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No.2022AP431

In the Supreme Court of Wisconsin

WISCONSIN STATE LEGISLATURE,
PLAINTIFF-APPELLANT-CROSS-RESPONDENT,
and
ADAM JARCHOW,
PLAINTIFF-CO-APPELLANT-CROSS-RESPONDENT,
v.
JOSH KAUL AND KATHY KOLTIN BLUMENFELD,
DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS-PETITIONERS.

On Appeal From The Polk County Circuit Court,
The Honorable Jeffery Anderson, Presiding
Case No.2021CV152

**RESPONSE BRIEF OF PLAINTIFF-APPELLANT-CROSS-
RESPONDENT WISCONSIN STATE LEGISLATURE AND
PLAINTIFF-CO-APPELLANT-CROSS-RESPONDENT ADAM
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ISSUES PRESENTED

1. Whether Section 27 of 2017 Act 369's mandate that the Attorney General "deposit all settlement funds into the general fund," Wis. Stat. § 165.10, requires the Attorney General to deposit "all settlement funds" in the general fund for general purpose revenue, given Wis. Stat. § 20.906(1)'s default rule that "[a]ll moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law."

The Circuit Court answered no, and the Court of Appeals answered yes.

2. Whether, if the Court determines that Wis. Stat. § 165.10 and Wis. Stat. § 20.906(1) should be interpreted not to prohibit the Attorney General from crediting settlement funds into the appropriation under Wis. Stat. § 20.455(3)(g), Wis. Stat. § 20.455(3)(g) authorizes the crediting of civil action settlement proceeds to that appropriation. In other words, whether the services rendered by Department of Justice ("Department") personnel in litigating a civil action on behalf of the State of Wisconsin or an executive branch agency constitute "proceeds from services" under Wis. Stat. § 20.455(3)(g).

Both the Circuit Court and the Court of Appeals declined to answer this question, but this Court's order granting the Petition For Review directed the parties to address it.

INTRODUCTION

Before 2017, the Attorney General had to obtain the approval of the Wisconsin State Legislature's Joint Committee on Finance ("JCF") before he could spend uncommitted settlement funds that the State had received. This dynamic was a product of then-operative Wis. Stat. § 165.10 (2017), which provided that the Attorney General could only "expend settlement funds under s. 20.455(3) that are not committed under the terms of the settlement" after "submit[ting] to the joint committee on finance a proposed plan for the expenditure of the funds" and completing JCF's passive-review procedure. Wis. Stat. § 165.10 (2017).

But the Attorney General devised two clever workarounds to evade the prior Section 165.10's JCF-approval requirement and retain near-total control over the expenditure of the State's settlement funds. First, the Attorney General deposited settlement funds into the Wis. Stat. § 20.455(3)(g) appropriation account for "gifts," "grants," and "proceeds," while expressly including in settlement agreements language "commit[ting]" settlement funds to certain purposes and thereby placing them outside of the JCF-approval process. Second, the Attorney General would deem certain large sums of settlement funds to be "cost recovery" and deposit them into the Wis. Stat. § 20.455(1)(gh) account for "[m]oneys received . . . for the expenses of investigation and prosecution of violations, including attorneys fees," thereby also placing these funds outside of JCF's reach. These mechanisms empowered the Attorney General to avoid requesting JCF approval for most of the State's settlement funds.

The Legislature adopted several provisions in 2017 Act 369 to end this practice. As particularly relevant here, Section 27 of Act 369 repealed and replaced the prior Section 165.10 with a single, simple mandate: “The attorney general shall deposit all settlement funds into the general fund.” 2017 Act 369, § 27. And an already-existing, longstanding statute, Wis. Stat. § 20.906(1), establishes the default rule that “[a]ll moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law.” So, given Section 20.906(1)’s default rule, Section 165.10 as amended by Act 369 requires the Attorney General to deposit all settlement funds into the general fund for general purpose revenue, with the Attorney General no longer having any ability to spend these funds to subsidize the operation of his office. The Court of Appeals correctly interpreted Sections 165.10 and 20.906(1) in just this way.

The Attorney General challenges the Court of Appeals’ decision, but his contrary reading of Section 165.10 renders this statutory mandate from the Legislature entirely meaningless. Specifically, in the Attorney General’s view, he complies with Section 165.10 by depositing settlement funds into the general fund and crediting them to the same Section 20.455(1)(gh) and Section 20.455(3)(g) accounts that he did under his workarounds, when the prior version of Section 165.10 was in effect. Thus, under the Attorney General’s position, Section 165.10’s terms that are now in the Wisconsin Statutes mean nothing. While the Attorney General resists that conclusion, all he can muster is a short

paragraph at Page 30 of his Opening Brief, which only proves the Court of Appeals' point that his reading nullifies Section 165.10. The Attorney General's other arguments in support of interpretation also fail. Most notably, he fails to give an account of Section 20.906(1)'s default rule that was key to the Court of Appeals' holding.

Should this Court, however, hold that Sections 165.10 and 20.906(1) do not prohibit the Attorney General from crediting settlement funds to the Section 20.455(3)(g) account, it should conclude that Section 20.455(3)(g) does not authorize that practice—the additional issue that this Court ordered the parties to address. Section 20.455 creates an appropriation for “Administrative services” of the Department, including for “gifts,” “grants,” and “proceeds from services.” Settlement funds are not “proceeds from services” in that statute, including because “proceeds” most naturally refers to funds from a voluntary transactional exchange, as opposed to a compromise of adversarial litigation. Further, any settlement funds that the Department receives for the State would be the result of its “Legal services”—as the Attorney General himself argues—but the Legislature listed the appropriations for the Department's “Legal services” in Subsection 1 of Section 20.455, not in Subsection 3, where the Section 20.455(3)(g) account appears. Subsection 3, moreover, lists the appropriations for “Administrative services,” a term that cannot fairly cover the Department's main litigation activity.

ORAL ARGUMENT AND PUBLICATION

By granting the Petition For Review, this Court has indicated that this case is appropriate for publication. This Court has set this case for oral argument for Wednesday, March 11, 2026.

STATEMENT OF THE CASE

A. The Constitution Gives The Legislature The Authority Over How To Spend The State's Money

Under the Wisconsin Constitution, “[d]eterminations of how to appropriate the state’s funds fall squarely within the legislative power.” *Evers v. Marklein*, 2024 WI 31, ¶ 14, 412 Wis. 2d 525, 8 N.W.3d 395 (“*Marklein I*”). That is because the Constitution vests the Legislature with the “spending power” in Article VIII, Section 2, *id.*, which provides that “[n]o money shall be paid out of the treasury except in pursuance of an appropriation by law,” Wis. Const. art. VIII, § 2. Thus, “[c]ontrolling the expenditure of state funds through lawmaking constitutes an exercise of the legislature’s appropriation authority” under the Constitution. *Marklein I*, 2024 WI 31, ¶ 14.

Exercising this core constitutional spending power, the Legislature has long organized the State’s finances into “funds”—namely, the State’s “general fund,” Wis. Stat. § 25.20, and various “segregated” funds, *id.* § 20.001(2)(d); *see generally* Legislative Fiscal Bureau (“LFB”), *State Budget Process*, Info. Paper 80

at 24–28 (Jan. 2025).¹ The State’s “general fund” consists of “[a]ll moneys in the state treasury not specifically designated in any statute as belonging to any other funds.” Wis. Stat. § 25.20. “Segregated funds,” by contrast, are funds separate from the general fund and created for specific purposes. *See id.* § 20.001(2)(d) (defining “Segregated fund revenues”); *see generally id.* § 25.17(1) (listing various segregated funds).

With respect to the State’s general fund, the Legislature has further subdivided this fund by revenue “source,” while providing that each source will “support” different kinds of “appropriations.” LFB, *supra*, at 27–28; Wis. Stat. § 20.001(2) (defining “Revenue types”). The general fund’s two most notable sources of funding are “general purpose revenue” and “program revenue.” LFB, *supra*, at 27–28 (also defining other sources of revenue either credited to the general fund or to various segregated funds, such as federal revenue or bond revenue); *see also* Wis. Stat. § 20.001(2). “General Purpose Revenue” comprises the “general revenues collected by the state”—such as “state sales taxes,” “individual and corporate income taxes,” and other receipts. LFB, *supra*, at 27; *see also* Wis. Stat. § 20.001(2)(a). General purpose revenue is “available for appropriation by the Legislature for any purpose.” LFB, *supra*, at 27; *see also* Wis. Stat. § 20.001(2)(a). “Program revenue,” in contrast, generally comprises “revenues collected for such things as user charges imposed as license or inspection fees,”

¹ Available at https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2025/0080_state_budget_process_informational_paper_80.pdf (all websites last visited Jan. 27, 2026).

