

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
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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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **November 18, 2024**. Please direct any comments regarding this table to the Clerk of Supreme Court via email to Clerk@WICourts.gov.

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2021AP001346*	<p><u>State v. Jobert L. Molde</u></p> <p>What is the proper place for statistical evidence of the prevalence of false reports of abuse in sexual assault cases, and did the court of appeals wrongly conclude in <i>Mader</i> and now in this case in holding that statistical testimony putting the incidence 8 percent amounts to <i>Haseltine</i> testimony that the victim in the case is telling the truth?</p> <p>If <i>Mader</i> correctly determined that such statistical testimony violates <i>Haseltine</i>, was this proposition settled law at the time of <i>Mader</i>'s and <i>Molde</i>'s 2019 trials, as <i>Mader</i> and the court here held below, so that trial counsel should have known to object to the testimony?</p> <p>The court of appeals concluded that counsel's non-objection to the statistical testimony was prejudicial even though Dr. Swenson's statistical testimony was in no way linked to an assessment of the child victim's truthfulness, the statistical testimony was brief, the victim's account of the assault was detailed and remained consistent through multiple tellings, and the victim disclosed the assault to her sister a week prior to its disclosure, among other factors.</p> <p>If the statistical testimony should not have been admitted, did the court of appeals err in concluding that <i>Molde</i> had proven that counsel's alleged error in not objecting to Dr. Swenson's testimony was prejudicial?</p>	11/12/2024 REVW	3 Dunn	05/21/2024 Unpub.
2021AP001525	<p><u>Hayden Halter v. Wisconsin Interscholastic Athletic Association</u></p> <p>Is the WIAA a state actor? Are the Halters entitled to judicial review of the WIAA's decision to suspend Hayden Halter from the 2019 varsity wrestling regional event and to deny him an internal appeal to the body's Board of Control? Are the Halters entitled to certiorari relief? Are the Halters entitled to declaratory relief reinstating Hayden Halter's 2019 state title and points? Are the Halters entitled to a permanent injunction?</p>	08/02/2022 REVW Oral Arg.: 10/09/2024	2 Racine	02/28/2023 Pub. 2024 WI App 12

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2022AP000718	<p><u>Wisconsin Manufacturers and Commerce, Inc. v. Wisconsin Department of Natural Resources</u></p> <p>The Spills Law broadly defines “hazardous substance” to include “any substance” whose quantity or concentration in a particular setting presents a hazard to human health or the environment. Those who are responsible for hazardous substances discharged to the environment must take action to restore the environment to the extent practicable and minimize the harmful effects. 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?</p> <p>The Voluntary Party Liability Exemption (VPLE) program under Wis. Stat. § 292.15 grants the Department discretion to grant different types of liability exemptions to those who have cleaned up their property. The broadest type exempts <i>all</i> contaminants covered by the Spills Law, not just those the participant addressed. For a time, the Department paused granting this broad type of liability exemption due to statewide uncertainty over the scope and severity of PFAS contamination. Did the Department have to promulgate an administrative rule before it exercised its discretion to pause granting the broadest liability exemption?</p> <p>Does Wis. Stat. § 227.10(2m) independently prevent the Department 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?</p>	<p>09/11/2022 REVW Oral Arg.: 01/14/2025</p>	<p>2 Waukesha</p>	<p>03/06/2024 Pub. 2024 WI App 18</p>
2022AP000959	<p><u>State v. Luis A. Ramirez</u></p> <p>Did the court of appeals create a new requirement departing from <i>Barker v. Wingo</i>, 407 U.S. 514, and other precedent?</p> <p>How should a reviewing court weigh a defendant's pro se requests, particularly where counsel never renews them and counsel never objects to adjournments?</p> <p>How should a reviewing court treat a circuit court's findings that a defendant did not want a speedy trial when those findings are based in part on credibility determinations?</p> <p>Did the court of appeals correctly hold that the State showed a "cavalier disregard" for Ramirez's constitutional speedy trial rights where the State offered explanations for every adjournment, the court and parties were actively preparing for trial, Ramirez never made a speedy trial demand through counsel, he was in prison on another conviction while the case was pending, and the circuit court determined that Ramirez never wanted</p>	<p>10/07/2024 REVW Oral Arg.: 01/16/2025</p>	<p>4 Columbia</p>	<p>04/25/2024 Pub. 2024 WI App 28</p>

