EXTRAORDINARY SESSIONS OF THE WISCONSIN LEGISLATURE

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In December 2018, the Wisconsin Legislature convened in extraordinary session, weeks after State Superintendent of Public Instruction Tony Evers defeated incumbent Governor Scott Walker in the general election. The legislation that came out of this post-election, extraordinary session sparked considerable opposition, and several lawsuits were subsequently filed, challenging the manner in which the session was called and the content of the legislation enacted. In one of these cases, *League of Women Voters v. Evers*, the plaintiffs challenged the constitutionality of the December 2018 Extraordinary Session.[1] The plaintiffs argued that the Wisconsin Constitution does not provide the legislature the authority to convene itself into extraordinary session and that, therefore, all gubernatorial appointments confirmed and legislation passed during the December 2018 Extraordinary Session were void. The Wisconsin Supreme Court ultimately ruled that the legislature does indeed have the authority to convene itself in extraordinary session, stating:

> We hold that extraordinary sessions do not violate the Wisconsin Constitution because the text of our constitution directs the Legislature to meet at times as "provided by law," and Wis. Stat. §13.02(3) provides the law giving the Legislature the discretion to construct its work schedule, including preserving times for it to meet in an extraordinary session. The work schedule the Legislature formulated for its 2017–2018 biennial session established the beginning and end dates of the session period and specifically contemplated the convening of an extraordinary session, which occurred within the biennial session.[2]

With this decision, the Wisconsin Supreme Court affirmed for the first time the legislature's power to call itself into extraordinary session throughout the biennial session, something the legislature has done dozens of times over the past four decades, most recently to deal expeditiously with various bills, including the 2021–23 biennial budget bill, and to consider a full veto override. The ruling all but ensures that this powerful tool will continue to be used by the legislature for decades to come.

This article summarizes the Wisconsin Legislature's authority to convene in extraordinary session, explains how these sessions are called and conducted, and briefly examines similar powers in other states. In addition, the article traces

the origins of extraordinary sessions and highlights some of the most notable extraordinary sessions that have been held.

Before turning to this discussion, it is helpful to understand the basic contours of Wisconsin's legislative schedule. The Wisconsin Legislature is a full-time, biennial body that convenes for the first time in January of each odd-numbered year. Typically, the legislature meets in regular session throughout the odd-numbered year and through the first few months of the even-numbered year before adjourning the regular session until the inauguration date of the next succeeding legislature. However, the legislature may meet in special or extraordinary session at any time throughout the biennium. The purpose of special and extraordinary sessions is typically to focus attention on important public policy matters or to address unfinished business after the the last general-business floorperiod ends. Unlike a special session, which is called for and guided by the governor, an extraordinary session is initiated by members of the legislature. For more information on special sessions, see page 422.

Authority to convene in extraordinary session

Extraordinary sessions, unlike special sessions, are not explicitly authorized by the constitution or the statutes.[3] However, as the Wisconsin Supreme Court confirmed in *League of Women Voters*, the authority for the legislature to convene in extraordinary session can be traced to Wis. Const. art. IV, § 11. That section provides that "[t]he legislature shall meet at the seat of government *at such time as shall be provided by law*, unless convened by the governor in special session . . . " (emphasis added).[4] The only law relating to meetings of the legislature is Wis. Stat. § 13.02, which requires the legislature to meet annually and to convene on the first Monday of January in each odd-numbered year. The law further requires the Joint Committee on Legislative Organization (JCLO) to meet early in each biennial legislative term to develop a work schedule for the biennium to be submitted to the legislature as a joint resolution.[5] The law requires this work schedule to include at least one meeting in January of each year.

Accordingly, the Wisconsin Legislature adopts a joint resolution at the beginning of each biennium that lays out the session schedule. Typically adopted as Senate Joint Resolution 1, the schedule establishes start and end dates for several "floorperiods,"[6] and specifies that days not scheduled for floorperiods are designated for committee work. Every adopted session schedule (beginning with the first such schedule, adopted for the 1971–72 biennium) has also provided for the legislature to convene "extraordinary" sessions—i.e., meetings other than the scheduled, regular session floorperiods. For example, the 2023 session schedule states:

> Unless reserved under this subsection as a day to conduct an organizational meeting or to be part of a scheduled floorperiod of the legislature, every day of the biennial session period is designated as a day for committee activity and is available to extend a scheduled floorperiod, convene an extraordinary session, or take senate action on appointments as permitted by joint rule 81.[7]

This language, along with a clause establishing the end of the biennial session period as the inauguration date of the next succeeding legislature, ensures that an extraordinary session may be convened at any time throughout the biennium.[8]

Since 1977, extraordinary sessions have also been provided for in the joint rules adopted at the beginning of each session. These rules define extraordinary sessions and lay out various procedures for convening them.[9] Additionally, Joint Rule 81 (3) (a) mirrors the language in the session schedule by providing that any day of the biennial session not reserved by the session schedule for an organizational meeting or scheduled floorperiod may be assigned to an extraordinary session. Extraordinary sessions may be held concurrently with regular session floorperiods or special sessions, per longstanding legislative custom and practice. In other words, in a single calendar day, the senate or the assembly can, and often does, meet on the floor in extraordinary session as well as in regular or special session.

Process for convening an extraordinary session

The joint rules, as well as the assembly and senate rules, provide that an extraordinary session may be called at the direction of a majority of the members of the organization committees of each house or by the passage of a joint resolution approved by a majority of the elected membership in each house (not merely those present to vote).[10] The joint rules also permit extraordinary sessions to be called by joint petition of a majority of the members elected to each house. However, virtually all extraordinary sessions held over the last four decades have been called by the organization committees of each house.[11]

The joint rules also provide that action in an extraordinary session is limited to the business "specified in the action by which it is authorized."[12] The extraordinary session call may include broad subjects or specific proposals or amendments, identified by bill or resolution number or even by LRB draft number. During an extraordinary session, new bills may be considered and so may previously introduced bills. In addition, any new bills are numbered in the same sequence as regular session bills. This differs from a special session, in which only new bills, numbered as special session bills, may be considered. For extraordinary sessions called after the adjournment of the last general-business floorperiod,[13] the date on

which all regular session bills are adversely disposed of, the call may revive a bill to the same stage of the legislative process it had attained before that date.[14] In other words, a bill that had already been passed by one house during the regular session would not need to be reconsidered by that house in an extraordinary session.

