

Section II — Checks on Government Power

Why Courts Matter Most When Other Institutions Fail

The American constitutional system rests on a simple but demanding premise: **power must be divided to remain legitimate**. Legislatures make law. Executives enforce it. Courts ensure that neither exceeds its authority. When each branch stays within its lane, liberty is preserved not by goodwill, but by structure.

In Wisconsin, that structure has been tested repeatedly—often not by elected officials, but by unelected administrators. Over time, the modern administrative state has accumulated sweeping authority to regulate, enforce, and adjudicate, frequently with minimal legislative input and limited democratic accountability. When that happens, courts are no longer optional participants in governance. They become essential safeguards.

The Wisconsin Supreme Court has long served as the final check when executive agencies exceed their statutory authority, disregard legislative limits, or attempt to substitute administrative preference for enacted law. In moments of institutional stress—emergencies, divided government, or rapid policy shifts—the Court’s role as an arbiter of constitutional boundaries becomes especially consequential.

But this checking function is neither automatic nor guaranteed.

A court committed to enforcing separation of powers will insist that agencies act only within the authority granted by statute, that legislatures retain meaningful oversight, and that executive officials remain subject to law. A court unwilling to perform that role—whether out of deference, ideology, or institutional ambition—effectively licenses the concentration of power in the administrative state.

This section examines how the Wisconsin Supreme Court has exercised, limited, or relinquished that responsibility. It addresses foundational questions of accountability: When can judges be held responsible for actions taken under color of office? What limits exist on judicial immunity? How should courts respond when executive officials defy legislative controls or bypass statutory safeguards?

These are not narrow legal disputes. They are structural questions with statewide consequences. When checks on government power erode, citizens lose not only recourse, but representation. Decisions migrate from public forums to administrative processes, insulated from voters and often shielded from meaningful review.

The materials that follow demonstrate why the judiciary’s willingness to enforce constitutional boundaries—especially against powerful bureaucratic actors—may be the single most important determinant of whether Wisconsin remains governed by law or by administrative discretion. Courts do not govern directly. But by deciding who may govern, and on what terms, they shape the balance of power more than any statute or election alone.