INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

SPRING REPORT

12 WAYS THE WISCONSIN SUPREME COURT WILL IMPACT WISCONSIN GOVERNMENT, POLICY, AND ITS PEOPLE

COURT WATCH SPRING REPORT

Executive Summary

Why Every Conservative in Wisconsin Needs to Understand State Courts

Most people think of politics as what happens in the Legislature or the Governor's office. But there is a third branch of government that shapes your daily life just as powerfully—and it operates almost entirely out of the spotlight. The Wisconsin Supreme Court decides who controls your school choices, what your property taxes will be, whether your vote is protected, and how much power unelected government bureaucrats have over your business and your family.

Right now, a liberal majority controls the Wisconsin Supreme Court—and it is using that power aggressively. It has already reversed settled law on elections and weakened the Legislature's ability to check the Governor's bureaucracy. The stakes could not be higher.

The Institute for Reforming Government's Court Watch Spring Report breaks down twelve critical issue areas where judicial philosophy—meaning, how judges decide what the law means—has a direct, real-world impact on Wisconsin families, taxpayers, businesses, and communities of faith.

What Is at Stake

When liberal activist judges seize control of the Wisconsin Supreme Court, here is what Wisconsin conservatives stand to lose:

Your Tax Bill	$16.8 billion in savings from Act 10 could be wiped out by a single court decision, threatening property tax hikes for every Wisconsin homeowner.
Your Child's School	Nearly 59,000 children in the School Choice program depend on the Court honoring 30 years of legal precedent—a liberal majority could end that program overnight.
Your Vote	The current liberal majority has already reversed settled election law on ballot drop boxes and redistricting. Voter ID and absentee ballot security remain at risk.
Your Gun Rights	458,000 Wisconsin concealed carry holders and hundreds of thousands of hunters and anglers could see their rights restricted by activist judges.
Your Faith and Family	Cases involving parental rights, religious liberty, and faith-based organizations are already on the Court's docket—with a majority that has ruled against Catholic Charities.
Your Business	Walker-era tort reforms that made Wisconsin a top-ten state for business could be dismantled through litigation rather than through the legislative process.
Your State Government	Unelected Madison bureaucrats at agencies like the DNR and Department of Revenue need a Court that keeps their power in check—not one that expands it.

The Bottom Line

State courts are where conservative policy victories are won or lost. The Legislature can pass the right laws. The Governor can sign them. But if the Wisconsin Supreme Court is controlled by liberal activist judges, those victories can be erased without a single vote being cast by the people. Act 10—passed by the Legislature and signed by the Governor—is one court decision away from being wiped out. School Choice—backed by thirty years of precedent—could be ruled unconstitutional by a majority that has already shown it will reverse settled law to advance a left-wing agenda.

The IRG Court Watch initiative exists to make judicial power visible, understandable, and accountable. The twelve primers in this Report are your resource for understanding what is happening on the Wisconsin Supreme Court—and what you can do to ensure it remains a court of law, not a court of politics.

Institute for Reforming Government | ReformingGovernment.org | Info@ReformingGovernment.org
PO Box 180291, Delafield, WI 53018 | @ReformingGovt

IRG COURT WATCH

INSTITUTE FOR REFORMING GOVERNMENT

TABLE OF CONTENTS

For further information on critical opinions released last term, *see* the Institute for Reforming Government's Wisconsin Supreme Court Term in Review 2025.

Introduction

Why Courts Matter for Everything That Matters

The Wisconsin Supreme Court shapes the lives of every resident of the state. Its decisions determine how elections are administered, how taxes are levied, whether businesses can plan for the future, and how families and faith communities relate to government. Yet for most citizens, the judiciary remains the least understood branch of government—and the least scrutinized.

The Institute for Reforming Government launched its Court Watch initiative to change that. Court Watch is built on a simple premise: judicial power is among the most consequential forms of government authority, yet among the least visible. While legislative debates play out in public and executive actions face constant media attention, judicial decisions often operate quietly—reshaping policy, overturning precedent, and reallocating power with little scrutiny and few opportunities for correction.

