

# WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES NOVEMBER 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:

Dane  
Sheboygan

## **MONDAY, NOVEMBER 11, 2024**

9:45 a.m.                      23AP2362                      Josh Kaul v. Joel Urmanski

## **MONDAY, NOVEMBER 18, 2024**

9:45 a.m.                      24AP351                      Wisconsin Elections Commission v. Devin LeMahieu

**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**

**November 11, 2024**

**9:45 a.m.**

23AP2362

Josh Kaul v. Joel Urmanski

*The Wisconsin Supreme Court accepted jurisdiction of this case following a bypass of the Court of Appeals. This is a review of a decision of the Dane County Circuit Court, Judge Diane Schlipper presiding, that declared Wisconsin's pre-Roe abortion statute, Wis. Stat. § 940.04, unenforceable as applied to consensual abortions. District Attorney Joel Urmanski ("the appellant") argues that the statute remains enforceable in light of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*. Attorney General Josh Kaul, along with the Wisconsin Department of Safety and Professional Services, the Wisconsin Medical Examining Board, and Dr. Clarence P. Chou (collectively, the "State Plaintiffs"), seek a declaration that the 19th-century statute does not apply to consensual abortions and should not be enforced.*

This is a review of a decision of the Dane County Circuit Court, Judge Diane Schlipper presiding, that declared Wisconsin's pre-Roe abortion statute, Wis. Stat. § 940.04, unenforceable as applied to consensual abortions. District Attorney Joel Urmanski, the appellant, argues that the statute remains enforceable in light of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*.

The statute in question, Wis. Stat. § 940.04, originally enacted in 1849, criminalizes abortion unless it is performed to save the life of the mother. The State Plaintiffs, including Attorney General Josh Kaul and the Wisconsin Department of Safety and Professional Services, argue that the statute has been superseded by more recent laws regulating abortion, such as Wis. Stat. § 940.15, which outlines specific conditions under which abortion is legal in Wisconsin. The circuit court agreed, relying on the Wisconsin Supreme Court's decision in *State v. Black* (1994), which interpreted Wis. Stat. § 940.04 as addressing only feticide and not consensual abortions.

District Attorney Urmanski has appealed, arguing that *Black* should either be overturned or does not apply to this case. He contends the *Dobbs* decision, which returned regulatory authority of abortion to the states, revives Wis. Stat. § 940.04 unless it is explicitly repealed or found unenforceable. The State Plaintiffs also argue that even if the statute were still applicable, it has been impliedly repealed by subsequent legislation that establishes a comprehensive framework for regulating lawful abortions.

The Wisconsin Supreme Court granted the petition to bypass the Court of Appeals and will now determine whether Wis. Stat. § 940.04 is enforceable as to consensual abortions and whether it has been impliedly repealed by later legislation.

The issues for the Supreme Court to decide are:

- 1) Whether Wis. Stat. § 940.04 applies to consensual abortions, or whether it is limited to acts of feticide, as interpreted by *State v. Black*.

- 2) Whether Wis. Stat. § 940.04 has been impliedly repealed by subsequent legislative enactments, including Wis. Stat. § 940.15, which regulates lawful abortions in Wisconsin.

**WISCONSIN SUPREME COURT**  
**November 18, 2024**  
**9:45 a.m.**

24AP351

Wisconsin Elections Commission v. Devin LeMahieu

*This case is before the court on petition to bypass the Wisconsin Court of Appeals, District II (headquartered in Waukesha), seeking Supreme Court review of an order of the Dane County Circuit Court, Judge Ann M. Peacock, presiding, that granted the Wisconsin Election Commission's motion for temporary injunction.*

The case revolves around the legal status of Meagan Wolfe, the Administrator of the Wisconsin Elections Commission, whose term expired on July 1, 2023, and the question of whether she can continue to serve as a "holdover" without a formal reappointment or Senate confirmation.

The dispute arose when the WEC failed to appoint a new administrator following the expiration of Wolfe's term. In a June 2023 vote, three WEC commissioners voted to reappoint Wolfe, while three abstained, leaving her reappointment unresolved. The Wisconsin Senate later voted to reject her "nomination" despite no formal reappointment being submitted. The plaintiffs, WEC and Wolfe, sought a judicial declaration that Wolfe is lawfully holding over in her role and that no vacancy exists requiring the appointment of a new administrator.

At the core of the case are the statutory provisions of Wis. Stat. § 15.61(1)(b)1, which outlines the process for appointing the WEC administrator. The plaintiffs argue that since there is no vacancy in the administrator position, there is no requirement to make a new appointment. The defendants, including legislative leaders such as Devin LeMahieu and Robin Vos, contend that the WEC has a mandatory duty to appoint a new administrator following the expiration of a term and that the Senate's advice and consent powers must be exercised.

The Dane County Circuit Court ruled in favor of the plaintiffs, holding that Wolfe is lawfully serving as a holdover under Wisconsin law, specifically referencing the precedent set in *State ex rel. Kaul v. Prehn*, which permits officials to remain in their roles after their terms expire until a successor is appointed and confirmed. The court also issued a permanent injunction preventing the defendants from attempting to replace Wolfe while she is lawfully holding over.

On appeal, the petitioners argue that the circuit court erred in its interpretation of Wis. Stat. § 15.61(1)(b)1, asserting that the WEC is required to appoint a new administrator regardless of whether a vacancy technically exists. They seek a writ of mandamus compelling the WEC to appoint a new administrator and submit the nomination to the Senate for confirmation. The Wisconsin Supreme Court's decision will clarify the legal framework governing the appointment and holdover status of key election officials in the state.

The issues for the Supreme Court to decide are:

- 1) Whether Wis. Stat. § 15.61(1)(b)1 requires the Wisconsin Elections Commission to appoint an Administrator regardless of whether a vacancy in such office exists.

- 2) Whether the circuit court appropriately exercised its discretion in declining to grant mandamus relief to Defendants-Appellants, and in granting permanent injunctive relief to the Commission