

Wisconsin Institute for Law and Liberty: Sues State Superintendent Tony Evers

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WISCONSIN INSTITUTE
FOR LAW & LIBERTY

Evers and Department of Public Instruction are violating state REINS Act

November 20, 2017 – Milwaukee, WI – Today attorneys at the Wisconsin Institute for Law & Liberty sued State Superintendent of Public Instruction Tony Evers on behalf of several taxpayers, who are also school board members and public school teachers. The lawsuit claims that Evers and DPI are refusing to follow the newly enacted REINS Act, which gives the legislature more control over state agencies.

WILL filed the case with the Supreme Court of Wisconsin as an original action, asking the court to take the case immediately because of the importance of the issue and because the case will be impacted by a 2016 Supreme Court decision (*Coyne v. Walker*) in which the Supreme Court was deeply divided.

Rick Esenberg, WILL President and General Counsel said, “State Superintendent Evers is blatantly violating newly enacted state law. The legislature passed the REINS Act to make all agencies, including the Department of Public Instruction, more accountable to the elected-state legislature and open to the people of Wisconsin. No one, including Superintendent Evers, is above the rule of law in Wisconsin.”

“This is a case that needs to be heard by the Supreme Court. It requires clarification of a recent Supreme Court decision [*Coyne v. Walker*] that had multiple opinions, none of which had support from a majority of justices. Moreover time is of the essence; rules promulgated by DPI impact hundreds of school districts, tens of thousands of teachers and administrators, and hundreds of thousands of parents and students throughout the state.”

Last summer the state legislature passed the [REINS Act](#), which gave the state legislature more oversight over regulations promulgated by agencies. Among other things, the REINS Act requires statements of scope for proposed rules to be submitted to the State Department of Administration for an analysis of whether the agency has authority to promulgate the proposed rule. This is a crucial step, as described by State Senator Luther Olsen, a supporter of the bill: “It ensures state agencies are not proposing rules that go beyond the legislature’s intent or the agency’s authority.”

But records obtained by WILL indicate that Evers and the DPI are violating this provision of the law by refusing to send scope statements to the Department of Administration. DPI is also not sending scope statements to the Governor for approval.

Evers and DPI will likely argue that the Superintendent of Public Instruction is exempted from parts of the REINS Act based on *Coyne v. Walker*. In that case, a divided Court held that 2011 Act 21 – which allowed the Governor to veto scope statements – was an unconstitutional violation of the State Superintendent’s constitutional right to supervise public instruction under Article X, sec. 1.

But Evers’ presumable interpretation of *Coyne* is wrong. The REINS Act has a number of provisions that were never discussed by the Court in *Coyne*. There was no majority opinion in *Coyne*, leaving confusion over its precedential value. Furthermore, several justices agreed that there is nothing in the Wisconsin Constitution that prevents the legislature from protecting the public from overreach by DPI, which is the basis of the REINS Act.

Today WILL asks the State Supreme Court to take this case as an original action and to issue a declaratory judgment that Superintendent Tony Evers must comply with all portions of the REINS Act.

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