Institute for Reforming Government

JULY 2026

IRG COURT WATCH

WISCONSIN SUPREME COURT · 2025–26 TERM

Term in *Review* 2026

A Half-Crazy Court

A plain-language guide to the eleven decisions that defined Wisconsin's highest court this term—the holdings, the votes, and the methodological fights brewing underneath.

ABOUT THE INSTITUTE FOR REFORMING GOVERNMENT

The Institute for Reforming Government ("IRG"), along with its partner organization IRG Action Fund, is focused on developing free-market and limited-government reforms, taking action on them, and getting results for Wisconsin. Founded in 2018, IRG has quickly grown into one of the state's foremost think tanks, boasting an elite policy team with decades of experience in state and federal government, trade associations, and statewide campaigns. Most importantly, IRG gets results for the conservative movement in Wisconsin.

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IRG's Court Watch initiative tracks the activity of Wisconsin courts and informs the public of their importance. From decisions on election laws to school choice to regulations affecting our freedoms, the courts play a crucial role in our everyday lives. Often overlooked, the courts have a quiet but giant role in nearly everything we do, yet most Wisconsinites are unaware of what they do or who even sits on the various benches.

Much of the work of the courts is veiled behind legal jargon and procedure. Court Watch empowers Wisconsinites with the knowledge of what the courts can do or have already done. Court Watch offers oversight of Wisconsin's judicial branch, scrutinizing its decisions and raising awareness of what it may do next.

Court Watch provides sustained oversight of Wisconsin's judicial branch by systematically monitoring decisions from the Wisconsin Supreme Court and the Wisconsin Court of Appeals. Through scorecards, term reviews, and rapid-response judicial primers, we evaluate judges' decision-making based on methodology—fidelity to text, adherence to precedent, respect for separation of powers, and protection of individual rights—rather than political outcomes. In doing so, Court Watch brings transparency to the judiciary and ensures that its work does not go unnoticed or misunderstood.

To read the *Wisconsin Supreme Court Term in Review 2025*, click **here**. Check out our Wisconsin Supreme Court Scorecards, Court of Appeals Report, and other flagship reports.

To learn more about IRG Court Watch, click here.

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Jake brings a unique skill set to IRG by drawing on his years of experience as a lawyer, strategic advisor, and public official to navigate the intersection of law and policy. Throughout his career he has focused on government relations matters for both public and private sector clients, representing dozens of local units of government and handling administrative matters before executive agencies.

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Kevin is an Illinois-licensed attorney whose work advances IRG's mission to promote effective governance and jurisprudence. He earned his Juris Doctor from Southern Illinois University School of Law, where he served as President of the Federalist Society and received a CALI Award in Advanced Constitutional Law.. During law school, he also interned with the Jackson County State's Attorney's Office and later joined the Crossroad Legal team, assisting in Second Amendment litigation across Illinois.

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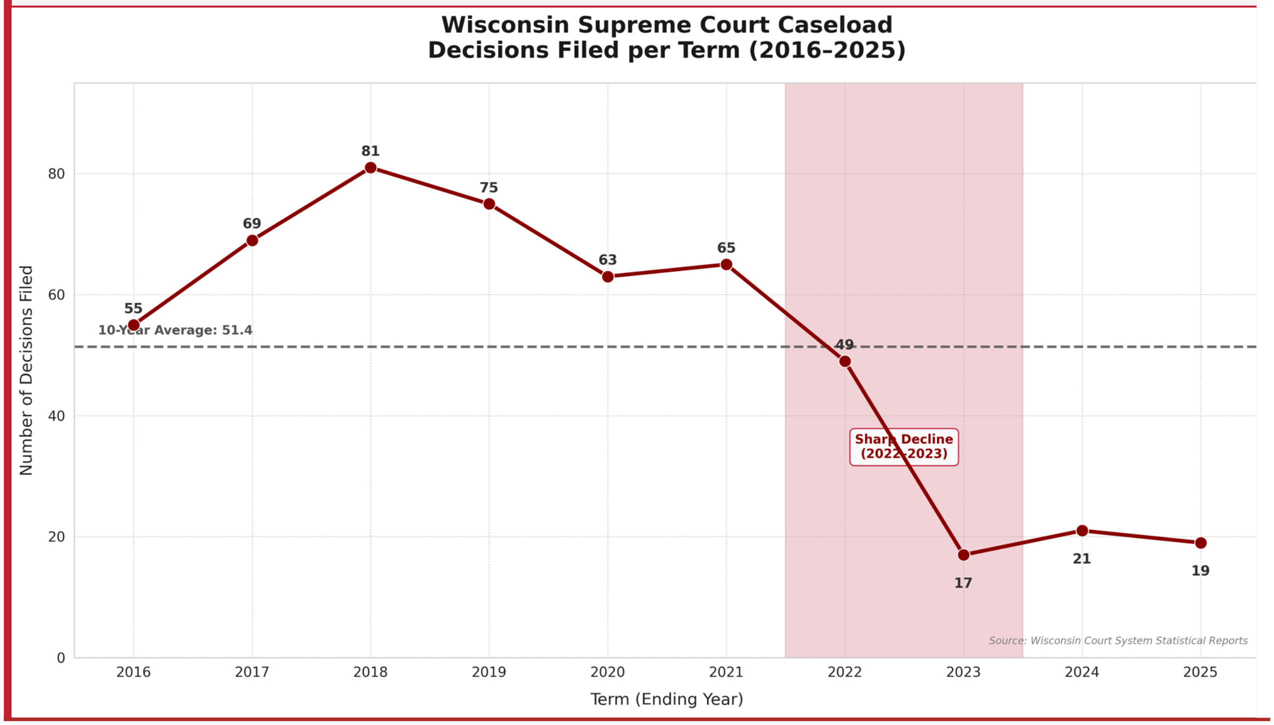
EXECUTIVE SUMMARY

Judicial elections have consequences. The people of Wisconsin have chosen progressive justices for the last several cycles—Rebecca Dallet, Jill Karofsky, Janet Protasiewicz, Susan Crawford, and now Chris Taylor. Collectively, this new progressive majority is still feeling its way forward. As a court, they are still deciding a historically small number of cases compared to prior years, and in many of those cases they still follow the law as the legislature enacted it or as precedent dictates. Indeed, this term the Court generally sided against the plaintiffs' bar on its civil docket and in favor of the government and prosecutors on its criminal docket. But in the big cases, those that touched on controversial and political issues, the Court's progressive majority showed its readiness to rule.

The foreword identifies the key themes visible across the big cases. The balance of this report provides short recaps breaking down each of the major cases this term, grouped into six categories: judicial method & the rule of law; education & equal protection; property & sovereignty; elections & transparency; business & civil liability; and government operations.

For the state's highest court, and certainly for the litigants in each individual case, no term is unimportant. But as with the U.S. Supreme Court, some terms have more blockbusters, and others are more lackluster. This term leans to the latter description. Most of the major ideological fights—Act 10, redistricting, overhauling statutory interpretation—remain in the pipeline for next term (these are briefly previewed in this report as *cases to watch* at the close).

For lawyers, legislators, and citizens alike, it is crucial to remain aware of the work of our state's high court, sitting atop the third branch of our state government. This Term in Review provides a handy, accessible guide, written in plain language, that empowers everyone invested in and affected by the Court's work to understand its term and trajectory.



TERM BY THE NUMBERS

How the Court split — And who did the writing?

Across the eleven featured decisions, only two were true 7-0 unanimous.

The rest fracture — and a single justice authored more majorities than anyone else.

11	64%	6	10
Featured merit opinions	Decided by a divided court: either 4-3 or 5-2	Of 7 justices authored a majority	Criminal or commitment cases in index

United — **Divided**

7–0 unanimous	Unanimous in judgment	6–1	Narrow 5–2	Split 4–3
2	2	1	3	2

Which way the docket leaned

Prevailing side, by docket

Civil Docket — Defense/business favored

Defense - 5 | Plaintiff - 2

Criminal Docket — Government favored

Government - 5 | Def. - 1

On the civil side the Court turned back the plaintiffs' bar in *Wren*, *Koble*, and *Guder*; on the criminal side it broadly favored prosecutors

A Fractured Court

Featured opinions drawing a separate writing

9 of 11

9 decisions drew at least one concurrence

2 decisions were fully unanimous, with no separate writing

Even where the judgment was unanimous, the justices frequently split over method — the term's defining tension.

WHO WROTE THE MAJORITIES

Lead author of 11 featured opinions

Dallet	3
Karofsky	2
Crawford	2
Ziegler	1
Protasiewicz	1
Hagedorn	1
Bradley	1

FEATURED CASE BY AREA OF LAW

Where the term's attention landed

Business Law & Civil Liability	5
Method & Rule of Law	2
Education & Equal Protection	1
Property & Sovereignty	1
Elections & Transparency	1
Government Operations	1

FOREWORD

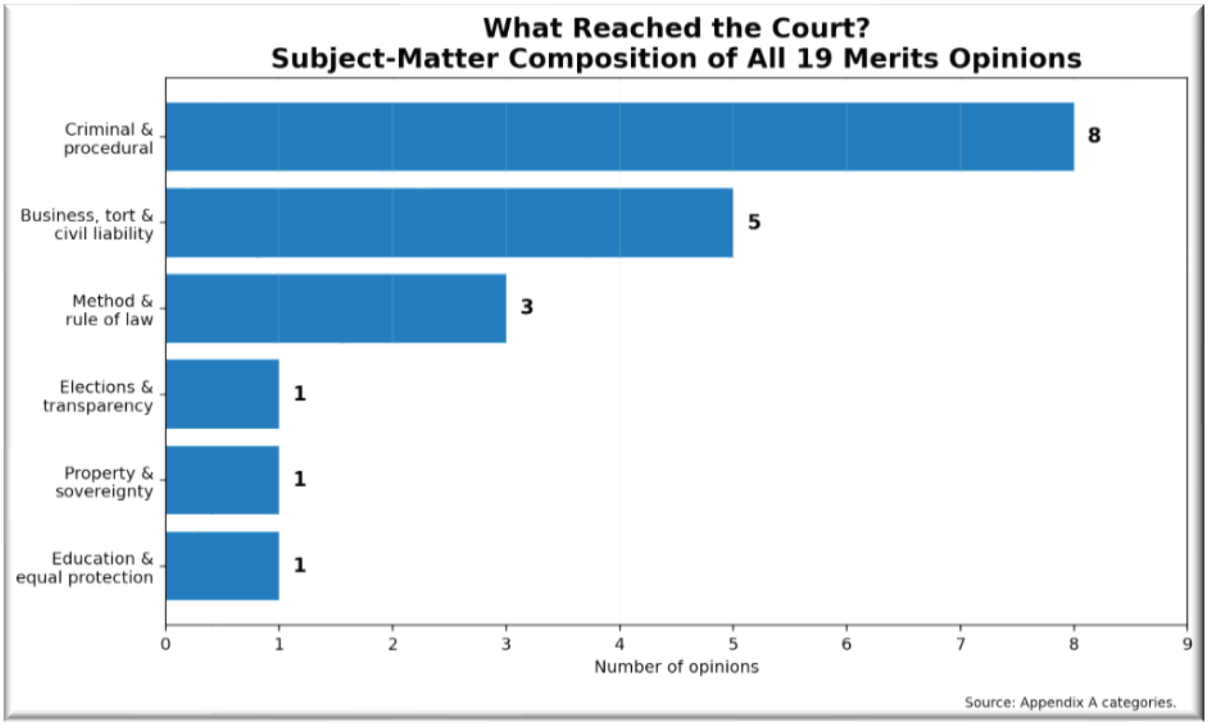
Daniel Suhr | *IRG Court Watch Legal Fellow*

I once saw a bumper sticker informing me that the driver had run a half marathon rather than the full 26.2 miles: a half marathon because he is only half-crazy. For judicial conservatives, it is an apt metaphor for the Wisconsin Supreme Court's 2025-26 term: only half-crazy. There is no doubt: a progressive majority rules the Court and is implementing its will. But it is also proceeding cautiously, picking its fights and still following the law to outcomes it may not like where the law affords little room to do otherwise.

