STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH NO. ___

SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU),
LOCAL 1,
250 E. Wisconsin Ave,
Milwaukee, WI 53202,

Case No. __________

Declaratory Judgment: 30701
Injunction or Restraining Order: 30704

SEIU HEALTHCARE WISCONSIN,
4513 Vernon Blvd #300
Madison, WI 53705,

MILWAUKEE AREA SERVICE AND
HOSPITALITY WORKERS,
1110 N. Old World 3rd Street, Suite 304
Milwaukee, WI 53203,

AFT-WISCONSIN,
1602 S. Park Avenue,
Madison, WI 53715,

WISCONSIN FEDERATION OF NURSES
AND HEALTH PROFESSIONALS,
9620 West Greenfield Avenue,
West Allis, WI 53214,

RAMON ARGANDONA,
563 Glen Drive
Madison, WI 53711,

PETER RICKMAN,
3702 South 20th Place
Milwaukee, WI 53221,

AMICAR ZAPATA,
3654 S. 22nd Street
Milwaukee, WI 53221,

KIM KOHLHAAS,
4611 Otsego Street
Duluth, MN 55804,

JEFFREY MYERS,
342 North Yellowstone Drive
Madison, WI 53705,

ANDREW FELT,
3641 Jordan Lane,
Stevens Point, WI 54481,

CANDICE OWLEY,
2785 South Delaware Avenue,
Milwaukee, WI 53207,

CONNIE SMITH,
4049 South 5th Place,
Milwaukee, WI 53207,

JANET BEWLEY,
60995 Pike River Road,
Mason, WI 54856,

Plaintiffs,

v.

ROBIN VOS, in his official capacity as
Wisconsin Assembly Speaker,
321 State St,
Madison, WI 53702,

ROGER ROTH, in his official capacity as
Wisconsin Senate President,
State Capitol—Room 220 South
Madison, WI 53707

JIM STEINEKE, in his official capacity as
Wisconsin Assembly Majority Leader,
2 E Main St,
Madison, WI 53703

SCOTT FITZGERALD, in his official
capacity as Wisconsin Senate Majority
Leader,
206 State St,
Madison, WI 53702

JOSH KAUL, in his official capacity as
Attorney General of the State of Wisconsin
7 W Main St,
Madison, WI 53703,

TONY EVERS, in his official capacity as
Governor of the State of Wisconsin,
State Capitol—Room 115 East
Madison, WI 53702,

Defendants.

COMPLAINT

Introduction

In December 2018, the Wisconsin Legislature convened an extraordinary session to pass a series of bills that served one overarching purpose: strip as much power as possible from the Executive Branch and hand it directly to the Legislative Branch. The political party in control of the Legislature had just lost statewide elections for Executive-Branch positions including the offices of Governor and Attorney General, and the bills passed during the extraordinary-legislative session were aimed at removing core executive functions from those offices and giving them instead to the Legislature—or, in some cases, to only a handful of legislators acting via committee. The bills, which were considered largely behind closed doors and pushed through under cover of night in an unusual lame-duck session with no public testimony in support, made headlines around the country as an assault on the will of the voters and an unprecedented "power grab" by legislators defeated at the ballot box but insistent on exerting control over the executive functions of government.

In the blink of an eye, the lame-duck Legislature fundamentally altered Wisconsin government by arrogating to itself powers recognized for more than two hundred years as within the exclusive province of the Executive Branch, and by enabling a handful of legislators to change the law without the quorum mandated by the Constitution. For example, the extraordinary-session legislation eliminates traditional Executive Branch control over litigation in

the name of the State, forcing the Governor and the Attorney General to continue prosecuting cases they believe should be settled or dropped, requiring the Attorney General to defend even plainly unconstitutional statutes notwithstanding his obligations as an officer of the court, and inserting the Legislature into day-to-day litigation decisions in a wholly unworkable and unlawful way. The bills also allow a single legislative committee to unilaterally suspend longstanding agency rules and regulations, dodging the Governor's veto power and changing Wisconsin's legal landscape without the input of the full Legislature. And the bills add layers and layers of unnecessary red tape to communication by government agencies, likely ensuring that hundreds, if not thousands, of basic guidance documents issued by executive agencies will shortly be rescinded. In addition, the bills also require the Executive Branch to seek legislative approval before acting in a variety of contexts—creating a clear and impermissible legislative veto over executive decisions large and small.

The Legislature's lame-duck power grab violates the Wisconsin Constitution. Wisconsin's Constitution transcends party politics and protects the people by guaranteeing the fundamental principle of separation of powers. As the nation's Founders explained in connection with the federal Constitution, the accumulation of governmental powers "in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47 (Madison). To avoid that tyranny, the Wisconsin Constitution—like the federal one and the constitutions of the other States—divides power among three co-equal branches of government. The Constitution then protects the functions that fall within each branch's exclusive province, and prohibits any branch from unduly burdening another branch's exercise of power. By attempting to re-allocate to the Legislative Branch core executive functions, and by impermissibly burdening the Executive

Branch's basic operations, the extraordinary-session bills violate those constitutional provisions and protections.

The practical consequences of the extraordinary-session bills illustrate why separation of powers is so important to our system of government. Almost immediately, the legislation introduced chaos and confusion over the State's position in important litigation. *See* Molly Beck & Patrick Marley, *Tony Evers reverses course, won't direct Josh Kaul to withdraw from Obamacare lawsuit after all*, Milwaukee Journal Sentinel (Jan. 23, 2019), https://bit.ly/2AX4WyP. And that confusion is just the tip of the iceberg; the government often initiates and defends against litigation, and the question of who can speak for the State and direct the State's resources is of critical importance.

The extraordinary legislation's provisions regarding agency guidance documents also threaten to grind many basic government functions to a halt. They bar the Executive Branch from communicating with citizens and businesses about basic implementation matters without sending previews of such communications to the Legislature. In a matter of months, the legislation will likely result in the rescinding of thousands of agency guidance documents, including even government websites that communicate to the public about basic governmental functions and crucial public programs (e.g., sites about how to obtain a driver's license or apply for unemployment benefits), and the legislation will require that agencies start from scratch and comply with onerous new procedural hurdles if they hope to reissue their guidance materials. Even after all that, Executive Branch agencies will be prohibited from seeking any deference in light of their expertise in legal proceedings challenging their interpretations.

The financial burden that will be imposed on Wisconsin taxpayers as a result of this chaos and inefficiency is incalculable. To begin with, the cost includes the Legislature's "carte blanche" approval of hiring "private attorneys at taxpayer expense" to fight any lawsuits challenging the extraordinary-session bills themselves without the Legislature's even "knowing what [that legal

work] would cost." Patrick Marley, *Wisconsin GOP lawmakers seek to hire attorneys at taxpayer expense to defend lame-duck laws*, Milwaukee Journal Sentinel (Jan. 17, 2019), https://bit.ly/2UwOzR2. The costs of litigation involving the State will also rise dramatically, and the inherent uncertainty over the State's litigation authority, including the power to enforce and defend the laws of Wisconsin, will impose additional significant internal costs and upset the reliance interests of individual citizens and Wisconsin business alike who need certainty to order their affairs. At the same time, the numerous provisions in the extraordinary-session bills that create unconstitutional legislative vetoes will require unnecessary and unlawful expenditures by the Executive Branch, as those provisions require executive officers and agencies to submit formal plans to the Legislature before taking any action.