In the following example, the senate's call for the April 2018 Extraordinary Session, the call references an introduced bill and an unintroduced substitute amendment to the bill and also revives the bill to its status at the conclusion of the regular session:

> In accordance with Joint Rule 81 (2) and Senate Rule 93, it is moved that the Committee on Senate Organization authorize the Legislature to meet in Extraordinary Session beginning at 9:00 A.M. on Wednesday, April 4, 2018, solely for the consideration of Assembly Bill 947, and a substitute amendment to Assembly Bill 947: LRBs0436. This bill shall be considered to be at the same stage of the proceedings as it had attained during the regular session.[15]

The legislature may also expand the purpose of an extraordinary session at any time by supplementing the call, using any of the methods permitted for convening an extraordinary session.[16]

Extraordinary session legislative procedures

As previously noted, during an extraordinary session, only bills and amendments germane to the call may be considered, with limited exceptions.[17] The joint rules further state that proposals may be introduced only by the following committees: JCLO, the Joint Committee on Employment Relations, the organization committee of either house, or "any committee of either house authorized to do so by the rules of that house."[18] The senate and assembly rules authorize introduction of proposals by each house's respective committee on finance, as well as the Joint Committee on Finance; the assembly rules also authorize the Assembly Committee on Rules to introduce proposals.[19]

The senate and assembly rules provide that the procedures for regular sessions apply also to extraordinary sessions, subject to a number of modifications.[20] These modifications serve generally to expedite the legislative process during extraordinary sessions and are the same modifications provided for special sessions. For example, under the senate rules, notice for extraordinary session committee meetings need only be posted on the legislative bulletin board; under the assembly rules, notice need only be posted on the bulletin board and on the legislative website.[21] Further, the senate and assembly rules both provide that, during an extraordinary session, proposals may be referred to the day's calendar and taken up immediately and that a calendar does not have to be provided.[22]

Other modifications affect floor debate during extraordinary sessions. Both houses prohibit motions to postpone proposals.[23] To advance a proposal to a third reading or to message it to the other house, both houses require only a simple majority vote of those present.[24] In the assembly, in almost all cases, motions to reconsider must be taken up immediately.[25] In the senate, any point of order must be decided within an hour.[26] Together, these modifications allow bills to be taken up on a legislative day, amended, passed, and messaged to the other house on the same legislative day.

Each house's rules also provide that procedural modifications may be adopted for a specific extraordinary session.[27] This has happened only a few times. Most notably, when the senate and assembly organization committees adopted motions convening the April 2020 Extraordinary Session to address the COVID-19 pandemic, they also adopted a number of special procedures to account for the fact that the session would be a primarily virtual meeting and to accelerate the usual extraordinary session procedures even further.[28] For example, the rule modifications required that all amendments be introduced by 9:00 a.m. on the day of the session and also prohibited members from offering privileged resolutions during the session.

Finally, the session schedule adopted at the beginning of the legislature's biennial session typically provides that a motion adopted in each house to adjourn an extraordinary session pursuant to the session schedule constitutes final adjournment of the extraordinary session.[29] In other words, when the senate and the assembly want to end an extraordinary session, they adjourn pursuant to Senate Joint Resolution 1. Unlike special session bills which die at the adjournment of the session, any bill which does not receive final action in the extraordinary session remains available for consideration, either in a regular session floorperiod or in another extraordinary session.

Other states

The power of the Wisconsin Legislature to convene itself in an unscheduled session is not unique. According to the National Conference of State Legislatures, 36 state legislatures have this power.[30] Comparing this power across legislatures is difficult, as the limitations for convening such a session (called an extraordinary or special session, depending on the state) vary and often depend in part on parliamentary custom and practice as well as case law. However, it is safe to conclude that the Wisconsin Legislature's extraordinary session power is unusually broad and is more frequently used than in other states.

For one, most of the 36 state legislatures that have the power to convene extraordinary or special sessions must do so via a petition, poll, or written request

of a specified majority of their members. The Wisconsin Legislature is one of only a handful in which certain legislative leaders can convene the session without such input from all members.[31] Out of the same group of 36 legislatures, the Wisconsin Legislature is one of only eight that operate on a full-time basis.[32] Most of the remaining, part-time legislatures adjourn *sine die* once they have concluded legislative business.[33] In addition, although several state legislatures have the power to convene themselves into session after *sine die* adjournment, they do not typically allow bills to be revived after that time.[34] Finally, some of the legislatures that have the power to convene extraordinary or special sessions have never attempted to hold such a session concurrently with a regular session floorperiod as the Wisconsin Legislature frequently does.[35]

In short, the Wisconsin Legislature maintains a relatively unique power to convene itself by a variety of means at any time throughout the biennial term and exercises this power more frequently than other state legislatures.

Origins of the extraordinary session

Extraordinary sessions have been provided for in the biennial session schedule since the very first such schedule was adopted in 1971. However, the origins of the extraordinary session go back much further. The original Wisconsin Constitution provided for an annual legislature that was authorized to meet once a year "at such times as shall be provided by law" unless it was convened by the governor.[36] The 1849 statutes established that "[t]he regular annual session of the legislature shall commence on the second Wednesday in January each year."[37] For the first four decades of the state's history, the legislature met in regular session for only a few months at the beginning of its term before adjourning *sine die* for the remainder of the year.[38]

In 1881, Wisconsin voters approved a constitutional amendment establishing a biennial instead of an annual session but limiting the biennial legislature to meeting "once in two years, and no oftener," unless convened by the governor.[39] News articles from the time indicate that support for the measure derived primarily from a belief that biennial sessions, and therefore biennial general elections, would be more economical.[40] Following this constitutional change, Chapter 153, Laws of 1882, amended the session language in the statutes to provide that the regular session would commence "on the second Wednesday of January of the year 1883 and biennially thereafter upon the same day and month."[41] Neither the amended constitution nor the statutes limited the length of the regular session, but together, they effectively required that the regular session be continuous once convened.[42]

