

212 East Washington Avenue, Third Floor
Post Office Box 7984
Madison, WI 53707

TONY EVERS, in his official capacity as Governor of the State
of Wisconsin,
State Capitol—Room 115 East
Madison, WI 53702

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Courthouse, 215 S. Hamilton Street, Madison, Wisconsin 53703, and to Plaintiffs' attorney, whose address is Stafford Rosenbaum LLP, 222 West Washington Avenue, Suite 900, P.O. Box 1784, Madison, Wisconsin 53701-1784. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A Judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call 608-266-4678 (TDD 266-4625) and ask for the Court ADA Coordinator.

Dated: January 10, 2019.

Electronically signed by Jeffrey A. Mandell
Jeffrey A. Mandell (State Bar No. 1100406)
Kurt M. Simatic (State Bar No. 1083460)
STAFFORD ROSENBAUM LLP

Deana K. El-Mallawany*
Ben Berwick*
Kristy Parker*
Jessica Marsden*
THE PROTECT DEMOCRACY PROJECT, INC.

Lawrence S. Robbins*
Carolyn Forstein*
Wendy Liu*
ROBBINS, RUSSELL, ENGLERT, ORSECK,
UNTEREINER & SAUBER LLP

Attorneys for Plaintiffs

* *Pro hac vice* applications forthcoming

Addresses:

STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
Post Office Box 1784
Madison, Wisconsin 53701-1784
Email: jmandell@staffordlaw.com
ksimatic@staffordlaw.com
608.256.0226

THE PROTECT DEMOCRACY PROJECT, INC.
10 Ware Street
Cambridge, MA 02138
Email: deana.elmallawany@protectdemocracy.org
ben.berwick@protectdemocracy.org
kristy.parker@protectdemocracy.org
jessica.marsden@protectdemocracy.org
202.579.4582

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
Email: lrobbins@robbinsrussell.com
cforstein@robbinsrussell.com
wliu@robbinsrussell.com
202.775.4500

capacity as Interim Administrator of the Wisconsin
Elections Commission,
212 East Washington Avenue, Third Floor
Post Office Box 7984
Madison, WI 53707

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the State of Wisconsin,
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Defendants.

COMPLAINT

Plaintiffs, by and through their attorneys, Stafford Rosenbaum LLP; The Protect Democracy Project; and Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, for their Complaint against Defendants, allege and state as follows:

This suit asserts that 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370, as well as the confirmation of 82 nominees to positions on various State authorities, boards, councils, and commissions, are unenforceable. Because the legislative session (“the December 2018 Extraordinary Session”) during which the underlying bills were adopted and nominees were confirmed was not convened in accord with the Wisconsin Constitution, the Legislature acted *ultra vires*. Accordingly, the December 2018 Extraordinary Session was unlawful and the actions taken at that session are without legal force.

INTRODUCTION

Wisconsin courts are “charged at all times with the support of the Constitution.” *State v. Hess*, 2010 WI 82, ¶39, 327 Wis. 2d 524, 785 N.W.2d 568 (quoting *Weeks v. United States*, 232 U.S. 383, 392 (1914)). That charge imposes upon the judiciary a “duty of ensuring the legislature does not exceed its constitutional powers.” *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶69, 383 Wis. 2d 1, 914 N.W.2d 678 (R.G. Bradley, J., concurring). “[A]s the constitutional body vested with the power to say ‘what the law is,’ the judiciary evaluates a statute for its fidelity to the constitution, and ‘an act of the legislature, repugnant to the constitution, is void.’” *Id.*, ¶84 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). It is the “court’s duty to resolve disputes regarding the constitutional functions of different branches of state government . . . notwithstanding the fact that the case involves political considerations or that final judgment may have political consequences.” *State ex rel. Wis. Senate v. Thompson*, 144 Wis. 2d 429, 436-37, 424 N.W.2d 385 (1988).

This case addresses fundamental limitations on the Legislature’s authority under the Wisconsin Constitution. As one of three co-equal branches of Wisconsin government, the Legislature must always conduct legislative business within the constraints set forth in the Constitution. Here, the Legislature failed to do so. Shortly after a statewide election in which Wisconsin voters elected new candidates to replace incumbent-candidates for the statewide offices of Governor, Attorney General, and Treasurer, the Legislature, acting at the direction of the Assembly Committee on Assembly Organization and the Senate Committee on Senate Organization (“Organizing Committees”), convened the December

2018 Extraordinary Session to consider proposals limiting the powers of the Governor- and Attorney General-elect.

The Legislature lacked legal authority to convene the December 2018 Extraordinary Session. Neither the Wisconsin Constitution nor any statute authorizes the Legislature, let alone a small subset of each chamber acting at the direction of its respective Organizing Committee, to convene itself in an “extraordinary session.” Both Organizing Committees purported to act pursuant to Joint Rule 81(2)(a). But the Legislature’s Joint Rules, adopted by a joint resolution of the Legislature, do not have the force of law. *State ex rel. Martin v. Zimmerman*, 233 Wis. 16, 288 N.W. 454, 456 (1939). This is a crucial distinction, because the Constitution authorizes the Legislature “to meet” in only two circumstances: “at such time as shall be provided by law” and when “convened by the governor in a special session.” Art. IV, § 11. Because the December 2018 Extraordinary Session does not fall within either category, the Legislature exceeded its constitutional authority by convening the session. Thus, it follows that all legislative business conducted during the December 2018 Extraordinary Session is *ultra vires* and, therefore, unenforceable.