These real-world consequences provide an object lesson regarding the importance of preserving separation of powers. Wisconsin's Constitution guarantees that separation and, in doing so, reflects two inter-related principles articulated by the Founders: that the "separate and distinct exercise of the different powers of government" is "essential to the preservation of liberty" and that each branch of government must have the ability to "counteract" the encroachments of the other. The Federalist No. 51 (Madison). The extraordinary-session laws ignore those cornerstone principles and, because they violate the basic separation of powers protected by the Wisconsin Constitution, should be declared unconstitutional and unenforceable.

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this State.

2. Defendants, as state officers, are subject to this Court's jurisdiction. *See Lister v. Bd. of Regents of Univ. Wis. Sys.*, 72 Wis. 2d 282, 303 (1976).

3. Venue is proper in Dane County because it is the county where the claims arose. Wis. Stat. § 801.50(2)(a).

Parties

Individual Taxpayer Plaintiffs

4. Ramon Argandona is a natural person residing at 563 Glen Drive, Madison, WI 53711. He has been employed for more than twenty years in environmental services work at a Wisconsin hospital. Mr. Argandona is also the President of the labor union called Service Employees International Union Healthhcare Wisconsin (SEIU HCWI or HCWI) and has served as an officer of HCWI for the past seven years. Mr Argandona is a Wisconsin taxpayer.

5. Peter Rickman is a natural person residing at 3702 South 20th Place, Milwaukee, WI 53221. He is employed by the Milwaukee Area Service and Hospitality Workers Organization (MASH) and has served as MASH's President since 2018. Mr. Rickman is a member of the Next Generation Workforce and Economic Development Policy Advisory Council appointed by Governor Evers in December 2018. Mr. Rickman is a Wisconsin taxpayer.

6. Amicar Zapata is a natural person residing at 3654 S. 22nd Street, Milwaukee, WI 53221. He is employed as a day custodian, working in the offices of a financial institution, and, since 2017, he has been an elected member of the Executive Board of the labor union SEIU Local 1 (SEIU Local 1 or Local 1). Mr. Amicar is a Wisconsin taxpayer.

7. Plaintiff Kim Kohlhaas is a natural person residing at 4611 Otsego Street, Duluth, MN 55804. She is the president of AFT–Wisconsin (AFT-W), a position she was first elected to in October 2013. Ms. Kohlhaas has taught in the Superior school district for more than twenty years. She was elected as the president of the Superior Federation of Teachers, AFT, Local 202 in April, 2011. Ms. Kohlhaas is primarily responsible for managing AFT-Wisconsin's staff,

stewarding its budgets and giving voice to its members' common interests. She directs the organization's political action programs. Ms. Kohlhaas pays Wisconsin sales taxes.

8. Plaintiff Jeffrey D. Myers is a natural person residing at 342 North Yellowstone Drive, Madison, WI 53705. He has been employed as an advanced environmental toxicologist by the State of Wisconsin Department of Natural Resources, Bureau of Air Management for more than thirty years. He is the president of the Wisconsin Science Professionals, Local 3272, an affiliate of AFT-Wisconsin and has been a member for thirty-three years. He has previously served as a union steward, bargaining team member, and vice-president of Local 3272. Mr. Myers is a Wisconsin taxpayer.

9. Plaintiff Dr. Andrew J. Felt is a natural person residing at 3641 Jordan Lane, Stevens Point, WI 54481. Dr. Felt is a Professor of Mathematics and formerly Chair of the Department of Mathematical Sciences at the University of Wisconsin–Stevens Point, where he has taught for more than fifteen years. He received his Ph.D. in Pure and Applied Mathematics from Washington State University in 2000. Dr. Felt is the President of the Stevens Point Academic Representation Council (SPARC, or AFT Local 6505). Dr. Felt is a Wisconsin taxpayer.

10. Plaintiff Candice Owley is a natural person residing at 2785 South Delaware Avenue, Milwaukee, WI 53207. She is a registered nurse and is President of the Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO (WFNHP). She actively campaigned for the elections of Tony Evers as governor and Josh Kaul as attorney general prior to their 2018 elections. Ms. Owley is a Wisconsin taxpayer.

11. Plaintiff Connie Smith is a natural person residing at 4049 South 5th Place, Milwaukee, WI 53207. She is employed as an operating room charge capture coordinator at a Milwaukee hospital. She is the Secretary of WFNHP. Ms. Smith is a Wisconsin taxpayer.

12. Plaintiff State Senator Janet Bewley is a natural person residing at 60995 Pike River Road, Mason, WI 54856. She represents Wisconsin's 25th Senate District, which is comprised of 13 northwestern counties and includes all of Wisconsin's Lake Superior shoreline. She is serving her second term in the State Senate after serving two terms in the State Assembly. Senator Bewley's professional career covers more than 30 years including serving as Dean of Students at Northland College, Executive Director at the Mary H. Rice Foundation, and Senior Community Development Officer at the Wisconsin Housing and Economic Development Authority. Senator Bewley is a Wisconsin taxpayer.

Entity and Association Plaintiffs

13. Plaintiff SEIU Local 1 of the Service Employees International Union ("SEIU") is a labor organization with its address at 250 E. Wisconsin Ave, Milwaukee, WI 53202. Local 1 has approximately 50,000 members in six states. More than 1,100 of the union's members work as custodians and security officers in Wisconsin. SEIU Local 1's custodian members clean commercial office space, food service establishments, sports venues, universities, and other places of commerce. Local 1 pays state payroll taxes to Wisconsin, and the union brings this action on its own behalf and on behalf of its Wisconsin members.

14. As described below (see paragraph 27), SEIU Local 1 engaged in significant political work leading up to the 2018 election Electoral work and related education and mobilization are an ongoing part of SEIU Local 1's work. The union works consistently and regularly to educate members and leaders about political issues, the political process, and the importance of elections and being politically engaged. Education takes place in leader meetings, organizing drives, and as part of the on-boarding process for new members. The communications department of Local 1 develops materials and videos to distribute for political and educational purposes.

15. SEIU Local 1 and its members are harmed by several discrete aspects of the extraordinary-legislation bills. For example, Local 1 interacts with the Wisconsin State Department of Workforce Development on a range of topics related to contract and employment issues and its ability to rely on Department guidance will be impaired by the harsh restrictions on executive-agency action imposed by the legislation.

16. In addition, ensuring access to adequate healthcare is one of the biggest challenges facing SEIU Local 1's members. Healthcare access has been a major issue during the union's contract negotiations and some Wisconsin-based members of Local 1 buy insurance on the Affordable Care Act (ACA) healthcare exchange. These members will be harmed if Wisconsin continues to pursue and is successful with its challenge to the ACA (a challenge from which Governor Evers has indicated he would withdraw but for the recent legislation), *see Texas, et al. v. United States*, 4:18-cv-00167 (N.D. Tex.). Other Local 1 members who cannot afford monthly premiums for employer-sponsored health insurance also rely on Medicaid. These members are directly affected by the Medicaid "waiver" provisions that the challenged legislation prohibits the Governor from acting to change without legislative approval.

