State Democracy Research Initiative
UNIVERSITY OF WISCONSIN LAW SCHOOL

The Calm Between the Storms: A Review of the Wisconsin Supreme Court's 2022-23 Term and Preview of 2023-24.

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The Wisconsin Supreme Court's 2022-23 term, which ended on June 30, unfolded against the backdrop of the most expensive judicial election in U.S. history.[1] While the election grabbed headlines, the term itself was a relatively quiet one—especially compared to the action-packed 2021-22 term and to what could be a blockbuster term in 2023-24.

During its 2021-22 term, the court adopted new electoral districts that largely resembled the old ones, barred drop boxes for absentee ballot return, limited the governor's appointment power, and more.[2] That term featured a record-setting percentage of 4-3 rulings. Meanwhile, with Janet Protasiewicz officially joining the court on August 1, the upcoming term could produce even more significant rulings—as many expect the court to revisit the state's gerrymandered maps and address abortion access.

The 2022-23 term, in contrast, saw few high-profile ideologically divisive cases and an overall dip in 4-3 rulings. That said, the court's decisions—45 in all[3]—were still consequential for many.

Perhaps most significantly, the court gave the legislature broad authority over the phrasing of ballot questions to amend the state constitution.[4] Local governments saw mixed results: one municipality prevailed over the "dark-store" theory that would have reduced property tax assessments for some big-box stores[5], while another lost the ability to charge a special road-repair fee that the court deemed a property tax.[6] And the court allowed police officers to search a driver based only on the smell of marijuana in his car, even though a legal substance—CBD—could produce the same odor.[7] These decisions and others also featured ongoing debates among the justices over important questions of interpretation and procedure.

The 2022-23 term marked the end of Justice Patience Roggensack's two-decade career on the court, and with it the court's longstanding conservative majority. Even before the shift in power, however, the court's three liberal justices managed to achieve majorities in more cases this past year than their conservative colleagues. Justice Brian Hagedorn retained his

status as the court's swing vote, siding more frequently in 2022-23 with the court's liberal wing, but also casting fewer decisive votes than in 2021-22.

The 2023-24 term remains largely a blank slate. The court has thus far accepted only six cases for review—compared to 33 at this point last year. But there is no shortage of major cases that could soon reach the court, from an anticipated redistricting challenge to an abortion dispute currently at the circuit court.

The 2022-23 term, by the numbers

The Wisconsin Supreme Court heard arguments in 50 cases between September 2022 and April 2023, 29 civil cases and 21 criminal.[8] Geographically, those cases were relatively balanced among the state's four appellate districts, with the most cases originating from the state's most populous counties.[9] The court resolved only 44 of the 50 argued cases, however. In five of the others, the court either deadlocked or decided the case was not appropriate for review,[10] while a sixth was held pending a U.S. Supreme Court decision.[11]

Conspicuously absent from the oral argument calendar were cases addressing election procedures or power struggles between the governor and legislature—prominent features of the previous year's docket. Those themes did show up in two additional cases that were not argued this term but that nevertheless generated published opinions. The first was the court's only case related to the 2022 midterm elections. The court did not directly resolve an election question, but rather determined which appellate district should do so.[12] In the second, the court denied reconsideration of a July 2022 decision about the delegation of legislative power.[13]

The court took the vast majority of cases—45 of the term's 50 arguments—after granting petitions for review brought by a party who lost at the court of appeals. The remaining five cases skipped over the court of appeals, one on a party's own bypass petition,[14] and four based on a certification by the court of appeals.[15] The court heard no cases under its original jurisdiction, which is how the court has previously addressed pressing and high-profile questions like redistricting and the validity of pandemic-era restrictions.

The court has discretion over its docket, and it generally chooses to hear cases that have legal significance beyond the parties' particular dispute, leaving narrower disagreements to the intermediate appellate courts.[16] Several of the court's 2022-23 decisions, however, appeared to involve case-specific error correction, with the justices unanimously reversing appellate decisions that ran afoul of existing precedent or clear statutory language.[17]

As always, the court decided questions of both state and federal law. The court has the final say in interpreting and applying the state constitution and state statutes, and those rulings make up a majority of the court's workload. But about two-fifths of its decisions related to federal law—many addressing the rights of criminal defendants under the U.S. Constitution.[18]

In several cases, resolving the parties' federal claims required the court to break new legal ground. In *State v. Moore*, for example, the court held that a car's "strong smell of marijuana" provided probable cause to search the driver—even though a legal substance, CBD, can produce the same odor.[19] In *Kindschy v. Aish*, the court held off on deciding the constitutionality of an abortion protestor's harassment injunction pending the U.S. Supreme Court's decision in another case, *Counterman v. Colorado*, which ultimately clarified the standard for identifying "true threats" unprotected by the First Amendment.[20] More often, however, the court applied longstanding federal precedent to new factual scenarios—including *State v. Richey*, where a four-justice majority concluded that a "generic description of a Harley-Davidson motorcycle recently seen driving erratically in the area" did not supply reasonable suspicion to justify a stop under the Fourth Amendment.[21]

Alliances and divisions among the justices

Justice Patience Roggensack's retirement on July 31, after two decades on the court, ends a period of conservative control that dates back to 2008. But the voting patterns of the court's four conservative and three liberal justices are more nuanced than those ideological labels alone would suggest.

In recent years, Roggensack has aligned most regularly with two other conservative jurists, Chief Justice Annette Ziegler (first elected in 2007) and Justice Rebecca Bradley (appointed in 2015 by Governor Scott Walker and elected in 2016). The court's liberal wing consists of its longest-serving member, Justice Ann Walsh Bradley—who was first elected in 1995 and has said she will run again in 2025[22]—as well as Justices Rebecca Dallet (elected in 2018) and Jill Karofsky (elected in 2020). Justice Brian Hagedorn, who was elected in 2019, is a self-described judicial conservative whose independent voting patterns have established him as the court's swing vote.[23]

The court's balance will shift to the left in August when Justice Roggensack is replaced by Janet Protasiewicz, a Milwaukee circuit court judge who campaigned on her liberal values and was elected by an 11-point margin. But even during the 2022-23 term, the court's more liberal members had some success building majorities. In 82 percent of the term's 45 decided cases, at least two of the court's three liberals were in the majority. Meanwhile, only 69 percent of cases had at least two conservatives in the majority.

Although Justice Hagedorn continued to be the court's swing justice in 2022-23, he cast a deciding vote in fewer cases than in 2021-22.[24] This term, 31 percent of cases—14 out of 45—were resolved on a 4-3 split, a marked decline from 2021-22 term, when 4-3 outcomes comprised an unprecedented 54 percent of the court's decisions. Hagedorn's choice to vote with the liberal or conservative wings determined the outcome in 71 percent of this term's 4-3 decisions (10 out of 14),[25] and he sided with his liberal colleagues on 7 out of those 10 occasions.

