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No. 2020AP1718 - OA

**In the Supreme Court of Wisconsin**

Jeré Fabick

*Petitioner,*

v.

Tony Evers, in his Official Capacity as the Governor of Wisconsin

*Respondent.*

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**PETITIONER'S MEMORANDUM IN SUPPORT OF HIS EMERGENCY  
MOTION FOR A TEMPORARY INJUNCTION**

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## INTRODUCTION

Ignoring the 60-day limit of Wis. Stat. § 323.10 (“Section 323.10”), the Governor has issued multiple state of emergency declarations based on the COVID-19 pandemic. As a result, Wisconsin has been in a continuous and seemingly perpetual state of emergency since July 30, 2020, without legislative approval.

Throughout this case, the Governor (through his attorneys) represented to this Court that the Legislature could end his state of emergency by a joint resolution, as provided in Section 323.10. The Governor assured this Court repeatedly that a joint resolution rescinding the state of emergency was an important procedural safeguard against runaway executive declarations. Indeed, all five of his state of emergency declarations provided “this State of Emergency from this Public Health Emergency shall remain in effect for 60 days, or until revoked by the Governor *or by joint resolution of the Wisconsin State Legislature.*” (Emphasis added.) Now we know the Governor’s representations were false.

On February 4, 2021, the Legislature passed a joint resolution “terminat[ing] and revok[ing]” Governor Evers’ fifth emergency order declaration, Executive Order 104. *Within the hour*, the Governor re-imposed the state of emergency, issuing Executive Order 105, which tracks nearly verbatim the wording of Executive Order 104.

The Governor has drastically altered the status quo that existed at the time this case was argued and in the months thereafter. He has taken actions that completely contradict the legal positions he took in attempting to persuade this Court that the power to declare a state of emergency under Section 323.10 was a political question to

be decided by the executive and legislative branches. Through his conduct, the Governor has demonstrated that he will not comply with the law until ordered to do so by this Court.

For the reasons set forth herein, this Court should issue a temporary injunction restraining enforcement of Executive Order 105 and any similar subsequent emergency declarations pending the outcome of this case. The Court should ultimately grant a permanent injunction as part of its final judgment.

### **BACKGROUND FACTS**

#### ***Governor Evers Issues Five Emergency Order Declarations Without Legislative Approval***

On March 12, 2020, Governor Evers, acting pursuant to Section 323.10, issued Executive Order 72, which declared a state of emergency for the State of Wisconsin related to public health in response to the COVID-19 pandemic. Executive Order 72 (March 12, 2020) (Pet. App. 1).

Under Executive Order 72, the Evers administration took numerous unilateral actions affecting all Wisconsin citizens. For instance, the Wisconsin Department of Health Services issued orders closing schools and restricting public gatherings.<sup>1</sup> Governor Evers also suspended the rules and actions of various administrative agencies.<sup>2</sup> The state of emergency declared under Executive Order 72 expired on May

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<sup>1</sup> See Emergency Order 1 (March 13, 2020) (Pet. App. 3); 4 (March 16, 2020) (Pet. App. 9); 5 (March 17, 2020) (Pet. App. 12); 6 (March 19, 2020) (Pet. App. 15); 8 (March 20, 2020) (Pet. App. 19); 12 (March 25, 2020) (Pet. App. 40); 28 (April 16, 2020) (Pet. App. 91); 31 (April 20, 2020) (Pet. App. 117).

<sup>2</sup> See Emergency Order 3 (March 15, 2020) (Pet. App. 4); 7 (March 18, 2020) (Pet. App. 17); 9 (March 20, 2020) (Pet. App. 26); 10 (March 21, 2020) (Pet. App. 27); 11 (March 21, 2020) (Pet. App. 28); 13 (March 26, 2020) (Pet. App. 56); 14 (March 27, 2020) (Pet. App. 58); 17 (March 27, 2020) (Pet. App. 58).

11, 2020, 60 days after the Governor issued it. The Wisconsin Legislature did not extend the state of emergency.

