

IN THE SUPREME COURT OF WISCONSIN

No. _____

WISCONSIN LEGISLATURE,

Petitioner,

v.

TONY EVERS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
THE STATE OF WISCONSIN,

Respondent.

EMERGENCY PETITION FOR ORIGINAL ACTION

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ISSUE PRESENTED BY THE CONTROVERSY

Whether the Governor can unilaterally suspend or otherwise amend the Wisconsin Statutes establishing the time of the spring election and the deadline for casting ballots in that election, as well as the terms of local government officials.

INTRODUCTION

Defying numerous state-election statutes and his countless previous statements that he clearly lacks legal authority to cancel tomorrow's election, the Governor announced moments ago—at the eleventh hour—that he was doing just that. The order is void for several, independent constitutional and statutory reasons, as the Governor has himself conceded. ***This Court should immediately issue an administrative stay of the Governor's order, grant this original action, hold the order invalid, and enjoin enforcement of the Governor's order as soon as possible***, as this election and preparations for tomorrow's voting are ongoing. Failure to do so will result in widespread voter confusion. Further, failure to grant an immediate administrative

stay risks interfering with the Legislature's stay application currently pending before the Supreme Court of the United States.

STATEMENT OF FACTS

1. Petitioner is the Wisconsin Legislature, located at the Wisconsin State Capitol, Madison, Wisconsin, 53703.

2. Respondent Tony Evers is the Governor of Wisconsin. His office is located at 115 East State Capitol, Madison, Wisconsin, 53703.

4. In February 2020, the novel coronavirus, COVID-19, began spreading throughout the United States.¹

5. In response, Governor Evers issued Executive Order 72, declaring a public health emergency throughout the State of Wisconsin.²

¹ The Atlantic, *How the Coronavirus Became an American Catastrophe* (March 21, 2020), available at <https://www.theatlantic.com/health/archive/2020/03/how-many-americans-are-sick-lost-february/608521/>.

² Executive Order # 72 (March 12, 2020), available at [https://evers.wi.gov/Documents/EO/EO072-Declaring ealthEmergencyCOVID-19.pdf](https://evers.wi.gov/Documents/EO/EO072-Declaring%20PublicHealthEmergencyCOVID-19.pdf).

6. After Governor Evers declared a public health emergency, Secretary-Designee Palm issued several orders closing schools and restricting public gathering, including Emergency Orders 1, 4, 5, and 8.³

7. Governor Evers also issued several orders suspending administrative rules, including emergency orders 2, 10, 11, 17, and 18.⁴

8. On March 24, Secretary-Designee Palm, at the direction of Governor Evers, issued Emergency Order 12, entitled “Safer at Home.”⁵

9. Emergency Order 12 exempts from its scope essential operations as defined by the Department of Homeland Security Cybersecurity & Infrastructure Security Agency’s (CISA) Advisory

³ Emergency Order 1 (March 13, 2020); 4 (March 16, 2020); 5 (March 17, 2020); 8 (March 20, 2020), available at <https://evers.wi.gov/Pages/Newsroom/Executive-Orders.aspx>.

⁴ Emergency Orders 2 (March 14, 2020), 10 (March 21, 2020); 11 (March 21, 2020); 17 (March 27, 2020); 18 (March 31, 2020), available at <https://evers.wi.gov/Pages/Newsroom/Executive-Orders.aspx>.

⁵ Emergency Order 12 (March 24, 2020), available at <https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf>.

Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.⁶

10. The CISA memorandum, in turn, defines elections officials as essential.⁷

11. Pursuant to Wisconsin Statute Section 5.02(21), Wisconsin's Spring Election is scheduled to take place on April 7.

12. Although Governor Evers issued numerous emergency orders relating to the public health emergency, he repeatedly stated that he did not have the authority to move the election.⁸

⁶ *Id.*

⁷ U.S. Dept. of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*, available at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf.

⁸ See, e.g., Mike Kemmeter, 105.7 WAPL, *Evers doesn't have authority to move election* (March 20, 2020), available at <https://www.wapl.com/2020/03/20/evers-doesnt-have-authority-to-move-election/>; Amy Gardner and John Wagner, *The Hour, Wisconsin Gov. Tony Evers asks lawmakers to cancel voting Tuesday, convert to all-mail election with May deadline* (April 3, 2020), available at <https://www.thehour.com/news/article/Wisconsin-Gov-Tony-Evers-asks-lawmakers-to-15177835.php>

13. On April 3, 2020, Governor Evers called a special session of the Wisconsin Legislature to consider postponing the election.⁹

14. The Legislature convened on April 3, but took no action to postpone or otherwise alter the scheduled election.

15. On April 6, 2020—one day before election—Governor Evers issued Executive Order 74 suspending in-person voting on April 7, 2020.¹⁰

STATEMENT OF RELIEF SOUGHT

The Court should immediately issue an administrative stay of the Governor's order, grant this petition, and enjoin enforcement of the Governor's order, as soon as possible.

⁹ Governor Tony Evers, Press Release, *Gov. Evers Calls for Special Session on Spring Election* (April 3, 2020), available at <https://content.govdelivery.com/accounts/WIGOV/bulletins/284c149>.

¹⁰ Executive Order 74 (April 6, 2020), available at https://content.govdelivery.com/attachments/WIGOV/2020/04/06/file_attachments/1420231/EO074-SuspendingInPersonVotingAndSpecialSession.pdf.

STATEMENT OF THE REASONS WHY THIS COURT SHOULD TAKE JURISDICTION

As discussed in more detail in the Memorandum in Support of Emergency Petition for Original Action and Emergency Motion for Temporary Restraining Order, this Court should grant this Petition. This case involves an invasion by the Executive into the Legislative arena: setting the time, place, and manner of elections, as well as the terms of local officials. Prompt resolution of this legal dispute is categorically within the public interest because the Governor's action significantly interferes with an ongoing election and will disenfranchise countless voters. And this case presents questions of statutory and constitutional interpretation, which do not require fact-finding by this Court.

CONCLUSION

This Court should grant the Petition and declare that Executive Order 74 is unlawful.

Dated: April 6, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of this Petition is being served on all opposing parties via electronic mail and first-class mail.

Dated: April 6, 2020

Ryan J. Walsh
Counsel for The Wisconsin Legislature