Another 36 percent of cases—16 out of 45—were resolved unanimously, a rate comparable to the last term. Justices Hagedorn and Karofsky each appeared in the majority in 91 percent of cases (41 out of 45), more than any of their colleagues. Professor Alan Ball of Marquette University made similar findings in his review of the 2022-23 term, published in the SCOWstats blog.[26]

Hagedorn was not the only justice to cross the ideological divide. Justice Karofsky joined conservative majorities in three decisions that went against criminal defendants.[27] Justice Roggensack twice voted with her liberal colleagues to form 4-3 majorities in cases related to products liability[28] and insurance coverage.[29] Justice Rebecca Bradley sided with the liberal justices in another 4-3 decision, finding that an officer violated the Fourth Amendment by stopping a driver based only on another officer's description of a Harley Davidson driving erratically through the same area.[30] Justice Rebecca Bradley was also the only justice to join two other liberal-authored opinions: a concurrence by Justice Karofsky emphasizing that delayed reporting by a child sexual assault victim does not indicate a lack of credibility,[31] and a dissent by Justice Ann Walsh Bradley arguing that prosecutors who intentionally induced a mistrial could not bring new charges.[32] Justice Ziegler signed onto another of Justice Ann Walsh Bradley's dissents, criticizing the reversal of longtime precedent that balanced the rights of criminal defendants against the privacy interests of their alleged victims.[33] And Justice Dallet broke with her liberal colleagues to join a decision that applied federal law to foreclose a county's liability for a correctional officer's sexual assault of an inmate in the county jail.[34]

Justice Rebecca Bradley was the justice most likely to stand alone, on the outcome of cases as well as the reasoning. She was the lone dissenter in two of the five cases decided by 6-1 votes, including one case in which she endorsed a circuit court's order requiring a hospital to administer the anti-parasitic drug Ivermectin to a COVID-19 patient—emphasizing a person's right "to self-determination" and "to make their own health care decisions."[35] Other lone dissents were written by Justices Ann Walsh Bradley (who would have rejected a constitutional amendment based on misleading ballot language);[36] Roggensack (who objected to the majority's decision to resolve a case summarily based on the state's concession rather than answer the question posed);[37] and Dallet (who deemed an attorney to be constitutionally ineffective for failing to object to hearsay testimony that relayed the defendant's alleged murder confession).[38]

Even when Justice Rebecca Bradley agreed with the outcome, she declined to join the majority's reasoning in another four cases, writing separately to flag concerns that the majority opinion overreached or could be misconstrued.[39] Justice Roggensack and Justice Hagedorn each did so in two cases, as well.[40] Both of Justice Hagedorn's separate concurrences resulted in Justice Rebecca Bradley's lead opinions not receiving a majority; in response, she criticized him for "depriv[ing] the people of precedent on a novel issue."[41]

The debate over constitutional interpretation

The term's most important democracy-related case addressed the legislature's power to present constitutional amendments to the voters. In *Wisconsin Justice Initiative, Inc. v. Wisconsin Elections Commission*, a conservative majority held that the state constitution places only a limited check on the legislature's discretion to craft ballot language for proposed amendments.[42] That case and others offered a window into the justices' conflicting views on constitutional interpretation, a topic that could take center stage in the coming term.

Amendments to the Wisconsin Constitution must be approved by the legislature over two sessions and then adopted by popular vote.[43] The ballot question for Marsy's Law, a victim's rights amendment that voters overwhelmingly endorsed in 2020, was challenged for allegedly misleading voters about its effect on the rights of the accused.[44] Six out of the seven justices concluded that the ballot language satisfied the state constitution's requirements, but they disagreed about what exactly those requirements are—and what interpretive method to use in identifying them.

Justice Hagedorn, writing for a four-justice conservative majority, looked to the "original meaning" of the Wisconsin Constitution, the text of which requires the legislature to "submit" a proposed amendment "to the people."[45] The constitution also demands that, if there is "more than one amendment," the people be able to "vote for or against such amendments separately."[46] Although a nearly century-old case suggested that a ballot question needs to capture "every essential" of the amendment, the court discerned "no such requirement" within the constitution's original meaning.[47] Rather than "fashion a new, exacting constitutional standard," the majority derived two modest constraints from the constitution's text and history: the ballot language must accomplish "one general purpose" and not be "fundamentally counterfactual."[48] The Marsy's Law language, the majority concluded, easily satisfied both.

Justice Dallet, in a concurrence joined by Justice Karofsky, advanced "a more pluralistic method" of constitutional interpretation—one that considers "text and history" as well as "precedent, context, historical practice and tradition."[49] That methodology led her to endorse the "every essential" test that the majority rejected, under which she concluded Marsy's Law would pass muster.[50] Justice Ann Walsh Bradley agreed with the existing "every essential" standard and criticized the majority for failing to respect "the precedent of a nearly century-old unanimous opinion." But she parted ways with the concurrence and dissented because she believed the ballot language did not properly tell voters that the amendment would diminish the rights of the accused.[51]

The implications of *Wisconsin Justice Initiative* go well beyond the survival of Marsy's Law. The majority's deferential approach appears to leave little room for judicial oversight when the legislature chooses how to present constitutional amendments to the people. As Justice Ann Walsh Bradley argued in dissent, "[d]emocracy works best when voters are fully

informed,"[52] and the majority's standard provides no recourse when the legislature's chosen ballot language offers an incomplete or slanted account of a proposed amendment.

Meanwhile, the debate over constitutional interpretation may foreshadow the coming term, when constitutional questions like the legality of partisan gerrymandering could come before the court.[53] In his majority opinion, Justice Hagedorn strove to show that originalism has been a longstanding fixture in Wisconsin case law (even as he acknowledged that the court has "not been entirely consistent in its application").[54] Justice Dallet disputed that narrative, arguing that many recent cases "use a more inclusive approach to constitutional interpretation."[55] Still, given that Hagedorn's view commanded a majority, Dallet made special note that "reliance on a particular method of interpretation in one case doesn't bind future courts to use that same method in all future cases."[56] Once Janet Protasiewicz joins the court, Justice Dallet's pluralistic approach may gain greater traction.