Thereafter, the Governor issued four additional state of emergency declarations based on the COVID-19 pandemic. On July 30, 2020, Governor Evers declared a second state of emergency related to COVID-19 under Section 323.10. Executive Order 82 (July 30, 2020) (Pet. App. 135). On September 22, 2020, Governor Evers declared a third state of emergency related to COVID-19, once again invoking Section 323.10. Executive Order 90 (Sep. 22, 2020) (Pet. App. 142). Following oral argument in this case, Governor Evers issued two subsequent emergency orders. On November 20, 2020, he issued Executive Order 95, and on January 19, 2021, he issued Executive Order 104. Each Executive Order declared COVID-19 a “public health emergency” under Wis. Stat. § 323.02(16), and each order designated “the Department of Health Services as the lead agency to respond to the public health emergency” pursuant to Section 323.10.

Following a press conference on November 18, 2020, during which the Governor announced his intent to issue the fourth state of emergency declaration, his chief legal counsel, Ryan Nilsestuen, acknowledged that the fate of the serial declarations of emergency was directly tied to the result of this Petition: “We had oral arguments earlier this week in a case that addresses the governor’s ability to issue public

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60); 18 (March 31, 2020) (Pet. App. 61); 21 (April 3, 2020) (Pet. App. 64); 22 (April 9, 2020) (Pet. App. 73); 23 (April 9, 2020) (Pet. App. 77); 26 (April 13, 2020) (Pet. App. 81); 29 (April 17, 2020) (Pet. App. 112); 30 (April 17, 2020) (Pet. App. 113); 33 (April 24, 2020) (Pet. App. 121); 35 (May 4, 2020) (Pet. App. 123).

health emergencies. I think that will provide clarity on the path forward rather than a new lawsuit.” Mitchell Schmidt, *Tony Evers to Extend Statewide Mask Mandate Into Next Year*, WIS. STATE J., Nov. 19, 2020.<sup>3</sup>

### ***The Legislature Revokes the State of Emergency***

On February 4, 2021, the Legislature passed Senate Joint Resolution 3 (“Joint Resolution”), which relates to “terminating the COVID-19 public health emergency, including all emergency orders and actions taken pursuant to declaration of the public health emergency.” (Pet. Supp. App. at 7.) The Joint Resolution stated that “the structural separation and limitation of governmental powers is foundational to our republican form of government, in that it ensures the government exercises only that authority to which the governed have consented.” (Pet. Supp. App. at 7.) After noting that the Legislature never extended the state of emergency declaration relating to COVID-19 after the Governor issued Executive Order 72 on March 12, 2020, the Joint Resolution stated that “the governor’s authority to address the COVID-19 coronavirus using the emergency powers identified in section 323.12 of the statutes expired on May 11, 2020.” (Pet. Supp. App. at 8.) Moreover, the Joint Resolution stated that “legislative oversight is rendered useless if the governor ignores the temporal limitations on the emergency powers by continuously reissuing emergency declarations for the same emergency.” (Pet. Supp. App. at 8.) As a result, the Joint Resolution

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<sup>3</sup> Available at [https://madison.com/wsj/news/local/govt-and-politics/tony-evers-to-extend-statewide-mask-mandate-into-next-year/article\\_17bcaae3-642f-5aa8-8c5c-e657fa1fd208.html](https://madison.com/wsj/news/local/govt-and-politics/tony-evers-to-extend-statewide-mask-mandate-into-next-year/article_17bcaae3-642f-5aa8-8c5c-e657fa1fd208.html).

affirmed Petitioner's argument that Executive Orders 82, 90, and 95 were "unlawfully issued." (Pet. Supp. App. at 9.)

In addition, the Joint Resolution revoked the then-current Executive Order 104. As the Legislature stressed in asserting its prerogative, "it is incumbent upon the three branches of government to act as checks on one another's power in order to vigorously protect and defend the principle of structurally separated and limited power, so as to protect the governed from abusive government." (Pet. Supp. App. at 9.) Accordingly, the Joint Resolution resolved that

[T]he governor had no authority to issue Executive Order #104 on January 19, 2021, and it was therefore void from the date of its issuance, as were any and all of the governor's actions or orders related to the declared public health emergency to the extent the authority for those orders or actions depended on Executive Order #104, or sections 323.10 or 323.12 of the statutes; and

**Be it further resolved, That** regardless of whether Executive Order #104 should ever be construed as having conferred on the governor any authority to exercise the powers granted by section 323.10 of the statutes, Executive Order #104 is hereby terminated and revoked. The revocation of Executive Order #104 terminates any and all of the governor's actions or orders related to the declared public health emergency to the extent the authority for those orders or actions depend on Executive Order #104, or sections 323.10 or 323.12 of the statutes

(Pet. Supp. App. at 9–10.)