As set forth below, this Complaint seeks both a declaration that the laws and confirmations resulting from the December 2018 Extraordinary Session are unenforceable and an injunction preventing the application, implementation, or enforcement of any legislative action taken as part of the December 2018 Extraordinary Session.

PARTIES

1. Plaintiff The League of Women Voters of Wisconsin (“LWVWI”) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of

Wisconsin with its principal office located at 612 West Main St., Suite 200, in the City of Madison, Dane County, Wisconsin. LWVWI works with and through 20 local Leagues around Wisconsin. LWVWI is part of The League of Women Voters of the United States, which has 700 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Hong Kong. LWVWI works to expand informed, active participation in state and local government, giving a voice to all Wisconsinites.

2. Plaintiff Disability Rights Wisconsin (“DRW”) is a statewide nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin. DRW maintains offices across the state of Wisconsin, including in Madison, Menasha, Milwaukee, and Rice Lake, with its principal office located at 131 West Wilson Street, Suite 700, in the City of Madison, Dane County, Wisconsin. DRW’s mission is to address the issues facing, and to ensure the rights of, all people with disabilities in the State of Wisconsin. DRW is regularly involved in policy and legal advocacy related to identified priority civil rights issues for people with disabilities, including concerns around community integration, inclusion, dignity, equal rights, and access to public health services and benefits. DRW has a multi-member board of directors and mental health advisory council, including among their members persons with disabilities, who have significant input into DRW’s goals and objectives. DRW is a member of the National Disability Rights Network and is designated by the Governor of the State of Wisconsin to act as the congressionally mandated protection and advocacy system for Wisconsin citizens with disabilities, pursuant to Wis. Stat. § 51.62, 29 U.S.C. § 794e, 42 U.S.C. §§ 15041, *et. seq.*, and 42 U.S.C. §§ 10801, *et. seq.* Pursuant to these laws, DRW has a state and federal

mandate to protect and advocate for the rights of persons with disabilities in Wisconsin, including persons with developmental disabilities, mental illness, traumatic brain injury, and other persons with disabilities through the pursuit of administrative, legal, and other appropriate remedies. As Wisconsin's protection and advocacy system, DRW oversees self-advocacy training and other programs and services to assist persons with disabilities in accessing vocational rehabilitation training and employment services; securing or regaining gainful employment; securing election access, including registering to vote, casting a vote, and accessing polling places; investigating allegations made by persons with disabilities who have been subject to abuse or neglect; and, as appropriate, pursuing legal remedies—including in this case—on behalf of DRW's constituents.

3. Plaintiff Black Leaders Organizing for Communities ("BLOC") is a project of Center for Popular Democracy and CPD Action. BLOC maintains its principal office at 3427 W. St. Paul Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin. BLOC mobilizes Black Wisconsinites to participate at all levels of government and encourages communities of color to fulfill their potential for electoral impact in Milwaukee. As part of its work, BLOC educates the Black community in Milwaukee about voter eligibility rules, voter ID requirements, the importance of voting, and the opportunity for early voting.

4. Plaintiff Guillermo Aceves is a natural person residing at 409 Burr Street, in the Village of Clinton, Rock County, Wisconsin. Mr. Aceves works as a heavy equipment operator. He is employed by Arbor Green, Inc., a contractor that engages in heavy and highway construction projects let and overseen by the Wisconsin Department of

Transportation. Mr. Aceves is an active member of the International Union of Operating Engineers Local 139. Mr. Aceves is a Wisconsin taxpayer.

5. Plaintiff Michael J. Cain is a natural person residing at 5010 Bayfield Terrace, in the City of Madison, Dane County, Wisconsin. Until his retirement, Mr. Cain spent his career—more than 34 years—serving as an attorney for the Wisconsin Department of Natural Resources (“DNR”). During his career, Mr. Cain served under seven Governors and seven Secretaries of DNR, from varying political parties and with varying policy priorities. Mr. Cain maintains a strong interest in conserving Wisconsin’s natural resources and in promoting efficient, effective governance in Wisconsin. Mr. Cain is a Wisconsin taxpayer.

6. Plaintiff John S. Greene is a natural person residing at 1926 Keyes Avenue, in the City of Madison, Dane County, Wisconsin. Mr. Greene spent the vast majority of his career—more than 25 years—serving as an attorney for the State of Wisconsin at the Wisconsin Department of Justice. During his career, Mr. Greene served under four Governors and five Attorneys General, from varying political parties and with varying policy positions. Mr. Greene’s work included extensive practice in the areas of environmental law, consumer protection, and criminal appeals. Mr. Greene maintains a strong interest in environmental, justice, and governance issues in Wisconsin. Mr. Greene is a Wisconsin taxpayer.

7. Defendant Dean Knudson is Chair of the Wisconsin Elections Commission. He is sued in his official capacity.

8. Defendant Jodi Jensen is Vice Chair of the Wisconsin Elections Commission. She is sued in her official capacity.

9. Defendant Julie M. Glancey is Secretary of the Wisconsin Elections Commission. She is sued in her official capacity.

10. Defendants Beverly Gill, Ann S. Jacobs, and Mark L. Thomsen are Commissioners of the Wisconsin Elections Commission. They are sued in their official capacities.

