

# Wisconsin state Supreme Court overturns governor's action, orders in-person voting today

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In actions that have far-reaching and ominous implications for democracy in America, both the Wisconsin state Supreme Court and the United States Supreme Court have intervened to support the demand by Republican Party officials in Wisconsin that the state conduct an in-person election today, despite the danger of coronavirus infection for any voter who goes to the polls.

The Wisconsin election is to go forward, both the Democratic presidential primary, a statewide vote for the state Supreme Court and a state referendum, and hundreds of local contests, despite the last-minute effort by Democratic Governor Tony Evers to postpone it until June. After weeks of prevaricating, Evers issued an executive order Monday to put off the in-person voting until June 9.

As of Monday, Wisconsin had 2,440 cases of coronavirus, of which 1,256 cases and 40 deaths were in Milwaukee, followed by Dane County (Madison) with 278 cases and nine deaths, Waukesha County, 160 cases and four deaths, and Kenosha County, 104 cases and one death. There is little doubt that holding a primary election with in-person voting will drive these numbers upward.

The vote is an election in name only, however. Because of the dangers of COVID-19 infection, particularly to the predominately elderly and retired people who traditionally staff polling places, there will actually be few places for voters to cast their ballots if they attempt to do so. Thousands of poll workers have refused to participate in the election because of the risk to their health.

In the entire city of Milwaukee, with a population of nearly 600,000, only five “voting stations” will be open. The city was compelled to reduce the number of polling stations from the usual 180 to five because it was essentially without poll workers. Nearly half of the 85 people who have died of coronavirus so far in Wisconsin were Milwaukee residents.

Many other cities were following suit. Green Bay, for example, cut the number of polling places from 31 to only two. Only Madison, the second-largest city and a Democratic stronghold, indicated it would open the usual number of polling places. But Mayor Satya Rhodes-Conway said, before the state

Supreme Court issued its order, “I certainly hope that anyone who has any influence on the decision recognizes again that from a public health perspective, it would be a really, really bad idea to hold the election.”

The Republican-controlled state legislature has achieved its wildest dreams: an election in Wisconsin in which voters in Milwaukee, the state's largest city, and in many other smaller cities, are effectively disenfranchised, while voters in sparsely populated rural areas, where the coronavirus is not yet a major factor, are expected to turn out. And this has been sanctioned by a 4–2 vote of the Wisconsin state Supreme Court, on a party-line vote, with one Republican, Daniel Kelly, who is up for reelection in today's ballot, recusing himself.

This travesty of democracy has been further sanctioned by the US Supreme Court, which issued a ruling, shortly after the state Supreme Court decision, overturning a federal district court decision to allow more time for voters to complete and mail in absentee ballots. By a party-line 5–4 vote, with five justices appointed by Republican presidents overruling four justices appointed by Democrats, the high court found that the lower court had exceeded its authority and that the coronavirus emergency did not justify allowing voters to mail in absentee ballots after the April 7 primary.

In his opinion, Justice Brett Kavanaugh explicitly declared that the court was not taking a position on whether the primary election should be held on April 7. That was left to be decided by the state Supreme Court. This is the opposite of the position taken by a 5–4 Republican majority on the court in the notorious 2000 decision in *Bush v. Gore*, in which the US Supreme Court overturned the decision of the Florida state Supreme Court to allow a statewide recount to continue because all voters, under the Florida state constitution, had the right to have their votes counted.

“The Court's order requires absentee voters to postmark their ballots by election day, April 7—i.e., tomorrow—even if they did not receive their ballots by that date. That is a novel requirement,” Justice Ruth Bader Ginsburg wrote in her dissent of the 5–4 decision, adding, “the Court's order, I fear, will result in massive disenfranchisement.”