Lest there be any doubt that the Legislature was asserting its proper authority as a co-equal branch of government, included in the Joint Resolution was the following analysis by the non-partisan Legislative Reference Bureau:

This joint resolution resolves that the public health emergency declared by the governor in Executive Order #104 on January 19, 2021, in response to the COVID-19 coronavirus, is unlawful and is terminated. The termination of the public health emergency applies to all actions of the governor and all emergency orders issued pursuant to the declaration of the public health emergency.

(Pet. Supp. App. at 7.)

***The Governor Defies the Legislature and Re-Imposes the State of Emergency***

It did not take long for the Governor to react. Within an hour of the Legislature's passage of the Joint Resolution, the Governor re-imposed the State of Emergency, issuing Executive Order 105, which tracked nearly verbatim the language in Executive Order 104. (Pet. Supp. App. at 11–13.) The Governor took this unilateral action despite a request from the Legislature to work with the Governor on creating emergency rules pursuant to Wis. Stat. § 227.24. (Pet. Supp. App. at 1–6.)

**ARGUMENT**

Entry of a temporary injunction is warranted when: “(1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits.” *Serv. Employees Int'l Union, Local 1 v. Vos*, 2020 WI 67, ¶93, 393 Wis. 2d 38, 946 N.W.2d 35 (citations omitted). As set forth below, the Petitioner's requested relief meets these factors.

**I. Fabick is Likely to Succeed on the Merits of His Claim that Executive Order 105—Like the Previously Challenged Executive Orders—is Unlawful**

This Court should issue an injunction immediately enjoining the enforcement of Executive Order 105. Fabick is likely to prevail on his claim that all emergency orders issued subsequent to Executive Order 72, including most recently Executive Order 105, are unlawful because: (1) The Governor repeatedly told this Court that the

Legislature had the authority to rescind his emergency order declarations at any time; and (2) In the parallel *Lindoo v. Evers* case, the Governor successfully argued to the circuit court that the Legislature had the power to end the state of emergency at any time; as such, the doctrine of judicial estoppel prohibits the Governor from reversing his legal position.

**A. Governor Evers Acted Unlawfully in Issuing Executive Order 105 After the Legislature Revoked Executive Order 104**

**1. Governor Evers Has Conceded That He May Not Override the Legislature's Revocation of an Emergency Order**

Emergency Order 105 is unlawful based on the Governor's own arguments to this Court in which he stated that the Legislature could revoke the state of emergency at any time, and the Governor could not ignore such a decision. For example, at oral argument the Governor's counsel stated: "[A]nd if the legislature importantly disagrees with the Governor's decision to issue a state of emergency order, it may revoke the order at will, and it doesn't have to give a reason, it just may do so." (Statement of Attorney Hannah Jurss, at 49:30 of oral argument.)

A member of this Court also touched on the Legislature's broad power to revoke emergency declarations:

**Justice Karofsky:** And the statute itself that we are talking about actually gives the Legislature quite a bit of power, doesn't it? The Legislature can put an end to [inaudible] one of these emergency orders of the governor, correct?

**Attorney Esenberg:** It could.

**Justice Karofsky:** It could extend it, correct?

**Attorney Esenberg:** It could do that.



**Justice Karofsky:** The legislature could convene, then could write a whole new statute, couldn't they?

**Attorney Eisenberg:** They could do that.

**Justice Karofsky:** So the legislature actually has a lot of power here should they choose to use it.

(Oral argument transcript at 28:24.) All of those statements were of course true. No party has ever questioned—at any time—the Legislature's authority to revoke a Governor's state of emergency declaration. Governor Evers' actions on February 4 were a direct assault on the Legislature's unquestioned power to revoke an emergency declaration at will.

Fabick noted in his Petition that without a judicial declaration prohibiting the Governor from issuing successive emergency order declarations for the same public health emergency absent legislative approval, there was a real possibility the Governor would simply issue new emergency order declarations in the face of a legislative resolution ending the emergency: "If Governor Evers is correct in his reading of Section 323.10 . . . . [t]he Legislature's statutory ability to revoke the state of emergency would be rendered illusory because, under Governor Evers' interpretation, he may issue a new declaration the next day after a joint resolution is passed." (Pet. Br. at 33.)