11. Defendant Meagan Wolfe is Interim Administrator of the Wisconsin Elections Commission. She is sued in her official capacity.

12. Defendant Tony Evers is Governor of the State of Wisconsin. He is sued in his official capacity. Many of the actions relevant to this action were taken by his predecessor, Scott R. Walker, in his official capacity as Governor of the State of Wisconsin.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 753.03, which provide for subject matter jurisdiction over all civil matters within this state.

14. Defendants, as state officers, are subject to this Court's jurisdiction. *See Lister v. Bd. of Regents of Univ. Wis. Sys.*, 72 Wis. 2d 282, 303, 240 N.W.2d 610 (1976).

15. Venue is proper in Dane County because it is the county where the claims arose. Wis. Stat. § 801.50(2)(a).

RELEVANT LEGAL AUTHORITY

16. Article IV, Section 11 of the Wisconsin Constitution provides that the Legislature may meet to conduct business in only two circumstances: “at such time as shall be provided by law” and when “convened by the governor in a special session.”

17. Article IV, Section 17, subsection (1) of the Wisconsin Constitution establishes that “[n]o law shall be enacted except by bill.”

18. Under this definition, the only meetings of the Legislature that have been enacted by bill, and are thus “provided by law,” are those set forth in Wis. Stat. § 13.02, which sets forth the methods by which the Legislature may convene “regular sessions” to conduct legislative business.

19. “Special sessions,” by contrast, are those meetings of the Legislature convened by the Governor under authority expressly conferred in Article IV, Section 11 and Article V, Section 4 of the Wisconsin Constitution.

20. Neither the Wisconsin Constitution nor any other law grants authority to the Legislature to convene and conduct legislative business in an “extraordinary session.”

21. The only purported authority for the Legislature to convene an “extraordinary session” to conduct legislative business appears in Joint Rule 81(2)(a).

22. Joint Rule 81(2)(a), however, was adopted by a joint resolution of the Legislature, not “by bill,” and, therefore, is not “provided by law.”

23. The distinction between a joint resolution and a bill is a long-standing one, and joint resolutions do not have the force of law. *See, e.g., Zimmerman*, 288 N.W.2d at 456.

24. Furthermore, Article IV, Section 7 of the Wisconsin Constitution provides that “a majority of each [house] shall constitute a quorum to do business, but a smaller number may adjourn from day to day.”

25. The Organizing Committees that directed the Legislature to convene the December 2018 Extraordinary Session do not constitute a quorum of the Legislature.

THE DECEMBER 2018 EXTRAORDINARY SESSION

Preparations

26. On Friday, November 30, 2018, the Assembly Committee on Assembly Organization voted to convene the December 2018 Extraordinary Session at 10:00 a.m. on December 3, 2018.

27. On Friday, November 30, 2018, the Senate Committee on Senate Organization voted to convene the December 2018 Extraordinary Session at 10:00 a.m. on December 3, 2018.

28. Late in the afternoon on Friday, November 30, 2018, the Assembly Committee on Assembly Organization introduced five bills for consideration during the December 2018 Extraordinary Session and referred them to the Joint Committee on Finance. The bills were numbered Assembly Bill (“AB”) 1069, AB 1070, AB 1071, AB 1072, and AB 1073.

29. Also late in the afternoon on Friday, November 30, 2018, the co-chairs of the Joint Committee on Finance noticed both a public hearing on and an executive session for consideration of AB 1069, AB 1070, AB 1071, AB 1072, and AB 1073, as well as their Senate companion bills, to be held on Monday, December 3, 2018.

The First Day

30. On Monday, December 3, 2018, at 11:57 a.m., the Senate was called to order for the December 2018 Extraordinary Session. At 11:58 a.m., the Senate, by unanimous consent, adjourned its floor proceedings for the December 2018 Extraordinary Session to the following day.

31. On Monday, December 3, 2018, at 12:37 p.m., the Assembly was called to order for the December 2018 Extraordinary Session. At 12:38 p.m., the Assembly adjourned its floor proceedings for the December 2018 Extraordinary Session of the Assembly to the following day.

32. Also on Monday, December 3, 2018, the Legislature's Joint Committee on Finance held a public hearing on the five Assembly bills introduced on November 30. The Joint Committee on Finance also introduced Senate companion bills to the Assembly bills pending before the Committee. The Senate companion bills were numbered Senate Bill ("SB") 883, SB 884, SB 885, SB 886, and SB 887, and corresponded to AB 1069, AB 1070, AB 1071, AB 1072, and AB 1073, respectively.

33. At the conclusion of the Joint Committee on Finance's public hearing—after approximately 12 hours of public testimony—the Committee went into executive session. During that executive session, in the early morning hours of Tuesday, December 4, 2018, on a 12-4 party-line vote, the Joint Committee on Finance recommended passage of three Assembly bills and their Senate companions: AB 1069/SB 883, AB 1070/SB 884, AB 1072/SB 886.

