WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
SEPTEMBER 2024

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

Ozaukee
Racine
Waukesha
Walworth

TUESDAY, SEPTEMBER 10, 2024

9:45 a.m.	23AP36	Wisconsin Voter Alliance v. Secord
	24AP232	Brown v. Wisconsin Election Commission
1:30 p.m.	22AP1158	Oconomowoc Area School District v. Cota

MONDAY, SEPTEMBER 23, 2024

9:45 a.m.	23AP1614	Morway v. Morway

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 the Public Information Office of the Wisconsin Court System at communications@wicourts.gov. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
September 10, 2024
9:45 a.m.

23AP36 Wisconsin Voter Alliance v. Secord

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), that reversed and remanded a Walworth County Circuit Court order, Judge David W. Paulson presiding, that dismissed WVA's petition for a writ of mandamus.

Secord is the Register in Probate in Walworth County, who is responsible for maintaining the records of guardianship and related proceedings. On June 28, 2022, the Wisconsin Voter Alliance (WVA) requested public records from Walworth County, asking for information under Wisconsin's Public Records Law that included the names, addresses, birth dates, and of all people under guardianship. While the county was preparing to respond, the WVA clarified on July 26, 2022, that it was seeking completed GN-3180 forms from 2016 to the present, as well as information regarding guardianships of wards without voting rights for the same time period. The GN--3180 forms are "Notices of Voting Eligibility," which indicate that a circuit court has found a person incompetent to exercise the right to vote or has restored a person's right to register or vote. The WVA filed a lawsuit against Secord on the same day to compel the county to provide these forms.

The Walworth County Circuit Court granted Secord's motion to dismiss on December 21, 2022, ruling the WVA did not prove the county was required to provide the requested records under the Public Records Law. The court noted that only the guardian's contact information might be disclosable, but only if there was a demonstrated need for it. The court ruled the WVA did not show a clear legal right to the information or a need for it since they were not involved in any of the guardianship cases.

On appeal, the Court of Appeals, District II, considered the importance of balancing privacy rights with the right to vote. The court of appeals found that while privacy is important, it is not absolute, especially when it comes to ensuring that only eligible voters can vote. The court of appeals concluded that notices of voting eligibility should be public, as mandated by the legislature, and found no exception in the Public Records Law for these notices. The court concluded that WVA met all requirements for a writ of mandamus.

The court of appeals ruled that the WVA had shown a public need for the information and was entitled to the forms. Secord petitioned the Supreme Court to review this decision in order to clarify the Wisconsin Public Records Law regarding the disclosure of these forms.

The Wisconsin Supreme Court granted the petition for review. The issues presented are:

1) Whether the Court of Appeals was bound to apply its own precedent established in *Wisconsin Voter Alliance v. Reynolds*, 2023 WI App 66, 410 Wis. 2d 335, 1 N.W.3d 748?

2) Whether the Notices of Voting Eligibility forms (GN-3180) are subject to public disclosure?

WISCONSIN SUPREME COURT
September 10, 2024
9:45 a.m.

24AP232 Brown v. Wisconsin Election Commission

This is a review, on bypass from the Wisconsin Court of Appeals, of the Racine County Circuit Court's order, Judge Eugene A. Gasiorkiewicz presiding, declaring that the City of Racine's designation of alternate absentee voting sites and its use of a mobile voting van for in-person absentee voting in 2022 were illegal under state law.

In the August 2022 primary election, the City of Racine deployed a van, referred to as a "Mobile Election Unit," for early in-person absentee voting. The plaintiff, Kenneth Brown, a registered voter in Racine, brought this legal challenge against the Wisconsin Elections Commission (WEC) and Racine's Municipal Clerk, Tara McMenamin, asserting that the use of the MEU as an alternate absentee voting site violated state election laws, specifically Wis. Stat. § 6.855, which governs the designation and operation of such sites.

Central to the case is the question of whether the MEU's operation complies with the statutory requirements set forth in Wis. Stat. § 6.855. The statute allows municipalities to establish alternate absentee voting sites but mandates that these sites must not provide any political party with an advantage. The circuit court ruled that Racine's selection of sites for the MEU contravened this requirement, noting that the sites chosen were in wards with partisan demographics differing from the ward in which the municipal clerk's office is located.

The case also presents an issue of standing, specifically whether Brown, as a concerned voter, has the legal right to bring this case. The circuit court determined that Brown was "aggrieved" under Wisconsin law, thereby granting him standing to pursue the case.

Additionally, the case addresses the interpretation of Wis. Stat. § 6.84, which reflects a legislative policy to strictly regulate absentee voting to prevent fraud or abuse. The circuit court concluded that the use of the MEU did not adhere to the statutory framework envisioned by the legislature. The circuit court emphasized the lack of statutory language explicitly authorizing mobile voting sites.

On May 3, 2024, this court granted bypass. The issues presented for review are:

Black Leaders Organizing for Communities' Petition:

1) Whether the Circuit Court improperly construed the "partisan advantage" language of Wis. Stat. § 6.855(1).
2) Whether the Circuit Court improperly applied Wis. Stat. § 6.84 to prohibit the City of Racine's Mobile Elections Unit (MEU) under Wis. Stat. § 6.855.