“receipts from product sales,” or “reimbursement for the costs of services provided by the collecting agency to another state agency,” for example. LFB, *supra*, at 27; Wis. Stat. § 20.001(2)(b). Program revenues are “credited to a specific appropriation account to finance an agency or a particular program.” LFB, *supra*, at 27; Wis. Stat. § 20.001(2)(b).

By default statutory rule, the Legislature has directed that revenue that the State receives must be deposited into the general fund and credited as general purpose revenues, via Wis. Stat. § 20.906(1). Specifically, Section 20.906(1) provides that “[a]ll moneys paid into the treasury shall be credited to the general purpose revenues of the general fund, unless otherwise specifically provided by law.” Wis. Stat. § 20.906(1). When the Legislature wishes to supplant Section 20.906(1)’s default rule and direct the crediting of state funds somewhere other than the general fund for general purpose revenues, it will “otherwise specifically provide[] by law,” *id.*, and identify a particular appropriation account (or segregated fund) in which to credit those revenues.

The Wisconsin Statutes are replete with examples of the Legislature using specific statutory language to direct the crediting of state revenues somewhere other than the general fund for general purpose revenues, such as into a specific appropriation account. *See, e.g.*, Wis. Stat. § 23.0917(5m)(b)2 (“All proceeds from the sale of land . . . shall be deposited in the general fund *and credited to the appropriation account* under s. 20.370(7)(ag).”

(emphasis added)).² The Legislature may include this specific crediting language in the same statute directing the depositing of the revenue into the general fund, *see, e.g., id.*, or in a different statute, *see* Wis. Stat. §§ 20.566(4)(j), 177.0801(2). In either case, however, the Legislature specifically identifies the appropriation account by name to supplant Section 20.906(1)'s default rule.

B. The Legislature First Adopts Wis. Stat. § 165.10 In 2017, Requiring The Attorney General To Come To The Joint Finance Committee Before Spending Settlement Funds

As originally enacted in 2017, Section 165.10 provided that, “before the attorney general may expend settlement funds under s. 20.455(3)(g) that are not committed under the terms of the settlement, the attorney general shall submit to the joint committee on finance a proposed plan for the expenditure of the funds.” Wis. Stat. § 165.10 (2017); 2017 Act 64, § 1672g. In other words, the prior version of Section 165.10 had sought to ensure

² *See also, e.g.*, Wis. Stat. §§ 23.293(4) (“These moneys shall be deposited in the general fund and credited to the appropriation under s. 20.370(7)(gg).”); 23.425(2m) (“The fees collected by the department . . . shall be deposited in the general fund and credited to the appropriation under s. 20.370(9)(gb).”); 23.426 (“The fees collected under this section shall be deposited in the general fund and credited to the appropriation account under s. 20.370(1)(gh).”); 25.40(1)(a)(4m) (“Moneys received . . . that are deposited in the general fund and credited to the appropriation account under s. 20.395(3)(jh).”); 48.275(2)(d)(1) (“Payments transmitted . . . shall be deposited in the general fund and credited to the appropriation account under s. 20.550(1)(L).”); 84.01(36)(d)(1) (“[A]ll fees received under this subsection shall be deposited in the general fund and credited to the appropriation account under s. 20.395(3)(eg).”); 348.26(2) (“All moneys received from fees imposed by the department under this subsection shall be deposited in the general fund and credited to the appropriation account under s. 20.395(5)(dg).”).

that the Legislature could exercise its constitutional appropriation authority by giving JCF the ability to approve the Attorney General's expenditure of settlement funds.

But the Attorney General developed two methods to circumvent the prior Section 165.10's JCF-approval requirement altogether, allowing him to spend settlement funds as he unilaterally saw fit without JCF review.

First, the Attorney General deposited settlement funds into the Department's appropriation account under Wis. Stat. § 20.455(3)(g), which account had been designated "to receive and allocate settlement funds that are distributed at [the Attorney General's] sole discretion." Supp.App'x.363.³ To avoid the prior Section 165.10's JCF-approval requirement, the Attorney General would include language in his settlement agreements expressly committing settlement funds deposited in the Section 20.455(3)(g) account to "[Consumer Protection], Discretionary, and Cost Recovery" categories. *See* Supp.App'x.428; *see also* Supp.App'x.376 ("Consumer Protection – JFC approval not required"); Supp.App'x.419–20 (using consumer-protection funds without legislative approval); Supp.App'x.353–58 (same); Supp.App'x.359–60, 371–72. By determining that such funds were "committed under the terms of the settlement" to these purposes, Wis. Stat. § 165.10 (2017), the Attorney General gave himself unilateral authority to spend those funds as he desired, "without

³ Citations of "Supp.App'x.____" refer to the Supplemental Appendix. Citations of "App'x.____" refer to the Appendix. Citations of "R." refer to the Indexed Record.

receiving passive legislative approval,” Supp.App’x.320–22; *see also* Supp.App’x.376, 421–25. The Attorney General would then “reassign [funds] between [Consumer Protection], Discretionary, and Cost Recovery at any time,” on the basis that the use of those “categories are entirely for [the Department]’s convenience in easily understanding and following the restrictions on use.” Supp.App’x.427–28.

Second, the Attorney General would designate certain settlement funds as “cost-recovery” and deposit those funds in the Department’s Wis. Stat. § 20.455(1)(gh)’s appropriation account, which also did not require JCF approval. *See* Supp.App’x.315–17, 417. The Department’s settlement agreements often “did not specify an amount for the costs of investigation and prosecution, including attorneys’ fees,” so “the [Attorney General] made different calculations in different cases to” determine what portion of a settlement he would designate as “cost recovery” and set aside for his own office. Supp.App’x.315. Amounts designated and set aside for “cost recovery” as attorneys’ fees, for example, ranged from “less than 30% of the total settlement monies” to “more than 30% of the total settlement monies,” and in some instances constituted “one-half [of] any recovery above the amount representing actual damages.” Supp.App’x.315–17. The Attorney General often deposited these settlement funds in the Wis. Stat. § 20.455(1)(gh) account without regard to the amount of work his office devoted to reaching the settlement. *See* Supp.App’x.315–17; Supp.App’x.327–29. In so designating these funds as “cost recovery” outside of JCF’s approval authority, the Attorney

General seized unilateral control of substantial sums, including \$393,897.71 out of \$1,460,964.57 in the *Barr Laboratories, Inc.* settlement, \$583,963.78 out of \$1,946,545.95 in the *General Motors* settlement, and \$1,191,891.89 out of \$2,069,241.72 in the *Uber Technologies* settlement. *See* Supp.App'x.327–29.

All told, these two mechanisms empowered the Attorney General to nullify the prior Section 165.10's JCF-approval mandate and to retain control over as much of the State's settlement funds as he pleased. The Attorney General was so effective at avoiding JCF's approval process that he only submitted a discretionary expenditure plan to JCF on two occasions. *See* Supp.App'x.373. Nevertheless, by the time Act 369 became effective, the Section 20.455(3)(g) account contained \$0 in unencumbered settlement funds. *See* R.59 at 85:19–86:9; Supp.App'x.369.

C. The Legislature Enacts Wis. Stat. § 165.10 In 2018 To End The Attorney General's Workarounds, Ensuring That Settlement Funds Will Simply Go Into The General Fund For General Purpose Revenue

In December 2018, the Legislature enacted Act 369 to end the Attorney General's workarounds and ensure that the Legislature could determine how to spend the State's settlement funds. Act 369 repealed Wis. Stat. § 165.10 (2017) and replaced it with the following provision: "The attorney general shall deposit all settlement funds into the general fund." 2017 Act 369, § 27, *codified at* Wis. Stat. § 165.10. Through this reform, the Legislature ensured that it would have control over *all* settlement

funds, given Section 20.906(1)'s default rule that “[a]ll moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law.” Wis. Stat. § 20.906(1). After Section 27, the Attorney General could no longer use the Section 20.455(3)(g) and Section 20.455(1)(gh) accounts for settlement funds, as all settlement funds would be deposited into the general fund for general purpose revenue.

