § 84.30 which, at the time of the events in this case, did not itself expressly prohibit the enlargement of nonconforming signs or provide for the removal of ones that are enlarged.[6] Lamar supports this argument by noting that the first version of administrative rules promulgated under § 84.30 in 1972 did not include any restriction on the enlargement of nonconforming signs. (Lamar's Br. at 21–22.)

Lamar's argument fails because it is equivalent to contending that the prohibition on enlargement of a nonconforming sign in Trans 201.10(2)(e) is inconsistent with § 84.30 as it existed prior to the 2018 amendment. In other words, Lamar is effectively claiming that Trans 201.10(2)(e) is a statutorily unauthorized rule. However, Lamar failed to raise any such claim in the lower court proceedings or in the proceedings before DHA. Any claim of statutory invalidity of a rule, therefore, has not been preserved for review by this Court.

In addition, under Wis. Stat. § 227.40(5), a party challenging the validity of an administrative rule must serve a copy of its action on the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) within 60 days of filing, pursuant to Wis. Stat. § 893.02, or the challenge

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[6] The recent amendment to § 84.30 does expressly prohibit enlargement of nonconforming signs. *See* Wis. Stat. § 84.30(5)(br)1.f. (prohibiting any "substantial change" to a nonconforming sign and defining a "substantial change" as including "increasing the square footage or area of the sign face."). In 2007, however, when Lamar's Billboard was enlarged, this express statutory prohibition did not exist. The enlargement was nonetheless prohibited at that time by Trans 201.10(2)(e).

cannot proceed. *Richards v. Young*, 150 Wis. 2d 549, 557, 441 N.W.2d 742 (Ct. App. 1989). Failure to comply with that requirement prevents the trial court from exercising jurisdiction over the challenge to the rule. *Harris v. Reivitz*, 142 Wis. 2d 82, 92–93, 417 N.W.2d 50 (Ct. App. 1987). Here, Lamar did not serve JCRAR, so neither the circuit court, nor the court of appeals, nor this Court has competency in the present case to address a challenge to the validity of Trans 201.10(2)(e) or any other administrative rule.

Finally, Lamar's arguments also fail because Lamar's interpretation of Trans 201.10(2) is self-defeating, would lead to absurd results, and is contrary to plain statutory language.

Lamar's interpretation is self-defeating because, under Trans 201.10(2), a nonconforming sign can be lawfully maintained and continued only if it satisfies the conditions enumerated in paragraphs (a) through (f) of that rule. If those conditions only applied to signs that already existed in 1972, as Lamar maintains, then nonconforming signs erected after that date—including the Billboard here—could not be lawfully maintained and continued at all. That outcome not only would be fatal to Lamar's Billboard, but also is an unreasonable outcome that the Department clearly did not intend when it promulgated the rule.

Lamar tries to avoid this self-defeating outcome by implausibly suggesting that *no law* prohibits the enlargement of non-conforming signs erected after 1972. But that would lead to the absurd conclusion that there are no legal limits at all on expanding or otherwise changing such signs. Courts must construe statutes "in such a way as to avoid an absurd or unreasonable result." *State ex rel. Sielen v. Circuit Court for Milwaukee Cty.*, 176 Wis. 2d 101, 106, 499 N.W.2d 657,

(1993).[7] Lamar's suggestion that it has an unfettered right to enlarge the Billboard at any time and by any amount would also be contrary to the federal highway sign control requirements with which Wis. Stat. § 84.30 was intended to comply. *See* Wis. Stat. § 84.30(1); *Vivid, Inc.*, 182 Wis. 2d at 75–78; Wis. Admin. Code § Trans 201.01. Lamar's argument should be rejected.

Finally, Lamar tries to justify its unreasonable position by suggesting that signs that were erected after the sign control law went into effect in 1972, and that later became nonconforming due to changed conditions, were not intended to be phased out at all. That suggestion is directly contrary to the plain language of § 84.30(5)(b), which states: "A sign lawfully erected after March 18, 1972 and which subsequently does not conform to this section shall be removed by the end of the 5th year after it becomes nonconforming." Wis. Stat. § 84.30(5)(b). The legislative intent to phase out nonconforming signs erected after 1972 could not be clearer.

