

Four-to-Three Decisions

There were no 4-3 decisions this term—an extremely unusual development, primarily due to Justice Vinje’s unavailability explained in this post’s introduction. Had he been able to participate, the four decisions deadlocked by 3-3 votes (*In re Relocation of County Highway J*, *Gooder v. State*, *In re Will of Ott*, and *State ex rel. Dammann v. Ballard*) would have generated 4-3 outcomes.

Decisions by Vote Split<sup>1</sup>

| 7-0 (or 6-0, 5-0)  | 6-1 (or 5-1)                               | 5-2 (or 4-2)                                 | 4-3        |
|--|--|--|------------|
| 362/385 (94%)  | 19/385 (5%)                                | 4/385 (1%)                                   | 0/385 (0%) |
| <i>Chicago &amp; Northwestern R. Co. v. Wisconsin Tax Comm.</i>            | <i>Aberg v. Moe</i>                        | <i>Baumgartner v. State</i>                  |            |
| <i>Will of Hoeye</i>   | <i>Baxter v. Sleeman</i>                   | <i>Brown v. Milwaukee T. R. Co.</i><br>(4-2) |            |
| <i>Korpela v. Ahola</i>  | <i>Brockman v. Brandenburg</i>             | <i>Columbia Bank v. Morgan</i>               |            |
| <i>Chicago, B. &amp; Q. R. Co. v. Railroad Com. of Wisconsin</i>           | <i>Christensen v. Schwartz</i>             | <i>Usiak v. Kubiak</i>                       |            |
| <i>Fitger Co. v. Kremer</i>  | <i>Chruscicki v. Hinrichs</i>              |  |            |
| <i>Svacina v. Greenzweig</i> [199 Wis. 366]                                | <i>Edwards v. Alhambra Theatre Co.</i>     |  |            |
| <i>Swift &amp; Co. v. Geraghty</i>   | <i>Halamka v. Schneider</i>                |  |            |
| <i>ESTATE OF AYLWARD: THE STATE v. AYLWARD</i>                             | <i>Kroehler v. Arntz</i>                   |  |            |
| <i>Lu May v. Van Drisse Motors, Inc.</i>                                   | <i>Nelson v. Duluth S. R. Co.</i>          |  |            |
| <i>In re Monaghan's Will</i>   | <i>Rang v. Klawun</i>                      |  |            |
| <i>Leach Co. v. Clark</i>  | <i>Schilling v. Milwaukee Bedding Co</i>   |  |            |
| <i>Grandhagen v. Grandhagen</i>  | <i>State v. Olson</i>                      |  |            |
| <i>State ex rel. Baxter v. Superior</i>                                    | <i>Wandersee v. Indus. Comm'n</i>          |  |            |
| <i>Westboro Lumber Co. v. Schwenker</i>                                    | <i>Allen v. Ross</i>                       |  |            |
| <i>Hamus v. Weber</i>  | <i>Shea v. Shea</i>                        |  |            |
| <i>Zerbel v. Supreme Assembly, E. F. U.</i>                                | <i>State ex rel. McDonald v. Nemachek</i>  |  |            |
| <i>Chicago, M. S. P. &amp; P. R. Co. v. Wolf</i>                           | <i>Timme v. Squires</i>                    |  |            |
| <i>Plumbers' Woodwork Co. v. Merchants' Credit &amp; Adjustment Bureau</i> | <i>Whiting-Plover Paper Co. v. Linwood</i> |  |            |
| <i>State ex rel. Guse v. Agnew</i>   | <i>WILL OF JOHNSON</i>                     |  |            |
| <i>Galenis v. State</i>  |  |  |            |
| <i>Frederick v. State</i>  |  |  |            |
| <i>Wisconsin Public Service Corp. v. Wisconsin Tax Com.</i>                |  |  |            |
| <i>Plankinton Packing Co. v. Wisconsin Tax Com.</i>                        |  |  |            |
| <i>Lott v. Grant</i>   |  |  |            |
| <i>Hedberg v. Dettling</i>   |  |  |            |
| <i>United Paper Corp. v. Lietz</i>   |  |  |            |
| <i>Christensen v. Petersen</i>   |  |  |            |
| <i>Scales v. Boynton Cab Co.</i>   |  |  |            |
| <i>Plankinton Bldg. Properties, Inc. v. Hurley-Reilly Co.</i>              |  |  |            |
| <i>Tigerton Lumber Co. v. Tigerton</i>                                     |  |  |            |
| <i>State ex rel. Borden Co. v. Dammann</i>                                 |  |  |            |
| <i>Fenelon v. State</i>  |  |  |            |
| <i>Milwaukee v. Meyer</i>  |  |  |            |
| <i>Schwartz v. Woodmen Acc. Co.</i>  |  |  |            |

