

# Supreme Court orders restoration of 82 lame-duck appointments Evers sought to rescind

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A split state Supreme Court on Tuesday ordered the immediate restoration of 82 appointments that Gov. Tony Evers sought to rescind after a Dane County judge overturned their confirmations from the December lame-duck session.

The court ruled 4-3 the Dane County judge had improperly failed to stay his decision after overturning the confirmations and other acts during the extraordinary session.

Senate Majority Leader Scott Fitzgerald, who has been critical of Evers' moves on the appointments, hailed the decision.

"Governor Evers' actions targeted public servants who are dedicated to working on behalf of Wisconsin citizens," said Fitzgerald, R-Juneau. "I'm glad to see that the Supreme Court has ended this unnecessary constitutional crisis and enforced the return of these individuals to their rightful positions."

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An Evers spokeswoman, meanwhile, maintained the administration was "confident that the Court will ultimately rule against the legislature's unconstitutional attempt to override the will of the people."

The appointees who were restored include PSC Commissioner Ellen Nowak, who said she intends to seek back pay and reimbursement for health care costs she incurred since Evers moved to push her out of the regulatory agency.

"I'm very pleased with the decision and look forward to returning to the PSC"

Wednesday, she wrote in a text message to WisPolitics.com.

The court's order was the latest legal twist in a pair of Dane County rulings that impacted the actions of GOP lawmakers in the waning days of Gov. Scott Walker's administration and before Evers took office.

Still, Tuesday's ruling only deals with the question of whether the appointments should be restored while the Dane County ruling is appealed and not the merits of the case.

One day after the March 21 Dane County ruling, Evers sought to rescind the 82 appointments as the Legislature appealed the decision. The 3rd District Court of Appeals then issued a stay March 27, but Evers argued that decision didn't impact his actions on the appointments.

The Legislature asked the appeals court to clarify its ruling, and on April 9, the judges ruled GOP lawmakers had failed to show any authority for an appellate court to overturn an action taken while an injunction was in place. The judges also found lawmakers had not shown that a stay could be applied retroactively, "and we are aware of none."

But the high court's four conservatives — Justices Pat Roggensack, Rebecca Bradley, Daniel Kelly and Annette Ziegler — cited a rule that allows appeals and circuit courts to grant various forms of temporary relief "to preserve the existing state of affairs" while an appeal is pending.

In this case, the justices wrote, that "has to mean the state of affairs in effect prior to the circuit court's injunction." Otherwise, the appellate courts would be powerless to undo actions taken before they could act on a request for stay.

"This would lead to an absurd result," the majority wrote, adding it would encourage parties to "rush around taking all sorts of actions" before an appellate court could consider a stay.

The justices also ruled the circuit court had improperly ignored the harm of refusing to stay an injunction preventing enforcement of a law passed by the Legislature and signed by the gov. They called it "an irreparable harm of the first magnitude."

Writing for the minority, Justice Ann Walsh Bradley criticized the decision for relying on a rule that the parties hadn't cited in their briefs. The majority corrected the

“deficiency in the Legislature’s motion by finding relief under a stone that the Legislature did not lift.” Joined by Justices Shirley Abrahamson and Rebecca Dallet, she wrote that “blindsides the parties and fails to provide notice and an opportunity to be heard on the basis the court finds dispositive.”

Ann Walsh Bradley also wrote the majority places “an inordinate amount of weight on the harm that results from enjoining an enacted law while completely ignoring the harm that comes from leaving a potentially unconstitutional law in place.”

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