

Evers trumpets Supreme Court ruling giving him power to pick own attorney in suit

Posted on Thursday, Jun 28, 2018

The Wisconsin Supreme Court ruling giving Tony Evers the power to pick his own attorney in a lawsuit over the administrative rules process is a “great win for common sense,” the state schools superintendent and Dem gov candidate said.

The state DOJ, which had argued it should represent DPI even though the two have opposing viewpoints in the case, called it a narrow decision due to “special circumstances” unique to the case.

In Wednesday’s unsigned 4-3 ruling, the court said it sided with Evers, because handing his legal representation to the Department of Justice would mean the superintendent would be forced to work with attorneys who take an opposing stance on the lawsuit filed by the conservative Wisconsin Institute for Law & Liberty.

The court found that could spur ethical implications for DOJ attorneys, which was one of the arguments Evers raised before the court.

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Evers called it a loss for Gov. Scott Walker, who had asked DOJ to represent DPI.

“But it was a win for Wisconsinites,” Evers said. “They get it. They understand issues of simple things that you can have your own lawyer is a winner.”

The court didn’t take up the merits of the WILL lawsuit seeking to require DPI to be subject to the REINS Act, which places requirements on agencies during the administrative rules process.

Instead, it only addressed whether Evers should be forced to be represented by DOJ.

The majority found siding with DOJ over the question of legal representation would make the attorney general a “gatekeeper” for the legal positions of people like the governor or justices of the court.

Siding with DOJ, the court wrote, would mean such constitutional officers would never be able to take a legal position contrary to that of the AG.

“Accepting DOJ’s argument would give the attorney general breathtaking power,” the court wrote.

The court further wrote the implications of siding with DOJ would mean Evers, who has constitutional authority over public instruction in the state, would not be able to protect such authority and would leave DOJ as the exclusive arbiter over the scope of the state superintendent’s power.

In deciding the case, the majority said it was exercising its “superintending and administrative authority over all courts” to resolve disputes regarding representation.

That drew a rebuke from three conservative justices — Rebecca Bradley, Michael Gableman and John Kelly — in a dissent that charged the majority disregarded the Wisconsin Constitution and threatened the separation of powers in its decision.

Along with citing the Federalist Papers, Bradley wrote neither the state constitution nor statutes give the state superintendent authority to hire his own lawyer. What is clear, she wrote, is state statute gives DOJ such authority.

“The majority creates a dangerous precedent. It brandishes its superintending authority like a veto over laws it does not wish to apply. In doing so, it thwarts the will of the people,” Bradley wrote.

The lawsuit says DPI is violating the 2017 REINS Act, which requires all state agencies to submit materials to the Department of Administration describing the scope of proposed administrative rules. WILL believes DPI violates the law because Evers has refused to produce such statements.

But the agency has cited a prior state Supreme Court ruling that found it didn’t

have to submit to the gov proposed rules for approval because DPI is a separate constitutional office.

DOJ maintains DPI is subject to the REINS Act and will continue to defend the law, said agency spokesman Johnny Koremenos.

“The Court narrowly decided today to use its own constitutional authority to appoint counsel for Superintendent Evers, because of the special circumstances of this particular case,” he said. “It did not rule that Superintendent Evers has the authority to choose his own lawyer in every case, as he had argued.”