In another case, *Becker v. Dane County*, Justice Hagedorn's views on the Wisconsin Constitution received pushback from the right. Justice Rebecca Bradley assailed his approach to the non-delegation doctrine, a theory that would limit a legislature's ability to delegate power to the executive or elsewhere. Last term, in rejecting a challenge to a local health official's pandemic-era authority, the Wisconsin Supreme Court in *Becker* declined to apply a reinvigorated non-delegation doctrine to constrain local officials.[57] Justice Hagedorn joined his three liberal colleagues and concurred to observe that—while he was open to "more broadly reconsidering our approach to the nondelegation doctrine in future cases"—the *Becker* petitioners failed to marshal the historical evidence necessary to support such an argument.[58]

During the 2022-23 term, when the same four justices denied a motion to reconsider *Becker*, Justice Rebecca Bradley penned a dissent that criticized the majority—and Justice Hagedorn in particular—for misreading the historical record: "The damage done to the constitutional separation of powers is bad enough," she wrote, "but in order to rubber stamp the diktats of the bureaucrats, the majority also bastardized history."[59] Justice Hagedorn declined to engage with the dissent, but he responded to the motion for reconsideration by defending his "text-and-history" approach to interpreting the state constitution. A more "abstract" nondelegation framework, he warned, "runs the risk of operating simply as a means by which judges find whatever they're predisposed to find."[60]

Statutory interpretation: Common methods, disputed application

In the realm of statutory interpretation, the Wisconsin Supreme Court has for years invoked a framework that focuses primarily on the statutory language and its context, and looks beyond the text only if the language is ambiguous.[61] Despite that high-level common ground, the justices in 2022-23 often disagreed over textual meaning, what tools of statutory

construction to use, and how to apply a statute to the facts of a case.

For the first time, the court construed a products liability law that Scott Walker signed soon after taking office in 2011. In *Murphy v. Columbus McKinnon Corporation*, the justices largely agreed in their interpretation of the statute, finding that it had replaced one prior common-law rule and codified another.[62] But they split 4-3 over whether the plaintiff, a utility line technician struck by a falling pole, could proceed to trial on his strict liability defective design claim.

Interpretive dilemmas also arose when litigants invoked competing statutes—or when the relevant statute was silent. When an athlete brought a negligence claim against an athletic association based on a coach's sexual abuse from 1997 to 2000, the "primary dispute" before the Wisconsin Supreme Court was "which of two statutes of limitations governs"—with four justices concluding that the claim was barred because the shorter period applied.[63] And in a medical records case, the justices split over how to interpret a statute that caps the amount health care providers can charge to provide copies of patient records.[64] The statute did not include electronic records on its list of record formats, which led the majority to conclude that fees cannot be charged for electronic records at all; the dissent drew the opposite conclusion, finding that the statute's silence meant providers were "free to charge whatever they choose" for electronic records, "subject only to federal law."[65]

The court resolved several other statutory questions unanimously, despite assertions that the adopted interpretation might produce unfair results. For example, in *Saint John's Communities, Inc. v. City of Milwaukee*, the court concluded that a property owner's lawsuit challenging its property taxes was filed prematurely because the owner had not yet paid the bill. The statute allows only a person "aggrieved" by the "collection" of an unlawful tax to file a claim to "recover" it—and a person cannot be aggrieved by the collection of a tax that has not "actually been collected."[66]

The role of precedent

Although the Wisconsin Supreme Court expressly overruled itself only twice this term, the justices regularly jostled over whether to overturn precedent—and when the court is bound by its past decisions.

In *State v. Johnson*, the court rejected longstanding precedent that allowed a criminal defendant to demand in camera review of their alleged victim's confidential health records if "necessary" to determine guilt or innocence.[67] The victim could refuse, but that meant they could not testify at trial. That standard arose in a 1993 court of appeals decision, *State v. Shiffra*, and was modified by the Wisconsin Supreme Court nine years later in *State v. Green*.[68]

This was the third time the state had asked for the *Shiffra/Green* standard to be overturned, but the court had previously been too divided to reach a majority holding.[69] This

time, five justices agreed that the time had come. In her majority opinion, Justice Dallet acknowledged "the importance of stare decisis to the rule of law" and walked through five "special justifications" the court has previously recognized for overturning its precedent.[70] Three of them applied here: *Shiffra* relied on a misreading of U.S. Supreme Court precedent; it had proved unworkable in practice; and it was undermined by recent developments in the law, including new constitutional protections for crime victims.[71] In dissent, Justice Ann Walsh Bradley—joined by Chief Justice Ziegler—criticized the majority for discarding a "decades-old procedure" and leaving "nothing" in its place.[72]

In the second case expressly reversing precedent, the court invoked "the benefit of hindsight" to overturn portions of a 2016 insurance coverage case. In *5 Walworth, LLC v. Engerman Contracting, Inc.*, six justices agreed that the earlier decision "was a departure from our well-established law" that improperly strayed from the language of the relevant insurance policies.[73] In several other cases, Chief Justice Ziegler and Justice Rebecca Bradley penned concurrences and dissents in which they advocated for overturning prior decisions they deemed inconsistent or objectively wrong.[74]

Whether a proposition even qualified as binding precedent was sometimes subject to debate. In *Wisconsin Justice Initiative*, the case examining the ballot language for Marsy's Law, Justice Hagedorn observed that the 1925 case that introduced the "every essential" language was not addressing a challenge to the content of a ballot question—and thus did not establish a binding standard for such a case.[75] Justice Ann Walsh Bradley thought otherwise, accusing the majority of "tossing precedent to the wind."[76]

That issue was complicated by the court's confusing relationship with dicta—when judicial opinions "touch on matters . . . not necessary for resolution of the case."[77] In a 2010 decision, the Wisconsin Supreme Court stated that the court of appeals cannot "dismiss a statement from an opinion by this court by concluding that it is dictum."[78] Justice Hagedorn (joined by Justice Dallet) wrote a concurrence to *Wisconsin Justice Initiative* urging the court to rethink that statement, which has led some to incorrectly "suggest we no longer recognize a role for dicta in our opinions."[79] The "every essential" language was, in Hagedorn's view, "classic dicta"—and thus, he concluded, "did not create a judicial test we are bound to apply forevermore."[80]

Who decides—and when?

Some of this term's most contentious debates among the justices related not to the substance of the underlying arguments but the more basic question of who should be deciding particular controversies—and when.

The most explosive of those exchanges appeared in *Jane Doe 4 v. Madison Metropolitan School District*, a case challenging a school district policy that allows parents to be excluded from a student's decision over what name and pronouns to use in school. That case already came before the Wisconsin Supreme Court last term in a dispute over whether the parents bringing the lawsuit could litigate the case in complete anonymity—which a four-justice majority (with Justice Hagedorn joining the three liberal justices) concluded they could not.[81] (The three dissenting justices would have skipped ahead to the merits and enjoined the policy as unconstitutional.[82]) After the circuit court dismissed the case because the sole remaining plaintiff lacked standing,[83] the plaintiff petitioned to bypass the court of appeals and seek immediate supreme court review. The same four-justice majority denied the petition—meaning the appeal would first be heard by the court of appeals, with a possibility of subsequent supreme court review.[84] (However, the plaintiff chose instead to end the case by voluntarily dismissing the appeal after the bypass petition was denied.[85])

Chief Justice Ziegler, dissenting from the order denying bypass, assailed the majority for "abdicat[ing] its responsibility, for the second time in this case, to decide some of the most important issues of our time."[86] Joined by Justices Roggensack and Rebecca Bradley, she urged the court to answer the "pressing legal question" concerning the constitutional right of parents "to parent their own children."[87] In a concurrence supporting the denial of bypass, Justice Hagedorn stressed that the underlying claim raises "novel legal questions that deserve careful consideration"—which he argued the court was not yet "at the point of addressing . . . head on."[88] Instead, he counseled in favor of "allowing the litigation process to develop," which "is how legal issues are refined and tested."[89]

