

Court Watch Newsletter

WISCONSIN SUPREME COURT · THE MONTH AHEAD



WELCOME

WHY THIS NEWSLETTER EXISTS

The mission of IRG Court Watch is simple — to track the activity of Wisconsin Courts and inform the public of their importance.

This newsletter serves as a critical component of Court Watch. Each issue will highlight what the Court is about to do or has just done, what is actually at stake, and where to read further if the case impacts you, your organization, or a client. The Court's public information office already publishes the docket, and we do not intend to duplicate it. Our job is to tell you which cases deserve your attention and why.

It is written for the people who live closest to these decisions: practicing attorneys, judges, legislators and their staff, and the associations and institutions that absorb the consequences.

It arrives on the Court's schedule rather than ours. Expect it around argument weeks and decision days, which means roughly monthly while the Court sits. When a decision cannot wait for the next issue, we will say so the day it lands.

This first issue previews the September oral argument calendar, explains the Court of Appeals' recent Act 10 decision, and links to IRG Legal Fellow Daniel Suhr's preview of the coming term.

Reply and tell us what you need covered. We read every response. And we appreciate your support. As the Wisconsin judiciary lurches leftward, it is more critical than ever that conservatives are aligned and working together to ensure originalism, textualism, and a respect for first principles prevail.

Jake Curtis

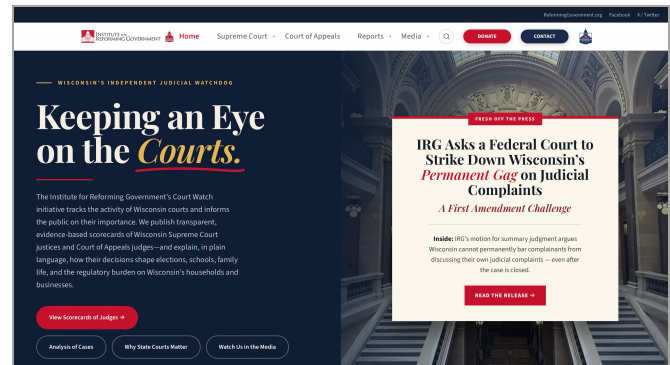
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THE NEW COURT WATCH HOMEPAGE

WHAT'S IN THIS ISSUE—AT A GLANCE

Act 10 comes back to the court	2	Oral arguments: <i>Mann-Tate, Sierra Club, S. G.</i>	3
Commentary: a new majority takes the bench	2	Oral arguments: <i>Bothfeld, WBLD, Petersen, D.M.B.</i>	4
Oral arguments: <i>Buddy's Plant Plus</i>	2	What We Are Listening For	4

Eight arguments, four days, and Act 10 at the door

The Wisconsin Supreme Court opens its term with eight arguments between September 8 and September 23. Two of them, heard back to back on the 16th, ask the justices to reopen the congressional map the court drew itself in 2022. Waiting behind the calendar is Act 10. The Court of Appeals upheld the law in July; the unions petitioned this court for review in August. It is not on the September calendar, but it is the case the term may be remembered for.

ON APPEAL PETITION FOR REVIEW PENDING · ACT 10

Act 10 comes back to the court

Unions that sued to overturn the 2011 law reforming collective bargaining for public sector employees have asked the Supreme Court to take their case. The question has followed Act 10 since it passed: whether the law could let some public employees keep negotiating over pay and benefits while denying that ability to everyone else.

In 2024 a Dane County judge held that the line Act 10 drew—“public safety” employees on one side, “general” on the other—had no rational basis. That ruling has been on hold since.

The Court of Appeals, District II, reversed, finding that the Legislature and then-Governor Scott Walker had justification for the exemption and that state and federal courts had already upheld the law.

WHAT THE APPEAL ACTUALLY ARGUES

The unions’ petition is less about the exemption than about method. They argue District II wrongly leaned on federal equal-protection precedent to interpret the Wisconsin Constitution, and that the justices should decide the question on state precedent instead.

Framed that way, the case asks the court to settle how Wisconsin courts decide equal protection under the state constitution—a holding reaching well past Act 10.

COMMENTARY THE TERM AHEAD

A new majority takes the bench

BY DANIEL SUHR, IRG COURT WATCH SENIOR LEGAL FELLOW

When the Wisconsin Supreme Court reconvenes for the first argument of its new term on September 8, its most conservative justice—the Scalia-style stalwart Rebecca Bradley—will have been replaced by its new most liberal justice—former Madison-area legislator Chris Taylor. The first few cases are relatively innocuous, but it won’t be long before the Court is in the thick of its calendar . . .

To read Daniel’s full commentary, visit IRG’s Court Watch Substack [here](#).

The arguments

SEPT 8 · 9:00

2023AP2428

Court of Appeals, District II
Sheboygan County
2025 WI App 46 · affirmed

Buddy’s Plant Plus Corp. v. Viking Masek Global Packaging Technologies, LLC

Viking agreed to build a custom machine to package bedbug-detection products for Buddy’s largest customer, and never delivered it. After trial the circuit court found a breach, then read the warranty clause—Viking’s “maximum liability hereunder is limited to the amount paid to” it—to cap recovery at what Buddy’s had already paid, denying consequential damages.

The question. Was the limitation of liability, placed inside the warranty clause, unconscionable and did it fail of its essential purpose, entitling Buddy’s to damages under the UCC? And did Buddy’s prove its consequential damages to a reasonable degree of certainty?

