

# Citizen Action of Wisconsin: Partisan Supreme Court further divides Wisconsin when unity is a question of life and death

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Statewide: The Wisconsin State Supreme Court majority's divisive and partisan decision late this afternoon, along with the obstructionism of the Legislature, risks making the worst public health threat in a century deadlier and the most severe economic downturn since the Great Depression more catastrophic.

In a major national emergency—a pandemic, a depression, a major war—success depends on elected leaders (including judges) and the public putting aside the divisions of normal politics and pulling together to take effective and decisive action. Wisconsin has a history of doing just this, but the divide-and-conquer politics of the last decade, which have transformed the Wisconsin Supreme Court and the Legislature, is now undermining the political and social unity needed to rise to the challenge.

It was not always this way in Wisconsin. During the Influenza Epidemic of 1918, the only comparable public health emergency, the [definitive history](#) concludes that the Badger State achieved a much lower death rate than the national average because of the vigorous and unified response. “Wisconsin was the only state in the nation to meet the crisis with uniform, statewide measures that were unusual both for their aggressiveness and the public’s willingness to comply with them.” The Wisconsin Supreme Court of 1918, in an era with a limited view of the power of government, took no action to obstruct this broad and unprecedented exercise of executive authority.

In stark contrast, the Wisconsin Supreme Court's deliberation and its decision on the current social distancing directive reveals a divisive brand of partisanship that will both make it much harder for the Governor and the Health Secretary to act, and will further undermine the public unity and social solidarity needed for an effective response.

First, the hyperbolic tone of several conservative justices in the oral arguments undermines public confidence in the process and will likely reduce adherence to social distancing. The justices often sounded more like partisan cable news or AM radio personalities than impartial judges sworn to impartially interpret the law.

Justice Rebecca Bradley claimed the Stay at Home order was "the definition of tyranny," compared it to the internment of Japanese-American citizens during World War II, and raised the specter of internment centers for victims of COVID-19. Bradley wondered how the order could be constitutional, despite the fact that the Legislature's case does not question the constitutionality of the order, making the narrow claim that the statute calls for a rule that the Legislature can block.

Second, the Chief Justice resorted to divisive, and arguably coded racial appeals to minimize the threat of the pandemic and further polarize the state.

After being asked if the pandemic was a threat outside Milwaukee, Assistant Attorney General Colin Roth discussed the growth of hotspots elsewhere, citing the rising infection rate in Brown County. Chief Justice Patience Roggensack shot back: "Due to the meatpacking, though — that's where Brown County got the flare," she said." It wasn't just the regular folks of Brown County."

Whether she intended it or not, the separation of workers, many of whom are from immigrant communities, from "regular folks of Brown County" is a classic example of dog whistle strategic racism which is grossly inappropriate for any figure of public or social authority, let alone a Chief Justice. For Roggensack to make such a public statement shows reckless disregard for her office and undermines public confidence in the legitimacy of the judicial branch of government. It also wrongly assumes that the infection of one group of people in the community will not accelerate the pandemic for the entire population. Many of the most dangerous new hot spots in the U.S. are in regions with meat packing plants.

"The reckless ruling threatens Wisconsin's pandemic response by removing our most effective containment tool in the middle of the crisis and further dividing the

state in a way that is likely to reduce compliance with social distance guidelines,” said Robert Kraig, Executive Director of Citizen Action of Wisconsin. “This is a nakedly political decision by a majority that has no regard for the plain wording of the law or the unprecedented public health threat we are facing. This decision shows a reckless disregard for the law. As in the lame duck ruling last year, no fair minded person thinks this court majority would have taken this action if the social distancing order came from a Republican governor.”