

BY BRYNA GODAR

Wisconsin Supreme Court: 2023-24 Term Review and 2024-25 Preview



Despite a low overall tally of opinions, the 2023-24 term was a headliner for democracy-related cases in the Wisconsin Supreme Court, and the justices show no signs of slowing down.

In its 2023-24 term, the Wisconsin Supreme Court decided the smallest number of cases ever. The court issued a total of 14 opinions,¹ compared to upwards of 40 in other recent terms.² This was in large part due to a much lower grant rate for petitions for review – of the 516 petitions for review the court disposed of this term, it only granted 10 petitions (about 2%),³ a decline from roughly 4% in the 2022-23 term and from an average of 8% in the 10 years prior.⁴

But the opinions the court did issue were significant, including rulings likely to reshape Wisconsin's electoral landscape and the balance of power in state government. This term was the first with newly elected Justice Janet Protasiewicz on the bench. Justice Protasiewicz's election in 2023 flipped the court from a 4-3 conservative lean to a 4-3 liberal bent, and several opinions splitting on this new line drew sharply worded dissents from the minority. But the court also reached greater consensus on many cases, with a total of 10 of the 14 cases drawing a majority of five or more justices. The proportion of cases involving 4-3 splits this term – 29% of decisions – is on par with last term's 31%.⁵ The prior two terms had higher percentages of 4-3 splits – 54 percent in the 2021-22 term and 37 percent of decisions in the 2020-21 term.⁶

This report recaps the court's major democracy and state constitutional law decisions and previews significant cases the court will take up in its 2024 term, which begins in September 2024.

Power Shifts in State Government

Two of the most significant democracy-related cases decided in the 2023-24 term involved the makeup and powers of state government. The first – *Clarke v. Wisconsin Elections Commission*⁷ – led to redrawing the state's legislative maps and could significantly affect the legislature's composition

in years to come. The second – *Evers v. Marklein*⁸ – concluded that a veto power wielded by a legislative committee over Wisconsin Department of Natural Resources (DNR) expenditures ran afoul of separation-of-powers principles.

Clarke v. Wisconsin Elections Commission. The Wisconsin Supreme Court's 4-3 decision in *Clarke* in late 2023 striking down the state's legislative maps continued a long saga of redistricting litigation in Wisconsin. In 2011, the Republican-controlled Wisconsin Legislature and Governor Scott Walker, a Republican, enacted maps that strongly favored Republican candidates.⁹ That plan largely survived various federal court challenges after the U.S. Supreme Court ruled in *Rucho v. Common Cause* that "partisan gerrymandering claims present political questions beyond the reach of the federal courts."¹⁰

In the next round of redistricting in 2021, the Republican-controlled legislature passed maps on a party-line vote, but Governor Tony Evers, a Democrat, vetoed them, citing a continuation of the 2011 maps' partisan skews.¹¹ After months of litigation, primarily in state court this time, the Wisconsin Supreme Court in 2022 put in place the legislature's proposed maps – the same ones the governor had vetoed – in *Johnson v. Wisconsin Elections Commission*.¹² The *Johnson* court adopted a "least change" approach to state court intervention in crafting maps and reasoned that the legislature's maps most closely resembled the 2011 maps.¹³

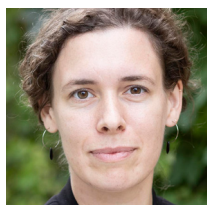
The *Clarke* plaintiffs filed an original action in 2023 challenging those legislature-drafted, court-enacted maps on multiple grounds, including a lack of contiguous districts, violation of separation-of-powers principles, and partisan gerrymandering in violation of the state (rather than federal) constitution. The court agreed in a sharply divided 4-3 decision to take up the case.¹⁴



But it limited the action to the first two issues, leaving the question of partisan gerrymandering to another day due to the extensive fact-finding required.¹⁵

The court ultimately ruled only on the first issue: contiguity.¹⁶ The Wisconsin Constitution requires that legislative districts “consist of contiguous territory.”¹⁷ In recent decades, Wisconsin’s policymakers have interpreted the term “contiguous” to include “political contiguity,” meaning some districts consist of separate, detached portions of land where the detached territory is a “municipal island” and the municipality is otherwise located in the district.¹⁸ The majority opinion, written by Justice Jill Karofsky, ruled that this practice is unconstitutional. The court concluded that “contiguous” means “touching, or in actual contact”¹⁹ and struck down the 2022 maps because “[a]t least 50 of 99 assembly districts and at least 20 of 33 senate districts violate this mandate.”²⁰

