

Wisconsin Institute for Law and Liberty: Gov. Evers' multiple emergency declarations violate law

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The News: The Wisconsin Supreme Court issued a 4-3 [decision](#) in Fabick v. Evers, Wednesday, to declare Governor Evers' use of multiple, consecutive emergency declarations, unlawful. Justice Brian Hagedorn, writing for the majority, wrote, "The question in this case is not whether the Governor acted wisely; it is whether he acted lawfully. We conclude he did not."

[WILL sued Governor Evers in Polk County Circuit Court](#) in August 2020 over Governor Evers' emergency declarations, but the case was stayed as a result of the Fabick original action. WILL President and General Counsel, Rick Esenberg, participated in November's oral arguments to address whether the multiple states of emergency constitute an unconstitutional delegation of the state legislature's core power to legislate.

The Quote: WILL President and General Counsel, Rick Esenberg, said, "Governor Evers abused the law and the constitutional separation of powers by declaring multiple, consecutive emergencies. This decision ensures that Wisconsin's constitutional order cannot be suspended for unlimited periods of time as long as the executive branch can justify an emergency declaration."

Background: In August 2020, WILL [filed a lawsuit](#) in Polk County Circuit Court on behalf of three Wisconsin taxpayers challenging Governor Evers' legal authority to issue multiple emergency declarations in response to COVID-19. Governor Tony Evers issued multiple, consecutive emergency declarations in response to COVID-19 in 2020 and 2021. But Wisconsin law makes clear that without express approval from the state legislature, the governor lacks the legal authority to extend an emergency declaration beyond 60 days.

A motion for a temporary injunction in WILL's lawsuit was denied and a motion for summary judgment was before the Court when the Wisconsin Supreme Court took

the Fabick original action. The Court stayed the proceedings in Polk County, and invited the Polk County plaintiffs to submit an amicus brief in Fabick.

WILL filed an [amicus](#) on November 3, along with a motion for oral argument time to brief the Court on the non-delegation matters in Fabick v. Evers. WILL President and General Counsel, Rick Esenberg, participated in Wisconsin Supreme Court oral arguments on November 16. Esenberg specifically addressed whether the state legislature's grant of authority, in response to Governor Evers' emergency declarations, constitutes an unconstitutional delegation of its core power to legislate.

Read More:

- [Supreme Court Decision in Fabick v. Evers](#), March 31, 2021
- [WILL Amicus in Fabick v. Evers](#), November 3, 2020
- ["Gov. Evers' emergency COVID-19 declaration violates the law,"](#) Rick Esenberg, Wisconsin State Journal, August 26, 2020