Act 369 included two additional reforms relevant here, located in Sections 21 and 103(1). *See* 2017 Act 369, §§ 21, 103(1). Section 21 amended Wis. Stat. § 20.455(3)(g) by limiting the Attorney General to spending from that appropriation account only “[t]he amounts in the schedule” that are “credited to” that account by statute. *Id.* § 21. This reform prohibits the Attorney General from spending any excess funds in this account. Section 103, in turn, “lapsed to the general fund the unencumbered balance of any settlement funds in [the Section 20.455(3)(g)] appropriation account,” *id.* § 103(1), such that all unencumbered funds previously held there lapsed to the general fund for general purpose revenues.

D. The Attorney General Raises A Series Of Ever-Shifting Excuses To Render Section 165.10 Meaningless, So That He Can Continue To Spend Settlement Funds However He Wants

1. “[N]ot happy or pleased,” Supp.App’x.242 (concession by the Attorney General’s counsel), with how Section 165.10, as amended, now limits his authority to use settlement funds, the Attorney General decided to ignore it. Rather than deposit

settlement funds into the general fund for general purpose revenue, as required, the Attorney General deposited over \$30 million dollars of settlement funds into a separate “clearing account” and the Section 20.455(1)(gh) account. See Supp.App’x.279, 285, 327–29.

The Attorney General’s actions led to a letter-writing campaign between the Chairs of JCF and the Attorney General that ultimately “culminated in the Legislature filing th[is] underlying lawsuit.” App’x.12. On June 21, 2019, the Chairs of JCF wrote to the Attorney General noting that he had apparently violated Section 165.10 by failing to deposit “*any* settlement funds into the general fund for general purpose revenues.” App’x.12. In his June 28, 2019 response, the Attorney General claimed that Section 165.10 applies only to funds arising from settlements of cases within his own narrow, now-rejected reading of Section 26 of Act 369. See Supp.App’x.64, 66–67; 2017 Act 369, § 26, *codified at* Wis. Stat. § 165.08(1).⁴ The Chairs responded on July 2, 2019,

⁴ Section 26 of Act 369 amended Wis. Stat. § 165.08 to provide that “[a]ny civil action prosecuted by the [Attorney General] . . . may be compromised or discontinued . . . by submission of a proposed plan to the joint committee on finance for the approval of the committee. The compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan.” 2017 Act 369, § 26, *codified at* Wis. Stat. § 165.08(1). The Attorney General had argued, including on his cross-appeal below, that this provision did not apply when he simultaneously files a civil action and a stipulated consent decree seeking a judgment from the court on that decree. See R.110 at 14–21. The Circuit Court and the Court of Appeals rejected the Attorney General’s interpretation of Section 26. See App’x.27–33, 63–93. The Attorney General has withdrawn his challenge to that interpretation of Section 26 in this case, given this Court’s intervening decision in *Kaul v. Wisconsin State Legislature*, 2025 WI 23, 416 Wis. 2d 322, 21 N.W.3d

clarifying that Section 165.10 applies to “any funds . . . derive[d] from settling any legal dispute,” not just those subject to Section 26, App’x.69, 71–72 (emphasis omitted), and providing a memorandum from the Legislative Fiscal Bureau showing how the Attorney General had failed to deposit millions of dollars in settlement funds in 2019 into the general fund for general purpose revenue, *see* Supp. App’x.73–75.

On July 15, 2019, the Attorney General again claimed that Section 165.10 only applied to cases covered by his idiosyncratic reading of Section 26. *See* Supp.App’x.77–80. The Attorney General then raised a new argument: that settlement funds “deposited into the general fund” and “not otherwise appropriated or credited to another appropriation account” may “continue to be credited to the appropriation account under Wis. Stat. § 20.455(3)(g).” Supp.App’x.77, 79.

Citing “uncertainty regarding the outcome of anticipated litigation over [the Section 165.10] issues” in light of the foregoing exchange, the Attorney General “began depositing” all settlement funds under his purview—that is, funds he previously deposited into the Section 20.455(3)(g) and Section 20.455(1)(gh) accounts—into a “clearing account” outside of the Legislature’s control. *See* Supp.App’x.284.⁵ The “clearing account” is a nonbudgetary

513. *See* Letter From Hannah S. Jurss, *Wis. State Legislature v. Kaul*, No.2022AP431 (Wis. Jul. 11, 2025).

⁵ The Attorney General knew that the salient issue here was *his own* depositing of funds in the Section 20.455(3)(g) and Section 20.455(1)(gh) accounts, which is why he initially deposited funds that previously went in those accounts into a clearing account. As the Chairs explained to him in their correspondence, there was no dispute that Section 27 does

appropriation account into which the Attorney General deposits funds that have no clear appropriation to credit. Supp.App'x.279. By the time of the parties' cross-summary-judgment briefing in this case, the Attorney General had deposited over \$32 million into this clearing account, *see* Supp.App'x.327–29.

The Attorney General then changed course, “later determin[ing] that [he] was clearly authorized” to “credit” settlement funds to the Section 20.455(1)(gh) account for cost recovery “based on three general kinds of settlement terms.” Supp.App'x.285. Those terms, were, in the Attorney General's view: “(1) a term specifying an exact amount of the proceeds to be allocated to the Department for its costs of investigation and/or prosecution, including attorneys' fees; (2) in multistate matters where Wisconsin assumes a leading role in the investigation and/or prosecution, a term assigning a specific portion of the recovery to Wisconsin; or (3) a term allocating a specified amount of the proceeds to be used at the Attorney General's discretion for any lawful purpose, one of which typically includes compensating the Department for the costs and expenses of litigation, including attorneys' fees.” Supp.App'x.341. Relying on such language, the Attorney General transferred some settlement funds from the clearing account to the Section 20.455(1)(gh) account and expended those funds without the Legislature's authorization. *See* Supp.App'x.285.

not apply to funds that other agencies, parties, victims and governments are entitled to under applicable law. *See* Supp.App'x.71, 429. The Attorney General never deposited those third-party-earmarked funds into his clearing account.

Regarding the Section 20.455(3)(g) account, the Attorney General originally did not deposit any settlement funds into this account following the enactment of 2017 Act 369, but kept those funds in the clearing account—including during earlier stages of this litigation. *See* Supp.App'x.289. However, in his Opening Brief, the Attorney General has now disclosed that “[s]uch moneys are now being credited to applicable appropriations.” Br.16 n.3. Further, the Attorney General previously stated in this case that, “but for litigation and dispute,” he would continue to place such settlement funds in the Section 20.455(3)(g) account. Supp.App'x.242.

E. Procedural Background

On June 3, 2021, the Legislature and individual Plaintiff Adam Jarchow⁶ filed this lawsuit in the Polk County Circuit Court, seeking a declaratory judgment, injunctive relief, and mandamus relief against Defendants the Attorney General and the Secretary of the Department of Administration⁷ (collectively, “Attorney General”), ordering the Attorney General to comply with Section 165.10. *See* Supp.App'x.9–36. The Legislature requested a declaration that Section 165.10 requires the Attorney General to “deposit all settlement funds into the general fund” for general purpose revenues “and does not allow for the depositing of

⁶ Plaintiff Jarchow joined the Legislature’s arguments and requests throughout this case, including on appeal.

⁷ The Secretary of the Department of Administration has the duty to “[r]eceive and have charge of all moneys paid into the treasury and any other moneys received by officers and employees of state agencies, and pay out the moneys as directed by law.” Wis. Stat. § 16.401(1).

settlement funds into the appropriation account under Wis. Stat. § 20.455(3)(g) or any other statute.” Supp.App’x.31 (quoting Wis. Stat. § 165.10); *see also* Supp.App’x.27–30.⁸ The Legislature also moved for a temporary injunction or, alternatively, a writ of mandamus, requesting, as relevant here, that the Circuit Court order the Attorney General to transfer and deposit all disputed settlement funds into the general fund for general purpose revenue. R.18; R.19 at 8–14.