Turning to remedies, the court overruled the “least change” approach used in *Johnson* as “unworkable in practice” because no majority of the court in *Johnson* agreed on the meaning of “least change” and because “least change did not fit easily or consistently into the balance of other requirements and considerations essential to the mapmaking process.”²¹ However, the court ultimately did not itself adopt new maps. Instead, the legislature passed the same maps Governor Evers proposed in the remedial phase of the *Clarke* litigation, and Governor Evers signed them into law.²²



Bryna Godar, Harvard 2021, is staff attorney for the State Democracy Research Initiative at the University of Wisconsin Law School. She is a member of the State Bar of Wisconsin’s Young Lawyers Division. Access the digital article at www.wisbar.org/wl.
bryna.godar@wisc.edu

The *Clarke* opinion drew lengthy dissents from each of the three conservative-leaning justices: Chief Justice Annette Ziegler, Justice Rebecca Grassl Bradley, and Justice Brian Hagedorn, all of whom had been in the majority in *Johnson*.²³ All three argued that the case amounted to a partisan political proceeding and that other procedural issues, such as standing, claim preclusion, and laches, should have barred the case.²⁴

Evers v. Marklein. In a 6-1 decision, the court struck down a legislative committee’s veto power over DNR expenditures of funds appropriated under the Knowles-Nelson Stewardship Program, a land acquisition and conservation grant program.²⁵ Under the challenged statutory provisions, the legislature’s Joint Finance Committee (or sometimes individual committee members) had the power to reject grant determinations and land acquisitions.²⁶ The majority opinion, written by Justice Rebecca Bradley, concluded that this practice violates the Wisconsin Constitution’s separation-of-powers principles,²⁷ a ruling that could have far-reaching implications for other, similar legislative committee veto provisions.²⁸

The Wisconsin Supreme Court has traditionally distinguished between each branch’s “core” powers and “shared” powers in delineating its separation-of-powers doctrine. In *Evers v. Marklein*, the court concluded that “the power to spend appropriated funds in accordance with the law enacted by the legislature lies solely within the core power of the executive to ensure the laws are faithfully executed.”²⁹ It emphasized that this is true even in the context of a legislatively created agency, such as the DNR,³⁰ and noted that the legislature retains other agency oversight mechanisms, like oversight investigations, audits, and the ability to prescribe the parameters of funding.³¹ The court also noted that “[t]he veto provisions undermine democratic governance by circumventing the lawmaking process – which requires

the participation of the entire legislature – and punting to a committee the controversial and therefore politically costly positions legislators would otherwise need to take.”³²

Despite their broad consensus on the outcome, the justices sharply divided in separate writings over a different issue not directly raised in the case – the non-delegation doctrine. In a concurrence, Justice Rebecca Bradley called for “revitaliz[ing] the dormant non-delegation doctrine”³³ and argued that “[c]onsistent application of the separation of powers principles espoused in [the court’s] cases requires the court to retrieve the legislature’s core lawmaking power from the administrative apparatus residing in the executive branch.”³⁴ Chief Justice Ziegler offered a similar argument in her dissent.³⁵

Meanwhile, in a concurrence joined by Justice Ann Walsh Bradley, Justice Karofsky, and Justice Protasiewicz, Justice Rebecca Dallet wrote that the case does not implicate the non-delegation doctrine and argued that the rationale for such a doctrine in Wisconsin is weak.³⁶

In a concurrence not focused on the non-delegation doctrine, Justice Ann Walsh Bradley, joined by Justice Dallet and Justice Protasiewicz, argued that, in separation-of-powers challenges to statutes, the court should not apply its usual presumption of constitutionality.³⁷ In her view, “[w]hen the legislative branch passes a law that allegedly usurps another branch’s core power, presuming such a statute to be valid would improperly place a thumb on the legislative branch’s side of the scale.”³⁸

Election-Related Cases

The *Clarke* redistricting case was not the court’s only encounter with election law. In other cases, the court directed the Wisconsin Elections Commission to put Representative Dean Phillips’s (D-Minn.) name on the state’s presidential primary ballot, and it reinstated the legality of using drop boxes to collect

absentee ballots, overturning a case decided two years ago that had reached the opposite conclusion.

Phillips v. Wisconsin Elections

Commission. In this per curiam decision in an original action, the court demonstrated its ability to exercise oversight over the elections process quickly and unanimously.³⁹ Phillips, at the time a Democratic presidential candidate, was initially left off the primary ballot after the Wisconsin Presidential Preference Selection Committee convened and “held no discussion about Phillips or any other Democratic presidential primary candidate” aside from Joe Biden.⁴⁰ Phillips filed a petition for original action to review that decision and sought a writ of mandamus directing the Wisconsin Elections Commission to place him on the ballot.