The Second Day

34. On Tuesday, December 4, 2018, the Assembly and the Senate reconvened in the December 2018 Extraordinary Session to consider the bills recommended by the Joint Committee on Finance.

35. The Senate adopted, on a party-line vote of 18-15, Senate Amendment 1 to SB 883. After a total of approximately 8 minutes of floor debate, the Senate passed SB 883, as amended, by a party-line vote of 18-15 at approximately 5:30 p.m. The Senate immediately messaged SB 883, as amended, to the Assembly and recessed into closed party caucuses.

36. The Senate reconvened at approximately 9:36 p.m. on Tuesday, December 4, 2018. The Senate tabled Senate Substitute Amendment 1, which would have replaced the full text of SB 886, and recessed back into closed party caucuses. At approximately 10:15 pm, the Senate reconvened and adopted, on a party-line vote of 18-15, Senate Substitute Amendment 2, which replaced the full text of SB 886. After a total of approximately 30 minutes of floor debate, the Senate adopted SB 886, as amended, by a party-line vote of 18-15 at approximately 10:45 p.m. The Senate immediately messaged SB 886, as amended, to the Assembly and recessed into closed party caucuses.

37. On Wednesday, December 5, 2018 shortly after midnight, the Assembly concurred in SB 886, as adopted by Senate, after a total of approximately 73 minutes of floor debate. The vote, which fell largely along party lines, was 62-35.

38. On Wednesday, December 5, 2018 at approximately 4:30 a.m., the Assembly concurred in SB 883, as adopted by the Senate, after a total of approximately 17 minutes of floor debate. The vote, which fell largely along party lines, was 57-27.

39. The Senate reconvened at approximately 5:48 a.m. on Wednesday, December 5, 2018. The Senate adopted, on a party-line vote of 18-15, Senate Substitute Amendment 1, which replaced the full text of SB 884. After a total of approximately 14 minutes of floor debate, the Senate passed SB 884, as amended, by a largely party-line vote of 17-16 at approximately 6:02 a.m. The Senate immediately messaged SB 884, as amended, to the Assembly.

40. On Wednesday, December 5, 2018 at approximately 8:20 a.m., the Assembly concurred in SB 884, as adopted by the Senate, after a total of approximately 120 minutes of floor debate. The vote, which fell largely along party lines, was 62-33.

Additional Proceedings

41. Also during the December 2018 Extraordinary Session, on the afternoon of December 4, 2018, the Senate confirmed *en masse* 82 gubernatorial nominees to various State authorities, boards, councils, and commissions. The party-line vote to confirm the gubernatorial nominees *en masse* was 18-15.

42. These nominations came up for Senate consideration at the December 2018 Extraordinary Session in two ways. First, on Monday, December 3, 2018, the Senate President withdrew the nominations of individuals to serve on various State authorities, boards, councils, and commissions that had not been acted upon in various Senate committees during the regular session and referred them to the Senate Committee on Senate

Organization. Second, that same day, then-Governor Walker released a significant number of nominees, none of whom had previously been publicly announced, to serve on various State authorities, boards, councils, and commissions; these new nominations were also referred to the Senate Committee on Senate Organization. The Senate Committee on Senate Organization, acting later on Monday, December 3, 2018, on a party-line 3-2 vote, placed all 82 nominations on the Senate calendar for a floor vote as part of the December 2018 Extraordinary Session the following day.

43. Two of the bill drafts initially proposed on November 30, 2018—AB 1071/SB 885 and AB 1073/SB 887—were not brought to the floor of either chamber for debate or a vote during the December 2018 Extraordinary Session. An additional bill passed by the Assembly during the December 2018 Extraordinary Session was not concurred in by the Senate.

Adjournment

44. On Wednesday, December 5, 2018 at 7:43 a.m., the Senate adjourned the December 2018 Extraordinary Session.

45. On Wednesday, December 5, 2018 at 8:22 a.m., the Assembly adjourned the December 2018 Extraordinary Session

Gubernatorial Approval

46. On Thursday, December 13, 2018, then-Governor Walker called for SB 883, SB 884, and SB 886.

47. The following day, early in the afternoon, then-Governor Walker signed all three bills in a public signing ceremony.

48. The bills were published on December 15, 2018, as 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370, respectively.

49. On information and belief, subsequent to the *en masse* confirmation vote on Tuesday, December 4, 2018, as part of the December 2018 Extraordinary Session, then-Governor Walker issued commissions to the nominees who had been confirmed to serve on various State authorities, boards, councils, and commissions.

HARMS TO PLAINTIFFS

50. Plaintiffs either have suffered or anticipate suffering irreparable harm, much of it immediate, as a result of actions taken by the Legislature as part of the December 2018 Extraordinary Session.