The Circuit Court held a hearing on the Legislature’s temporary-injunction motion on July 29, 2021. *See* R.79. The Circuit Court thereafter entered an interim order providing that “Defendants may not transfer, spend, dispose of, encumber, disburse, or otherwise withdraw the moneys received from settlements currently held within Defendants’ nonbudgetary appropriation (*i.e.*, Defendants’ clearing account) to the extent those moneys are discretionary settlement moneys that are not committed under the terms of the settlement and that, prior to Act 369, the Department of Justice would have credited to appropriation under Wis. Stat. § 20.455(3)(g).” R.72 at 1–2. The Circuit Court, however, declined to order the same relief with respect to the funds held in the Wis. Stat. § 20.455(1)(gh) account. *See id.* The Circuit Court stated that its interim “freeze order”

⁸ The Legislature had previously filed an original action before this Court to stop the Attorney General’s ongoing violations of Section 27. However, the Court declined to grant review of this issue. *See* Order, *Vos v. Kaul*, No. 2019AP1389-OA (Wis. Sept. 22, 2020); Order, *Kaul v. Wis. State Legislature*, No. 2020AP1928-OA (Wis. March 24, 2021).

would not “expire” until it issued a written decision. R.79 at 19:15, 18–20.

Expedited briefing and discovery ensued, culminating in the filing of cross-motions for summary judgment. *See* R.86 at 4:6–8.

On March 11, 2022, after a hearing on the cross motions, *see* App’x.50, the Circuit Court granted partial summary judgment to the Attorney General and held that, although Section 165.10 requires the Attorney General to deposit settlement funds into the general fund, it does not require the funds to be credited to general purpose revenues within the general fund, App’x.114. The Circuit Court also held that any cost-recovery funds in the Section 20.455(1)(gh) account could remain there. App’x.106–109, 115. The Circuit Court further concluded that it did not have proper briefing on the issue of whether the Attorney General’s depositing of settlement funds into the Section 20.455(3)(g) account was lawful. App’x.114–16.

2. The Legislature appealed to the Court of Appeals, challenging the Circuit Court’s interpretation of Section 165.10 as not forbidding the Attorney General’s past practices of playing keep-away with the State’s settlement funds. *See* R.131; R.133; R.142. The Court of Appeals ruled in the Legislature’s favor and reversed the Circuit Court, in a 2-1 decision.

The Court of Appeals held that “the Attorney General has . . . act[ed] precisely in the manner which the Legislature sought to end” with Act 369.” App’x.15. The Court of Appeals explained that Section 165.10’s plain text, when “read together” with Section 25.20 and Section 20.906(1), “leave[s] no other option” than

to conclude that the Attorney General “is operating contrary to law when settlement funds are deposited anywhere other than in the general purpose revenue fund.” App’x.19–22. Section 165.10’s reference to “all settlement funds” means all settlement funds “received by the Attorney General.” App’x.21 & n.15. Section 20.906(1) then provides that all “moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law.” App’x.21 (emphasis removed) (also citing Wis. Stat. § 25.20). So, the Court of Appeals held, because “the legislature has not otherwise specifically provided by law separate accounts of designations” for the depositing of settlement funds, Section 165.10 and Section 20.906(1) together require the Attorney General to deposit all “such settlement funds . . . into the general purpose revenues of the general fund.” App’x.34. The Court of Appeals also explained that other provisions of Act 369 supported this holding, as they similarly eliminated the Attorney General’s discretion over settlement funds received by the Department in other ways. App’x.23–24.

The Court of Appeals further explained that its interpretation of Section 165.10 would *not* require the Attorney General to “exercise authority” over portions of settlement funds that are “designated for third parties,” such as “restitution, victim fees, and attorneys fees.” App’x. 21 n.15, 23 n.17. Rather, settlement funds “specifically earmarked for other parties” were “otherwise specifically provided by law” under Section 20.906(1) and so would not be credited to the general purpose revenues of

the general fund under Section 20.906(1)'s default rule. App'x.23 n.17; see App'x.21.

Judge Neubauer dissented, raising the arguments that the Attorney General articulates here. App'x.35 (Neubauer, J., dissenting). In her view, the Section 20.455(1)(gh) and Section 20.455(3)(g) accounts do “otherwise specifically provide[d]” for the depositing of settlement funds into those program-revenue accounts, thereby rebutting Section 20.906(1)'s default rule and directing the Attorney General to credit settlement funds to those accounts. App'x.35–38 (Neubauer, J., dissenting).

3. The Attorney General filed his Petition For Review of the Court of Appeals' decision with this Court on January 2, 2025, Petition for Review, *Legislature v. Kaul*, No.2022AP000431 (Wis. Jan. 2, 2025), which this Court granted on December 8, 2025, Order Granting Pet., *Legislature v. Kaul*, No.2022AP000431 (Wis. Dec. 8, 2025). In granting the Petition, the Court ordered the parties to address an additional issue: “If the court determines that Wis. Stat. § 165.10 and § 20.906(1) should be interpreted not to prohibit the attorney general from crediting settlement funds into the appropriation under Wis. Stat. § 20.455(3)(g), does the language of Wis. Stat. § 20.455(3)(g) authorize the crediting of civil action settlement proceeds to that appropriation? In other words, do the services rendered by Department of Justice personnel in litigating a civil action on behalf of the State of Wisconsin or an executive branch agency constitute “proceeds from services” under Wis. Stat. § 20.455(3)(g)?” *Id.*

STANDARD OF REVIEW

This Court reviews de novo a circuit court's grant of summary judgment, including any "issues of constitutional and statutory interpretation" related to that determination. *Wis. State Legislature v. Wis. Dep't of Pub. Instruction*, 2025 WI 27, ¶ 15, 416 Wis. 2d 611, 621–22, 22 N.W.3d 932, 938 (citing *Marklein I*, 2024 WI 31, ¶ 8). In "independently review[ing] a grant of summary judgment" by the circuit court, this Court "us[es] the same methodology as the circuit court." *Wis. Prop. Taxpayers, Inc. v. Town of Buchanan*, 2023 WI 58, ¶ 8, 408 Wis. 2d 287, 992 N.W.2d 100 (citation omitted). "Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law," *id.* (citation omitted), based upon the "pleadings, depositions, answers to interrogatories, and admissions on file," Wis. Stat. § 802.08(2).

ARGUMENT

I. Section 165.10 Requires The Attorney General To Deposit "All Settlement Funds" Into The General Fund For General Purpose Revenues

A. Section 165.10, Read In Context With Section 20.906(1)'s Default Rule, Directs The Attorney General To Deposit All Settlement Funds Into The General Fund For General Revenue Purposes

1. This Court's method of "statutory interpretation begins with the language of the statute," understanding that language according to "its common, ordinary, and accepted meaning" while also giving "specially-defined words or phrases . . . their technical or special definitional meaning." *State ex rel. Kalal v. Cir. Ct. for*

Dane Cnty., 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted). “[T]he context in which [statutory language] is used” is also critical to its proper interpretation, thus the Court must understand statutory language “as part of a whole” and “in relation to the language of surrounding or closely-related statutes.” *Id.* ¶ 46. Further, the Court must strive to interpret statutes in a way that “avoid[s] surplusage,” that “giv[es] reasonable effect to every word,” and that “avoid[s] absurd or unreasonable results.” *Id.* The Court may also consider as “part of [this] plain meaning analysis” the Legislature’s “history” of “amend[ing]” the particular statutes at issue, as that too is “part of the context.” *State v. Cox*, 2018 WI 67, ¶ 10, 382 Wis. 2d 338, 913 N.W.2d 780 (citations omitted).