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2022AP001158	<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? 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 to terminate the employment of Jeffrey Cota and Gregory Cota was made on the basis of their arrest records in violation of the WFEA. Did the 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?	06/17/2024 REVW Oral Arg.: 09/10/2024	2 Waukesha	01/10/2024 Pub. 2024 WI App 8
2022AP001759*	<u>Nicole McDaniel v. Wisconsin Department of Corrections</u> Did the Wisconsin Court of Appeals err by applying an unprecedented and excessively demanding pleading standard when deciding a motion for class certification, effectively treating it as a motion for summary judgment? Did the Wisconsin Court of Appeals err when it ruled, contrary to many state and federal courts around the country, that the corrections officers cannot be compensated for pre-shift and post-shift activities such as security screenings?	11/12/2024 REVW	1 Milwaukee	05/15/2024 Unpub.
2023AP000036	<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 Oral Arg.: 09/10/2024	2 Walworth	12/22/2023 Unpub.
2023AP000070*	<u>Scot Van Oudenhoven v. Wisconsin Department of Justice</u> Whether an expungement under Wisconsin law qualifies as an “expungement” as that term is used in 18 U.S.C. § 921(a)(33)(B)(ii). This issue was raised in the Court of Appeals in Van Oudenhoven’s opening brief and the Court of Appeals ruled that an expungement under Wisconsin law is not an expungement under federal law.	11/12/2024 REVW	2 Winnebago	06/04/2024 Pub. 2024 WI App 38

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2023AP000255	<u>Melissa A. Hubbard v. Carol J. Newman, M.D.</u> 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?	10/07/2024 REVW Oral Arg.: 01/14/2025	4 Rock	03/21/2024 Pub. 2024 WI App 22
2023AP000645	<u>State v. Carl Lee McAdory</u> Does Wis. Stat. § 346.63(1)(c) grant circuit courts the post-remittitur authority to reopen judgments of conviction, vacate post-jeopardy orders dismissing § 346.63(1) counts at the State's request, and reinstate and convict defendants on those counts? When a defendant appeals from a judgment of conviction, seeking to have his conviction on a count reversed, the State becomes a respondent on appeal. If, in the event the defendant's appeal succeeded, the State wished to have an order dismissing a different count vacated and further wished to have the judgment of conviction reopened and modified to have the defendant convicted on the previously-dismissed count, must the State have filed a notice of cross appeal under Wis. Stat. Rule 809.10(2)(b) ? Alternatively, must the State have raised this request as an alternate ground for relief in its briefing on the defendant's appeal, as provided in <i>State v. Alles</i> , 106 Wis. 2d 368, 390-91, 316 N.W.2d 378 (1982)? Can a circuit court reinstate a count on which the defendant was found guilty but which the State moved to have dismissed after jeopardy attached, consistent with the defendant's protections against double jeopardy and his interest in the finality of judgments?	10/07/2024 REVW Oral Arg.: 01/16/2025	2 Rock	04-11-2024 Pub. 2024 WI App 29

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2023AP001140*	<u>Wisconsin Department of Corrections, Division of Community Corrections v. Brian Hayes</u> Even if a sexual assault victim's out-of-court statements are found inadmissible, must the agency in a revocation proceeding still consider whether other unobjected-to, non-hearsay evidence supports a finding of the probation violations? Does a probationer's conditional right to confront the victim under <i>Morrissey v. Brewer</i> , 408 U.S. 471, 487, 489–90 (1972), allow an agency to consider out-of-court statements by a sexual assault victim? Where an agency commits an error of law about its ability to consider certain evidence and thus fails to consider it, does a reviewing court properly ignore that error and simply consider the remaining evidence under certiorari review?	11/12/2024 REVW	1 Milwaukee	05/14/2024 Unpub.
2023AP001614	<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 Oral Arg.: 09/23/2024	2 Ozaukee	11/17/2023 Unpub.
2023AP001950	<u>State v. H.C.</u> Is the statutory scheme controlling the disposition phase in a termination of parental rights proceeding unconstitutional on its face because it violates procedural due process by not requiring the petitioner to prove that termination is in the best interest of the child by a certain level of proof? If the statutory scheme controlling the disposition phase in a termination of parental rights proceeding is unconstitutional because it does not require the petitioner to prove that termination is in the best interest of the child by a certain level of proof, is a parent whose rights were terminated under the unconstitutional statute entitled to a new disposition hearing? Even if the court were to conclude that the constitution does not require it, is there nonetheless a burden of proof at the dispositional phase? And, if so, what is the burden of proof?	09/11/2024 REVW Oral Arg.: 12/09/2024	1 Milwaukee	03/05/2024 Unpub.