17. Plaintiff SEIU Healthcare Wisconsin is a labor organization with its address located at 4513 Vernon Blvd #300, Madison, WI 53705. HCWI represents 3,238 employees in 42 bargaining units in home care, nursing homes, and hospitals across the State of Wisconsin. HCWI pays employee-income, property, and sales taxes. HCWI brings this action on its own behalf and on behalf of its members.

18. SEIU HCWI and its members are harmed (similarly to Local 1) by several discrete aspects of the bills. For example, some HCWI members who work part time are not able to access employer-provided health insurance and instead must purchase health insurance on the

private market, including via the ACA exchange, which is vulnerable to Wisconsin's pending legal challenge to the ACA.

19. Plaintiff Milwaukee Area Service and Hospitality Workers is a labor organization with its address located at 1110 N. Old World 3rd Street, Suite 304, Milwaukee, WI 53203. MASH operates a hiring hall for workers and employers in the service and hospitality industries in Milwaukee, Wisconsin, and functions as a union for workers employed in the service and hospitality industries. Through its hiring hall, MASH recruits workers into service and hospitality industry employment, provides soft skills training, and develops multi-employer career pathways. Acting as a labor union, MASH organizes and represents workers for the purposes of collective bargaining with service and hospitality industry employers on matters of wages and terms and conditions of employment.

20. MASH also advocates locally and in state government to improve employment and workforce standards. For example, MASH has advocated for: a statutory minimum wage of $15 per hour; establishment of tripartite sectoral boards consisting of elected representatives of employers, workers, and appointed representatives of the public interest to develop industry-wide agreements covering employment and workforce standards and practices; the creation of a service-industry apprenticeship program that would involve the Department of Workforce Development; and a change in practice by the Wisconsin Economic Development Corporation from directing funds to individual enterprises, including the service and hospitality industries, to directing funds to targeted industry sectors through multi-stakeholder bodies consisting of elected representatives of employers and employees and of appointed representatives of the public interest that would make investments for the betterment of the entire industry sector.

21. During the 2018 election, MASH advocated in particular for Executive Branch action that would involve using rule-making authority to establish requirements regarding wage

rates and participation in industry sector wage boards for state contractors, recipients of state financial assistance, and recipients of Medicaid program dollars. MASH also advocated for agency rules to clarify Section 1 of 2017 Wisconsin Act 327.

22. MASH members are harmed (similarly to SEIU Local 1 and SEIU HCWI) because many MASH members work part time for Milwaukee Arena-District employers and are not able to access employer-provided health insurance and instead must purchase health insurance on the private market, including via the ACA exchange, which is vulnerable to Wisconsin's pending legal challenge to the ACA.

23. Plaintiff AFT-Wisconsin (AFT-W) is a labor organization with its address located at 1602 S. Park Avenue, Madison WI, 53715. AFT-W has approximately 4,000 members living and working throughout Wisconsin. These members are employed at most levels of State and local government. They are public school employees; University of Wisconsin System faculty, staff and graduate assistants; technical college faculty and staff; and State government professional employees ranging from public defender attorneys to scientists. AFT-W's mission, among others, is to secure for its members the working conditions essential to professional job performance. Since 2011 AFT-W has met this mission primarily by organizing its members and others to exercise their civic duty to engage in the body politic. These organizing and communication efforts occur at every level of government—from school board elections to the political contest for the office of Governor. Additionally, these efforts focus on organizing around the broader political issues of government revenue generation and expenditures that support public education from the elementary school to UW Madison's doctoral programs. AFT-W brings this action on its own behalf and on behalf of its members. It asserts their collective interest as taxpayers and public employees.

24. Plaintiff Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO (WFNHP) is a labor organization with its address located at 9620 West Greenfield Avenue, West Allis, WI 53214. WFNHP has approximately 1,300 members employed as nurses and other healthcare professionals and workers in hospitals and healthcare facilities around Wisconsin, in both the public and private sectors. WFNHP is committed to the growth and empowerment of its membership and all healthcare workers. WFNHP seeks to secure optimal working conditions and professional development for its members, while playing a leadership role in establishing high standards of clinical practice and patient care. WFNHP played a leading role in advocating for the enactment of Wisconsin's Health Care Worker Protection Act, Wis. Stat. § 146.997 in 1999 and 2000. It continues to advocate, not only for policies improving the quality of patient care in hospitals, such as limits on nurse-to-patient ratios and restrictions on mandatory overtime for healthcare workers, but also for policies that will assure affordable, accessible healthcare for all Wisconsin residents, including the expansion of Medicaid and the preservation of the Affordable Care Act.

25. These efforts focus on organizing WFNHP's members around the broader political issues of taxation to generate revenues and government expenditures that improve the delivery of healthcare to all Wisconsin residents, including WFNHP's members. WFNHP brings this action on its own behalf and on behalf of its members. It asserts their collective interest in the conditions of their employment, but also their interest as taxpayers and as members of Wisconsin's body politic.

26. The majority of WFNHP's members are nurses: registered nurses (RNs), advanced practice nurse practitioners (APNPs) and licensed practical nurses (LPNs). All of them must be licensed by the Board of Nursing (BON) in the Department of Safety and Professional Services (DSPS). Information pertaining to their licenses is available both on the DSPS and BON

websites and in *Nursing Forward,* a newsletter published and posted online by BON three times a year.

27. Each of these associations and their members engaged in significant political work in the run-up to the 2018 Wisconsin election in support of now-Governor Evers, whose authority to act and role in Wisconsin government is undermined by the extraordinary-session legislation. Their members engaged in door knocking, phone banking, public education, and other efforts to support Evers. They did this work with the expectation that candidate Evers, if elected, would have all the executive authority traditionally reserved for the executive and preserved for the executed by the Wisconsin Constitution. These associations' and their members' election-related efforts have been rendered significantly less effective by the extraordinary-session legislation.

Defendants

28. Defendant Robin Vos is the Wisconsin Assembly Speaker. He is sued in his official capacity.

29. Defendant Roger Roth is the Wisconsin Senate President. He is sued in his official capacity.

30. Defendant Jim Steineke is the Wisconsin Assembly Majority Leader. He is sued in his official capacity.

31. Defendant Scott L. Fitzgerald is the Wisconsin Senate Majority Leader. He is sued in his official capacity.

32. Defendant Josh Kaul is the Attorney General of the State of Wisconsin. He is sued in his official capacity.

33. Defendant Tony Evers is the Governor of Wisconsin. He is sued in his official capacity.

34. Compliance with Wis. Stat. 893.825 will occur with service of the summons and complaint on the above defendants.

Background

35. On November 6, 2018, the State of Wisconsin held an election. Prior to that election, the Wisconsin Legislative and Executive Branches were under the unified control of the Republican Party. The Party held a majority of seats in the Wisconsin Legislature, and the Wisconsin Governor, Scott Walker, was a member of the Republican Party as well.

36. In the November 6 election, Tony Evers, a member of the Democratic Party of Wisconsin, was elected Governor. Under Wisconsin law, Mr. Evers was scheduled to become Governor on January 7, 2019.