This Court’s approach to statutory interpretation incorporates other longstanding canons of construction. For example, the Court understands that “where a general statute and a specific statute apply to the same subject, the specific statute controls.” *Rouse v. Theda Clark Med. Ctr., Inc.*, 2007 WI 87, ¶ 37, 302 Wis. 2d 358, 735 N.W.2d 30; *see also Townsend v. ChartSwap, LLC*, 2021 WI 86, ¶ 26, 399 Wis. 2d 599, 967 N.W.2d 21. The Court “presum[es] that the legislature intends to change the law by creating a new right or withdrawing an existing right when it amends a statute.” *Lang v. Lang*, 161 Wis. 2d 210, 220, 467 N.W.2d 772 (1991) (citation omitted). The Court gives effect to later-enacted statutes over earlier-enacted statutes when they are “conflicting.” *In re Frederick’s Est.*, 247 Wis. 268, 271, 19 N.W.2d 248 (1945). And the Court interprets statutory terms in light of

the other terms used in the same statutory provision. *Stroede v. Soc’y Ins.*, 2021 WI 43, ¶¶ 14–15, 397 Wis. 2d 17, 959 N.W.2d 305 (applying “noscitur a sociis” canon).

2.a. The plain text of Section 165.10—read in tandem with Section 20.906(1)’s default rule that deposits of state funds into the treasury must be credited to the general purpose revenues of the general fund “unless otherwise specifically provided by law”—obligates the Attorney General to deposit all settlement funds into the general fund for general purpose revenue. Wis. Stat. § 20.906(1); App’x.19–26. This statutory requirement that the Attorney deposit all settlement funds into the general purpose revenue for general revenue purposes supersedes any prior law that had authorized the Attorney General to deposit settlement funds elsewhere, such as the Section 20.455(3)(g) and Section 20.455(1)(gh) accounts.

Section 165.10 provides that “[t]he attorney general shall deposit all settlement funds into the general fund,” Wis. Stat. § 165.10, and this plain-text directive is clear and straightforward, App’x.20. The word “shall” “unmistakably” commands a “mandatory” directive. *Cox*, 2018 WI 67, ¶¶ 11, 16; App’x.21. That is especially so in the context here, with the Legislature prescribing “[p]enalties” for the “fail[ure] to make such deposits of money” as required by law. Wis. Stat. § 20.906(3); see *Vill. Of Elm Grove v. Brefka*, 348 Wis. 2d 282 (2013). A “settlement” is “[a]n agreement ending a dispute or a lawsuit.” *Settlement*, Black’s Law Dictionary (11th ed. 2019). And “fund” means “[m]oney or other assets.” *Fund*, Black’s Law Dictionary, *supra*. Thus, “settlement

funds” are money or other assets paid to end a dispute or lawsuit. The “general fund” is “[a]ll moneys in the state treasury not specifically designated in any statute as belonging to any other funds.” Wis. Stat. § 25.20.

Section 20.906(1) establishes a longstanding, default rule that “[a]ll moneys paid into the treasury shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law.” Wis. Stat. § 20.906(1); *see also id.* §§ 20.001(2)(a), 25.20; App’x.21. The “unless otherwise specifically provided by law” component of Section 20.906(1) is important, as this means that money deposited into the treasury goes to general purpose revenues of the general fund unless some other statute “*contra[dicts]*” Section 20.906(1)’s default rule by “set[ting] forth” a “standard . . . that [is] different,” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 379 (2013) (emphasis added) (interpreting the similarly worded Federal Rule of Civil Procedure 54(d)). Such a contradiction may arise when, for example, another statute “create[es] an irreconcilable conflict” with Section 20.906(1)’s default rule. *See United States v. Trident Seafoods Corp.*, 92 F.3d 855, 863 (9th Cir. 1996) (interpreting the similarly worded 28 U.S.C. § 2412); *see also Watford v. Heckler*, 765 F.2d 1562, 1566 (11th Cir. 1985) (interpreting similarly worded statute). This interpretive rule makes it “very simple for the legislature to [] provide[] for payment of the moneys . . . into a special or trust fund” or some other location “if it so desired,” *Friedrich v. Zimmerman*, 238 Wis. 148, 298 N.W. 760, 762 (1941), rather than into “the general purpose revenues of the general fund,” Wis. Stat.

§ 20.906(1). All the Legislature must do is “expressly state[]” or “specify” that it “want[s]” the money at issue deposited in an “appropriation account,” such as by “mention[ing]” the specific “account[] where the funds should be credited.” App’x.26.

Here, applying Section 165.10’s plain text and Section 20.906(1)’s statutory default rule compels the conclusion that Section 165.10 requires the Attorney General to “deposit . . . settlement funds . . . into the general purpose revenues of the general fund.” App’x.34. Section 165.10 mandates that “[t]he attorney general shall deposit all settlement funds into the general fund.” Wis. Stat. § 165.10. No other provisions of Wisconsin law “specifically provide[]” for the crediting of settlement funds to any particular appropriations account; therefore, Section 20.906(1)’s default rule applies, and such settlement funds must be “credited to the general purpose revenues of the general fund.” Wis. Stat. § 20.906(1). That is, no provision of Wisconsin law—including Section 20.455(1)(gh) and Section 20.455(3)(g)—“expressly state[s]” or “specif[ies]” that settlement funds are to be credited to a “mention[ed]” “appropriation account.” App’x.26; *accord Marx*, 568 U.S. at 379; *Trident Seafoods*, 92 F.3d at 863. That is unlike the myriad other statutes that the Legislature has enacted that do expressly identify an appropriation account in which to credit certain funds, thereby displacing Section 20.906(1)’s default rule that such funds are to be credited to the general purpose revenues of the general fund. *See supra* pp.13 & n.2 (collecting examples).

b. Statutory history, *Cox*, 2018 WI 67, ¶ 10; *accord Lang*, 161 Wis. 2d at 220, supports this plain text reading of Section 165.10

as requiring the Attorney General to deposit all settlement funds into the general fund for general purpose revenue.

Prior to Section 27's amendments to Section 165.10, Section 165.10 provided that, "before the attorney general *may expend settlement funds under s. 20.455(3)(g) that are not committed under the terms of the settlement*, the attorney general shall submit to the joint committee on finance a proposed plan for the expenditure of the funds." Wis. Stat. § 165.10 (2017) (emphasis added). Under the prior Section 165.10, therefore, the Attorney General had to obtain JCF's approval before spending settlement funds under his control. *Id.* But the Attorney General then employed two clever techniques to circumvent this JCF-approval requirement. *See supra* pp.14–16. First, he would incorporate specific language into settlement agreements allowing him to maximize the amount of settlement funds he could deposit into the Section 20.455(3)(g) account. *See supra* pp.14–15. Second, he would unilaterally deem certain settlement funds as "cost recovery" for his office, triggering his ability to deposit those funds in the Section 20.455(1)(gh) account. *See supra* pp.15–16. These practices allowed the Attorney General to seize control over as many settlement funds as he saw fit without respecting the Legislature's mandatory JCF-approval process, thus frustrating the Legislature's ability to "appropriate the state's funds" for the benefit of the entire State. *Marklein I*, 2024 WI 31, ¶ 18.

The Legislature amended Section 165.10 to end these practices by replacing the prior JCF-approval process with a simple mandate: all "settlement funds . . . shall be deposited" by

the Attorney General “into the general purpose revenue of the general fund.” App’x.33–34 (citing Wis. Stat. §§ 20.906(1), 165.10).

c. The statutory context, *Kalal*, 2004 WI 58, ¶ 48, also strongly supports this plain-text conclusion. Other sections of Act 369—of which Section 27 contains the amendment to Section 165.10 at issue here—stripped the Attorney General’s statutory authority over settlement funds. So, Section 21 prevented the Attorney General from spending funds that had been previously deposited into the Section 20.455(3)(g) account by limiting the Attorney General to spending, from that appropriation account, only “[t]he amounts in the schedule” that are “credited to” that account by statute. 2017 Act 369, § 21. Section 103, in turn, lapsed all unencumbered settlement funds from that account into the general fund. *Id.* § 103(1). Read together, *see Kalal*, 2004 WI 58, ¶ 48, Sections 21, 27, and 103 of Act 369 broadly establish that the Attorney General can no longer use settlement funds to fund the operation of his office in his sole discretion. In other words, the Legislature comprehensively eliminated the Attorney General’s authority to allocate and expend settlement funds at will, mandating instead that he deposit all settlement funds into the general purpose fund, for general purpose revenues. Wis. Stat. § 165.10; *id.* § 20.906(1).

