

# **WILL: Wisconsin Supreme Court sides with Legislature in critical separation of powers case**

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WILL filed amicus urging Supreme Court to allow Legislature to defend state law  
The News: The Wisconsin Supreme Court, in a 4-3 decision, [held](#) that the Wisconsin Legislature does have standing to defend state law when the Attorney General does not defend it. The Wisconsin Institute for Law & Liberty (WILL) filed an [amicus](#) in the case before the Court, *DNC v. Bostelmann*, that warned that a federal appellate court's interpretation of Wisconsin law "poses an existential threat to the separation-of-powers principles our state and country are founded upon."

The Quote: WILL Deputy Counsel Luke Berg said, "We are pleased that the Court agreed that the Wisconsin Legislature can defend laws where the Attorney General refuses to do so. If this were not so, the state would have no lawyer and a single judge's decision to change election procedures on the eve of an election would evade review by higher courts."

The Background: The controversy over standing stems from four consolidated lawsuits that challenge various Wisconsin election laws. The Attorney General withdrew from the cases early on and the Wisconsin Elections Commission has not defended the laws in federal court. The Wisconsin Legislature intervened, as state law permits, and offered a robust defense of those laws. When the District Court ordered changes to some of Wisconsin's election laws, just a few months before the November election, the Legislature appealed to the Seventh Circuit Court of Appeals, but the panel initially held that the Legislature does not have standing to defend state law in federal court. At the Legislature's request, the federal court agreed to certify that question to the Wisconsin Supreme Court.

WILL filed an [amicus brief](#) that made a clear and straightforward argument to the Court about why it is critical to allow the Wisconsin Legislature to defend state law in federal court when others, typically charged with doing so, do not. The amicus articulates the stakes: "When, as here, the Attorney General bows out and the named government defendants roll over, the Legislature must be permitted to intervene to defend state law; otherwise a single judge will be able to rewrite state law with impunity, totally upending our system of checks and balances."

In the wake of the Wisconsin Supreme Court's decision, the matter heads back to the Seventh Circuit Court of Appeals.