37. Within hours after former Governor Walker conceded the election, Defendant Vos expressed interest in limiting Mr. Evers's power in what a national newspaper described as a "Republican Power Play, Months in the Making." *See* Mitch Smith, John Eligon & Monica Davey, *Behind the Scenes in Wisconsin: A Republican Power Play, Months in the Making*, N.Y. TIMES (Dec. 7, 2018), https://nyti.ms/2PrvA7x ("*Republican Power Play*"). Lawmakers who supported the "power grab" explained that they were "nervous" about the election outcome and wanted to lock in (or, euphemistically, "put on solid ground") policies pursued by the now-defeated Governor. When asked whether legislators would be pushing the bill if the election had gone a different way, Republican State Representative John Nygren said "My guess is we wouldn't necessarily be here." *Id.*

38. Shortly after the election, certain state lawmakers, including Defendant Vos and Defendant Fitzgerald, called an extraordinary legislative session to take place before the Governorship changed hands from Mr. Walker to Mr. Evers. The extraordinary session was convened in early December, 2018.

39. Going into the extraordinary session, Defendants announced a 141-page package of bills designed to strip the incoming Governor of traditional executive authority and hand the state Legislature unprecedented power over executive functions. The scope of the bills—their invasion of traditional executive functions—caught even aligned legislators off guard, with State Senator Robert L. Cowles (a legislator for three and a half decades) quoted as saying that while he had understood a few "basic things" would be discussed, the package of bills in the "ultimate document went further." *Republican Power Play,* N.Y. TIMES (Dec. 7, 2018).

40. The Legislature's Joint Committee on Finance held a single day of hearings on the bills. The hearings lasted late into the night, with hours of testimony from members of the public criticizing the bills.

41. There was no public testimony in support of the bills. *See* Joy Powers, *Key Takeaways from the Wisconsin Legislature's Extraordinary Session*, WUWM (Dec. 4, 2018), https://bit.ly/2SNAa2r ("No one from the public spoke in support of any of the pending legislation."). Instead, testifying citizens described the bills as an attempted "coup," an "erosion of American democracy" and an "attempt to negate an election." *Republican Power Play,* N.Y. TIMES (Dec. 7, 2018). Hundreds more protested outside in the cold. According to Mr. Cowles, most of the constituents who contacted his office expressed opposition to the bills—even many Republicans "who said 'This just did not look good.'" *Id*.

42. Nonetheless, the Committee voted on party lines to approve a majority of the proposed bills. The Legislature then rushed the bills through in an overnight session, passing them in the late hours of the night and into the early morning.

43. This extraordinary-session legislation, the provisions of which are discussed in detail below, unduly burdens and substantially interferes with the Executive Branch's power and responsibility to take care that the laws be faithfully executed, impermissibly strips the executive

branch of core executive powers and hands those powers to the Legislature instead, and imposes massive and irreparable costs.

44. The extraordinary legislation came under immediate and widespread criticism. Former Governor Scott McCallum referred to the bills as "a power grab," and "completely political," and he urged then-Governor Walker to veto several of them. Craig Gilbert, *Former GOP Gov. Scott McCallum urges Scott Walker to reject lame-duck plans*, MILWAUKEE JOURNAL SENTINEL (Dec. 8, 2018), https://bit.ly/2B2iecS. Former Governor McCallum warned of the bills leading to "a very slippery slope of personal power over public policy."

45. The legislation has been roundly seen as attempting to undo the effects of the 2018 election. As one political scientist at UW–Madison put it, "This is just the legislature, after losing the election somewhat surprisingly, deciding they don't want an attorney general from the opposing party . . . That's just nullifying the election results." Tara Golshan, *How Republicans are trying to strip power from Democratic governors-elect*, VOX (Dec. 14, 2018), https://bit.ly/2RBP1fV.

46. Another scholar described the legislation as an "assault on the most basic democratic norm: the willingness of the loser of an election to let the winner rule." Zack Beauchamp, *The Wisconsin power grab is part of a bigger Republican attack on democracy*, VOX (Dec. 6, 2018), https://bit.ly/2RFll1e. A longtime supporter of then-Governor Walker, prominent philanthropist Sheldon Lubar, pointedly criticized the legislation and publicly encouraged Walker not to sign the bills. Meg Jones, *Influential Republican businessman Sheldon Lubar sharply criticizes Walker for lame-duck session*, MILWAUKEE JOURNAL SENTINEL (Dec. 4, 2018), https://bit.ly/2PlZiuL.

47. Ultimately, notwithstanding the significant public criticism and the fact that the extraordinary legislation would curtail the powers of the office of the Governor, then-Governor Walker signed all of the extraordinary legislation into law on December 14, 2018.

48. On January 7, 2019, Tony Evers became Governor of Wisconsin.

The Separation of Powers in Wisconsin

49. Like every State, and like the United States as a whole, Wisconsin operates with a Constitution that protects its people by guaranteeing separation of powers. The Legislature makes the laws, and the Governor has the power and obligation to "take care that the laws be faithfully executed." Wis. Const. Art. V, § 4.

50. This separation of powers is a fundamental feature of our country's republican form of government that has been in place since the Founding. As James Madison wrote in *The Federalist Papers*, "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47 (Madison). The Framers therefore saw the "separate and distinct exercise of the different powers of government" as "essential to the preservation of liberty" because each branch of government would have the ability to "counteract" the encroachments of the other. The Federalist No. 51 (Madison).

51. The Framers were particularly concerned with the need to check legislative power. They recognized that in a "republican government, the legislative authority necessarily predominates." Federalist No. 51. So, to safeguard liberty, it is necessary to ensure that the legislature "can exercise no executive prerogative." Federalist No. 47.

52. The Framers identified two main ways to check the legislative power, as demonstrated in the federal constitution. The first check was "to divide the legislature into different branches," spreading the legislative power throughout the members of two distinct bodies. Federalist No. 51. Second, the Framers gave the executive a qualified ability to veto legislative acts, subject to the possibility of an override only when a supermajority of both legislative bodies agrees.

53. These two measures—bicameralism and the veto power—are thus hallmarks of the separation of powers. They prevent the accumulation of power in the hands of the few by spreading it across two bodies and ensuring that no legislative acts can be taken without the possibility of a check by the executive.

54. Wisconsin's Constitution embodies both of these fundamental protections. *See* Wisc. Const. Art. V, § 10.

55. Wisconsin's Constitution also establishes the separation of powers as a core part of the structure of Wisconsin's government. Each branch of government "has exclusive core constitutional powers into which other branches may not intrude." *State v. Horn*, 226 Wis. 2d 637, 643, 594 N.W.2d 772 (1999) (citing *State ex rel. Friedrich v. Cir. Ct. for Dane Cnty.*, 192 Wis. 2d 1, 13, 531 N.W.2d 32 (1995)). This separation of powers is virtually ironclad: Each branch's core powers reflect "zones of authority constitutionally established for each branch of government upon which any other branch of government is prohibited from intruding." *State ex rel. Fiedler v. Wis. Senate*, 155 Wis. 2d 94, 100, 454 N.W.2d 770 (1990) (citing *In re Complaint Against Grady*, 118 Wis. 2d 762, 776, 348 N.W.2d 559 (1984)); *see also Outagamie Cnty. v. Smith*, 38 Wis. 2d 24, 39–40, 155 N.W.2d 639 (1968) ("[O]ne branch of the government has no authority to compel a co-ordinate branch to perform functions of judgment and discretion that are lawfully delegated to it by the constitution."). Because "[t]he state suffers essentially by every . . . assault of one branch of the government upon another," it is "the duty of all the coordinate branches scrupulously to avoid even all seeming of such." *Integration of Bar Case*, 244 Wis. 8, 48, 11 N.W.2d 604 (1943) (quoting *In re Goodell*, 39 Wis. 232, 240 (1875))).