Unlike Wisconsin, many other states had a constitutional or statutory provision providing for what was known as a bifurcated or split session, which allowed

the legislature to adjourn for a long period of time during the regular session and then reconvene.[43] Without this split session option, in the decades following the 1881 constitutional amendment, the Wisconsin Legislature would typically meet in a continuous session from January of the odd-numbered year until early summer of the same year and then adjourn *sine die*. The legislature would remain dissolved until the swearing in of the next succeeding legislature a year and a half later, unless called into special session by the governor.[44]

This schedule resulted in a number of problems for the legislature. First, the legislature had to make decisions on fiscal matters for the entire biennium using estimates of revenue calculated at the very beginning of the biennium. Second, if the governor vetoed a bill after the legislature had adjourned *sine die*, the legislature was unable to review the governor's action and consider veto overrides. Third, the legislature was often unable to enact revisor's correction bills, which would then need to wait until the next session.[45] Finally, the schedule was grueling for legislators. Although most sessions wrapped up by early summer, some continued into the fall.[46] Not only did the legislature remain in a single, continuous session without a long break, but also Wis. Const. art. IV, § 10 prevented either house from adjourning for more than three days without the consent of the other house.[47] As such, the legislature would typically meet in floor sessions every week, sometimes holding skeletal sessions on Mondays and Fridays so legislators could travel home to their districts.[48] The legislature would also regularly adopt joint resolutions recessing for a week or so, further prolonging the length of the session.[49]

Several proposals to remedy these issues were considered throughout the first few decades of the 20th century—including proposals to provide for a split session—but none of them passed.[50] However, beginning in the 1943 session, the Wisconsin Legislature began regularly adjourning for very long periods prior to final adjournment, essentially splitting the session.[51] The 1943 legislature, in a show of animosity to Governor Walter Goodland, adopted a joint resolution in August 1943 adjourning until January 12, 1944.[52] Additionally, the joint resolution provided the legislature flexibility to promptly reconvene before January 12, 1944, if necessary to address the "present war emergency," by a call of a special joint committee of the legislature.[53] Some alleged that in addition to providing for legislative review of the governor's actions, this move would prevent the governor from calling a WWII-related special session in which he alone could determine the subject matter of legislation to be considered.[54] Although no occasion arose prompting the legislature to call itself back into session before January 12, it marked the first time that such an option was agreed to.[55]

This practice of splitting the regular session by adjourning for prolonged

periods continued for the remainder of the 1940s and throughout the 1950s.[56] These adjournments were effected by joint resolutions, sometimes referred to as "recess resolutions." These recess resolutions specified the date the legislature would reconvene and for what limited purpose, although the legislature did not always adhere to the recess resolution's scope once reconvened.[57] Typically, the legislature would adopt a recess resolution in early summer of the odd-numbered year and then reconvene in the fall, often for the purpose of considering executive vetoes and appointments as well as revisor's correction bills.[58] These long recesses and later meetings with a limited focus, often called "recessed sessions" or "adjourned sessions," were an attempt to maintain a continuous session to comply with the "once in two years, and no oftener" restriction in article IV, section 11, while allowing for greater legislative flexibility and oversight.[59] Following the final recessed session in the fall, the legislature would adjourn *sine die* until the start of the next legislative session.

During the gubernatorial terms of Democrats Gaylord Nelson (1959–62) and John Reynolds (1963–64), an additional session schedule issue came to the fore. For almost the entire duration of these terms, Republicans held a majority in both houses of the legislature. At that time, gubernatorial appointments requiring the advice and consent of the senate were assumed to not need legislative review once the legislature had adjourned the regular session *sine die*.[60] To prevent the governor from making objectionable interim appointments, the 1961 and 1963 legislatures did not adjourn *sine die* and instead adjourned once the business of the session was complete via a joint resolution permitting the legislature to reconvene on the morning of the final day of the legislative session.[61] By doing so, the legislature sought to retain the senate's ability to reject gubernatorial appointments throughout the entire biennial session.[62] Notably, the 1961 and 1963 recess resolutions contained provisions similar to the 1943 provision that permitted the regular session to resume earlier than the specified reconvening date; now, however, an earlier resumption would be effected by a majority petition of members, rather than by the call of a special joint committee.[63]

In 1964, Governor Reynolds challenged one of the 1963 legislature's prolonged recesses as a violation of article IV, section 11. In particular, the governor alleged that when the legislature adjourned from August 6 to November 4, 1963 (which he claimed was an attempt to block his appointments), it was not a legitimate recess but was instead a *sine die* adjournment.[64] In the resulting *State ex rel. Thompson v. Gibson*, the Wisconsin Supreme Court upheld the power of the legislature to "recess" without violating article IV, section 11, stating that, "one single session may be interrupted by recesses, and validly continue after a recess as long as such recesses can be said to be taken for a proper legislative purpose."[65] With

this ruling, the court affirmed that a session could still be continuous in spite of the legislature's well-established practice of interrupting the session with long recesses. However, the court did not address whether a continuous session could stretch into the even-numbered year.

In an effort to codify what was already taking place, the 1965 Wisconsin Legislature adopted on first consideration 1965 Assembly Joint Resolution 5, which proposed amending article IV, section 11, so as to permit the legislature to meet in regular session more than once in two years, leaving regular session schedule requirements to be "provided by law" alone.[66] Those who advocated for the change saw it as the first step in officially permitting the legislature to meet again in the second year of the biennium after adjourning in the first year, something that it was already in the practice of doing. In addition to allowing for more legislative oversight of gubernatorial vetoes and appointments, those in favor of permitting annual meetings of the legislature argued that they would allow for greater flexibility in handling the state's finances.[67] Additionally, the move to annual meetings was in line with the nationwide trend at that time.[68] Those opposed to the change argued that annual meetings would result in higher state spending because legislators would face "prolonged exposure" to "pressure group influences," as well as an increase in legislative salaries, which some feared would serve to attract "professional politicians."[69] The 1967 legislature adopted the proposal on second consideration in a near-unanimous vote as 1967 Assembly Joint Resolution 15, and in April 1968 the amendment was ratified in a decisive 670,757 to 267,997 vote.[70]

