

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES APRIL 2024

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol.

TUESDAY, APRIL 17, 2024

9:30 a.m. 23AP2020-OA

Governor Evers v. Senator Marklein

2:00 p.m. 22AP1349

Becker v. Wisconsin Department of Revenue

Note: The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact media coordinator Jason Cuevas at WISC-TV, (608) 277-5241. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT

April 17, 2024

9:30 a.m.

2023AP2020-OA Governor Evers v. Senator Marklein

This Wisconsin Supreme Court accepted jurisdiction over the original action petition filed by Governor Evers, the Department of Natural Resources, the Board of Regents of the University of Wisconsin System, the Department of Safety and Professional Services and Marriage and Family Therapy Board, and the Professional Counseling and Social Work Examining Board ("the petitioners"), against Senator Howard Marklein and Representative Mark Born as chairs of the Joint Committee on Finance; Senator Chris Kapenga and Representative Robin Vos, as chairs of the Joint Committee on Employment Relations; and Senator Steve Nass and Representative Adam Neylon, as co-chairs of the Joint Committee for Review of Administrative Rules ("the respondents"). The petitioners have asked this court to declare a number of statutory provisions unconstitutional as violative of the doctrine of separation of powers.

The Wisconsin Constitution, like the federal constitution, separated the powers of the state government into three branches. The petitioners assert that the legislature has strayed from that foundational division of authority by enacting statutes that allow legislative committees to improperly “veto” executive branch decision-making. The petition asked the court to resolve three issues. The court granted the petition for leave to commence an original action with respect to only the first issue set forth in the petition:

Wisconsin Stat. § 23.0917 charges DNR with administering the Knowles-Nelson Stewardship Program, through which DNR awards already-appropriated funds to expand public access to the State’s natural resources. Courts have universally recognized that spending appropriated funds is an executive power and that legislative committees cannot block the executive’s exercise of that power. Wisconsin Stat. § 23.0917(6m) and (8)(g)3. authorize the Joint Committee on Finance, a 16-member legislative committee, to veto DNR’s choices. Do those veto provisions facially violate the separation of powers?

The court's order held the second and third issues in abeyance pending further order of the court.

The Knowles-Nelson Stewardship program was created by the Legislature in 1989 to acquire land for nature-based recreation and for the protection of environmentally sensitive areas. The program authorizes the DNR to acquire land, develop public recreational property, and provide grants to local units of government and nonprofit organizations to do the same. Under the program, the DNR reviews grant applications and awards funds based on purposes and priorities set out in the Wisconsin statutes and administrative rules (e.g., the development of state forests, public hunting grounds, or state trails; the acquisition of land for the preservation or enhancement of the state’s water resources, natural habitat areas and fisheries, and natural areas; etc.). The Legislature has authorized the DNR to obligate specified amounts each fiscal year from various state funds for Knowles-Nelson Program projects.

The challenged statutory provisions—Wis. Stat. § 23.0917(6m) and (8)(g)3.—provide the Joint Committee on Finance (JCF) with two mechanisms to block the DNR’s spending of already-appropriated funds for Knowles-Nelson Program projects. First, pursuant to Wis. Stat. § 23.0917(6m), the JCF may

decline, under a 14-day passive review process, the encumbrance or expenditure of more than \$250,000 for any project (except DNR property development projects) to be funded from the Knowles-Nelson Program. Second, Wis. Stat. § 23.0917(8)(g) authorizes the JCF to require approval, with 12 of 16 members voting in favor, of any acquisition of land under the Knowles-Nelson Program that is outside of the boundaries of stewardship projects established before May 1, 2013.

The petitioners submit that spending appropriated funds is an executive power that legislative committees cannot block, and thus the “veto mechanisms” provided to the JCF by Wis. Stat. § 23.0917(6m) and (8)(g)3. violate the separation of powers. The petitioners say these provisions unconstitutionally intrude on the executive branch’s power to administer the Knowles-Nelson Program. They also argue that Wis. Stat. § 23.0917(6m) and (8)(g)3. improperly empower the JCF to modify existing spending law without following constitutionally required bicameralism and presentment procedures.

The respondents dispute the petitioners' arguments. The respondents argue, inter alia, that the JCF's authority to review expenditures comes from enacted statutes, voted on by the entire legislature and signed by the Governor. Thus, the respondents argue, the very authority that JCF has retained over the Knowles-Nelson Program complies with the bicameralism and presentment requirements that the petitioners claim are being evaded.

The Wisconsin Supreme Court will be deciding whether Wis. Stat. §§ 23.0917(6m) and (8)(g)3. facially violate the Wisconsin Constitution’s separation of powers.

WISCONSIN SUPREME COURT

April 17, 2024

2:00 p.m.

2022AP1349

William Becker v. Wisconsin Department of Revenue

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee) that reversed the La Crosse County Circuit Court order, Judge Todd W. Bjerke, presiding, which had reversed the Department of Revenue's assessment against Becker and the Tax Appeals Commission's ruling affirming that assessment.

Between January 1, 2008, and December 21, 2011, William Becker sold "trailer type vehicles" to out-of-state residents who were not planning on using the trailers in Wisconsin, except for removing them from the state. In September and October 2013, the Wisconsin Department of Revenue (DOR) issued assessments to Becker in the amount of \$526,262.62 for sales and use tax plus interest and \$34,747.22 for individual income tax. Becker had not paid sales tax on the trailers he sold to out-of-state residents because, he argued, the trailer sales qualified for sales tax exemption under Wis. Stat. § 77.54(5)(a)4., which excludes sales tax on "truck bodies" being sold to non-residents of Wisconsin for out-of-state use. Becker filed a petition for redetermination with the DOR, and the DOR denied the petition. Becker appealed the denial to the Tax Appeals Commission (Commission), which ruled in favor of the DOR. The Commission ruled that the trailers sold by Becker were not subject to the sales tax exemption in Wis. Stat. § 77.54(5)(a)4. due to the lack of a "necessary symbiotic relationship" between the trailers and the vehicles that pulled them.

Becker filed a Chapter 227, Wis. Stats., judicial review petition with the La Crosse County Circuit Court to review the decision of the Commission. The circuit court reversed the Commission, ruling that Becker's trailers were indeed "truck bodies" based on DOR v. Trudell, 104 Wis. 2d 39, 310 N.W.2d 612 (1981), as well as dictionary, industry and regulatory definitions of "truck bodies," and therefore were subject to the sales tax exemption.

DOR filed an appeal with the court of appeals. The court of appeals reversed the circuit court, holding that Becker's trailers were not "truck bodies," as that phrase was defined in Trudell. The court of appeals determined that unlike the truck tractors at issue in Trudell, the vehicles used to pull Becker's trailers "function separately."

Becker filed a petition with the Wisconsin Supreme Court to review the court of appeals' decision. The question this court must answer is:

Are semitrailers "truck bodies" within the meaning of Wis. Stat. § 77.54(5)(a)4. if designed to be pulled by trucks rather than truck tractors?