The Governor downplayed this scenario, referring to it as a "hypothetical abuse of power," (Resp. Br. at 36.) and stating:

Fabick and the Legislature amicus argue that the Legislature's explicit, important, authority to revoke a state of emergency order is "illusory" because a hypothetical Governor could override the Legislature's decision to revoke an order by issuing a new state of emergency order the next day. Of course, that has not happened . . . .

(Resp. Br. at 37, brief citations omitted.) The Governor further ridiculed the suggestion that he would ever try to ignore a joint resolution ending the state of emergency: “[T]he Legislature amicus makes the remarkable suggestion that this Court should step-in because they fear the Governor would thwart any joint resolution they pass. This Court should not do the Legislature’s work, particularly where the Legislature has not attempted to revoke the existing order.” (Resp. Br. at 37, n.30, brief citations omitted.)

Throughout this lawsuit, Fabick and the Governor agreed on one point: if the Legislature passed a joint resolution rescinding the state of emergency, the state of emergency would end. It was always understood that the Legislature has the authority under Section 323.10 to rescind an emergency declaration. As such, Executive Order 105 is unlawful by the Governor’s own admission.

**2. The Governor’s Actions Related to the Issuance of Executive Order 105 Underscores that Fact that Section 323.10 Does Not Permit the Governor to Unilaterally Declare Multiple States of Emergency Related to the COVID-19 Pandemic**

Fabick’s position was and is that the Legislature was not required to pass a joint resolution because the Governor’s subsequent emergency order declarations were void *ab initio*. The Governor used this previously unexercised legislative power—unconvincingly—in an effort to shield his previous Executive Orders from judicial scrutiny. His decision to issue Executive Order 105 immediately following the Legislature’s resolution to end the Governor’s declared state of emergency further supports Fabick’s argument that Section 323.10 does not give the Governor the right to issue successive state of emergency declarations without Legislative approval.

A decision by this Court on the merits as to the lawfulness of Executive Orders 82, 90, 95, and 104 is even more pressing than when this case was briefed and argued. The Governor previously tried to convince this Court that his successive emergency order declarations were in response to changing circumstances stemming from COVID-19. Indeed, the Governor derided Fabick's position as imposing a "one-and-done limitation" that would handcuff the executive branch's ability to respond to a flood that causes a dam to burst two months later. (Resp. Br. at 29-30.) And yet Executive Order 104 and 105—which are nearly identical—were issued just 16 days apart. The Governor cannot seriously contend that the "public health emergency" created by COVID-19 changed between January 19, 2021, and February 4, 2021.

Accordingly, Executive Order 105 affirms the importance of the argument Fabick made in his Petition: A Governor may not extend a state of emergency beyond 60 days without legislative approval.

**3. If Executive Order 105 Complies with Section 323.10, Then the Statute is an Unconstitutional Delegation of Legislative Power to the Executive**

For the reasons set forth above, Executive Order 105 violates Section 323.10 and thus is unlawful. As such, this Court does not need to reach the question of whether Section 323.10 represents an unconstitutional delegation of legislative power to the executive. However, in the unlikely event this Court determines that Executive Order complies with Section 323.10, this Court should declare the statute an unconstitutional delegation of legislative authority.

Wisconsin courts have, in certain instances, allowed the Legislature to delegate its power to the executive branch. *Watchmaking Examining Bd. v. Husar*, 49 Wis. 2d 526, 536, 182 N.W.2d 257 (1971). However, the Legislature must limit this delegation so that its purpose is “ascertainable” and there are “procedural safeguards” to ensure the executive branch acts “within that legislative purpose.” *Id.*; see also *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 228 N.W.2d 684 (1983) (noting the Legislature has instituted “sufficient procedural safeguards” to prevent the governor and other administrative officials from acting outside the legislative purpose of a statute for funding state deficits, including a limit on the value of “operating notes” issued to fund an operating deficit and review by a legislative committee before the operating notes are issued).

Here, the governor’s ability to issue an executive order declaring a state of emergency in response to a single public health emergency, and then to issue unilateral orders under that executive order that restrict the conduct of private persons within the State of Wisconsin, is a delegation of legislative power. See Wis. Stat. § 323.01(1) (Declaring that the policy behind Wisconsin Statutes Chapter 323 is “[t]o prepare the state and its subdivisions to cope with emergencies resulting from a disaster, or the imminent threat of a disaster, it is declared to be necessary to establish an organization for emergency management, *conferring upon the governor* and others specified the powers and duties provided by this chapter.”) (Emphasis added)).