This collection of primers applies the Court Watch framework across the full range of issues where judicial philosophy has the greatest cumulative impact. The materials examine how judges understand their own role—whether they see themselves as interpreters of law or architects of policy. They explore how courts function as referees between the political branches, particularly when executive agencies exceed their statutory authority. They demonstrate how judicial treatment of precedent and statutory limits directly affects taxpayers, employers, and local governments. They evaluate how election-law decisions shape the rules of democratic participation itself. And they consider how judicial power reaches beyond government into the institutions that sustain civil society—families, religious organizations, and voluntary associations.

Across these domains, a consistent theme emerges: judicial philosophy is not an abstraction. A court's approach in one area carries over into others. A judiciary willing to abandon precedent in election disputes will not hesitate to revisit settled economic reforms. A court that defers excessively to administrative agencies will struggle to protect civil liberties when they conflict with bureaucratic preference. Over time, doctrinal shifts compound, reshaping governance in ways that are difficult to reverse.

The purpose of this project is not to tell readers what to think about any particular controversy. It is to make judicial power visible, intelligible, and accountable. Courts derive their legitimacy not from popularity or alignment with favored outcomes, but from adherence to law, fidelity to precedent, and respect for institutional boundaries.

The primers that follow invite readers to look beyond individual cases and ask the more fundamental question: Is the Wisconsin Supreme Court acting as a court—or as something else entirely? Answering that question is essential to preserving constitutional government in Wisconsin.

TEXT, HISTORY, AND TRADITION VERSUS VALUES AND FEELINGS

OVERVIEW

A judge's job is to apply the law to the facts, no more and no less. Oftentimes judges are called upon to interpret the laws, whether as provisions of the constitution, statutes, or regulations. Some constitutional provisions in particular reflect broad principles–"due process," "free exercise," "cruel and unusual." How is a judge to decide on the meaning of these phrases? Some judges rely on text, history, and tradition. Other judges rely on their personal "values" and beliefs about public policy.

WHAT YOU SHOULD KNOW

From 2005-2008, the Wisconsin Supreme Court went on a bender of judicial activism. Here's how former Wisconsin Supreme Court Justice Diane Sykes described it in a speech at Marquette University Law School:

> Together, these five cases mark a dramatic shift in the court's jurisprudence, departing from some familiar and long-accepted principles that normally operate as constraints on the court's use of its power: the presumption that statutes are constitutional, judicial deference to legislative policy choices, respect for precedent and authoritative sources of legal interpretation, and the prudential institutional caution that counsels against imposing broad-brush judicial solutions to difficult social problems. I will concede (as I must) that a court of last resort has the power to throw off these constraints, revise the rules of decision, and set the law on a new course. But when it does so, we ought to sit up and take notice, and question whether that power has been exercised judiciously....
>
> The Wisconsin Supreme Court has enormous influence over the legal order and the political, social, and economic future of this state. These cases from the last term reflect a court quite willing to aggressively assert itself to implement the statewide public policies it deems to be most desirable. The court is loosening the usual constraints on the use of its power, freeing itself to move the law essentially as a legislature would, except that its decisions are for the most part not susceptible of political correction as the legislature's would be.

In her first paragraph, Judge Sykes defines the principles of good judging: a presumption of deference to elected policy makers, respect for precedent, and judicial humility when approaching difficult social problems. The Wisconsin Supreme Court abandoned those principles in that period from 2005-2008, and we are perched on the precipice of a return to that attitude.

WHAT COULD HAPPEN

The Court will soon consider 2011 Act 10, which will expose whether respect for precedent and the legislature's policy decisions will be preempted by the majority's "values" and policy preferences. The Wisconsin Supreme Court has already upheld Act 10, and the U.S. Court of Appeals has rejected this exact same argument about equal protection. Moreover, the Wisconsin Supreme Court recently reiterated in *AMB v. Circuit Court for Ashland County* the limits of its power when applying "rational basis" scrutiny, the lowest version of judicial review for an act of the legislature. Will it stick with that deference to the legislature's policy choices in the Act 10 case?

