

**WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
MAY 2024**

The case listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases listed below originated in the following counties:

Dane

MONDAY, MAY 13, 2024

9:45 a.m. 24AP164

Priorities USA v. Wisconsin Elections Commission

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

May 13, 2024

9:45 a.m.

2024AP164

Priorities USA v. Wisconsin Elections Commission

This case is before the court on petition to bypass the Wisconsin Court of Appeals, District IV (headquartered in Madison), seeking Supreme Court review of an order of the Dane County Circuit Court, Judge Ann M. Peacock, presiding, that granted the Wisconsin Legislature's motions to dismiss Priorities USA's constitutional challenges to absentee voting procedures.

Priorities USA, the Wisconsin Alliance for Retired Americans, and William Franks, Jr. (collectively "Priorities USA") filed a lawsuit against the Wisconsin Elections Commission ("WEC") in Dane County circuit court seeking declaratory relief challenging the constitutionality of several statutory absentee voter provisions: (1) the witness-certification requirement; (2) the prohibition on use of drop boxes as interpreted by Teigen v. Wisconsin Elections Commission; (3) the election day "cure" deadline; and (4) the provisions which state that absentee voting is a "privilege" and that absentee ballots cast in contravention of the statutory procedures for absentee ballots may not be counted.

The Wisconsin Legislature intervened in the case, and both the Legislature and WEC filed motions to dismiss. The circuit court granted the motions to dismiss, in part, concluding that "[u]nder the controlling legal standard . . . [Priorities USA's] allegations do not support a facial constitutional claim because [Priorities USA's] own allegations show that the provisions are not unconstitutional in all circumstances." The circuit court preserved an unpleaded "hybrid" challenge raised in Priorities USA's briefing with respect to the application of the witness requirement to a subset of absentee voters and part of Priorities USA's challenge to the directive not to count absentee ballots for voters who do not comply with the witness requirement. Priorities USA then voluntarily dismissed the remaining claims, and the circuit court entered judgment dismissing the case in its entirety.

Priorities USA filed an appeal with the court of appeals, and before briefs were filed in that court, Priorities USA filed a petition to bypass the court of appeals. The petition to bypass asked the Wisconsin Supreme Court to take jurisdiction of the case and resolve three issues. The court granted the petition to bypass with respect to only the third issue set forth in the petition:

Whether to overrule the Court's holding in Teigen v. Wisconsin Elections Commission, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, that Wis. Stat. § 6.87 precludes the use of secure drop boxes for the return of absentee ballots to municipal clerks.

The court's order granting bypass held all other issues in the appeal in abeyance pending further order of the court.