The Governor previously argued there are two, and only two, procedural safeguards in Section 323.10: (1) the state of emergency expiring after 60 days; or (2) the Legislature voting to rescind the state of emergency. (Resp. Br. at 19-27, 33.)

Should this Court accept Governor Evers' latest interpretation of Section 323.10, then these two safeguards will be rendered illusory, and the statute will represent an unconstitutional delegation of legislative power to the governor.

If Executive Order 105 is permitted to stand, the Legislature's statutory ability to revoke the state of emergency would be totally eliminated, as the Governor now contends he may re-issue an emergency declaration *the very same day the Legislature revokes the declaration*. If the Governor is permitted to blithely ignore the Legislature's joint resolution rescinding an emergency declaration, then the Governor would have complete unilateral authority to keep Wisconsin in a state of emergency for 365 days a year based on the same underlying circumstances. Such a reading of Section 323.10 would be a blatantly unconstitutional delegation of power to one branch of government.

**B. The Doctrine of Judicial Estoppel Precludes the Governor From Arguing that Executive Order 105 is Lawful**

As the Court is aware, the Lindoo *amici* previously filed a lawsuit in Polk County Circuit Court raising many of the same arguments presented in this Petition. *See* Polk County Case No. 20CV219. There, the plaintiffs moved (unsuccessfully) for a temporary injunction against Executive Orders 82 and 90. In opposing the Lindoo plaintiffs' motion, the Governor repeatedly stressed that "[t]he Legislature's power to revoke a state-of-emergency order is a meaningful procedural safeguard." (Pet. Supp. App. at 57.) Indeed, the Governor repeatedly assured the circuit court in *Lindoo* that the power to end the state of emergency resided with the Legislature:

- “Contrary to Plaintiffs’ one-and-done reading of the law, the statute gives the Governor authority to issue a new order declaring a state of emergency. And if the people’s representatives in the Legislature believe that new order is improper, the remedy is clear: The Legislature can revoke it.” (Pet. Supp. App. at 18.)
- “And thus, we see that Plaintiffs’ true disagreement is with the Governor’s conclusion that this COVID-19 spike constitutes an emergency worthy of a new state-of-emergency declaration. But, again, that is a factual determination that the Governor is empowered to make, and the Legislature is permitted to revoke. It is not an issue this Court should resolve.” (Pet. Supp. App. at 54.)
- “The reasoning of *Panzer* forecloses Plaintiffs’ nondelegation argument. Not only is Wis. Stat. § 323.10 subject to the same safeguards that the *Panzer* Court pointed to—repeal, amendment, and public opinion—it contains a much more immediate and powerful safeguard: The Legislature may simply terminate an executive order by joint resolution.” (Pet. Supp. App. at 59.)
- “More specifically, Wis. Stat. § 323.10 protects (1) the Governor’s interest in initially determining whether emergency conditions exist and, when they do exist, in declaring a state of emergency; and (2) the Legislature’s interest in passing a joint resolution to revoke or extend such an emergency order, whenever the Legislature, in its own discretion, deems such action appropriate. Under the statute, however, only the Legislature has a legally protected interest in revoking a gubernatorial declaration of an emergency. And that may occur only by the statutorily prescribed mechanism of a legislative joint resolution—not by private litigation.” *See* Wis. Stat. § 323.10. (Pet. Supp. App. at 39.)

The Governor was successful in getting the circuit court to adopt his argument. In its decision denying the motion for a temporary injunction, the circuit court held “[t]he legislature can end the state of emergency at anytime, but so far, it has declined to do so.” (Pet. Supp. App. at 65.)

The doctrine of judicial estoppel precludes the Governor from now changing his position. “For judicial estoppel to be available, three elements must be satisfied: (1) the later position must be clearly inconsistent with the earlier position; (2) the facts at

issue should be the same in both cases; and (3) the party to be estopped must have convinced the first court to adopt its position.” *State v. Ryan*, 2012 WI 16, ¶33, 338 Wis. 2d 695, 809 N.W.2d 37. The United States Supreme Court has described the necessity of the doctrine of judicial estoppel: “[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citation omitted). As applied by Wisconsin courts, the doctrine prevents a party from taking a position on appeal inconsistent with the position taken at the trial court. *See, e.g., State v. English–Lancaster*, 2002 WI App 74, ¶22, 252 Wis. 2d 388, 642 N.W.2d 627; *State v. Michels*, 141 Wis. 2d 81, 97, 414 N.W.2d 311 (Ct. App. 1987).

