INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

ANY HEARING, OR A REAL ONE? THE COURT TESTS AN AGENCY'S EXIT FROM CONTESTED CASES

Friends of Blue Mound State Park v. Wisconsin Department of Natural Resources

No. 2024AP577 · Argued October 13, 2026

OVERVIEW

On October 13, 2026, in the second of two Justice on Wheels arguments in Chippewa Falls, the Wisconsin Supreme Court took up a question that sounds technical but governs how Wisconsinites may contest the decisions of every state agency. Wis. Stat. § 227.42(1) gives a person a right to a trial-like contested case hearing when an agency action threatens a substantial interest and four conditions are met. Subsection (3) carves out "actions where hearings at the discretion of the agency are expressly authorized by law." The Department of Natural Resources invoked that exception to deny a hearing to the Friends of Blue Mound State Park, which opposes a snowmobile trail in the park's 2021 master plan. In a published decision, the court of appeals agreed, holding that DNR's discretion over public participation in park planning—including whether to hold public hearings—was enough. *Friends of Blue Mound State Park v. DNR*, 2025 WI App 63. The Court must decide whether "hearings" in the exception means any hearing at all, or only the kind of adjudicative hearing the statute otherwise guarantees.

WHAT YOU SHOULD KNOW

- The Court is reviewing a published court of appeals decision holding that an agency's discretion to hold any form of public hearing triggers the § 227.42(3) exception and defeats the statutory right to a contested case hearing.[1]
- A contested case is not a listening session. It brings a neutral hearing examiner, discovery, subpoenas, cross-examination, and written findings of fact that then travel up on judicial review.
- The Friends argue the exception applies only when other law clearly authorizes discretion over a contested case or a substantially similar hearing. DNR argues the word "hearings" means what it says.
- DNR offered four routes to affirm, including that park planning categorically presents no material dispute of fact. Justices probed whether the Friends' injury differs from the general public's.
- The ruling will reach well beyond state parks. It decides whether an agency can, through its own rules, put entire programs beyond the reach of contested case hearings.

WHAT HAPPENED

On May 26, 2021, DNR adopted a new master plan for Blue Mound State Park in Iowa County, replacing a plan dating to 1985. Among other things, the plan reopens a former service road to give snowmobilers cross-park access. The Friends of Blue Mound State Park, a statutorily recognized friends group that raises money for and hosts events at the park, petitioned for a contested case hearing on the trail's environmental and economic effects. DNR denied the petition in July 2021, reasoning that master planning is discretionary and that § 227.42(3) therefore applied.[2]

The litigation has already made one trip through the appellate courts. In 2023 the court of appeals held, in a published decision, that the Friends had both capacity and standing to seek judicial review of the plan and of the hearing denial. On remand, Iowa County Circuit Judge Matthew C. Allen upheld the denial. The court of appeals affirmed. Writing for a District I panel, Presiding Judge Colón held that DNR's park-planning rules require some form of public participation but give the department discretion over its form, including whether to hold public hearings, which is enough to trigger the exception. The court did not reach whether the Friends satisfied the four conditions in subsection (1), and the Friends' separate challenge to the plan itself remains stayed in circuit court.[3]

LEGAL BACKGROUND

Section 227.42 codifies a residual right to a contested case hearing for anyone who shows (a) a substantial interest injured or threatened by agency action, (b) no evidence of legislative intent that the interest not be protected, (c) an injury different in kind or degree from that suffered by the general public, and (d) a dispute of material fact. The Court has described it as a safety net for people who have no other statutory right to an adjudicative hearing. Subsection (3) excludes rulemaking, rehearings, and "actions where hearings at the discretion of the agency are expressly authorized by law."[4]

DNR's authority comes from Wis. Stat. § 27.01(2), which empowers the department to plan and manage state parks, and from Wis. Admin. Code § NR 44.04(7), which requires that the public be given opportunities to participate in master planning and provides that such involvement may include meetings, hearings, workshops, or open houses. Neither text mentions contested cases. Older decisions, chiefly *Waste Management* and a line of *Wisconsin's Environmental Decade* cases, applied the exception without asking what kind of hearing the authorizing law contemplated; DNR also relies on the Court's *Clean Wisconsin* decisions, which held that a broad grant of authority is no less explicit for being broad.[5]

ZOOM IN

The argument turned on a single unmodified word, and the bench pressed both sides on it.