In a 12-page opinion issued only seven days after Phillips filed his petition, the court concluded that the selection

committee had “failed to demonstrate that it exercised discretion” in applying the statutory ballot-access standard to Phillips. The statute directs the committee to determine which candidates are “generally advocated or recognized in the national news media throughout the United States.”⁴¹ Given the committee’s apparent failure to consider Phillips’s candidacy at all, the court concluded that the committee had abused its discretion.⁴² Because there was insufficient time to remand the issue to the selection committee to properly exercise its discretion ahead of primary ballot preparation, the court granted mandamus relief and ordered the Wisconsin Elections Commission to place Phillips’s name on the ballot.⁴³

Priorities USA v. Wisconsin Elections

Commission. In a 4-3 decision written by Justice Ann Walsh Bradley, the court ruled that clerks can use drop boxes to collect absentee ballots.⁴⁴ In doing so, it

overruled *Teigen v. Wisconsin Elections Commission*,⁴⁵ a case decided in 2022 that had reached the opposite conclusion. The case consequently raised key issues of stare decisis in addition to the baseline question of statutory interpretation.

Wisconsin Statutes section 6.87(4)(b)1. provides that absentee ballot envelopes “shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” The *Teigen* court interpreted the phrase “to the municipal clerk” to exclude return via a drop box, instead requiring personal delivery at the clerk’s office (or an alternative designated site).⁴⁶

The *Priorities USA* majority instead stressed that state statutes distinguish between the “office of the municipal clerk” and “the municipal clerk”: the latter is a person while the former is a location.⁴⁷ Because “[a] drop box is set up, maintained, secured, and emptied



Strength & Experience

ABA Retirement Funds

Built by **LAWYERS**,
Powered by **PROS**®

Your employees are your firm’s greatest asset – financial wellness is one of their greatest needs.

The **ABA Retirement Funds Program** is designed specifically for the retirement needs of the legal community. We address many top concerns, like:



Fiduciary Protection



Governance



Employee Retention



Revenue Transparency

\$7.1B

in retirement plan assets

4K

law firms and legal organizations

38K

lawyers and legal professionals

As of 12/31/2023





Contact us today! abaretirement.com • 800.826.8901 • joinus@abaretirement.com

The ABA Retirement Funds Program is available through the State Bar of Wisconsin as a member benefit. Please read the Program Annual Disclosure Document (April 2024) carefully before investing. This Disclosure Document contains important information about the Program and investment options. For email inquiries, contact us at: joinus@abaretirement.com. Registered representative of Voya Financial Partners, LLC (member SIPC). Voya Financial Partners is a member of the Voya family of companies (“Voya”). Voya, the ABA Retirement Funds, and the State Bar of Wisconsin are separate, unaffiliated entities, and not responsible for one another’s products and services. CN3115318_0925

A Member Benefit of



STATE BAR
OF WISCONSIN

SEPTEMBER 2024 13

WI Sup Ct - Feature-full-vertical-left.indd 13

8/26/2024 10:23:13 AM

Wisconsin Supreme Court, Holdings and Votes – 2023-24 Term

Civil Law Decisions, 2023-24

1. *Clarke v. Wisconsin Elections*

Comm'n, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370 (Dec. 22, 2023)

Subject area: Redistricting

Holding: Wisconsin's current legislative maps contain noncontiguous districts and thus violate article IV, sections 4 and 5 of the Wisconsin Constitution.

Vote: 4-3

KAROFKY (majority opinion), joined by A. BRADLEY, DALLET, and PROTASIEWICZ

ZIEGLER (dissent)

R. BRADLEY (dissent)

HAGEDORN (dissent)

2. *Catholic Charities Bureau Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2024 WI 13, 411 Wis. 2d 1, 3 N.W.3d 666 (March 14, 2024)

Subject areas: Taxation; constitutional law

Holdings: The petitioners are not operated primarily for religious purposes within the meaning of Wis. Stat. section 108.02(15)(h)2. and are therefore not exempt from payment of unemployment compensation taxes. The application of Wis. Stat. section 108.02(15)(h)2. to the petitioners does not violate the First Amendment because the petitioners failed to demonstrate that the statute as applied to them is unconstitutional beyond a reasonable doubt.

Vote: 4-3

A. BRADLEY (majority opinion), joined by DALLET, KAROFKY, and PROTASIEWICZ

R. BRADLEY (dissent), joined by ZIEGLER with respect to ¶¶ 110-161 and 163-198.

HAGEDORN (dissent)

3. *Andrade v. City of Milwaukee Bd. of Fire & Police Comm'rs*, 2024 WI 17, 411 Wis. 2d 340, 5 N.W.3d 261 (April 30, 2024)

Subject area: Procedural due process

Holding: The petitioner received due process under Wisconsin law and the U.S. Constitution in his termination as a police officer.

