

THIS DOCUMENT WAS PREVIOUSLY FILED VIA E-MAIL

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.

**PETITIONER'S EMERGENCY MOTION FOR A TEMPORARY
INJUNCTION**

Matthew M. Fernholz (WI Bar No. 1065765)
CRAMER, MULTHAUF & HAMMES, LLP
1601 East Racine Ave., Ste. 200
P.O. Box 558
Waukesha, WI 51387
(262) 542-4278
(262) 542-4270 (Fax)
mmf@cmhlaw.com

Attorney for Petitioner

Petitioner Jeré Fabick, by and through his counsel, Cramer, Multhauf & Hammes, LLP, hereby respectfully and urgently moves this Court pursuant to Wis. Stat. § 813.02 and Wis. Stat. Rule 809.14 for a temporary injunction enjoining the enforcement of Governor Tony Evers' Executive Order 105, which was issued February 4, 2021. As more fully explained in Petitioner's memorandum in support of his motion, Governor Evers drastically altered the status quo of this case, and has plunged this State into a constitutional crisis. Immediate action by this Court is necessary to restore the balance of power between the legislative and executive branches.


As the Court is aware, the fourth state of emergency declaration, Executive Order 95, was issued on November 20, 2020, four days after oral argument in this case. Petitioner promptly notified the Court of the fourth emergency order, and the Court took judicial notice of Executive Order 95. With the fourth state of emergency declaration set to expire, Governor Evers issued a fifth emergency order declaration, Executive Order 104, on January 19, 2021. As Petitioner has argued, Governor Evers' second, third, fourth, and fifth emergency order declarations were all unlawful because the Legislature never approved an extension of the state of emergency as required under Wis. Stat. § 323.10.

On February 4, 2021, the Legislature passed a Joint Resolution that "terminated and revoked" Executive Order 104. *Within the hour*, the Governor turned around and re-imposed the state of emergency, issuing Executive Order 105, which tracks nearly verbatim the wording of Executive Order 104.

The Governor repeatedly assured this Court that a state of emergency declaration could be ended by a joint resolution of the Legislature as provided in Wis. Stat. § 323.10. As explained by the Governor, the joint resolution was an important procedural safeguard against runaway executive declarations. Now, the Governor has revealed that he intends to keep Wisconsin in a perpetual state of emergency until he and he alone decides it shall end. 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 and in Petitioner's supporting memorandum, this Court should issue an injunction restraining enforcement of Executive Order 105 and any similar subsequent emergency declarations.

Dated this 9th day of February, 2021.



Matthew M. Fernholz (WI Bar No. 1065765)
CRAMER, MULTHAUF & HAMMES, LLP
1601 East Racine Ave., Ste. 200
P.O. Box 558
Waukesha, WI 53387
(262) 542-4278
(262) 542-4270 (Fax)
mmf@cmhlaw.com

Attorney for Petitioner

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.



Matthew M. Fernholz (WI Bar No. 1065765)
CRAMER, MULTHAUF & HAMMES, LLP
1601 East Racine Ave., Ste. 200
P.O. Box 558
Waukesha, WI 51387
(262) 542-4278
(262) 542-4270 (Fax)
mmf@cmhlaw.com

Attorney for Petitioner