B. The Attorney General’s Contrary Reading Would Render Wis. Stat. § 165.10 Meaningless

In his Opening Brief, the Attorney General puts forward a contrary interpretation of Section 165.10 that would render that provision meaningless. Specifically, the Attorney contends that he

“complies with [Section 165.10, as amended by Section 27 of Act 369] when [he] deposits money from settlements into the state treasury and credits them to applicable program revenue appropriations in the general fund.” Br.22. The Attorney General’s interpretation is wrong.

As an initial matter, the Attorney General’s interpretation would render Section 165.10’s directive—that “[t]he attorney general shall deposit all settlement funds into the general fund,” Wis. Stat. § 165.10—meaningless, violating the bedrock canon against surplusage, *Kalal*, 2004 WI 58, ¶ 46. The Attorney General’s only response to this surplusage argument is a single paragraph on Page 30 of his Opening Brief. Br.30. There, the Attorney General argues that Section 165.10 had two effects: (1) it eliminated his ability to spend settlement funds from the Section 20.455(3)(g) account through the “passive JCF-approval process”; and (2) it required him to “place[]” settlement funds “into the state treasury” rather than, for example, “donat[ing]” them “to a non-profit organization.” Br.30. Neither of the two points in the Attorney General’s short paragraph gives Section 165.10’s text meaning, making his interpretation a statutory nonstarter. *Kalal*, 2004 WI 58, ¶ 46.

As to the first supposed effect that the Attorney General would give Section 165.10 (the removal of the Attorney General’s expenditure authority after JCF review), this focuses entirely upon the language that Section 27 *removed* from the prior version of Section 165.10. *Compare* Br.30, *with* 2017 Act 369, § 27. It says nothing about the meaning of the language of Section 27 that

actually appears in the Wisconsin Statutes today: “[t]he attorney general shall deposit all settlement funds into the general fund.” Wis. Stat. § 165.10. The Court must “give reasonable effect to every word” in Section 27 “in order to avoid surplusage” if it at all “possible,” *Kalal*, 2004 WI 58, ¶ 46, but the Attorney General’s first supposed effect fails to satisfy that obligation.

As for the second supposed effect—requiring the Attorney General to deposit settlement money into the state treasury, rather than donate them to a non-profit organization—this too is no real effect. In the Attorney General’s view, he could simply deposit the settlement money into the Section 20.455(1)(gh) account as “cost recovery”—thus, he claims, fully satisfying Section 165.10—and then immediately take that money out of this account and donate it in his discretion to a non-profit of his choosing, without any appropriation from the Legislature. In other words, according to the Attorney General, Section 165.10 just requires him to take that additional, ministerial (and entirely meaningless) step before unilaterally directing state settlement dollars to a non-profit organization of his choice, as he could do before the Legislature amended Section 165.10. That does not give “reasonable effect to every word” in Section 165.10, as it fails to give any practical effect to Section 165.10’s text, thus violating the surplusage canon. *Kalal*, 2004 WI 58, ¶ 46.

Next, the Attorney General provides no coherent account of Section 20.906(1). *See generally* Br.22–30. Specifically, the Attorney General does not attempt to identify any Wisconsin statute, *see generally* Br.22–30, that “*specifically provide[s]*” for the

crediting of settlement funds somewhere other than “the general purpose revenues of the general fund,” Wis. Stat. § 20.906(1) (emphasis added); App’x.26; *accord Marx*, 568 U.S. at 379; *Trident Seafoods*, 92 F.3d at 863. Rather, the Attorney General appears to invite the Court to reject Section 20.906(1)’s default rule by claiming that, “[w]hen moneys should be deposited into the general fund as general purpose revenues, the statutes say so.” Br.31–32 (citing Wis. Stat. §§ 20.505(1)(kb), 73.03(33m), 301.105). Section 20.906(1) establishes the opposite rule: “All moneys paid into the treasury shall be credited to the general purpose revenues of the general fund *unless otherwise specifically provided by law.*” Wis. Stat. § 20.906(1) (emphasis added). As for the Attorney General’s cited examples—Wis. Stat. §§ 20.505(1)(kb), 73.03(33m), and 301.105—they do not direct the crediting of money as “general purpose revenues of the general fund,” *id.*, but rather direct the crediting of money as “general purpose revenue-earned,” Wis. Stat. §§ 20.505(1)(kb) (emphasis added); 73.03(33m) (same); 301.105 (same). “General purpose revenue-earned” is not the same budget concept as “general purpose revenue.” *Compare* Wis. Stat. § 20.001(2)(a), *with id.* § 20.001(4). Instead, “general purpose revenue-earned” is revenue received “incidentally [by an agency] in connection with general purpose revenue in the course of accomplishing program objectives . . . and for which no program revenue appropriation is made.” *Id.* § 20.001(4). Thus, the Attorney General’s citations of Wis. Stat. §§ 20.505(1)(kb), 73.03(33m), and 301.105 just further demonstrate the application and operation of Section 20.906(1)’s default rule here.

Rather than explain why Section 20.906(1)'s default rule does not apply here, the Attorney General just criticizes the Court of Appeals' reliance on this statute. Br.33. Specifically, the Attorney General faults the Court of Appeals for, in his view, holding that the Legislature may only "otherwise specifically provide[]" for the crediting of general purpose revenues to a particular appropriation, Wis. Stat. § 20.906(1), by enacting "a single subsection" that simultaneously provides "depositing and crediting instructions" for given moneys, Br.33 (citing App'x.26). But the Court of Appeals did not adopt such a single-subsection rule, *see* App'x.26—nor could it, given the Legislature's authority over how "to structure legislation," *Wis. State Legislature*, 2025 WI 27, ¶ 29, and the State's finances, *see Marklein I*, 2024 WI 31, ¶ 14. The Court of Appeals correctly held that, under Section 20.906(1), the Legislature "specifically provide[s]" for the crediting of moneys somewhere other than the general purpose revenues of the general fund by "expressly stat[ing] so," including by specifically "mention[ing]" the particular appropriation account to which the money should be credited. App'x.26. Again, the Wisconsin Statutes are replete with examples of the Legislature using such express language, whether in a single statutory provision, *see supra* pp.13 & n.2 (collecting examples), or across multiple provisions, like the one example cited by the Attorney General, Br.33 (citing Wis. Stat. §§ 20.566(4)(j), 177.0801(2)). Critically, however, no provision of Wisconsin law—including Section 20.455(1)(gh) and Section 20.455(3)(g)—"direct[s] with more specificity" than Section 165.10 "where DOJ settlement

funds shall be deposited,” meaning that Section 20.906(1)’s default rule fully applies here. App’x.21–22.⁹

The Attorney General then argues that the Court of Appeals’ interpretation of Section 165.10 and Section 20.906(1) “impliedly repealed most applications of more than a dozen statutes”—specifically, the “13 different statutes providing for the [Department’s] recovery of attorney fees and costs,” cross-referenced in Wis. Stat. § 20.455(1)(gh). Br.34–35. This too is wrong. The Court of Appeals did not hold that Section 165.10 and Section 20.906(1) impliedly repealed Section 20.455(1)(gh) or its cross-referenced statutes. *See generally* App’x.15–34. Rather, the Court of Appeals concluded that Section 165.10 superseded Section 20.455(1)(gh) *as to the deposit of settlement funds only*, given that it is a later enacted, more specific statute dealing specifically with those types of funds. App’x.22 n.16. Thus, Section 20.455(1)(gh) and its cross-referenced statutes apply in all applications not involving settlement funds, such as fee awards

⁹ Unlike the Attorney General, Judge Neubauer does take the position that the Section 20.455(1)(gh) and Section 20.455(3)(g) accounts do specifically displace Section 20.906(1)’s default rule. App’x.40–43 (Neubauer, J., dissenting)). Respectfully, Judge Neubauer’s conclusion is unpersuasive, as she nowhere identifies statutory language in Section 20.455(1)(gh) or Section 20.455(3)(g) that “*specifically* provides” for the crediting of settlement funds. Wis. Stat. § 20.906(1) (emphasis added). Indeed, regarding Section 20.455(3)(g) in particular, Judge Neubauer concedes that the provision “*does not specifically* refer to funds or proceeds received from litigation settlements.” App’x.42–43 (Neubauer, J., dissenting) (emphasis added). That should have been the end of the inquiry, given that Section 20.906(1)’s default rule applies unless some other statute “*specifically* provide[s]” otherwise. Wis. Stat. § 20.906(1) (emphasis added).

granted by a court after a favorable jury verdict. The Attorney General's only remaining response is that his interpretation of Section 165.10 creates no conflict with Section 20.455(1)(gh), thus precluding this application of the later-enacted-statute canon and the general/specific canon. Br.35. Yet, as explained above, *supra* pp.33–34, the Attorney General's interpretation gives no “effect whatsoever to” Section 165.10 as amended and so is not a permissible construction of this statute—including with respect to its relationship with Section 20.455(1)(gh). App'x.23–25.

