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NEWS FOR IMMEDIATE RELEASE

August 15, 2018

AG Schimel Reports End-Of-Term Results for the Office of the Solicitor General

MADISON, Wis. – Attorney General Brad Schimel today reported on the remarkable success of the Office of the Solicitor General at the conclusion of the terms of the U.S. Supreme Court (October 2017 - June 2018) and the Wisconsin Supreme Court (September 2017 - July 2018). The Solicitor General's Office prevailed in every merits decision issued in cases where it represented the state and its agencies as parties.

"The Solicitor General's Office has played a critical role in upholding the rule of law and advancing the interests of the State of Wisconsin in the highest courts of the land," said Attorney General Schimel. "Its success this term has been unprecedented, as the office prevailed in every merits decision issued when it represented the state."

At the U.S. Supreme Court this term, the office won a unanimous judgment in *Gill v. Whitford*.

At the Wisconsin Supreme Court, the office was victorious in all 12 of its merits cases, and supported three prevailing parties as amicus.

In other courts, the office had similar success, prevailing in cases defending Wisconsin's right-to-work law and the Unborn Child Protection Act, as well as obtaining rehearing (and ultimately reversal) in *Dassey v. Dittmann*.

Finally, the office received commendations from its peers this term, winning a "Best Brief" award from the National Association of Attorneys General for its brief in *Gill*, and another from the Wisconsin State Bar for its brief in *International Union v. Schimel*, defending Wisconsin's right-to-work law.

Below are the highlights of the term:

U.S. Supreme Court

Gill v. Whitford

In a case that drew considerable national attention, the solicitor general argued before the Supreme Court that the plaintiffs lacked standing to bring a statewide partisan-gerrymandering challenge to Wisconsin's Assembly districts. The court unanimously found in Wisconsin's favor that the plaintiffs had failed to prove standing to sue.

Wisconsin Supreme Court

Tetra Tech E.C., Inc. v. Wis. Dep't of Revenue and *Wis. Dep't of Workforce Development v. Wis. Labor and Industry Review Commission*

In these cases involving questions of judicial deference to administrative agencies, the office argued that the court should overrule its prior deference cases and replace them with a framework of deference that tracked the statutory requirements. The court agreed, and replaced its prior agency-deference scheme with a new regime that tracks the language of Wisconsin's statutes regarding judicial review of agency decisions. The court also agreed with the office on the underlying merits in both cases, involving the meaning of Wisconsin's tax and workman's compensation laws.

State v. Mitchell

For the second time in as many terms, the Wisconsin Supreme Court considered the constitutionality of drawing blood from an unconscious OWI arrestee for the purpose of measuring blood alcohol content. The court agreed with the office that police acted reasonably in drawing Mitchell's blood, given that he was unconscious and had been arrested for OWI.

Porter v. State

The office defended a state law that prevents funeral homes from buying cemeteries and vice versa. The office argued, and the court agreed, that the law is rationally related to the state's legitimate interest in protecting the bereaved—a particularly vulnerable class of consumers—by promoting competition and imposing barriers to certain financial improprieties in the death-care industry.

State v. Bartelt

The office argued, and the Wisconsin Supreme Court agreed, that the defendant was not in custody after he admitted to a crime at the police station because the police did nothing to place him in custody. Therefore, the defendant was not entitled to *Miranda* warnings or to a lawyer, even if he requested one.

State v. Cox and *State v. Williams*

Since 2014, every criminal conviction in Wisconsin triggers a mandatory "DNA surcharge" to help fund the state's DNA database and related investigative work. In these two cases, one defendant argued that the updated law did not mandate the DNA surcharge, while the other argued that the surcharge was a form of punishment subject to the Ex Post Facto clause of the U.S. Constitution. The office argued, and the court agreed, that the surcharge is in fact mandatory for all convictions, and that it is not punitive either in intent or effect.

State v. Sanders
The office argued, and the Wisconsin Supreme Court agreed, that the circuit court in which a defendant will be prosecuted for a crime depends on the age of the defendant at the time the criminal charges are filed, not at the time the alleged criminal conduct occurred. Therefore, when a juvenile sex offender's crimes are not reported and prosecuted until after he turns 17, his case rightly belongs in adult court.