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<sup>1</sup> Occasionally, a justice will author a separate opinion that concurs in part and dissents in part. For SCOWstats tables, each such vote is categorized as either a dissent or a concurrence according to the following guidelines. If a justice's opinion dissented from the result on one or more issues, it is classified as a dissent. If the opinion concurred with the result on all issues but disputed the majority's reasoning on one or more issues, it is classified as a concurrence.

As explained in this post's introductory comments, certain justices were not on the court for the entire term, and it is not always possible to determine precisely when they began, or ceased, to participate in decisions. Consequently, while the *totals* are accurate for each of the four columns in this table, I have not disaggregated the votes in individual columns (for example, I have not tried to establish how many decisions in the first column were 7-0, how many were 6-0, and so on).

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| <i>State ex rel. Spencer v. Freedy</i>  |  |  |  |
| <i>Retelle v. State</i>   |  |  |  |
| <i>Schwenker v. Johnson</i>   |  |  |  |
| <i>Schwenker v. Thompson</i>  |  |  |  |
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| <i>Ansorge v. Green Bay</i>   |  |  |  |
| <i>Schlesinger v. State</i>   |  |  |  |
| <i>Ross v. State Bank of Trego</i>  |  |  |  |
| <i>Nash Sales, Inc. v. Milwaukee</i>  |  |  |  |
| <i>State ex rel. Blockwitz v. Diehl</i>   |  |  |  |
| <i>Schaefer v. Hoffman</i>  |  |  |  |
| <i>Lincoln Fireproof Warehouse Co. v. Greusel</i>                                       |  |  |  |
| <i>FLAMBEAU RIVER LUMBER CO. v. RAILROAD COMM'N OF WISCONSIN</i>                        |  |  |  |
| <i>ESTATE OF NEITMAN: PROCHNOW v. NEITMAN</i>   |  |  |  |
| <i>Integrity Sav. Bldg. &amp; Loan Ass'n v. Nixdorf</i>                                 |  |  |  |
| <i>In re Baerwolf</i>   |  |  |  |
| <i>Kurz v. Kuhn</i>   |  |  |  |
| <i>Larson v. Koller</i>   |  |  |  |
| <i>State ex rel. Daniels v. Washbush</i>  |  |  |  |
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| <i>Sovich v. Loewn</i>  |  |  |  |
| <i>Baker v. Pusey</i>   |  |  |  |
| <i>HANSEN v. CENTRAL VEREIN DER GEGENSEITIGEN UNTERSTUETZUNGS GESELLSCHAFT GERMANIA</i> |  |  |  |
| <i>Polacheck v. Michiwaukee Golf Club [198 Wis. 78]</i>                                 |  |  |  |
| <i>Greene v. Donner</i>   |  |  |  |
| <i>Methew's Will</i>  |  |  |  |
| <i>Maryland Casualty Co. v. Industrial Com. [February 5, 1929]</i>                      |  |  |  |
| <i>Seideman v. Sheboygan Loan &amp; Trust Co.</i>                                       |  |  |  |
| <i>Muirhead v. Bruns</i>  |  |  |  |
| <i>In re Quatsoe's Will</i>   |  |  |  |
| <i>Martin v. American Ins. Co.</i>  |  |  |  |
| <i>BECHTEL v. COLUMBIA CAS. CO.</i>   |  |  |  |
| <i>WASHINGTON COUNTY v. GROTH</i>   |  |  |  |
| <i>National Exchange Bank v. Lange</i>  |  |  |  |
| <i>Sommerfield v. Flury</i>   |  |  |  |
| <i>Pierson v. Dorff</i>   |  |  |  |
| <i>Ernest v. Schmidt</i>  |  |  |  |
| <i>David Adler &amp; Sons Co. v. Maglio</i>   |  |  |  |
| <i>Wisconsin Gas &amp; Electric Co. v. Railroad Com. of Wisconsin</i>                   |  |  |  |
| <i>Saxe Operating Corp. v. Industrial Com. of Wisconsin</i>                             |  |  |  |
| <i>Chicago, M. &amp; S. P. R. Co. v. Railroad Com. of Wisconsin</i>                     |  |  |  |
| <i>O'Neil v. Russell [198 Wis. 9]</i>   |  |  |  |
| <i>Strauss v. Turck</i>   |  |  |  |
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| <i>Layton v. Rowland</i>  |  |  |  |
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| <i>Krueger v. Krueger</i>   |  |  |  |
| <i>O'Neil v. Russell</i> [198 Wis. 11]                                  |  |  |  |
| <i>Standard Oil Co. v. Wisconsin Tax Com.</i>                           |  |  |  |
| <i>Clark v. Indus. Comm'n of Wis.</i>                                   |  |  |  |