III. The right to cure an illegality under Wis. Stat. § 84.30(11) does not apply to an order to remove a lawfully erected nonconforming sign that has subsequently lost its legal nonconforming status.

Lamar also argues that, even if the Billboard was illegally enlarged, it is not subject to removal because it was subsequently restored to its permitted size. According to Lamar, § 84.30(11) gives the owner of a nonconforming sign the right to cure a violation that would destroy the sign's legal nonconforming status before the Department can order removal. In this case, Lamar maintains removal could not be

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[7] An administrative rule is interpreted in the same fashion as a statute. *Wis. Dep't of Revenue v. Menasha*, 2008 WI 88, ¶ 45, 311 Wis. 2d 579, 754 N.W.2d 95 (2008).

ordered because any prior illegal enlargement of the Billboard had been corrected before the Department issued its order.

The statute on which Lamar relies says, in pertinent part:

> Any sign erected in an adjacent area after March 18, 1972, in violation of this section or the rules promulgated under this section, may be removed by the department upon 60 days' prior notice by registered mail to the owner thereof and to the owner of the land on which said sign is located, unless such sign is brought into conformance within said 60 days.

Wis. Stat. § 84.30(11). Lamar claims this statute applies to a sign, like the Billboard, that originally was legally erected but later became nonconforming.

Lamar is wrong. Section 84.30(11) does not apply here for several reasons. First, that statute, by its own terms, only applies to illegally erected signs, whereas the Billboard was legally erected. Second, Lamar's interpretation of the statute is inconsistent with the nature of a nonconforming use and with the legislative direction to phase out nonconforming signs. Third, the right to cure a violation under § 84.30(11) would be meaningless as applied to a nonconforming sign like the Billboard, because it is impossible to bring such a sign into conformance with the requirements of § 84.30. The Billboard has been out of conformance with § 84.30(2)(b) and (3)(e) since I-39 was designated in 1996, and there is nothing that could be done to bring a sign at that location into conformance.

A. Section 84.30(11) only applies to illegally erected signs, and the Billboard was legally erected.

The opportunity to cure a legal violation under § 84.30(11) only applies to signs that were erected illegally, but for which the illegality is correctable. The statute refers

to "any sign erected in an adjacent area after March 18, 1972, in violation of this section or the rules promulgated under this section . . . ." *Id.* Lamar's Billboard was erected after March 18, 1972, but was not erected in violation of § 84.30 or chapter Trans 201.

Section 84.30(11) does not provide all sign owners with an opportunity to cure problems with their signs. Its purpose is to give an owner who erects a new sign at a legally permissible location, but without a permit or without complying with the technical specifications of § 84.30(4), an opportunity to obtain a permit or bring the sign into technical compliance within 60 days of receiving notice of the sign's illegality from the Department. If the owner brings the sign into compliance, it will not be removed. But the statute does not apply to a legally erected sign that subsequently becomes a legal nonconforming sign and later is illegally altered, resulting in the loss of its legal nonconforming status.

Lamar insists that the phrase "in violation of this section or the rules promulgated under this section" modifies the word "sign," not the word "erected." Wis. Stat. § 84.30(11). Lamar thus construes the statutory language to mean: "Any sign that is currently in violation of this section and that was erected after March 18, 1972, may be removed upon 60 days' notice, unless that sign is brought into conformance within those 60 days."

In contrast, DHA agreed with the Department that the statutory language means: "Any sign that, after March 18, 1972, is erected in violation of this section may be removed upon 60 days' notice, unless that sign is brought into conformance within those 60 days."

Lamar's interpretation is incorrect. If the phrase "in violation of this section" were intended to modify the word "sign," the phrase would immediately follow the word "sign."

