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FOR IMMEDIATE RELEASE
January 10, 2019

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League of Women Voters of Wisconsin Sues to Prevent Enforcement of Bills Passed During Unconstitutional “Extraordinary Session” of the Legislature

Suit Seeks to Invalidate Actions Taken During Lame-Duck Proceeding

MADISON—Today the League of Women Voters of Wisconsin, along with five other plaintiffs, filed a lawsuit in Dane County Circuit Court challenging the enforceability of the legislation adopted during an “extraordinary session” of the Wisconsin Legislature last month. The lawsuit asks the court to prevent the Wisconsin Election Commission and Governor Tony Evers from enforcing or implementing any of the provisions of the newly enacted laws. The lawsuit contends that because the Legislature unconstitutionally convened the December 2018 “extraordinary session,” all business conducted during the “extraordinary session” is void and unenforceable.

“The people of Wisconsin expect their elected officials to represent their interests transparently, and in a manner that respects the limits of the constitutional authority granted to them,” said **Erin Grunze, Executive Director of the League of Women Voters of Wisconsin**. “The adoption of and attempts to implement the legislation passed during the “extraordinary session” are unconstitutional and fundamentally undermine our democracy.”

The lawsuit was filed on behalf of three statewide civil rights organizations representing the interests of thousands of Wisconsinites: the League of Women Voters of Wisconsin, Disability Rights Wisconsin, and Black Leaders Organizing for Communities. The organizations were joined by three Wisconsin residents, union laborer Guillermo Aceves, longtime natural resources attorney and advocate Michael Cain, and former Wisconsin Assistant Attorney General John Greene. The plaintiffs allege that the Legislature unconstitutionally convened an “extraordinary session” during which it passed three bills that expand the Legislature’s powers at the expense of the executive branch of government, thereby causing the plaintiffs irreparable harm.

“We are urgently asking the court to prevent enforcement of the bills passed during the ‘extraordinary session’ to ensure the integrity of and to prevent limitations on voters’ ability to participate in the state’s spring elections,” said Grunze. “One co-equal branch of government should not be allowed to act outside its constitutional authority to the detriment of Wisconsin taxpayers and voters.”

The Wisconsin State Constitution authorizes the Legislature to convene in only two ways: by regular session or by special session called by the Governor. The Constitution does not authorize the Legislature to convene an “extraordinary session” on its own initiative. The December 2018 “extraordinary session” was convened by the Legislature through a joint resolution, not by law or special session as required by the Constitution. Therefore, the “extraordinary session” falls outside both constitutionally sanctioned categories.

In response to filing the lawsuit, lead counsel Jeffrey A. Mandell said, “The text of the Wisconsin Constitution is unambiguous. The Legislature does not have the authority to convene itself in an ‘extraordinary session.’ Because the session was unconstitutional, all business conducted during the ‘extraordinary session’ is illegal and, therefore, void. Fidelity to the Constitution is a fundamental principle of law.”

“Provisions adopted during the ‘extraordinary session’ enshrine in statute dramatic changes to Wisconsin’s Medicaid program, putting the state’s disabled community at risk and undermining our ability to effectively carry out our federally designated protection and advocacy functions,” added Kristin M. Kerschensteiner, Advocacy/Legal Services Director of Disability Rights Wisconsin. “These sweeping changes will harm disabled individuals across the state, were unlawfully adopted, and do not withstand scrutiny.”

“The changes to voting laws have an acutely harmful impact on minority communities who voted early in significant numbers in the November 2018 election,” said Angela Lang, Executive Director of Black Leaders Organizing for Communities (BLOC). “The Legislature doubled down on a strategy that a federal court already declared unconstitutional. That’s not how democracy is supposed to work.”

Guillermo Aceves, a private citizen and plaintiff in the lawsuit, commented, “As a proud member of the International Union of Operating Engineers Local 139, I know first-hand how important it is to make sure our roads and bridges are built to the highest standards, and that the workers building those roads and bridges are fairly compensated for their good work. An unconstitutional legislative session isn’t the place to make changes to the law that could affect our state’s infrastructure safety.”

Michael Cain, a private citizen who joined the lawsuit, noted, “The bills were adopted with such haste that there was not a meaningful opportunity for public input or for the legislators to assess the real impacts. As an example, the provisions dealing with agency guidance documents will result in the waste of millions of dollars of taxpayer funds and will not serve the needs of the public, applicants, or the agencies charged with efficient administration of State laws. As a taxpayer, a sportsman, and a lawyer who spent my entire career advocating for the protection of Wisconsin’s natural resources, I believe these provisions undermine longstanding priorities enshrined in Wisconsin law.”

John Greene, a private citizen, former Wisconsin Assistant Attorney General, and taxpayer-plaintiff, warned, “Provisions adopted by the Legislature during the ‘extraordinary session’ will undermine the Attorney General’s ability to represent the people of Wisconsin, protect consumers, and safeguard the environment. These laws will make litigation in which the State is involved more expensive and complex, and could reduce the amount of money the State receives from settlements. Taxpayers, the environment, and victims of consumer fraud should not be penalized by this unconstitutional legislation.”

“This lawsuit is not about partisan politics,” stated Protect Democracy’s Deana El-Mallawany, who is co-counsel in the case. “It is about upholding the rule of law and requiring the legislature to act within the constitutional constraints on its authority. Elected officials are bound by the constitution. They cannot simply ignore its limitations. When they do, the people of Wisconsin and our democracy suffer.”

“Our clients are requesting that the courts intervene to prevent a co-equal branch of government exceeding the constitutional limits on its powers. All laws passed during the extraordinary session are unenforceable because the ‘extraordinary session’ itself was unlawful under the plain language of the Wisconsin Constitution,” stated co-counsel Larry Robbins of Robbins Russell.

The complaint can be found [here](#).

The legal memorandum seeking a temporary injunction can be found [here](#).

Jeffrey A. Mandell is a partner at the law firm [Stafford Rosenbaum](#) LLP, which has offices in Madison, WI and Milwaukee, WI. Mr. Mandell is a litigator with broad trial and appellate experience in federal and state courts, including the Wisconsin Supreme Court and the U.S. Supreme Court.

Lawrence Robbins is a trial and appellate litigator who handles both criminal and complex civil litigation. Mr. Robbins has extensive experience in state and federal courts across the country, and has argued eighteen cases in the U.S. Supreme Court. He is a partner at the law firm [Robbins Russell Englert Orseck Untereiner & Sauber LLP](#), which has an office in Washington, DC.

[Protect Democracy](#) is a nonpartisan nonprofit dedicated to preventing American democracy from declining into a more authoritarian form of government.

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The League of Women Voters of Wisconsin is a nonpartisan political organization that advocates for informed and active participation in government. There are 20 local Leagues in Wisconsin. More information at lwvwi.org.
