

June 27, 2024

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
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Web Site: www.wicourts.gov

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The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **June 27, 2024**. Please direct any comments regarding this table to the Clerk of Supreme Court via email to Clerk@WICourts.gov.

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| Case No. | Caption/Issue(s) | SC Accepted/ Oral Arg. or Brief Subm. | CA Dist./ Cty. | CA Decision |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------|
| 2020AP1775 | <u>Nancy Kindschy v. Brian Aish</u> Whether Wis. Stat. § 813.125 , as construed by the Court of Appeals to prohibit speech from a public sidewalk intended to persuade listeners to repent sinful conduct violates the First Amendment of the U.S. Constitution and Art. I, §3 of the Wisconsin Constitution? Whether speech from a public sidewalk intended to persuade listeners, even if directed to a specific listener, to repent sinful conduct serves "no legitimate purpose" within the meaning of Wis. Stat. § 813.125 ? Whether enjoining, for a period of four years, a pro-life, anti-Planned Parenthood protestor from protesting on a public sidewalk in front of a Planned Parenthood during its business hours constitutes an unconstitutional restraint on First Amendment protected expression? | 06/22/2022 REVV REVERSED 06/27/2024 2024 WI 27 | 3 Trempealeau | 03/08/2022 Pub. 2022 WI App 17 401 Wis. 2d 406 973 N.W.2d 828 |
| 2021AP1589 | <u>Sojenhomer LLC v. Village of Egg Harbor</u> Do the recently enacted prohibitions on condemnation for "pedestrian ways" set forth in Wis. Stat. § 32.015 and Wis. Stat. § 61.34(3)(b) , prohibit Wisconsin municipalities from exercising their condemnation powers pursuant to Wis. Stat. § 61.34(3)(a) , to widen and reconstruct a road when a sidewalk will be located within the right-of-way? | 08/17/2023 REVV REVERSED 06/19/2024 2024 WI 25 | 3 Door | 03/14/2023 Pub. 2023 WI App 20 407 Wis. 2d 587 990 N.W.2d 267 |
| 2021AP2105-CR | <u>State v. Michael Gene Wiskowski</u> When the report of a person sleeping in a car while waiting in line at a drive thru is contradicted by the officer's observation of the car driving on the road without any traffic violations, is there reasonable suspicion to stop the car or can police justify the stop based on the community caretaker doctrine? After the stop, when the driver provides a reasonable explanation, can the officer use the community caretaker doctrine to extend the stop to perform field sobriety tests? | 09/26/2023 REVV REVERSED 06/18/2024 2024 WI 23 | 2 Sheboygan | 03/15/2023 Unpub. |
| 2022AP1158 | <u>Oconomowoc Area School District v. Cota</u> 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 a forfeiture, constitute an "arrest record" within the meaning of the Wisconsin Fair Employment Act ("the WFEA") and does the WFEA therefore provide protection against terminations that are based upon this information? | 06/17/2024 REVV | 2 Waukesha | 01/10/2024 Pub. 2024 WI App 8 |

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| 2022AP1329 | <u>State v. B. W.</u> Whether a circuit court's plea colloquy is defective when it miscommunicates the burden of proof it is required to apply at disposition. Whether the circuit court improperly relied on the adoptive parent's assurance that she would allow the respondent to continue to visit with his son in deciding to terminate his parental rights. | 12/12/2023 REVW AFFIRMED 06/27/2024 2024 WI 28 | 1 Milwaukee | 10/25/2023 Unpub. |
| 2022AP1349 | <u>Becker v. Wis. Dept. of Revenue</u> 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? | 01/23/2024 REVW Oral Arg.: HOLD | 1 LaCrosse | 07/25/2023 Unpub. |
| 2023AP36 | <u>Wisconsin Voter Alliance v. Secord</u> Whether the Court of Appeals was bound to apply its own precedent established in <i>Wisconsin Voter Alliance v. Reynolds</i> , 2022 WI App 66 , 410 Wis. 2d 335, 1 N.W.3d 748? Whether the Notices of Voting Eligibility forms are subject to public disclosure? | 12/27/2023 REVW | 2 Walworth | 12/22/2023 Unpub. |
| 2023AP215 | <u>Winnebago County v. D.E.W.</u> What kind of testimony must the County present to satisfy the "reasonable explanation" requirement in Wis. Stat. § 51.61(1)(g)4 ? Does this Court's decision in <u>Winnebago County v. Christopher S.</u> , 2016 WI 1 , 366 Wis. 2d 1, 878 N.W.2d 109 permit the court of appeals to uphold a finding that the patient is incompetent to refuse medication based on "conclusory" testimony from the testifying doctor so long as the lower court finds that testimony "credible"? | 12/12/2023 REVW DISMISSED 05/14/2024 2024 WI 21 | 2 Winnebago | 08/30/2023 Unpub. |

