

WisDOJ: Supreme Court upholds blood draws for unconscious intoxicated drivers, authorized under Wisconsin's implied-consent law

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MADISON, Wis. – The Wisconsin Department of Justice prevailed before the Wisconsin Supreme Court today in *State v. Mitchell*, in which the court confirmed the constitutionality of a warrantless blood draw of an unconscious driver properly arrested for an intoxicated-driving offense. The court's holding leaves standing Wisconsin's implied-consent statute, which authorizes warrantless blood draws in such circumstances. Mothers Against Drunk Driving filed an amicus brief in support of the state's position and also presented oral argument.

"With drugged driving on the rise, this law is critical to law enforcement's ability to fight one of the many ways the opioid epidemic is putting our communities at risk," said Attorney General Brad Schimel. "Today's ruling is a win in the fight against the opioid epidemic and drunk driving, and DOJ is grateful for Mothers Against Drunk Driving, who provided critical support in this case in briefing and in oral argument."

Wisconsin's implied consent law provides that drivers implicitly consent to tests of their blood alcohol content (BAC) when they drive on Wisconsin roads. When a driver is arrested for drunk driving, they are given the option of submitting to the test or revoking their consent and losing their driving privileges. When a driver is unconscious, the law presumes that the driver has not revoked their consent, and officials are permitted to take a blood sample to test the driver's BAC.

In this case, the state argued that the warrantless blood draw of the passed-out intoxicated driver, Gerald P. Mitchell, was constitutional because suspicion-based

searches of an unconscious drivers' BAC satisfy the consent exception to the Fourth Amendment warrant requirement and also passes muster under Fourth Amendment principles of general reasonableness.

The case was argued before the court by Chief Deputy Solicitor General Ryan Walsh.