

October 27, 2021

## WISCONSIN SUPREME COURT

### TABLE OF PENDING CASES

Clerk of Supreme Court  
Telephone: (608) 266-1880  
Facsimile: (608) 267-0640  
Web Site: [www.wicourts.gov](http://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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **October 27, 2021**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
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 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2018AP942-CR	<u>State v. Robert Daris Spencer</u>  Was the court of appeals correct that the trial court's assumed unconstitutional ex parte communication with, and dismissal of, the only African-American on the defendant's jury, was subject to harmless error analysis; and, if so, was the court of appeals correct that the dismissal of the juror constituted harmless error?  Did the trial court violate the defendant's constitutional rights and/or erroneously exercise its discretion when it considered the race of the defendant and of trial participants when justifying the juror's dismissal?  If Defendant-Appellant-Petitioner's right to counsel was denied at a critical state, was that error harmless?  Did the circuit court's decision dismissing the sick juror violate Defendant-Appellant-Petitioner's rights to due process and equal protection, or constitute an erroneous exercise of discretion?	08/13/2021 REVW	1 Milwaukee	Unpub.
2018AP1476-CR	<u>State v. Octavia W. Dodson</u>  Did the sentencing court violate the defendant's Second Amendment right by considering his status as a lawful gun owner an aggravating factor at sentencing?	01/20/2021 REVW Oral Arg 09/13/2021	1 Milwaukee	Unpub.
2018AP2205	<u>State v. C. G.</u>  Does Wis. Stat. § 301.45, the statute governing juvenile sex offender registration, unconstitutionally infringe on Ella's* First Amendment right to freedom of speech by preventing her from legally changing her name to reflect her gender identity?  Does requiring Ella to register under Wis. Stat. § 301.45 amount to cruel and unusual punishment in violation of the Eighth Amendment?  * Ella is a pseudonym pursuant to Wis. Stat. § 809.19(1)(g). Ella is a transgender female and, therefore, will be referred to using female pronouns.	04/27/2021 REVW Oral Arg 12/10/2021	3 Shawano	02/24/2021 Pub. 2021 WI App 11 396 Wis. 2d 105 955 N.W.2d 443
2018AP2319-CR	<u>State v. Manuel Garcia</u>  Did the court of appeals err when it reversed the defendant's conviction based on the legal conclusion that the introduction at trial of inculpatory statements Garcia made to police violated his rights under <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) because the defendant himself did not testify, despite the fact that the circuit court admitted the statements under the "opening the door" exception, elucidated by this court in <u>State v. Brecht</u> , 143 Wis. 2d 297, 421 N.W.2d 96 (1988), and not the impeachment exception discussed in <u>Harris v. New York</u> , 401 U.S. 222 (1971)?	01/20/2021 REVW <b>Affirmed by equally divided court 2021 WI 76 09/24/2021</b>	2 Racine	11/19/2020 Pub. 2020 WI App 71 ___ Wis. 2d ___ 951 N.W.2d 631

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2019AP96	<u>Friends of Frame Park, U.A. v. City of Waukesha</u>  Is the test to be applied to determine if a litigant is entitled to attorney's fees under Wis. Stat. § 19.37(2)(a) of the Public Records Law whether the legal custodian properly withheld records under an exception to that law initially, regardless of whether commencement of an action was a cause of the release of the records?  May a draft contract which is the subject of negotiation between a municipality and a private entity be withheld from disclosure under the Public Records Law pursuant to Wis. Stat. §§ 19.35(1)(a) and 19.85(1)(e) where the contract has not yet been presented to the municipality's governing body for review, and before it meets in closed session to do so?	02/24/2021 REVW Oral Arg 09/09/2021	2 Waukesha	10/29/2020 Pub. 2020 WI App 61 394 Wis. 2d 387 950 N.W.2d 831
2019AP221-CR	<u>State v. Nhia Lee</u>  If the circuit court lost jurisdiction to determine probable cause at a preliminary hearing because the ten-day time limit under Wis. Stat. § 970.03(2) had expired by 104 days, what is the appropriate remedy?  Should circuit courts be required to appoint attorneys when there are delays in securing SPD-appointed counsel for a defendant?  Was a defendant's right to counsel denied?  Was defendant denied due process?  Was a defendant's right to a speedy trial denied?	05/19/2021 REVW Oral Arg 12/10/2021	3 Marathon	02/24/2021 Pub. 2021 WI App 12 396 Wis. 2d 136 955 N.W.2d 424
2019AP299	<u>Friends of the Black River Forest v. DNR</u>  Does a plaintiff satisfy the "injury-in-fact" prong of the standing test by alleging an injury that will not, and cannot, result from the challenged action until numerous intervening, uncertain, and unrelated events occur?  Does a plaintiff satisfy the "zone of interest" prong of the standing test by alleging a violation of statutes and regulations that expressly grant the DNR the power to take such action?  Does a Plaintiff satisfy the "zone of interest" prong of the standing test by alleging that an injury is environmental in nature, even where the statute at issue is not?  Does the plaintiff's alleged injuries fall outside the zone of interests of the land-disposition law, so that they lack standing to challenge the Board's land exchange with one of the defendants?	02/24/2021 REVW Oral Arg 10/01/2021	2 Sheboygan	Unpub.

