

September 2, 2020

## WISCONSIN SUPREME COURT

### TABLE OF PENDING CASES

Clerk of Supreme Court  
Telephone: (608) 266-1880  
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Web Site: [www.wicourts.gov](http://www.wicourts.gov)  
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **September 2, 2020**. 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.

**WISCONSIN SUPREME COURT PENDING CASES**

Clerk of Supreme Court  
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2016AP1688 (consolidated with 2016AP2502)	<u>Clean Wisconsin, Inc. v. DNR</u>  Does the Department of Natural Resources (DNR) have authority to impose off-site groundwater-monitoring requirements and an animal-unit maximum on a Wisconsin Pollution Discharge Elimination System (WPDES) permit?  Did DNR retain discretion to decide whether to impose certain permit conditions after denying review of the Administrative Law Judge's decision?  Was the circuit court competent to enter, and, if so, did it correctly enter an award of costs and fees to Petitioners?	04/09/2019 CERT	4 Dane	--
2017AP2244	<u>Village of Slinger v. Polk Properties, LLC</u>  Can a property owner's application for a zoning change, the owner's entry into a development agreement, or the owner's entry into restrictive covenants alone, constitute an abandonment under <u>State ex rel. Schaetz v. Manders</u> , 206 Wis. 121, 238 N.W. 835, 837 (1931)?  Did the trial court lack competence to retroactively reassess the subject property without prior involvement of the specified administrative process under <u>Hermann v. Town of Delavan</u> , 215 Wis. 2d 370, ¶10, 24, 572 N.W.2d 855 (1998)?  Was the trial court's assessment against a property owner an unlawful retroactive reassessment of taxes under <u>Wisconsin Central Ltd. v. Wisconsin Department of Revenue</u> , 2000 WI App 14, 232 Wis. 2d 323, 606 N.W.2d 226?  Do multiple additional errors require the reversal of the circuit and court of appeals' decisions; specifically:  a. Is restrictive covenant 10.1, which expressly entitled the property owner to use unsold lots for non-residential purposes, an exception to restrictive covenant 5.1?  b. Having issued a scheduling order that did not include a contempt hearing as a remaining proceeding in the case, and without any prior notice from the court of such a hearing, did the court conduct a contempt hearing without the required notice?  c. Did the doctrine of judicial estoppel preclude the Village from seeking and obtaining penalties and contempt sanctions from the property owner for agricultural use in 2014-2017 under <u>Thoma v. Village of Slinger</u> , 2018 WI 45, 381 Wis. 2d 311, 912 N.W.2d 56?  d. Did the Village fail to identify a zoning ordinance that had been violated and did it fail to present evidence of a zoning code violation?  e. Was it prejudicial error for the trial court to have precluded offered evidence of the lack of fines imposed on similarly situated offenders under <u>State v. Boyd</u> , 2000 WI App 208, ¶14, 238 Wis. 2d 693, 618 N.W.2d 251?	07/15/2020 REVW	2 Washington	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2018AP59	<u>Clean Wisconsin, Inc. v. DNR</u>  Did the Department of Natural Resources (DNR) lawfully approve eight high capacity wells without conducting an additional environmental review not required by statute or rule, given that Act 21 prohibits agencies from enforcing any requirement that is not “explicitly” permitted, and given that no statute explicitly authorizes additional environmental review for these wells?  Is Petitioners’ claim that DNR failed to “consider . . . cumulative impacts” when approving the wells barred by Wis. Stat. § 281.34(5m), which prohibits any person from “challeng[ing] an approval . . . of a high capacity well based on the lack of consideration of [ ] cumulative environmental impacts”?	04/09/2019 CERT	4 Dane	--
2018AP71	<u>Mohns Inc. v. BMO Harris Bank National Association</u>  Does Wisconsin law prevent a court from entering, as a discovery sanction, a default judgment or directed verdict when the discovery conduct had no impact on the plaintiff’s ability to pursue and prove its case?  Does Wisconsin law prevent a plaintiff from recovering damages for unjust enrichment and breach of contract simultaneously, in the presence of a discovery sanction of liability?  Does Wisconsin law bar an award of punitive damages based solely on damages claims that sound in contract or quasi-contract, in the presence of a discovery sanction of liability?	03/17/2020 REVW Oral Arg 10/01/2020	2 Waukesha	Unpub.
2018AP283	<u>Gail Moreschi v. Village of Williams Bay and Town of Linn ETZ Zoning Board of Appeals</u>  Whether a board can create new minutes and new decisions after receipt of a writ of certiorari action.  Whether the court of appeals determination of what constitutes a “triggering event” for purposes of appeal on a writ of certiorari conflicts with Wis. Stats. § 62.23(7); ETZ ordinances; or the Court of Appeals’ holding in <u>Zelman v. Town of Erin</u> , 2018 WI App 50, 383 Wis. 2d 679, 917 N.W.2d 222.	11/12/2019 REVW Oral Arg 09/08/2020	2 Walworth	Unpub.
2018AP547	<u>Michael Anderson v. Town of Newbold</u>  Are The Town of Newbold Land Division Standards set forth in ordinance 13.13 an exercise of a subdivision authority granted under Wis. Stat. 236?  Is the Legislative intent in enacting 2015 WI Act 55 to set statewide shoreland standards, and to not defer to municipalities?	06/16/2020 REVW Oral Arg 10/01/2020	3 Oneida	11/20/2019 Pub. 2019 WI App 59 389 Wis. 2d 309 935 N.W.2d 856

