

Dept. of Justice: Files brief in U.S. Supreme Court defending Wisconsin's implied consent impaired driving law

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MADISON, Wis. – On behalf of the State of Wisconsin, the Wisconsin Department of Justice today filed a brief in the U.S. Supreme Court defending the constitutionality of Wisconsin's implied consent law, Wis. Stat. § 343.305, as it applies to an unconscious intoxicated driver.

“We need to reduce drunk and drugged driving in Wisconsin,” said Attorney General Josh Kaul. “The state law DOJ is defending provides a tool that law enforcement officers can use as they work to keep our roads safe.”

Like the other 49 states, Wisconsin has an implied consent law that deems an intoxicated driver to have consented to a blood test if police have probable cause of intoxicated driving. The present case concerns a challenge by a defendant, Gerald Mitchell, who argued that the law's application to him while unconscious violated the Fourth Amendment.

In July 2018, the Wisconsin Supreme Court upheld Wisconsin's law. The court approved of the statute's presumption that an unconscious intoxicated driver has not withdrawn consent for a blood draw, allowing police to administer a test. Mitchell then sought review by the U.S. Supreme Court.

Today, in *Mitchell v. Wisconsin*, DOJ filed a brief asking the U.S. Supreme Court to affirm Wisconsin's Supreme Court and uphold the implied consent laws application to unconscious, intoxicated drivers. Wisconsin's brief points to the toll impaired

driving takes on Wisconsinites and the statute's importance to law enforcement for combating drunk and drugged driving on our roads.

A copy of the brief can be found [here](#).