As is often the case, the Court's ideological divisions were on clearest display on the last day of the term, with two cases touching hot topics. *Brekke v. Midwest Medical Insurance* should have been straightforward: indeed, the justices agreed unanimously on the answer to the primary legal question–whether an unborn child is a "patient" entitled to informed consent rights for a medical procedure (Yes). However, because the wording of the decisions could have ramifications for abortion law, the case resulted in a bevy of opinionated opinions. The other final case, *Kaul v. Wisconsin Legislature*, considered a statutory interpretation question that spoke to underlying separation-of-power dynamics between the state's Democrat Attorney General and the Republican-controlled legislature. There, the progressive majority ignored a key statutory provision to hand a win to the A.G., while putting egg on its own face by dismissing a question presented that it raised *sua sponte* to the parties as improvidently granted. *Wisconsin Voters Alliance v. Secord* looks like it should be a controversial case, dealing as it does with transparency in voting records. That view is reinforced by the Court's 5-2 split, with the progressive majority united to protect certain voter records from disclosure to an election integrity group generally considered right-wing. The case presents a relatively narrow question of statutory interpretation, and the majority opinion by Justice Janet Protasiewicz engages in standard textualism, even as Justice Annette Ziegler applied the same tools to find a different answer.

The Court followed the sane half of its "only half-crazy" brain in *Rabiebna v. Higher Educational Aids Board*, even if the progressive justices were grumpy about it. The three conservatives, joined by Justice Protasiewicz, issued a straightforward majority opinion applying the U.S. Supreme Court's decision in *Students for Fair Admissions v. Harvard* (2022) to various state scholarship programs administered by HEAB. Chief Justice Jill Karofsky concurred in an opinion that acknowledged the Supreme Court's binding precedent but aligned herself with the dissenters in *SFFA*. Justice Rebecca Dallet, in her own concurrence, acknowledged the high standard for affirmative action programs set in *SFFA* and said this program's evidentiary record failed to meet that standard while still holding out the possibility that other programs could potentially survive in the future.

On the civil docket, this was not a good term for the plaintiffs' bar. The Court's unanimous decision in *Wren v. Columbia St. Mary's* was a straightforward application of precedent on the Wisconsin Constitution's right to a jury trial, even as it shot down an expansive interpretation that would have blown up building blocks of our modern economic regulatory system, including workers compensation. *Gudex v. Franklin Collection Service* similarly interpreted the consumer-protection statute's class-action provision in line with its plain text, while making it harder for plaintiffs' lawyers to maintain such classes. The Court used a combination of precedent, text, and common sense again in *Koble Investments v. Marquardt* to turn down a plaintiff-side lawyer with a creative theory for fees in a residential lease dispute. And the progressives gave half a loss to the trial bar in *Estate of Lorbiecki v. Pabst Brewing*, with a pro-plaintiff reading of the independent contractor doctrine but a pro-business decision on how to calculate punitive damages. The only exception is *Brekke*, discussed above, which nevertheless will have very minimal impact on medical malpractice insurers.



On the criminal side of its docket, the Court generally favored the government. In *State v. J.D.B.*, *Outagamie County v. M.J.B.*, *Waukesha County v. R.D.T.*, *State v. Gasper*, and *State v. Rauch Sharak*, the Court reached largely unified decisions upholding the government's prosecutorial and protective interests. In *State v. K.R.C.*, the Court's progressive majority set a more inclusive standard for what counts as a custodial interrogation of a minor, while still upholding the conviction based on a harmless error analysis.

A few other orders besides final published opinions also deserve note.

First, the Court decided to stay its proceedings pending defendants' appeal to the U.S. Court of Appeals for the Seventh Circuit in the legal ping-pong ball that is *Voces de La Frontera v. Gerber*. There, the ACLU filed a petition for original action on behalf of Voces, an immigrant advocacy group, aiming to make Wisconsin a sanctuary state by judicial fiat. The Court accepted the petition—not a cautious move—and the defendant sheriffs removed the matter to federal court, arguing it required interpretation of a federal law (the statute governing federal-local immigration cooperation). The federal judge in Madison eventually declined jurisdiction and returned the case to the Wisconsin Supreme Court. The sheriffs appealed the federal judge's ruling to the Seventh Circuit. In a cautious move, the Wisconsin Supreme Court suspended its own consideration of the petition pending that appeal, delaying any substantive consideration likely for a year or more. The grant of the petition was a win for the ACLU and Voces—the stay pending appeal was a significant procedural loss for the ACLU and Voces. Both were decisions soundly in the Court's own discretion, where no clear law governed the outcome either way.

Second, the Court created a mess for itself with a proposed rule to reform its recusal rule. The existing rule was put in place over a decade ago by the conservative majority and strikes a workable balance between the free speech rights of judicial campaign participants and the due process rights of litigants. But since it was supported at the time by business groups and adopted by the conservative majority, it is a bugaboo for the new progressive majority regardless of its practicality.

The Court has significant flexibility in how it chooses to handle rules petitions. Here, the progressive majority chose to proactively take up a rules petition from a group of retired judges as their vehicle for change. However, even the liberal advocates at Law Forward, the liberal professors from UW Law School, and the liberal trial lawyers group all agreed the petition was fundamentally flawed and in need of substantial reworking. The progressive majority was forced to backtrack with egg on its face after the retired judges themselves acknowledged their proposal was a half-baked mess. The majority ultimately decided to punt the issue to a study committee.

The progressive majority's decision to proactively invite scrutiny on recusal is especially confounding given the recent raft of recusal motions to the Court. This term, Justice Protasiewicz denied a request to recuse in redistricting litigation because of support from the Democratic Party and her statements on the campaign trail, and another to recuse from Michael Gableman's disciplinary case. Last term, she denied a similar recusal motion in the Act 10 litigation. Justice Crawford denied a similar request on redistricting in November. Meanwhile, in April Chief Justice Karofsky and Justice Dallet denied requests for recusal by former Dane County Circuit Court judge Jim Troupis in his criminal case regarding the 2020 alternate electors (the Court also denied Troupis' request for its intervention due to alleged misconduct by the trial judge). In other words, as judicial candidates have become more transparent about their personal values and judicial philosophies in particular areas of law, regular motions for recusal are also becoming part of the court's new normal. CourtWatch will be watching to see whether the study committee just slaps lipstick on the current rules or if it's willing to tackle the deeper issues around recusal, campaign speech, and the First Amendment.

The resolution of that study committee's work is one of several storm clouds already on the horizon for conservatives in the Court's next term.

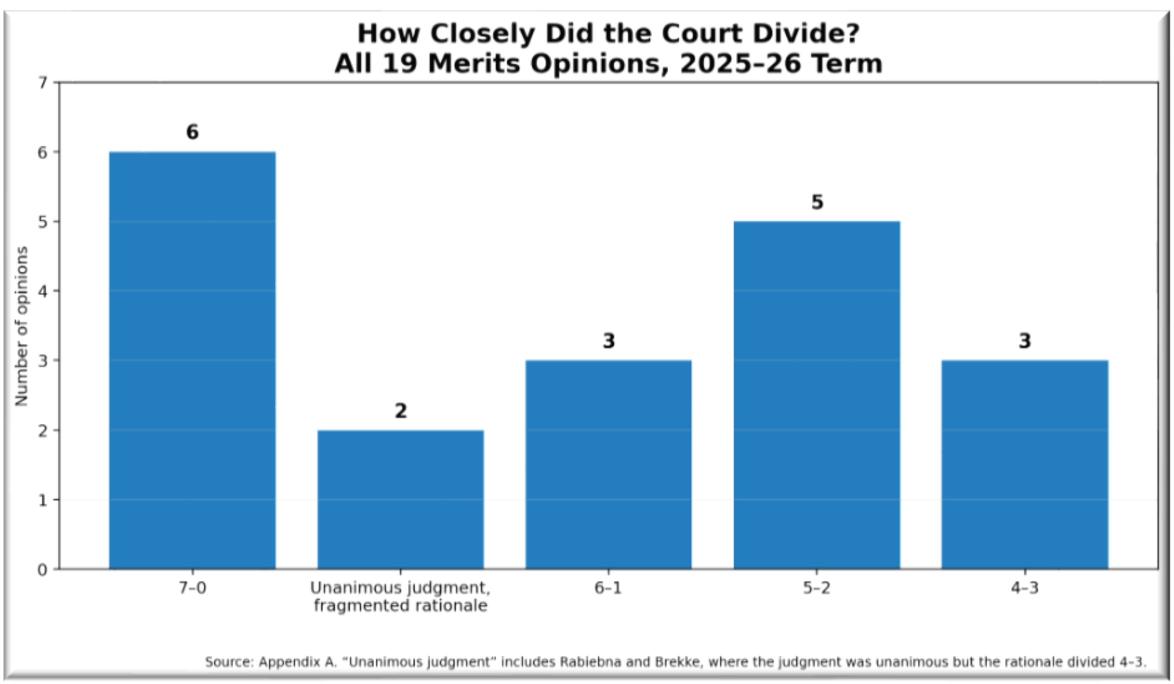
First, *Wisconsin Business Leaders for Democracy* and *Bothfeld* are gerrymandering challenges to Wisconsin's congressional district map. When WBLD and Bothfeld originally filed their actions in Dane County Circuit Court, the court's clerk notified the Supreme Court under a redistricting statute. Over the objections of Justices Ziegler and Rebecca Bradley, the Court decided to act under a state statute requiring a three-judge panel of circuit court judges to hear the case. Those judges ruled in the spring that the Wisconsin Supreme Court's prior rulings bound them in 2011 and 2012 concerning the map. Those decisions are now on appeal to the Wisconsin Supreme Court. The liberal attorneys attacking the maps in *WBLD* sought to rush that review at the end of the 2025-26 term, but the progressive majority declined the request by scheduling oral argument for the fall, at the start of the 2026-27 term, thus guaranteeing the 2026 midterms will use the current map.

Second, the Court has placed the question of interpretative methodology squarely on the menu for the fall. In particular, the progressive majority looks primed to overrule *Kalal v. Dane County Circuit Court*, a landmark case from Justice Diane Sykes that prioritized statutory text above other interpretive tools when reading laws. Justice Dallet, in particular, has suggested revisiting *Kalal* several times previously and the question is squarely teed up in *Abby Windows LLC v. LIRC*, set for argument in September. *Kalal* has been a foundational building block of legal interpretation in Wisconsin for two decades, cabining lower courts and the state high court alike from shopping through legislative intent, legislative purpose, legislative history, and other amorphous and convenient tools to reach preferred outcomes in favor of a strict if straightforward reading of the statutory text. Abandoning *Kalal* in favor of a more "holistic" approach to statutory interpretation, Justice Shirley Abrahamson's signature judicial philosophy, will open the door to a new wave of judicial activism, as courts supplant the plain meaning of statutory text with their version of the legislature's policy goals in enacting the statute in the first place. Justice Bradley's swan song concurrence in *State v. N.K.B.* laid out these stakes in stark terms, previewing the intellectual combat to come.

As the progressive majority figures out when and how to flex its muscles, it is also evolving as its membership changes. Justice Ann Walsh Bradley, now retired, may have been more devoted to precedent and stare decisis than others. One gets the sense from Justice Susan Crawford's separate opinions, such as her dissent in *Gudex*, that she is less deferential to plain meaning in statutory interpretation than her liberal colleagues. She will soon be joined by fellow Dane County jurist Chris Taylor, who will likely join her in pulling the progressive majority further leftward. And Judge Pedro Colon is running for the Court next April—his now-reversed opinion for the District I Court of Appeals in *Wren* was highly ambitious. Indeed, the race between Judge Colon and Judge Lyndsey Brunette for support among Wisconsin Democrats will in part reflect the difference between alternate versions of progressivism on the Court.

Meanwhile, the conservative side of the court will shrink by one as the great Justice Rebecca Bradley, long the conservative stalwart of the Court, departs after over a decade of faithful service. As a lawyer, I will miss the cultural and literary references that often open her opinions, her active presence in the legal community, and her probing questions on the bench. As a citizen, I will miss her unyielding defense of the Constitution, especially her pathbreaking work revitalizing the state's separation of powers as a cornerstone of our liberty.

She departs the Court as it lurches further left. Though the Court this term proceeded cautiously in some places and more boldly in others, we will likely have to wait for the progressive majority's continued evolution to see it fully embrace its power.



Rebecca Bradley's Judicial Legacy

As Justice Bradley departs the bench on July 31, 2026, IRG and Court Watch salute her devotion to public service, the rule of law, and the defense of our rights and liberties. From her initial appointment to the Milwaukee County Circuit Court in December 2012, her service on the bench was marked by her determined advocacy for both our state and federal constitutions, textualism, and limits on the modern administrative state. To mark her tenure on the Court, we reprint here IRG legal fellow Daniel Suhr's op-ed in the Milwaukee Journal Sentinel, previously published when she announced her retirement. Though the voters answered Suhr's closing question when they elected Chris Taylor over Maria Lazar in April 2026, the query remains relevant as we look to the long-term trajectory of the Court . . .