| <i>Martwick v. Selover</i>  |  |  |  |
| <i>Bruckner v. Helfaer</i>  |  |  |  |
| <i>Wendt v. Lentz</i>   |  |  |  |
| <i>Ruben v. Raasch</i>  |  |  |  |
| <i>MESAR v. SOUTHERN SUR. CO.</i>                                       |  |  |  |
| <i>George F. Russell, Inc. v. Hickcox</i>                               |  |  |  |
| <i>State ex rel. Sisson v. Kalk</i>                                     |  |  |  |
| <i>STATE ex rel. MANDELKER v. MANDELKER</i>                             |  |  |  |
| <i>Nelson v. Milwaukee E. R. &amp; L. Co.</i>                           |  |  |  |
| <i>Schlecht v. Anderson</i>   |  |  |  |
| <i>State v. Kiefer</i>  |  |  |  |
| <i>Theby v. Wisconsin Power &amp; Light Co.</i>                         |  |  |  |
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| <i>Marks Bros. Co. v. Goossen</i>                                       |  |  |  |
| <i>United States Fidelity &amp; Guaranty Co. v. Verbergt</i>            |  |  |  |
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| <i>Struebing v. American Ins. Co.</i>                                   |  |  |  |
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| <i>Janesville Sand &amp; Gravel Co. v. Industrial Com. of Wisconsin</i> |  |  |  |
| <i>MILWAUKEE CORRUGATING CO. v. INDUSTRIAL COMM'N OF WISCONSIN</i>      |  |  |  |
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| <i>In re Wallace's Will</i>   |  |  |  |
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| <i>Johnson v. Rudolph Wurlitzer Co.</i>                                 |  |  |  |
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| HARDWARE MUT. CAS. CO. v.<br>INDUSTRIAL COMM'N OF WISCONSIN    |  |  |  |
| Eggert v. Dramburg   |  |  |  |
| General Motors Acceptance Corp. v.<br>Stock                    |  |  |  |
| Ramsdell v. Insurance Co. of North<br>America                  |  |  |  |
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| State ex rel. Zilisch v. Auer                                  |  |  |  |
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| Weichers v. Weichers   |  |  |  |
| First Acceptance Corp. v. Indemnity Ins.<br>Co.                |  |  |  |
| Northwestern Cas. & Sur. Co. v. Indus.<br>Comm'n of Wis.       |  |  |  |
| Sheldon v. Tomahawk  |  |  |  |
| Porter v. Burtis   |  |  |  |
| Ford v. Werth  |  |  |  |
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| In re Koshkonong Mud Creek Drainage<br>Dist.                   |  |  |  |
| Welch v. Oconomowoc  |  |  |  |
| Foster v. Sawyer County  |  |  |  |
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| Chicago, M. S. P. & P. R. Co. v. Railroad Com.                   |  |  |  |
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| <i>Bartels v. Fetterly (per curiam)</i>   |  |  |  |
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| <i>Kelly v. Byram (per curiam)</i>  |  |  |  |
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| <i>In re Will of Graff (per curiam)</i>   |  |  |  |
| <i>Auburn Sales &amp; Service Co. v. Wisconsin Power &amp; Light Co. (per curiam)</i> |  |  |  |
| <i>Hoppe v. Wendt (per curiam)</i>  |  |  |  |
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| <i>Nicolaus v. Thompson's, Inc. (per curiam)</i>                            |  |  |  |
| <i>Cass v. Clintonville (per curiam)</i>                                    |  |  |  |
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| <i>Young v. Juneau County (per curiam)</i>                                  |  |  |  |
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| <i>Barry v. Baker (per curiam)</i>  |  |  |  |
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| <i>GRAHAM v. CHICAGO PORTRAIT CO. (per curiam)</i>                          |  |  |  |
| <i>Necedah Mfg. Co. v. Juneau County (per curiam)</i>                       |  |  |  |
| <i>Falls Excavating Co. v. Wisconsin Power &amp; Light Co. (per curiam)</i> |  |  |  |
| <i>State ex rel. Wylie v. Dammann (per curiam)</i>                          |  |  |  |