Vote: 5-2

HAGEDORN (majority opinion), joined by A. BRADLEY, DALLET, KAROFKY, and PROTASIEWICZ

ZIEGLER (dissent), joined by R. BRADLEY

4. *A.M.B. v. Circuit Ct. for Ashland Cnty.*, 2024 WI 18, 411 Wis. 2d 389, 5 N.W.3d 238 (April 30, 2024)

Subject area: Family law

Holding: A Wisconsin statute that prohibits the adoption of a child by the mother's nonmarital partner is constitutional.

Vote: 7-0

R. BRADLEY (unanimous opinion)

R. BRADLEY (concurrence), joined by ZIEGLER and HAGEDORN

DALLET (concurrence), joined by A. BRADLEY and PROTASIEWICZ

KAROFKY (concurrence)

5. *Sojenhomer LLC v. Village of Egg Harbor*, 2024 WI 25, 412 Wis. 2d 244, 7 N.W.3d 455 (June 19, 2024)

Subject area: Land use

Holding: Statutes that bar municipalities from condemning land for pedestrian walkways do not apply to sidewalks.

Vote: 4-3

DALLET (majority opinion), joined by A. BRADLEY, KAROFKY, and PROTASIEWICZ

ZIEGLER (dissent), joined by R. BRADLEY and HAGEDORN

6. *State v. R.A.M. (In re Termination of Parental Rts. to P.M.)*, 2024 WI 26, 412 Wis. 2d 285, 3 N.W.3d 349 (June 25, 2024)

Subject area: Family law

Holding: A circuit court must wait at least two days before adjudicating the dispositional phase of a termination-of-parental-rights trial when the parent has failed to appear.

Vote: 5-2

KAROFKY (majority opinion), joined by A. BRADLEY, R. BRADLEY, DALLET, and PROTASIEWICZ

ZIEGLER (dissent), joined by HAGEDORN

7. *State v. B.W. (In re Termination of Parental Rts. to B.W.)*, 2024 WI 28, 412 Wis. 2d 364, 8 N.W.3d 22 (June 27, 2024)

Subject area: Family law

Holding: A circuit court did not err by relying in part on an adoptive parent's promise when deciding to terminate the parental rights of a birth parent.

Vote: 7-0

ZIEGLER (majority opinion), joined by R. BRADLEY, DALLET, HAGEDORN, and KAROFKY, and joined by A. BRADLEY and PROTASIEWICZ

except for ¶¶ 65-67

ZIEGLER (concurrence), joined by R. BRADLEY

A. BRADLEY (concurrence), joined by PROTASIEWICZ

8. *Kindschy v. Aish*, 2024 WI 27, 412 Wis. 2d 319, 8 N.W.3d 1 (June 27, 2024)

Subject area: Freedom of speech

Holding: A circuit court improperly entered an injunction against an anti-abortion protestor who repeatedly made intimidating statements to a nurse who worked at a clinic.

Vote: 5-2

DALLET (majority opinion), joined by A. BRADLEY, HAGEDORN, KAROFKY, and PROTASIEWICZ

R. BRADLEY (dissent), joined by ZIEGLER

9. *Waukesha Cnty. v. M.A.C. (In re Mental Commitment of M.A.C.)*, 2024 WI 30, 412 Wis. 2d 462, 8 N.W.3d 365 (July 5, 2024)

Subject area: Civil commitment

Holding: Recommitment and involuntary medication hearing notices must be served on the subject of the hearings, not only on the person's attorney.

Vote: 5-2

PROTASIEWICZ (majority opinion), joined by A. BRADLEY, DALLET, and KAROFKY

HAGEDORN (concurrence)

R. BRADLEY (concurring in part, dissenting in part)

ZIEGLER (dissent)



10. *Evers v. Marklein*, 2024 WI 31, 412 Wis. 2d 525, 8 N.W.3d 395 (July 5, 2024)

Subject area: Separation of powers
Holding: A statute authorizing the Wisconsin Legislature's Joint Finance Committee to temporarily block the Department of Natural Resources' spending of legislatively appropriated funds violates the Wisconsin Constitution's separation-of-powers provision.

Vote: 6-1

R. BRADLEY (majority opinion), joined by A. BRADLEY, DALLET, HAGEDORN, KAROFISKY, and PROTASIEWICZ

A. BRADLEY (concurrency), joined by DALLET and PROTASIEWICZ
R. BRADLEY (concurrency)
DALLET (concurrency), joined by A. BRADLEY, KAROFISKY, and PROTASIEWICZ
ZIEGLER (dissent)

11. *Phillips v. Wisconsin Elections Comm'n*, 2024 WI 8, 410 Wis. 2d 386, 2 N.W.3d 254 (Feb. 2, 2024)

Subject area: Election Law

Holding: The Wisconsin Presidential Preference Selection Committee failed to exercise statutorily required discretion when it chose the candidates to be placed on the 2024 Democratic presidential preference primary ballot.