During the 1965, 1967, and 1969 sessions, as the constitutional amendment was being considered, the legislature continued the practice of remaining in session throughout the biennium and adjourning for long periods via joint resolutions that also provided for the legislature to convene at an earlier date via majority petition of the members of each house.[71] Notably, the 1969 recess resolution provided for the first time that the organization committees of the two houses could also convene the legislature in advance of the scheduled reconvening date via majority petition of the members of each committee.[72]

The 1969 legislature considered several bills to officially establish an annual meeting schedule under the ratified constitutional amendment, but none of them passed. The following session, the legislature enacted Chapter 15, Laws of 1971, in a bipartisan vote, which provided for annual meetings and created the requirement that JCLO meet early in each biennium to develop a work schedule to be submitted to the legislature as a joint resolution. The session schedule was seen by many legislators to be more significant than the annual meetings provision, as it would bring a higher degree of order and predictability to the

legislative process. Rupert H. Theobald, head of the Legislative Reference Bureau at the time, stated that he hoped the work schedule would solve the problem that "once a session starts, no one knows how to end it."[73] The law further stated that any measures introduced in the odd-numbered year of the biennium would carry over into the even-numbered year.

As the legislature was considering this session schedule requirement, it concurrently considered and adopted its first session schedule, 1971 Senate Joint Resolution 21. The session schedule more or less mirrored the pattern that had already been established: three floorperiods in 1971 and one floorperiod followed by a three-day veto review period in 1972. The session schedule also provided that additional floorperiods could be called between the scheduled floorperiods by adoption of a joint resolution or by a majority of the members of each house and that, after the adjournment of the veto review period (on March 10, 1972), additional floorperiods could be called by a majority petition of the members of each house or by a majority petition of the members of the organization committee of each house. The session schedule referred to these extra floorperiods as "extraordinary sessions" and limited them to the issues specified in the action by which they were authorized.[74] This concept of extraordinary sessions was essentially a codification of what recent recess resolutions had already been providing for, and was so unremarkable that news articles describing this first session schedule did not mention the provision at all.[75]

The 1977 Joint Rules, adopted as 1977 Assembly Joint Resolution 23, were the first joint rules to explicitly mention extraordinary sessions. The analysis for Assembly Joint Resolution 23 explained that the rule changes pertaining to extraordinary sessions and the session schedule incorporated "the standard provisions previously adopted every two years as part of the session schedule." The joint rules, since 1977, and every session schedule, from 1971 on, have provided for extraordinary sessions. In 1983, both houses amended their respective rules to establish the same accelerated procedures for extraordinary sessions that they had already established for special sessions.[76]

Extraordinary sessions, 1980–present

The first extraordinary session was convened in January 1980, nine years after extraordinary sessions were first provided for in the session schedule. On January 3, 1980, the senate and assembly organization committees, both with Democratic majorities, voted to convene in extraordinary session at 10 a.m. on January 22 to consider 22 bills related to "crime and energy."[77] On January 15, Republican Governor Lee Dreyfus issued a proclamation to convene a special session at 9:30 a.m. on January 22, 30 minutes before the start of the planned extraordinary

session, to consider four additional crime measures he claimed the legislature was trying to bury.[78] Assembly Speaker Edward Jackamonis called the action an "intrusion into the legislative process."[79]

In response, the assembly and senate rules committees blocked the special session bills offered by Governor Dreyfus.[80] When the assembly convened in special session on January 22, Republicans tried to pull the governor's measures from committee but the vote failed. At 10 a.m., Assembly Majority Leader James Wahner rose to the point of order that the hour of 10 a.m. having arrived, the assembly was in extraordinary session.[81] Speaker Jackamonis ruled Majority Leader Wahner's point of order well taken and that a regular session or an extraordinary session called by the legislature takes precedence over a special session called by the governor.[82] By a 59–36 vote, the assembly upheld the decision of the chair, then it recessed the special session and commenced its first extraordinary session. The senate likewise refused to let the governor's bills reach the floor for debate, in a 21–11 party-line vote, and promptly adjourned the special session to convene the extraordinary session.[83] The legislature went on to enact 16 of the bills considered during the January 1980 Extraordinary Session; no special session bills were enacted.[84]

The next six extraordinary sessions were far less dramatic, dealing primarily with ratifying collective bargaining contracts and considering time-sensitive legislation and veto overrides. The next extraordinary session to garner significant media attention was held in June 1988. The legislature, controlled by Democrats, held a one-day extraordinary session primarily for the purpose of adopting 1987 Senate Joint Resolution 71 to limit the governor's partial veto power. Specifically, the measure proposed amending the Wisconsin Constitution to specify that in approving an appropriation bill in part, the governor could not create a new word by striking individual letters in the words of the enrolled bill, a move that had been dubbed the "Vanna White Veto."[85] This extraordinary session convened three weeks after the Wisconsin Supreme Court ruled in *State ex rel. Wisconsin Senate v. Thompson* that such a veto did not violate the constitution.[86]

Ten years and three extraordinary sessions later, the legislature called for an extraordinary session in April 1998, following a special election that gave Republicans control of the senate. Now in control of both houses and the governor's office, Republicans considered 116 bills during the extraordinary session on a variety of topics that they had delayed addressing until after the election.[87] The extraordinary session was held concurrently with a special session called by Governor Tommy Thompson. In total, nearly 100 of the bills considered during the April 1998 Extraordinary Session were ultimately enacted, the most of any session to date.

A total of seven extraordinary sessions were held during the 2003–04 legislative session, the most of any biennial term to date. The Republican-controlled legislature convened extraordinary sessions to address a number of issues about which they were at odds with Democratic Governor Jim Doyle.[88] Most notably, the legislature called an extraordinary session in February 2003 to consider a proposal that would require legislative ratification of Indian gaming compacts between the governor and state tribes.[89] The session was called in response to the announcement that Governor Doyle had reached an agreement with the Potawatomi Nation on a compact with no expiration date.[90] The legislature passed the bill but it was vetoed days later by Governor Doyle.[91] The legislature reconvened the February 2003 Extraordinary Session to consider an override of the governor's veto, but the override failed in the senate.[92]

In December 2010, with just a few weeks remaining before the Republicans would take control of the legislature and the governor's office in the upcoming session, the legislature's Democratic leaders convened an extraordinary session to ratify labor contracts. This was in spite of the fact that Governor-elect Walker had publicly demanded that Governor Doyle's administration stop negotiations on the labor contracts.[93] The assembly narrowly ratified the contracts, but when the contracts arrived in the senate, Senate Majority Leader Russ Decker surprised his fellow Democrats by announcing he would vote against ratification, stating that he believed the incoming Republicans should deal with the contracts.[94] His opposition vote, and that of fellow Democratic Senator Jeff Plale, effectively killed the contracts.