Frequency in the Majority

These tables display how frequently each justice voted in the majority. The first table includes all cases in which a justice voted, while the second table includes only cases decided by split votes.

All Cases

| Justice    | Majority Votes Cast | Total Votes Cast | Percent in Majority |
|------------|---------------------|------------------|---------------------|
| Crownhart  | 378                 | 384              | <b>98%</b>          |
| Rosenberry | 384                 | 385              | <b>99.7%</b>        |
| Stevens    | 378                 | 380              | <b>99%</b>          |
| Owen       | 383                 | 385              | <b>99%</b>          |
| Eschweiler | 367                 | 383              | <b>96%</b>          |
| Doerfler   | 325                 | 325              | <b>100%</b>         |
| Fowler     | 56                  | 56               | <b>100%</b>         |
| Fritz      | 24                  | 24               | <b>100%</b>         |

Non-Unanimous Decisions

| Justice    | Majority Votes Cast | Total Votes Cast | Percent in Majority |
|------------|---------------------|------------------|---------------------|
| Crownhart  | 17                  | 23               | <b>74%</b>          |
| Rosenberry | 22                  | 23               | <b>96%</b>          |
| Stevens    | 21                  | 23               | <b>91%</b>          |
| Owen       | 21                  | 23               | <b>91%</b>          |
| Eschweiler | 7                   | 23               | <b>30%</b>          |
| Doerfler   | 20                  | 20               | <b>100%</b>         |
| Fowler     | 3                   | 3                | <b>100%</b>         |
| Fritz      | 0                   | 0                | <b>--</b>           |

Opinions Authored<sup>2</sup>

The first table indicates how many majority opinions a justice authored in cases decided by each of the four possible majority vote totals. The second table shows how many concurrences and dissents each justice wrote. If a justice dissented without authoring an opinion, he is not credited.

| Opinion Author | 7-0 (or 6-0, 5-0) | 6-1 (or 5-1) | 5-2 (or 4-2) | 4-3 |
|----------------|-------------------|--------------|--------------|-----|
| Crownhart      | 50                | 3            | 0            | 0   |
| Rosenberry     | 48                | 4            | 1            | 0   |
| Stevens        | 49                | 5            | 0            | 0   |
| Owen           | 38                | 5            | 0            | 0   |
| Eschweiler     | 41                | 1            | 2            | 0   |
| Doerfler       | 28                | 1            | 1            | 0   |
| Fowler         | 10                | 0            | 0            | 0   |
| Fritz          | 2                 | 0            | 0            | 0   |

| Opinion Author | Concurring Opinions | Dissenting Opinions |
|----------------|---------------------|---------------------|
| Crownhart      | 0                   | 4                   |
| Rosenberry     | 0                   | 0                   |
| Stevens        | 0                   | 1                   |
| Owen           | 0                   | 2                   |
| Eschweiler     | 0                   | 3                   |
| Doerfler       | 0                   | 0                   |
| Fowler         | 0                   | 0                   |
| Fritz          | 0                   | 0                   |

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<sup>2</sup> *Per curiam* decisions are omitted.