WEC's Petition:

1) Under Wis. Stat. § 6.855(1), municipalities may designate alternate voting sites for in-person absentee voting. A site may not afford an advantage to any political party. Wis. Stat. § 6.855(1). In response to a 2016 federal court ruling concluding that limiting municipalities to a single site could violate federal law, the Legislature passed Wis. Stat. § 6.855(5), which permits multiple sites. But the circuit court held that Racine erred in establishing such sites for the August 2022 primary election because its sites were located in wards with different Democratic/Republican voting results than the ward where the city clerk's office is located. Did the circuit court correctly interpret the statute?
2) This lawsuit was filed by a voter who filed an administrative complaint with the Commission under Wis. Stat. § 5.061[] and then appealed after the Commission found no violation of law. The plaintiff asserted that he is a voter who wants to see the law followed. He did not assert that his ability to vote had been injured or that he belongs to a political party that was injured. The circuit court held that the plaintiff had standing based on Teigen v. WEC, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. Was the plaintiff "aggrieved" under Wisconsin law?
3) For the August 2022 primary election, Racine parked a mobile voting unit at the sites designated as alternate in-person absentee voting. The unit contained the voting equipment and other materials needed for voters to cast their votes. The circuit court held that this violated Wisconsin statutes. Was this a correct reading of Wisconsin law?

Brown's Cross-Appeal:

1) Whether the circuit court erroneously interpreted Wis. Stat. § 6.855 with respect to the use of alternate absentee voting sites including when they may be used, where they may be located, and their availability throughout the election period.

WISCONSIN SUPREME COURT
September 10, 2024
1:30 p.m.

22AP1158 Oconomowoc Area School District v. Cota

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), that reversed and remanded the Waukesha County Circuit Court order, Judge Lloyd V. Carter presiding, that affirmed the decision of the Labor and Industry Review Commission.

The Wisconsin Supreme Court has granted a petition for review in *Oconomowoc Area School District v. Labor and Industry Review Commission*, which addresses critical questions regarding the interpretation of "arrest record" under the Wisconsin Fair Employment Act (WFEA). This case arises from the Oconomowoc Area School District's decision to terminate the employment of Gregory and Jeffrey Cota, two brothers accused of retaining funds from the sale of school district scrap metal. After receiving municipal citations for theft, the brothers were fired by the District. The brothers challenged their terminations, contending that the District's actions constituted unlawful employment discrimination based on their "arrest record," as defined by Wis. Stat. § 111.32(1).

The Labor and Industry Review Commission (LIRC) found in favor of the Cotas, determining that the District had engaged in discriminatory practices by terminating the brothers based on their municipal citations, which LIRC considered to be an "arrest record." The Waukesha County Circuit Court, presided over by Judge Lloyd V. Carter, upheld LIRC's decision, ruling that the terminations violated the WFEA's arrest record discrimination prohibition. The Oconomowoc Area School District appealed the ruling to the Wisconsin Court of Appeals, District II.

The court of appeals reversed the lower court's decision, holding that the WFEA's protections against discrimination based on an "arrest record" did not extend to municipal citations. The court of appeals reasoned that the legislature did not intend for the term "arrest record" under Wis. Stat. § 111.32(1) to encompass civil or municipal ordinance offenses. Instead, the statute was meant to protect individuals against discrimination related to criminal arrest information, particularly from jurisdictions that do not use the terms felony or misdemeanor. The appellate court's ruling remanded the case back to the circuit court with directions to dismiss the Cotas' complaints on their merits.

Both LIRC and the Cotas petitioned the Supreme Court to review the court of appeals' decision. The issues presented for review by those petitioners are set forth below.

Labor and Industry Review Commission:

1) Does information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried pursuant to law enforcement authority, for a municipal offense punishable by forfeiture, constitute an "arrest record" within the meaning of [the WFEA] and does the WFEA therefore provide protection against terminations that are based upon this information?

2) If the Court agrees on the first issue presented, a secondary issue is presented as to whether substantial evidence in the record supports the factual finding of the [LIRC] that the decision of the Oconomowoc Area School District ("the District") to terminate the employment of Jeffrey Cota and Gregory Cota ("the Cotas") was made on the basis of their arrest records, in violation of the WFEA.

Jeffrey M. Cota and Gregory L. Cota:

1) Did LIRC and the trial court correctly determine that a municipal citation was an arrest record as defined by Wis. Stat. § 111.32(1), and therefore firing the Cotas because of information indicating the Cotas had been issued a municipal citation was arrest record discrimination?

WISCONSIN SUPREME COURT
September 23, 2024
9:45 a.m.

2023AP1614 Morway v. Morway

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), concerning the timeliness of an appeal of an order issued by the Ozaukee County Circuit Court, Judge Sandy A. Williams presiding, in a divorce proceeding.

This case is before the court on a petition to review an appellate court order concerning the timeliness of an appeal of an order issued by the Ozaukee County Circuit Court, Judge Sandy A. Williams presiding, in a divorce proceeding. The circuit court order in question resolved a spousal maintenance issue but left open a request for attorney fees and did not contain a statement that it was a final order for purposes of appeal.

The husband in the divorce proceeding subsequently appealed the order to the Wisconsin Court of Appeals. The Court of Appeals issued an order holding that the appeal was untimely because the challenged circuit court order was final for purposes of appeal even though it did not contain a finality statement and left open a request for attorney fees, and the husband did not challenge the order within 90 days of its entry.

The petition for review asks the Wisconsin Supreme Court to address three key issues:

1) Is an order that includes no finality language and that expressly contemplates additional substantive litigation between the parties a "final order" under Wis. Stat. § 808.03(1) for purposes of appeal?

2) Is there an attorney fee exception to finality under Wis. Stat. § 808.03(1), such that an order is final for purposes of appeal if all that remains to be litigated is a claim for attorney's fees?

3) If an attorney fee exception exists, does it extend to fee claims that require additional substantive litigation between the parties?