Between 2011 and 2018, with Republicans in control of both houses and the governor's office, nine extraordinary sessions were held, including a February 2015 session to pass right-to-work legislation and the December 2018 Extraordinary Session described at the beginning of this article. During the December 2018 Extraordinary Session, legislators passed three sweeping bills that limited the powers of the governor and the attorney general and included provisions related to early voting, agency guidance documents, online sales tax revenue, and federal transportation funding, among other things.[95]

In April 2020, the legislature convened an extraordinary session to consider a bill to address the COVID-19 pandemic. In order to meet safely, the legislature for the first time in state history met in a virtual session, invoking the emergency virtual session law under Wis. Stat. § 13.42.[96] As previously mentioned, the organization committee of each house, in its motion calling the extraordinary session, also provided for special virtual session rules. In the virtual extraordinary session, in a near-unanimous vote, the legislature passed 2019 Assembly Bill 1038, later enacted as 2019 Wisconsin Act 185. The act made a number of changes to

address the pandemic and its economic impacts, including lifting a one-week waiting period for unemployment insurance; prohibiting insurers from charging copays on COVID-19 tests and from discriminating against people who have had the virus; and making it easier for out-of-state or retired health care workers to practice in the state.

The legislature convened two extraordinary sessions during the 2021–22 biennium. First, in February 2021, the legislature met in extraordinary session to pass 2021 Assembly Bill 1, a bill related to state government actions to address the COVID-19 pandemic, and to adopt a joint resolution terminating the COVID-19 public health emergency declared by Governor Evers in Executive Order 104. The second extraordinary session was called in June of 2021 to deal expeditiously with various pieces of legislation, including the biennial budget bill. The call was later expanded to include consideration of the full veto of 2021 Assembly Bill 336. The veto override attempt failed in the assembly in a 59–37 vote.[97]

In total, 40 extraordinary sessions have been called since 1980. Some of these sessions have occurred after the conclusion of the last general-business floorperiod, while others have occurred during interim committee work periods or concurrently with regular session floorperiods or special sessions. Nearly all of these sessions have been called by the committee on organization of each house. Over 300 laws have been enacted that were considered during an extraordinary session. See the table on page 506 for a complete listing of extraordinary sessions.

Conclusion

Extraordinary sessions are an important means for the legislature to conduct its business. They enable the legislature to respond to matters that it considers important or urgent at the time when those matters present themselves, rather than being restricted to previously scheduled floorperiods. In addition, they enable the legislature to conduct the lawmaking process in an expedited manner by permitting a simple majority of members to advance legislation at every stage. In the absence of extraordinary sessions, the lawmaking process would be slower, and the legislature would have to rely on the governor to call special sessions to have the legislature return to Madison after final adjournment. The legislature would be a far weaker institution.

The legislature's ability to call itself into extraordinary session is an aspect of the legislature's core, lawmaking power. The state constitution vests the lawmaking power in the legislature and provides that it may determine by law when it shall meet, the one exception to this self-determination being that the legislature must also convene when called into special session by the governor. If the legislature did not have the power to meet at any time of its choosing (provided

that it determined the meeting time in a manner provided by law), it would not truly possess its core, lawmaking power. Instead, its ability to exercise that power would sometimes depend on a decision of the governor as to whether to convene the legislature.

An extraordinary session is one way for the legislature to maintain its independence from the governor. As former Assembly Speaker Tom Loftus noted in an op-ed while the supreme court was considering *League of Women Voters*, extraordinary sessions were established to "bring some parity with the governor and exercise the right of the legislature to govern itself."[98] The legislature's power to convene itself in extraordinary sessions leveled the playing field, as it were. If the governor could call the legislature into session at any time, why could not the legislature do the same?

For over 40 years, the legislature has used extraordinary sessions to enact legislation, including innovative and sometimes urgent measures and even biennial state budgets, as well as to propose amendments to the constitution. Over this period, extraordinary sessions have sometimes been convened along party lines, both by Republicans and by Democrats, and sometimes on a bipartisan basis. This article has documented the importance of extraordinary sessions and described the legislative procedures and practices unique to extraordinary sessions. Clearly, extraordinary sessions are now an engrained and vital part of the Wisconsin lawmaking process. BB

NOTES

1. League of Women Voters v. Evers, 2019 WI 75, 387 Wis. 2d 511, 929 N.W.2d 209.

2. *Id.* ¶ 2.

3. Although there is no law explicitly providing for extraordinary sessions, the term does appear in the statutes. For example, see Wis. Stat. § 13.625 (1m) (b) 1., which states: "A contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session."

4. In *League of Women Voters*, the supreme court reasoned that this provision authorizes the legislature to lawfully meet "when a statute so provides." 2019 WI 75, ¶ 17, 387 Wis. 2d 511, 929 N.W.2d 209.

5. Wis. Stat. § 13.02 (3). In *League of Women Voters*, the plaintiffs argued in part that Wis. Stat. § 13.02 limits the legislature's meeting to the regular session only, because the statute does not explicitly include the term "extraordinary session." However, the court ruled that the absence of the word "extraordinary" in Wis. Stat. § 13.02 "does not make an extraordinary session unconstitutional, just as the absence of the words 'floorperiods,' and 'committee work periods' from the statute doesn't make those meetings unconstitutional either." 2019 WI 75, ¶ 22, 387 Wis. 2d 511, 929 N.W.2d 209. The court further stated: "The terminology the Legislature chooses to accomplish the legislative process is squarely the prerogative of the Legislature." *Id.* ¶ 42. In addition to confirming the authority under Wis. Const. art. IV, § 11, the court also recognized that the session schedule requirement under Wis. Stat. § 13.02 is expressly authorized under Wis. Const. art. IV, § 8, which provides that "each house may determine the rules of its own proceedings." *Id.* ¶ 28. For more information about the latter clause, see Richard A. Champagne, "The Rules of Proceedings Clause," *Reading the Constitution* 1, no. 1 (Madison, WI: Legislative Reference Bureau, October 2016).