That exchange of opinions originally appeared in an unpublished—and largely unnoticed—order released on May 19, 2023. Nearly a month later, the order was amended to add a new dissent by Justice Rebecca Bradley, who accused Justice Hagedorn of misrepresenting Chief Justice Ziegler's dissent, engaging in "foolish hyperbole" and "personal attacks," and "lacing his concurrence with vaguely sexist suggestions."[90] "Justice Hagedorn's limited conception of the judicial role," she wrote, "is not rooted in the text of the Wisconsin Constitution, its history, or traditional judicial values."[91] Hagedorn acknowledged the supplemental writing in a footnote but opted not to respond "because of its abandonment of basic judicial decorum."[92]

A less divisive ruling on judicial process marked the justices' only foray into the November 2022 midterm election. In *State ex rel. Kormanik v. Brash*, the court unanimously resolved a longstanding venue question concerning which of the state's four appellate districts should hear the appeal when a case relates to the validity of an agency's guidance document.[93] Just weeks before the November 2022 election, a Waukesha County circuit court judge had ordered the Wisconsin Elections Commission to withdraw guidance allowing clerks to "spoil" an

absentee ballot at a voter's request so that person could change their vote (typically because their chosen candidate subsequently dropped out of the race).[94] An appeal was filed, but there was uncertainty over which district should hear it—a question governed by an interlocking series of venue statutes.[95] The court unanimously directed the case to the Waukesha-based District II—and thus reversed the chief appellate judge's decision to send it to District IV.[96] The impact of the venue decision was quickly felt: Although District IV (based in Madison) had temporarily stayed the circuit court's order, District II let it take effect despite the election's proximity.[97]

The court's decisions *not* to answer certain questions this term provoked other discussions about the court's role and obligations to the public. In *State v. Anderson*, the court summarily reversed the court of appeals without a reasoned majority opinion because the state conceded that the underlying decision was incorrect.[98] Justice Roggensack dissented, arguing that by failing to answer the question presented, the court had "shirk[ed] its duty to the parties and the public to declare what the law requires."[99] Elsewhere, Justice Ann Walsh Bradley urged the court to be more transparent when it dismisses a matter as "improvidently granted" (meaning the court concludes it should not have accepted the case in the first place). In light of the "substantial effort and resources" litigants devote to arguing a case, she wrote that the court should "explain to the litigants and the public the reason for its dismissal."[100]

A preview of the 2023-24 term

The 2023-24 term has the potential to be momentous. The election of Janet Protasiewicz could usher in a wave of new litigation. Attorneys have already announced, for example, that they will promptly challenge Wisconsin's electoral maps once Protasiewicz joins the court.[101] For the moment, however, the content of the court's upcoming term remains largely undetermined.

The court has thus far granted review in only six cases—four of which have already been scheduled for the court's September sitting.[102] This represents a tiny fraction of the court's customary pipeline. At this time last year, the court had already decided to hear 33 of the 50 cases that landed on the 2022-23 calendar.

The 2023-24 term will open on September 11 with argument in *A.M.B. v. Circuit Court for Ashland County*, an adoption case challenging Wisconsin's statutory requirement that a person be married to a child's parent in order to adopt as a stepparent.[103] That will be followed by *Catholic Charities Bureau, Inc. v. LIRC*, which addresses whether several Catholic Charities entities qualify for a "religious purposes" exemption from Wisconsin's unemployment insurance law.[104] In other cases, the court will consider the due process rights of a dismissed Milwaukee police officer and whether a delay in appointing a public defender provides an exception to the statutory deadline for requesting a new judge.[105]

The rest of the 2023-24 term remains a matter of conjecture. How quickly the court hears any challenge to the state's electoral maps depends on whether the case is filed in a circuit court or as an original action in the supreme court. In addition, lawsuits have recently been threatened over several public controversies, including Meagan Wolfe's status as the administrator of the Wisconsin Elections Commission, the governor's use of the partial veto to make changes to the state budget, and restrictions imposed on Milwaukee as part of the state's shared revenue deal.[106] Whether litigation will follow is uncertain, but any of those prospective cases could present issues of statewide importance that the Wisconsin Supreme Court might choose to hear, albeit not necessarily in the coming term.

Other matters of public interest are already pending in the lower courts, but the timing for potential supreme court review is difficult to predict. Attorney General Josh Kaul is challenging the state's abortion ban in Dane County Circuit Court, where the complaint just survived a motion to dismiss.[107] The court of appeals recently heard arguments in another case in which Kaul has challenged the constitutionality of a statute that gives a legislative committee power over the settlement of civil actions.[108] And several lawsuits concerning election procedures, like the standards for rejecting absentee ballots based on incomplete witness addresses, are being litigated in circuit courts.[109] Once those election questions are answered at the trial level, the supreme court could choose to hear any appeals on an expedited base to settle them in advance of the November 2024 election.

In the coming months, Wisconsin's new-look state supreme court should offer some initial signs of how it plans to exercise its authority. Many Wisconsinites will be watching with anticipation.

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[1] Sarah Ewall-Wice, *Why Wisconsin's Supreme Court race was the most expensive election of its kind ever*, CBS News (Apr. 4, 2023).
[2] *See generally* Dustin Brown, *Maps, Elections, and Governmental Power: A review of the Wisconsin Supreme Court's 2021-22 Term & preview of 2022-23*, State Democracy Research Initiative (Oct. 10, 2022).
[3] This total includes all published decisions resolving cases argued before the court in 2022-23, as well as one case that the court decided without argument on a petition for supervisory writ. Excluded from this figure are decisions on motions and petitions, as well as attorney disciplinary matters.
[4] Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122.
[5] Lowe's Home Centers, LLC v. City of Delavan, 2023 WI 8, 405 Wis. 2d 616, 985 N.W.2d 69.
[6] Wis. Prop. Taxpayers, Inc. v. Town of Buchanan, 2023 WI 58, --- Wis. 2d ---, --- N.W.2d ---.
[7] State v. Moore, 2023 WI 50, --- Wis. 2d ---, 991 N.W.2d 412.
[8] An additional case was accepted for review but voluntarily dismissed by the petitioner a month before the scheduled argument. Waupaca County v. Golla, No. 2021AP1076 (Wis. Jan. 10, 2023) (order granting voluntary dismissal, dismissing appeal, and removing case from February 2023 calendar).
[9] Each of the four appellate districts contributed between 20 and 30 percent of the term's argued cases. District II (based in Waukesha) had the most with 15 cases, followed by 14 from District IV (based in

Madison), 11 from District I (which includes only Milwaukee County), and 10 from District III (based in Wausau and covering the northern half of the state). The circuit courts of seven counties saw at least two cases reach the Wisconsin Supreme Court's oral argument calendar this term: Milwaukee (11); Dane (6); Waukesha (4); Racine (4); Kenosha (4); Walworth (3); and Waupaca (2). One case originated from each of the following circuit courts: Barron, Brown, Chippewa, Dodge, Douglas, Dunn, Juneau, Langlade, Marathon, Outagamie, Portage, Sauk, Trempealeau, Vernon, Washington, and Wood counties.