In her single ten-year term on the Wisconsin Supreme Court, Justice Rebecca Bradley made more of an intellectual impact than many justices make in two or three times that length of service on the bench. As she declines to run again and finishes her tenure, Wisconsinites owe a deep debt of gratitude to the foremost champion of our constitutional rights and liberties on our state courts.

First appointed by Governor Scott Walker in 2015 and elected to a full term in her own right after a hard-fought race in 2016, Bradley laid down an early marker for her judicial philosophy in the 2017 case *Gabler v. Crime Victims Rights Board*. The state legislature had established an executive agency to protect the rights of crime victims in court proceedings, in itself a noble goal. But the agency was empowered to oversee and even reprimand judges in their conduct of criminal cases, which infringed on a core judicial function.

Bradley explained that this violated the separation of powers, the fundamental constitutional principle that each branch (legislative, executive, judicial) serves a unique and important function, and that the branches must respect one another's particular provinces. Just like we do not want judges acting as "legislators in robes" by rewriting laws through judicial opinions, we also do not want legislators or executive officials supervising judges as they handle criminal cases.

The very next year, the Wisconsin Supreme Court took *Gabler* as precedent for an even more important case: *TetraTech v. Department of Revenue*. The question in that case was whether the courts would defer to agency bureaucrats when they interpret statutes which the agency administers. In other words, do the judges say what the law is, or do the bureaucrats? In an opinion that would anticipate the U.S. Supreme Court's landmark decision in *Loper Bright v. Raimondo* in 2024, Wisconsin's high court set down a strong rule favoring judicial independence over agency deference.

The importance of the *Gabler* case would be apparent again and again thanks to two deeper currents in our state: first, the Covid-19 pandemic, and second, the split in party control of our state government (with a Democratic governor and Republican legislature), both of which put front-and-center questions about governmental power between the branches.

Thus, Justice Bradley's concurring opinion in *Wisconsin Legislature v. Palm*, the seminal case on pandemic powers, opened by reference to *Gabler* and the separation of powers: "The people of Wisconsin never consented to any elected official, much less an unelected cabinet secretary, having the power to create law, execute it, and enforce it."

More recently, the Governor and Attorney General have squared off against the Legislature in a series of cases dealing primarily with committee oversight of executive actions. Though Justice Bradley has been in dissent more often in these cases, she consistently returns to the importance of checks-and-balances between the branches.

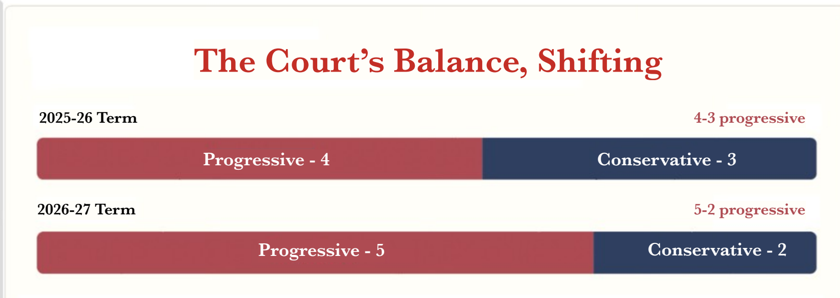
However, when judges inappropriately assert their own power to preempt executive or legislative prerogatives, they aggrandize the judiciary outside its proper role, as in *Kaul v. Urmanski*'s abortion decision. There, she said the Court's "majority erases a law it does not like, making four lawyers sitting on the state's highest court more powerful than the People's representatives in the legislature." She called out that decision as "a raw exercise of political power" rather than a properly reasoned judicial decision. That is another function of the separation of powers: it requires the judiciary to police itself to stay in its own lane.

Throughout these and her other opinions, two key themes emerge. First is her regular return to the foundational documents of our republic: our federal and state constitutions and early explanations of the political philosophy that shaped them, like *The Federalist Papers*, Locke, and Montesquieu.

Second is a keen commitment to protecting individual rights and liberties. The separation of powers, for instance, with its system of divided powers and checks-and-balances, is good because it ensures liberty for individual citizens. When governmental power is diffuse rather than concentrated, accountable rather than insulated, and closer to the voters, then it is more likely to respect individual freedom.

Because these principles are embedded across her scores of opinions (for Justice Bradley was an active writer of not only majority opinions, but also dissents and concurrences), she leaves an intellectual legacy that will mark the path for generations of judges to come.

As voters consider candidates to replace her, they will likely face a stark choice in April 2026. Will our next justice join an activist majority enamored with its own power and unafraid to wield it to advance progressive policy goals in spite of long-standing precedents and principles like the separation of powers? Or will we elect another justice who shares Justice Bradley's conservative convictions and textualist/originalist philosophy, even if not her inimitable style?



Ideological composition as Justice Bradley departs and Justice-elect Taylor arrives August 2026

2026 Term — Critical Cases at a Glance

Wisconsin Supreme Court · The 11 featured decisions of the 2025–26 term · Vote, authorship, separate writings, and holding

Case	Vote	Majority Author	Concurrences	Dissents	Holding
I. METHOD & THE RULE OF LAW					
Koble Investments v. Marquardt 2026 WI 19	7–0	**Bradley** (unanimous)	Bradley & Ziegler (would go further); Crawford (standing)	—	The Wisconsin Consumer Act (§ 427.104 does not reach a month-to-month residential lease: rent accrues as occupancy is furnished, so there is no "agreement to defer payment." Even assuming a violation, the tenant proved n actual loss—and no loss means no fees.
State v. N.K.B. 2026 WI 22	6–1	**Dallet** (Karofsky, Hagedorn, Protasiewicz, Crawford)	Bradley (in judgment)	Ziegler	Section 51.61(1)(g)3. does not authorize dangerousness-based involuntary medication of a person committed only under § 971.14. The methodological fight is the story: the majority reaches for statutory history, and Justice Bradley's concurrence defends *Kalal* textualism.
II. EDUCATION & EQUAL PROTECTION					
Rabiebna v. HEAB 2026 WI 20	Unan. judg. /4–3	**Ziegler** (Bradley, Hagedorn, Protasiewicz)	Karofsky and Dallet (in result)	— (unanimous in judgment)	The § 39.44 minority undergraduate grant program cannot survive strict scrutiny under *SFFA*. Taxpayer standing was reaffirmed 7–0; the separate writings split over how much room, if any, race-conscious aid retains.
III. PROPERTY, SOVEREIGNTY & THE TAX BASE					
Legend Lake POA v. Keshena 2026 WI 21	4–3	**Crawford** (Karofsky, Dallet, Protasiewicz)	—	Bradley (w/Ziegler); Hagedorn (w/Ziegler, Bradley)	Tribal sovereign immunity bars enforcement of restrictive covenants against land taken into trust, and the immovable property exception categorically does not reach tribes—leaving private covenant holders and the local tax base without recourse.
IV. ELECTIONS & TRANSPARENCY					
Wisconsin Voter Alliance v. Secord 2026 WI 27	5–2	**Protasiewicz** (Karofsky, Dallet, Hagedorn, Crawford)	—	Ziegler (w/Bradley)	Completed notice of voting eligibility forms held by a register in probate are "closed" court records under § 54.75, not public records subject to mandamus. The majority adopts Justice Hagedorn's streamlined mandamus framework; the dissent applies the same text and gets a different answer.

V. BUSINESS, TORT & CIVIL LIABILITY					
Estate of Lorbiecki v. Pabst 2026 WI 12	5–2	**Dallet** (Karofsky, Hagedorn, Protasiewicz, Crawford)	Dallet (Hagedorn)	Ziegler w/Bradley	Safe-place liability and the punitive award are affirmed; the § 895.043(6) punitive-damages cap limits only the amount recoverable against the defendant, not the jury's award as such.
Wren v. Columbia St. Mary's 2026 WI 11	7–0	**Karofsky** (unanimous)	—	—	The COVID-19 immunity statute does not facially violate the jury-trial right. Because the statute abrogated the underlying common-law claim, no "case at law" ever arose—threshold-first sequencing, and the right never attaches.
Cincinnati Insurance Co. v. Ropicky 2026 WI 25	4–3	**Hagedorn** (Karofsky, Dallet, Protasiewicz)	—	Ziegler (w/Bradley, Crawford)	Rainwater intrusion through a construction defect is a covered "ensuing loss" under a homeowner policy; the Fungi endorsement caps that coverage at $10,000; and the insured's bad-faith claim is reinstated.
Racine County v. R.P.L. 2026 WI 26	4–3	**Crawford** (Karofsky, Ziegler, Hagedorn)	—	Bradley; Dallet; Protasiewicz (w/ Dallet)	An appeal from a Ch. 55 protective placement is not moot, because § 46.10 cost-of-care liability is a live collateral consequence; on the merits, the evidence of dangerousness and permanent incapacity was sufficient.
Brekke v. Midwest Medical Insurance Co. 2026 WI 29	Unan. judg. 4–3	**Karofsky** (Dallet, Protasiewicz, Crawford)	Hagedorn (in judgment); Crawford (w/ Karofsky)	Ziegler (in part); Bradley (in part)	An unborn child who receives medical care in utero is a "patient" under § 448.30, so the physician owed a duty to obtain informed consent from the surrogate on the child's behalf as well as her own; because the child was born alive, she holds an independent claim.
VI. GOVERNMENT OPERATIONS					
Wisconsin State Legislature v. Kaul 2026 WI 28	5–2 Issue 2 DIG'd	**Dallet** (Karofsky, Protasiewicz, Crawford)	Hagedorn (in part/dissenting in part—objects to the DIG)	Bradley (w/Ziegler as to ¶¶ 30–87)	The attorney general satisfies § 165.10 by depositing uncommitted settlement funds into the general fund, even if he then credits those same dollars to an appropriation he controls: "deposit" and "credit" are distinct acts, and § 165.10 speaks only to the first. The Court added a second issue—then dismissed it as improvidently granted, leaving § 20.906(1) and § 20.455(3)(g) uninterpreted.

Court composition (2026 term): Karofsky, C.J.; Ziegler; Bradley; Hagedorn; Dallet; Protasiewicz; Crawford. Lead author listed first; joining justices in parentheses. Data drawn from the 2026 opinion index (Appendix A).

I. Method & the Rule of Law

Koble Investments v. Marquardt, 2026 WI 19

Reading the Consumer Act as Written

OVERVIEW

A unanimous Wisconsin Supreme Court has reversed a court of appeals decision that, for the first time in the more than five decades since the Wisconsin Consumer Act was enacted, stretched that consumer-protection statute to govern an ordinary residential lease. The Court held that the Act does not reach a residential lease under which rent is paid monthly, because such a lease is not "an agreement to defer payment." *Koble Investments v. Marquardt*, 2026 WI 19. The decision is a textbook example of judges doing their actual job—reading a statute as written rather than expanding it to fit a preferred policy result. And the posture is telling: the party pressing the appeal was not the tenant, who had long since walked away, but her former attorney, who sought to manufacture an award of fees for himself.

WHAT YOU SHOULD KNOW

- The Wisconsin Supreme Court unanimously (7–0) reversed the court of appeals and held that the Wisconsin Consumer Act does not govern a residential lease under which rent is payable on a monthly basis.
- The court of appeals had broken with more than 50 years of unbroken practice by treating a residential lease as a "consumer transaction" with "an agreement to defer payment." No Wisconsin court had ever applied the Consumer Act to a residential lease.
- The decision rests on plain meaning: rent accrues month to month—occupancy in exchange for rent—so nothing is "deferred." Chapter 704, not the Consumer Act, governs landlord-tenant relations.
- Even assuming the lease was void for a missing notice, the tenant proved no financial loss. A tenant who lives in the unit still owes rent; voiding a lease is not a windfall.
- The tenant herself never appealed. Her former lawyer pursued the case—without her knowledge or consent—to chase his own fees. Statutory attorney fees belong to the client, not the lawyer.

WHAT HAPPENED

Koble Investments served its tenant, Elicia Marquardt, a notice terminating her lease for nonpayment of rent during the sixty-day moratorium on eviction notices that Governor Evers ordered during the COVID-19 pandemic. Koble conceded the violation and dismissed its own eviction claim. Marquardt counterclaimed under the Consumer Act and argued the lease was void for omitting a statutorily required domestic-abuse-protections notice. After the eviction was dismissed, Marquardt stopped participating; her attorney, James Miller, intervened on his own behalf to pursue statutory fees. The court of appeals reversed the circuit court and—for the first time since the Act's 1971 enactment—held that a residential lease is a Consumer Act "consumer transaction" with "an agreement to defer payment," awarding double damages and fees.

