

Supreme Court reverses course, finds DPI subject to GOP laws on administrative rules

Posted on Tuesday, Jun 25, 2019

Three years after ruling the Department of Public Instruction doesn't have to submit proposed administrative rules to the gov for review, the state Supreme Court reversed course today and found the agency is subject to the requirement just like any other agency.

In a 4-2 decision, the court overturned that 2016 ruling. In doing so, the conservative majority found the Wisconsin Constitution gives the state superintendent the power to supervise public instruction.

But the Legislature grants the superintendent and DPI the power to promulgate rules. Therefore, the court ruled, lawmakers can set limits on that power.

"That the SPI also has the executive constitutional function to supervise public instruction does not transform the SPI's legislatively delegated rulemaking power into a constitutional supervisory function," Chief Justice Pat Roggensack wrote in the majority opinion that was joined by her fellow three conservatives.

>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)

In 2011, Republicans approved a change in the rule-making process that required agencies to first submit a scope statement on proposed rules to the gov for approval. Those statements describe the rule and its objectives, among other things. The law also required final drafts of rules to be again submitted to the gov for review before they could be sent to the full Legislature.

In 2016, the court ruled DPI wasn't subject to that law because it inappropriately gave the gov supervision of public instruction, a power granted the state

superintendent in the constitution.

The following year, Republicans pushed through the REINS Act, which added new requirements such as scope statements being submitted to the Department of Administration for review with the agency making a nonbinding recommendation to the gov.

The conservative Wisconsin Institute for Law & Liberty went back to the court after the 2017 law took effect seeking an order to force DPI to comply with the law. The agency countered it wasn't subject to the law due to the 2016 decision.

But that 2016 ruling included a lead opinion from one justice, a two-justice concurrence and a second concurrence from a fourth justice. Today's majority noted they only agreed on the outcome.

Still, WILL President & General Counsel Rick Esenberg praised the court's decision.

"Given that the DPI has generally been a captive of the educational establishment and hostile to reform, this decision is a huge victory for Wisconsin's kids," he said. "It is also a huge win for democratic government, the separation of powers and public accountability."

Writing for the minority, Justice Ann Walsh Bradley slammed the court's majority for doing an "about-face" on its 2016 decision.

"Although nothing in our Constitution has changed since Coyne was decided, what has changed is the membership of the court," she wrote.

In order to reach its conclusion, Bradley added, the majority "throws ... out the window" the doctrine of stare decisis, in which the court follows previous decisions when the same points arise in litigation.

Gov. Tony Evers echoed those sentiments.

"The facts didn't change in the last three years and neither did the meaning of the constitution. Only the composition of the court did," he said in a statement.

The gov's successor at DPI, Carolyn Stanford Taylor, noted the decision did not affect her office's constitutional independence, adding the decision was limited to rulemaking.

“While I am disappointed, we remain committed to Wisconsin schools and students and will continue our work to ensure each student is college and career ready,” she said in a statement.

Fellow liberal Justice Rebecca Dallet joined Bradley in her dissent. Conservatives Rebecca Bradley and Daniel Kelly filed concurring opinions, while liberal Shirley Abrahamson withdrew from participation in the case.