Vote: Per curiam

12. *Priorities USA v. Wisconsin Elections Comm'n*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429 (July 5, 2024)

Subject area: Election law

Holding: A 2022 decision that held ballot drop boxes were illegal was unsound, and state law allows local election clerks to use drop boxes to collect absentee ballots.

Vote: 4-3

A. BRADLEY (majority opinion), joined by DALLET, KAROFISKY, and PROTASIEWICZ

R. BRADLEY (dissent), joined by ZIEGLER and HAGEDORN

Criminal Law Decisions, 2023-24

1. *State ex rel. Davis v. Circuit Ct. for Dane Cnty.*, 2024 WI 14, 411 Wis. 2d 123, 4 N.W.3d 273 (March 26, 2024)

Subject area: Criminal procedure

Holding: Davis was not entitled to a supervisory writ because the circuit court had no plain duty to treat his request for substitution as timely.

Vote: 6-1

PROTASIEWICZ (majority opinion), joined by A. BRADLEY, DALLET, and KAROFISKY

R. BRADLEY (concurrency)
HAGEDORN (concurrency)
ZIEGLER (dissent)

2. *State v. Wiskowski*, 2024 WI 23, 412 Wis. 2d 185, 7 N.W.3d 474 (June 18, 2024)

Subject area: Search and seizure

Holding: A police officer who saw no signs of drowsiness or intoxication in a driver he stopped was not justified in extending the traffic stop and ordering the driver out of the car.

Vote: 6-1

HAGEDORN (majority opinion), joined by A. BRADLEY, R. BRADLEY, DALLET, KAROFISKY and PROTASIEWICZ
HAGEDORN (concurrency), joined by R. BRADLEY with respect to ¶¶ 39-75, and PROTASIEWICZ with respect to ¶ 72 and ¶¶ 74-75
PROTASIEWICZ (concurrency), joined by A. BRADLEY
ZIEGLER (dissent)

Most of the holdings displayed in the table were summarized by Marquette University Law School Professors Daniel D. Blinka and Thomas J. Hammer and were originally published in the Supreme Court Digest that appears in *Wisconsin Lawyer*.™

Table compiled by Jeff M. Brown, Willamette Univ. School of Law 1997, former legal writer for the State Bar of Wisconsin. jbrown2@wisbar.org

by the municipal clerk," the court concluded, a drop box is a valid method of returning a ballot "to the municipal clerk."⁴⁸ The court also noted that giving clerks discretion to determine the manner of return "is consistent with the statutory scheme as a whole, under which Wisconsin's 1,850 municipal clerks serve the 'primary role' in running elections via our 'decentralized' system."⁴⁹

The majority also rejected *Teigen's* position that Wisconsin Statutes section 6.84 requires courts to take a "skeptical" view of absentee voting.⁵⁰ Subsection (1) states that "voting by absentee ballot is a privilege" and that it "must be carefully regulated to prevent" various abuses. Subsection (2) then states that the absentee voting statutes "shall be construed as mandatory" and that "[b]allots cast in contravention of" the statutory procedures "may not be counted."

The court in *Priorities USA* concluded that, instead of providing an interpretive rule for courts, "[s]ection 6.84(1) is merely a declaration of legislative policy" and that section 6.84(2) merely provides the consequence of contravening absentee voting procedures – that is, that the vote will not be counted.⁵¹ On the issue of stare decisis, the court wrote that because a "skeptical" gloss on absentee voting "permeated the entirety of the *Teigen* majority's analysis," the court's prior ruling was not merely wrong but was "unsound in principle" and therefore properly overruled.⁵²

In dissent, Justice Rebecca Bradley, joined by Justice Hagedorn and Chief Justice Ziegler, criticized the majority for "again forsak[ing] the rule of law in an attempt to advance its political agenda"⁵³ and "tramp[ing] the doctrine of stare decisis."⁵⁴ Justice Rebecca Bradley acknowledged that she has previously rejected strong versions of stare decisis and been willing to revisit statutory interpretation rulings.⁵⁵ But she asserted that the majority opinion's author (Justice Ann Walsh Bradley) had previously counseled against overruling statutory precedents

and should have remained faithful to that principle here.⁵⁶

The Term to Come: 2024-25

The court's upcoming term will continue to include high-profile cases on democracy and state constitutional law, including abortion, the governor's partial veto power, requirements for absentee voting sites, and more. The petitions already granted include the following:

• **Planned Parenthood of Wisconsin v. Urmanski**⁵⁷ & **Kaul v. Urmanski**⁵⁸: These cases center on the legality of abortion in Wisconsin following the U.S. Supreme Court's overruling of *Roe v. Wade*.⁵⁹ *Kaul* will address whether an 1849 statute criminalizes abortion. (A lower court ruled in 2023 that it does not.⁶⁰) *Planned Parenthood* raises a constitutional claim, arguing that if the statute is interpreted to prevent abortions except to save the mother's life, then it would violate the Wisconsin Constitution.