LEGAL BACKGROUND

As IRG adjunct fellow Daniel Suhr wrote last year in the Wisconsin State Journal, retiring Justice Ann Walsh Bradley was historically a strong respecter of precedent:

In *State v. Lindell* (2001), she railed against the majority for overturning a case that she herself had dissented on when it was originally considered. "I happen to be among those who believe *Ramos* was wrongly decided. . . . However, despite my disagreement, because of the many and consistent affirmations of Ramos by this court I eventually had to acknowledge it as valid precedent." When given the opportunity to overturn *Ramos*, then, she declined it, "[o]ut of respect for the law and this court as an institution."

More recently, in State v. Prado (2021), she wrote, "Stare decisis, the principle that courts must stand by things decided, is fundamental to the rule of law. Any departure from stare decisis requires special justification." Whatever is sufficient under that standard, one thing clearly fails it: "The decision to overturn a prior case must not be undertaken merely because the composition of the court has changed."

Unfortunately, Justice Bradley abandoned that respect for precedent when she considered the ballot drop box and redistricting decisions last year. The replacement of retiring justice Pat Roggensack by Janet Protesawicz was nothing more than a change in the composition of the Court, yet that principle did not stop the new majority (including Ann Walsh Bradley) from overturning those two cases.

ZOOM IN

When judges follow the text, history, and tradition, they are tied down to concrete, objective principles that limit their discretion and force them to respect their appropriate role, which includes respecting the role of the governor and legislature to make policy choices as the political branches.

INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

PLAYING POLITICS IN THE LEAST POLITICAL BRANCH

OVERVIEW

Judges are elected on a non-partisan basis, and historically the judiciary has kept its distance from party politics. The liberal majority has tossed much of that legacy overboard with an aggressive agenda to remake the courts in line with its ideology and silence conservative voices.

WHAT YOU SHOULD KNOW

- Judges wear black robes, not red or blue jerseys for a particular political team. Even though many come to the bench from a career in public service, including past elected offices, their job is to follow and apply the law fairly and impartially. To use another image, Lady Justice is blindfolded for a reason. Yet under the current liberal majority, the Wisconsin Supreme Court has become pervasively political, as the majority uses its power to enforce its agenda.
- The Wisconsin Supreme Court's new majority has also set a new record low for number of cases reviewed in a term, with just 14 decisions in its 2023-24 term. The Court had averaged around 50 in recent years– the dropoff could be credited to the dysfunction on the court and the number of complex political cases the court reviewed, especially redistricting. In other words, numerous litigants did not have their cases reviewed so the court could keep its calendar free for the accelerated pace necessary to get its redistricting decision done and implemented in time for the 2024 elections.

WHAT COULD HAPPEN

The Court has vast administrative powers. The Court oversees the state bar, for instance. In some states, high courts have used their powers to rein in state bar associations from advocating on controversial issues like abortion, or DEI. The Court also oversees the rules governing lawyers and judges. Some state high courts have adopted rules that significantly impact the free speech and religious liberty of orthodox people of faith serving as attorneys. This court has also considered recusal rules and disciplinary cases that could squelch free speech during judicial elections. The Court also appoints regional senior judges and a number of committees, turning the administrative machinery of the courts over to liberals and building their judicial bench.

WHAT'S NEXT

Chief Justice Annette Ziegler's current two-year term as chief justice ends on April 30, 2025. The Court is likely to elect the new chief for the coming two-year term before then. Despite an election taking place on April 1, the new Chief Justice will be chosen without input from the winner of the April 1 election.

LEGAL BACKGROUND

When the new liberal majority took over, it acted quickly to assert its will, even when it meant upsetting longstanding norms:

- Fired the well-respected Director of State Courts Randy Koschnick and tried to impose a Dane County Circuit Court judge in his place despite a constitutional prohibition on such moves. Director Koschnick was a former conservative circuit court judge.
- Removed longtime public servant David T. Prosser Jr.'s name from the State Law Library in Madison. Justice Prosser was a conservative justice and former Republican Speaker of the Assembly.
- Created an "administrative committee" within the Court that stripped the conservative chief justice of many of her traditional (if not constitutional) prerogatives as to scheduling and docket management.
- Many of these changes were made unilaterally – without a scheduled meeting of the Court where all seven justices were heard and could vote.