51. LWVWI, BLOC, and DRW are harmed by Section 1K of 2017 Wisconsin Act 369, which “changes the time during which in-person absentee voting is permitted.” Wisconsin Legislative Council, *Amendment Memo: Senate Bill 884, Senate Substitute Amendment 1* at 3, <https://docs.legis.wisconsin.gov/2017/related/lcamendmemo/sb884.pdf> (Dec. 11, 2018). Under Section 1K, “in-person absentee voting may occur from 14 days preceding the election to the Sunday preceding the election, but cannot occur on a legal holiday.” *Id.* These restrictions on early voting limit the opportunities for voter participation in Wisconsin elections, thereby harming Wisconsin voters who would otherwise have broader opportunities to participate in elections and impairing LWVWI, BLOC, and DRW in fulfilling their charge of expanding or making voter participation in elections more accessible. Section 1K will necessitate that BLOC divert scarce resources from other activities central to its mission to instead educate canvassers and voters on

changes to the law governing early voting in Milwaukee. In addition, Section 1K will limit the opportunities for electoral participation for people with disabilities, thereby impairing DRW's ability to fulfill its federal mandate of securing election access for Wisconsinites with disabilities, including by ensuring they can register to vote, access polling places, and cast a vote. These restrictions will further require DRW to divert its resources away from its proactive efforts to assist people with disabilities and instead devote more of its limited time and financial resources to ensuring constituents can exercise their franchise rights.

52. LWVWI and BLOC are further harmed by Sections 91-95 of 2017 Wisconsin Act 369, which codify “the DOT petition process contained in DOT administrative rules permitting an individual who does not possess otherwise required documentation to obtain a state identification card for voting by providing secondary documentation or through other verification.” *Id.* at 2. This codification perpetuates a defective system and prevents eligible voters from participating in Wisconsin elections, thereby impairing LWVWI and BLOC in fulfilling their missions of expanding voter participation and diverting their resources from expanding voter participation to assisting individuals in navigating the defective petition process to obtain temporary IDs that will allow them to exercise their franchise rights.

53. LWVWI and BLOC are further harmed by all three laws adopted during the December 2018 Extraordinary Session—and indeed by the December 2018 Extraordinary Session itself—in that the Legislature convened to conduct business unconstitutionally, which undermines public confidence in the Wisconsin government and thereby impairs

LWVWI and BLOC's missions to promote transparent governance and inspire Wisconsinites to become more involved in State government.

54. DRW and its constituents are harmed by Section 10 of 2017 Wisconsin Act 370, which requires an express legislative mandate before the Wisconsin Department of Health Services may “submit[] a request to a federal agency for a waiver or a renewal, modification, withdrawal, suspension, or termination of a waiver of federal law or rules, or for authorization to implement a pilot program or demonstration project.” Legislative Fiscal Bureau, *December 2018 Extraordinary Session Bills as Passed by the Legislature* at 29-30, http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0002_december_2018_extraordinary_session_bills_as_passed_by_the_Legislature_12_6_18.pdf (Dec. 6, 2018). By curtailing the Wisconsin Department of Health Services' authority to efficiently and effectively advance such waiver programs, Section 10 frustrates DRW's ability to informally and effectively work in collaboration with the State executive agency that most directly affects the lives of people with disabilities in Wisconsin, interferes with DRW's ability to fulfill its statutory mandate as Wisconsin's protection and advocacy system to pursue administrative remedies that protect the rights of people with disabilities, and forces DRW to divert resources from its proactive efforts to assist people with disabilities and instead devote more of its limited time and financial resources to advocating for and advancing terms of Medicaid waiver programs in a manner beneficial to its constituency.

55. DRW and its constituents are also harmed by the codification, in 2017 Wisconsin Act 370, of a Medicaid waiver program approved by the federal Centers for

Medicare and Medicaid Services on October 31, 2018, but not yet implemented. *See id.* at 38-39. Cementing the terms of a waiver in statute impedes DRW from pursuing and achieving informal, cost-effective administrative modifications benefiting persons with disabilities and frustrates DRW's efforts to fulfill its statutory mandate as Wisconsin's protection and advocacy system. In addition, DRW anticipates that the inflexibility created by codification of waiver programs will harm it and its constituents by necessitating that DRW divert resources from its proactive efforts to assist people with disabilities and instead devote more of its limited time and financial resources to investigating and addressing the unintended harms to people with disabilities that arise during the implementation and enforcement of the waiver.

56. DRW and its constituents are harmed by specific provisions in the newly codified Medicaid waiver that will have detrimental effects on people with disabilities. This includes drug screening and testing requirements, *see id.* at 33-36, the imposition of work requirements, *see id.* at 38, and the creation of a new monthly premium for Medicaid-eligible individuals, *see id.* at 38-39, all of which impose new threshold requirements for Medicaid-eligible people with disabilities to access the Medicaid services to which they are entitled. Each of these requirements will disproportionately harm DRW's constituents and could lead to more people with disabilities being denied Medicaid coverage. For that reason, these provisions frustrate DRW's ability to achieve its mission, impair DRW's ability to fulfill its statutory mandate as Wisconsin's protection and advocacy system, and will require DRW to divert its resources away from its proactive efforts to protect people with disabilities' access to Medicaid services and opportunities for gainful employment

and instead devote more of its limited time and financial resources to assisting these individuals in accessing coverage and investigating claims.

57. DRW and its constituents are harmed by Section 13 of 2017 Wisconsin Act 370, which requires legislative approval before the Wisconsin Department of Health Services may seek federal approval for proposed amendments to Wisconsin’s Medicaid program “if the estimated fiscal effect of the proposed plan amendment . . . is greater than \$7,500,000 from all revenue sources in the 12-month period following its implementation date.” *Id.* at 32. The increased time and complexity associated with the adoption of state Medicaid plan amendments will harm DRW’s constituents because many amendments may go unadopted or may not be adopted in a timely manner. The increased time and complexity associated with the adoption of State Medicaid plan amendments will also require DRW to divert its resources from its proactive efforts assisting people with disabilities and instead devote more of its limited time and financial resources to advocating for statutory amendments to the State Medicaid plan in a manner advantageous to people with disabilities in Wisconsin.