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2023AP002020	<p><u>Evers v. Marklein</u></p> <p>Under various provisions of Wis. Stat. ch. 101, [the Department of Safety and Professional Services (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?</p>	10/07/2024 ORIG	--	--
2023AP002362	<p><u>Josh Kaul v. Joel Urmanski</u></p> <p>Does § 940.04, and § 940.04(1), (5), and (6) specifically, prohibit performing consensual abortions, subject to the exception in § 940.04(5)?</p> <p>If § 940.04, and § 940.04(1), (5), and (6) in particular, otherwise would apply to and prohibit performing consensual abortions, subject to § 940.04(5), has that prohibition been impliedly repealed or superseded by subsequent legislation such that it can no longer be applied to consensual abortions?</p> <p>If § 940.04, and § 940.04(1), (5), and (6) in particular, otherwise would apply to and prohibit performing consensual abortions, subject to § 940.04(5), is that prohibition unenforceable as to abortions under the Due Process Clause because it is unconstitutionally vague on its face or compliance is impossible?</p> <p>If § 940.04, and § 940.04(1), (5), and (6) in particular, otherwise would apply to and prohibit performing consensual abortions, subject to § 940.04(5), is that prohibition unenforceable because of alleged disuse and reliance on <i>Roe v. Wade</i> and its progeny?</p> <p>Do the State Agencies have standing to bring their own claims in this action and, if not, can they rely on the standing of an intervenor to remain in the action and benefit from a judgment obtained by an intervenor?</p>	07/02/2024 BYPA Oral Arg.: 11/11/2024	4 DANE	--

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2024AP000232	<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>	<p>05/03/2024 BYPA Oral Arg.: 09/10/2024</p>	<p>2 Racine</p>	<p>--</p>

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2024AP000330	<p><u>Planned Parenthood of Wisconsin vs. Joel Urmanski</u></p> <p>Whether Wisconsin Statute § 940.04, if interpreted to prevent a person from obtaining an abortion in all circumstances except “to save the life of the mother,” violates the person’s inherent right to life and liberty guaranteed by Article I, Section 1 of the Wisconsin Constitution, by unconstitutionally interfering with the person’s right to bodily integrity, autonomy, and self-determination—including the decision of whether and when to have a child.</p> <p>Whether Wisconsin Statute § 940.04, if interpreted to prevent a person from obtaining an abortion in all circumstances except “to save the life of the mother,” violates the person’s right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution, by treating people, including those who seek abortion services, differently than people who seek comparable healthcare services, without an adequate state interest.</p> <p>Whether Wisconsin Statute § 940.04, if interpreted to prevent physicians from performing an abortion in all circumstances except “to save the life of the mother,” violates the physicians’ rights to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution, by treating physicians providing abortion services differently than those providing comparable healthcare services, without an adequate state interest.</p> <p>Whether Wisconsin Statute § 940.04, if interpreted to prevent physicians from performing an abortion in all circumstances except “to save the life of the mother,” infringes on the physicians’ fundamental right to liberty guaranteed by Article I, Section 1 of the Wisconsin Constitution, by preventing them from practicing their chosen profession and treating their patients to the full extent of the physicians’ education, training, and ability, consistent with the patients’ needs.</p>	07/02/2024 ORIG	--	--

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2024AP000351	<p><u>Wisconsin Elections Commission v. Devin LeMahieu</u></p> <p>The Commission and Administrator Wolfe seek a ruling that Administrator Wolfe may lawfully hold over in her position, that there is no vacancy that the Commission must fill through an appointment while she does so, and that, during the holdover, neither the Senate nor the Joint Committee on Legislative Organization may act to remove her or appoint an interim administrator. Despite the Senate's efforts last summer and the repeated contradictory statements by two Defendants-Appellants since the litigation began, all Defendants-Appellants conceded in circuit court that these points are correct. The circuit court also agreed.</p> <p>The Commission and Administrator Wolfe also seek a ruling that the Commission has no duty to make a new appointment when there is no vacancy. Defendants-Appellants argue that, notwithstanding the valid holdover and absence of a vacancy, the Commission nevertheless has a mandatory duty to appoint someone to a new term. Neither the Commission's statutes nor <i>Prehn</i> supports their argument, as the circuit court concluded, but Defendants have appealed.</p>	<p>09/11/2024 BYPA Oral Arg.: 11/18/2024</p>	<p>4/2 Dane</p>	<p>--</p>
2024AP000729	<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>	<p>06/17/2024 ORIG Oral Arg.: 10/09/2024</p>	<p>--</p>	<p>--</p>
2024AP001872	<p><u>Kennedy v. Wisconsin Elections Commission</u></p> <p>Whether the circuit court appropriately exercised its discretion in denying a temporary injunction that would have required election clerks to reprint or hand-affix stickers to four million Wisconsin ballots to remove Kennedy's name.</p>	<p>09/20/2024 BYPA AFFIRMED 09/27/2024</p>	<p>4/2 Dane</p>	<p>--</p>

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