It does not. It follows the phrase "erected in an adjacent area after March 18, 1972." By interposing "erected" after "sign" and closer to "in violation," the legislature intended that "in violation" modify "erected," rather than "sign." In addition, the use of the prepositional phrase "in violation" suggests that the phrase functions as an adverb modifying "erected." A sign can be erected "in violation of this section," but in order to modify "sign," the phrase would have to be re-worded to say "sign *that is* in violation," or something similar.

Lamar argues that the commas immediately before and after the phrase "in violation of this section or the rules promulgated under this section" set off that phrase and connect it to "sign," rather than to "erected." (*See* Lamar's Br. at 28.) That is incorrect.

Where two commas separate a subordinate phrase from a preceding term and a subsequent modifier, it may indicate that the modifier relates to the preceding term rather than to the intervening offset subordinate phrase. For example, in a case that Lamar cited before the court of appeals, this Court interpreted an insurance contract containing the phrase "[i]njury, other than bodily injury, arising out of one or more of the following offenses," and concluded that "arising out of" modified the first use of the word "[i]njury," not the offset subordinate phrase "other than bodily injury." *Liebovich v. Minnesota Ins. Co.*, 2008 WI 75, ¶¶ 30–31, 310 Wis. 2d 751, 751 N.W.2d 764.

But that is not what is going on in the first sentence of § 84.30(11). There, the purportedly offset "in violation" phrase is not a subordinate phrase placed between an initial term and a subsequent modifier. Rather, the "in violation" phrase is itself the modifier, and that modifier follows both "sign" and "erected." This language is distinguishable from that in cases like *Liebovich*, where the offset subordinate phrase is between the modified term and its modifier. Because the "in violation"

phrase in § 84.30(11) is placed after both "sign" and "erected," the commas before and after that phrase do not themselves resolve whether the phrase modifies "sign" or "erected." As discussed, above, however, the location of "in violation" immediately after the "erected" phrase, and the placement of the "erected" phrase between "sign" and "in violation" demonstrates that "in violation" modifies "erected," not sign." Section 84.30(11), therefore, does not apply to signs that were lawfully erected and later became nonconforming.

B. Lamar's interpretation of Wis. Stat. § 84.30(11) is inconsistent with the nature of a nonconforming use and with the legislative intent to phase out nonconforming signs.

Lamar's interpretation of § 84.30(11) is also inconsistent with the generally disfavored status of nonconforming uses under the law. "[T]he policy of the law is the gradual elimination of non-conforming uses." *State ex rel. Peterson v. Burt*, 42 Wis. 2d 284, 291, 166 N.W.2d 207 (1969). Accordingly, it is well established that once a nonconforming use loses its legal nonconforming status, the nonconforming use is invalidated. Where an established nonconforming use is illegally expanded, enlarged, or otherwise unlawfully changed, not only is the change illegal, but the prior legal nonconforming use is also invalidated. *Waukesha Cty. v. Pewaukee Marina, Inc.*, 187 Wis. 2d 18, 30–31, 522 N.W.2d 536 (Ct. App. 1994).

This approach to nonconforming uses is reflected in the statutes and rules at issue here. The requirements imposed on nonconforming signs are continuous throughout the life of the sign: "The sign . . . must continue to be lawfully maintained." Wis. Admin. Code § Trans 201.10(2)(d). A sign that is not lawful or that does not continue to be lawful is subject to removal. Regardless of whether Lamar later

reduced the size of the Billboard back to its prior, legal nonconforming size, the Billboard was intermittently enlarged between 2007 and 2009, in violation of Trans 201.10(2)(e). It thus did not "continue to be lawfully maintained" during that period. Wis. Admin. Code § Trans 201.10(2)(d). As a result, the Billboard can no longer continue as a legal nonconforming sign. Wis. Admin. Code § Trans 201.10(2).