[10] Following the recusal of one or two justices, the court deadlocked in two cases. Rennick v. Teleflex Med. Inc., 2023 WI 34, 407 Wis. 2d 43, 988 N.W.2d 680; Pepsi-Cola Metro. Bottling Co. v. Emps. Ins. Co. of Wausau, 2023 WI 42, 407 Wis. 2d 384, 990 N.W.2d 267. The court dismissed two petitions for review as improvidently granted, Slamka v. Gen. Heating & Air Conditioning, 2022 WI 68, 404 Wis. 2d 586, 980 N.W.2d 957; State v. Jackson, 2023 WI 37, 407 Wis. 2d 73, 989 N.W.2d 555, and it vacated one certification from the court of appeals, State v. Robinson, No. 2020AP1728-CR (Wis. May 10, 2023) (order vacating May 18, 2022 certification order and remanding case to court of appeals).

[11] Kindschy v. Aish, No. 2020AP001775 (Wis. argued Dec. 1, 2022).

[12] State ex rel. Kormanik v. Brash, 2022 WI 67, 404 Wis. 2d 568, 980 N.W.2d 948.

[13] Becker v. Dane Cnty., 2023 WI 36, 407 Wis. 2d 45, 989 N.W.2d 606. The court also issued a third published opinion in a case that was not argued this term, denying a motion for reconsideration of a 2022 decision regarding a public records request related to businesses that had at least two positive cases of COVID-19. Wis. Mfrs. & Com. v. Evers, 2023 WI 5, 405 Wis. 2d 478, 984 N.W.2d 402.

[14] Wis. Prop. Taxpayers, Inc. v. Town of Buchanan, 2023 WI 58, ---- Wis. 2d ---, --- N.W.2d ---.

[15] Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122; State v. Rector, 2023 WI 41, 407 Wis. 2d 321, 990 N.W.2d 213; Walworth Cnty. v. M.R.M., 2023 WI 59, --- Wis. 2d ---, --- N.W. 2d ----; and State v. Robinson, 20AP1728-CR (Wis. May 10, 2023) (vacating certification order).

[16] *See* Wis. Stat. § 809.62(1r) (identifying criteria for granting review).

[17] *See, e.g.*, Casanova v. Polsky, 2023 WI 19, 406 Wis. 2d 247, 986 N.W.2d 780 (applying receivership statutes to deem bondholders' mortgage lien superior to claim by residents of senior living facility); Milwaukee Police Supervisors Org. v. City of Milwaukee, 2023 WI 20, 406 Wis. 2d 279, 986 N.W.2d 801 (concluding that pension offset payment is included in "current annual salary" when calculating disability payments for firefighters injured on the job); State v. Wilson, 2022 WI 77, 404 Wis. 2d 623, 982 N.W.2d 67 (finding officers' warrantless entry into suspect's fenced-in backyard violated the Fourth Amendment).

[18] The line between state and federal law can be unclear, as federal constitutional standards are often embedded within state law. *See, e.g.*, State v. Jackson, 2023 WI 3, 405 Wis. 2d 458, 983 N.W.2d 608 (applying state standard to conclude that defendant was entitled to an evidentiary hearing on his federal constitutional claim for ineffective assistance of counsel); State v. Thomas, 2023 WI 9, 405 Wis. 2d 654, 985 N.W.2d 87 (applying confrontation clause from U.S. and Wisconsin constitutions as well as state statutes on hearsay and expert testimony).

[19] State v. Moore, 2023 WI 50, ¶ 15, --- Wis. 2d ---, 991 N.W.2d 412. As Justice Dallet pointed out in dissent, courts in other states have gone the other way on this question. *Id.* ¶¶ 30-31 (Dallet, J., dissenting) (citing Commonwealth v. Barr, 266 A.3d 25, 41 (Pa. 2021); Lewis v. State, 233 A.3d 86, 99 (Md. 2020)).

[20] Kindschy v. Aish, No. 2020AP001775 (Wis. argued Dec. 1, 2022); Counterman v. Colorado, No. 22-138, 2023 WL 4187751 (U.S. June 27, 2023).

[21] State v. Richey, 2022 WI 106, 405 Wis. 2d 132, 983 N.W.2d 617. *See also, e.g.*, Slabey v. Dunn Cnty., 2023 WI 2, 405 Wis. 2d 404, 983 N.W.2d 626 (finding county not liable for violating federal constitutional rights of inmate who was sexually assaulted by corrections officer in county jail).
[22] *Liberal Justice Ann Walsh Bradley says she'll seek a fourth term in 2025*, WisPolitics.com (Apr. 6, 2023).
[23] For a detailed discussion of the voting patterns among the justices in 2021-22, see Alan Ball, *The Supreme Court's 2021-22 Term: Some Initial Impressions*, SCOWstats (July 13, 2022).
[24] In the 2021-22 term, Justice Hagedorn cast a deciding vote in all but four of the 28 decisions in which the court split 4-3—and he voted equally with the court's liberal and conservative wings. *Id.* That year, his vote determined the outcome in cases that selected the state's latest set of gerrymandered political maps, prohibited drop boxes for absentee ballot return, limited the governor's appointment authority, and approved the pandemic-era delegation of authority to local health officials. *See generally* Brown, *supra* n.2.
[25] In the other four 4-3 decisions, deciding votes were cast by Justices Roggensack (twice), Rebecca Bradley, and Karofsky.
[26] Alan Ball, *The Supreme Court's 2022-23 Term: Some Initial Impressions*, SCOWstats (July 12, 2023).
[27] State v. Hoyle, 2023 WI 24, 406 Wis. 2d 373, 987 N.W.2d 732 (concluding that a prosecutor was not commenting on a defendant's decision not to testify—and thus did not violate the Fifth Amendment—when he described an alleged victim's testimony as "uncontroverted"); State v. Moeser, 2022 WI 76, 405 Wis. 2d 1, 982 N.W.2d 45 (holding that the Fourth Amendment's requirement that warrants be "supported by oath or affirmation" was not violated when an officer failed to take an oath before filling out a form affidavit for a warrant that said he had been "duly sworn on oath"); State v. Green, 2023 WI 57, --- Wis. 2d ---, --- N.W.2d --- (rejecting argument that retrial following mistrial would violate defendant's Fifth Amendment right against double jeopardy).
[28] Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898.
[29] Acuity v. Est. of Shimeta, 2023 WI 28, 406 Wis. 2d 730, 987 N.W.2d 689.
[30] State v. Richey, 2022 WI 106, 405 Wis. 2d 132, 983 N.W.2d 617. Justice Rebecca Bradley also joined the three liberal justices in Justice Dallet's concurrence in *State v. Thomas*, providing the fourth vote to form a majority on the second of two issues in that case. 2023 WI 9, ¶¶ 57-71, 405 Wis. 2d 654, 985 N.W.2d 87 (Dallet, J., concurring) (holding that the state violated the Confrontation Clause by admitting hearsay testimony about DNA evidence when the crime report's author was unavailable for cross-examination, but finding the error was harmless).
[31] State v. Hineman, 2023 WI 1, ¶¶ 61-67, 405 Wis. 2d 233, 983 N.W.2d 652 (Karofsky, J., concurring).
[32] State v. Killian, 2023 WI 52, ¶¶ 59-98, --- Wis. 2d ---, 991 N.W.2d 387 (Ann Walsh Bradley, J., dissenting).
[33] State v. Johnson, 2023 WI 39, ¶¶ 104-52, 407 Wis. 2d 195, 990 N.W.2d 174 (Ann Walsh Bradley, J., dissenting).
[34] Slabey v. Dunn Cnty., 2023 WI 2, 405 Wis. 2d 404, 983 N.W.2d 626.
[35] Gahl v. Aurora Health Care, Inc., 2023 WI 35, ¶¶ 29-98, --- Wis. 2d ---, 989 N.W.2d 561 (Rebecca Grassl Bradley, J., dissenting); *see also* Secura Supreme Ins. Co. v. Est. of Huck, 2023 WI 21, ¶¶ 39–84, 406 Wis. 2d 297, 986 N.W.2d 810 (Rebecca Grassl Bradley, J., dissenting) (accusing the majority of "reject[ing] the parties' contractual agreement in favor of doing justice in a case involving tragic facts," causing "injury to the rule of law" in order to achieve "more palatable" results).
[36] Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n, 2023 WI 38, ¶¶ 153-91, 407 Wis. 2d 87, 990 N.W.2d 122 (Ann Walsh Bradley, J., dissenting).