58. DRW also anticipates that it and its constituents will also be harmed by Section 38 of 2017 Wisconsin Act 369, which imposes new limitations on agency guidance documents. As summarized by the Legislative Fiscal Bureau, these provisions “[e]stablish various requirements with respect to the adoption and use of guidance documents by agencies, including requirements that agencies must comply with in order to adopt guidance documents.” *Id.* at 12. This section also provides that, “as of six months after the bill’s effective date any guidance document that does not comply with the requirements in

the bill is considered to be rescinded.” *Id.* at 13. As Wisconsin’s protection and advocacy system, DRW has, over 40 years, identified legal issues that people with disabilities confront and has successfully worked with State agencies to develop appropriate administrative responses. Many of those responses have been memorialized in agency guidance documents, which ensure that, when the same issue arises for different individuals and/or in different areas of the State, the response is efficient, effective, and consistent. The anticipated rescission and amendment of guidance documents will impair DRW’s ability to fulfill its federal mandate as Wisconsin’s protection and advocacy system by making it more difficult for DRW to achieve efficient, effective, and consistent results for people with disabilities who face common challenges under Wisconsin law, and will require DRW to divert resources to ensuring that newly adopted, amended, or rescinded guidance documents do not harm people with disabilities’ access to Medicaid and other services upon which they rely.

59. Each of the above-described provisions of 2017 Wisconsin Act 369 and 2017 Wisconsin Act 370 will harm not only DRW as an organization, but also the constituents DRW is mandated to protect as Wisconsin’s protection and advocacy system. These provisions are likely to injure DRW’s constituents disproportionately because the provisions will likely frustrate their access to Medicaid services, hamper their participation in the electoral process, and impair the efficient and effective development and adoption of new and innovative Medicaid waiver programs and State Medicaid plan amendments that would provide access to programs and services designed to enhance the lives of people with disabilities.

60. The implementation of 2017 Wisconsin Act 370 will likely harm DRW, which will be impaired from seeking timely redress of systemic issues that routinely arise in the administration of State Medicaid programs, resulting in an increase in the number of Medicaid services denials DRW's constituents face and limiting DRW's ability to resolve these issues for people with disabilities as a group, thereby requiring DRW to litigate claims individually. As the protection and advocacy system for people with disabilities receiving Medicaid services in Wisconsin, DRW will likely be required to expend more of its limited staff time and financial resources participating in Medicaid hearings before State agencies and litigating these issues in court.

61. DRW and its constituents will be harmed as a result of Sections 35 and 80 of 2017 Wisconsin Act 369, which eliminate judicial deference to certain agency interpretations, decisions, and orders and will create uncertainty; discourage the consistent application of the laws agencies are charged with enforcing; encourage litigation; and result in increased costs to administrative agencies and the Department of Justice, which is tasked with representing administrative agencies. As a result, DRW will be forced to divert resources away from its protection and advocacy function in order to defend its constituents' claims in administrative and judicial review proceedings.

62. DRW will be harmed by the enforcement of the provisions included in 2017 Wisconsin Act 370, because they could further delay the implementation of amendments to the state Medicaid Purchase Plan ("MAPP") program that have been approved by the legislature. Delay of the MAPP amendments affect the ability of some of DRW's

constituents to gain access to Medicaid coverage because changes to the medical needy monthly income limits have not yet been implemented.

63. Mr. Aceves anticipates being harmed by Section 17 of 2017 Wisconsin Act 368, which limits the use of federal funds for large transportation projects “to not less than 70% of the aggregate federally eligible project components.” *Id.* at 8. Specifically, Act 368 “would require the DOT to expend federal moneys on not less than 70% of the aggregate project components eligible for federal funding each fiscal year for the following project types: (a) southeast Wisconsin freeway megaprojects; (b) major highway development projects; and (c) state highway rehabilitation (SHR) projects with a total cost of less than \$10 million.” *Id.* As summarized by the Legislative Fiscal Bureau, these provisions “limit the number of projects subject to federal requirements associated with the use of federal highway aid (such as federal prevailing wage or environmental requirements).” *Id.* Mr. Aceves’s employer, Arbor Green, Inc., is a woman-owned business and a Disadvantaged Business Enterprise (“DBE”) program certified contractor. The DBE program is intended to increase participation of woman-owned businesses in transportation projects. The DBE program applies only to those Wisconsin Department of Transportation (“DOT”) projects using federal funds. As a result of the funding limitations in Section 17, fewer Wisconsin DOT projects will be eligible to participate in the DBE program, resulting in fewer contract opportunities for Arbor Green, and by extension, work opportunities for Mr. Aceves. Mr. Aceves will lose the opportunity to work on federally regulated projects. He will also lose the protections that come with the Davis-Bacon Act prevailing wage requirements and the Copeland Act, which also apply only to those Wisconsin DOT projects using federal funds.

