

# WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES JANUARY 2025

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:

Rock  
Waukesha

## TUESDAY, JANUARY 14, 2025

|           |         |   |
|-----------|---------|---|
| 9:45 a.m. | 22AP718 | Wisconsin Manufacturers and Commerce, Inc. v. Wisconsin Department of Natural Resources |
|           | 23AP255 | Melissa A. Hubbard v. Carol J. Neuman, MD   |

## THURSDAY, JANUARY 16, 2025

|           |             |                                    |
|-----------|-------------|------------------------------------|
| 9:45 a.m. | 23AP2020-OA | Governor Evers v. Senator Marklein |
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**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**

**January 14, 2025**

**9:45 a.m.**

22AP718

Wisconsin Manufacturers & Commerce v. WDNR

*This is a review of a decision by the Wisconsin Court of Appeals, District II (headquartered in Waukesha), affirming a Waukesha County Circuit Court order, Judge Michael O. Bohren presiding, in favor of Wisconsin Manufacturers and Commerce, Inc. (WMC) and Leather Rich, Inc. The case concerns the authority of the Department of Natural Resources (DNR) under Wisconsin's Spills Law to enforce cleanup obligations for substances not formally designated as hazardous through administrative rulemaking.*

The Spills Law, codified in Wis. Stat. § 292.11, requires responsible parties to investigate and remediate discharges of hazardous substances. WMC and Leather Rich argue that the DNR cannot classify certain substances, including per- and polyfluoroalkyl substances (PFAS), as hazardous or enforce cleanup obligations unless it first promulgates administrative rules formally designating those substances and specifying their hazardous concentration levels. The plaintiffs contend that without these rules, DNR's actions violate Wis. Stat. § 227.10(2m), which requires agencies to promulgate rules before enforcing standards, requirements, or thresholds.

The circuit court ruled in favor of WMC and Leather Rich, holding that DNR's classification of PFAS and its decision to pause the issuance of broad liability exemptions under the Voluntary Party Liability Exemption (VPLE) program constituted unpromulgated rulemaking. The Court of Appeals affirmed, finding that the DNR must engage in formal rulemaking to enforce cleanup obligations for PFAS under the Spills Law.

The Wisconsin Supreme Court granted DNR's petition for review. The issues presented are:

- 1) May responsible parties avoid investigating and remediating discharges of hazardous substances like PFAS (and potentially others) unless and until the Department promulgates rules designating those substances as "hazardous" and the concentrations at which they qualify as such?
- 2) Did the DNR have to promulgate an administrative rule before it exercised its discretion to pause granting the broadest liability exemption?
- 3) Does Wis. Stat. § 227.10(2m) independently prevent the DNR from administering the Spills Law until it promulgates administrative rules listing all substances it considers to be "hazardous" and at what concentration they qualify as such?

**WISCONSIN SUPREME COURT**

**January 14, 2025**

**9:45 a.m.**

23AP255

Melissa A. Hubbard v. Carol J. Neuman, MD

*This is a review of a decision by the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Rock County Circuit Court ruling, Judge Derrick A. Grubb presiding. The case addresses the scope of a physician's duty to disclose information under Wisconsin's informed consent law, Wis. Stat. § 448.30.*

Melissa A. Hubbard, the plaintiff-respondent, alleges that Dr. Carol J. Neuman, her treating OB/GYN, recommended to another physician, Dr. Michael McGauley, the surgical removal of Hubbard's ovaries during a planned laparoscopic procedure for suspected severe endometriosis. Hubbard claims Dr. Neuman failed to inform her of this recommendation, which she argues was necessary for her to make an informed decision about the treatment. During the procedure, Dr. McGauley removed Hubbard's ovaries, which Hubbard contends occurred without her consent.

Dr. Neuman argues that her duty under Wis. Stat. § 448.30 does not extend to informing Hubbard about her communications with Dr. McGauley because she was not the physician performing the surgery. Neuman asserts that requiring such disclosure would undermine physician collaboration and discourage open communication between providers, which is essential for effective patient care.

The circuit court denied Dr. Neuman's motion to dismiss, finding that Hubbard's allegations were sufficient to state a claim under Wis. Stat. § 448.30. The Court of Appeals affirmed, concluding that a treating physician's duty to inform may include disclosures about communications with other physicians involved in the patient's care.

The Wisconsin Supreme Court granted Dr. Neuman's petition for review to address the following issue:

- 1) Does a treating physician who refers a patient to another physician have a duty under Wis. Stat. § 448.30 to inform the patient about her conversations with that other physician, including her thoughts and alleged recommendations to the other physician, where the referring physician does not provide the treatment out of which the claim arises?

**WISCONSIN SUPREME COURT**

**January 16, 2025**

**9:45 a.m.**

23AP2020-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 case examines whether the Joint Committee for Review of Administrative Rules' (JCRAR) authority to block or suspend administrative rules complies with Wisconsin's constitutional principles, including the separation of powers, bicameralism, and presentment.*

The petitioners, including Governor Tony Evers and several state agencies, argue that JCRAR's authority to block or suspend administrative rules violates constitutional principles of bicameralism, presentment, and the separation of powers. Specifically, they challenge the statutory provisions that allow JCRAR to veto proposed rules indefinitely or temporarily, as well as to suspend already-promulgated rules multiple times without following the formal legislative process.

This dispute arises from two contested rules. First, the Department of Safety and Professional Services (DSPS) proposed updates to Wisconsin's commercial building code to align with regional and national standards for safety and energy efficiency. JCRAR indefinitely blocked the rule, citing insufficient economic impact analysis and concerns about increased costs to property owners. Second, the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board issued a rule defining conversion therapy as unprofessional conduct. JCRAR temporarily suspended this rule for over three years, citing conflicts with state law and concerns about its impact on free speech and religious rights.

The Court of Appeals upheld JCRAR's actions, relying on prior precedent from *Martinez v. DILHR* and *SEIU v. Vos*, which recognized rulemaking as a delegated legislative function subject to legislative oversight. Petitioners argue that these decisions should be overturned, claiming JCRAR's actions improperly interfere with executive authority to implement legislative directives through rulemaking.

This case is part of a broader lawsuit filed by Governor Evers against Republican legislative leaders, challenging legislative overreach in several contexts. In a related case earlier this year, the Supreme Court ruled 6-1 that the Legislature's Joint Finance Committee exceeded its authority by blocking funds for land conservation purchases already approved by the full Legislature. The current case focuses solely on the third issue raised in Evers' lawsuit.

The Wisconsin Supreme Court granted review to address the following issue:

- 1) Under various provisions of Wis. Stat. ch. 101, the DSPS is charged with promulgating rules relating to commercial building safety, accessibility, and energy efficiency. Under Wis. Stat.

§ 457.03(2), the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board is responsible for developing ethics standards for social workers, marriage and family therapists, and professional counselors. Courts have broadly recognized that blocking executive branch agencies' rules violates bicameralism and presentment procedures and infringes on executive and judicial authority. Wisconsin Stat. §§ 227.19(5)(c), (d), (dm), and 227.26(2)(d) and (im) authorize the Joint Committee for Review of Administrative Rules, a 10-member legislative committee, to veto administrative rules. Do these veto provisions violate the separation of powers by allowing this committee to block executive agency rulemaking or, at minimum, DSPS's and the Board's rulemaking authority over commercial building standards and ethics standards for social workers, marriage and family therapists, and professional counselors?