The US Supreme Court overturned the ruling made by District Judge William Conley, for the Western District of Wisconsin, which would have required counting absentee ballots mailed later than April 7 provided they were received by April 13, the legal deadline. Nearly 600,000 absentee ballots mailed to voters at their request have not yet been returned. Some 11,000 ballots had not yet been mailed out Monday morning to the voters who requested them. Given the disruption caused by the coronavirus epidemic, it is likely that tens if not hundreds of thousands of ballots will not be postmarked by April 7 and those votes will be disqualified.

In issuing Executive Order #74 to postpone the April 7 vote, Governor Evers cited language in the state Constitution which allows him to take extraordinary action which “he or she deems necessary for the security of persons and property.” The two top state Republicans, Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald, immediately filed suit with the state Supreme Court, accusing Evers of “unconstitutional overreach.”

Evers had dithered over whether to go ahead with the election, even after 11 other US states with votes scheduled between March 24 and mid-May had either postponed their elections or switched to mail-ballot-only to allow voters to observe social distancing rules aimed at curbing the coronavirus infection. On Sunday, the mayors of nine Wisconsin cities, including Milwaukee and Madison, appealed to the state’s Department of Health Services to ban in-person voting Tuesday on health grounds.

After initially claiming he had no legal authority to postpone the vote, Evers issued the executive order Monday, with his spokesman saying conditions had changed because of the pandemic: “This is an unprecedented situation in our state’s history, and thus this is not even really a choice, but a need in order to protect personal security to not allow in-person voting tomorrow.”

The election is now supposed to go forward, putting the lives of hundreds of thousands of people needlessly at risk. President Trump voiced his approval for the court’s decision, writing on Twitter, “The Wisconsin Supreme Court ruled that tomorrow’s election will proceed as scheduled. VOTE for Justice Daniel Kelly tomorrow, and be safe!”

In an interview with the *Washington Post*, Lois Frank, 57, the village clerk of tiny Cambria, located in rural eastern Wisconsin, spoke of the danger clerks like her will face tomorrow. “We’re going to be on the front lines just like the health care workers, I just personally know a lot of clerks that do have health risks, myself included.”

No in-person primaries have been held in the US since March 17 when Florida, Arizona and Illinois voters risked their lives waiting hours to vote in crowded understaffed polling stations. In the declaration accompanying his executive order, Evers compared the infection rates between Michigan and Ohio to explain why the elections needed to be postponed.

Michigan currently has 17,221 confirmed cases of COVID-19 and 727 deaths, while Ohio reports 4,400 cases of COVID-19 with 142 deaths so far. Ohio actually has a larger population, and the two states are comparable in the social devastation and poverty of former industrial centers like Detroit, Cleveland and Youngstown. But Michigan held a presidential primary on March 10, in which some 1.4 million people voted, while Ohio canceled its scheduled in-person voting on March 17.

This past Saturday Evers had called a special session of the legislature to take up his belated request to postpone the primary until May 19 and to convert the election to an entirely mail-in election. The Republican-dominated assembly gavelled in and out of the special session in less than 20 seconds without taking up the governor’s request.

In addition to the Democratic presidential primary contest between Joe Biden and Bernie Sanders, the April 7 elections features the aforementioned supreme court race between Kelly and current Dane County Circuit Judge Jill Karofsky, as well as hundreds of contests for county board, school board and municipal judges.

The *Milwaukee Journal Sentinel* reported that up to 7,000 poll workers had already made it known that they were not going to violate Evers “stay-at-home” order by working the polls. According to Evers’ own executive order, the city of Waukesha, with a population of nearly 73,000 people, would have had one available polling station. But limiting the number of stations exacerbates the danger of spreading the infection, since it insures longer lines at the polls.

Evers and the GOP had sought a deal to “protect” poll workers, many who are older and at higher risk of falling ill, floating a proposal to replace the older poll workers with younger ones. When this proposal, unsurprisingly, found few volunteers, Evers decided to call up soldiers from the Wisconsin National Guard to needlessly endanger themselves by manning the few polling stations that will be available.



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