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Visited 09/24/2020

APPENDIX

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2018AP594-CR	<u>State v. Leevan Roundtree</u>  Is Wis. Stat. § 941.29(2) unconstitutional as applied to a person convicted of failure to pay child support?  In the aftermath of <u>Class v. United States</u> , 138 S. Ct. 798 (2018), does a guilty plea waive a claim that the statute of conviction is unconstitutional as applied?	01/14/2020 REVW Oral Arg 09/11/2020	1 Milwaukee	Unpub.
2018AP669	<u>Ronald L. Collison v. City of Milwaukee Bd. of Review</u>  Whether the policy used by the City of Milwaukee in valuing contaminated property, “City of Milwaukee Environmental Contamination Standards (CMECS)”, conforms to statute.  Whether the assessor for the City of Milwaukee considered the impairment of the properties market value due to the presence of contamination as required by statute § 70.32(1m).  Whether the assessment in the instant action conforms to Wisconsin statutes.	04/30/2020 REVW	1 Milwaukee	Unpub.
2018AP731-CR	<u>State v. Kevin L. Nash</u>  When accepting a guilty plea under <u>Alford v. North Carolina</u> , 400 U.S. 25 (1970), a circuit court may find there is a factual basis for the plea only if there is “strong proof of guilt.” May a court find strong proof of guilt based on the information contained in the criminal complaint, or must the court hear additional evidence before it can make that finding?	12/10/2019 REVW Oral Arg 09/11/2020	2 Waukesha	Unpub.
2018AP858-CR	<u>State v. Brian L. Halverson</u>  Does incarceration automatically produce <u>Miranda</u> ( <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)) custody under the Wisconsin Constitution?  Did the totality of the circumstances surrounding the defendant’s interrogation put him in <u>Miranda</u> custody?	03/17/2020 REVW Oral Arg 09/14/2020	3 Chippewa	12/18/2019 Pub. 2019 WI App 66 389 Wis. 2d 554 937 N.W.2d 74
2018AP1114	<u>Christus Lutheran Church of Appleton v. Wisconsin Department of Transportation</u>  Did the court of appeals’ decision misconstrue Wis. Stat. § 32.05(2)(a)?  Was a jurisdictional offer DOT made to the petitioner “based” “upon” the appraisal?	05/19/2020 REVW Oral Arg 10/05/2020	3 Outagamie	12/18/2019 Pub. 2019 WI App 67 389 Wis. 2d 600 937 N.W.2d 63
2018AP1239	<u>Applegate Farm v. Wis. Department of Revenue</u>  Whether Wisconsin state agencies need to consider indirect environmental effects when determining whether to issue an environmental impact statement (“EIS”) under Wis. Stat. § 1.11(2).	05/19/2020 REVW Oral Arg 10/05/2020	4 Green	02/26/2020 Pub. 2020 WI App 7 390 Wis. 2d 708 940 N.W.2d 725

