

9. In April 2020 and in February 2020, Mr. Newman worked the polls in a good and satisfactory manner and without wearing a face covering.
10. On March 12, 2020, Defendant Governor Evers issued Executive Order No. 72, declaring a public health emergency resulting from the COVID-19 pandemic in Wisconsin and invoking the Governor's powers under a state of emergency pursuant to Wis. Stat. § 323.10.
11. Executive Order No. 72 and the state of emergency remained in effect for 60 days.
12. Executive Order No. 72 and the state of emergency expired on May 11, 2020 pursuant to Wis. Stat. § 323.10.
13. On July 30, 2020, Defendant Governor Evers issued Executive Order No. 82, based upon the same ongoing public health emergency under Wis. Stat. § 323.10.
14. Defendant Evers' issuance of Executive Order No. 82 ignores the statutory limitations on emergency powers and unlawfully expands the state of emergency without Legislative approval.
15. By Executive Order No. 82, Defendant Governor Evers attempts to make law on his own accord. This claim to power is subject to no legislative check and, because it purportedly can be renewed again and again, it is subject to no time limitation.
16. Pursuant to the powers that Defendant Governor Evers claimed for himself through Executive Order #82, he issued Emergency Order No. 1.
17. Emergency Order No. 1, issued pursuant to the supposed authority under the expanded declaration of emergency under Executive Order No. 82, is void ab initio.
18. The facial covering requirement of Emergency Order No. 1 -- and its applicable exemptions -- also are at issue in this case.
19. On its face, Emergency Order No. 1 exempts certain categories of persons from the face covering requirement. A person need only fit within one category to be exempt. Emergency Order No. 1, at Section 3(b), states:

[T]he following individuals are exempt from the face covering requirement ...

 - ii. . Individuals who have trouble breathing; and
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 - iv.. Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.
20. "Individuals who have trouble breathing" are exempt from the face covering requirement of Emergency Order No. 1.

21. Separately, “Individuals with medical conditions” are exempt from the face covering requirement of Emergency Order No. 1.
22. The Governor’s Office issued enforcement guidance together with Emergency Order No. 1. That guidance indicates that when encountering a person not wearing a face covering, it is wrong to demand proof of exemption:

What do I do if I see someone not wearing a face covering, even though they should be?

Nothing. Some people have conditions or circumstances that would make wearing a face covering difficult or dangerous. Just wear your face covering and stay six feet away.

23. All municipal clerks were informed, prior to election day, that those who have trouble breathing should not wear a face covering.
24. Mr. Newman is an individual who has trouble breathing.
25. Mr. Newman also has a medical condition which makes it dangerous for him to wear a mask for an extended period of time.
26. Emergency Order No. 1 exempts Mr. Newman from wearing a face covering for these two different, but similar, reasons.
27. Mr. Newman is an individual who has trouble breathing and Emergency Order No. 1 therefore exempts him from the face covering requirement.
28. Mr. Newman is an individual with a medical condition that prevents him from wearing a face covering and, for this additional reason, Emergency Order No. 1 exempts him from the face covering requirement.
29. Mr. Newman was scheduled to work the local polls in the City of Lacrosse on August 11, 2020.
30. At the direction of Defendant Clerk Lehrke, Mr. Newman was discharged of his duties as a poll worker while at the polls on August 11, 2020.
31. Defendant Clerk Lehrke wrongly indicated to Mr. Newman that Emergency Order No. 1 required him to wear a face covering.
32. Mr. Newman alerted Clerk Lehrke that Emergency Order No. 1 exempts certain persons from wearing a face covering, such as himself.
33. Clerk Lehrke indicated to Mr. Newman that she refused to recognize his exemption under Emergency Order No. 1.
34. When Mr. Newman told Clerk Lehrke that he is exempt from the face covering requirement of Emergency Order No. 1, Clerk Lehrke stated: “Then you have to leave, you are being discharged of your duties then.”
35. Despite the fact that Mr. Newman is exempt from the face covering requirement of Emergency Order No. 1, Clerk Lehrke told Mr. Newman that both “state law” and “the Governor’s executive order” required him to wear a face covering.

36. Clerk Lehrke then told Mr. Newman that, regardless of the exemptions under Emergency Order No. 1, “state law” provides that it is “improper conduct” for an exempt person to not wear a face covering and that Mr. Newman could not work in any future election because of this “failure.”
37. Despite the fact that Mr. Newman is exempt from the face covering requirement of Emergency Order No. 1, Clerk Lehrke told him that utilizing the exemption from the face covering requirement of Emergency Order No. 1 is a “neglect of your duties.”
38. Clerk Lehrke demanded that Mr. Newman “leave now” because “it’s state law.”
39. Clerk Lehrke told Mr. Newman that by exercising an exemption from the face covering requirement of Order No. 1, he was “neglecting [his] official duties.”
40. Mr. Newman asked for alternate type of personal protective equipment, but Clerk Lehrke refused this.
41. Mr. Newman asked to remain as an election observer, but Clerk Lehrke refused this as well, telling him that “state law” did not allow Mr. Newman to observe.
42. Contrary to Clerk Lehrke’s admonitions to Mr. Newman, Wisconsin Law allows that “any member of the public may be present at any polling place” and allows that person to stand (socially distanced) up to “8 feet from the table at which electors announce their name and address ...” Wis. Stat. §7.41(1), (2).
43. Clerk Lehrke indicated that she would “put something in writing” to Mr. Newman regarding his “termination” and his ban from the polls. As of this date, Clerk Lehrke has failed to do so.
44. Mr. Newman again attempted to resolve this matter with Clerk Lehrke. Mr. Newman contacted Clerk Lehrke, through counsel, to ask that she reconsider her actions and allow Mr. Newman to work in future elections. Clerk Lehrke did not respond.
45. Clerk Lehrke has failed to provide any payment to Mr. Newman for his work at the polls, including for his completion of the required training incident to the August 11, 2020 primary election.
46. Emergency Order No. 1 exempts Mr. Newman from wearing a face covering, and based upon this fact Clerk Lehrke has punished Mr. Newman for exercising his right to the exemption, discharged him of his duties, and barred him from working in future elections based upon a false claim of “neglect.”
47. Mr. Newman was harmed and continues to be harmed by Defendant Governor Evers’ Emergency Order No. 1 and by Clerk Lehrke’s application (or misapplication) of Emergency Order No. 1, because:

