



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
ATTORNEY GENERAL**

**Raymond P. Taffora
Deputy Attorney General**

**114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529**

February 11, 2009

TO: The Honorable Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing

FR: Attorney General J.B. Van Hollen

A handwritten signature in cursive script that reads "J.B. Van Hollen".

RE: 2009 Senate Bill 19

Dear Senators:

I write today to oppose the enactment of 2009 Senate Bill 19.

As Attorney General, my office would be responsible for representing the state in all of the federal and state court actions that would arise from waiving sovereign immunity with respect to Title I of the Americans with Disability Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, and the Family and Medical Leave Act. I am very concerned that this legislation is an overbroad and expensive solution to a problem that does not exist.

Each of the federal laws addressed by this bill has an analog in the Wisconsin statutes with nearly identical substantive provisions that protects state employees. While state and federal law provide different processes to vindicate those underlying protections and sometimes provide different remedies, the process that Wisconsin provides to protect rights guaranteed by state law—administrative enforcement options—is less costly to the state and possibly state employees than cumbersome and expensive court actions.

Thus, this bill will expose the state to increased costs yet does not provide any money or resources to offset those costs. Even with funding, I do not believe it is prudent—particularly in light of the current fiscal situation—to increase costs without tangibly increasing substantive protections or benefits.

I am also opposed to this bill because its breadth is unnecessary and undermines Wisconsin's sovereignty. Whatever differences exist between the federal and Wisconsin legal schemes, it is entirely within the control of the Wisconsin Legislature to address those changes without a blanket waiver of sovereign immunity. If, for example, the legislature believes that current employment law provides an insufficient remedy to state workers, nothing prevents the legislature from addressing that particular problem through targeted amendments to current law. Surrendering state sovereign immunity, however, is just another way of saying that Wisconsin needs the Congress of the United States to dictate our state's policies with regard to the protection of the state workforce.

Last, this approach is without precedent. Since statehood, the Wisconsin legislature has never unilaterally waived Wisconsin's immunity against federal law claims as the bill draft proposes to do.¹ Of course, the legislature *has* carved out situations in which the state could be sued under Wisconsin law—indeed, it has done so with regard to employee rights. I believe that our state can adequately protect the rights of the state workforce, and that it is our state legislature, not Congress, that is the proper entity to provide these protections.

Respectfully, I ask that you oppose this bill.

¹ Wisconsin immunity has been eliminated regarding certain federal law claims by other means, primarily: (1) Congress involuntarily abrogated Wisconsin's immunity against claims arising under various laws that were promulgated pursuant to Congress' 14th Amendment Authority; and (2) certain Wisconsin agencies have agreed to suit regarding federal law claims in exchange for the receipt of federal funding, such as claims arising under title IX. That Congress has not involuntarily abrogated Wisconsin's immunity with respect to these laws is an indication that Congress does not perceive these laws as the protection of fundamental civil rights of the nature protected by the 14th Amendment.