56. In addition to core powers, which are "exclusively committed to one branch of government by the Wisconsin Constitution," some powers may be exercised in part by two or more branches. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360, 441 N.W.2d 696 (1989). Even

when two or more branches both exercise some share of a given governmental power, the separation of powers remains fundamental: no branch may "unduly burden or substantially interfere with the other branch's essential role and powers." *Id.* This principle "serves to maintain the balance between the three branches, preserve their independence and integrity, and to prevent the concentration of unchecked power in the hands of one branch." *Id.* at 360–61.

The Extraordinary Legislation

57. The extraordinary-session legislation subverts the separation of powers principle, by, among other things, giving the Legislature—or at times, just a few legislators acting together in a committee—the power to prevent or undo the Governor's actions without passing a single bill.

58. The legislation is a clear attempt by one branch, the Legislature, upset by an electoral outcome affecting another branch, to undo the separation of powers. But separation of powers is a fundamental principle enshrined in the State's Constitution that lasts longer than any one electoral cycle. The extraordinary legislation's power-stripping provisions violate the Wisconsin Constitution and should accordingly be struck down

59. The legislation enacted during the extraordinary session and signed into law by then-Governor Walker made many changes to Wisconsin statutes. This Complaint focuses on those provisions that violate the Wisconsin Constitution. As discussed below, the extraordinary legislation contained provisions (I) stripping the Executive Branch of its authority over litigation involving enforcement and execution of the State's laws; (II) severely burdening the Executive Branch's ability to communicate with the public and enforce the law; and (III) granting legislative committees an impermissible override of executive-branch decisions—i.e., a legislative veto.

60. Taken together, the extraordinary legislation strips powers from the Governor and the Attorney General that are protected under the Wisconsin Constitution. The legislation

sweeps broadly, affecting the Executive Branch's ability to make rules and regulations, to enforce laws in court, and to communicate with the public about basic matters of governance—all essential to the Branch's ability to fulfill its constitutional duty to execute the State's laws. Every aspect of government in Wisconsin is and will be affected: health and safety, law enforcement, education, transportation, agriculture, and more.

61. In numerous instances, extraordinary-session legislation violates an additional protection provided by the Wisconsin Constitution as well, namely, the requirement that the Legislature have a quorum of members (a majority) present to do business. The quorum requirement is a fundamental mechanism of legislative accountability, because it ensures that the legislature cannot take legislative action without the input of a substantial number of representatives who have been chosen by the electorate. But many of the provisions of the challenged legislation allow legislative action to be taken by committees, giving power to effectively change the law to only a handful of legislators in the majority party.

I. Stripping the Executive Branch of Litigation Authority

62. Under our nation's constitutional traditions, the power vested in the Executive Branch has long been understood to include the authority to litigate on behalf of the state. *See United States v. Nixon*, 418 U.S. 683, 693 (1974) (citing *The Confiscation Cases*, 74 U.S. 454 (1868)). This power encompasses both criminal and civil proceedings in which the Executive represents the government and includes the ability to "consent to a discontinuance" of a suit once initiated. *The Confiscation Cases*, 74 U.S. at 457.

63. This authority over litigation is a core component of the Wisconsin Constitution's mandate that the Governor "take care that the laws be faithfully executed." Wis. Const. Art. V, § 4. As the U.S. Supreme Court explained in describing separation of powers under the federal Constitution, "A lawsuit is the ultimate remedy for a breach of the law, and it is to the President,

and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'"

64. The extraordinary legislation overrides this cornerstone of executive power.

65. In particular, Section 97 of Act 369 permits the Legislature to intervene in any action in which a party "challenges the construction or validity of a statute," whether "as part of a claim or affirmative defense," including cases in which a party "challenges in state or federal court the constitutionality of a statute, facially or as applied" or "challenges a statute as violating or preempted by federal law."

66. By including any litigation in which a party "challenges the construction" of a statute, this provision encompasses a vast swath of litigation—perhaps all civil litigation in which two parties dispute the meaning of a statute.

67. Section 5 of Act 369 provides that if the Legislature or a legislative committee intervenes under the provision created by Section 97, it may "obtain legal counsel other than from the department of justice," with the cost of representation paid from appropriations for the general program operations of the Legislature.

68. Next, Section 26 of Act 369 prevents the Governor from ending "[a]ny civil action prosecuted by the department [of justice] by direction of any officer, department, board, or commission, or any civil action prosecuted by the department on the initiative of the attorney general or at the request of any individual."

69. Section 26 then gives that power to end civil litigation to the Legislature. It provides that in any such civil action, the action "may be compromised or discontinued" only with the approval of a legislative intervenor, or, "if there is no intervenor, by submission of a proposed plan to the joint committee on finance for the approval of the committee." The Act is

clear that "[t]he compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan."

70. The Act also provides that "[n]o proposed plan may be submitted to the joint committee on finance if the plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal laws, without the approval of the joint committee on legislative organization."

71. In other words, Section 26 of Act 369 prevents the Governor from ending any civil action commenced by the Department of Justice without the approval of the Legislature or a legislative committee.

72. Section 30 of Act 369 also limits the ability of the Attorney General to compromise or settle "any civil action or other matter brought before a court or an administrative agency which is brought against the state department, or officer, employee, or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employee's, or agent's duties."

73. Section 30 provides that if such an action "is for injunctive relief or there is a proposed consent decree," the Attorney General may not compromise or settle the action "without the approval of an intervenor . . . or if there is no intervenor without first submitting a proposed plan to the joint committee on finance."

74. As with Section 26, described above, "[t]he attorney general may not submit a proposed plan to the joint committee on finance under this subdivision in which the plan concedes the unconstitutionality or other invalidity of a statue, facially or as applied, or concedes that a statute violates or is preempted by federal law, without the approval of the joint committee on legislative organization."

75. The combined effect of Sections 26 and 30 is that in any civil litigation prosecuted by the Department of Justice, or any civil litigation in which the Attorney General defends any state department, officer, employee, or agent, neither the Attorney General nor the Governor may settle or discontinue the litigation without the approval or acquiescence of at least one legislative committee.

76. In short, the extraordinary-session legislation takes a core part of what it means to enforce and execute Wisconsin law—namely, the enforcement and execution of that law in court—and redistributes control over that quintessential executive function from the Executive Branch to the Legislative Branch, transforming that branch from the body that passes laws (as it is described to every school child around the country) into a branch that passes *and controls execution and enforcement* of those laws.

