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Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

March 24, 2021

To:

Thomas C. Bellavia
Charlotte Gibson
Colin Thomas Roth
Assistant Attorneys General
P.O. Box 7857
Madison, WI 53707-7857

Kevin M. LeRoy
Misha Tseytlin
Troutman Pepper Hamilton Sanders LLP
227 W. Monroe Street, Suite 3900
Chicago, IL 60606

Kevin M. St. John
Bell Giftos St. John LLC
5325 Wall Street, Suite 2200
Madison WI, 53718

You are hereby notified that the Court has entered the following order:

No. 2020AP1928-OA Kaul v. Wisconsin State Legislature

On November 23, 2020, Attorney General Josh Kaul, the Department of Justice (Department), Governor Tony Evers, and Joel Brennan, Secretary, Department of Administration (DOA), (collectively, "Petitioners") filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, a motion for a temporary injunction, a supporting affidavit and a legal memorandum, asking the court to address: (1) Whether Wisconsin Stat. § 165.08's [Joint Finance Committee (JCF)] consent provision violates the Wisconsin constitution's separation of powers as applied to the compromise or discontinuance of civil enforcement actions that the Department prosecutes; and (2) Whether Wisconsin Stat. § 165.08's JCF consent provision violates the Wisconsin constitution's separation of powers as applied to the compromise or discontinuance of civil actions the Department prosecutes on behalf of executive-branch agencies relating to the administration of the statutory programs they execute, such as common law tort and breach of contract actions. The petition names the Legislature, the Joint Committee on Finance (JCF), and individual legislative leaders as respondents.

Pursuant to this court's order, on December 16, 2020, a response was filed. The respondents also filed a "Cross-Petition for Original Action," "Memorandum of Respondents/Cross-Petitioners and Respondents in Support of Cross-Petition for Original Action,

Page 2

March 24, 2021

No. 2020AP1928-OA Kaul v. Wisconsin State Legislature

in Response to Petition for Original Action and in Opposition to the Motion For Temporary Injunction," and "Supplemental Appendix." The cross-petition names Attorney General Josh Kaul and the Department as cross-respondents, and presents these issues:

1. Whether Section 26 of 2017 Act 369—which requires the Attorney General to seek approval from the Legislature's Joint Committee on Finance before "compromis[ing] or discontinu[ing]" "[a]ny civil action prosecuted by" the Attorney General—facially complies with the separation of powers as to: (a) the category of cases civilly prosecuted by the Attorney General on the Attorney General's sole initiative and (b) the category of civil actions prosecuted by the Attorney General that are referred by other executive branch agencies and relate to statutory programs administered by the referring executive branch agencies;
2. Whether Section 26 applies to "[a]ny civil action prosecuted by" the Attorney General, including when the Attorney General has engaged in some manner of pre-lawsuit negotiations; and,
3. Whether Section 27 of 2017 Act 369 requires the Attorney General to deposit "all settlement funds into the general fund," and is not limited by Section 26 in any respect.

The respondents-cross-petitioners acknowledge that issues two and three in the cross-petition are duplicative of issues that some of the same legislative leaders raised in a previous original action petition denied by this court by order dated September 22, 2020. Vos v. Kaul, 2019AP1389.

By order dated January 14, 2021, the court ordered the petitioners-cross-respondents to file a response, and permitted the petitioners to file a reply to the Legislature's cross-petition. Those documents were filed on February 9, 2021. On February 11, 2021, the respondents-cross-petitioners filed a letter attaching a "supplemental authority."

The court having considered all of the foregoing,

IT IS ORDERED that the petition for leave to commence an original action is denied; and

IT IS FURTHER ORDERED that the motion for temporary injunction is dismissed, as moot; and

IT IS FURTHER ORDERED that the cross-petition for leave to commence an original action is denied.

Sheila T. Reiff
Clerk of Supreme Court