

DEREK LINDOO,
BRANDON WIDIKER,
and JOHN KRAFT

Case No: 20-CV-219

Plaintiffs,

v.

TONY EVERS, in his official
capacity as Governor of the
State of Wisconsin,

Defendant.

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR A TEMPORARY
INJUNCTION**

To: TONY EVERS, in his official capacity as Governor of the State of Wisconsin

PLEASE TAKE NOTICE that on October 5, 2020 at 3:00 o'clock p.m., or as soon thereafter as the matter may be heard, Plaintiffs will appear before the Honorable R. Michael Waterman and pursuant to Wis. Stat. § 813.02 request entry of a temporary injunction: (a) declaring that Executive Orders #82 and #90 (along with Emergency Order #1 – the Mask Mandate) are invalid and void, and (b) enjoining the enforcement of any of those orders.

PLEASE TAKE FURTHER NOTICE that the Plaintiffs understand that this motion will be heard by the Court via a Zoom call with further instructions for the Zoom call to be issued by the Court.

In support of this motion, the Plaintiffs state as follows:

1. This is an action against Governor Tony Evers, in his official capacity, based upon his unilaterally declaring successive states of emergency in violation of Wisconsin state law.

2. Wis. Stat. § 323.10(1) allows the Governor of Wisconsin to declare a state of emergency related to public health, but further provides, “A state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature.”

3. When a Governor declares a state of emergency, certain emergency powers become activated pursuant to state law.

4. Defendant Evers first declared a state of emergency related to COVID-19 on March 12, 2020. That state of emergency expired by law on May 11, 2020. Then, on July 30, 2020 he declared a *second* state of emergency via Executive Order #82, extending the state of emergency relating to COVID-19 for another 60 days. On September 22, 2020, anticipating the expiration of his second state of emergency declaration, Governor Evers declared a *third* state of emergency relating to COVID-19 via Executive Order #90, yet again extending the state of emergency beyond the 60-day limit provided by law.

5. The Legislature has never extended the original state of emergency related to COVID-19, nor did it extend his *second* state of emergency.

6. Defendant Evers has used his emergency powers to issue emergency orders requiring all Wisconsinites to wear masks. Those emergency orders were based upon the emergency powers Defendant Evers has unlawfully taken for himself by unilaterally extending the state of emergency related to COVID-19.

7. The Plaintiffs ask this Court to grant the Plaintiffs’ motion for an order (a) declaring that Executive Orders #82 and #90 (along with Emergency Order #1 – the Mask Mandate) are invalid and void, and (b) enjoining the enforcement of any of those orders.

This motion is further supported by the Plaintiffs’ Brief in Support of the Motion for a Temporary Injunction filed herewith.

Dated this 28th day of September, 2020.

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, Inc.
Attorneys for Plaintiffs

/S/ Signed electronically by Richard M. Esenberg

Richard M. Esenberg, WI Bar No. 1005622

414-727-6367; rick@will-law.org

Lucas Vebber, WI Bar No. 1067543

414-727-7415; lucas@will-law.org

Anthony LoCoco, WI Bar No. 1101773;

414-727-7419; alococo@will-law.org

330 E. Kilbourn, Suite 725

Milwaukee, WI 53202-3141

PHONE: 414-727-9455 / FAX: 414-727-6485