

Wisconsin Supreme Court strikes down state's stay-at-home order

The ruling said the state health secretary's emergency order is "unlawful, invalid, and unenforceable."

The Wisconsin Supreme Court on Wednesday struck down the state's stay-at-home order during the coronavirus pandemic as "unlawful, invalid, and unenforceable" after finding that the state's health secretary exceeded her authority.

In a 4-3 ruling, the court called Health Services Secretary Andrea Palm's directive, known as Emergency Order 28, a "vast seizure of power."

The order directed all people in the state to stay at home or at their places of residence, subject only to exceptions allowed by Palm, the ruling says. The order, which had been set to run until May 26, also restricted travel and business, along with threatening jail time or fines for those who don't comply.

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The ruling says the judges weren't challenging Democratic Gov. Tony Evers' emergency powers, but the decision effectively undercuts his administration and forces him to work out a compromise with the Republican-controlled Legislature.

One of the dissenting justices, Rebecca Dallet, said her conservative colleagues in the majority were the ones who were exceeding their authority, and she noted precedent for Palm's directives — a monthslong stay-at-home order during the 1918 Spanish Flu pandemic.

"This decision will undoubtedly go down as one of the most blatant examples of judicial activism in this court's history," she said. "And it will be Wisconsinites who pay the price."

The decision is the result of the Legislature's lawsuit against the Health Services Department alleging that Palm's directives overreached and asking the court to grant relief to give the Legislature a "seat at the table" in the rule-making process.

During oral arguments, Justice Rebecca Bradley suggested that the order amounted to “tyranny,” and at another point, she referred to Japanese Americans’ internment during World War II.

Chief Justice Patience Roggensack actively questioned both sides and was later criticized for seeming to have downplayed a spike in cases connected to a JBS meatpacking in Green Bay.

Spikes in cases “were due to the meatpacking, though. That’s where Brown County got the flare. It wasn’t just the regular folks in Brown County,” Roggensack said in response to the Health Services Department’s highlighting the spread of the virus.

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There have been almost 11,000 confirmed cases of COVID-19 in Wisconsin and 421 deaths, according to the NBC News coronavirus tracker.

“Republicans believe business owners can safely reopen using the guidelines provided by the Wisconsin Economic Development Corporation,” the Republican leaders of Legislature said in a statement after the ruling.

Evers said, “Up until now, Wisconsin was in a pretty good place in our battle against COVID-19.”

“We cannot let today’s ruling undo all the work we have done and all the sacrifices Wisconsinites have made over these past few months,” he said in a statement. “I am disappointed in the decision today, but our top priority has been and will remain doing what we can and what we have to do to protect the health and safety of the people of our state.”

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