

AG Kaul: Announces legal action to allow DOJ to again enforce Wisconsin laws without unconstitutional legislative interference

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MADISON, Wis. – Attorney General Josh Kaul, along with Governor Tony Evers and Secretary Joel Brennan, today filed a lawsuit against the Wisconsin State Legislature in the Wisconsin Supreme Court challenging the constitutionality of certain applications of a provision in 2017 Act 369 (Act 369) that have hampered the Wisconsin Department of Justice’s (DOJ) ability to enforce state laws that protect Wisconsinites.

“Wisconsinites depend on the Wisconsin Department of Justice to protect the public and ensure that justice is done,” said Attorney General Kaul. “The Wisconsin Department of Justice works to make things right when consumers are cheated or when our air, water, or land is polluted. The provision of the 2018 extraordinary session legislation that’s at issue in this case impedes that critical work by giving the state legislature a role in executive branch functions, in violation of the Wisconsin Constitution’s separation of powers.”

The provision of Act 369 that is being challenged interferes with the state’s ability to enforce laws that, among other things:

- Secure financial restitution for consumers that were cheated, for tenants that were defrauded by bad property managers, and for employees whose wages were stolen;
- Hold accountable violators that endanger communities by polluting air, water, or land; and

- Address disputes between state agencies and outside individuals or vendors that have done harm to the state, such as party who breaches a contract.

AG Kaul, Governor Evers, and Secretary Brennan argue that the provision of Act 369 at issue is unconstitutional as applied to two categories of cases. They also argue that the incompatibility of the settlement and legislative processes make the provision at issue unworkable. Noted in an affidavit is a case that did not fall under the provisions of Act 369, but in which, “on the eve of trial, the court directed the parties to appear at a status conference with full settlement authority. If the other parties had reached a pre-trial resolution and JCF consent had been needed, Wisconsin could not have joined that settlement.” The legislature’s unconstitutional intrusion into the settlement process hampers the state’s ability to enforce the law.

While the Wisconsin Supreme Court in *SEIU v. Vos* did not find the provision at issue unconstitutional in every potential application, the majority opinion noted, “We stress that this decision is limited. We express no opinion on whether individual applications or categories of applications may violate the separation of powers, or whether the legislature may have other valid institutional interests supporting application of these laws.”

The filings can be found [here](#).