



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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VIA HAND DELIVERY

The Honorable Tony Evers
Governor of Wisconsin
Room 115 East, State Capitol

Re: Response to your letter of January 22, 2019

Dear Governor Evers:

I received your letter dated January 22, 2019, in which you explained that you were "immediately withdrawing the authority previously provided under Wis. Stat. § 165.25(1m) for Wisconsin to participate in litigation over the Affordable Care Act in" *Texas v. United States* ("the ACA litigation").

Under Wis. Stat. § 165.08(1), in a case in which there is no intervenor under Wis. Stat. § 803.09(2m), a "civil action prosecuted by [DOJ] by direction of any officer ... may be compromised or discontinued ... by submission of a proposed plan to the joint committee on finance for the approval of the committee," and "[t]he compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan." A reasonable argument can be made that withdrawal of the State as a party to the ACA litigation would *not* result in the compromise or discontinuance of a "civil action": the ACA litigation will not be compromised or discontinued even if the State withdraws from that litigation. Nevertheless, given the ambiguity of the pertinent statutory language and the State Legislature's intent in enacting Wis. Stat. § 165.08(1), I believe that Wis. Stat. § 165.08(1) would likely be interpreted to apply to a motion to withdraw the State as a party to the ACA litigation.

Accordingly, my view is that, notwithstanding your letter, DOJ does not have statutory authority to withdraw the State from the ACA litigation absent approval from the Joint Committee on Finance.

Sincerely,

Joshua L. Kaul
Attorney General of Wisconsin

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