77. This transformation is unconstitutional, and for good reason. The negative practical consequences of these provisions are significant. *First*, they unavoidably introduce chaos and uncertainty, which can already be seen. They inject the Legislature as an additional client of the Attorney General in key litigation, making rational and consistent decision-making extraordinarily difficult if not impossible. *Second* (and relatedly), these provisions politicize the litigation and settlement process, turning cases into political footballs to be bounced back and forth between the Executive and Legislative Branches, and, in the process, imposing considerable and unnecessary costs on both courts and litigants alike. *Third*, they interfere with basic litigation procedure and make the prosecution of cases to conclusion much more difficult. As just one example, it is not clear how government parties will comply with orders to appear at settlement conferences with settlement authority, or how they will comply with mediation requirements. *Fourth*, and equally important, the bills concentrate in one body two independent government

functions—legislation and execution of the law—that the founding generation recognized must be kept separate to avoid tyranny.

78. It is particularly troubling that the extraordinary legislation imposes extra hurdles on the Attorney General and the Governor in situations where they wish to take the position that a given law is unconstitutional. This prevents the Executive Branch from fulfilling its key role as an independent, democratically accountable check on the Legislature should the Legislature pass an unconstitutional law.

79. These negative effects are already occurring. The Republican Legislature's legal bill for just one major piece of litigation—the redistricting challenge—has *already* cost Wisconsin taxpayers $840,000 and is "on track to cost taxpayers $3.5 million." Patrick Marley, *Gov. Tony Evers to use private attorneys after AG declines to defend lame-duck laws*, MILWAUKEE JOURNAL SENTINEL (Jan. 28, 2019), https://bit.ly/2t5OzeZ. In another lawsuit, after the Attorney General declined to represent Governor Evers, the Governor was forced to "spend up to $50,000 of taxpayer money on private attorneys" while the Legislature approved "billing taxpayers for their own private attorneys in the legal fight." *Id.* And, within weeks of the extraordinary-session bills being signed into law, top Republican lawmakers "signed off . . . on hiring" "private attorneys at taxpayer expense" to fight any lawsuits challenging the lame-duck laws, "without knowing what [that legal work] would cost." Patrick Marley, *Wisconsin GOP lawmakers seek to hire attorneys at taxpayer expense to defend lame-duck laws*, MILWAUKEE JOURNAL SENTINEL (Jan. 17, 2019), https://bit.ly/2UwOzR2. That move follows on the heels of a plan approved by the Legislature to hand Assembly Speaker Vos "carte blanche to hire attorneys for other potential lawsuits." *Id.*

80. Confusion surrounding ongoing and important litigation is also evident. After Governor Evers—consistent with longstanding executive-branch practice—withdrew the Attorney General's authority to proceed in a multi-state lawsuit targeting the Affordable Care

Act, the Attorney General responded that, as a result of the laws enacted during the extraordinary session, the Wisconsin Department of Justice "does not have statutory authority to withdraw the State from the ACA litigation absent approval from the Joint Committee on Finance." *Wisconsin Governor's Order to Leave ACA Lawsuit Rejected*, N.Y. TIMES (Jan. 24, 2019), https://nyti.ms/2G7yHRM. As a result, the Attorney General took the position that, now, only the Republican-controlled Legislature "has the power to take such action." *Id*. The same problem has also arisen in another case challenging the lame-duck laws, with the Attorney General stating that, as a result of the laws, he cannot represent the State because of an ongoing "conflict of interest." Patrick Marley, *Gov. Tony Evers to use private attorneys after AG declines to defend lame-duck laws*, MILWAUKEE JOURNAL SENTINEL (Jan. 28, 2019), https://bit.ly/2t5OzeZ. So long as the extraordinary-session laws remain on the books, that conflict remains.

II. Severely burdening the Executive Branch's ability to communicate with the public and enforce the law

81. The extraordinary legislation also contains a number of provisions that create extreme impediments to the Executive Branch's ability to publicly discuss state law, which will hamper the Executive Branch's ability to communicate with the public about legal requirements and to implement effectively the laws and regulations of the State.

82. Section 31 of Act 369 creates a broad definition of "Guidance document," which includes, with limited exceptions, "any formal or official document or communication issued by an agency" that "[e]xplains the agency's implementation of a statute or rule" or "[p]rovides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected."

83. This definition encompasses executive statements that are not laws or rules and that do not have the force of law. It includes statements that executive agencies may wish to make about what the law requires or how individuals or companies should comply with the law.

84. As a result, the definition sweeps within it much of the Executive Branch's ability to communicate with the public and with regulated persons and entities about the law. Such a broad definition would likely include, for instance, a bulletin issued by the Division of Motor Vehicles providing information about driver's license exams; a pamphlet from the Department of Public Instruction explaining how it administers funding for a particular program; a form from the Department of Children and Families stating eligibility requirements for child support; or a guide for employers about health insurance from the Department of Health Services.

85. After creating such a broad definition of "guidance document," other provisions of Act 369 then create a series of significant hurdles for any guidance document issued by an executive agency:

a. Section 38 requires executive agencies to take all of the following steps for each communication that qualifies as a guidance document:

    i. submit the proposed guidance to the legislative reference bureau

    ii. provide for a public comment period of at least 21 days before adopting the guidance

    iii. consider all public comments that are submitted

    iv. post each guidance document online

    v. allow for continued public comment on the guidance document until it is no longer in effect

b. In addition, the secretary or head of each agency must sign each guidance document to certify its compliance with these requirements. That certification

must affirm "that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated."

86. Section 38 then sets a date on which all existing guidance documents that agencies have previously adopted will be rescinded if they have not been adopted in accordance with these procedures or do not contain a specific certification signed by the secretary or head of the agency.

87. Section 38's date is set for "the first day of the 7th month beginning after the effective date of this paragraph." Because the extraordinary legislation went into effect on December 16, 2018, this provision will go into effect on July 1, 2019.

88. This means that, absent compliance or specific certification, all "formal or official document[s] or communication[s] issued by an agency" of the State of Wisconsin that "[e]xplain the agency's implementation of a statute or rule," with limited exceptions, may be rescinded in a matter of months. As noted above, this likely includes vast numbers of basic materials used to communicate to the public about the actions of government agencies, how they serve the public, how Wisconsin citizens can take advantage of public programs, and what government agencies believe are actions required to stay compliant with statutes, rules, and other regulations.

89. As but one example, Section 38 would rescind Wisconsin's handbooks on unemployment insurance and claims, which are "intended to assist employers in meeting their obligations under current Wisconsin Unemployment Insurance (UI) law," and provide claimants with "important information and instructions about . . . eligibility for benefits and how to protect . . . rights to those benefits under the Wisconsin Unemployment Insurance law." *See* https://dwd.wisconsin.gov/ui201/; https://dwd.wisconsin.gov/uiben/handbook/.

90. For every rescinded guidance document, Section 38's procedural hurdles will create a massive burden on each agency seeking to reissue those basic communications, requiring public notice and comment periods and individualized certifications for each bulletin, form, pamphlet, web site, or other document covered by Act 369's new requirements.

91. Sections 65 through 71 of Act 369 also permit litigants to challenge guidance documents in court to the same extent as rules. And Act 369 prevents the Executive Branch from seeking deference in any proceeding based on an agency interpretation of any law—a radical proposition that will upset the fundamental and well-settled principle that parties and courts are entitled to rely on the benefits of agency expertise in administrative decision-making.