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2019AP629	<u>Jama I. Jama v. Jason C. Gonzalez</u>  Is there an exception to the actual innocence rule that relieves criminal malpractice plaintiffs of establishing their innocence as to convictions on which they do not claim malpractice?  If criminal malpractice plaintiffs need not establish their innocence as to all convictions, must they nevertheless establish their innocence as to all convictions transactionally related to the convictions on which they claim malpractice?  If criminal malpractice plaintiffs need not, as a matter of law, establish their innocence as to any convictions, is the circuit court nevertheless allowed to determine, on a case-by-case basis, whether public policy considerations preclude imposing liability on the defendant, and did the circuit court correctly determine that public policy bars the claims at issue here?	03/24/2021 REVW <b>Affirmed by equally divided court 2021 WI 79 10/20/2021</b>	4 Dane	01/27/2021 2021 WI App 3 395 Wis. 2d 655 954 N.W.2d 1
2019AP664-CR	<u>State v. Alan S. Johnson</u>  Whether an alleged victim in a criminal case has standing under the 2020 Wisconsin Constitutional Amendment to lodge legal arguments in opposition to a defendant's motion for in camera review.  Whether the 2020 Wisconsin Constitutional Amendment applies retroactively to an alleged victim's request for standing to lodge legal arguments in opposition to a pending motion for in camera review which was filed, and pertinent issue litigated, prior to the enactment of the amendment.  Whether Wis. Stat. § 950.105, which provides in relevant part that, "[a] crime victim has a right to assert, in a court in the county in which the alleged violations occurred, his or her rights as a crime victim under the statutes or under article 1, section 9m of the Wisconsin Constitution," confers standing upon the alleged crime victim in this matter.	02/26/2021 REVW Oral Arg 09/29/2021	4 Waupaca	11/19/2020 Pub. 2020 WI App 73 394 Wis. 2d 807 951 N.W. 2d 616
2019AP691-CR 2019AP692-CR	<u>State v. Cesar Antonio Lira</u>  Should the defendant's award of credit be reversed because, under the terms of Wis. Stat. § 973.155, the defendant's Oklahoma custody was not connected to the conduct for which he was sentenced in Wisconsin?  Should <u>State v. Brown</u> , 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708, be overruled because it misinterpreted the interplay between Wis. Stat. §§ 973.15(5) and 973.155?  Should this award of credit to the defendant be vacated because it is contrary to Wis. Stat. § 973.155(1)(a) and case law interpreting the statute?	01/20/2021 REVW Oral Arg 09/27/2021	1 Milwaukee	Unpub.

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*2019AP1007	<u>Container Life Cycle Management, LLC v. DNR</u>  Is "finality," a word that appears nowhere in section 227.52, a required characteristic of an agency decision that is the subject of a petition for judicial review under that statute?  When an agency makes a determination that has the effect of subjecting a person to a more rigorous and expensive regulatory regime and substantially increasing the cost and delay that person will encounter in seeking a permit, is that determination subject to immediate judicial review under section 227.52 of the Wisconsin Statutes?  Did the agency's decision adversely affect the petitioner's substantial interests?  Does issue preclusion apply in different permitting proceedings subject to chapter 227?	09/14/2021 REVW	1 Milwaukee	Unpub.
2019AP1033	<u>Sauk County v. S. A. M.</u>  Whether respondent's appeal of his recommitment was moot because the commitment expired before respondent filed his notice of appeal.  Whether Sauk County failed to meet its burden to prove by clear and convincing evidence that respondent was dangerous.  Whether respondent was denied procedural due process because he did not receive particularized notice of the basis for his recommitment, including which of the standards of dangerousness was being alleged.  Whether this court has the authority, through its "superintending and administrative authority over all courts" (Wis. Const. art. VII, § 3(1)) and/or its authority to "regulate pleading, practice, and procedure in judicial proceedings in all courts" (Wis. Stat. § 751.12(1)), to require the Court of Appeals to expedite the disposition of appeals under Wis. Stat. ch. 51, or in some other manner to ensure that appellants under Wis. Stat. ch. 51 receive an appeal that addresses the merits of the appellants' contentions?	02/24/2021 REVW Oral Arg 12/13/2021	4 Sauk	Unpub.
*2019AP1046-CR	<u>State v. Theophilous Ruffin</u>  Was Ruffin entitled to an evidentiary hearing based on his postconviction allegation that his trial counsel was deficient for not pursuing a theory of self-defense?	09/17/2021 REVW	1 Milwaukee	Unpub.

