

# **WILL: Files amicus alleging Gov. Evers' emergency declarations threaten separation of powers**

Posted on Tuesday, Nov 3, 2020

**>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

The News: The Wisconsin Institute for Law & Liberty (WILL) filed an [amicus brief](#) in the Wisconsin Supreme Court in *Fabick v. Evers*, an original action challenging Governor Evers's legal authority to issue multiple emergency declarations in response to COVID-19. The original action before the Court resulted in a stay in the proceedings of [WILL's lawsuit](#) in Polk County where similar questions are before the Polk County Circuit Court.

The Quote: WILL President and General Counsel Rick Esenberg said, "Governor Evers's response to COVID-19 violates the law and challenges the separation of powers in fundamental ways. There can be no pandemic exception to the rule of law."

WILL's Amicus: WILL filed its [amicus brief](#), written on behalf of the three plaintiffs in the Polk County case, in response to an invitation by the Wisconsin Supreme Court. The brief argues that, while state statute clearly prohibits Governor Evers from indefinitely exercising emergency powers without approval by the Legislature, if the Court concludes otherwise than the emergency powers statute violates the separation of powers. The state constitution vests the power to legislate in the Legislature alone, and the Legislature may not simply give that power away to another branch without adequate procedural safeguards. The brief also argues that the Court should reinvigorate its doctrine in this area and prevent the Legislature from ever giving away its core powers, with or without such safeguards.

Background: Governor Tony Evers has issued three emergency declarations in response to COVID-19 in 2020. But Wisconsin law is clear that without express approval from the state legislature, the governor lacks the legal authority to extend an emergency declaration beyond 60 days. But Governor Evers has done just that. The result is a total breakdown of our constitutional order where the state

legislature crafts and passes legislation and the governor signs or vetoes legislation. In August 2020, WILL [filed a lawsuit](#) in Polk County Circuit Court on behalf of three Wisconsin taxpayers challenging Governor Evers's legal authority to issue multiple emergency declarations in response to COVID-19. A motion for a temporary injunction was denied and a motion for summary judgment was before the Court when the Wisconsin Supreme Court took the Fabick original action, stayed the proceedings in Polk County, and invited the Polk County plaintiffs to submit an amicus brief in Fabick.

Read More:

- [Amicus Brief](#), November 3, 2020
- [Motion for Oral Argument](#), November 3, 2020
- ["Gov. Evers' emergency COVID-19 declaration violates the law,"](#) Rick Esenberg, Wisconsin State Journal, August 26, 2020