



MEMORANDUM

To: Interested Parties
From: Connor Fitzgerald, Scholars Intern
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Date: June 18, 2025
Subject: Kaul v. Legislature Supreme Court Decision

Two cases, *Kaul v. Legislature* and *Legislature v. Kaul*, challenge provisions of 2017 Wisconsin Act 369 that limit the Wisconsin DOJ's authority in civil litigation. In *Kaul v. Legislature* the DOJ contests the Act's requirement that the Joint Committee on Finance (JCF) must approve any settlement or discontinuance of civil cases handled by the department. *Legislature v. Kaul* addresses a separate provision mandating that all settlement proceeds be deposited into the general fund, rather than directed to specific appropriations.

Supreme Court Decision – *Kaul v. Legislature*, 2025 WI 23

On June 17, 2025, the Wisconsin Supreme Court unanimously ruled in favor of the DOJ and Attorney General Josh Kaul, holding that requiring JCF approval for certain settlement decisions violates the Wisconsin Constitution's separation of powers.

The Court concluded that:

- Settling civil enforcement actions and cases brought at the request of executive agencies falls within the core constitutional powers of the executive branch, not the legislative branch.
- The legislature may prescribe the DOJ's statutory authority to litigate and settle cases, but it cannot reserve to itself the power to approve or veto settlements once that statutory authority is granted.
- The challenged statute improperly allowed the legislature to interfere with the execution of the law, assuming a role the Constitution does not permit it to hold.
- The Court explicitly distinguished between permissible legislative oversight (e.g., appropriations and policymaking) and unconstitutional execution of executive functions.

As a result, the Court struck down the JCF approval requirement for these categories of cases as unconstitutional.

Implications for Current Law

1. **End of JCF Veto Power Over DOJ Litigation Decisions**

The Supreme Court's ruling eliminates the requirement that JCF approve settlements in DOJ-initiated civil enforcement and agency-requested litigation. This restores the pre-Act 369 status quo where the Attorney General, within statutory limits, can independently settle civil cases. The decision reinforces the exclusive role of the executive in executing the laws once enacted by the legislature.

2. **Potential Consequences for *Legislature v. Kaul***

Although *Legislature v. Kaul* remains pending, if the court uses the same reasoning that it used in *Kaul v. Legislature* which leans toward a similar separation-of-powers analysis, it may strike down provisions requiring all settlement funds to be deposited into the general fund.

3. **Limits on Legislative Interference with Executive Execution**

While the legislature retains full authority to write laws and determine the scope of DOJ powers, it cannot interfere once those powers are assigned and exercised within constitutional limits. Attempts to "approve" individual executive decisions after statutory authorization are now firmly unconstitutional in core executive matters like settlement decisions.