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2019AP1206	<p><u>Daniel J. Hennessy, Jr. v. Wells Fargo Bank, N.A.</u></p> <p>Should Wisconsin modernize its approach to interpreting foreign countries' laws by adopting the federal and other states' approach of allowing judges to consult whatever resources they deem helpful and treating legal interpretation as a question of law?</p> <p>Did the circuit court correctly extend comity to a Mexican proceeding by entering a monetary judgment for no specific amount of money in the absence of a judgment for a definite sum of money by the Mexican court?</p> <p>Where it is undisputed that the Wisconsin contracts were governed by Wisconsin law and that the Mexican courts did not consider Wisconsin law, did the circuit court err in concluding that the Mexican judgment intended, <u>sub silentio</u>, to find liability under the Wisconsin Contracts?</p>	<p>02/24/2021            REVW            Oral Arg            10/04/2021</p>	<p>1            Milwaukee</p>	<p>10/29/2020            Pub.            2020 WI App 64            394 Wis. 2d 357            950 N.W.2d 877</p>
2019AP1317	<p><u>State v. Daniel J. Van Linn</u></p> <p>After the defendant was arrested on suspicion of drunk driving, a sheriff's deputy ordered his blood drawn for testing. The circuit court found the draw illegal and excluded its evidence as fruit of the poisonous tree. After the suppression decision, the prosecutor applied for a subpoena to the hospital where the defendant had been treated; the application included the results of the first, suppressed blood test. The court issued the subpoena and the hospital turned over evidence including the results of the blood alcohol test it had conducted. Was the State's decision to seek this subpoena the fruit of its earlier, unlawful search, such that its results should have been suppressed?</p>	<p>04/27/2021            REVW            Oral Arg            10/27/2021</p>	<p>3            Oconto</p>	<p>Unpub.</p>
2019AP1320	<p><u>Elliot Brey v. State Farm Mutual Automobile Ins. Co.</u></p> <p>Does the definition of "underinsured motorist coverage" in Wis. Stat. § 632.32(2)(d) void underinsured motorist (UIM) insurance policy provisions requiring that an insured sustain a bodily injury in order for UIM benefits to be collectable, thereby overruling the prior Court of Appeals decision in <u>Ledman v. State Farm Mut. Auto Ins. Co.</u>, 230 Wis. 2d 56, 601 N.W.2d 312 (Ct. App. 1999)?</p>	<p>02/24/2021            REVW            Oral Arg            09/15/2021</p>	<p>4            Monroe</p>	<p>07/29/2020            Pub.            2020 WI App 45            393 Wis. 2d 574            947 N.W.2d 205</p>
2019AP1365	<p><u>Danelle Duncan v. Asset Recovery Specialists, Inc.</u></p> <p>Was the repossession of plaintiff's vehicle from the ground floor, open door, multivehicle parking garage and separate parking space proper under Wis. Stat. § 425.206(2)(b), based on the circuit court's determination that the parking garage was not a "dwelling used by [the plaintiff] as a residence?"</p> <p>Was the dismissal of plaintiff's Wis. Stat. § 425.107 "Unconscionable Behavior" claim on summary judgment by the circuit court proper?</p> <p>Whether a plaintiff may bring an affirmative claim under Wis. Stat. § 425.107, or whether that section is limited to being raised only defensively in response to a suit by a merchant or creditor?</p>	<p>01/25/2021            REVW            Oral Arg            09/15/2021</p>	<p>4            Dane</p>	<p>08/31/2020            Pub.            2020 WI App 54            393 Wis. 2d 814            948 N.W.2d 419</p>

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2019AP1479	<u>City of Waukesha v. City of Waukesha Board of Review</u> May a municipality seek certiorari review of a decision of its Board of Review?	03/24/2021 REVW Oral Arg 10/27/2021	2 Waukesha	12/23/2020 Pub. 2020 WI App 77 395 Wis. 2d 239 952 N.W.2d 806
2019AP1565-CR	<u>State v. Ryan Hugh Mulhern</u> Must the rape shield statute bar relevant evidence of the victim's lack of sexual conduct that the victim offers to corroborate her claim of sexual assault, that is not prejudicial to her or to the defendant, and that causes none of the harms that the statute protects against?  Assuming that the rape shield law barred a victim's elicited statement, is the error harmless, given that the admitted evidence was relevant, non-prejudicial, and admitted in violation of a statute designed to protect victims?	01/20/2021 REVW Oral Arg 11/22/2021	3 Pierce	Unpub.
2019AP1618	<u>Nudo Holdings, LLC v. Board of Review for the City of Kenosha</u> Was the respondent's decision in affirming the property tax assessment for petitioner's land, classifying it as residential land instead of agricultural land, according to the law?  Was the respondent's decision supported by sufficient evidence?	03/24/2021 REVW Oral Arg 11/01/2021	2 Kenosha	12/23/2020 Pub. 2020 WI App 78 395 Wis. 2d 261 952 N.W.2d 816
2019AP1671	<u>Cree, Inc. v. LIRC</u> Whether the respondent erred in its interpretation and application of the Wisconsin Fair Employment Act's ("WFEA") substantial relationship test when it found that there was not a substantial relationship between an applicant for employment's multiple convictions for assaulting and battering women and the employment he sought at an employer, through which he would have regular, unsupervised interaction with women.  Whether the respondent erred in disregarding the testimony of the applicant's fact and expert witnesses concerning the nature of the position to which he applied and the substantial relationship between his numerous domestic violence convictions and the potential for violence against those with whom he would interact if employed with this employer.	03/24/2021 REVW Oral Arg 10/15/2021	2 Racine	01/27/2021 Pub. 2021 WI App 4 395 Wis. 2d 642 953 N.W.2 883