The disfavored status of nonconforming signs is also reflected in the legislative direction that they be gradually phased out of existence. Under § 84.30(5)(b), a nonconforming sign lawfully erected after March 18, 1972, is intended to be removed by the end of the fifth year after it becomes nonconforming, subject to the requirement of payment of just compensation pursuant to § 84.30(6)(c). Where sufficient funds have not been appropriated to pay that compensation, a nonconforming sign may continue to exist beyond that five-year period. Wis. Stat. § 84.30(15). Nevertheless, the legislature plainly directed that nonconforming signs would have a limited lifespan and would not continue to exist in perpetuity. Against this clear statutory background, an implied right to cure an illegal change to a nonconforming sign cannot plausibly be read into § 84.30(11). If the Legislature had intended to create a statutory right to cure for nonconforming signs, it would have expressed that intent through clear statutory language, as it did in 2018 when it created § 84.30(5)(br)1.f. When Lamar enlarged its Billboard in 2007, however, no such statutory right to cure existed.[8]

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[8] It is also significant that when the Legislature created a statutory right to cure in 2018, it did not do so by amending § 84.30(11), where Lamar claims the right was already implied. Instead, the new right to cure is located in § 84.30(5), which deals specifically with nonconforming signs. That placement supports DHA's view that § 84.30(11) does not apply to nonconforming signs.

C. The right to cure a violation under Wis. Stat. § 84.30(11) would be meaningless as applied to a nonconforming sign like the Billboard, because it is impossible to bring such a sign into conformance with the requirements of Wis. Stat. § 84.30.

The right to cure that Lamar tries to read into § 84.30(11) would also be meaningless as applied to a nonconforming sign like the Billboard.

The right to cure under § 84.30(11) provides an opportunity for a sign that does not conform with the requirements of § 84.30 and chapter Trans 201 to be "brought into conformance." If a new sign is illegally erected without a permit or in violation of statutory size, spacing, or lighting requirements, it may be possible to bring the sign into conformance with the law by obtaining a permit or correcting the size, spacing, or lighting problem.

Nonconforming signs, in contrast, are by definition incapable of being brought into conformance with one or more applicable legal requirements. Where a nonconforming sign has been illegally changed, it may be possible to undo that change, but that is not enough to make the nonconforming sign conform to the requirements of § 84.30. A sign that is at a location where signs are no longer allowed cannot be brought into conformance with the law.

The present case is a good example. When US-51 became I-39, the location of Lamar's Billboard became an unlawful location for a sign. Henceforth, it was impossible for a sign at that location to conform to § 84.30. The Billboard was allowed to remain at that location as a legal nonconforming sign, but only subject to the requirement that it be continuously maintained in accordance with the requirements of Trans 201.10(2), including the prohibition against enlargement. When the Billboard was illegally

enlarged, it lost its legal nonconforming status. When it was subsequently reduced back to its former size, it was not "brought into conformance" with § 84.30 because it is still in an unlawful location and is no longer protected by a legal nonconforming status. It is simply an illegal sign, subject to removal.

D. DHA's interpretation of Wis. Stat. § 84.30(11) would not deprive the Department of authority to order removal of illegal nonconforming signs or deprive DHA of jurisdiction to conduct hearings in removal cases.

Lamar also makes two other arguments about DHA's interpretation of § 84.30(11), both of which fail.

First, Lamar suggests that the Department's authority to order the removal of a sign comes only from § 84.30(11) and, therefore, if that provision does not apply to nonconforming signs, then the Department has no authority at all to order the removal of such signs.

Lamar's suggestion fails because it overlooks the Department's exercise of its rulemaking authority under § 84.30(14). That statute authorizes the Department to "promulgate rules deemed necessary to implement and enforce [§ 84.30]." Wis. Stat. § 84.30(14). Pursuant to that authority the Department has promulgated Trans 201.09, which expressly provides that "any nonconforming sign which subsequently violates s. 84.30, Stats., or these rules, shall be subject to removal as an illegal sign." Wis. Admin. Code § Trans 201.09. Consistent with § 84.30(14), that rule provides for enforcement by removal of illegal nonconforming signs. Moreover, to the extent that Lamar may mean to suggest that Trans 201.09 is a statutorily unauthorized rule, that issue is not properly before the Court because Lamar did

not serve notice that it was challenging the validity of a rule on JCRAR. *See supra* at 18–19.