6. Floorperiods are periods of time available for consideration of proposals by the full assembly and senate.

7. 2023 Wis. SJR 1 § 1 (3) (a).

8. The plaintiffs in *League of Women Voters* argued that the conclusion of the final scheduled floorperiod on March 22, 2018, constituted a *sine die* adjournment, meaning that the legislature had terminated the session, thereby preventing the legislature from reconvening unless the governor called a special session. The court disagreed, stating: "Characterizing the March 22, 2018 adjournment as a *sine die* adjournment conflicts with both the work schedule adopted in JR1, as well as cases defining *sine die* adjournment." 2019 WI 75, ¶ 25, 387 Wis. 2d 511, 929 N.W.2d 209.

9. See Joint Rules 99 (27m) and 81.

10. Joint Rule 81 (2) (a); Senate Rule 93 (intro.); Assembly Rule 93 (intro.).

11. One exception was the February 1987 Extraordinary Session, convened by 1987 Wis. SJR 7 for the purposes of introduction and reference of the governor's budget bill and holding a joint convention to receive the governor's budget message. See Wis. Senate Journal (1987) 52. The other exception was the June 1994 Extraordinary Session, convened to consider a joint resolution amending the constitution to authorize a sports lottery. That session was initially called for by the senate and assembly organization committees, but the full legislature later revised the call by adopting 1993 Wis. AJR 145. See Wis. Senate Journal (1993) 1052–3.

12. Joint Rule 81 (2) (b).

13. The session schedule lays out a series of scheduled floorperiods, including the "last general-businesses floorperiod," in spring of the even-numbered year. After the last general-business floorperiod, there is only a "limited-business floorperiod," which is limited to matters allowed under Joint Rule 81m (2) and certain resolutions, as well as a "veto review floorperiod," limited to matters allowed under Joint Rule 82 (1m). See 2023 Wis. SJR 1 § 1 (3) (u), (v), and (x), for example. At the adjournment of the last general-businesses floorperiod, any bill not yet agreed to by both houses is adversely disposed of for the biennial session and recorded as "failed to pass," "failed to adopt," or "failed to concur." See Joint Rule 83 (4).

14. See Senate Rule 93 (1): "Notwithstanding rule 46 (6), any proposal that is adversely and finally disposed of for the biennial session may be revived by specific inclusion in the action authorizing an extraordinary session, provided that the proposal had not failed a vote of concurrence or passage in the senate. Any proposal revived under this subsection is considered to be at the same stage of the proceedings as it had attained upon being adversely and finally disposed of." Although there is no comparable assembly rule, the assembly practice is to allow bills to be revived in the same way. See, for example, the Committee on Assembly Organization's call for the November 2018 Extraordinary Session, which revived 2017 Wis. AB 963. Wis. Assembly Journal (2017) 958.

15. Wis. Senate Journal (2017) 890.

16. For example, see Wis. Senate Journal (2003) 896.

17. Joint Rule 81 (2) (b) allows for advice and consent on nominations for appointment; Senate Rule 93 (1) and (1d) allows the senate to consider certain resolutions, including those offering commendations, memorializing Congress, or affecting senate or legislative rules or proceedings, and also allows the senate to consider nominations for appointments; Assembly Rule 93 (1) allows the assembly to consider proposals or amendments pertaining to the organization of the legislature.

18. Joint Rule 81 (2) (c).

19. Senate Rule 93 (1p); Assembly Rule 93 (2).

20. Senate Rule 93 (intro.); Assembly Rule 93 (intro.).

21. Senate Rule 93 (2); Assembly Rule 93 (3).

22. Senate Rule 93 (3); Assembly Rule 93 (4).

23. Senate Rule 93 (5); Assembly Rule 93 (5).

24. Senate Rule 93 (6); Assembly Rule 93 (7).

25. Assembly Rule 93 (6). In the senate, no such rule is necessary because all actions to advance a proposal are decided by simple majority vote, including messaging the senate's actions to the assembly.

26. Senate Rule 93 (4).

27. Senate Rule 93 (intro.); Assembly Rule 93 (intro.).

28. Wis. Senate Journal (2019) 820; Wis. Assembly Journal (2019) 746–47. For a summary of this virtual extraordinary session, see Richard A. Champagne and Alex Rosenberg, "The First Virtual Meeting of the Wisconsin State Legislature," *LRB Reports* 4, no. 10 (Madison, WI: Legislative Reference Bureau, June 2020).

29. See, for example, 2023 Wis. SJR 1 § 1 (5) (a).

30. In all of those states, the governor can also call such a session. In the 14 remaining states, only the governor can call such a session: Alabama, Arkansas, California, Idaho, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Dakota, Rhode Island, South Carolina, Texas, and Vermont. "Special Sessions," National Conference of State Legislatures, accessed July 18, 2022, https://ncsl.org.

31. In Wisconsin, these leaders are the members of the houses' committees on organization. Connecticut, Delaware, Florida, Illinois, and Ohio also allow legislative leaders to convene a special or extraordinary session. "Special Sessions," National Conference of State Legislatures.

32. The other states are Alaska, Hawaii, Illinois, Massachusetts, New York, Ohio, and Pennsylvania. "Full- and Part-Time Legislatures," National Conference of State Legislatures, accessed July 18, 2022, https://ncsl.org.

33. National Conference of State Legislatures, "Provisions Relating to Regular Legislative Sessions" (unpublished manuscript, May 2017). National Conference of State Legislatures, "Special or Extraordinary Legislative Sessions" (unpublished manuscript, January 10, 2013).