ZOOM IN

The courts are the third branch of government. They have a budget of $172 million, employ thousands of people statewide, and administer numerous systems that impact law and policy in Wisconsin. The Wisconsin Supreme Court acts as the board of directors for the judicial branch, with the chief justice as chairman of the board. A liberal majority can use its power not only to decide cases, but to restructure an entire branch of government to serve its ideological agenda.

INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

THE WISCONSIN SUPREME COURT IS THE BACKSTOP AGAINST BUREAUCRAT OVERREACH

OVERVIEW

Oftentimes lawsuits and legislative oversight are the last two lines of defense against the power-hungry moves of Madison bureaucrats set on running our lives, whether from the Department of Natural Resources or Department of Revenue. The state constitution embodies a simple but profound principle—the separation of powers—to ensure that our liberties are protected. Thanks to that idea, which is also a constitutional command, state agencies cannot wield unchecked power over our lives. They are accountable to legislators, the people we actually elect to make policy, and to judges to ensure they are operating within their prescribed authority. But bureaucrats are often working to expand their empire, and it's imperative we have a Wisconsin Supreme Court that keeps those efforts under control.

WHAT YOU SHOULD KNOW

- Wisconsin bureaucrats do not have unchecked authority to exert control over our lives. They derive their authority from the legislative branch and must answer to the judiciary.
- The Wisconsin Supreme Court is the court of last resort when an agency action or inaction is challenged. In Wisconsin, conservative majorities in the Wisconsin Supreme Court have protected Wisconsinites and Wisconsin businesses from bureaucratic overreach.
- The Court will decide in future years whether the Republican-led Legislature can act as a vigorous check on the Democrat-led executive branch.
- Wisconsin Voters remain focused on reigning in the power of the bureaucracy, with 32% saying that the Legislature should make important policy decisions and only 8% favoring bureaucrats at state agencies in a recent IRG poll.

WHAT COULD HAPPEN

Checks-and-balances are an essential safeguard to our liberty. The Federalist Papers said that the concentration of all power—legislative, executive, and judicial—in one set of hands is the very definition of tyranny. Yet that's what happens all too often in the modern administrative state, where unelected bureaucrats write the rules, enforce them, and then have their own system of administrative law judges to adjudicate violations.

The Legislature acts as an essential check-and-balance on the Governor and Madison-based bureaucrats. So do the courts, when they take their job seriously as guardians of constitutional rights and structure. When courts abdicate their role, or cut back on the Legislature's powers of oversight, it undermines liberty and taxpayer accountability.

The Wisconsin Supreme Court is currently considering a case on whether the Legislature's Joint Committee for the Review of Administrative Rules ("JCRAR") can act as an effective check on policymaking by unelected bureaucrats through the administrative rules process. These touch on highly sensitive areas, like the First Amendment rights of Christian licensed professionals to provide counseling in accordance with their faith. (*Evers v. Marklein,* 23AP2020-OA). Moreover, if this legislative check is ended, it will extend out to every agency that adopts rules, from professional licensing boards to the Department of Natural Resources.

WHAT'S NEXT

The Wisconsin Supreme Court is currently considering a case on whether the Legislature's Joint Committee for the Review of Administrative Rules ("JCRAR") can act as an effective check on policymaking by unelected bureaucrats through the administrative rules process. These touch on highly sensitive areas, like the First Amendment rights of Christian licensed professionals to provide counseling in accordance with their faith. (*Evers v. Marklein,* 23AP2020-OA). Moreover, if this legislative check is ended, it will extend out to every agency that adopts rules, from professional licensing boards to the Department of Natural Resources.

LEGAL BACKGROUND

During the years of the conservative majority on the Court, Wisconsin was one of the first states in the nation to see its courts reinvigorate checks-and-balances on bureaucrats. In *Tetra Tech v. Department of Revenue,* 2018 WI 75, the Court held that it would no longer put a thumb on the scale in favor of state agencies when considering how to interpret rules and statutes.