Governor Evers successfully argued to the circuit court that the decision to rescind an emergency order declaration was for the Legislature to make. The circuit court agreed. Perhaps the Governor thought the Legislature would never vote to revoke one of his emergency declarations. Regardless, the doctrine of judicial estoppel precludes the Governor from changing his positions.

## **II. The Remaining Factors Weigh in Favor of this Court Granting a Temporary Injunction**

Moving beyond the likelihood of success factor, this Court should grant a temporary injunction as Fabick has no other adequate remedy at law. The basis for this Petition was that the Governor was violating Section 323.10 by repeatedly declaring a state of emergency without legislative authorization for the same public health

emergency. The Governor's response was that the courts had no role to play in this interbranch dispute between the executive and legislative branches. That professed safeguard has now been discarded, as the Governor is refusing to recognize the Joint Resolution invalidating the latest emergency order declaration. There is now quite literally nothing to stop the Governor from keeping Wisconsin in a perpetual state of emergency short of an order of this Court.

Next, an injunction is needed to preserve the status quo. The status of this case from the time of oral argument in November through the issuance of the fifth emergency order declaration in January was the same. The Governor drastically altered the status quo on February 4, 2021, when he reversed his prior position that the Legislature could vote down a state of emergency through a joint resolution. Injunctive relief is particularly appropriate here because it would merely restore the state of affairs that existed before Executive Order was issued.<sup>4</sup>

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<sup>4</sup> Invalidation of Executive Order 105 would not render the remainder of Fabick's petition moot. Fabick sought a declaration that the Governor's authority to declare a state of emergency in response to a single public health emergency is limited to a single 60-day period, unless the Legislature agrees to extend the state of emergency. Thus, a ruling on the merits of Executive Orders 82, 90, 95, and 104, is still a pending question before the Court.

To the extent this Court believes invalidation of Executive Order 105 would resolve the merits of Fabick's petition, this Court should nonetheless proceed with answering the questions presented in this original action. In cases such as this one—indeed, even in cases much less compelling than this one—this Court has recognized that it “has a law-declaring function” and “matters of serious public concern which are likely to cause judicial disputes in the future are not resolved when a factual basis on which a judicial declaration may be made to guide future conduct is presently before the court.” *State ex rel. LaCrosse Tribune v. Circuit Court*, 115 Wis. 2d 220, 228-229, 340 N.W.2d 460 (1983). In such cases, it is “not inappropriate for this court, where a problem is likely to recur, to declare the law for the guidance of other courts, even though the particular controversy is moot.” *Id.* at 230.

Indeed, this case meets many of the exceptions this Court has recognized for deciding an otherwise moot issue, as this case presents an issue “of great public importance,” the “constitutionality of a statute is involved,” the situation given the current pandemic is likely to “arise again and should be resolved by the court to avoid uncertainty,” and the question presented “evades review because the



Finally, Fabick—and all taxpayers—will suffer irreparable harm without an injunction. Governor Evers and his administration have utilized government funds in promulgating Executive Order 105, in that Governor Evers has directed his staffers—public employees—to draft, promote, and enforce the orders. Such conduct results in wasted public expenditures at a time when the political branches are negotiating a proposed budget for the next biennium.

### CONCLUSION

For the reasons set forth herein, this Court should issue a temporary injunction restraining enforcement of Executive Order 105 and any similar subsequent emergency declarations pending the outcome of this case. The Court should ultimately grant a permanent injunction as part of its final judgment.

Dated this 9th day of February, 2021.



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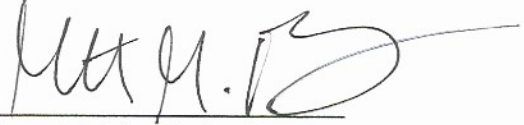
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appellate process usually cannot be completed and frequently cannot even be undertaken within the time that would have a practical effect upon the parties.” *Id.* at 229.

**CERTIFICATE OF SERVICE**

A copy of this notice is being served upon all parties via e-mail and first-class mail.

Dated this 9th day of February, 2021.



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