34. Adjournment *sine die* (Latin for "without a day") means the absolute end of the session; it essentially terminates the sitting and the power of the legislature. National Conference of State Legislatures, "Reconvening Special Session after Adjournment *Sine Die*" (unpublished manuscript compiling results of an NCSL listserv survey of the American Society of Legislative Clerks and Secretaries, September 2008).

35. National Conference of State Legislatures, "Nesting Regular and Special Sessions" (unpublished manuscript compiling results of an NCSL listserv survey of the American Society of Legislative Clerks and Secretaries, March 2006).

36. Art. IV, § 11, of the original Wisconsin Constitution specifically stated: "The legislature shall meet at the seat of government at such time as shall be provided by law, once in each year and not oftener, unless convened by the governor."

37. 1849 Wis. Rev. Stat. § 8.1 (1849). The section was later renumbered as 1858 Wis. Rev. Stat. § 9.1 (1858) and later still as 1878 Wis. Rev. Stat § 10.99 (1878).

38. Adjournment *sine die* meant that the legislature essentially dissolved. As such, if called into special session by the governor, the legislature would need to reorganize and elect new leaders.

39. Wis. Const. art. IV, § 11, was amended to read: "The legislature shall meet at the seat of government, at such time as shall be provided by law, once in two years and no oftener, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened." 1880 Wis. SJR 9; 1881 Wis. AJR 7; ratified in November 1881 in a 53,532–13,936 vote.

40. "Against Biennial Sessions," *Janesville Daily Gazette*, February 18, 1880; "The Biennial Business," *Janesville Daily Gazette*, March 26, 1881; "Biennial Sessions: What the Milwaukee Press Say of 'a Barren Ideality,'" *Wisconsin State Journal*, February 24, 1879.

41. Wis. Stat. § 10.99 (1882). Section 4 of Chapter 634, Laws of 1917, renumbered the statutory section to its present location of Wis. Stat. § 13.02 and simplified the language to say that biennial sessions would begin in each odd-numbered year. It also added the "Regular Sessions" section title that still appears in the statutes today.

42. The Wisconsin Supreme Court affirmed this in *State ex rel. Sullivan v. Dammann*: "Here in Wisconsin the legislature generally adjourns each week from Friday until the following Tuesday, and occasionally recesses or temporarily adjourns for a week or two. We have but one biennial session." 221 Wis. 551, 562, 267 N.W. 433 (1936). In *League of Women Voters*, the supreme court affirmed this once again, stating: "The Legislature is 'in session' continually during the biennial session until a *sine die* adjournment." 2019 WI 75, ¶ 26, 387 Wis. 2d 511, 929 N.W.2d 209.

43. Kathleen Kepner, "The Adjourned Legislative Session in Wisconsin," *LRL Brief* no. 42, (Madison, WI: Legislative Reference Library, May 1956), 2.

44. For the first 120 years of Wisconsin's history, the vast majority of special sessions were convened after the final adjournment of the regular session. See Richard A. Champagne and Madeline Kasper, "Special Sessions of the Wisconsin Legislature," *Reading the Constitution* 7, no. 2 (Madison, WI: Legislative Reference Bureau, 2023): 10–12.

45. Kepner, "The Adjourned Session," 4.

46. For example, the 1935 session continued for 262 calendar days, from January 7 to September 27. Unlike other states, Wisconsin did not limit the length of regular sessions.

47. Specifically, Wis. Const. art. IV, § 10, provided that "neither house shall, without the consent of the other, adjourn for more than three days."

48. Kepner, "The Adjourned Session," 2.

49. See for example 1929 Wis. SJR 135, adjourning the legislature from August 31, 1929, until September 5, 1929.

50. For example, 1941 Wis. SB 95 proposed a split session, divided into three parts: the first five weeks would be for the introduction of bills, then the legislature would recess for a period to hold committee hearings, then the legislature would reconvene to act upon bills that the committees had considered. Other proposals sought to

require the legislature to remain on the floor five days a week to speed up the session (e.g., 1935 Wis. AJR 71) or to limit the length of the session (e.g., 1935 Wis. AJR 40).

51. Although the legislature began regularly adjourning for long periods in 1943, it had done so at least five times prior. According to Kepner, "The Adjourned Session," 2: "In 1853 the legislature adjourned to sit as a Court of Impeachment in a case of a circuit judge charged with corruption and malfeasance in office. The 1856 and 1858 legislatures recessed so that joint committees of the legislature could investigate charges of fraud and the conduct of affairs in various state agencies. Adjournment in 1862 was to enable legislative committees to work on reassessment of taxes and in 1897 to consider revisor's bills and executive messages." See 1853 Wis. JR of March 25, 1853 (Wis. Senate Journal (1853) 601); 1856 Wis. JR March 28, 1856 (Wis. Senate Journal (1856) 800); 1858 Wis. AJR 46 (Wis. Assembly Journal (1858) 1178); 1862 Wis. SJR 40 (Wis. Senate Journal (1862) 659); and 1897 Wis. SJR 76 (Wis. Senate Journal (1897) 881).

52. 1943 Wis. AJR 107; Kepner, "The Adjourned Session," 3. The legislature had already adjourned for relatively long periods over the summer via 1943 Wis. AJR 95 and AJR 99, with the stated purpose of reconvening for the "completion of legislative business."

53. See 1943 Wis. AJR 107.

54. Kepner, "The Adjourned Session," 3.

55. Wisconsin Legislative Reference Library, "Recalling the Legislature During an Adjournment Prior to Sine Die Adjournment," *LRL Brief* no. 102 (Madison, WI: Legislative Reference Library, September 1961), 2.

56. See 1945 Wis. SJR 93; 1947 Wis. SJR 79; 1949 Wis. SJR 64; 1953 Wis. SJR 58; 1955 Wis. AJR 117; 1957 Wis. AJR 116; 1959 Wis. AJR 107. The 1951 legislature did not split the session and adjourned *sine die* on June 14, 1951.

57. Wisconsin Legislative Reference Library, "The Mechanics of Disposal of All Measures prior to Sine Die Adjournment or Adjournment for an Extended Period by the Wisconsin Legislature and the Nature of the Joint Resolution Adjourning the Legislature for an Extended Period," *LRL Brief* no. 74 (Madison, WI: Legislative Reference Library, June 1959), 4; Kepner, "The Adjourned Session," 1.