• **LeMieux v. Evers**⁶¹: This original action challenges the extent of the governor's partial veto power, arguing that Governor Evers's use of the partial veto to strike individual digits and extend a school district revenue limit by 400 years is unconstitutional.⁶² Wisconsin governors have long had an unusually powerful partial veto that has allowed them to essentially rewrite provisions in appropriation bills.⁶³

• **Brown v. Wisconsin Elections Commission**⁶⁴: This case stems from the 2022 election, in which the Racine City Clerk used a mobile van to handle absentee ballot collection at multiple city-designated sites. The circuit court concluded that the use of a mobile van violated election laws about alternative absentee ballot voting sites. The Wisconsin Supreme Court agreed to hear the case directly on a petition for bypass.

In the 2024-25 term, the court will likely also consider democracy-related

litigation surrounding the August and November elections. For example, some issues that have arisen in recent lower court cases include absentee ballot requirements⁶⁵ and the accessibility of absentee voting for individuals with disabilities who cannot independently read or mark ballots.⁶⁶

Disputes over legislative and executive power are sure to continue as well. In addition to the partial-veto case mentioned above, another case about the governor's partial veto is pending in lower courts, accompanied by a counterclaim from Governor Evers further challenging the power of the Joint Committee on Finance. And the court may consider the contours of state constitutional rights beyond the abortion cases – this past term in *A.M.B. v. Circuit Court for Ashland County*,⁶⁷ an adoption case, several justices previewed their respective positions on state constitutional rights in concurrences, a debate that will likely continue.⁶⁸

The court's 2024-25 term will unfold alongside a high-stakes judicial election in April 2025. After three decades on the court, Justice Ann Walsh Bradley, part of the court's current liberal-leaning majority, is not seeking reelection. As the state's voters choose her successor, they could significantly affect the ideological direction of the court.

Conclusion

Despite the low overall tally of opinions, the 2023-24 term was a headliner for democracy-related cases in the Wisconsin Supreme Court, and the justices show no signs of slowing down. It is likely that there will continue to be sharply divided decisions in the 2024-25 term. But the court has also shown consensus building in many of its cases, including in defining the powers of the legislative and executive branches. **WL**

Nicolet Law is looking for an attorney to join our Personal Injury practice in Wisconsin. Must be admitted to practice law in Wisconsin. This position will involve negotiations, record review, depositions, hearings, trial, and other work advocating for injured folks. The ideal applicant will enjoy helping injured clients and their families get justice and continue healing.

Minimum requirements:

- Admitted to practice law in Wisconsin.
- Ability to reliably commute to and from the office in the State in which you are hired in; and ability to commute to meet clients as needed.
- Previous experience in a professional office environment.
- Detail-oriented and organized.
- Ability to work as part of a team, manage and prioritize multiple projects, and meet deadlines.
- Proficiency in Microsoft Office – Word, Excel, Outlook.
- Comfortable speaking on the phone.
- Demonstrates the highest level of professionalism and customer service; ability to handle confidential matters with discretion.
- Desire to work as a team in a fast-paced, growing office that focuses on client satisfaction, results, and an awesome work culture.

Nicolet Law Office offers a competitive compensation package including:

- Medical, dental, vision coverage, flex spending accounts (FSA)
- Life insurance
- Short-term and long-term disability insurance
- 401k
- Paid Time Off, Wellness Leave, Parental Leave, Bereavement Leave
- Paid Parking

Schedule:

- Full-time
- 8-hour shift
- Day shift
- Monday to Friday

To Apply:

Visit - <https://nicoletlaw.com/careers/>



NICOLET LAW
ACCIDENT & INJURY LAWYERS

ENDNOTES

¹This figure excludes attorney discipline decisions, two 3-3 split per curiam decisions (in which Justice Protasiewicz was not participating), and two cases dismissed as improvidently granted.

²Alan Ball, *The Supreme Court's 2023-24 Term: Some Initial Impressions*, SCOWstats (July 8, 2024), <https://scowstats.com/2024/07/08/the-supreme-courts-2023-24-term-some-initial-impressions/>.

³*Wisconsin Supreme Court Monthly Statistical Report June 2024*, <https://www.wicourts.gov/sc/DisplayDocument.pdf?content=pdf&seqNo=824126>.

⁴The data for this analysis comes from Wisconsin Court System, *Supreme Court Statistics*, https://www.wicourts.gov/supreme/sc_statistical.jsp (last visited July 12, 2024).