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*2019AP1728 (consolidated with 2019AP2063)	<u>Marilyn Casanova v. Michael S. Polsky, Esq.</u>  May an undocumented, unrecorded lien—created by judicial fiat—have priority over a Trustee's perfected first mortgage and security interest?  Did the Court of Appeals (and, by extension, this Court) lack jurisdiction over these appeals by virtue of the failure to appeal from a final order?  Did the Bondholders agree that their right to re-payment is subject to the Residents first receiving reimbursement of their entrance fees?  Do the appellate courts have jurisdiction over the present case?	10/18/2021 REVW	2 Racine	Unpub.
2019AP1832-CR	<u>State v. Christopher W. Yakich</u>  When a defendant has been found guilty by reason of mental disease or defect in two separate cases and is subject to two separate commitment orders, does the circuit court have authority to run the terms of commitment consecutive to one another?	06/16/2021 REVW Oral Arg 12/08/2021	4 Waupaca	Unpub.
*2019AP1850-CR	<u>State v. Scott W. Forrett</u>  Is Wisconsin's accelerated penalty structure for OWI related offenses unconstitutional under <u>Birchfield v. North Dakota</u> , 579 U.S. ___, 136 S. Ct. 2160 (2016) and <u>State v. Dalton</u> , 2018 WI 85, 383 Wis. 2d 147, 914 N.W.2d 120?  Is an increased penalty for an offense because the person is a repeater an increased penalty for the prior offense?	09/14/2021 REVW	2 Waukesha	05/26/2021 Pub. 2021 WI App 31 398 Wis. 2d 371 961 N.W.2d 132
*2019AP1876-CR	<u>State v. Donald P. Coughlin</u>  How does a court consider the theory of guilt in an evidence sufficiency claim when an inconsistency exists between a jury instruction and verdict?  Must a court accept a jury's resolution of any vagueness in testimony as jury credibility and weight determinations and must a court then adopt the reasonable inferences that a jury may have drawn from the evidence?  Has the defendant challenging the sufficiency of the evidence met his burden to overcome the deference given to the jury and its verdict to satisfy that the evidence, viewed most favorably to the State and the convictions, was insufficient to sustain the guilty verdicts?	09/14/2021 REVW	4 Juneau	Unpub.

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2019AP2034	<u>Andrea Townsend v. ChartSwap, LLC</u>  Whether Wis. Stat. § 146.83(3f)(b), which limits the amount that a "health care provider" may charge for providing copies of patient health records, applies to entities that are not "health care providers".  Whether, under Wis. Stat. § 990.001(9), an agent is directly liable for any conduct that violates any statutory requirement applicable to the principal.	02/24/2021 REVW Oral Arg 09/29/2021	1 Milwaukee	12/23/2020 Pub. 2020 WI App 79 395 Wis. 2d 229 952 N.W.2d 831
*2019AP2063 (consolidated with 2019AP1728)	<u>Marilyn Casanova v. Michael S. Polsky, Esq.</u>  May an undocumented, unrecorded lien—created by judicial fiat—have priority over a Trustee's perfected first mortgage and security interest?  Did the Court of Appeals (and, by extension, this Court) lack jurisdiction over these appeals by virtue of the failure to appeal from a final order?  Did the Bondholders agree that their right to re-payment is subject to the Residents first receiving reimbursement of their entrance fees?  Do the appellate courts have jurisdiction over the present case?	10/18/2021 REVW	2 Racine	Unpub.
*2019AP2065-CR	<u>State v. Richard Michael Arrington</u>  Did the defendant prove that his counsel was ineffective for failing to move to suppress the CI's recordings and testimony on Sixth Amendment grounds?  Did the defendant prove that the State violated his Sixth Amendment right to counsel?	09/14/2021 REVW	3 Brown	05/26/2021 Pub. 2021 WI App 32 398 Wis. 2d 198 960 N.W.2d 459
2019AP2090	<u>Claudia B. Bauer v. Wisconsin Energy Corporation</u>  Has Wisconsin law on prescriptive easements eliminated entirely the longstanding common law requirement that a property owner have notice of a utility company's use of their land, in order for the utility company to lawfully acquire a prescriptive easement?  Can the continuous use requirement of Wis. Stat. § 893.28(2) be satisfied as a matter of law when a public utility substantially modifies its initial use of another's property?  Are the constitutional rights of a private landowner violated if a public utility company can exercise its prescriptive easement rights without providing any notice whatsoever to the property owner, and in doing so, avoid having to use its condemnation powers?	05/19/2021 REVW Oral Arg 11/16/2021	2 Walworth	--