The Supreme Court reversed across the board, 7–0. Writing for the Court, Justice Bradley held that Wis. Stat. § 427.104 does not reach a monthly residential lease, which is not "an agreement to defer payment": rent accrues each month in exchange for that month's occupancy, so nothing is deferred, And the court of appeals' theory that a one-year lease creates a single debt paid in twelve installments "is not how residential leases work." Even assuming a void lease, Marquardt proved no pecuniary loss under Wis. Stat. §100.20(5)—paying rent for a place to live is not a loss—so neither she nor her attorney could recover fees or costs.

Applying *Kalal's* plain-meaning framework and reading the related statutes together, the Court gave weight to a half-century of unbroken practice: the enforcing agency has excluded real-property leaseholds, no court had applied the Act to a residential lease in 54 years, and—citing *Loper Bright Enterprises v. Raimondo*—it treated that settled understanding as evidence of the statute's meaning, not deference to the agency.a tenant under a void lease remains a periodic tenant who still owes rent, and the record showed no actual payment of the late fees or filing fee claimed. With no prevailing Consumer Act claim and no proven loss, neither Marquardt nor her attorney could recover fees or costs.

» **Justice Bradley, joined by Justice Ziegler, would have gone further and held the Consumer Act inapplicable to residential leases entirely—a tenant is not a "customer" who "acquires" goods—invoking the omitted-case canon. That the majority's own author wrote separately, joined by only one colleague, signals there were not four votes for the broader rule.**

» **Justice Crawford would have reversed on standing alone: the appeal was brought by the tenant's former lawyer to pursue his own fees, and statutory fees belong to the client, not counsel.**

WHAT'S NEXT

The majority deliberately left open the broader question the concurrence pressed—whether the Consumer Act reaches residential leases *at all*. Until a future case squarely presents it, lower courts have a clear holding on § 427.104 and a strong signal from the Court's reasoning, but not a categorical ruling. The standing problem Justice Crawford flagged—an attorney litigating an absent client's claims in pursuit of his own fees—is a recurring risk the majority sidestepped on forfeiture grounds, and one worth monitoring. Expect landlords and the consumer-credit bar to cite *Koble* for two propositions: that month-to-month leases fall outside the Consumer Act, and that voiding a lease, without proof of an actual loss, yields no damages.

"The omission of residential leases from the WCA makes it so obvious the WCA does not cover residential leases that it does indeed seem absurd to have to say it."

- Justice Bradley concurring at ¶37

State v. N.K.B., 2026 WI 22

Text versus Statutory History

OVERVIEW

The Wisconsin Supreme Court has held that a circuit court may not order the involuntary medication of a criminal defendant committed solely for competency restoration under Wis. Stat. § 971.14 on the ground that the defendant is dangerous. *State v. N.K.B.*, 2026 WI 22. Six justices agreed on the bottom line; only five joined the reasoning. Justice Bradley agreed that no statute supplies the authority but wrote separately to charge the majority with sidelining *State ex rel. Kalal*—the Court's foundational statutory-interpretation precedent, which the majority opinion never cites—in favor of statutory history. The result is the clearest window this term into the Court's brewing fight over how to read statutes, in a case where nearly everyone agreed on what the statutes ultimately permit.

WHAT YOU SHOULD KNOW

» The Court held that Wis. Stat. § 51.61(1)(g)3. does not authorize court-ordered involuntary medication of a defendant committed exclusively under § 971.14, affirming the court of appeals. Justice Dallet wrote for five justices; Justice Bradley concurred in the judgment; Justice Ziegler dissented.

» Section 971.14 permits court-ordered medication for one purpose only—restoring competency to stand trial—under requirements more rigorous than § 51.61(1)(g)3.: a mandatory physician's report, proof by clear and convincing evidence, and a medical-standards directive. Letting the State route around those requirements would render them a dead letter.

» Dangerousness is not left unaddressed. Physicians may still administer involuntary medication when necessary to prevent serious physical harm, and the State may open a parallel Chapter 51 commitment—with a probable-cause hearing within 72 hours—while the criminal case remains suspended.

» Justice Bradley's concurrence is a full-throated defense of *Kalal* textualism: the text alone resolves the case, and elevating statutory history over enacted text invites what she calls "analytical anarchy." She contends the majority's omission of *Kalal* was intentional.

» Justice Ziegler would harmonize the statutes to let the criminal court weigh dangerousness, warning that requiring a second, separate Chapter 51 proceeding—new case, new lawyers, likely a new judge—is "likely unworkable in practice."

WHAT HAPPENED

"Naomi"—the Court's pseudonym for the defendant—was charged with felony battery by a prisoner for slapping a nurse while jailed e in Milwaukee County. After her counsel raised competency, the circuit court found her incompetent but likely restorable, committed her to the custody of the Department of Health Services ("DHS") under Wis. Stat. § 971.14, made the four findings *Sell v. United States* requires, and ordered involuntary medication to restore her competency. When Naomi appealed,DHS asked the court to reconsider on dangerousness grounds; the circuit court vacated its *Sell* order and entered a new one resting expressly on dangerousness, without reaching the *Sell* factors.

The court of appeals sided with Naomi, and the Supreme Court affirmed. Writing for the Court, Justice Dallet began with the text: although § 51.61(1)'s definition of "patient"reaches Chapter 971 committees, § 971.14 supplies its own, more demanding process for the same determination, and reading 51.61(1)(g)3 to remain available would let the State bypass the stricter statute and leave its safeguards with no work to do. The majority grounded its reading in statutory history and in *State v. Anthony D.B.*, which held § 51.61(1)(g)3 controls involuntary medication for individuals committed under a listed chapter "unless and until the legislature provides alternative provisions"—as it has in Chapter 971. The doctrinal backdrop is two constitutional tracks: *Sell* (medicate to restore competency, on four findings) and *Washington v. Harper* (medicate a dangerous individual through fair, possibly administrative, procedures). All seven justices agree the text comes first; the fight is over what comes next, and it produced the term's sharpest exchange over *Kalal*.

- **Justice Bradley, concurring in the judgement, agrees no statute authorizes a dangerousness-based order but faults the majority for resting on statutory history when the enacted text alone resolves the case—counting more than 420 citations to *Kalal* since 2004, none in the majority opinion, and calling the omission intentional.**

- **Justice Ziegler, dissenting, stresses the record the majority understates: Naomi's prior adjudicated dangerousness and dozens of violent episodes She reads § 51.61(1)(g)3 to apply to Chapter 971 committees and warns that the majority's parallel-proceeding alternative is "likely unworkable in practice."**

The disagreement is about weight, not method: the majority *did* begin with the text, and Justice Hagedorn joined it in full. Last term's *SEIU v. WERC* said courts may consult statutory history without first finding ambiguity; *N.K.B.* is the fault line that decision left unresolved.

WHAT'S NEXT

The majority expressly reserved two questions: how the analysis applies when an individual is subject to a parallel commitment (or committed under a statute other than § 971.14), and the outer parameters of the emergency exception physicians may invoke. Because the holding is statutory rather than constitutional, the legislature holds the pen—under *Anthony D.B.*'s "unless and until" framework, it may add a dangerousness pathway to Chapter 971 if it concludes the dual-proceeding route is too cumbersome. Watch whether county officials can actually run parallel § 51.20 proceedings at the pace the majority projects; Justice Ziegler's workability critique will be tested in real courtrooms, quickly. And watch the methodology fight: expect the concurrence to be cited whenever a Wisconsin opinion leads with statutory history, and expect *N.K.B.* to feature in the ongoing debate over whether *Kalal* remains this Court's lodestar.

> *"Justice is blind, but it should not turn a blind eye to the obvious. Naomi is not competent to proceed, in a criminal proceeding, and is irrefutably dangerous."*
>
> \- Justice Ziegleer dissenting at ¶54

II. Education & Equal Protection

Konkanok Rabiebna v. Higher Educational Aids Board, 2026 WI 20

Students for Fair Admissions v. Harvard Comes to Wisconsin

OVERVIEW

The Wisconsin Supreme Court has struck down a state program that distributes taxpayer-funded financial aid to college students based on their race, national origin, or ancestry. Applying the U.S. Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard* ("*SFFA*"), the Court held that Wis.. Stat.. § 39.44—the Minority Undergraduate Retention Grant Program—cannot survive strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Konkanok Rabiebna v. Higher Educational Aids Board*, 2026 WI 20. Every justice agreed the program is unconstitutional and that the challengers had standing to sue—but the agreement stopped there. Only four justices embraced the majority's full equal-protection rationale; three, including Chief Justice Karofsky, concurred in the result on a narrower ground and wrote separately to argue that a better-documented race-based program could still survive. The decision is a real win for color-blind equal protection and for taxpayer oversight of unlawful spending—but a narrower one than the headline suggests.

WHAT YOU SHOULD KNOW

» The Court unanimously held that Wis.. Stat.. § 39.44—which limits state college-retention grants to specified racial, national-origin, ancestry, and alienage groups—violates the Equal Protection Clause, and affirmed the injunction against the Higher Educational Aids Board ("HEAB").

» The justices split 4–3 on the reasoning. Four (Ziegler, Bradley, Hagedorn, Protasiewicz) found neither a compelling interest nor narrow tailoring; three concurred only in the result, on a narrower ground.

» Diversity is not a compelling interest. After *SFFA*, only two interests justify race-conscious laws—prison safety and remedying specific, identified past discrimination—and neither applies here.

» Timing matters: the compelling-interest record must exist when the law was passed. HEAB's data came decades later and covered UW's public campuses, not the colleges the grants fund.

» Taxpayers can challenge unlawful spending. An unconstitutional outlay is itself a pecuniary loss; a plaintiff need not show a lower overall tax bill.

WHAT HAPPENED

Five Wisconsin taxpayers sued to stop HEAB from administering the Minority Undergraduate Retention Grant Program, Wis. Stat. § 39.44, which awards need-based grants of up to $2,500 a year—but only to students who are Black American, American Indian, Hispanic, or post-1975 Southeast Asian immigrants (or their descendants);. all other students are categorically ineligible. The Jefferson County circuit court upheld the statute under *Grutter v. Bollinger.*

While the appeal was pending, the U.S. Supreme Court decided *SFFA*, holding that race-based college admissions violate equal protection and that diversity is not a sufficiently coherent interest to justify them.

Bound by *SFFA*, the court of appeals reversed and enjoined the program. HEAB sought review in the Wisconsin Supreme Court.

The Court affirmed. Writing for the Court, Justice Ziegler first held the taxpayers had standing, then concluded § 39.44 fails strict scrutiny. HEAB could not show a compelling interest before the Legislature when it enacted the program, and the program is not narrowly tailored: race is not one factor among many in an individualized review—it is the only factor, and a student either belongs to a preferred group or does not. Tracing the admissions line—*Bakke*, *Grutter*, *Gratz*, and *Fisher*, culminating in *SFFA*—the Court stressed that the compelling-interest inquiry turns on the record before the Legislature at enactment, and that HEAB's evidence concerned retention at UW's public campuses, not the private and technical colleges the grants fund. The judgment was unanimous, but the Court fractured 4–3 on how to reach it—a decision about judicial discipline as much as outcome.

- **Justice Dallet, joined by Chief Justice Karofsky and Justice Crawford, concurred only in result, would have struck the program on the single narrow ground that HEAB produced no evidence the eligible students were dropping out of the funded colleges at disproportionate rates, and faults the majority for rejecting the Board's asserted interest "piecemeal." She added that a color-blind reading of the Fourteenth Amendment is neither inevitable nor compelled by its text or history**

- **Chief Justice Karofsky, joined by Justice Crawford, went further: conceding she is bound by SFFA, she wrote at length that the Amendment was never color-blind, quoted Justice Jackson's *SFFA* dissent, and concluded a program like § 39.44 could be constitutional on an interpretation that "honors its purpose—to combat oppression."**

The full-rationale majority drew Justices Ziegler, Bradley, Hagedorn, and Protasiewicz—a coalition that does not track the Court's usual divide.