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2018AP1518	<u>Ted Ritter v. Tony Farrow</u>  Does Wisconsin trademark law permit an implied assignment of trademarks to a new owner when no other business assets or services are transferred?  Does Wisconsin's Condominium Ownership Act (Wis. Stat. ch. 703) require that control of business services and corresponding trademarks transfer to a condominium association when the real property where the services are provided is converted to a condominium?	01/14/2020 REVW Oral Arg 09/08/2020	3 Vilas	08/28/2019 Pub. 2019 WI App 46 388 Wis. 2d 421 933 N.W.2d 167
2018AP1880 (consolidated with 2018AP2371)	<u>David Stroede v. Society Insurance, A Mutual Company</u>  Whether the defendant qualifies as a "Possessor of Real Property" as that term is defined and used in Wis. Stat. § 895.529, Civil liability limitation; duty of care owed to trespassers.	07/15/2020 REVW	1 Milwaukee	02/26/2020 Pub. 2020 WI App 8 390 Wis. 2d 817 ___ N.W.2d ___
2018AP1887	<u>Waupaca County v. K.E.K.</u>  Whether the circuit court lacked competency to exercise subject matter jurisdiction over a recommitment proceeding due to Waupaca County's conceded violation of § 51.20(13)(g)2r.  Whether § 51.20(1)(am) violates substantive due process and equal protection of the law on its face and as applied.	07/24/2020 REVW	4 Waupaca	Unpub.
2018AP1952-CR	<u>State v. Mark D. Jensen</u>  Did the court of appeals overlook an established exception to the law-of-the-case doctrine when it concluded that it and the circuit court were bound to follow this Court's 2007 holding that the victim's statements were testimonial?  Did the circuit court correctly determine that, under the narrower definition of testimonial adopted by the Supreme Court since 2007, the victim's statements are nontestimonial?  Should this Court remand to address the remaining issues that the court of appeals did not decide because of its holding that it was bound by this Court's prior decision?	06/16/2020 REVW	2 Kenosha	--
2018AP2066-CR	<u>State v. Alfonso C. Loayza</u>  Do the lack of a judgment of conviction for a prior offense and other documents that "support the inference" that the conviction does not exist render a Wisconsin DOT driving record that lists the conviction unreliable so that it cannot prove the conviction by even a preponderance of the evidence?	06/16/2020 REVW	4 Rock	Unpub.

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2018AP2104	<u>State v. Jamie Lane Stephenson</u>  To prove that a person meets the criteria for commitment under Chapter 980, must the State present expert opinion testimony that the person is "dangerous" as defined under ch. 980?  Should the standard of review of the sufficiency of the evidence of dangerousness in a Chapter 980 case be changed to require that a reviewing court conduct a de novo review of whether the evidence satisfies the legal standard of dangerousness?	03/17/2020 REVW Oral Arg 09/14/2020	3 Dunn	11/20/2019 Pub. 2019 WI App 63 389 Wis. 2d 322 935 N.W.2d 842
*2018AP2142	<u>State v. Tavodess Matthews</u>  Is an adjourned probable cause hearing a "preliminary contested matter" that terminates litigants' opportunity to request judicial substitution?	08/26/2020 REVW	1 Milwaukee	06/24/2020 Pub. 2020 WI App 33 ___ Wis. 2d ___ 946 N.W.2d 200
*2018AP2220-CR	<u>State v. Adam W. Vice</u>  Under the totality of the circumstances, was a defendant's confession voluntary?	08/20/2020 REVW	3 Washburn	06/24/2020 Pub. 2020 WI App 34 ___ Wis. 2d ___ 946 N.W.2d 206
2018AP2357-LV	<u>State v. Anthony James Jendusa</u>  In an appeal of a sexually-violent person commitment trial, did the appellate court erroneously exercise its discretion in denying the State's petition for leave to appeal because the order subjects DOC and the researchers to substantial and irreparable injury and raises issues in the administration of justice, because the circuit court had no authority—pursuant to Wis. Stat. § 980.036(2)(h), § 980.036(2)(j), § 980.036(5), or <u>Brady v. Maryland</u> , 373 U.S. 83 (1963) — to order DOC to disclose this data to the defense for use in a sexually-violent person commitment trial?  Does release of the information in the database sought by the respondent violate either Wisconsin or federal law, see e.g., Wis. Stat. § 51.30; Wis. Stat. §§ 146.81-83; Wis. Admin. Code ch. DHS 92; 42 C.F.R. ch. 1(A)2, 2a; 42 C.F.R. Part 2; 45 C.F.R. Subt. A, Subch. A., pt. 46 (protection of human subjects); 45 C.F.R. Subt. A, Subch. C, pt. 164 (HIPPA)?  Does an entity like the Department of Corrections fall under the umbrella of "the state" for the purposes of the Wis. Stat. Ch. 980 discovery statutes?  Does the circuit court have authority to order a non-investigative agency to provide a defendant with data that does not meet any of the discovery provisions in Wis. Stat. Ch. 980?  Does <u>Brady v. Maryland</u> impose any duty on a prosecutor in sexually violent person commitment trials?	01/23/2020 REVW Oral Arg 10/26/2020	1 Milwaukee	--