Finally, the Attorney General claims that the Legislature's interpretation of Section 165.10 “creates constitutional problems” because it would require the Attorney General to place some settlement funds belonging to third parties in the State's coffers. Br.35–36 (emphasis omitted). However, the *exact same* “problem[],” Br.35–36—how to account for settlement funds obtained by the Attorney General that are committed by law to third parties—arises under both the Legislature's and the Attorney General's interpretation of Section 165.10 here, so this argument is a red herring. Thus, the potential existence of this issue does not weigh in favor of either the Legislature's or the Attorney General's position here.

In complex settlements, the State of Wisconsin, other States, third-party victims, and/or the Federal Government may all have lawful claims to portions of the settlement funds at issue. In such circumstances, it would be untenable and unconstitutional for the Attorney General to seize all of these settlement funds and place them within the Section 20.455(3)(g) and Section 20.455(1)(gh)

accounts, as the Legislature repeatedly explained below. Resp.App'x.65–68; Opening Brief of Plaintiff-Appellant at 30 n.7, *Legislature v. Kaul*, No.2022AP431 (Wis. Ct. App. July 12, 2022) (“Pls.Ct.App.Br.”). And it would be *equally* untenable and unconstitutional for the Attorney General instead to place those funds in the general fund for general purpose revenues or into any other appropriation account. Resp.App'x.65–68; Pls.Ct.App.Br.30 n.7. Those funds belong to third parties, not to the State, so the State cannot retain them in Wisconsin’s treasury.

Given the forgoing, *both* the Legislature and the Attorney General have taken the position here that “settlement funds” within Section 165.10 refers only to funds that the Attorney General is entitled to control by law. *See Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 64, 357 Wis. 2d 469, 851 N.W.2d 262 (constitutional-avoidance canon). Specifically, the Attorney General claims that “settlement funds” under Section 165.10 “means moneys from multistate settlements that a particular settlement leaves uncommitted and subject to disbursement at the Attorney General’s discretion, beyond reasonable attorney fees (which the Department credits to Wis. Stat. § 20.455(1)(gh)) and moneys credited for specific remedial applications,” such as restitution for victims. Br.37–39. Similarly, the Legislature has explained throughout this case that “settlement funds” in Section 165.10 does not “cover” funds due to third-parties and so such funds “are not within the scope of this [case].” App'x.23 n.17.

While the Attorney General criticizes the Legislature’s interpretation of Section 165.10 as “supersed[ing]” the “restitution

appropriation” for victims, Br.36, this is just an attempt to distract the Court from the equivalency between his interpretation and the Legislature’s interpretation vis-à-vis settlement funds belonging to third parties. Both the Legislature’s and the Attorney General’s interpretations of Section 165.10 must take account of settlement funds committed by law to third parties, and both do so in the same sensible way: by concluding that Section 165.10’s reference to “settlement funds” does not cover third-party funds to which the Attorney General has no legal entitlement.¹⁰

II. Even If This Court Holds That Sections 165.10 And 20.906(1) Do Not Prohibit Crediting Settlement Funds To The Section 20.455(3)(g) Account, Section 20.455(3)(g) Does Not Authorize Crediting Of Settlement Funds Into That Account, In Any Event

While the Legislature maintains that Section 165.10, read in tandem with Section 20.906(1), requires the Attorney General to deposit *all* settlement funds into the general fund for general

¹⁰ The Attorney General also spends portions of his Opening Brief generally discussing terms used in “Wisconsin’s budget statutes,” Br.24–28, and then criticizing the Court of Appeals’ supposed misuse of these “budget statute[]” “terms,” Br.30–33—such as the Court of Appeals’ few references to the “general purpose revenue fund,” Br.31 (quoting App’x.21–23) (emphasis omitted), rather than the “general purpose revenues of the general fund.” The Attorney General’s criticisms do not undermine the Court of Appeals’ holding: “Wis. Stat. § 165.10, when read in conjunction with related statutes (including Wis. Stat. § 20.906(1)) . . . requires that ‘all settlement funds’ (as defined; not including those bound to third-parties) shall be deposited into the general fund,” and “[b]ecause the legislature has not otherwise specifically provided by law separate accounts or designations, . . . such settlement funds shall be deposited into the general purpose revenues of the general fund.” App’x.33–34. That holding, moreover, is entirely consistent with basic principles concerning the Legislature’s control of the State’s finances. *See supra* pp.10–13.

purpose revenues, *supra* Part I, at a minimum, the extant statutory regime precludes the Attorney General from depositing settlement funds into the Section 20.455(3)(g) account. While this narrow holding would still render Section 165.10's text meaningless, *see supra* Part I, it would at least allow Act 369's relevant reforms to the Attorney General's authority over the State's settlement funds to achieve some practical effect. The Legislature presented this alternative argument both to the Circuit Court and the Court of Appeals, and this Court specifically ordered the parties to brief this alternative issue when it granted the Attorney General's Petition for Review. Order Granting Pet., *Legislature v. Kaul*, No. 2022AP000431 (Wis. Dec. 8, 2025).

A. Under this Court's established method of statutory interpretation, *see supra* Part I.A.1, Section 20.455(3)(g) does not authorize the deposit of settlement funds into this account, and the Legislature's amendment to Section 165.10 removed the only statutory language that could have arguably justified using the Section 20.455(3)(g) account for settlement funds. Therefore, at a minimum, the Attorney General lacks authority to deposit settlement funds into the Section 20.455(3)(g) account.

The plain text of Section 20.455(3)(g) precludes the Attorney General from depositing settlement funds into the Section 20.455(3)(g) account. Section 20.455(3)(g) authorizes the Attorney General to deposit "moneys received from gifts and grants and all proceeds from services, conferences, and sales of publications and promotional materials" into the Section 20.455(3)(g) account. Wis. Stat. § 20.455(3)(g). Section 20.455(3)(g)'s reference to "proceeds

from services” refers to revenue that the Department receives from voluntarily selling “services” to others—*not* from settling litigation with an adversarial party—especially given its pairing with the statutory terms “proceeds from . . . conferences” and “proceeds from . . . sales of publications and promotional materials.” See *Stroede*, 2021 WI 43, ¶¶ 14–15. Each of those paired statutory terms refers to voluntary sales between the Department and other parties—that is, the Department could only earn “proceeds from . . . conferences” and “proceeds from . . . sales of publications and promotional materials” by selling such “conferences,” “publications,” and “promotional materials” to willing buyers—thus the term “proceeds from services,” Wis. Stat. § 20.455(3)(g), should carry this same meaning. Further, “settlement funds”—the term used by the prior version of Section 165.10 with reference to monies from settlements that may have been in the Section 20.455(3)(g) account—is not one of the paired statutory terms in Section 20.455(3)(g). Nor is “proceeds from services” an ordinary way to refer to funds received from settling litigation, given that “proceeds” means “the amount of money received from a sale” or “[s]omething received upon selling, exchanging, collecting, or otherwise disposing of collateral.” *Proceeds*, Black’s Law Dictionary, *supra*.

This plain text interpretation gives a unified meaning to Section 20.455(3)(g). By pairing “proceeds from services” with its other terms, Wis. Stat. § 20.455(3)(g) has reasonable sweep, potentially covering any “services” that the Department may sell to others for a fee, even those that may not strictly qualify as

“conferences” or as selling “publications” or “promotional materials.” *See generally* LFB, *supra* at 25 (explaining that “[a]ppropriations in Wisconsin, even if narrow in scope, generally do not become so narrow as to be line-item in nature”). And this aligns with Section 20.455(3)(g)’s inclusion of appropriations for “gifts and grants,” as “gifts and grants” are funds voluntarily given to the Department—entirely different than funds obtained by the Department as a result of settling adversarial litigation. *See Gift*, Black’s Law Dictionary (defining “gift” as a “voluntary transfer of property to another without compensation”); *Grant*, Black’s Law Dictionary, *supra* (defining “grant” as “[a]n agreement that creates a right or interest in favor of a person or that effects a transfer of a right or interest from one person to another”).