[37] State v. Anderson, 2023 WI 44, ¶¶ 2-31, 407 Wis. 2d 428, 990 N.W.2d 771 (Roggensack, J., dissenting).
[38] State v. Mull, 2023 WI 26, ¶¶ 77-95, 406 Wis. 2d 491, 987 N.W.2d 707 (Dallet, J., dissenting).
[39] Green Bay Pro. Police Ass'n v. City of Green Bay, 2023 WI 33, 407 Wis. 2d 11, 988 N.W.2d 664 (Rebecca Grassl Bradley, J., concurring) (criticizing the majority opinion for failing to "even mention" a U.S. Supreme Court opinion that she concluded should control the due process analysis); DEKK Prop. Dev., LLC v. Wis. Dep't of Transp., 2023 WI 30, ¶¶ 25-31, 406 Wis. 2d 768, 988 N.W.2d 653 (Rebecca Grassl Bradley, J., concurring) (writing separately "because the majority opinion could be misconstrued to undermine constitutionally protected private property rights"); Lowe's Home Ctrs., LLC v. City of Delavan, 2023 WI 8, 405 Wis. 2d 616, 985 N.W.2d 69 (Rebecca Grassl Bradley, J., concurring) (concluding that the majority opinion mischaracterized some of the trial court's legal conclusions as factual, giving lower courts too much reference and potentially denying taxpayers "any avenue for meaningful appeal"); Walworth Cnty. v. M.R.M., 2023 WI 59, --- Wis. 2d ---, --- N.W. 2d --- (accusing the majority of "conflat[ing] this court's judicial power with legislative power" (emphasis in original)).
[40] 5 Walworth, LLC v. Engerman Contracting, Inc., 2023 WI 51, ¶¶ 50-86, --- Wis. 2d ---, --- N.W. 2d --- (Roggensack, J., concurring) (criticizing the majority's failure "to understand the judicial history of the commercial law doctrines that underlie" several of the court's insurance precedents); State v. Debrow, 2023 WI 54, --- Wis. 2d ---, --- N.W. 2d --- (Roggensack, J., concurring) (noting that the majority opinion "lacks a full analysis of the entire proceeding, which is necessary in addressing the court of appeals' reversal of the circuit court"); Sanders v. State of Wis. Claims Bd., 2023 WI 60, ¶¶ 49-53, --- Wis. 2d ---, --- N.W. 2d --- (Hagedorn, J., concurring) (agreeing with the lead opinion's statutory analysis but concurring in the result because the lead opinion reaches "beyond the issues raised by the parties" and engages "in a lengthy critique of the dissent" that "misses the mark"); In re A.G., 2023 WI 61, ¶¶ 39-49, --- Wis. 2d ---, --- N.W. 2d --- (Hagedorn, J., concurring) (noting that the lead opinion "concludes the same, but rests its conclusion in part" on something not "relevant" to the analysis).
[41] In both cases, a majority of justices agreed on the outcome but not the underlying reasoning. *Sanders*, 2023 WI 60, ¶ 33; *In re A.G.*, 2023 WI 61, ¶ 32 n.5 ("The concurring justices [Hagedorn, joined by Karofsky] disserve the people of Wisconsin by blocking a clean precedential decision on A.G.'s first argument without cause.").
[42] Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122.
[43] Wis. Const. art. XII, § 1.
[44] *Wis. Just. Initiative*, 2023 WI 38, ¶¶ 4, 8-13.
[45] *Id.* ¶¶ 2–5 (quoting Wis. Const. art. XII, § 1).
[46] *Id.* ¶ 2 (quoting Wis. Const. art. XII, § 1).
[47] *Id.* ¶¶ 4-5 (discussing State ex rel. Ekern v. Zimmerman, 187 Wis. 180, 204 N.W. 803 (1925)).
[48] *Id.* ¶¶ 5-6.
[49] *Id.* ¶ 94 (Dallet, J., concurring).
[50] *Id.* ¶¶ 128-34.
[51] *Id.* ¶¶ 153-58 (Ann Walsh Bradley, J., dissenting).
[52] *Id.* ¶ 190 (accusing the majority of "essentially surrendering our responsibility for judicial review to the legislature").
[53] The public dialogue between Justices Dallet and Hagedorn over constitutional interpretation began several weeks earlier in *State v. Hoyle*—only the context there was the U.S. Constitution. 2023 WI 24, 406 Wis. 2d 373, 987 N.W.2d 732. In *Hoyle*, the court held that the prosecutor's description of evidence as "uncontroverted" was not a comment on the defendant's silence and thus did not violate the Fifth

Amendment. Justice Hagedorn, in a concurrence joined by Justice Rebecca Bradley, recognized the Wisconsin Supreme Court's "obligation as a lower court . . . to faithfully apply United States Supreme Court precedent." *Id.* ¶ 81 (Hagedorn, J., concurring). But he turned to "the original meaning and historical record" to find "additional support for the decision not to extend" such precedent even further, counseling the court to "tread cautiously" when asked "to extend precedent that has a weak foundation in the original meaning of the Constitution." *Id.* ¶¶ 81, 86. While acknowledging that "constitutional language can be hard to interpret in the first instance, and even harder to apply in practice," he warned that a "textual puzzle is not a license to impose our own take on what the law should be." *Id.* ¶ 86. Justice Dallet, in a dissent joined by Justice Ann Walsh Bradley, disagreed with Hagedorn's view "that constitutional interpretation should always be guided by the original public meaning of the provision at issue." *Id.* ¶ 106 (Dallet, J., dissenting).