58. Kepner, "The Adjourned Session," 4.

59. "Constitutional Referendums . . . ," *Green Bay Press Gazette*, March 24, 1968.

60. H. Rupert Theobald, "Rules and Rulings: Parliamentary Procedure from the Wisconsin Perspective," in *State of Wisconsin 1985–1986 Blue Book*, ed. Wisconsin Legislative Reference Bureau (Madison, WI: Legislative Reference Bureau, 1985), 131–32.

61. 1961 Wis. AJR 167; Wis. Senate Journal (June 8, 1962–January 9, 1963) 156–57; Wis. Assembly Journal (June 8, 1962– January 9, 1963) 159; 1963 Wis. AJR 128; Wis. Senate Journal (1963) 2475; Wis. Assembly Journal (1963) 2881. Theobald, "Rules and Rulings," 131–32.

62. Theobald, "Rules and Rulings," 131–32.

63. 1961 Wis. AJR 167; 1963 Wis. AJR 128.

64. Aldric Revell, "Fight Seen by Governor," *Capital Times*, April 27, 1964.

65. State *ex rel.* Thompson v. Gibson, 22 Wis. 2d 275, 290 (1964). The court also distinguished between the legislature being no longer in session, "i.e. where there has been termination or dissolution of a session," and the legislature being in a recess, "i.e. a temporary adjournment during the biennial session." It also provided that "The ordinary form of termination of a session is by sine die adjournment, although we do not here decide that there could be no other form of adjournment which would terminate the session." *Id.*

66. Specifically, 1965 Wis. AJR 5 proposed deleting the words "once in two years and no oftener" from Wis. Const. art. IV, § 11, so that it would simply read: "The legislature shall meet at the seat of government at such time as shall be provided by law . . . ."

67. William Brissee, "Proposal for Annual Session of Legislature Wins Support," *Wisconsin State Journal*, August 6, 1964.

68. John Wyngaard, "Legislators Talking More about Sessions Each Year," *Green Bay Press Gazette*, October 1965.

69. Wyngaard, "Legislators Talking More About Sessions Each Year"; "Annual Sessions Needed," *The Paper* (Oshkosh), March 21, 1968; Arthur L. Srb, "Should State Lawmakers Meet in Annual Session," *Waukesha Daily Freeman*, March 21, 1968; "Final OK for Annual Session Bill," *Milwaukee Journal*, March 19, 1971.

70. The April 1968 ballot question read: "Shall article IV, section 11 of the constitution be amended to permit the legislature to meet in regular session oftener than once in two years?" The language in Wis. Const. art. IV, § 11 has not been amended since.

71. 1965 Wis. AJR 163; 1967 Wis. AJR 97.

72. 1969 Wis. SJR 105.

73. Charles E. Friederich, "Annual Session Bill May bring New Order to Legislature," *Milwaukee Journal*, January 31, 1971.

74. Note that prior to this time, the term "extraordinary session" was often used interchangeably with "special session" in the press. See, for example, John Wyngaard, "Is Crash Highway Program True Legislative Emergency," *Wisconsin Rapids Daily Tribune*, December 9, 1963. The article refers to the 1958 special session convened by Governor Vernon Thompson as an extraordinary session.

75. "Annual Sessions Approved," *Wisconsin State Journal*, March 11, 1971; H. Carl Mueller, "Senate OKs Measure for Annual Sessions," *Milwaukee Sentinel*, March 12, 1971.

76. 1983 Wis. AR 12; 1983 Wis. SR 4.

77. Wis. Senate Journal (1979) 1106.

78. Wis. Senate Journal (1979) 1100–1101. Patricia Simms, "Legislators Vent Anger at Dreyfus," *Wisconsin State Journal*, January 16, 1980.

79. Simms, "Legislators Vent Anger."

80. Patricia Simms, "Rules Panel Won't Introduce 3 of Governor's Crime Bills," *Wisconsin State Journal*, January 18, 1980; "Crime Session Under Way," *Kenosha News*, January 22, 1980.

81. Wis. Assembly Journal (1979) 1848.

82. In issuing this ruling, Speaker Jackamonis relied on precedent set in 1962 and 1963 when Republicans controlled the legislature, which held that when the legislature was in session anyway, it had no special obligation to consider a governor's bills ahead of its own business.

83. Wis. Senate Journal (1979) 1103.

84. Chapters 111, 112, 113, 114, 115, 116, 117, 118, 119, 189, 219, 238, 295, 329, 349, and 350, Laws of 1979.

85. For a recent discussion of the partial veto power, see Richard A. Champagne, Staci Duros, and Madeline Kasper, "The Wisconsin Governor's Partial Veto Power after *Bartlett v. Evers*," *Reading the Constitution* 5, no. 3 (Madison, WI: Legislative Reference Bureau, July 2020).

86. State *ex rel.* Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 437 (1988).

87. David Callender, "GOP puts 116 Bills on Agenda," *Capital Times*, April 17, 1998.

88. "Legislature Finishes Session," *Janesville Gazette*, March 17, 2004.

89. 2003 Wis. SB 41.

90. "Do Odds Improve for Casino?" *Janesville Gazette*, February 21, 2003; Gordon Govier, "Doyle's Gaming Stance Dismays Clerics," *Capital Times*, March 3, 2003.

91. Wis. Senate Journal (2003) 102.

92. The vote was 20 for and 11 against, one vote short of the two-thirds majority required for a veto override. Wis. Senate Journal (2003) 104.

93. "Dems End Lame Duck Session After Failure to Pass Union Contracts," *Associated Press*, December 16, 2010.

94. "Union Contracts Stall in Senate," *Wisconsin State Journal*, December 16, 2010.

95. 2017 Wis. Act 368, 2017 Wis. Act 369, 2017 Wis. Act 370.

96. For a summary of this virtual session, see Champagne and Rosenberg, "First Virtual Meeting."

97. Wis. Assembly Journal (2021), 431.

98. Tom Loftus, "Tom Loftus: Wisconsin Legislature Alone Controls 'Extraordinary' Sessions," *Cap Times*, April 26, 2019, https://madison.com.