Wis. Association of State Prosecutors v. Wis. Employment Relations Commission
The office argued that the Wisconsin Employment Relations Commission (WERC) had authority under Act 10 to require public-sector unions to submit a short informational form and fee payment before WERC would hold an annual recertification election, and that if the union failed to file the required form and fee, it would be decertified. The court agreed, upholding WERC's rule requiring public-sector unions to submit a form and fee for the annual recertification elections.

Wis. Dep't of Natural Resources v. Wis. Court of Appeals, District IV
The office successfully petitioned the court for a Supervisory Writ over the Court of Appeals, ordering District IV to return a case to District II, pursuant to Wisconsin's venue-selection statute.

State v. Jones
A habitual sex offender challenged the admissibility at his commitment hearing of certain expert testimony based on "actuarial instruments" commonly used by professionals in the field to gauge a sex offender's likelihood of re-offending. The office argued, and the court agreed, that the instruments in question were admissible under Wisconsin law and U.S. Supreme Court precedent governing the admissibility of scientific evidence.

State v. Kerr
The court agreed with the office that courts should not suppress evidence when the police have not engaged in any misconduct. In this case, because a mistake by the circuit court and not any misconduct or systemic negligence by police caused the Fourth-Amendment violation, the evidence should not have been excluded.

Mayo v. Wis. Injured Patients & Families Comp. Fund
Participating as amicus curiae, the office argued that the state's cap on noneconomic medical malpractice damages—a vital tool in enticing doctors to practice in Wisconsin—is constitutional. The office also urged the Wisconsin Supreme Court to overrule a prior case that held that a lower cap was unconstitutional. The court agreed on both points.

Voters with Facts v. City of Eau Claire
Participating as amicus curiae, the office argued that Wisconsin's Tax Incremental Financing law (TIFs) did not violate the Wisconsin Constitution's requirement that all taxes be uniform. The court agreed, upholding the City of Eau Claire's TIF plan.

U.S. Court of Appeals for the Seventh Circuit

International Union v. Schimel
The solicitor general's office defended Act 1, Wisconsin's right-to-work law, against a challenge by certain unions that Act 1's prohibition on forced payment of union dues by non-union workers constituted an unconstitutional "taking" of the unions' property. The office argued, and the court agreed, that Act 1 is nearly identical in this respect to an Indiana law recently upheld by the Supreme Court, and that the law does not affect an unconstitutional taking of the unions' property.

Dassey v. Dittmann
On rehearing before the full Seventh Circuit, the solicitor general's office argued, and the full court agreed, that the Wisconsin Court of Appeals did not unreasonably apply U.S. Supreme Court precedent in holding that Dassey's confession was voluntary. Dassey then petitioned for U.S. Supreme Court review of that decision, a petition which the office opposed. The Supreme Court denied review, and Dassey remains incarcerated.

Loertscher v. Anderson
The solicitor general defended the Unborn Child Protection Act and argued that the lawsuit challenging it should be dismissed as moot because the plaintiff has left Wisconsin with no plans to return. The court agreed and dismissed the case.

U.S. Court of Appeals for the D.C. Circuit

Wisconsin v. EPA
The office is leading a coalition of five states challenging the EPA's Cross State Air Pollution Rule, which requires the states to reduce their emissions beyond the level generally required by EPA in order to assist downwind states with high pollution. The case is set for oral argument this fall before the D.C. Circuit.

U.S. District Court for the Northern District of Texas

Texas et al. v. United States

In its decision upholding the constitutionality of the Affordable Care Act (ACA), the U.S. Supreme Court held that the ACA's "individual mandate" could fairly be construed as a tax. But in 2017, Congress zeroed out the mandate's "tax" penalty while leaving the mandate itself in place. Along with Texas, Wisconsin leads a 20-state coalition seeking an injunction against continued enforcement of the ACA, arguing that the mandate has been rendered unconstitutional because the court's rationale for calling the mandate a tax—the fact that it raised revenue—no longer obtains, and that the mandate is not severable from the rest of the Act. As Wisconsin is one of the lead plaintiffs, the office is actively involved in briefing in the case, which is ongoing.