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Wisconsin Supreme Court Strikes Down Governor Evers' Safer-At-Home Order

Late this afternoon, the Wisconsin Supreme Court struck down Gov. Tony Evers' Safer-At-Home Order by a vote of 4-3.

The Court ruled that the Evers' Administration exceeded its authority when State Department of Health Services Secretary Andrea Palm issued the Safer-At-Home extension through Tuesday, May 26. The action was brought by Republican state lawmakers who have pushed the state to adopt a regional approach, with more restrictions in places with higher concentrations of COVID-19 cases and fewer restrictions in areas where cases are rare. Gov. Evers argued against the regional approach, saying the virus would not respect county lines and some of the smallest counties have the least access to medical care.

The Republican challengers originally asked the Court for a six-day stay in the event the Safer-At-Home Order was stricken. This would have kept the Safer-At-Home Order in place while a new one was negotiated to replace it. But, instead, the Court decided to strike down the order effective immediately.

Wisconsin was one of 43 states to implement state-wide restrictions in response to the COVID-19 pandemic. As of Wednesday, it was one of 11 states to continue to have state-wide restrictions in place. However, Gov. Evers has issued "Turn the Dial" measures aimed at slowly removing the restrictions.

With this decision, Gov. Evers' Safer-At-Home Order is no longer in effect. However, local municipalities are free to adopt certain measures as they see fit to curb the spread of the disease. By 5:46 p.m. on Wednesday, Dane County issued an Emergency Order incorporating most of the elements of the Safer-At-Home Order, effective immediately. Milwaukee County is expected to consider a similar measure soon.

Where that leaves the rest of the state remains unanswered. The Safer-At-Home Order closed schools through June 30, ending in-person school for the remainder of the school year and placing graduation ceremonies on hold. It is unlikely the school closures will be reversed and the Wisconsin School Administrators Alliance has received a legal opinion advising that the

Wisconsin Supreme Court decision does not invalidate the portion of the Stay-At-Home Order closing schools.

The closure of private businesses, however, has been revoked (subject to local orders such as those issued by Dane County, as mentioned above). The Evers' administration could issue new stay-at-home orders, but it would need the approval of the Legislature's rulemaking committee, which is run by Republicans. While Republicans in the Legislature have not offered a specific proposal, they have embraced a plan by Wisconsin Manufacturers and Commerce which would reopen the state immediately.

At this moment, we have more questions than answers, but, rest assured your Buelow Vetter attorneys are monitoring the situation and will provide updates as they arise. Should you have any questions regarding this matter, please feel free to contact Joel S. Aziere at JAziere@buelowvetter.com or 262-364-0250 or your Buelow Vetter attorney.