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| 2023AP441 | <p><u>State v. R. A. M.</u></p> <p>Does a circuit court striking a parent's contest posture and entering default judgment after a finding of bad faith and egregious behavior by the respondent parent automatically trigger a waiver of counsel under Wis. Stat. § 48.23?</p> <p>Does an automatic waiver of counsel under Wis. Stat. § 48.23 without an explicit finding of waiver and discharge of counsel by the circuit court lead to absurd results?</p> <p>Does any limitation of appointed counsel's participation in a TPR proceeding as a sanction after entering default judgment against a parent amount to "total deprivation" of counsel under <u>Shirley E. [Torrance P., Jr. v. Shirley E., 2006 WI 129, ¶43, 298 Wis. 2d 1, 724 N.W.2d 623]</u>?</p> | <p>09/26/2023 REVW</p> <p>AFFIRMED 06/25/2024 2024 WI 26</p> | <p>1 Milwaukee</p> | <p>07/26/2023 Unpub.</p> |
| 2023AP533 | <p><u>Waukesha County v. M.A.C.</u></p> <p>Under what circumstances can a default judgment be entered against an individual who appears by counsel at a commitment hearing?</p> <p>Whether Wis. Stat. § 51.20(10)(a) entitles an individual to personal notice of a recommitment hearing.</p> <p>Whether a person can forfeit their right to an examination of their competency to refuse medication.</p> | <p>12/12/2023 REVW</p> <p>Oral Arg.: 03/20/2024</p> | <p>2 Waukesha</p> | <p>08/30/2023 Unpub.</p> |
| 2023AP1072 | <p><u>Douglas County v. K.A.D.</u></p> <p>What is "evidence?" Is evidence the sworn testimony of witnesses, documents the court has received, or any facts to which the parties have stipulated? See WIS JI-CIVIL 50. Or is evidence any document statutorily required to be filed with the court prior to the relevant evidentiary hearing even if never introduced or admitted into evidence?</p> | <p>06/17/2024 REVW</p> | <p>3 Douglas</p> | <p>02/13/2024 Unpub.</p> |

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| 2023AP1399-OA | <u>Rebecca Clarke v. Wisconsin Elections Commission</u> Do the existing state legislative maps violate the contiguity requirements contained in Article IV, Sections 4 and 5 of the Wisconsin Constitution? Did the adoption of the existing state legislative maps violate the Wisconsin Constitution's separation of powers? If the court rules that Wisconsin's existing state legislative maps violate the Wisconsin Constitution for either or both of these reasons and the legislature and the governor then fail to adopt state legislative maps that comply with the Wisconsin Constitution, what standards should guide the court in imposing a remedy for the constitutional violation(s)? What fact-finding, if any, will be required if the court determines there is a constitutional violation based on the contiguity clauses and/or the separation-of-powers doctrine and the court is required to craft a remedy for the violation? If fact-finding will be required, what process should be used to resolve questions of fact? | 10/06/2023 ORIG Oral Arg.: 11/21/2023 | -- | -- |
| 2023AP1614 | <u>Morway v. Morway</u> 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? 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? If an attorney fee exception exists, does it extend to fee claims that require additional substantive litigation between the parties? | 04/16/2024 REVW | 2 Ozaukee | 11/17/2023 Unpub. |
| 2023AP2020-OA | <u>Governor Evers v. Senator Marklein</u> 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. 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? | 02/02/2024 ORIG Oral Arg.: 04/17/2024 | -- | -- |
| 2024AP164 | <u>Priorities USA v. Wisconsin Election Commission</u> Whether to overrule the Court's holding in <u>Teigen v. Wisconsin Elections Commission</u> , 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. | 03/12/2024 BYPA Oral Arg.: 05/13/2024 | 4 Dane | -- |

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| 2024AP232 | <p><u>Kenneth Brown v. Wisconsin Elections Commission</u></p> <p>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?</p> <p>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 <i>Teigen v. WEC</i>, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. Was the plaintiff “aggrieved” under Wisconsin law?</p> <p>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?</p> | 05/03/2024 BYPA | 2 Racine | -- |
| 2024AP729-OA | <p><u>LeMieux v. Governor Evers</u></p> <p>Does Article V, § 10(1)(c) of the Wisconsin Constitution forbid a governor from deleting digits in an enrolled bill to create a new year?</p> <p>Does a governor exceed his or her partial-veto authority under Article V, § 10(1)(b) of the Wisconsin Constitution by deleting language in an enrolled bill to create a longer duration than the one that the legislature approved?</p> | 06/17/2024 ORIG | -- | -- |

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