

# **WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES APRIL 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:

Dane  
Milwaukee  
Waukesha

## **WEDNESDAY, APRIL 2, 2025**

9:45 a.m.	22AP790	Josh Kaul v. Wisconsin State Legislature
11:00 a.m.	23AP1464-CR	State v. Kordell L. Grady

## **THURSDAY, APRIL 3, 2025**

9:45 a.m.	24AP1713	Wisconsin State Legislature v. Wisconsin Department of Public Instruction
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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

April 2, 2025

9:45 a.m.

22AP790

Josh Kaul v. Wisconsin State Legislature

*The Wisconsin Supreme Court accepted review of this case following a petition for review from the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a decision by the Dane County Circuit Court, Judge Susan M. Crawford presiding. The case examines whether Wis. Stat. § 165.08(1), which requires the Attorney General to obtain approval from the Legislature's Joint Committee on Finance (JCF) before settling or discontinuing certain lawsuits, violates the Wisconsin Constitution's separation of powers doctrine as applied to civil enforcement actions and litigation related to executive agency program administration.*

The dispute arose after the Wisconsin Department of Justice (DOJ), represented by Attorney General Josh Kaul, along with Governor Tony Evers and Department of Administration Secretary Katy Koltin Blumenfeld, challenged the constitutionality of Wis. Stat. § 165.08(1). They argued that the statute unconstitutionally restricts the Attorney General's ability to resolve civil enforcement actions and lawsuits involving state agencies. The Circuit Court ruled in favor of the DOJ, holding that the statute infringes on executive authority by subjecting settlement decisions to legislative approval.

The Wisconsin Court of Appeals reversed the Circuit Court's decision, ruling that the Legislature has a legitimate interest in certain settlements that may impact state funds and policy matters. The appellate court concluded that the statute does not violate the separation of powers because it allows for legislative oversight in areas where the Legislature has a constitutional role. The court also found that the DOJ did not demonstrate that the law imposes an undue burden on the executive branch's ability to conduct litigation.

The Legislature argues that the statute serves as a necessary check on the Attorney General's authority to settle cases that may have budgetary or policy implications for the state. The DOJ, however, contends that requiring legislative approval affects the Attorney General's role in representing the state in legal matters and limits the executive branch's discretion in enforcing laws and defending state agencies in court. The Supreme Court's decision will determine whether the statute represents a valid exercise of legislative oversight or an unconstitutional encroachment on executive authority.

The Wisconsin Supreme Court granted the petition to bypass to address the following issues:

- Does Wisconsin Stat. § 165.08(1) violate the Wisconsin Constitution's separation of powers as applied to the categories of:
  - 1) civil enforcement actions; and
  - 2) civil actions prosecuted on behalf of executive agencies regarding the administration of programs the agencies are charged with executing?

**WISCONSIN SUPREME COURT**

**April 2, 2025**

**11:00 a.m.**

23AP1464-CR

State v. Kordell L. Grady

*This is a review of a decision by the Wisconsin Court of Appeals, District II (headquartered in Waukesha), affirming a Waukesha County Circuit Court ruling, Judge Paul Bugenhagen Jr. presiding. The case involves a restitution hearing where the defendant, Kordell L. Grady, argues that his due process rights were violated when he was denied a confidential attorney-client consultation during the hearing. Additionally, the case addresses whether an insurance company can be awarded restitution for a deductible when the insured party has not personally requested reimbursement.*

Grady, who was convicted of multiple offenses, including fleeing an officer and first-degree recklessly endangering safety, appeared via Zoom for a contested restitution hearing while his attorney, the assistant district attorney, and the judge were physically present in court. During the hearing, Grady requested to speak with his attorney. The court went off the record but did not ensure a confidential means of communication, allowing the prosecution to overhear Grady's statements and reference them in its argument. Grady contends that this violated his right to private legal consultation and due process, necessitating a new restitution hearing. The State argues that Grady failed to assert his right to a confidential consultation at the time and that any alleged violation did not impact the fairness of the hearing.

Another issue in the case concerns the restitution awarded to an insurance company. The insurer sought reimbursement not only for the amount it paid for repairs to a damaged police vehicle but also for the \$1,000 deductible paid by the City of Muskego. Grady argues that an insurance company should not receive restitution for a deductible paid by another entity unless specifically requested by the insured party. The circuit court and court of appeals upheld the restitution order, determining that the insurance company was authorized to seek the full amount.

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

1. The circuit court chose to conduct a contested restitution hearing as a "hybrid" procedure: Mr. Grady, the mentally ill criminal defendant, appeared via Zoom from prison. His lawyer, the assistant district attorney, and the judge all appeared in-person. During the hearing, Mr. Grady asked to speak to his lawyer. The court went "off the record" to facilitate that request, but made no attempt to ensure a confidential line of communication. The State, after listening in on Mr. Grady's conversation with his attorney, used his comments to support its restitution argument. Does this procedure necessitate a remand for a new restitution hearing?
2. May an insurance company be awarded restitution equivalent to the deductible paid by an insured when that insured has not filed a request for restitution?

## WISCONSIN SUPREME COURT

April 3, 2025

11:00 a.m.

24AP1713

Wisconsin State Legislature v. Wisconsin Department of Public Instruction

*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 Stephen E. Ehlke presiding. The case concerns a dispute between the Wisconsin State Legislature and the Wisconsin Department of Public Instruction (DPI), along with Governor Tony Evers, regarding the constitutionality of a gubernatorial partial veto and the Legislature's authority to control appropriated funds.*

The dispute arises from legislative funding for literacy programs. The Wisconsin Legislature passed Senate Bill 971, which allocated \$50 million to DPI for literacy initiatives. Governor Evers exercised a partial veto, consolidating two appropriations into a single literacy program fund. The Legislature contends that this action was unconstitutional because Senate Bill 971 was not an appropriation bill as defined under the Wisconsin Constitution, making it ineligible for a partial veto. Conversely, the Governor and DPI argue that the bill authorized the expenditure of public funds and, therefore, qualifies as an appropriation bill, meaning the veto was constitutionally valid. The Supreme Court's decision on this issue will determine whether the Governor had the authority to reshape the appropriation through a partial veto.

The case also raises questions about the Joint Committee on Finance's (JCF) ability to control appropriated funds. The Legislature argues that JCF has the statutory authority under Wis. Stat. § 13.101 to oversee fund disbursement and that withholding the funds is a lawful exercise of its budgetary oversight powers. DPI and the Governor counter that this action violates Article VIII, Section 2 of the Wisconsin Constitution, which requires appropriations to be made by law. They assert that JCF's ability to block funding represents an unconstitutional delegation of legislative authority to a small subset of lawmakers rather than the full Legislature.

The Wisconsin Supreme Court granted the petition to bypass to address the following issues:

1. Was 2023 Senate Bill 971, the bill that became 2023 Wis. Act 100, an "appropriation bill" under article V, § 10(1)(b), such that the Governor validly partially vetoed it?
2. Assuming S.B. 971 was an "appropriation bill," did the Governor's partial veto otherwise comply with article V, § 10(1)(b)?
3. Can JCF, consistent with article VIII, § 2, and Wis. Stat. § 13.101, withhold from DPI the \$50 million the budget bill set aside for DPI's literacy programs and credited to JCF's "emergency" appropriation?