[54] *Wis. Just. Initiative*, 2023 WI 38, ¶¶ 22-28.

[55] *Id.* ¶ 94 (Dallet, J., concurring).

[56] *Id.* ¶ 118 (Dallet, J., concurring).

[57] Becker v. Dane Cnty., 2022 WI 63, 403 Wis. 2d 424, 977 N.W.2d 390.

[58] *Id.* ¶¶ 50, 55–57 (Hagedorn, J., concurring).

[59] Becker v. Dane Cnty., 2023 WI 36, ¶¶ 7–30, 407 Wis. 2d 45, 989 N.W.2d 606 (Rebecca Grassl Bradley, J., dissenting).

[60] *Id.* ¶ 3 n.1 (Hagedorn, J., concurring); *id.* ¶¶ 3, 5.

[61] *See generally* State ex rel. Kalal v. Circuit Ct. for Dane Cnty., 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. In her concurrence to *Wisconsin Justice Initiative*, however, Justice Dallet opened the door to alternative approaches to statutory interpretation. *Wis. Just. Initiative*, 2023 WI 38, ¶ 119 (Dallet, J., concurring) (observing that, while *Kalal* "and subsequent cases applying it appear to assume that its statutory-interpretation framework is binding," "there are good reasons to doubt that assumption").

[62] Murphy v. Columbus McKinnon Corp., 2022 WI 109, 405 Wis. 2d 157, 982 N.W.2d 898 (refusing to conclude that "the legislature did away with decades of common law in a few short strokes of the pen").

[63] Fleming v. Amateur Athletic Union of U.S., Inc., 2023 WI 40, ¶ 17, 407 Wis. 2d 273, 285, 990 N.W.2d 244, 250, reconsideration denied (July 3, 2023). The justices also had to choose between competing statutes in a case concerning the tax due on the portion of an airplane lease covering repairs and maintenance. Citation Partners, LLC v. Wis. Dep't of Revenue, 2023 WI 16, 406 Wis. 2d 36, 985 N.W.2d 761. Four justices concluded that the governing statute was the state's 5 percent sales tax (which applies to airplane leases "without any deduction for" materials and labor). *Id.* ¶¶ 1-2, 10. Three dissenters would have applied another statute that exempted aircraft repairs from sales tax. *Id.* ¶¶ 23-24.

[64] Banuelos v. Univ. of Wis. Hosps. & Clinics Auth., 2023 WI 25, 406 Wis. 2d 439, 988 N.W.2d 627.

[65] *Id.* ¶¶ 1-4; *id.* ¶ 73 (Rebecca Grassl Bradley, J., dissenting).

[66] St. John's Communities, Inc. v. City of Milwaukee, 2022 WI 69, 404 Wis. 2d 605, 982 N.W.2d 78.

[67] State v. Johnson, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d 174. The defendant in *Johnson* sought to review the mental health records of a son he was accused of sexually abusing.

[68] State v. Shiffra, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), *abrogated by* State v. Green, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, and overruled by *Johnson*, 2023 WI 39.

[69] *Johnson*, 2023 WI 39, ¶ 22.

[70] *Id.* ¶¶ 19-20. Although *Shiffra* was a court of appeals decision, the majority assumed without deciding that a special justification was still necessary to overturn it, "because we arguably applied *Shiffra* in several prior cases." *Id.* ¶ 22.

[71] *Id.* ¶¶ 23-47.

[72] *Id.* ¶¶ 104-52 (Ann Walsh Bradley, J., dissenting).
[73] 5 Walworth, LLC v. Engerman Contracting, Inc., 2023 WI 51, , --- Wis. 2d ---, --- N.W.2d --- (overruling Wis. Pharmacal Co., LLC v. Nebraska Cultures of Cal., Inc., 2016 WI 14, 367 Wis. 2d 221, 876 N.W.2d 72).
[74] *See, e.g.*, State v. Fermanich, 2023 WI 48, ¶ 30 (Ziegler, C.J., dissenting) (arguing that the court "should bring clarity to" the law governing sentence credits "by overruling" precedent on which the majority relied); State v. Rector, 2023 WI 41, ¶ 85, 407 Wis. 2d 321, 990 N.W.2d 213 (Rebecca Grassl Bradley, J., concurring in part and dissenting in part) ("The majority stops short of overturning *Wittrock* and *Hopkins* despite insinuating they were wrongly decided, creating inconsistency in the law—a prime reason to discard a decision."); Pagoudis v. Keidl, 2023 WI 27, ¶ 87, 406 Wis. 2d 542, 583, 988 N.W.2d 606, 626 (Rebecca Grassl Bradley, J., concurring in part and dissenting in part) (arguing that the court's "objectively wrong precedent," in which it had "castrated the plain meaning" of a statute, "should be overturned"); Walworth Cnty. v. M.R.M., 2023 WI 59, ¶ 30 (Rebecca Grassl Bradley, J., concurring) (arguing that the court "has a duty to overrule" the "freewheeling test" the majority employed, "which was premised on a United States Supreme Court decision from which the Court retreated 30 years ago").
[75] Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n, 2023 WI 38, ¶¶ 40-42, 407 Wis. 2d 87, 990 N.W.2d 122.
[76] *Id.* ¶¶ 153-58 (Ann Walsh Bradley, J., dissenting).
[77] *Id.* ¶¶ 138 (Hagedorn, J., concurring).
[78] Zarder v. Humana Ins. Co., 2010 WI 35, ¶ 58, 324 Wis. 2d 325, 782 N.W.2d 682.
[79] *Wis. Just. Initiative*, 2023 WI 38, ¶¶ 137-50 (Hagedorn, J., concurring).
[80] *Id.* ¶ 151 (Hagedorn, J., concurring). Justice Dallet joined the rest of the concurrence but not this concluding paragraph.
[81] Doe 1 v. Madison Metro. Sch. Dist., 2022 WI 65, 403 Wis. 2d 369, 976 N.W.2d 584. There was no question that the parents could maintain their anonymity in public filings; the only question was whether they were required to disclose their names and addresses to the court and attorneys alone.
[82] *Id.* ¶¶ 42-99 (Roggensack, J., dissenting).
[83] The other plaintiffs dropped out of the case after the supreme court resolved the confidentiality question against them. Mitchell Schmidt, *Last parent in lawsuit over Madison Schools gender identity guidance drops appeal*, Wisconsin State Journal (July 10, 2023).
[84] Doe 4 v. Madison Metro. Sch. Dist., No. 22AP2042, slip op. (Wis. May 19, 2023, amended June 14, 2023).
[85] Nick Viviani, *Lawsuit over Madison school district's gender identity policy dismissed*, WMTV nbc15.com (July 10, 2023).
[86] *Doe 4*, No. 22AP2042, slip op. at 10 (Ziegler, C.J., dissenting).
[87] *Id.* ("Ours is not a court of 'no resort.' We are a court of last resort. Being a court of last resort does not mean that, in all cases, each and every procedure must be exhausted before this court can declare the answer to a purely legal question.").
[88] *Id.*, slip op. at 2 (Hagedorn, J., concurring).
[89] *Id.*, slip op. at 8.
[90] *Id.*, slip op. at 55, 60, 66 (Rebecca Grassl Bradley, J., dissenting). The order received some media attention after it was amended to include Justice Rebecca Bradley's dissent. *See* Jessie Opoien, *A rift within the Wisconsin Court's conservative wing boils over in handling of gender identity case*, Milwaukee Journal Sentinel (June 20, 2023); *Good News for the Indian Child Welfare Act*, Strict Scrutiny (June 19, 2023).