WHAT'S NEXT

The win is genuine but bounded. The Court resolved the case on the narrowest ground that commanded a majority and expressly declined to adopt the court of appeals' broader holding that *SFFA* forbids essentially all race-based government funding or support. That broader principle—which would have reached well beyond financial aid—is no longer the binding rule, leaving the question open for another day. And three justices, including the Chief, have all but invited a future challenge built on a fuller evidentiary record. Expect the door left ajar in the concurrences to be tested: a redrafted program, or a new one supported by Wisconsin-specific data on the precise institutions at issue, would not be foreclosed by today's decision. In the meantime, *Rabiebna* supplies two durable propositions—that race-based eligibility for state benefits triggers, and rarely survives, strict scrutiny, and that Wisconsin taxpayers retain robust standing to challenge unlawful expenditures.

> *"Under the Grant Program, race is not but one factor in a 'highly individualized, holistic review'; race is the only factor."*
>
> \- Justice Ziegler for the majority at ¶56

III. Property, Sovereignty & the Tax Base

Legend Lake Property Owners Ass'n v. Keshena, 2026 WI 21

Tribal Immunity and the Tax Base

OVERVIEW

A divided Wisconsin Supreme Court has held that the Menominee Indian Tribe is immune from a suit to enforce private restrictive covenants against former reservation land now held in federal trust. *Legend Lake Property Owners Ass'n v. Keshena*, 2026 WI 21. The narrow grounds are unremarkable: the Menominee Restoration Act contains no clear statement abrogating immunity, and a covenant the Tribe never signed cannot waive it. What fractured the court 4–3 was the majority's decision to go further—holding, for the first time in any court, that the common-law "immovable property" exception to sovereign immunity categorically does not apply to Indian tribes. By the majority's own admission that holding was unnecessary to the result, and it came over two dissents and without the land's actual owner, the United States, before the court.

WHAT YOU SHOULD KNOW

- The Court split 4–3. Justice Crawford wrote for the majority, joined by Chief Justice Karofsky and Justices Dallet and Protasiewicz. Justices Bradley and Hagedorn each dissented; Justice Ziegler joined both.
- The bottom line: tribal immunity bars the suit. Congress did not clearly abrogate it in the Restoration Act, and the Association's unilaterally imposed 2009 covenants—which the Tribe never signed and Keshena had no authority to accept for the Tribe—did not waive it.
- The contested move: the majority refused to recognize any "immovable property" exception to tribal immunity—even though, because the land is now reservation land, the exception could not have applied here anyway. The majority concedes as much. Both dissents call the broad ruling avoidable.
- The landowner was never in the case. The United States holds the land in trust but was never joined. Justice Hagedorn would have sent the case back rather than decide far-reaching federal and tribal questions without the property owner present.

WHAT HAPPENED

In 1954 Congress terminated federal recognition of the Menominee and ended the trust status of its reservation; under financial pressure the tribal corporation sold thousands of acres to non-members, including the tract that became the Legend Lake development. The 1973 Menominee Restoration Act restored recognition and created a mechanism to reacquire lost land by transferring it to the United States in trust. In 2009 the Association amended its covenants to block exactly that, and in 2017 tribal member Guy Keshena acquired more than 30 lots for the Tribe and asked the BIA to take them into trust. The Association sued in 2018; the United States accepted the lots into trust in 2023, and parallel federal litigation upheld the transfer. Writing for the majority, Justice Crawford affirmed dismissal, holding that nothing abrogated, waived, or displaced the Tribe's immunity and that it extends to Keshena because the Tribe is the real party in interest.

Under federal law tribal immunity is the "baseline position," Michigan v. Bay Mills Indian Community: Congress may strip it only by clear statement, and a tribe may waive it only clearly and unequivocally—a party wanting to sue "need only bargain for a waiver." See C&L Enterprises v. Citizen Band Potawatomi Indian Tribe. The separately contested "immovable property" exception—by which a sovereign owning land in another sovereign's territory is treated as to that land like a private owner—traces to Schooner Exchange v. McFaddon and Permanent Mission of India v. City of New York, but no court had applied it to a tribe, and the U.S. Supreme Court twice declined to decide whether it should, Upper Skagit Indian Tribe v. Lundgren. The exception could not have rescued this suit in any event, because the lots are now reservation land; the majority nonetheless reached out to hold it does not exist for tribes.

» **Justice Bradley, joined by Justice Ziegler, would recognize the exception: tribes hold the common-law immunity of sovereigns, and that immunity carries the common-law exceptions with it. She argues the majority manufactures a near-absolute immunity the common law does not supply and inverts deference—true deference would leave a settled exception intact until Congress abolishes it—invoking the omitted-case canon from her Koble concurrence.**

» **Justice Hagedorn, joined by Justices Ziegler and Bradley, would not have reached the merits at all: the landowner, the United States, was never joined, and Wisconsin's joinder and declaratory-judgment statutes forbid deciding weighty federal and tribal questions with the absent owner's interests at stake.**

The dissents differ in emphasis but converge on one objection: a divided majority announced a broad, first-of-its-kind rule the disposition did not require, in a posture missing the party most affected. The narrow holdings—demanding a clear statement before abrogation and refusing to bind a sovereign to a contract it never signed—rest on solid textualist ground; the objection is the reach, not the result.

WHAT'S NEXT

The decision leaves two different markers. The narrow holdings instruct private parties and tribes to bargain for express waivers up front to enable future lawsuits, as they cannot be imposed after the fact. The broad 4–3 holding rules that no immovable property exception applies to tribes in Wisconsin, matching only two out-of-state decisions on a question left open by the U.S. Supreme Court. Future litigation will likely test whether this rule holds, particularly in cases involving non-reservation land with the landowner present. The recurring indispensable-party procedural risk noted by Justice Hagedorn warrants monitoring. Finally, the court placed the policy question of whether private covenants can maintain former reservation land on local zoning and tax rolls squarely with Congress.

> *"The majority gaslights the reader by declaring tribal immunity from suit over property located in the territory of another sovereign to be 'settled law' while proclaiming its deference to Congress . . . Far from applying 'settled law,' the majority invents a new immunity for tribes out of whole cloth. The majority cites zero binding authority … to support its farcical assertion."*
>
> - Justice Btadley dissenting at ¶62

IV. Elections & Transparency

Wisconsin Voter Alliance v. Secord, 2026 WI 27

Closing the Book on NVE Records

OVERVIEW

A divided Wisconsin Supreme Court has ended the Wisconsin Voter Alliance's four-year effort to obtain the court forms that tell election officials a person has been found incompetent to vote. The Court held, 5–2, that completed Notice of Voting Eligibility ("NVE") forms held by a county register in probate are "court records pertinent to the finding of incompetency" and therefore "closed" under Wis. Stat. § 54.75—placing them beyond the reach of Wisconsin's public records law. *Wisconsin Voter Alliance v. Secord*, 2026 WI 27. The decision also quietly rewrites the procedural rulebook: adopting Justice Hagedorn's earlier concurrence, the Court held that in public records mandamus actions the only question is whether the requester has a right to the records—a genuine simplification that will help future requesters even as this one walks away empty-handed. Justice Ziegler, joined by Justice Bradley, dissented, arguing that the majority collapsed two distinct statutory findings and shielded a document the legislature created for the very purpose of being communicated.

WHAT YOU SHOULD KNOW

- The Court held 5–2 that completed NVE forms (circuit court form GN-3180) are "closed" court records under Wis. Stat. § 54.75, so a statutory exception to disclosure applies and no writ of mandamus may issue
- The majority found the forms procedurally and substantively intertwined with the guardianship incompetency finding: both findings are made in the same closed hearing, both assess mental capacity, and the form carries the guardianship case caption and number.
- The Court adopted Justice Hagedorn's *Secord II* concurrence and clarified that public records mandamus turns on a single question—the requester's right to the records—not the four traditional mandamus elements. Appellate review is de novo, and *Morke* was overruled in part
- Justice Ziegler's dissent: a finding of incompetency and a finding of incapacity to vote are separate determinations with different legal standards—and a form created only after the incompetency finding cannot be "pertinent to" it.
- Practical upshot: the public cannot obtain, from the court custodians who hold them, the documents needed to verify that voter rolls reflect judicial ineligibility determinations.

WHAT HAPPENED

The Wisconsin Voter Alliance sent public-records requests to registers in probate seeking completed Notice of Voting Eligibility ("NVE") forms—the standardized communications a circuit court transmits to election officials and the Elections Commission when it declares a person incompetent to vote or restores that right. Walworth County's register, Kristina Secord, received two requests in 2022, and the Alliance filed this mandamus action. The circuit court held the forms confidential under Wis. Stat. § 54.75; a published decision, *Wisconsin Voter Alliance v. Reynolds*, had held them closed, and the court of appeals, bound by Reynolds, affirmed.

Writing for the Court, Justice Protasiewicz affirmed, 5–2. NVE forms "have some connection" to the guardianship incompetency finding: they are created in the same Chapter 54 case, carry its caption and "GN" number, and communicate a finding made in the same hearing on similar evidence. Read against Chapter 54's confidentiality architecture—closed hearings under § 54.44(5), and § 54.75's limit allowing even a person with a demonstrated "need" to learn only the fact of incompetency and the guardian's contact information—the forms are "court records pertinent to the finding of incompetency" and therefore closed, notwithstanding the public-records law's presumption of access, Wis. Stat. § 19.31, which yields to a statutory exception under § 19.36(1). The Court also cleaned up procedure: in public-records mandamus the only question is whether the requester has a right to the records, reviewed de novo—adopting Justice Hagedorn's earlier Secord II framework and discarding the traditional four-element test.

Both opinions claim the textualist high ground; the dissent has the better of the pure text, the majority of context and structure.

- **The majority's work is done less by the enacted word "pertinent" than by a confidentiality purpose harvested from neighboring provisions.**
- **Justice Ziegler, joined by Justice Bradley, dissents on precision and sequence: Chapter 54 draws a hard line between the incompetency finding, § 54.10(3), and the separate incapacity-to-vote finding, § 54.25(2)(c)1.g.; the NVE form does not exist when the incompetency finding is made and is an after-the-fact communication of a different finding the legislature ordered transmitted—and Chapters 51 and 55 show the legislature knew how to close records wholesale when it meant to.**

The mandamus clarification is a real win for future requesters—no damages showing, no purpose inquiry, no alternative-remedy trap—even as the requester who prompted it takes nothing from it.

WHAT'S NEXT

The majority expressly reserved whether NVE forms generated through the standalone voting-eligibility procedure of § 54.25(2)(c)4—a determination made outside any guardianship—are also closed; the Alliance conceded at oral argument that every form it sought here came from a guardianship case. Requests aimed at WEC rather than at registers in probate present a distinct question the Court flagged but did not decide: no party alleged WEC makes the forms themselves public, and a court custodian's confidentiality is unaffected by WEC's treatment of duplicates. The durable fix is legislative—the legislature that mandated transmission of these determinations to election officials could as easily provide for their public accessibility. And expect *Secord* to be cited well beyond election law for its streamlined mandamus standard and de novo review holding.

> *"A court cannot use a document to make a finding if the document does not exist at the time the finding is made."*
>
> - Justice Ziegler dissenting at ¶46

V. Business, Tort & Civil Liability

Estate of Lorbiecki v. Pabst Brewing Co., 2026 WI 12

Safe-Place Liability & the Punitive Cap

OVERVIEW

In *Estate of Lorbiecki v. Pabst Brewing Co.*, 2026 WI 12, a 5-2 Wisconsin Supreme Court held that a property owner could be held liable under Wisconsin's safe-place statute, Wis. Stat. § 101.11, to the employee of an independent contractor who was hired to work with asbestos-insulated pipes—even though the owner did not direct the work and the asbestos was undisturbed until the contractor's own employees disturbed it. The majority further held that the evidence supported submitting punitive damages to the jury. Pabst did win a narrower statutory construction point: the punitive-damages cap in § 895.043(6) is tied to the amount recoverable against the remaining defendant, not the full verdict against non-parties. Justices Ziegler and Bradley dissented.