92. Of course some legislative involvement in the administrative process is consistent with the principle of separation of powers. *See, e.g.*, *Martinez v. Dep't of Indus., Labor and Human Relations*, 165 Wis. 2d 687, 700, 478 N.W.2d 582 (1992) (upholding the ability of the Legislature to temporarily suspend administrative rules where there is "[t]he full involvement of both houses of the legislature and the governor."). But the burdens imposed by the Legislature on the administrative process *violate* separation of powers when they become so onerous as to prevent the Executive Branch from effectively doing its job. Taken together, the extreme procedural hurdles and the prohibition on seeking deference for agency expertise go far beyond the Legislature's appropriate role and serve the purpose not of guiding the administrative process as the Legislature might do consistently with our system of Republican government but of jamming the wheels of that process so that the public is forced to look to the Legislature, rather than to the Executive, as enforcer of the State's laws.

93. One need only consider the practical consequences of these provisions to understand the point. Inevitably, state agencies will offer less guidance on both important new rulemakings and everyday regulations, sparking increased uncertainty for regulated parties when

it comes to ordering their private arrangements. That uncertainty, in turn, will likely multiply litigation over the meaning and scope of agency regulations (now just another route to legislative control)—increasing the burden facing the already overworked state courts. At the same time, these provisions will unsettle longstanding expectations and destabilize reliance interests in ways that will chill entrepreneurial and business-side risk-taking. The legal uncertainty invited by such a regime will impose substantial costs on all stakeholders and residents in Wisconsin. *See, e.g.*, Yuval Feldman & Shahar Lifshitz, *Behind the Veil of Legal Uncertainty*, 74 LAW & CONTEMP. PROBS. 133, 133 (Spring 2011).

III. Empowering legislative committees to override executive-branch decisions

94. Numerous provisions of the extraordinary legislation prevent the Executive Branch from acting without the approval of a legislative committee, or give a legislative committee the authority to undo an action by the Executive Branch.

95. Perhaps most notably, Section 64 of Act 369 allows the Joint Committee for Review of Administrative Rules to suspend indefinitely the rules issued by Executive Branch agencies without opportunity for the Governor to veto the committee's action. This provision allows a handful of legislators on a single legislative committee to effectively change the laws of Wisconsin, undoing the procedural safeguards that the Wisconsin Supreme Court identified as "critical elements" supporting the constitutionality of the prior regime of legislative oversight. *Martinez*, 165 Wis. 2d 687, 700, 478 N.W.2d 582 (1992).

96. Additionally, several other provisions of the extraordinary legislation prevent the Executive Branch from acting without the approval of a legislative committee, or give a legislative committee the authority to undo an action by the Executive Branch:

a. Section 10 of Act 370 requires state agencies to submit plans to the joint committee on finance before engaging in a variety of regulatory actions, including seeking an

administrative waiver from federal government agencies or seeking a modification to existing administrative waivers. The joint committee then has the authority to approve or disapprove of the plan.

b. Section 16 of Act 369 requires the Department of Administration to notice the joint committee on legislative organization "of any proposed changes to security at the capitol," and provides that the department may not implement the proposed changes if the committee disapproves of them.

c. Section 87 of Act 369 requires the Wisconsin Economic Development Corporation to notify the joint committee on finance before it designates a new enterprise zone, and prohibits the corporation from designating a new enterprise zone if the committee disapproves.

d. Section 11 of Act 370 forbids the reallocation of certain funds, including emergency assistance funds, without the approval of the joint committee on finance.

97. These provisions violate the separation of powers guaranteed by the Wisconsin Constitution. The Wisconsin Constitution divides the legislative power into two bodies—the Assembly and the Senate—and gives the Governor the ability to veto legislation that passes through these two bodies. *See* Wis. Const. Art. V, § 1, § 10. But the challenged provisions of the extraordinary-session legislation allow an individual committee to change the law without going through the normal legislative process and without providing the Governor the opportunity to exercise his constitutional veto power.

98. Under these challenged provisions, individual legislative committees can take action to effectively repeal rules and regulations, thereby changing the laws that apply to the people of Wisconsin. These provisions also empower individual legislative committees to prevent the Governor or other executive-branch officers from taking actions that would otherwise be

legal. As a result, they effectively change the law that applies to the Executive Branch without going through the bicameral legislation process and without providing the opportunity for a veto.

99. These provisions therefore amount to an unconstitutional legislative veto. *See, e.g.*, *I.N.S. v. Chadha*, 462 U.S. 919, 944–59 (1983); *Martinez*, 165 Wis. 2d 687, 700, 478 N.W.2d 582 (1992). They threaten the separation of powers by undermining one of the key powers given to the Governor—the veto power.

100. These provisions also violate separation of powers by stripping the legislative power from Wisconsin's bicameral Legislature as a whole and vesting it in the hands of legislative committees. The Wisconsin Constitution requires that each house of the Legislature have "a quorum to do business," a provision designed to prevent the Legislature from wielding its power without input from a majority of its members. Wis. Const. Art. IV, § 7. These provisions violate that constitutional protection, giving a handful of legislators the authority to control the course of major governmental decisions.

CLAIMS

COUNT I

Violations of Separation of Powers under Article V of the Wisconsin Constitution — the Governor's Power and Duty to "Take Care that the Laws Be Faithfully Executed"

(Declaratory and Injunctive Relief)

101. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth here in full.

102. Wisconsin Statute § 806.04 authorizes the entry of a declaratory judgment and injunctive relief where a law is unconstitutional.

103. Article V of the Wisconsin Constitution gives the Governor the power and duty to "take care that the laws be faithfully executed." Wis. Const. Art. V, § 4.

104. It is a violation of the Wisconsin Constitution for one branch of government to "unduly burden or substantially interfere with the other branch's essential role and powers." *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360, 441 N.W.2d 696 (1989). This principle "serves to maintain the balance between the three branches, preserve their independence and integrity, and to prevent the concentration of unchecked power in the hands of one branch." *Id.* at 360–61.

105. The extraordinary legislation unduly burdens and substantially interferes with the Executive Branch's power and responsibility to take care that the laws be faithfully executed.

106. The extraordinary legislation contains numerous provisions that strip the Executive Branch of core executive powers and give those powers to the Legislature instead.

107. Among these impermissible power-stripping provisions are the provisions requiring the Legislature's approval before civil litigation may be settled or discontinued; the provisions permitting the Legislature to intervene in any action challenging the construction or validity of a statute; the provisions allowing for legislative overrides of executive action; the provisions requiring legislative approval before executive action is taken; and the provisions controlling and directing agency guidance and deference.

108. The extraordinary legislation's provisions regarding settlement and litigation authority, intervention power, legislative overrides of executive action, legislative approval before executive action is taken, and agency guidance also unduly burden the Executive Branch's constitutional powers and duties. The cumulative effect of those provisions is to render it prohibitively costly to engage in basic functions of governance.

109. Overall, the extraordinary legislation unduly burdens and substantially interferes with the Executive Branch's constitutionally assigned responsibility to faithfully execute the laws of the State of Wisconsin.