The statutory structure of Section 20.455 further confirms this plain-text meaning. Section 20.455 separates the Department’s appropriations into three categories: those related to “Legal services” in Subsection 1, those related to “Law enforcement services” in Subsection 2, and those related to “Administrative services” in Subsection 3. Wis. Stat. § 20.455(1), (2), (3); *see generally id.* § 20.455(5) (further providing appropriations for “Victim and witness”). Any “settlement funds” would be the product of the Department’s “Legal services” of “prosecut[ing] or defen[ding] [] any action or proceeding in which the state may be a party or may have an interest,” *id.* § 20.455(1)(a), or providing “legal services to state agencies,” *id.* § 20.455(1)(km). If the Legislature had intended to appropriate settlement funds to any specific appropriation account within Section 20.455, it would have

included that appropriation within Subsection 1's appropriation for "Legal services" (and actually used the term "settlement funds"). Yet, the Legislature did not appropriate any settlement funds to the Department there. *See generally id.* § 20.455(1). Relatedly, the Legislature would not have appropriated settlement funds to the Department under Subsection 3—including within the Section 20.455(3)(g) account—as such funds are not the result of the Department's "Administrative services." *Id.* § 20.455(3)(g).

Section 27 of Act 369's repeal and replacement of Section 165.10 also eliminated any prior statutory language that the Attorney General could have conceivably relied upon to support his practice of depositing settlement funds into the Section 20.455(3)(g) account. *See Cox*, 2018 WI 67, ¶ 10 (statutory history relevant to plain-meaning analysis); *Lang*, 161 Wis. 2d at 220 (presumption that change in law creates change in rights). Prior to Section 27, Section 165.10 obligated the Attorney General to seek approval from JCF before "expend[ing] settlement funds under s. 20.455(3)(g)." *Id.* With Section 27, the Legislature repealed this language altogether, and the statute now directs "[t]he attorney general [to] deposit *all* settlement funds into the general fund." *See* 2017 Act 369, § 27; Wis. Stat. § 165.10 (emphasis added); *see supra* Part I. That amendment, therefore, eliminated any arguable statutory basis for placing settlement funds into the Section 20.455(3)(g) account.

Finally, the canon against interpreting statutes to reach "absurd or unreasonable results" further supports this plain-text interpretation of Section 20.455(3)(g). *Kalal*, 2004 WI 58, ¶ 46.

The Attorney General had admitted that he lacks the authority to spend any of the money in the Section 20.455(3)(g) account under Wisconsin law, both before this Court, Br.43, and in the courts below, *see* Supp.App'x.343; *see also* Supp.App'x.229; R.39 at 46. So, because the Attorney General cannot spend these funds, the many millions of dollars that the Attorney General has unlawfully deposited into the Section 20.455(3)(g) account—totaling over \$32 million at the time of the parties' cross-motions for summary judgment below—must remain untouched and unspent for public purposes throughout the State. Supp.App'x.327–29. Such interpretation creates “absurd [and] unreasonable results,” *Kalal*, 2004 WI 58, ¶ 46, because it would obstruct the use of significant sums of money that would otherwise be appropriated for the public benefit, *see Marklein I*, 2024 WI 31, ¶ 18. So, to avoid this absurd result, this Court should not interpret Wis. Stat. § 20.455(3)(g) as allowing the Attorney General to deposit settlement funds into that account, so that they will not languish there indefinitely.

B. The Attorney General claims that he faithfully abides by Section 165.10's mandate when he deposits funds into the general fund and then correspondingly credits the Section 20.455(3)(g) “proceeds from services” appropriation. Br.39–45. The Attorney General's position on this alternative issue is wrong.

First, the Attorney General's contends that he may deposit settlement funds into the Section 20.455(3)(g) account because they are “proceeds from services” under Wis. Stat. § 20.455(3)(g)—specifically, in his words, “proceeds' of the Department's *legal services*,” Br.42 (emphasis added). As explained above, the

structure of Section 20.455 refutes that claim. Subsection 1 of Section 20.455(3)(g) lists the Department's appropriations for "Legal services," Wis. Stat. § 20.455(1) (emphasis added)—including the very same "legal services" to which the Attorney General refers in his Opening Brief, *compare id.* § 20.455(1)(a), *and id.* § 20.455(1)(km), *with* Br.42. Section 20.455(3)(g) does not appear under Subsection 1. Instead, it appears in Subsection 3, under the header "Administrative services." Wis. Stat. § 20.455(3). Again, had the Legislature intended to appropriate settlement funds from the Department's legal services to the Department, it would have included that appropriation within Subsection 1 as another appropriation for "Legal services," rather than burying it under Subsection 3 with the label "Administrative services," and it would have used the term "settlement funds" as well. The Legislature did none of this.

Second, the Attorney General argues that the Wisconsin Statutes and case law "commonly understand moneys from settlements to be 'proceeds' of the settlement," Br.42, but this badly backfires. In each of the examples that the Attorney General cites, the statutes or case law at issue explicitly qualify the "proceeds" as "settlement" proceeds. *See* Br.42 (citing various sources using terms like "settlement proceeds," "proceeds of the settlement," "proceeds of any settlement" (emphasis omitted)). Here, in marked contrast, Wis. Stat. § 20.455(3)(g) does not qualify the "proceeds" involved as "settlement" proceeds. Instead, Wis. Stat. § 20.455(3)(g) refers simply to "proceeds from services, conferences, and sales of publications and promotional materials."

Wis. Stat. § 20.455(3)(g). Had the Legislature intended “proceeds” in Wis. Stat. § 20.455(3)(g) to cover “settlement” proceeds, it would have said so explicitly, like in the examples that the Attorney General cites. *Responsible Use of Rural & Agr. Land (RURAL) v. Pub. Serv. Comm’n of Wis.*, 2000 WI 129, ¶ 39, 239 Wis. 2d 660, 619 N.W.2d 888.

Third, the Attorney General claims that the statutory history supports his interpretation of Wis. Stat. § 20.455(3)(g), Br.43–45, but this argument too undermines his position. According to the Attorney General, he deposited settlement funds into the Section 20.455(3)(g) account under the “pre-Act 369 version of Wis. Stat. § 165.10.” Br.43–44. But the Legislature passed Section 27 of Act 369 to *end* the Attorney General’s practice of depositing any settlement funds into that account. *Supra* pp.16–17. Section 27 achieved this reform by removing the prior statutory language arguably suggesting that the Attorney General could “expend settlement funds under s. 20.455(3)(g)” and then replacing it with a single, mandatory directive: “[t]he Attorney General shall deposit all settlement funds into the general fund.” 2017 Act 369, § 27.

Finally, the Attorney General claims that, had Act 369 “changed the Department’s ability to credit ‘settlement funds’” to the Section 20.455(3)(g) account, there would have been no need to for the Legislature to “restrict[] the Department’s expenditure authority” from that account “moving forward.” Br.44. But the Section 20.455(3)(g) account covers multiple potential sources of funds, including “gifts,” “grants,” and “proceeds from services,

conferences, and sales of publications and promotional materials,” that the Department may receive. Wis. Stat. § 20.455(3)(g). While the prior version of Section 165.10 arguably permitted depositing settlement funds in the Section 20.455(3)(g) account in light of the language of Wis. Stat. § 165.10 (2017), the Legislature eliminated that language and additionally “restrict[ed]” the Department’s “expenditure authority” under Section 20.455(3)(g) to “the amounts in the schedule.” Br.44. In doing so, Act 369 put a cap on the Department’s ability to spend any such “gifts,” “grants,” or “proceeds,” and precludes any argument that the 20.455(3)(b) is a proper repository for settlement funds.

CONCLUSION

This Court should affirm the decision of the Court of Appeals and hold that the Attorney General must deposit all settlement funds into the general fund for general purpose revenues.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 10,524 words.

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