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**Gov. Evers’ mask mandate likely to face similar legal challenges as stay-at-home order**

By WisPolitics.com

Gov. Tony Evers’ decision to issue a statewide mask mandate could set up another legal bill over the extent of his powers to combat COVID-19. But it would be with different plaintiffs and a different composition on the state Supreme Court.

GOP lawmakers were quick to condemn Evers’ actions, calling them an unconstitutional overreach. And Assembly Speaker Robin Vos, R-Rochester, said he expects “citizen groups” to challenge the order, a hint any new suits likely won’t be filed by lawmakers.

Evers acknowledged the risk of triggering a legal challenge with the new move. But citing a rise in COVID-19 cases, he said the “piecemeal” approach of local orders isn’t working.

“I’m worried about that, too,” Evers told reporters of the possibility a court will overturn his order, which took effect Aug. 1. “But my job as governor is to put people first, to do what’s best for the people of our state, and do everything I can to keep people healthy and safe.”

Under the mandate, those 5 and older are required to wear a face covering when they’re inside or in an enclosed space, other than a private residence, and around those who aren’t members of their household.

His executive order also strongly recommends face coverings in other settings, including outdoors, when it isn’t possible to maintain social distancing.

Evers has said in recent weeks that he hesitated to issue such a mandate, because he believed Republicans would sue to overturn it and he’d lose before the state Supreme Court again.

GOP lawmakers sued after Evers’ administration issued an extended stay-at-home order this spring, and the conservative-leaning state Supreme Court in May overturned the directive in a 4-3 ruling. In that decision, conservative Justice Brian Hagedorn joined his two liberal colleagues in opposing the decision.

Writing in his dissent, the former chief legal counsel to then-Gov. Scott Walker said he didn’t believe GOP lawmakers had standing to sue.

Vos’ comments about “citizen groups” suing over the new order was a nod to that.

“It doesn’t build public support when there are questions surrounding the metrics and the constitutionality of this mandate,” said Vos, adding he supports allowing local governments to make decisions on mask mandates.

The conservative Wisconsin Institute for Law & Liberty has sued the Evers administration on several fronts during his term. The group’s president and general counsel, Rick Esenberg, said its attorneys are reviewing the order.

“Wearing a mask is courteous and smart,” Esenberg said. “But the presence of a pandemic does not negate the rule of law. Governor Evers, quite simply, lacks the legal authority to declare a second public health emergency and require every citizen to wear a mask.”

The order took effect the same day liberal Jill Karofsky replaced conservative Dan Kelly on the state Supreme Court, perhaps improving the governor’s chances if the order lands before the justices.

Kelly joined the majority in overturning the extended stay-at-home order. But Evers insisted the timing had nothing to do with the court’s composition.

“The virus is the difference. It’s not Jill Karofsky,” Evers said, adding he’s been considering the order for weeks.

The mask order comes with several exceptions such as: while eating or drinking; sleeping; swimming; if wearing one while at work would create a hazard; and if a single individual is “giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation for an audience.”

For the latter, the speaker must remain at least 6 feet away from others at all times.

There are also exemptions from the mandate for those who: have trouble breathing; are unconscious, incapacitated or otherwise unable to remove the covering without help; and are incarcerated.

The order also doesn’t cover state facilities overseen by the state Legislature or the state Supreme Court. Violations of the order, which runs through Sept. 28, are punishable by a civil fine of up to $200.

Other provisions of the order include:

* individuals are discouraged from using “medical-grade supplies” and N95 masks;
* the governor’s directive supersedes local orders that are less stringent than the state directive;
* children between the ages of 2 and 5 are encouraged to wear masks when social distancing isn’t possible, but it’s not required.

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