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*2018AP2383	<u>United America, LLC v. Wisconsin Department of Transportation</u>  The issue presented is the interpretation and scope of the statutory language in Wis. Stats. § 32.18, "any damages to said lands."	08/20/2020 REVW	3 Lincoln	05/27/2020 Pub. 2020 WI App 24 392 Wis.2d 335 944 N.W.2d 38
2018AP2419-CR	<u>State v. Angel Mercado</u>  Did the court of appeals contravene Wis. Stat. § 901.03(1)(a) when it directly reviewed the defendant's forfeited challenges to the admission of the victims' forensic- interview videos into evidence?  Did the circuit court properly admit the victims' forensic-interview videos into evidence at trial? This question presents four sub-issues:  Did the circuit court comply with Wis. Stat. § 908.08(2)(b) when it reviewed the relevant portions of two child victims' forensic-interview videos before playing them to the jury?  Did the court of appeals conflict with precedent when it rejected the State's argument that all three victims' forensic-interview videos were admissible under the residual hearsay exception?  Was the youngest victim's forensic-interview video also admissible under Wis. Stat. § 908.08(3)© or as a prior inconsistent statement?  Did the circuit court comply with Wis. Stat. § 908.08(5)(a) when it allowed the youngest victim to testify before playing her forensic-interview video for the jury?	05/19/2020 REVW Oral Arg 10/26/2020	1 Milwaukee	03/26/2020 Pub. 2020 WI App 14 391 Wis. 2d 304 ___ N.W.2d ___
2019AP90-CR	<u>State v. George E. Savage</u>  Did the defendant prove that he was entitled to withdraw his plea without showing a reasonable probability that his defense would have succeeded at trial?  Did <u>State v. Sholar</u> , 2018 WI 53, 381 Wis. 2d 560, 912 N.W.2d 89, prevent the court of appeals from affirming the circuit court's determination that counsel was not ineffective based on the evidence at the <u>Machner</u> hearing?	05/19/2020 REVW	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2019AP130	<u>Southport Commons, LLC v. Wisconsin Department of Transportation</u>  What is the correct interpretation of Wis. Stat. § 88.87(2)(c), which provides in relevant part: "If ...[DOT] constructs and maintains a highway ... not in accordance with par. (a), any property owner damaged by the highway ... may, within 3 years after the alleged damage occurred, file a claim with the appropriate governmental agency."?	08/20/2020 REVW	2 Kenosha	05/27/2020 Pub. 2020 WI App 26 392 Wis.2d 207 944 N.W.2d 46
*2019AP2033	<u>Portage County v. E. R. R.</u>  Whether an appeal from a Wis. Stat. § 51.20(1)(am) commitment order may properly be dismissed as moot.  Whether the County met its burden to prove by clear and convincing evidence that the respondent was currently dangerous as required by Wis. Stat. § 51.20(1)(am).	08/20/2020 REVW	4 Portage	Unpub.
2019AP2397 (consolidated with 2020AP112)	<u>Timothy Zignego v. Wisconsin Elections Commission</u>  Does Wis. Stat. § 6.50(3) apply to the Wisconsin Elections Commission ("WEC")?  Was it proper to order WEC to comply with Wis. Stat. § 6.50(3) and, as is required by that law, to deactivate the voter registrations of voters within 30 days of sending them a notice and receiving no response?  Was it proper to find WEC and certain of its commissioners in contempt for failing to comply with the Writ of Mandamus for 32 days after the Circuit Court granted the Writ, and for twice voting not to comply with the Writ?	06/01/2020 REVW Oral Arg 09/29/2020	2 Ozaukee	03/26/2020 Pub. 2020 WI App 17 391 Wis. 2d 441 941 N.W. 2d 284
2020AP112 (consolidated with 2019AP2397)	<u>Timothy Zignego v. Wisconsin Elections Commission</u>  Does Wis. Stat. § 6.50(3) apply to the Wisconsin Elections Commission ("WEC")?  Was it proper to order WEC to comply with Wis. Stat. § 6.50(3) and, as is required by that law, to deactivate the voter registrations of voters within 30 days of sending them a notice and receiving no response?  Was it proper to find WEC and certain of its commissioners in contempt for failing to comply with the Writ of Mandamus for 32 days after the Circuit Court granted the Writ, and for twice voting not to comply with the Writ?	06/01/2020 REVW Oral Arg 09/29/2020	2 Ozaukee	03/26/2020 Pub. 2020 WI App 17 391 Wis. 2d 441 941 N.W.2d 284

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP557-OA	<u>Mark Jefferson v. Dane County</u>  Do respondents have the authority to issue an interpretation of state election law allowing Dane County voters to vote absentee without a photo ID?  Does Emergency Order #12, the "Safer at Home" Order, authorize all Wisconsin voters – regardless of whether they are "indefinitely confined" or suffering a "physical illness or infirmity" due to COVID-19 – to vote absentee without a photo ID?  May an elector who is not indefinitely confined and who is not disabled for indefinite period obtain an absentee ballot under Wis. Stat. § 6.86(2)(a) due to the COVID-19 pandemic?	04/01/2020 ORIG Oral Arg 09/29/2020	4 Dane	--

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