Second, Lamar suggests that, if § 84.30(11) does not apply to nonconforming signs, then DHA has no jurisdiction to conduct a hearing in a case involving an order to remove a nonconforming sign. According to Lamar, § 84.30(18) gives DHA jurisdiction to conduct "[h]earings concerning sign removal notices under sub. (11)," but not concerning other sign removal notices. Therefore, if subsection (11) does not apply, then DHA had no jurisdiction.

Lamar's argument fails because § 84.30(18) is not the exclusive source of DHA's hearing authority. Wisconsin's Administrative Procedure Act supplies a more general source of authority to conduct hearings:

> (1) In addition to any other right provided by law, any person filing a written request with an agency for a hearing shall have the right to a hearing which shall be treated as a contested case if:
>
> (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
>
> (b) There is no evidence of legislative intent that the interest is not to be protected;
>
> (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
>
> (d) There is a dispute of material fact.

Wis. Stat. § 227.42(1). Under that statute, Lamar had the right to request a contested case hearing from the Department.

In addition, § 227.43(1)(br) provides that DHA shall "[a]ssign a hearing examiner to preside over any hearing of a

contested case which is required to be conducted by the department of transportation and which is not conducted by the secretary of transportation." Wis. Stat. § 227.43(1)(br). DHA thus was statutorily authorized to conduct the hearing requested by Lamar in this case.

IV. The Department was not required to engage in administrative rulemaking before ordering removal of the Billboard.

Lamar argues that the sign removal order in this case embodies changes in the Department's interpretation of § 84.30, and that the Department was required to engage in formal rulemaking in order to make such changes. At the DHA hearing, Lamar presented evidence that it was the practice of a Department employee prior to 1999 not to immediately require the removal of a nonconforming sign to which extensions were added, but instead to give the owner a 60-day warning to remove the extensions. (Lamar's Br. at 33–34.) In the present case, in contrast, the Department took the position that enlarging a nonconforming sign by adding an extension to it immediately deprives the sign of its legal nonconforming status and makes it an illegal sign, subject to removal. Lamar contends the Department could not depart from the employee's prior practice by ordering the removal of the Billboard in this case without first engaging in rulemaking. That contention fails for several reasons.

First, rulemaking was not required because the interpretation here was made in the course of individualized decision making. Section 227.10(1) says, "an interpretation of a statute made in the decision of a contested case . . . or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule." Wis. Stat. § 227.10(1). This case

involves the Department's decision concerning specific facts related to Lamar's Billboard and a contested case hearing regarding that individualized decision. Agencies are not statutorily required to engage in rulemaking in order to interpret and apply the law to such individual cases.

Second, there has been no change in the Department's position that a nonconforming sign cannot lawfully be enlarged through the addition of extensions. Even under the pre-1999 practice, the Department did not allow extensions to nonconforming signs, but rather required that such extensions be removed within 60 days. Contrary to Lamar's suggestions, therefore, there has been no change in the Department's view that an extension constitutes an unlawful enlargement of a sign. Any change relates, rather, to the existence of a 60-day right to cure such a violation.

As to the right to cure, an agency is not required to engage in administrative rulemaking in order to bring its practices into conformity with the plain meaning of a statute. *See Schoolway Transp. Co. v. Div. of Motor Vehicles*, 72 Wis. 2d 223, 235–36, 240 N.W.2d 403 (1976). Here, for the reasons discussed in section III above, the plain language of § 84.30(11)—in particular, the fact that "in violation" is placed immediately after the "erected" phrase, rather than after "sign"—shows that the 60-day right to cure applies only to signs that have been unlawfully erected, not to signs that were lawfully erected and have subsequently become nonconforming. To the extent a Department employee may have previously construed § 84.30(11) as affording a 60-day right to cure illegal enlargements of nonconforming signs, that interpretation was contrary to the language of that statute, and the Department was not required to engage in rulemaking to correct it.

Lamar's counter-arguments are unavailing.