[91] *Doe 4*, No. 22AP2042, slip op. at 65 (Rebecca Grassl Bradley, J., dissenting).
[92] *Id.*, slip op. at 3 n.1 (Hagedorn, J., concurring). Questions about tone in the court's opinions were also raised when the court denied the State Bar of Wisconsin's request to create a new specialty continuing legal education credit on "Diversity, Equity, Inclusion, and Access." The court denied the petition on a 4-3 vote. In the Matter of Diversity, Equity, Inclusion, and Access Training for Continuing Legal Education, No. 22-01 (Wis. July 13, 2023). Justice Rebecca Bradley wrote separately to "highlight how DEIA courses damage human dignity, undermine equality, and violate the law." *Id.* ¶ 2 (Rebecca Grassl Bradley, J., concurring). Justice Dallet, in a dissent joined by Justices Ann Walsh Bradley and Karofsky, declined to respond "to the substance of the concurrence," calling it "hostile, divisive, and disrespectful." *Id.* ¶ 46 n.4 (Dallet, J., dissenting). Justice Rebecca Bradley described the dissent's response as "headline-grabbing rhetoric." *Id.* ¶ 1 n.1 (Rebecca Grassl Bradley, J. dissenting).
[93] State ex rel. Kormanik v. Brash, 2022 WI 67, 404 Wis. 2d 568, 980 N.W.2d 948.
[94] *Id.* ¶¶ 2-4.
[95] *Id.* ¶¶ 5-10.
[96] *Id.* ¶¶ 17-29
[97] *Id.* ¶ 12; Kormanik v. Wis. Elections Comm'n, No. 2022AP001720 (Wis. Ct. App. Oct. 27, 2022) (order denying petitions for leave to appeal and lifting temporary stay of circuit court order).
[98] State v. Anderson, 2023 WI 44, 407 Wis. 2d 428, 990 N.W.2d 771 (per curiam).
[99] *Id.* ¶¶ 2-31 (Roggensack, J., dissenting) ("Today is another example of this court's increasing indifference to the obligations imposed upon the Wisconsin Supreme Court as an institution. I dissent because I would fulfill our obligation in a deeply complicated legal terrain and of incredible personal significance to those seeking guidance from this court.").
[100] Slamka v. Gen. Heating & Air Conditioning Inc., 2022 WI 68, 404 Wis. 2d 586, 980 N.W.2d 957 (Ann Walsh Bradley, J., concurring); *see also* State v. Jackson, 2023 WI 37, 407 Wis. 2d 73, 989 N.W.2d 555 (Ann Walsh Bradley, J., dissenting) (concluding that "the issues in this case are worthy of this court's review" and exhorting the court to "explain to the litigants and the public the reason for a dismissal as improvidently granted").
[101] David A. Lieb, *New voting districts could change again in some states before the 2024 elections*, Associated Press (June 10, 2023); *see also* Chantelle Lee, *What the Wisconsin Supreme Court Election Could Mean for the 2024 Election, Gerrymandered Maps and Abortion*, Frontline (April 7, 2023).
[102] Wisconsin Supreme Court, Assignment for the Month of September 2023 (July 7, 2023); Wisconsin Supreme Court, Table of Pending Cases (June 26, 2023).
[103] A.M.B. v. Circuit Ct. for Ashland Cnty., No. 2022AP1334 (Wis. argument scheduled Sept. 11, 2023).
[104] Cath. Charities Bureau, Inc. v. LIRC, No. 2020AP2007 (Wis. argument scheduled Sept. 11, 2023).
[105] Andrade v. City of Milwaukee Bd. of Fire & Police Comm'rs, No. 2020AP333 (Wis. review granted June 22, 2023); Davis v. Circuit Ct. for Dane Cnty., No. 2022AP1999-W (Wis. review granted Mar. 31, 2023).
[106] *See* Molly Beck & Jessie Opoien, *Meagan Wolfe finds herself back where she started as elections chief: In the middle of a firestorm*, Milwaukee Journal Sentinel (July 3, 2023); Scott Bauer, *Wisconsin governor's 400-year veto angers opponents in state with long history of creative cuts*, Associated Press (July 6, 2023); Evan Casey, *Milwaukee still looking to challenge provisions included in shared revenue deal*, Wisconsin Public Radio (June 26, 2023).
[107] Kaul v. Urmanski, No. 2022CV001594, slip op. (Dane Cnty. Circuit Ct. July 7, 2023) (denying motion to dismiss); *Wisconsin judge: Lawsuit to repeal abortion ban can continue*, Wisconsin Public Radio (July 7, 2023).
[108] Kaul v. Wis. State Legislature, No. 2022AP000790 (Wis. Ct. App. argued June 5, 2023).

[109] League of Women Voters of Wis. v. Wis. Elections Comm'n, No. 2022CV002472 (Dane Cnty. Circuit Ct. filed Sept. 30, 2022) (seeking clarification as to what qualifies as a "missing" witness address on an absentee ballot certification); Rise, Inc. v. Wis. Elections Comm'n, No. 2022CV002446 (Dane Cnty. Circuit Ct. filed Sept. 27, 2022) (seeking clarification of when a witness address on an absentee ballot certification is complete); Braun v. Wis. Elections Comm'n, No. 2022CV001336 (Waukesha Cnty. Circuit Ct. filed Sept. 15, 2022) (challenging Wisconsin Elections Commission's approval of a voter registration form for failing to comply with Wisconsin law); Braun v. Vote.org, No. 2023AP000076 (Wis. Ct. App. appeal filed Jan. 13, 2023) (addressing whether Vote.org is entitled to intervene in lawsuit challenging use of national voter registration form in Wisconsin).