(A) Clerk Lehrke used her application (or misapplication) of Emergency Order No. 1 to bar him from serving as a poll worker on August 11, 2020;

(B) Clerk Lehrke wrongly claims that Mr. Newman's exemption from Emergency Order No. 1 is somehow "neglect" on his part, which is false;

(C) Clerk Lehrke has barred Mr. Newman from working the polls on November 3, 2020, based upon her wrongful claim that Mr. Newman's exemption from Emergency Order No. 1 is somehow "neglect" on his part;

(D) Emergency Order No. 1 is itself unlawful, and therefore any application of Emergency Order No. 1 to harm Mr. Newman is wrongful.

COUNT I (against Defendant Governor Evers)

Declaratory Judgment that Executive Order #82, Emergency Order No. 1, any additional executive order that claims to further expand the same state of emergency are unlawful, void and unenforceable.

48. Plaintiff realleges and incorporates all of the allegations of this complaint as if fully set forth herein.
49. Plaintiff seeks a declaration that Emergency Order No. 82 is unlawful, void, and unenforceable.
50. Emergency Order No. 82 is unlawful, void, and unenforceable because it purports to expand a state of emergency after the expiration, by law, of the state of emergency.
51. The power to make law is vested in the Wisconsin Legislature. Wis. Const. Art. IV, § 1.
52. The legislative delegation of emergency power to the Governor is limited under Wis. Stat. § 323.10. "A state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature." Wis. Stat. § 323.10.
53. The statutory requirement that the extension of emergency powers must be approved by "joint resolution" of the Legislature means that that loan of power belongs exclusively to the Legislature and is neither subject to approval nor veto by the Governor.
54. Defendant Governor Evers' attempt to unilaterally expand the 60-day limitation on a state of emergency exceeds his statutory and constitutional power, and is therefore unlawful, void and unenforceable.
55. Plaintiff Newman has been harmed by the unlawful Emergency Order No. 1 because that order was used as a basis to exclude him from working in a polling place on August 11, 2020.

56. Plaintiff Newman will continue to be harmed by the unlawful Emergency Order No. 1 because his supposed violation of that order is now being used as the basis of a false claim of “neglect” against Mr. Newman in order to bar Mr. Newman from ever again working at a polling place in the State of Wisconsin.
57. A declaration by this court that Executive Order No. 82 and Emergency Order No. 1 are unlawful, void, and unenforceable is the appropriate remedy on Count I.

COUNT II (against Defendant Clerk Lehrke)

Declaratory Judgment that Clerk Lehrke wrongfully applied Emergency Order No. 1 to Plaintiff Newman, who is exempt by the plain terms of Order No. 1.

58. Plaintiff realleges and incorporates all of the allegations of this complaint as if fully set forth herein.
59. Plaintiff seeks a declaration that Clerk Lehrke wrongfully applied Emergency Order No. 1 to him as he is exempt from the face covering requirement of Order No. 1.
60. Emergency Order No. 1 exempts certain categories of persons from the face covering requirement, including both “individuals who have trouble breathing” and “individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.”
61. Plaintiff Newman is exempt from the face covering requirement of Emergency Order No. 1 for each of these reasons stated above.
62. Each reason for Mr. Newman’s exemption is independent of the other.
63. Defendant Clerk Lehrke violated Order No. 1 by failing to recognize the exemptions in it, and by punishing Mr. Newman for being a person exempt from the face covering requirements of Order No. 1.
64. Further, Defendant Clerk Lehrke failed to comply with the enforcement guidance provided by the Governor alongside Order No. 1. That guidance indicates that when encountering a person not wearing a face covering, it is wrong for a person to confront that person.
65. A declaration by this court that Clerk Lehrke misapplied and violated Emergency Order No. 1, and a ruling that Mr. Newman is not barred from working or observing in any polling place, is the appropriate remedy on Count II.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Issue a declaratory judgment that Executive Order No. 82, Emergency Order No. 1, and any additional order that purports to expand the state of emergency beyond May 11, 2020 are unlawful, void and unenforceable;
- B. Issue a declaratory judgment that Clerk Lehrke violated Emergency Order No. 1 by punishing Mr. Newman for exercising his right to an exemption under that Order;
- C. Enter an injunction prohibiting the enforcement of Emergency Order No. 1 and any additional executive order that purports to expand the state of emergency beyond May 11, 2020;
- D. Enter an injunction against Clerk Lehrke prohibiting her from barring Mr. Newman, or any other exempt person, from working or observing in any polling place;
- E. Grant such further relief as the court deems appropriate, including costs of this action.

Dated this 17th day of September, 2020

Electronically signed by:

/s/Joseph W. Voiland

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