WHAT YOU SHOULD KNOW

- **The decision expands owner liability under the safe-place statute, moving past the traditional rule that owners are absolved when relinquishing control of safe premises to an independent contractor. See Potter v. City of Kenosha; Barth v. Downey Co.**
- **The majority ruled that the safe-place statute "supersedes" the common-law duty of ordinary care, rejecting the argument that the general rule in Tatera v. FMC Corp. bars an independent contractor's employee's claim.**
- **Juries can infer "control" from routine safety practices, such as Pabst's ownership, daily inspections, and a fire-prevention notification memo for welds or cuts.**
- **An "unsafe condition" can be satisfied by asbestos made airborne by the contractor's own work, prompting the dissent to warn of strict liability for buildings with undisturbed asbestos.**
- **The Dallet concurrence highlights an unresolved appellate question: whether a denied summary-judgment motion is reviewed on the pre-trial record, trial record, or both.**
- **Pabst won a cap on punitive damages, limiting them to twice the compensatory damages actually recoverable against Pabst ($4,657,937.38) rather than the full verdict across all tortfeasors.**

WHAT HAPPENED

The safe-place statute, Wis. Stat. § 101.11(1), imposes a heightened, non-delegable duty on owners of places of employment, extending to "frequenters," including a contractor's employees*, Barth v. Downey Co.* For decades, though, *Potter v. City of Kenosha* and *Barth* held that an owner who relinquishes "complete control and custody" of a safe premises to an independent contractor is not liable when the contractor's own work creates the hazard, and *Tatera v. FMC Corp.* reinforced that a principal employer ordinarily is not liable to a contractor's employee doing the contracted work.

Writing for the majority, the Court substantially narrowed both doctrines. It held Tatera's general rule inapplicable to safe-place claims because the statute "supersedes" the common-law duty of ordinary care; treated the Potter turnover-of-control exception as a jury question rather than a legal bar, finding Pabst could be found to have "retained control" because it owned the brewery, inspected daily, and required notice before welds or cuts; and held that airborne asbestos generated by the contractor's own work is an "unsafe condition associated with the structure," relying on *Neitzke v. Kraft-Phenix Dairies, Inc.* and *Viola v. Wis. Elec. Power Co.* Justice Ziegler, joined by Justice Bradley, dissented, reading Potter and Barth to require a pre-existing unsafe condition and noting that the cases the majority cites all involved asbestos that predated the plaintiff's work.

The most consequential move may be procedural. Wis. Stat. § (Rule) 809.10(4) preserves the right to appeal a denied summary-judgment motion after final judgment, and practitioners understood that denial to get de novo review on the summary-judgment record. The Lorbiecki majority instead evaluated Pabst's challenge on the whole trial record while "express[ing] no view" on whether the federal rule of Ortiz v. Jordan should apply in Wisconsin; Justice Dallet's concurrence, joined by Justice Hagedorn, concedes the question is open and invites the Court to resolve it.

- **The dissent warns this makes denied summary-judgment motions "de facto unreviewable," because a plaintiff who survives on a thin record can cure the defect with trial evidence the defendant never had a chance to test—folding the motion's legal sufficiency into a verdict sufficiency-of-the-evidence review.**

WHAT'S NEXT

The decision leaves owners of older commercial, industrial, and institutional buildings with materially greater safe-place exposure to the employees of the very contractors they hire to remediate the hazard at issue—and it leaves a consequential procedural question open. Because the majority reviewed the denied summary-judgment motion on the full trial record, and because Justice Dallet's concurrence expressly reserves whether post-trial review looks to the pre-trial record, the trial record, or both, defense counsel should now assume that losing summary judgment forecloses the best pre-trial exit and should preserve every legal theory through Rule 805.14 and JNOV motions. Watch for the Court to take up the record-on-review question the concurrence flagged, and for renewed attention to the § 895.043(6) cap, which the Court read to limit only the amount recoverable against the remaining defendant. Expect the plaintiffs' bar to cite *Lorbiecki* to push safe-place claims past summary judgment, and the defense bar to contest "control" and "unsafe condition" aggressively on the evidence.

> *"This case leaves an important question about appeals from the denial of summary judgment unanswered. … should an appellate court rely only on the pre-trial factual record …, only on the evidence admitted at trial, or both?"*
>
> \- Justice Dallet concurring at ¶41

Wren v. Columbia St. Mary's Hospital Milwaukee, Inc., 2026 WI 11

COVID Immunity & the Jury-Trial Right

OVERVIEW

A unanimous Wisconsin Supreme Court has reversed a court of appeals decision that declared the state's COVID-19 health-care immunity statute facially unconstitutional. The Court held that Wis. Stat. § 895.4801—which shields health care providers from civil liability for pandemic-era care—does not violate the jury-trial right in Article I, Section 5 of the Wisconsin Constitution, because Article XIV, Section 13 empowers the legislature to alter or suspend common law causes of action, and where no cause of action exists, no jury right attaches. *Wren v. Columbia St. Mary's Hospital Milwaukee, Inc.*, 2026 WI 11. The case arose from what the Court itself called "heartbreaking circumstances"—a stillbirth during the immunity window—but the constitutional analysis was resolved at the threshold: the Court applied no tier of scrutiny at all, because the right the plaintiff invoked never attached.

WHAT YOU SHOULD KNOW

- The Wisconsin Supreme Court unanimously (7–0) reversed the court of appeals and held that Wis. Stat. § 895.4801, the COVID-19 health-care immunity statute, does not facially violate the constitutional right to trial by jury.
- The analysis is structural, not policy-driven. Article XIV, Section 13 authorizes the legislature to alter or suspend the common law; Article I, Section 5 guarantees a jury only in "cases at law"—causes of action that exist. Once the legislature abrogated the claims, there was no case at law to which a jury right could attach.
- The court of appeals had applied strict scrutiny and found the immunity insufficiently tailored. The Supreme Court held that the scrutiny framework never comes into play: a statute cannot burden a constitutional right that has not attached.
- The holding tracks decades of precedent upholding the Worker's Compensation Act against identical jury-trial challenges—and the Court warned that the court of appeals' logic would have imperiled Good Samaritan, charitable-distribution, recreational-land, and hazardous-substance immunity statutes.
- The case is not over. Review was expressly limited to the jury-trial question. The plaintiff's remaining constitutional challenges—vagueness, due process, right to redress—return to the court of appeals on remand.

WHAT HAPPENED

One month into the COVID-19 emergency, the legislature passed and Governor Evers signed 2019 Wisconsin Act 185, creating Wis. Stat. § 895.4801, which immunizes health-care providers from civil liability for acts or omissions during the emergency and the 60 days after—March 12 through July 11, 2020—so long as care was in good faith or substantially consistent with pandemic guidance, with reckless, wanton, or intentional misconduct carved out. Savannah Wren, whose high-risk pregnancy required close monitoring, was discharged after presenting with symptoms and, returning for a scheduled induction, delivered a stillborn child; she sued in 2023, alleging her providers failed to schedule a timely induction. The circuit court dismissed under § 895.4801; the court of appeals held the statute facially unconstitutional as eliminating a jury trial on the abrogated claims.

The Supreme Court, unanimous through Chief Justice Karofsky, reversed and resolved the case at the threshold. The Article XIV, Section 13 power "includes the power to define and limit causes of action and to abrogate common law on policy grounds," and because § 895.4801 suspended Wren's causes of action she pled no "case at law," so the Article I, Section 5 jury-trial guarantee—which protects how certain claims are tried, not whether the legislature may eliminate them—never attached. The controlling analogy is the Worker's Compensation Act, which abrogated common-law tort claims and survived jury-trial challenges because no jury right attaches to claims that no longer exist. The Court declined the parties' briefing on scrutiny: no level applies to a right never implicated.

- **Sequencing discipline. Before asking whether a statute survives strict scrutiny, a court must ask whether the asserted right attaches at all—threshold-first sequencing that keeps judicial policy assessment out of choices the constitution assigns the legislature. The unanimity is the tell: a Court often described in partisan terms upheld, 7–0, a Republican-drafted, Evers-signed pandemic immunity statute because the method left no room for outcome preferences.**
- **Scope discipline. The Court granted review on one question, decided it, and remanded the rest; Wren's vagueness, due-process, and redress theories remain open, and the opinion neither blesses § 895.4801 against every challenge nor hints at how they come out.**

WHAT'S NEXT

The case returns to the court of appeals for Wren's remaining constitutional challenges, so § 895.4801 is not yet out of the woods—and this dispute could return to the Supreme Court on one of those theories. Watch three things: whether the vagueness and due-process arguments fare any better under the same threshold-first discipline; whether plaintiffs' lawyers shift from facial to as-applied theories, arguing particular care fell outside the statute's good-faith and guidance conditions or amounted to reckless conduct; and whether *Wren* becomes the standard citation for the legislature's Article XIV, Section 13 abrogation power. Expect the defense bar to cite it early and often—and expect future immunity fights to be won or lost on statutory conditions, not the jury clause.

> *"This action arose from heartbreaking circumstances that occurred during the § 895.4801 window of immunity, when Savannah Wren gave birth to a stillborn child at Columbia St. Mary's Hospital."*
>
> - Chief Justice Karofsky for the majority at ¶2

Cincinnati Insurance Co. v. Ropicky, 2026 WI 25

Ensuing Loss & Homeowner Coverage

OVERVIEW

A 4–3 Wisconsin Supreme Court has held that when a construction defect lets rainwater into a home, the resulting water damage is an "ensuing loss" that the policy covers—even though the policy expressly excludes losses "caused by" defective construction. *Cincinnati Insurance Co. v. Ropicky*, 2026 WI 25. Writing for the Court, Justice Brian Hagedorn adopted the 20-year-old court of appeals decision in *Arnold v. Cincinnati Insurance Co.* and declined to join the majority of jurisdictions requiring a new, independent cause of loss. Justice Annette Ziegler, joined by Justices Bradley and Susan Crawford, dissented, warning that the majority reads the exclusion out of the contract and hands Wisconsin homeowners the bill for shoddy homebuilding.

WHAT YOU SHOULD KNOW

» The Court held 4–3 that rainwater entering a home through a construction defect is an **ensuing loss** covered by the policy's Ensuing Loss Exception—not a loss "caused by" the excluded defect.

» The Court adopted *Arnold*, a 2004 court of appeals decision, holding that an ensuing loss need only follow as a "chance, likely, or necessary consequence" of the defect and arise from "a cause in addition to" it. Rain qualifies. No break in the causal chain is required.

» The Court unanimously rejected the court of appeals' reading of the **Fungi** provisions: purchasing Fungi Additional Coverage triggers an *exception* to the Fungi Exclusion; it does not switch the exclusion off entirely.

» Summary judgment for the insurer was reversed. Whether the defect existed, how much loss it caused, and whether fungi was present at all are jury questions. The bad-faith claim is reinstated on remand.

» The dissent's warning is economic: if insurers must cover the foreseeable elemental damage that flows from defective construction, the cost lands on Wisconsin policyholders rather than on the builder who caused it.

WHAT HAPPENED

James Ropicky woke during a 2018 storm to rainwater streaming through his great-room wall. Cincinnati's engineer traced the water to a one-inch "gutter gap" and other defects present since the 2005 build, paid $2,138.53 in repairs and the $10,000 fungi limit, then denied the rest under the Construction Defect and Fungi Exclusions; Ropicky, claiming more than $1 million, countersued for breach and bad faith. The record was contested at nearly every point—the engineer did no diagnostic testing on first inspection, could not fix the gap's pre-removal width, and bagged demolition-dumpster samples wet for months—but the circuit court granted Cincinnati summary judgment and the court of appeals reversed.

The Supreme Court affirmed the reversal and resolved two questions. First, rainwater flowing in through a construction defect is an ensuing loss, so the exception reinstates coverage for the resulting damage even though the cost of fixing the defect stays excluded. Second, the Fungi Additional Coverage operates as an exception to the Fungi Exclusion—adopting Judge Neubauer's reading below and rejecting the view that buying the coverage nullifies the exclusion. On remand a jury must decide whether the defect exists, what damage it caused, and whether fungi was present at all. Wisconsin's only prior authority, *Arnold* (Ct. App.

2004), required an ensuing loss to follow as a "chance, likely, or necessary consequence" from "a cause in addition to the excluded cause"; the majority read Arnold as adopting the broad, dictionary sense of "ensue" and reaffirmed it, while the dissent read "in addition to" to require a second, independent causal event and would have joined the national majority.

- **A textualist argument on both sides. The majority defines "ensue" from Webster's Third; the dissent reads the clause against the exclusion it modifies, and has the better of it—the majority never supplies a workable line between a loss "caused by" a defect (excluded) and one "ensuing from" it (covered), so the exclusion shrinks to the cost of repairing the defect itself.**
- **Quasi-stare decisis. Conceding under Evers v. Marklein that it owes the court of appeals no stare decisis deference, the majority nonetheless gave Arnold "some prudentially grounded respect" because insurers draft against settled meaning—a real reliance rationale, but a new, ill-defined middle category between binding and persuasive authority that litigants will test.**

The alignment resists a partisan read: Justice Hagedorn wrote for a majority including the Chief and Justices Dallet and Protasiewicz, while Justice Crawford joined Justice Ziegler's dissent with Justice Bradley. Methodology, not coalition, drove the case.