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*2019AP2095	<u>Great Lakes Excavating, Inc. v. Dollar Tree Stores, Inc.</u>  Does Wis. Stat. § 779.05(1), relating to waivers of construction liens, prohibit the consideration of extrinsic evidence to give effect to the written language used by parties?  Can equitable estoppel be asserted to counter the argument that a lien waiver intended to be a partial lien waiver must be regarded as a full lien waiver pursuant to Wis. Stat. § 779.05(1)?  What must a party do to preserve an appeal when asserting equitable estoppel to oppose a defense?	10/18/2021 REVW	1 Milwaukee	04/28/2021 Pub. 2021 WI App 23 397 Wis. 2d 210 959 N.W.2d 351
*2019AP2150-CR	<u>State v. Valiant M. Green</u>  Did the affidavit in support of a search warrant for a blood draw fail to state probable cause to believe that the suspect had committed a crime and thus require suppression of the blood test result?	09/14/2021 REVW	2 Kenosha	--
2019AP2205	<u>Loren Imhoff Homebuilder, Inc. v. Lisa Taylor</u>  Did Petitioners sufficiently assert an objection to the arbitrator on a single arbitrator panel sleeping through major portions of the arbitration hearing by objecting to such sleeping multiple times between the close of evidence and the issuance of the arbitration decision and award?  Whether the doctrine of forfeiture applies in arbitration proceedings and, if so, whether it should be applied in this case?	04/22/2021 REVW Oral Arg 10/04/2021	4 Dane	12/23/2020 Pub. 2020 WI App 80 395 Wis. 2d 178 953 N.W.2d 353
*2019AP2236	<u>Timothy Rave v. SVA Healthcare Services, LLC</u>  Did the trial court erroneously exercise its discretion when it granted Plaintiff-Respondent's motion to certify class despite the fact that defenses like the statute of limitations and lack of standing bar Plaintiff-Respondent's claim making him an inadequate class representative?  Did the trial court erroneously exercise its discretion when it granted Plaintiff-Respondent's motion to certify a class despite the fact that the class definition was overbroad and failed to meet the predominance and superiority requirements of Wis. Stat. § 803.08(2)(c) at the time the court granted certification?	08/13/2021 REVW	1 Milwaukee	Unpub.

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2020AP29-CR	<u>State v. Westley D. Whitaker</u>  Does it violate the First and Fourteenth Amendments and Article I Section 18 of the Wisconsin Constitution to consider a defendant's religious identity and impose a sentence intended to deter crime solely within his religious community?  If a sentencing court may consider a defendant's religious association to deter other members of a religious community does the "reliable nexus" test in <u>State v. Fuerst</u> 181 Wis. 2d 903, 512 N.W.2d 243 (1994) and <u>State v. J.E.B.</u> 161 Wis. 2d 655, 469 N.W.2d 192 (1991) require congruity between the offense and the activity protected by the First Amendment?  Does the sentencing factor/ objective of "protection of the public" include permitting the sentencing court to increase the sentence imposed on the defendant to send a message to an identified set of third parties that they should alter their behavior in the future, apart from generally being deterred from committing offenses like those committed by the defendant?	06/16/2021 REVW Oral Arg 12/09/2021	4 Vernon	03/31/2021 Pub. 2021 WI App 17 396 Wis. 2d 557 957 N.W.2d 561
*2020AP128	<u>Robert L. Slamka v. General Heating and Air Conditioning</u>  Is the Right to Work Act in the State of Wisconsin pre-empted by Federal Law depriving the Wisconsin Employment Relations Commission of jurisdiction to hear and determine cases under the Right to Work Act § 111.06(l)(a) and § 111.04(3)(a) Wis. Stats.?  Does Article I, Section 9 of the Wisconsin Constitution provide a remedy before the Wisconsin Employment Relations Commission under the Right to Work Act § 111.04(3)(a) Wis. Stats?	09/14/2021 REVW	4 Dane	Unpub.
*2020AP192-CR	<u>State v. Chrystul D. Kizer</u>  Does the defense set forth in section 939.46(1m)—for crimes committed as a "direct result" of trafficking—provide a complete defense to a charge of first-degree intentional homicide?	09/14/2021 REVW	2 Kenosha	07/28/2021 Pub. 2021 WI App 46 398 Wis. 2d 697 963 N.W.2d 136
2020AP202	<u>Estate of Anne Oros v. Divine Savior Healthcare Inc.</u>  Is a lawsuit against the respondent, a defined Wisconsin Chapter 655 provider and its affiliate healthcare providers subject to Chapter 655?  Is a Community Based Residential Facility (CBRF) that is a d/b/a of the respondent, an affiliate entity "whose operations are combined as a single entity with a hospital" pursuant to Chapter 655.002, such that the respondent is entitled to the protections of Wisconsin Chapter 655?	04/27/2021 REVW	4 Columbia	01/27/2021 Pub. 2021 WI App 8 395 Wis. 2d 676 953 N.W.2d 914