WHY IT MATTERS

Whether a liability cap written into a warranty clause holds decides how much of the risk a Wisconsin buyer carries when a custom order is never delivered, and how plainly suppliers must state the limits they intend to rely on.

SEPT 8 · 10:30

2024AP2585-CR

Court of Appeals, District I
Milwaukee County
2026 WI App 17

State v. Noah Q. Mann-Tate

Wisconsin's reverse-waiver statute, Wis. Stat. § 970.032(2), lets a case that begins in adult criminal court be sent to juvenile court. As the State describes it, the statute already supplies notice, a hearing with counsel, criteria guiding the circuit court's discretion, and a reasoned decision.

The question. Is § 970.032(2) facially unconstitutional under the Fourteenth Amendment's procedural due process clause because it does not *also* require the circuit court to consider and discuss the "attributes of youth" described in dicta in federal decisions about categorically barred punishments and *Miranda* custody?

WHY IT MATTERS

If the statute is facially invalid, every reverse-waiver hearing in the state needs a new script, and the requirement would come from a court reading federal dicta rather than from the Legislature.

SEPT 15 · 9:00

2024AP673

Court of Appeals, District IV
Dane County
2025 WI App 39

Sierra Club v. Wisconsin Department of Natural Resources

In issuing air-pollution control permits, DNR follows an internal guidance memorandum on estimating a proposed facility's effect on air quality, drawn from statewide and regional monitors. The memo imposes no mandatory requirements and states that it "does not establish or affect legal rights or obligations," creates no rights enforceable in litigation, and is "not finally determinative" of anything—those questions are settled in the final permit.

The question. Does the memo nonetheless carry the "force of law," such that it had to go through formal notice-and-comment rulemaking?

WHY IT MATTERS

The month's central administrative-law case. Where the line falls between internal guidance and an unpromulgated rule decides how much of an agency's working policy must be made in public, with notice and comment, before it governs a permit.

SEPT 15 · 10:30

2024AP472

Court of Appeals, District IV
Waupaca County
2025 WI App 32

S. G. v. Wisconsin Department of Children and Families

The case turns on two readings of Wis. Stat. § 48.09(5), which names who represents the public in children's code proceedings.

The questions. Is corporation counsel a party as a matter of statutory right in an action under § 48.13 when corporation counsel is not the petitioner? And is corporation counsel a party representing the interest of the public when a county human services department is ordered to provide services and funding in a privately filed petition?

WHY IT MATTERS

Party status decides who may be heard and who may appeal. The answer determines whether a county ordered to fund services in a case it did not bring has standing to contest the order.

SEPTEMBER 16

TWO DIRECT APPEALS · THE CONGRESSIONAL MAP

The court is asked to review its own map

Both came from Dane County on direct appeal, and both concern the plan this court adopted in 2022 under a “least-change” criterion it has since stepped away from.

9:00 a.m. · 2026AP1168

Elizabeth Bothfeld v. Wisconsin Elections Commission

First, whether a map adopted under the now-repudiated least-change criterion violates the state constitution’s separation of powers, having required the court to set aside its duty of neutral and independent judgment. The trial court held that only this court may review a map it adopted.

Second, whether the Wisconsin Constitution permits sorting voters into districts by political affiliation to one party’s advantage. The trial court held precedent foreclosed the claim, though the court has recently called partisan gerrymandering an “important and unresolved legal question.”

10:30 a.m. · 2026AP1008

Wisconsin Business Leaders for Democracy v. Wisconsin Elections Commission

A different theory: an *anti-competitive* gerrymander, aimed at districts drawn so safely that general elections stop deciding anything. The circuit court treated the claim as functionally equivalent to a partisan-gerrymandering claim for political-question purposes.

It also read *Johnson I* as foreclosing all state constitutional challenges to the map by holding that Article IV is “the exclusive repository of state constitutional limits on redistricting.” The court is asked whether that is right, and whether preclusion or laches bars the claim.

SEPT 23 · 9:00

2024AP581-CR

Court of Appeals, District II

Kenosha County

2025 WI App 74

State v. Jonathan James Petersen

The question. Whether, and to what extent, a circuit court at sentencing may regulate a defendant’s First Amendment activity as a condition of extended supervision.

WHY IT MATTERS

Every circuit judge in Wisconsin writes supervision conditions. The answer fixes how far they may reach into speech, association, and religious practice after sentencing.

SEPT 23 · 10:30

2023AP1717

Court of Appeals, District III

Eau Claire County

Unpublished

Distinguished Multiplying Buildings (D.M.B.), LLC v. Germantown Mutual Insurance Co.

The question. Whether the ordinance-or-law exclusion in Germantown Mutual’s policy excludes coverage for D.M.B.’s constructive total loss when the municipality ordered the building razed after a significant fire.

WHY IT MATTERS

Ordinance-or-law exclusions appear in most commercial property policies written in the state. The ruling decides who absorbs the loss when a raze order, not the fire, ends the building.

WHAT WE ARE LISTENING FOR

Four of this month’s arguments turn on method rather than facts: which constitution supplies the test in the Act 10 appeal, whether an agency memo is a rule, whether Article IV is the only source of limits on redistricting, and how far a sentencing court may reach into protected speech.

Questions or comments? E-mail kz@reforminggovernment.org