WHAT'S NEXT

The immediate consequence is a trial in Waukesha County on defect, causation, fungi, and—now reinstated—bad faith. The broader consequence is contractual. The majority's answer to the dissent is that insurers unhappy with this coverage can write clearer policies going forward. That is a real answer, and it is where the action will move: expect revised ensuing-loss language in Wisconsin homeowner forms, drafted to require an independent cause of loss in terms the Court cannot read past. Whether that language gets approved, priced, and litigated is the story to watch.

The dissent predicts insurance costs will "skyrocket"; the majority calls that unlikely, given that *Arnold* has been on the books for 20 years. Both cannot be right, and the honest answer is that *Arnold* bound only the court of appeals—this is the first time the Supreme Court has spoken. Court Watch will track filed-rate activity and any legislative response. Also worth watching: the first case to press the Court on what "prudentially grounded respect" for court of appeals precedent actually requires..

> *"The unfortunate reality is that Wisconsin homeowners now may see their insurance costs skyrocket as coverage is expanded to encompass the homebuilder's faulty workmanship."*
>
> \- Justice Ziegler dissenting at ¶91

Racine County v. R.P.L., 2026 WI 26

Protective Placement & Mootness

OVERVIEW

A fractured Wisconsin Supreme Court has affirmed the continued protective placement of a 65-year-old Racine man—call him Robert, as the Court does—who was removed from the home he had lived in for 40 years, placed in an adult family home against his will, and had that home sold to pay for the placement he did not want. *Racine County v. R.P.L.*, 2026 WI 26. The Court split 4–3 on the merits and produced four separate writings. The real fight is not about Robert's diagnosis. It is about who decides—the circuit judge who heard the evidence, or the appellate court reviewing a paper record—and whether the Court did what it said it was doing.

WHAT YOU SHOULD KNOW

- By a 4–3 vote, the Court held the evidence sufficient to continue Robert's protective placement under Wis. Stat. § 55.08(1). Justice Crawford wrote; the Chief Justice and Justices Ziegler and Hagedorn joined. Justices Bradley, Dallet, and Protasiewicz each dissented.
- The Court held the appeal was **not moot** even though a later placement order superseded the one on appeal: statutory liability for the cost of care is a collateral consequence. Counties should expect more merits review, not less.
- **Justice Hagedorn's concurrence is the durable piece.** He argues the "mixed" standard of review—clear error on facts, de novo on the legal conclusion—collapses in Chapter 55, because every statutory element is at bottom a medical fact question. He invites the Court to adopt clear-error review in a future case, and to revisit Chapter 51.
- **Justice Protasiewicz's dissent lands the sharpest blow:** the majority recites the mixed standard, then does clear-error work and calls it de novo. If the standard is changing, the bench and bar deserve to be told.
- The County's only witness was the court-appointed expert, who testified he could not predict whether Robert's impairments were permanent—the very element the County had to prove by clear and convincing evidence.

WHAT HAPPENED

After a 2023 fall, Robert was placed under guardianship and protective placement and moved to an adult family home; his house was sold over his objection to fund his care. At his 2024 review he received adversary counsel, an independent evaluation, and a full hearing, but not a return home. The County's single witness, court-appointed psychologist Dr. Braam, described a post-stroke neurocognitive disorder requiring 24-hour supervision—but also testified that speech and communication training could be "extremely helpful" and reduce the need for guardianship, that Robert had regained independent functioning once before, and, asked whether his impairments were likely permanent, that he could not predict. The County never provided the therapy.

The Supreme Court affirmed. It first held the appeal not moot: because Wis. Stat. § 46.10(2) makes a protectively placed person liable for care costs, that liability is a collateral consequence surviving the order's expiration—extending *Sauk County v. S.A.M.* from Chapter 51 to Chapter 55. On the merits it upheld the circuit court's findings as not clearly erroneous and concluded that, "in light of" them, the evidence satisfied the dangerousness and permanence elements of § 55.08(1). Chapter 55 permits placement only on four elements proved by clear and convincing evidence and directs the least restriction on liberty, § 55.001. The Court left unresolved the standard of appellate review—the court of appeals' "mixed" standard from *Walworth County v. Therese B.*—declining the Wisconsin Counties Association's request to adopt clear-error review because the parties had not raised it.

- » **Read the concurrence. Justice Hagedorn (joined by Justice Crawford, who also wrote the majority) argues a standard of review allocates decisional power between institutions; building on *State v. Garfoot* and this term's *State v. J.D.B.*, he contends the § 55.08 elements are medically rooted and credibility-dependent, so the legal and factual questions collapse into one the trial judge is better positioned to make. Court Watch expects the question tested within a term or two.**

- » **The candor problem is the majority's. Justice Protasiewicz's dissent is not a quarrel with the facts: the majority announces the mixed standard, conducts a searching clear-error review, then declares its de novo review complete "in light of" the findings it just upheld. If four justices think the de novo step does no work, the Court should change the standard openly, not drain it while professing to apply it.**

- » **Burden fidelity cuts against the County, which carried a clear-and-convincing burden on permanence yet offered one witness who could not predict permanence and named therapies it never provided. Justice Bradley's dissent presses the point: the State took a man's liberty and then his house on a thin record, and deference cannot manufacture evidence the proponent never introduced.**

WHAT'S NEXT

Three things to watch. First, the standard-of-review question is now openly on the table with an invitation from two justices and an amicus already on file; the next Chapter 55 or Chapter 51 petition raising it squarely is likely to be granted. Second, the mootness holding matters for counties: cost-of-care liability under § 46.10(2) will keep expired placement orders reviewable, which means more merits appeals and more scrutiny of annual-review records. Third, the practical lesson for county corporation counsel is evidentiary—one court-appointed expert who cannot speak to permanence is a thin record for a deprivation this severe, and three justices were prepared to say so. For the Legislature, there is a cleaner question buried here: if the elements of § 55.08(1) are really factual determinations, the Legislature can say what standard of review governs them, as it has done for administrative decisions in § 227.57. It should not take another splintered decision for the point to be made.

> *"This mismatch between what the majority says it is doing and what it actually does will, I fear, needlessly inject confusion into our protective placement jurisprudence."*
>
> - Justice Protasiewicz dissenting at ¶81

Brekke v. Midwest Medical Insurance Co., 2026 WI 29

Answering More Than Was Asked: The Court's Scope Problem in Brekke

OVERVIEW

The court of appeals certified one question to the Wisconsin Supreme Court: is an unborn child a "patient" under Wisconsin's informed-consent statute, Wis. Stat. § 448.30? All seven justices answered yes. That should have been the end of it. Instead, a four-justice majority treated the certification as a jurisdictional key to the entire appeal and resolved at least six additional questions the parties never briefed to this Court—when the claim vests, who exercises consent, whether the surrogate must be joined, how causation is measured, and whose rights prevail when duties conflict. *Charlie May Brekke v. Midwest Medical Insurance Co.*, 2026 WI 29. Three separate writings said so. Justice Hagedorn, concurring in the judgment only, called portions of the majority "classic dicta" and warned the loose language could lead future litigants astray. The result is a unanimous holding wrapped inside an opinion so expansive that no one can say with confidence where the holding ends and the commentary begins.

WHAT YOU SHOULD KNOW

- The Court held that Charlie Brekke was a "patient" before her birth, that her physician owed a duty to obtain informed consent from her surrogate on her behalf, and that—having been born alive—she may pursue that claim independently. Partial summary judgment reversed; remanded.
- On the certified question, the Court was **unanimous**. Every justice agreed a treated unborn child is a "patient." The division is entirely about how much *else* the majority decided.
- The majority's best work is textual: § 448.30(6) cannot excuse disclosure whenever a patient is "incapable of consenting," or the exception would swallow the rule for every minor and every incapacitated adult.
- The majority frames the interpretive task through the 2025 *SEIU v. WERC* formulation—"all relevant intrinsic sources," statutory history among them—continuing a quiet drift from text-first sequencing.
- Justices Hagedorn, Ziegler, and Bradley each faulted the majority for deciding issues not presented—including a surrogacy rule announced without reading the surrogacy contract.
- The majority conditioned Charlie's *claim* on being "born alive." Nothing in § 448.30 says so. Justice Bradley argues the limitation is imported from *Roe*-era precedent that *Dobbs* unsettled—and that it may extinguish the parents' wrongful-death claim when the child does not survive.

WHAT HAPPENED

Charlie Brekke was born in 2015 via a surrogate, Samantha, who had gestational diabetes—a known risk of unusually large babies. Charlie weighed 11 pounds, 5 ounces; during a vaginal delivery she suffered shoulder dystocia and a brachial-plexus injury leaving her permanently disabled. Through a guardian ad litem she sued the delivering physician for negligence and failure to obtain informed consent, alleging he never disclosed the risk or offered a cesarean. The physician moved for partial summary judgment on one ground: under Wis. Stat. § 448.30 he owed informed-consent duties to Samantha alone, and Charlie—unborn at the time—was owed nothing. The circuit court dismissed that claim; the jury found no negligence; and the court of appeals certified the patient question.

Chief Justice Karofsky, for four justices, reversed. Charlie was a patient because the physician was in fact treating her, and neither statutory exception applied categorically to minors; the duty ran to Samantha as Charlie's medical decisionmaker but was owed to Charlie, so her claim is not derivative and does not require Samantha's joinder. The Court rejected a "reasonable baby" causation theory: the question is what a reasonable person in the decisionmaker's position would have done if informed. A certification operates as a

bypass under Wis. Stat. § 808.05, giving the Court the whole appeal—but the majority conceded the certified question is answerable on § 448.30's terms alone, so everything past the text was elective.
This is a scope-discipline case with a methodology problem underneath it.

- **The vanishing *Kalal* framework. The majority opens by quoting *SEIU Healthcare Wisconsin v. WERC* for a "full consideration of all relevant intrinsic sources," including statutory history—the second opinion this term to recite that formulation without acknowledging that *Kalal* sequences those sources, text first. The textual craft is real (the "a patient" versus "the patient" distinction in § 448.30(2); *Fuchsgruber*'s clear-statement rule against silent abrogation), but a framework never named cannot discipline the next case.**

- **The canon asymmetry. Justice Bradley lands a clean hit: the majority borrows definitions from §§ 146.81 and 153.01 to define "patient" yet refuses to consult the Statutes' definitions of "unborn child" because they say "in this section" and "in this chapter." The two moves are in fact distinguishable—an express textual limitation is a real constraint, while the borrowed statutes were used as evidence of ordinary usage—but the majority never draws the distinction, and its silence is what makes the charge stick.**

- **The contract nobody read, and the personhood fight the majority started. Charlie exists because of a parentage agreement that expressly allocated medical decision-making, yet the majority announced—for all cases—that "the pregnant patient is always responsible for making medical decisions for an unborn child," without citing the contract, briefing it, or reconciling *Rosecky*, which held surrogacy agreements enforceable. Seven justices agreed a treated unborn child is a patient; the majority then added, drawing on *Kruzicki* and *Vandervelden*, that Charlie's claim vested only because she was "born alive"—a limitation nowhere in the statute and never briefed. Justice Bradley's structural objection deserves a straight answer: a wrongful-death action under § 895.03 is derivative, so a live-birth condition could leave the parents of a child who dies with no claim—the physician who informs no one faces liability if the child lives and none if it dies. The reassurance that the holding "means nothing" is the dicta; the holding—an unborn child in treatment is a patient whose consent, through the mother, governs—is the law.**

WHAT'S NEXT

The holding is narrow: an in utero patient's live-born child can sue independently for failure to inform her decision-maker. The rest is confusing dicta. Under the Wisconsin *Justice Initiative*, litigants will contest which paragraphs of the 54-paragraph majority are binding. The broad "always the decision-maker" rule—declared despite un-isolated statutory exceptions—will likely face immediate challenges from fathers, guardians, or Chapter 48 cases. On remand, the circuit court must address a causation inquiry predefined by the Supreme Court, despite neither party requesting it.

> *"Some members of the court are afraid of their own shadow, supposing the correct ruling in this case may have downstream effects on abortion law . . . The majority's disclaimer is punctuated by the flashing neon adverb 'Importantly.' It's almost as if the majority is worried that law and logic will operate as a dangerous undercurrent that might accidentally lead to dignifying unborn children too much."*
>
> \- Justice Hagedorn concurring at ¶59

VI. Government Operations

Wisconsin State Legislature v. Kaul, 2026 WI 28

Deposit is not Credit

OVERVIEW

The Wisconsin Supreme Court held that the attorney general complies with Wis. Stat. § 165.10 when he deposits uncommitted settlement funds into the general fund—even if he then credits those same dollars to a Department of Justice appropriation he controls. The statute commands a deposit; it says nothing about crediting, and the Court would not read in a restriction the legislature omitted. *Wisconsin State Legislature v. Kaul*, 2026 WI 28. That much is ordinary textualism.