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APPENDIX

**WISCONSIN SUPREME COURT PENDING CASES**

Clerk of Supreme Court  
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP298-CR	<u>State v. Joseph G. Green</u>  Did the circuit court have authority to order tolling of the 12-month statutory time limit for bringing an incompetent criminal defendant to trial competency?	06/16/2021 REVW Oral Arg 12/13/2021	4 Dane	03/31/2021 Pub. 2021 WI App 18 396 Wis. 2d 658 957 N.W.2d 583
*2020AP307	<u>Gregory M. Backus v. Waukesha County</u>  In light of the decision in <u>118th St. Kenosha, LLC v. DOT</u> , 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486, is a temporary limited easement compensable under Wis. Stat. § 32.09(6g) (2019-20)?	09/14/2021 CERT	2 Waukesha	--
2020AP370	<u>Waukesha County v. E.J.W.</u>  When a final hearing is adjourned for good cause to facilitate the appointment of new counsel, is the deadline to file a jury demand reset to 48 hours in advance of the new time set for the hearing under Wis. Stat. § 51.20(11)?	02/24/2021 REVW Oral Arg 09/09/2021	2 Waukesha	Unpub.
*2020AP485	<u>Wisconsin Property Tax Consultants, Inc. v. Wisconsin Department of Revenue</u>  In concluding that the Tax Appeals Commission had jurisdiction to entertain a declaratory judgment action asserting the Department of Revenue failed to comply with the rule promulgation requirements of Chapter 227 when it denied the exemption enacting in Wis. Stat. § 70.111(27) to all manufacturers, did the circuit court improperly rely on the primary jurisdiction doctrine to dismiss the declaratory judgment action under Wis. Stat. § 227.40?	10/18/2021 REVW	2 Ozaukee	07/28/2021 Pub. 2021 WI App 47 398 Wis.2d 654 963 N.W.2d 103
2020AP520	<u>Friendly Village Nursing and Rehab, LLC v. DWD and LIRC</u>  Whether the LIRC reasonably concluded that the petitioner's filing of an application for unemployment account successorship was both untimely and not permitted due to excusable neglect.  Whether the LIRC should have considered the interests of justice in determining whether the petitioner's application was untimely as a result of excusable neglect.	04/26/2021 REVW Oral Arg 10/25/2021	3 Oneida	01/27/2021 Pub. 2021 WI App 9 395 Wis. 2d 701 954 N.W.2d 392
2020AP704	<u>Daniel Doubek v. Joshua Kaul</u>  Are <u>Evans v. DOJ</u> , 2014 WI App 31, 353 Wis. 2d 289, 844 N.W.2d 403, and <u>Leonard v. State</u> , 2015 WI App 57, 364 Wis. 2d 491, 868 N.W.2d 186, "good law" in light of the United States Supreme Court's decision in <u>United States v. Castleman</u> , 572 U.S. 157 (2014)?	06/16/2021 CERT Oral Arg 12/09/2021	3 Brown	--

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP878-CR	<u>State v. Avan Rondell Nimmer</u>  Does law enforcement, within a minute of receiving a ShotSpotter report of shots fired at a residential address, have reasonable suspicion to stop the only person outside the address, where the person reacts to the police by grabbing at his waistband, angling one side of his body away from police, and speeding his pace away from the officers?	03/24/2021 REVW Oral Arg 10/25/2021	1 Milwaukee	Unpub.
*2020AP925	<u>James Cobb v. Gary A. King</u>  Did the Circuit Court misconstrue Wis. Stat. § 706.10(3), which provides:  In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance . . .  when it concluded that an easement, which mentioned only the grantees and no one else, nonetheless ran with the land by virtue of the statute?  Did the passage in the same statute that provided, “In conveyances of land words of inheritance shall not be necessary to create or convey a . . .” apply to easements, when cases hold that easements involve a limited right to use another’s property but do not involve a fee interest in the land and when Wis. Stat. § 700.02(1) defines fee interests in real property but does not include easements.  Did the passage in the statute that “every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance” mean that the easement ran with the land, when nothing in the easement’s terms indicated that was the case; in other words, did the terms of the statute supersede the terms of the easement?	09/14/2021 REVW	3 Oconto	Unpub.
2020AP940	<u>Brown County v. Brown County Taxpayers Association</u>  Does the sales and use tax the county enacted in 2017 and implemented as part of its 2018 budget process “directly reduce the property tax levy,” as required by Wis. Stat. § 77.70 (2015-16), if the proceeds are designated to fund new capital projects that collectively would otherwise exceed the levy limits established by Wis. Stat. § 66.0602, but the county could otherwise fund the projects by borrowing?	04/22/2021 CERT Oral Arg 11/16/2021	3 Brown	--

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP1058-CR	<u>State v. Teresa L. Clark</u>  Does the burden shift to the State when a defendant collaterally attacking a prior conviction does not point to evidence that shows that the circuit court failed to inform her of the right to counsel but merely alleges that the court failed to do so?  Did the defendant prove that her right to counsel was violated in her prior cases?	04/27/2021 BYPA Oral Arg 10/15/2021	3 Ashland	--
2020AP1271-AC	<u>James Sewell v. Racine Unified School District Board of Canvassers</u>  Does Wis. Stat. § 7.54 vest in challenging parties the right to review in open court ballots they assert were miscounted such that an incorrect election outcome will be sustained unless the errors alleged by the challengers are corrected by the circuit?	06/16/2021 REVW Oral Arg 11/22/2021	2 Racine	--
*2020AP2081-AC (consolidated with 3030AP2103-AC)	<u>Wisconsin Manufacturers and Commerce v. Tony Evers</u>  Whether the Associations sufficiently alleged a justiciable controversy under the Uniform Declaratory Judgments Act.  Whether the right to challenge a records release under the Uniform Declaratory Judgments Act survived the enactment of Wis. Stat. § 19.356, which states that "[e]xcept as . . . otherwise provided by statute . . . no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record."	08/12/2021 REVW	2 Waukesha	05/26/2021 Pub. 2021 WI App 35 398 Wis. 2d 164 960 N.W.2d 442
*2020AP2103-AC (consolidated with 2020AP2081-AC)	<u>Wisconsin Manufacturers and Commerce v. Tony Evers</u>  Whether the Associations sufficiently alleged a justiciable controversy under the Uniform Declaratory Judgments Act.  Whether the right to challenge a records release under the Uniform Declaratory Judgments Act survived the enactment of Wis. Stat. § 19.356, which states that "[e]xcept as . . . otherwise provided by statute . . . no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record."	08/12/2021 REVW	2 Waukesha	05/26/2021 Pub. 2021 WI App 35 398 Wis. 2d 164 960 N.W.2d 442
*2021AP6	<u>Sheboygan County v. M.W.</u>  Whether the court of appeals decision is contrary to the express purpose of the underlying rule from <u>Langlade Cty. v. D.J.W.</u> , <u>2020 WI 40</u> , <u>391 Wis. 2d 231</u> , <u>942 N.W.2d 277</u> , under which the circuit court erred?	09/14/2021 REVW Oral Arg 12/08/2021	2 Sheboygan	Unpub.