⁵Alan Ball, *Wisconsin Supreme Court Statistics 2022-23*, SCOWstats (July 24, 2023), <https://scowstats.com/2023/07/24/wisconsin-supreme-court-statistics-2022-23/>.

⁶Alan Ball, *Wisconsin Supreme Court Statistics, 2021-22*, SCOWstats (July 21, 2022), <https://scowstats.com/2022/07/21/wisconsin-supreme-court-statistics-2021-22/>; Alan Ball, *A 4-3 Surge*, SCOWstats (June 7, 2022), <https://scowstats.com/2022/06/07/a-4-3-surge/>; Alan Ball, *The Supreme Court's 2021-22 Term: Some Initial Impressions*, SCOWstats (July 13, 2022), <https://scowstats.com/2022/07/13/the-supreme-courts-2021-22-term-some-initial-impressions/>.

⁷*Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370 (reconsideration denied).

⁸*Evers v. Marklein*, 2024 WI 31, 412 Wis. 2d 525, 8 N.W.3d 395.

⁹*How the 2011 Political District Map Changed the Game for Wisconsin*, Wis. Pub. Radio (Oct. 13, 2021), <https://www.wpr.org/shows/mappedout/how-2011-political-district-map-changed-game-for-wisconsin>; *Wisconsin's 2011 Map Cemented Republicans' Majority and Shaped a Decade of Policy*, Wis. Pub. Radio (Oct. 27, 2021), <https://www.wpr.org/shows/mappedout/wisconsins-2011-map-cemented-republicans-majority-and-shaped-decade-policy>; Wis. Legis. Reference Bureau, *Redistricting in Wisconsin 2020*, at 71-72 (2020), https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_elections_project/redistricting_wisconsin_2020_1_2.pdf.

¹⁰*Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (2019). One federal court ordered the redrawing of two districts to comply with the Voting Rights Act. *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 849-51, 852-53 (E.D. Wis. 2012). The other initially agreed with plaintiffs that the plan amounted to an unconstitutional partisan gerrymander. *Whitford v. Gill*, 218 F. Supp. 3d 837, 910, 926-27 (W.D. Wis. 2016), *vacated and remanded*, 585 U.S. 48 (2018). The U.S. Supreme Court agreed to hear *Whitford v. Gill* and granted a stay of that decision, but the case was ultimately rendered moot by *Rucho*. Wis. Legis. Reference Bureau, *supra* note 9, at 72-73.

¹¹Bridgit Bowden, *Evers Vetoes Republican-Drawn Redistricting Maps*, Wis. Pub. Radio (Nov. 18, 2021), <https://www.wpr.org/politics/evers-vetoes-republican-drawn-redistricting-maps>.

¹²*Johnson v. Wisconsin Elections Comm'n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559, *overruled by Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370 (reconsideration denied).

¹³*Id.* ¶¶ 3, 72.

¹⁴See *Clarke v. Wisconsin Elections Comm'n*, 2023 WI 70, 409 Wis. 2d 372, 995 N.W.2d 779.

¹⁵*Id.*

¹⁶*Clarke*, 2023 WI 79, 410 Wis. 2d 1.

¹⁷Wis. Const. art. IV, § 4.

¹⁸*Clarke*, 2023 WI 79, ¶ 18, 410 Wis. 2d 1.

¹⁹*Id.* ¶ 16.

²⁰*Id.* ¶ 77.

²¹*Id.* ¶¶ 61-63.

²²Scott Bauer, *Wisconsin's Democratic Governor Signs His New Legislative Maps Into Law After Republicans Pass Them*, Associated Press (Feb. 20, 2024), <https://apnews.com/article/wisconsin-redistricting-republican-democrat-9c2677a09e48152df323fbf5c55611ef>.

²³See *Johnson*, 2022 WI 19, 401 Wis. 2d 198, *overruled by Clarke*, 2023 WI 79, 410 Wis. 2d 1.

²⁴*Clarke*, 2023 WI 79, ¶¶ 78-184, 410 Wis. 2d 1 (Ziegler, C.J., dissenting); *id.* ¶¶ 185-263 (R.G. Bradley, J., dissenting); *id.* ¶¶ 264-302 (Hagedorn, J., dissenting).

²⁵*Evers v. Marklein*, 2024 WI 31, 412 Wis. 2d 525.

²⁶Jacob Resneck, *'There's No Transparency': Secretive 'Pocket Veto' Scuttles Wisconsin Projects*, Wis. Watch (Mar. 11, 2023), <https://wisconsinwatch.org/2023/03/theres-no-transparency-secretive-pocket-veto-scuttles-wisconsin-projects/>.

²⁷*Evers v. Marklein*, 2024 WI 31, ¶ 2, 412 Wis. 2d 525.