COUNT II

Violations of Separation of Powers under Articles IV and V of the Wisconsin Constitution — Impermissible Legislative Veto

(Declaratory and Injunctive Relief)

110. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth here in full.

111. Article IV of the Wisconsin Constitution vests the legislative power of the State of Wisconsin in two bodies—the Wisconsin Senate and the Wisconsin Assembly. Wis. Const. Art. IV, § 1.

112. Article V, Section 10 of Wisconsin's Constitution grants a veto power to the Governor, one "example of a constitutional check and balance" by which the Executive branch "protect[s] itself from intrusions by the other branches." *State ex rel. Kleczka v. Conta*, 82 Wis.2d 679, 709 n.3, 264 N.W.2d 539 (1978).

113. This veto power, in turn, relies on the "presentment" of any legislative action to the Governor for the potential exercise of the veto power. *Martinez*, 165 Wis. 2d at 699, 478 N.W.2d 582 (1992); *see also* Wisc. Const. Art. V, § 10.

114. The extraordinary legislation violates Article IV and V's fundamental safeguards by creating an unconstitutional legislative veto. *See, e.g.*, *I.N.S. v.* Chadha, 462 U.S. 919, 944–59 (1983). The extraordinary legislation creates numerous provisions that purport to allow a single legislative committee to take actions with the force of law that bind the Governor, the Attorney General, and Executive-Branch agencies without any opportunity for the Governor to exercise his veto.

115. For instance, Section 64 of Act 369 allows the Joint Committee for Review of Administrative Rules to suspend a rule issued by an Executive Branch agency indefinitely,

without opportunity for the Governor to veto the Committee's action. Under Section 64, if a state agency issues a rule that the Joint Committee simply does not like, it can prevent that rule from taking effect. No legal rationale or justification is necessary.

116. Additionally, Sections 26 and 30 of Act 369 allow the Legislature, either as a whole or through individual legislative committees, to disapprove a plan submitted by the Governor or Attorney General to settle or discontinue a case, or consent to an injunction, legally prohibiting the Governor or Attorney General from taking actions the Governor or Attorney General would otherwise take.

117. Similarly, Sections 16 and 87 of Act 369, and Section 10 of Act 370, allow the Legislature or a legislative committee to disapprove of planned or proposed Executive Branch actions, with the effect that the Executive Branch agency in question is legally prevented from taking that action.

118. The Wisconsin Supreme Court has upheld the use of legislative committees to set aside agency action only when the procedures used required "[t]he full involvement of both houses of the legislature and the governor," giving opportunity for the full bicameral Legislature's involvement as well as the potential exercise of the Governor's veto power. *Martinez*, 165 Wis. 2d 687, 700–01, 478 N.W.2d 582 (1992).

119. None of the provisions of the extraordinary legislation that create a legislative veto provide both for the involvement of both houses of the Legislature and the opportunity for the Governor to exercise his veto power. Nonetheless, these provisions allow legislative committees to "make permanent" their disapproval of executive action without "the formal bicameral enactment process coupled with executive action." *Id.* at 699. These provisions purport to empower legislative committees to take actions that affect the legal relations and legal obligations of the state and of private parties.

120. As a matter of course, the Executive Branch is only permitted to act in accordance with law. These provisions, however, attempt to empower the Legislature—or mere legislative committees—to issue decisions forbidding the Governor or Attorney General from taking actions that could otherwise legally be taken. In doing so, these provisions would enable the Legislature or its committees to change the legal obligations imposed on a coordinate branch of government without the full Legislature's involvement and without the potential exercise of the Governor's veto. That is an impermissible violation of the separation of powers in the Wisconsin Constitution.

COUNT III

Violations of Article IV of the Wisconsin Constitution — Legislative Action without a Quorum

(Declaratory and Injunctive Relief)

121. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth here in full.

122. Article IV of the Wisconsin Constitution vests the legislative power of the State of Wisconsin in two bodies—the Wisconsin Senate and the Wisconsin Assembly. Wis. Const. Art. IV, § 1. Article IV provides further that "a majority of each shall constitute a quorum to do business." *Id.* § 7.

123. The extraordinary legislation contains numerous provisions that enable single legislative committees—or at times only the leaders of those committees—to take legislative action without a majority of the Senate or Assembly present. All of the sections discussed under Count II—Sections 16, 26, 30, 64, and 87 of Act 369, and Sections 10 and 11 of Act 370—enable individual committees to take legislative action without a quorum of the Senate or Assembly present.

124. For instance, Sections 26 and 30 empower the Joint Committee on Finance to overturn the Governor or Attorney General's decision to settle or discontinue a lawsuit. Section 16 permits the Joint Committee on Legislative Organization to overturn Executive Branch plans regarding security controls at the capitol.

125. Section 64 of Act 369, as discussed above, empowers the Joint Committee for Review of Administrative Rules, acting alone, to suspend an agency's rule indefinitely.

126. Section 10 of Act 370, meanwhile, allows the Joint Committee on Finance—or a subcommittee that it designates for this purpose—to overturn executive agency proposals for a waiver of federal law or a "renewal, modification, withdrawal, suspension, or termination of federal law."

127. Each of these sections empowers a committee—through scheduling a meeting, through inaction, through passing a resolution, and/or through explicitly stating disapproval—in a way that prevents the executive from taking otherwise lawful action, thereby altering the legal status quo and effectively changing the laws of Wisconsin.

128. The committee actions empowered under these sections are properly understood as legislative actions. They will directly alter the rights, powers, and duties of a coordinate branch of government as well as, in some circumstances, the laws, rules, or regulations governing the public. Some of these actions will have the effect of overturning legally binding rules or actions made by the Executive Branch. These actions are properly understood as legislative acts to which Article IV's quorum requirement applies.

129. Because the quorum requirement is a procedure that "is mandated by the constitution," it is not within the Legislature's discretion to follow or ignore. *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 365, 338 N.W.2d 684 (1983). The laws creating these procedures and

attempting to use them to bind the Executive Branch are therefore "subject to judicial review." *Id.*

130. The committees that are empowered by the extraordinary session are composed of a number of members that is less than a majority of the Senate or of the Assembly.

131. The extraordinary legislation's provisions that empower committees to take binding legislative action in the absence of a quorum of legislators are therefore unconstitutional, and any actions taken by the committees pursuant to those provisions are null, void, and not binding on the people of Wisconsin or on the other coordinate branches of the State of Wisconsin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that this Court enter a judgment in their favor and against the Defendants, consisting of:

(a) A declaratory judgment pursuant to Wis. Stat. § 806.04, declaring that the various provisions of 2017 Wisconsin Act 369 and 2017 Wisconsin Act 370 identified above violate the separation of powers preserved by the Wisconsin Constitution and are therefore invalid and unenforceable.

(b) An injunction pursuant to Wis. Stat. § 806.04 and Wis. Stat. ch. 813, barring any State official from attempting to apply, implement, or enforce any of the unconstitutional provisions of 2017 Wisconsin Act 369 and 2017 Wisconsin Act 370.

(c) Such other and further relief as this Court may deem just and proper, including reasonable attorneys' fees and costs.

Respectfully submitted,

Dated: February 4, 2019

/s/ Timothy E. Hawks

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**pro hac vice admissions pending*