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2021AP419	<u>State v. X.S.</u>  Did the court of appeals erroneously exercise its discretion in denying the motion for reconsideration less than 24 hours after it was filed in a written order that contained no explication?  Did the juvenile court err when it permitted the respondent to introduce an explanation of the underlying offense that mitigated, but did not negate probable cause for, the offense(s) alleged in the delinquency petition?	10/18/2021 REVW	1 Milwaukee	Unpub.
*2021AP463	<u>Colectivo Coffee Roasters, Inc. v. Society Insurance</u>  Does an all risk commercial property insurance policy that provides coverage for “direct physical loss of or damage to property” and does not contain any virus exclusions apply to loss of business income and other expenses incurred from the contaminating presence of the COVID-19 virus on the covered premises?  Does an all risk commercial property insurance policy that provides coverage for “direct physical loss of or damage to property” and does not contain any virus exclusions apply to loss of business income and other expenses arising from government orders restricting and limiting the physical use of the premises in response to the COVID-19 pandemic?  Does a policy that provides coverage for loss of business income, which requires (a) action by civil authority that (b) prohibits access to the insured’s premises due to (c) damage to property other than property at the insured’s premises, thereby provide coverage when the civil authority prohibits gatherings of people?  Does a policy that provides coverage for loss of business income, which requires “contamination” that results in action by a governmental authority prohibiting access to the insured’s premises apply when the insured and patrons can continue to access the insured premises for modified purposes and/or sell products at the insured location?	09/14/2021 BYPA	1 Milwaukee	--

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2021AP802	<u>Andrew Waity v. Devin Lemahieu</u>  Whether Wis. Stat. § 16.74 gives the Legislature – acting through its leadership – the authority to enter into those “contract[s]” for legal “services” that the Legislature determines to be “required within the legislative branch.”  Whether the Wisconsin Constitution gives the Legislature – acting through its leadership – the authority to enter into those contracts for legal services that the Legislature determines to be necessary for the discharge of its constitutional duties.  Whether Wis. Stat. § 20.765 gives the Legislature – acting through its leadership – the authority to enter into contracts for legal services that the Legislature determines to be required for carrying out its “functions.”  Whether Wis. Stat. § 13.124 gives the Legislature – acting through its leadership – the authority to obtain legal advice for impending, but not yet filed, litigation.  Whether the circuit court erroneously exercised its discretion in failing to stay its summary judgment order pending appeal.	07/15/2021 BYPA Oral Arg 11/01/2021	4 Dane	--
*2021AP1321-LV (consolidated with 2021AP1325)	<u>County of Dane v. Public Service Commission of Wisconsin</u>  Whether an appeal challenging the lawfulness of a subpoena for testimony (that has been stayed pending appeal) is mooted when the subpoenaing party withdraws the subpoena while simultaneously stating that it will soon issue, and does issue, yet another subpoena for testimony to which the subpoenaed party objects on the same grounds.  Whether a circuit court commits a per se abuse of discretion on the “likelihood of success” prong of the Gudenschwager test by simply cross-referencing its merits decision in its denial of a motion for stay pending appeal? See <u>Waity v. LeMahieu</u> , No. 2021AP802 (July 15, 2021) (P-App. 1103).  Whether conduct by an adjudicator that creates a mere “appearance of bias” violates the Due Process Clause.  Whether an adjudicator’s personal connections to individuals linked to parties appearing before the adjudicator, whether those individuals are close friends or mere professional acquaintances, give rise to a “serious risk of actual bias” under the Due Process Clause, notwithstanding the presumptions of regularity, integrity, honesty, and impartiality that attach to the adjudicator’s decisions.  Whether the practice of applying for employment, after leaving public office, with an entity that had previously appeared before the adjudicator creates a “serious risk” that the adjudicator, when the entity appeared before him, had been actually biased.	09/21/2021 REVW	4 Dane	--