For these reasons, Mr. Aceves anticipates that 2017 Wisconsin Act 368 will result in him having less work and lower overall earnings.

64. Mr. Cain and Mr. Greene, as taxpayers, anticipate being harmed by Section 38 of 2017 Wisconsin Act 369, which imposes new limitations on agency guidance documents and will result in the illegal disbursement of tax revenues associated with the increased costs arising out of the implementation of new or revised guidance documents. The provisions of Section 38 “[e]stablish various requirements with respect to the adoption and use of guidance documents by agencies, including requirements that agencies must comply with in order to adopt guidance documents.” *Id.* at 12. This section also provides that, “as of six months after the bill’s effective date any guidance document that does not comply with the requirements in the bill is considered to be rescinded.” *Id.* at 13. Mr. Cain and Mr. Greene, as taxpayers, will be injured as a direct result of the enforcement of 2017 Wisconsin Act 369, because they anticipate that many guidance documents will not be brought into compliance with these provisions within the six-month period they mandate and will be subject to rescission. As a result, State agencies will be precluded by law from using or relying on these documents, impairing their efficiency in administering those provisions of Wisconsin they are charged with enforcing, undermining consistency in the administration of State agency programs, and hindering the effective training of State agency staff. Mr. Cain and Mr. Green also. In addition, State agencies will be required to expend significant taxpayer funds to review and modify existing guidance documents for compliance with 2017 Wisconsin Act 369. These provisions will impose additional costs on State agencies, which will cause pecuniary loss to Mr. Cain and Mr. Greene as

taxpayers. In addition, Mr. Cain anticipates that these provisions will cause significant disruption and delay to State agencies' processing of permit applications, because implementation will require technical staff to divert their efforts from processing permit applications and instead focus on implementing the provisions contained in 2017 Wisconsin Act 369.

65. Mr. Cain and Mr. Greene, as taxpayers, are further harmed by Sections 35 and 80 of 2017 Wisconsin Act 369, which eliminate judicial deference to certain agency interpretations, decisions, and orders and will result in the illegal disbursement of tax revenues associated with the increased costs to agencies to enforce and defend administrative rules and orders. As summarized by the Legislative Fiscal Bureau, these provisions “[p]rohibit a court from according deference to agency interpretations of law in certain proceedings and prohibit agencies from seeking deference in any proceeding to agency interpretations of law.” *Id.* at 12. These provisions will create uncertainty and encourage litigation, resulting in injury and pecuniary loss to Mr. Cain and Mr. Greene, as taxpayers, due to the increased costs borne by administrative agencies and the Department of Justice, which is tasked with representing administrative agencies.

66. Mr. Greene, as a taxpayer, anticipates being harmed by Section 27 of 2017 Wisconsin Act 369, which, as summarized by the Legislative Fiscal Bureau, mandates that “DOJ must deposit all settlement funds into the general fund” and provides that, for settlement “monies to be appropriated as directed by the court or settlement agreement, the Legislature would need to enact legislation.” *Id.* at 16. As a taxpayer, and based on his experience as a former Wisconsin Assistant Attorney General, Mr. Greene anticipates that,

by precluding the Attorney General from committing the State to specific uses of settlement funds, this provision will prevent the Attorney General from entering into settlements financially advantageous to the State and will discourage opposing parties from negotiating settlement agreements with the State. These provisions will result in injury and pecuniary loss to Mr. Greene, as a taxpayer, because of the additional expenses associated with increasing the State's litigation load and attendant costs. In addition, this provision will result in injury and pecuniary loss to Mr. Greene due to the increased costs associated with seeking statutory authorization to expend settlement funds, which are sometimes received in multiple payments over long periods of time on an irregular basis, thereby necessitating numerous legislative enactments related to the settlement of a single case and potentially jeopardizing the State's ability to comply with the terms of a settlement agreement. The failure of the Legislature to enact legislation implementing the terms of a settlement would impose additional costs on the State by jeopardizing the settlement and requiring additional costly legal proceedings.

67. Mr. Greene, as a taxpayer, anticipates being harmed by Sections 5, 7-8, and 28-29 of 2017 Wisconsin Act 369, which authorize the Legislature to intervene and participate alongside the Attorney General in litigation involving the State. *See* Wisconsin Legislative Council, *Amendment Memo: Senate Bill 884, Senate Substitute Amendment 1* at 4-7, <https://docs.legis.wisconsin.gov/2017/related/lcamendmemo/sb884.pdf> (Dec. 11, 2018). These provisions will result in increased costs to the State, including the substantial expense of hiring of private counsel to represent legislative entities when they seek to intervene in litigation. Based on his extensive experience as a Wisconsin Assistant

Attorney General, Mr. Greene anticipates that these provisions will result in injury and pecuniary loss to him, as a taxpayer, due to the additional costs associated with increased and more complex litigation.

68. Mr. Greene, as a taxpayer, anticipates being harmed by Section 30 of 2017 Wisconsin Act 369, which requires the Attorney General to consult with the Legislature before settling any litigation involving the State, even in those instances where the Legislature has not intervened and is not a named defendant. *See id.* at 7-8. This provision will impede and delay settlements by the Attorney General, is likely to deter parties from negotiating settlements with the State, and will likely preclude the State from entering into financially beneficial settlements. Based on his extensive experience as a Wisconsin Assistant Attorney General, Mr. Greene anticipates that this provision will result in injury and pecuniary loss to him, as a taxpayer, due to the increased costs associated with decreasing the incidence of settlement and increasing costs to the State.

