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POLITICS

GOP leaders go to court in support of effort to strike down Tony Evers' mask mandate

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MADISON - Republican legislative leaders went to court Friday to show support for a lawsuit against Gov. Tony Evers' statewide mask mandate after more than 17,000 people in Wisconsin tested positive in the last week and some hospitals are on the brink of being overwhelmed.

The move also came the same day President Donald Trump, who does not wear face masks regularly, tested positive for the coronavirus and officials said he would be hospitalized for a few days.

Senate Majority Leader Scott Fitzgerald and Assembly Speaker Robin Vos filed a brief on behalf of the state Legislature in support of a lawsuit brought by the conservative legal firm Wisconsin Institute for Law & Liberty that argues Evers overstepped his authority by issuing a new public health emergency over the same pandemic.

The lawsuit also seeks to immediately block Evers' indoor mask mandate, which was issued under the health emergency Republicans say was issued illegally. Legislative leaders filed a brief Friday in support of the injunction.

"Wisconsin's emergency-powers statute cannot possibly be read to justify a Governor's power to renew, unilaterally and indefinitely, a declared state of emergency caused by a single pandemic, regardless how long the pandemic lasts or how its severity changes over time," lawmakers argue in a brief in support of the motion for a temporary injunction of the order.

They made their filing the same day the Michigan Supreme Court found Gov. Gretchen Whitmer no longer had the power to issue orders to combat COVID-19 — delivering in that state what Republicans hope to achieve in Wisconsin.

Republicans who control the Wisconsin Legislature could convene at any time and vote to cancel the health emergency, and the mask mandate, but have chosen not to ahead of an election during which some members may become more vulnerable by taking such a vote.

Instead, the legislative leaders are paying private attorneys at taxpayer expense to accomplish the same goal.

Britt Cudaback, spokeswoman for Evers, said the GOP lawmakers were making the situation in Wisconsin worse.

"It's unconscionable that Republicans who haven't passed a bill in 170 days somehow mustered the will to support yet another lawsuit aimed at preventing the governor from keeping people safe," she said. "Republicans in Wisconsin have refused to take COVID-19 seriously from the beginning and continue to be unfazed by this crisis even after more than 50 reported COVID-19 deaths in three days."

Fitzgerald, Vos, and other GOP lawmakers did not immediately answer questions about the court filing.

Among the Republicans who remained mum were ones Democrats have targeted this fall, such as Rep. Jim Ott of Mequon and Rep. Rob Hutton of Brookfield.

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Attorneys for the plaintiffs in the lawsuit argue the challenge is not about the mask mandate but did not answer whether the plaintiffs were concerned about the effects on public health if the challenge successfully invalidates the mandate.

"There are legal ways the governor can exercise power within our constitutional system of government, but he has refused to do so and has refused for six months," WILL deputy counsel Lucas Vebber said in a statement.

Fitzgerald, a Republican from Juneau who is running for Congress in the 5th District, and Vos, a Republican from Rochester, successfully sued Evers earlier this year over the extension of the governor's first public health emergency that shut down thousands of businesses.

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The ruling ordered the Evers administration to issue statewide rules and policies through a process known as rulemaking, which gives a GOP-controlled legislative committee veto power over such plans.

Department of Health Services officials proposed the same plan to the rules committee in May after the stay-at-home order was knocked down and was rejected by the committee. Around the same time, Vos and a rules committee leader said they don't see a need to adopt any new guidelines for the state, despite repeatedly saying previously they were suing to block Evers' order to be able to work with him on a new plan.

Since then, Evers hasn't tried to propose new plans to the committee.

Public health officials and epidemiologists agree that while face masks do not fully prevent transmission of the coronavirus, they greatly reduce it. If the mask mandate is knocked down, public health officials worry an already bad situation will get even worse.

In the last week, 17,433 people tested positive in Wisconsin — a number only outmatched by California and Texas, which have populations four times Wisconsin's size.

And on Wednesday, 683 patients were in the hospital with COVID-19 on Wednesday, nearly double what it was two weeks earlier.

In April, surging hospitalization numbers were a bellwether for Wisconsin's highest death totals since the pandemic began. Although death totals have been level for most of September, on Wednesday officials reported a new single-day record with 27.

At ThedaCare in the Fox Valley, where hospitals have been among some of the state's hardest hit, Michael Hooker, vice president and chief medical officer for acute care, said the surge of coronavirus patients is happening much faster than they'd expected. If the trend isn't reversed, he said, it could overwhelm hospitals in as little as two weeks.

ThedaCare began to send COVID-19 patients to its Neenah facility and critical access hospitals in Berlin, Shawano and Waupaca after it ran out of room at its COVID unit in Appleton. Bellin Hospital in Green Bay was at 94% of its capacity on Tuesday. And Aspirus Healthcare in Wausau reported the same day that it has had to place some patients on a waiting list for entering the hospital.

Patrick Remington, a former Centers for Disease Control epidemiologist and director of the Preventive Medicine Residency Program at the University of Wisconsin-Madison, said using face masks helps prevent such a problem from exploding further.

"The evidence suggests that if fewer people were wearing masks there would be more transmission," Remington said.

Patrick Marley of the Milwaukee Journal Sentinel contributed to this report.

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