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

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*2021AP1325 (consolidated with 2021AP13210LV)	<p><u>County of Dane v. Public Service Commission of Wisconsin</u></p> <p>Whether an appeal challenging the lawfulness of a subpoena for testimony (that has been stayed pending appeal) is mooted when the subpoenaing party withdraws the subpoena while simultaneously stating that it will soon issue, and does issue, yet another subpoena for testimony to which the subpoenaed party objects on the same grounds.</p> <p>Whether a circuit court commits a per se abuse of discretion on the “likelihood of success” prong of the Gudenschwager test by simply cross-referencing its merits decision in its denial of a motion for stay pending appeal? See <u>Waity v. LeMahieu</u>, No. 2021AP802 (July 15, 2021) (P-App. 1103).</p> <p>Whether conduct by an adjudicator that creates a mere “appearance of bias” violates the Due Process Clause.</p> <p>Whether an adjudicator’s personal connections to individuals linked to parties appearing before the adjudicator, whether those individuals are close friends or mere professional acquaintances, give rise to a “serious risk of actual bias” under the Due Process Clause, notwithstanding the presumptions of regularity, integrity, honesty, and impartiality that attach to the adjudicator’s decisions.</p> <p>Whether the practice of applying for employment, after leaving public office, with an entity that had previously appeared before the adjudicator creates a “serious risk” that the adjudicator, when the entity appeared before him, had been actually biased.</p>	09/21/2021 REVW	4 Dane	--

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APPENDIX

**WISCONSIN SUPREME COURT PENDING CASES**

Clerk of Supreme Court  
(608) 266-1880

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*2021AP1450-OA	<u>Billie Johnson v. Wisconsin Elections Commission</u>	09/22/2021 ORIG	4 Dane	--
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Whether the Petitioners, Intervenor-Petitioners the Congressmen, and Intervenors-Petitioners Citizen Mathematicians and Scientists, who, based on the 2020 Census results, live in or represent malapportioned state legislative and congressional districts, are entitled to a declaration that the existing apportionment maps as set forth in Wis. Stat. §§ 3.11-3.18 (for congressional districts, which the Petitioners, the Congressmen, and Intervenors-Petitioners Citizen Mathematicians and Scientists challenge) and §§ 4.01-4.99 (for state assembly districts, which the Congressmen do not challenge) and § 4.009 (for state senate districts, which the Congressmen do not challenge) violate the one person one vote principle, contained in art. I, Section 1 and art. IV of the Wisconsin Constitution.

Whether the BLOC Intervenor-Petitioners who, based on the 2020 Census results, live in or represent individuals who live in malapportioned districts, are entitled to declaration that the existing apportionment maps as set forth in §§ 4.01-4.99 (for state assembly districts) and § 4.009 (for state senate districts) violate the one person one vote principle, guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and contained in art. IV of the Wisconsin Constitution.

Whether the Intervenors-Petitioners Citizen Mathematicians and Scientists, who based on the 2020 Census results, live in malapportioned state legislative and congressional districts, are entitled to a declaration that Wisconsin's current apportionment maps as set forth in Wis. Stat. §§ 3.11-3.18 (for congressional districts) and §§ 4.01-4.99 (for state assembly districts) and § 4.009 (for state senate districts) violate the one person one vote principle under Article I, Section 2 of the U.S. Constitution or the Fourteenth Amendment.

Whether the Petitioners and the Congressmen are entitled to an injunction prohibiting the Respondents from administering any election for Congressional and—for Petitioners only—State Senate, or State Assembly seats until a new apportionment plan is adopted and in place that satisfies the requirements of art. I, Section 1 and art. IV of the Wisconsin Constitution. Further, in the absence of an amended state law with a lawful apportionment plan, whether the Petitioners (as to congressional and state legislative districts) and the Congressmen (as to congressional districts only) are entitled to an establishment of a judicial plan of apportionment to meet the requirements of art. I, Section 1 and art. IV of the Wisconsin Constitution.

Whether the BLOC Intervenor-Petitioners are entitled to an injunction prohibiting the Respondents from administering any election for State Senate or State Assembly seats until a new apportionment plan is adopted and in place that satisfies the requirements of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and art. IV of the Wisconsin Constitution, and, in the absence of an amended state law with

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APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**  
 Clerk of Supreme Court  
 (608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
	<p>a lawful apportionment plan, establishment of a judicial plan of apportionment to meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and art. IV of the Wisconsin Constitution.</p> <p>Whether the Intervenor-Petitioners Citizen Mathematicians and Scientists are entitled to an injunction prohibiting the Respondents from administering any regularly scheduled election for Congressional, State Senate, or State Assembly seats until a new apportionment plan is adopted and in place that satisfies all applicable constitutional requirements, including, where relevant, the requirements of art. IV of the Wisconsin Constitution, and, in the absence of an amended state law with a lawful apportionment plan, establishment of a judicial plan of apportionment to meet all applicable constitutional requirements, including, where relevant, the requirements of art. IV of the Wisconsin Constitution. 7. Whether, in the absence of an amended state law with a lawful apportionment plan, the Hunter Intervenor-Petitioners are entitled to the establishment of a timely judicial plan of apportionment to meet the requirements of art. IV of the Wisconsin Constitution with sufficient time to protect associational activities in advance of the 2022 election.</p>			

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