69. Mr. Cain and Mr. Greene, as taxpayers, are harmed by the disbursements of tax revenues to implement and enforce unlawfully adopted statutes. Mr. Cain and Mr. Greene are similarly harmed by the disbursement of tax revenues to pay salaries, benefits, per diems, and expense reimbursements to individuals serving on various state authorities, boards, councils, and commissions who were not lawfully appointed to those positions.

70. All Plaintiffs are harmed to the extent that the laws adopted in the December 2018 Extraordinary Session alter the status quo that existed prior to the passage and enactment of those laws.

71. At least some of the harms that Plaintiffs have suffered or will suffer are irreparable and cannot be addressed through any other adequate remedy at law

CAUSE OF ACTION
Declaratory Judgment and Injunctive Relief against Defendants

72. Plaintiffs restate and re-allege paragraphs 1 through 71 above as if fully set forth herein.

73. Wisconsin Statute § 806.04 authorizes entry of a declaratory judgment and injunctive relief where a law is unenforceable.

74. Legislative and executive actions inconsistent with the Wisconsin Constitution are unenforceable.

75. The December 2018 Extraordinary Session exceeded the Wisconsin Constitution's limitation on legislative authority as set forth in Article IV, Section 11 and additionally violated the quorum requirement of Article IV, Section 7 because the Legislature convened the December 2018 Extraordinary Session without obtaining approval from a majority of the Legislature's members.

76. 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370 violate the Wisconsin Constitution because the underlying bills—SB 883, SB 884, and SB 886—were passed during the December 2018 Extraordinary Session and not during a constitutionally valid session of the Legislature authorized by Article IV, Section 11 or convened in accord with the quorum requirement of Article IV, Section 7.

77. The Senate confirmations of 82 nominees during the December 2018 Extraordinary Session exceeded the Wisconsin Constitution's grant of legislative authority

as set forth in Article IV, Section 11 and additionally violated the quorum requirement of Article IV, Section 7 because the Legislature did not obtain approval to convene the December 2018 Extraordinary Session from a majority of the Legislature's members.

78. Commissions issued to each of the 82 nominees confirmed by the Senate on Tuesday, December 4, 2018 violated the Wisconsin Constitution because the underlying nominations were confirmed during the December 2018 Extraordinary Session and not during a constitutionally valid session of the Senate authorized by Article IV, Section 11 or convened in accord with the quorum requirement of Article IV, Section 7.

79. Accordingly, 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370, as well as the 82 nominations confirmed by the Senate during the December 2018 Extraordinary Session, are unenforceable.

80. Plaintiffs have no adequate remedy at law and have been or will be irreparably harmed by the application, implementation, and/or enforcement of these legislative actions taken as part of the December 2018 Extraordinary Session.

81. On this basis, Plaintiffs seek the relief detailed below.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request the following relief:

A. Enter a declaratory judgment, pursuant to Wis. Stat. § 806.04, that 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370 are unenforceable.

B. Enter a declaratory judgment, pursuant to Wis. Stat. § 806.04, that the 82 nominees to various authorities, boards, councils, and commissions confirmed by the Senate during the December 2018 Extraordinary Session are without legal effect;

C. Enter an injunction, pursuant to Wis. Stat. ch. 813, barring any State official from attempting to apply, implement, or enforce any actions taken by the Legislature at the December 2018 Extraordinary Session, including any provision of 2017 Wisconsin Act 368, 2017 Wisconsin Act 369, and 2017 Wisconsin Act 370 or the confirmation of 82 nominees to various State authorities, boards, councils, and commissions;

D. Order any other relief as the Court deems just and equitable.

Dated: January 10, 2019.

Electronically signed by Jeffrey A. Mandell
Jeffrey A. Mandell (State Bar No. 1100406)
Kurt M. Simatic (State Bar No. 1083460)
STAFFORD ROSENBAUM LLP

Deana K. El-Mallawany*
Ben Berwick*
Kristy Parker*
Jessica Marsden*
THE PROTECT DEMOCRACY PROJECT, INC.

Lawrence S. Robbins*
Carolyn Forstein*
Wendy Liu*
ROBBINS, RUSSELL, ENGLERT, ORSECK,
UNTEREINER & SAUBER LLP

Attorneys for Plaintiffs

* *Pro hac vice* applications forthcoming

Addresses:

STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
Post Office Box 1784
Madison, Wisconsin 53701-1784
Email: jmandell@staffordlaw.com
ksimatic@staffordlaw.com
608.256.0226

THE PROTECT DEMOCRACY PROJECT, INC.
10 Ware Street
Cambridge, MA 02138
Email: deana.elmallawany@protectdemocracy.org
ben.berwick@protectdemocracy.org
kristy.parker@protectdemocracy.org
jessica.marsden@protectdemocracy.org
202.579.4582

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
Email: lrobbins@robbinsrussell.com
cforstein@robbinsrussell.com
wliu@robbinsrussell.com
202.775.4500