- **What "hearings" means.** The Friends argued that § 227.42 is about contested cases from its title onward, that subsections (1)(c) and (2) also say only "hearing" yet plainly mean a contested case, and that subsection (3) resolves conflicts between the general right and laws giving an agency discretion over the same kind of hearing. Justice Taylor countered that subsection (1) specifies a hearing "treated as a contested case" and subsection (3) does not, and another justice noted that chapter 227 uses "contested case" repeatedly when it means one. Justice Hagedorn asked why the Friends needed the "substantially similar" qualifier, and what to do with *Waste Management* and the *Environmental Decade* cases, which counsel candidly called the Friends' biggest obstacle.
- **Swallowing the rule.** The sharpest questioning of DNR came from a justice who warned that reading "hearings" to include any public-input session would let an agency's discretion to hold a listening session extinguish an injured party's right to adjudication. DNR's answer was that the final plan remains subject to judicial review, and that no single group is entitled to a special forum—otherwise snowmobilers, loggers, and energy interests would each claim one too. Asked whether the Court should instead rule narrowly on materiality, DNR conceded it would not resist that path.

» **Injury and materiality.** Justice Crawford asked how the Friends' objection differs from a policy disagreement, and Chief Justice Karofsky pressed counsel to say what the disputed facts—who will pay to build and maintain the trail, whether there is regional need for it—are material to. The Friends pointed to the 2023 standing decision as law of the case; DNR noted that standing for judicial review is a lower bar than an injury distinct from the public's.

The methodological stakes cut in an unexpected direction. DNR's position is the more literal reading of one word; the Friends' is the more contextual reading of the whole section, backed by a clear-statement argument that an agency should have to say so plainly, through notice-and-comment rulemaking the Legislature can review, before it removes a statutory right. That is an accountability argument that cuts against agency self-exemption.

WHAT'S NEXT

A decision is expected by the end of the term next summer. Watch whether the Court reaches subsection (3) or resolves the case on the subsection (1) factors, an approach at least one justice floated that would leave the court of appeals' broad reading in place. Watch, too, how it treats *Waste Management*: following it, confining it, or withdrawing its language. Two related petitions, including *Sauk Prairie Conservation Alliance v. DNR*, in which a circuit court ordered a contested case hearing on a different park plan before the court of appeals reversed, according to the Friends' counsel, are being held pending this decision. Whatever the outcome, every agency that holds public hearings will read it closely.

ENDNOTES

1. *Friends of Blue Mound State Park v. DNR*, 2025 WI App 63, Wis. 2d / N.W.3d cite (Colón, P.J., for a panel of White, C.J., Colón, P.J., and Geenen, J.), *review granted* (Wis. 2026). Grant date.
2. *Id.* ¶¶ 4, 7–8, 20.
3. *Friends of Blue Mound State Park v. DNR*, 2023 WI App 38, 408 Wis. 2d 763, 993 N.W.2d 788; 2025 WI App 63, ¶¶ 8–9, 13, 19–24, 33; No. 2021CV114 (Wis. Cir. Ct. Iowa Cnty.).
4. Wis. Stat. § 227.42(1), (3); *Milwaukee Metro. Sewerage Dist. v. DNR*, 126 Wis. 2d 63 (1985).
5. Wis. Stat. § 27.01(2); Wis. Admin. Code § NR 44.04(7)(a), (d); *Waste Mgmt. of Wis., Inc. v. DNR*, 128 Wis. 2d 59, 381 N.W.2d 318 (1986); *Clean Wis., Inc. v. DNR*, 2021 WI 71, 398 Wis. 2d 386, 961 N.W.2d 346; *Clean Wis., Inc. v. DNR*, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611. *Environmental Decade* cites needed.

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