Lamar notes that, although *Schoolway* held that rulemaking was not required in order to change an agency interpretation of a school bus special license statute, rulemaking was required in order to change the interpretation of an urban mass transportation special licensing statute. *See Schoolway*, 72 Wis. 2d at 232–33, 236–37. Lamar contends that the Department's changed interpretation of § 84.30(11) in this case is more closely analogous to the second change in *Schoolway*, for which rulemaking was required.

Lamar is incorrect for two reasons. First, the portion of *Schoolway* on which Lamar relies, does not change the fact that, under § 227.10(1), an agency's interpretation of a statute is not required to be promulgated as a rule, if it is made in the course of deciding a contested case or other individualized decision making.

Second, contrary to Lamar's assertion, the statute at issue here is more closely analogous to the first statute discussed in *Schoolway* than to the second. The *Schoolway* Court found that the agency could change its interpretation of the first, school bus special license statute without rulemaking because the meaning of that statute was clear. *See id.* at 235–36. In contrast, the Court found that the meaning of the second, urban mass transportation special licensing statute was not clear. *Id.* at 236–37. It was the reinterpretation of an unclear statute that required rulemaking.

Here, it is clear for the reasons already discussed that § 84.30(11) does not provide a 60-day right to cure an illegal enlargement of a nonconforming sign. Contrary to Lamar's contention, therefore, any change in the Department's interpretation of § 84.30(11) is analogous to the first statutory interpretation in *Schoolway*, for which rulemaking was not required.

Lamar also suggests that the meaning of the 60-day right to cure under § 84.30(11) cannot be clear because both DHA and the court of appeals have had to engage in complex analysis of syntax in order to explicate that meaning. As the court of appeals noted, however, the examination of syntax is a standard element of any statutory interpretation. *See Lamar Central*, 2018 WL 6264822, ¶ 60 (*citing S.A.M. v. Meister*, 2016 WI 22, ¶ 29, 367 Wis. 2d 447, 876 N.W.2d 746). Reliance on syntax to disclose the clear meaning of a sentence does not itself render that meaning unclear. Moreover, to the extent that the analyses of syntax in this litigation have been complex, that complexity is due not to the unclarity of § 84.30(11), but rather to Lamar's efforts to twist the rules of grammar to give that provision an unnatural meaning. When § 84.30(11) is given a proper grammatical reading, its meaning is clear and does not require rulemaking.

V. The legal effect of the enlargement of the Billboard's advertising surface is governed by Trans 201.10(2)(e), not by the common law of nonconforming uses.

Lamar's final argument is that the Court should apply the common law doctrine of nonconforming uses to this matter. Court decisions involving that doctrine, according to Lamar, provide that a mere increase in the scope of a legal nonconforming use is not sufficient to invalidate it, unless it is also coupled with an identifiable change in the nature of the use. Here, Lamar suggests, the nature of the use of the Billboard was unchanged by the addition of the extension panels, and that addition, therefore, was insufficient to invalidate the legal nonconforming use.

In this case, however, there are specific provisions of law that govern the issues regarding the Billboard. The Department, pursuant to its rulemaking authority under Wis. Stat. § 84.30(14), has required that a nonconforming sign

"may not be enlarged." Wis. Admin. Code § Trans 201.10(2)(e). That is an express and unqualified prohibition against enlarging a nonconforming sign. Neither the statutes nor the rules provide an exception for temporary or small enlargements. The controversy at hand is controlled by a specific administrative rule provision that cannot be overridden by the general case law principles on which Lamar relies.

CONCLUSION

Respondent DHA respectfully asks the Court to affirm its May 24, 2016, decision upholding the sign removal order issued to Lamar by the Department of Transportation on September 4, 2012.

Dated this 20th day of June, 2019.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 9,242 words.

Dated this 20th day of June, 2019.

THOMAS C. BELLAVIA
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

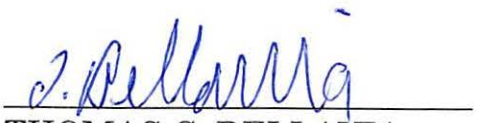
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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 20th day of June, 2019.



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