²⁸Harry Isaiah Black, *Research Note: History of Wisconsin's Joint Committee on Finance's Veto Powers*, State Democracy Rsch. Initiative (2024), [https://statedemocracy.law.wisc.edu/research-note-history-of-wisconsins-joint-committee-on-finances-veto-powers/\(cataloguing%20veto%20powers%20exercised%20by%20the%20Joint%20Committee%20on%20Finance\)](https://statedemocracy.law.wisc.edu/research-note-history-of-wisconsins-joint-committee-on-finances-veto-powers/(cataloguing%20veto%20powers%20exercised%20by%20the%20Joint%20Committee%20on%20Finance)).

²⁹*Evers v. Marklein*, 2024 WI 31, ¶ 18, 412 Wis. 2d 525.

³⁰*Id.*

³¹*Id.* ¶¶ 20-22, 30.

³²*Id.* ¶ 29.

³³*Id.* ¶ 56 (R.G. Bradley, J., concurring).

³⁴*Id.* ¶ 47.

³⁵*Id.* ¶ 83 (Ziegler, C.J., dissenting).

³⁶*Id.* ¶¶ 72-73 (Dallet, J., concurring).

³⁷*Id.* ¶ 39 (A.W. Bradley, J., concurring).

³⁸*Id.* ¶ 40.

³⁹*Phillips v. Wisconsin Elections Comm'n*, 2024 WI 8, 410 Wis. 2d 386, 2 N.W.3d 254.

⁴⁰*Id.* ¶ 4.

⁴¹*Id.* ¶ 2 (quoting Wis. Stat. § 8.12(1)(b).3).

⁴²*Id.* ¶ 9.

⁴³*Id.* ¶ 12.

⁴⁴*Priorities USA v. Wisconsin Elections Comm'n*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429.

⁴⁵*Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519, *overruled by Priorities USA*, 2024 WI 32, 412 Wis. 2d 594.

⁴⁶*Id.* ¶ 4.

⁴⁷*Priorities USA*, 2024 WI 32, ¶ 22, 412 Wis. 2d 594.

⁴⁸*Id.* ¶ 26.

⁴⁹*Id.* ¶ 28.

⁵⁰*Id.* ¶ 32.

⁵¹*Id.* ¶ 45.

⁵²*Id.* ¶¶ 41, 49.

⁵³*Id.* ¶ 51 (R.G. Bradley, J., dissenting).

⁵⁴*Id.* ¶ 52.

⁵⁵*Id.* ¶ 59.

⁵⁶*Id.*

⁵⁷No. 2024AP330 (Wis. July 2, 2024) (granting petition for original action).

⁵⁸No. 2023AP2362 (Wis. July 2, 2024) (granting petition for bypass).

⁵⁹*Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

⁶⁰*Kaul v. Urmanski*, No. 22 CV 1594, 2023 WL 11724618 (Wis. Cir. Ct. Dane Cnty. July 7, 2023).

⁶¹No. 2024AP729 (Wis. June 17, 2024) (granting petition for original action).

⁶²Rich Kremer, *Wisconsin's Partial Veto Has Stood for Nearly a Century. The Wisconsin Supreme Court Will Give It Another Look*, Wis. Pub. Radio (June 19, 2024), <https://www.wpr.org/news/wisconsins-partial-veto-has-stood-for-nearly-a-century-the-wisconsin-supreme-court-will-give-it-another-look>.

⁶³Richard A. Champagne, Staci Duros, & Madeline Kasper, *The Wisconsin Governor's Partial Veto*, 5 Reading the Const. 3 (July 2020), https://docs.legis.wisconsin.gov/misc/lrb/reading_the_constitution/governors_partial_veto_5_3.pdf.

⁶⁴No. 2022CV1324 (Wis. Cir. Ct. Apr. 1, 2024). The supreme court granted the petitions to bypass on May 3, 2024.

⁶⁵*Oldenburg v. Wisconsin Elections Comm'n*, No. 2024CV43 (Wis. Cir. Ct. Marinette Cnty. July 29, 2024); *Rise Inc. v. Wisconsin Elections Comm'n*, No. 2024AP165 (Wis. Ct. App. July 11, 2024); *League of Women Voters of Wis. v. Wisconsin Elections Comm'n*, No. 2024AP166 (Wis. Ct. App. July 30, 2024).

⁶⁶*Disability Rts. Wis. v. Wisconsin Elections Comm'n*, No. 2024CV1141 (Wis. Cir. Ct. Dane Cnty. June 25, 2024), *appeal docketed*, No. 2024AP1298 (Wis. Ct. App. July 1, 2024).

⁶⁷2024 WI 18, 411 Wis. 2d 389, 5 N.W.3d 238.

⁶⁸*Id.* ¶¶ 35-48 (R.G. Bradley, J., concurring); *id.* ¶¶ 49-61 (Dallet, J., concurring). **WL**