

WISCONSIN SUPREME COURT

April 10, 2019

1:30 p.m.

2017AP2278-OA

Kristi Koschkee v. Carolyn Stanford Taylor

The Supreme Court accepted jurisdiction over the original action petition filed by the Wisconsin Institute of Law & Liberty raising the question of whether the Department of Public Instruction and its Superintendent are required to comply with the Wisconsin Regulations from the Executive In Need of Scrutiny (REINS) Act.

The Wisconsin Institute for Law & Liberty (WILL) filed a petition to commence an original action on behalf of licensed school teachers, Kristi Koschkee and Amy Rosno; New London School Board member, Christopher Martinson; and Mary Carney, parent of a child attending a parochial school in Wisconsin as well as a member of the Marshfield School Board. The respondents named in the petition were Tony Evers, in his former capacity as Wisconsin Superintendent of Public Instruction (SPI), and the Department of Public Instruction (DPI). The case caption has since been amended to reflect the new SPI, Carolyn Stanford Taylor.

The petition raises one issue: Must DPI comply with the Regulations from the Executive In Need of Scrutiny (REINS) Act?

The REINS Act amended state statutes to require that any agency that proposes to promulgate a rule must first submit a statement of scope for the proposed rule to the Department of Administration (DOA), which shall make a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the statement of scope. After DOA makes a determination of the agency's authority to promulgate the proposed rule, it reports on the determination to the governor, who may approve or reject the rule.

WILL asserts that in September and October of 2017, after the effective date of the REINS Act, DPI forwarded statements of scope for proposed rules to the Legislative Reference Bureau but did not first submit the statements of scope to DOA as required by the REINS Act. WILL says the DPI's position is that it is not required to comply with the portion of the REINS Act requiring it to submit statements of scope to DOA or receive approval from the governor based on this court's decision in Coyne v. Walker, 2016 WI 38, 368 Wis. 2d 444, 879 N.W.2d 520.

WILL notes that Coyne held that certain portions of Act 21, which predates the REINS Act, could not be applied to DPI, and concedes the petition seeks to revisit the Coyne decision.

The DPI argues that WILL asks the Supreme Court to take a simple, but unprecedented, action: reverse this Court's holding in Coyne v. Walker, a decision from just three years ago, and upend the Court's longstanding interpretation of Article X, § 2 of the Wisconsin Constitution.

The DPI asserts the REINS Act did nothing to modify the provisions at issue in Coyne and merely added an additional procedural step by requiring agencies to first submit scope statements to DOA for a determination if there is "legal authority" to draft the rule. Under the REINS Act, DPI says the DOA then forwards the rule to the governor who, as was provided by Act 21 (which was at issue in Coyne), may approve or reject the scope statement.

The DPI says that in Coyne, a majority of this court already ruled that the governor cannot "veto" administrative rules promulgated by the SPI to supervise public instruction. The

DPI says the issues raised by petitioners are identical to the issues already litigated in Coyne and do not need to be reconsidered.