



MEMORANDUM

TO: Minority Leader Janet Bewley
FROM: Tamara Dodge, senior coordinating attorney
DATE: October 8, 2020
SUBJECT: Status of Emergency Order #3

You have asked me about the status of Emergency Order #3, issued on October 6, 2020, by Secretary-designee Palm of the Department of Health Services. Emergency Order #3 sets limitations on the capacity of certain public gatherings in response to the COVID-19 pandemic.

Anyone who seeks to challenge the enforceability of an executive branch order of the type of Emergency Order #3—including a challenge to Emergency Order #3 that it is unenforceable under the Wisconsin Supreme Court opinion in *Wisconsin Legislature v. Palm*¹—must do so by petitioning a court to decide the enforceability of the order. Wisconsin law includes specific procedures that contemplate allowing a party to obtain relief in circumstances where it appears that the party is entitled to judgment and it is necessary to restrain the actions of the other party stop a violation of the moving party's rights.²

Thus, even if enforceability of Emergency Order #3 is questioned, the order remains in effect until one of the following occurs: 1) a court issues an order enjoining DHS from enforcing Emergency Order #3 or an order ruling the Emergency Order #3 unenforceable, 2) Secretary-designee Palm voluntarily terminates the order for any reason, or 3) the expiration date specified in the order, November 6, 2020, is reached. The filing of an action in court that challenges Emergency Order #3 does not in and of itself prevent DHS from enforcing it unless and until the court orders that DHS may not enforce Emergency Order #3. Until then, DHS may continue to enforce Emergency Order #3.

¹ *Wisconsin Legislature v. Palm*, [2020 WI 42](#).

² See, for example, Wis. Stat. 813.02 (1) (a), which sets forth the standards for obtaining a temporary injunction. A court order prohibiting an action, in this example Emergency Order #3, before the court proceedings has concluded is known as a temporary injunction. A party challenging an action requests the court to issue a temporary injunction under the procedure specified in Wis. Stat. ch. 813, which also specifies the procedures for the issuing orders of permanent injunction

I hope you have found this memorandum helpful. Please let me know if the LRB can provide any additional assistance.