What follows is not. The Court itself added a second question—whether DOJ's litigation work yields "proceeds from services" under § 20.455(3)(g), the appropriation where attorneys general have parked tens of millions of dollars—then briefed it, argued it, and dismissed it as improvidently granted. The dispute that brought these parties to court is left exactly where it started.

WHAT YOU SHOULD KNOW

» Five justices reversed the court of appeals in relevant part; Justices Bradley and Ziegler would have affirmed. In the budget statutes, "deposit" and "credit" are different acts—and § 165.10 commands only the first.

» Notice what is *not* in dispute: every justice who reached the point agrees § 165.10 speaks to deposit alone. The case actually turns on § 20.906(1)'s default crediting rule—which the majority expressly declined to interpret.

» The Court added the second issue on its own motion, took briefing and argument on it—then dismissed it as improvidently granted. Justice Hagedorn is "unaware of this court dismissing an issue as improvidently granted."

» He also says the Court is not actually divided on that issue—only on how to style a mandate that changes nothing for the parties. "The parties deserve better, and so does Wisconsin."

» On the dissent's account of the record, DOJ credited nearly $33 million of settlement money to accounts under its own control—including an "Attorney General—Discretionary" account the legislature never created.

WHAT HAPPENED

For decades, attorneys general of both parties deposited "uncommitted" multistate-settlement money in the general fund and credited it to the Department of Justice's own "gifts, grants and proceeds" appropriation, Wis. Stat. § 20.455(3)(g), where the DOJ could spend it. In 2017 Act 59 created § 165.10, requiring a spending plan to the Joint Committee on Finance; fifteen months later Act 369 replaced it with one sentence—"The attorney general shall deposit all settlement funds into the general fund"—capped § 20.455(3)(g), and lapsed its unencumbered balance. After Attorney General Josh Kaul took office, the Legislature sued for a declaration that § 165.10 requires the funds to land in general purpose revenues; the court of appeals so held, and the Supreme Court granted review, adding a question of its own about "proceeds from services" under § 20.455(3)(g).

Writing for the Court, Justice Dallet reversed in relevant part. The budget statutes use "deposit" and "credit" to mean different things—to deposit is to place money into a fund; to credit is to direct money already in the general fund to a part of it—and § 165.10 speaks only of deposit. Because the general fund holds both general purpose and program revenues, money credited to a program appropriation is still in the general fund, so the attorney general complies; the Court "will not read into a statute language that it does not contain or reasonably imply." Then it stopped: on the "proceeds from services" question it had added, the Court declared itself "too divided to reach a majority mandate," dismissed the issue as improvidently granted, and reserved any view on § 20.906(1).

» **Justice Hagedorn, concurring in part and dissenting in part, agrees the court of appeals misread § 165.10 but objects to the dismissal: the Court is declining to decide an issue briefed, argued, and central to the dispute, and it is not actually divided on § 20.455(3)(g)'s meaning—only on how to style the mandate—so the parties get no clarity.**

» **Justice Bradley, dissenting, joined by Justice Ziegler as to ¶¶30–87, would affirm: § 165.10 requires deposit of all settlement funds, § 20.906(1) then requires them credited to general purpose revenues unless a statute "specifically" provides otherwise, and the only one that does—§ 20.455(1)(gh)—does not reach these funds. The associated-words canon confines "proceeds from services" to voluntary transactions, and Act 369, which capped the appropriation and lapsed its balance, did not silently authorize the practice it was dismantling. Justice Ziegler joined the analysis but not the preliminary statement accusing the majority of deceiving the public—a core that is stronger for standing alone.**

For anyone tempted to read this as a simple partisan loss, resist: on the question it answered, the majority did what textualists ask—it refused to add words the legislature omitted. The failure is that the Court declined to read the statutes that mattered.

WHAT'S NEXT

The underlying dispute remains unresolved. The attorney general's practice continues, the court of appeals' contrary judgment is vacated, and key provisions—§ 20.906(1)'s default crediting rule and § 20.455(3)(g)'s "proceeds from services"—remain uninterpreted. Dismissing the added issue left lower courts without a holding and the department without a rule to follow. The legislature's remaining options are legislative. It can amend § 165.10 to explicitly address crediting, amend § 20.455(3)(g) to clarify its meaning, or bring the § 20.906(1) question back in a new complaint seeking a clear declaration to cure the identified pleading gap. The procedural shift warrants tracking. By dismissing a single issue rather than an entire case as improvidently granted, the Court has adopted a new mechanism to evade merits questions post-argument. IRG Court Watch will monitor this trend.

> *"If an attorney makes a false statement of fact or law, she may be sanctioned … Unfortunately, supreme court justices can deceive the People of Wisconsin with impunity. Reaching an opinion favorable to Democratic Attorney General Josh Kaul (who faces a contested election in November), the majority dodges the issue we asked the parties to brief …"*
>
> - Justice Bradley dissenting at ¶26

Appendix A - *2026 Opinion Index*

Every merits opinion of the 2026 term. Lead author listed first; concurrences noted in the holding cell.

Case & Citation	Vote	Majority	Dissent	Key Holding
I. Method & the Rule of Law				
Koble Investments v. Marquardt 2026 WI 19	7–0	Bradley (unanimous)	—	The Consumer Act (§ 427.104) does not reach a monthly residential lease; no "deferred payment," and no proven loss, so no fees. Bradley/Ziegler concurrence would go further; Crawford concurs on standing.
State v. N.K.B. 2026 WI 22	6–1	Dallet (Karofsky, Hagedorn, Protasiewicz, Crawford; Bradley concurs in judgment)	Ziegler	§ 51.61(1)(g)3. does not authorize dangerousness-based involuntary medication of a § 971.14-only committee. Bradley's concurrence is a textualism-vs-statutory-history fight.
Wisconsin State Legislature v. Kaul 2026 WI 28	5–2; issue 2 DIG	Dallet (Karofsky, C.J., Protasiewicz, Crawford); Hagedorn concurs in part / dissents in part	Bradley (w/Ziegler, ¶¶30–87)	AG complies with § 165.10 by depositing uncommitted settlement funds into the general fund even when he also credits them to a DOJ program appropriation — "deposit" ≠ "credit," and § 165.10 is silent on crediting; court of appeals reversed in part. The second issue—whether DOJ litigation "proceeds from services" under § 20.455(3)(g) reaches settlement funds — is dismissed as improvidently granted for want of a majority mandate. Hagedorn concurs on § 165.10 but dissents from the dismissal, urging that a majority actually agrees on § 20.455(3)(g). Bradley (w/ Ziegler) would affirm: § 20.906(1)'s default rule requires crediting settlement funds to the general purpose revenues of the general fund, and § 20.455(3)(g) is no exception.
II. Education & Equal Protection				
Rabiebna v. HEAB 2026 WI 20	Unan. judg./4–3	Ziegler (Bradley, Hagedorn, Protasiewicz; Karofsky, Dallet & Crawford concur in result)	— (unanimous in judgment)	The § 39.44 minority grant program fails strict scrutiny under *SFFA*; taxpayer standing reaffirmed 7–0.
III. Property, Sovereignty & the Tax Base				
Legend Lake POA v. Keshena 2026 WI 21	4–3	Crawford (Karofsky, Dallet, Protasiewicz)	Bradley (w/Ziegler); Hagedorn (w/ Ziegler, Bradley)	Tribal sovereign immunity bars enforcing restrictive covenants on trust land; the immovable-property exception categorically does not reach tribes.
IV. Elections & Transparency				
Wisconsin Voter Alliance v. Secord 2026 WI 27	5–2	Protasiewicz (Karofsky, Dallet, Hagedorn, Crawford)	Ziegler (w/Bradley)	Completed NVE forms in a register of probate are "closed" court records under § 54.75; adopts Hagedorn's streamlined mandamus framework.
V. Business, Tort & Civil Liability				
Estate of Lorbiecki v. Pabst 2026 WI 12	5–2	Dallet concurrence, joined by Hagedorn)	Ziegler (w/Bradley)	Affirmed safe-place liability and punitive award; the § 895.043(6) cap applies only to the amount recoverable against the defendant.
Wren v. Columbia St. Mary's 2026 WI 11	7–0	Karofsky, C.J. (unanimous)	—	The COVID-19 immunity statute does not facially violate the jury-trial right; it abrogated the common-law claim, so no "case at law" arose.

Cincinnati Insurance Co. v. Ropicky 2026 WI 25	**4–3**	Hagedorn (Karofsky, Dallet, Protasiewicz)	Ziegler (w/ Bradley, Crawford)	Rainwater intrusion via a construction defect is a covered "ensuing loss"; Fungi coverage caps at $10,000; bad-faith claim reinstated.
Racine County v. R.P.L. 2026 WI 26	**4–3**	Crawford (Karofsky, Ziegler, Hagedorn)	Bradley; Dallet; Protasiewicz (w/ Dallet)	A Ch. 55 protective-placement appeal is not moot (§ 46.10 cost-of-care is a collateral consequence); evidence sufficient on dangerousness and permanence.
Brekke v. Midwest Medical Insurance Co. 2026 WI 29	**Unan. judg./4–3**	Karofsky, C.J. (Dallet, Protasiewicz, Crawford); Hagedorn concurs in judgment; Crawford concurrence (w/ Karofsky)	Ziegler (in part); Bradley (in part)	An unborn child who receives medical care in utero is a "patient" under § 448.30; the physician owed a duty to obtain informed consent from surrogate Samantha on both her own and Charlie's behalf; because Charlie was born alive, she has an independent, non-derivative informed-consent claim. Partial summary judgment for the defense reversed; remanded. The court is unanimous that such a child is a patient who may sue; the split is over scope—Hagedorn (concurring in judgment), Ziegler, and Bradley say the majority reached beyond the certified question, and Bradley separately rejects the "born alive" limitation.
VI. Criminal & Procedural				
[*State v. Gasper*] 2026 WI 3	**5–2**	Ziegler (Karofsky, Bradley, Hagedorn, Protasiewicz)	Crawford (part Dallet)	Viewing CSAM flagged by a private hash-match scan did not exceed the private search; no Fourth Amendment violation.
[*State v. Rauch Sharak*] 2026 WI 4	**7–0**	Protasiewicz (unanimous)	—	Google acted as a private actor, not a government agent; the later warrantless viewing was permissible under the private-search doctrine.
[*State v. J.D.B.*] 2026 WI 5	**6–1**	Hagedorn (Karofsky, Ziegler, Bradley, Dallet, Protasiewicz)	Crawford	Upheld a *Sell* involuntary-medication order; overruled Green's mandatory evidentiary checklist.
[*Gudex v. Franklin Collection Serv.*] 2026 WI 6	**6–1**	Hagedorn (Dallet concurrence w/ Karofsky, Protasiewicz)	Crawford	§ 426.110(4)(c) lets a Consumer Act defendant bar a damages class action by curing the named plaintiff's claim.
[*State v. K.R.C.*] 2026 WI 10	**7-0**	Protasiewicz (Karofsky, C.J., Dallet, Crawford)	Hagedorn concurrence w/ Bradley & Ziegler	A 12-year old questioned by police at school was in custody for purposes of *Miranda*; his unwarned statements should have been suppressed but admission was harmless.
[*Sheboygan County v. N.A.L.*] 2026 WI 16	**7–0**	Karofsky, C.J. (Bradley, Dallet, Protasiewicz concurrences)	—	No colloquy is constitutionally required before a Ch. 51 stipulation; Ch. 51's protections supply the process due.
[*Outagamie County v. M.J.B.*] 2026 WI 23	**7–0**	Crawford (unanimous)	—	A missed 48-hour report-access deadline (§ 51.20(10)(b)) does not strip competency; reviewed for harmless error—harmless here.
[*Waukesha County v. R.D.T.*] 2026 WI 24	**5–2**	Dallet (Karofsky, Hagedorn, Protasiewicz, Crawford)	Ziegler (w/ Bradley)	An appeal of an expired Ch. 51 recommitment order is not moot—vacating it would practically affect two collateral consequences (§ 46.10(2) cost-of-care liability and firearm-rights restoration).

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