During the Covid-19 pandemic, state agency bureaucrats asserted unprecedented levels of power to make policy affecting everyday people. These orders affected Wisconsinites' ability to gather and worship, send children to school and receive an education, and even go to work for an extended period of time. The Wisconsin Supreme Court – by only a one vote margin – was an essential check on the expansionist impulse to override any normal policymaking process by the secretary of health services. (*Wisconsin Legislature v. Palm*, 2020 WI 42)

That same year, in *SEIU v. Vos*, 2020 WI 67, the Court released a tangle of opinions on various bills adopted at the end of the Walker Administration. Importantly, the Court upheld the ability of the Legislature to intervene in litigation to defend state laws, which is especially important when the Attorney General (who normally has that job) has announced policy positions contrary to those laws. The Court also upheld a statutory codification of principles announced in *Tetra Tech*, ensuring that courts do not prefer bureaucrats over citizens when interpreting agency rules.

More recently, the liberal majority on the Wisconsin Supreme Court ruled that the legislature's Joint Finance Committee cannot act as a check on the Department of Natural Resources when it acquires new state lands (*Evers v. Marklein*, 2024 WI 31). The immediate result is that the Republican-led Legislature can no longer oversee individual land purchases by the state, but the broader impact is to empower the executive free from legislative oversight.

ZOOM IN

The bottom line is that effective legislative oversight of state agencies is a key check on the Madison bureaucrats. The Wisconsin Supreme Court is often called upon to act as the referee between the other two branches. Especially in an era of divided government, this can easily slip into an issue of partisan preferences.

INSTITUTE FOR REFORMING GOVERNMENT

JUDICIAL IMMUNITY IN WISCONSIN HAS LIMITATIONS ATTACHED TO THE ROLE OF A JUDGE

SUMMARY

Wisconsin Judge Hannah Dugan is facing federal charges for allegedly helping a defendant avoid arrest by telling him to exit her courtroom through a side door, delaying federal immigration agents. She claims she was just doing her job as a judge and is protected by judicial immunity, which usually shields judges from legal consequences for decisions made using judicial authority. But prosecutors argue she acted outside her authority and broke the law.

This case raises big questions:

» **How far does a judge's immunity go?**
» **Can judges be prosecuted for actions taken in the courtroom? What about actions taken *outside* the courtroom?**
» **Where is the line between courtroom management and illegal conduct?**

A similar case in Massachusetts involved another judge accused of helping an undocumented immigrant escape arrest. In that case, the court ruled that the judge could be prosecuted.

What happens next could set a national precedent. If Judge Dugan wins, judges may gain broader protection from prosecution. If she loses, it could reinforce that judges are not above the law—especially when it comes to interfering with federal enforcement.

OVERVIEW

A Milwaukee County Circuit Court Judge, Hannah C. Dugan, faces federal charges for allegedly directing a defendant, Eduardo Flores-Ruiz, to exit her courtroom through a jury door to evade federal agents executing an administrative warrant.[1] Charged with concealing a person from arrest (18 U.S.C. § 1071) and obstruction of justice (18 U.S.C. § 1505), Dugan is claiming judicial immunity, arguing her actions were official judicial acts, exempt from prosecution because she acted within her role as a judge. The prosecution counters that her conduct was not judicial, and she illegally exceeded her authority, and thus is not shielded from criminal liability. This case tests the boundaries of judicial immunity and federal-state relations, raising questions about accountability and sovereignty; it also echoes precedent in United States v. Richmond Joseph, 2020 WL 4288425 (D.Mass., 2020)[2] where a Massachusetts judge faced similar charges for aiding a defendant's evasion, highlighting tensions between judicial immunity and federal law enforcement.

ZOOM IN

This case, like *United States v. Richmond Joseph*, highlights a clash between judicial authority and federal power. Judges have broad discretion to manage courtrooms, but Dugan's alleged actions—directing Flores-Ruiz to evade arrest, confronting agents, demanding a judicial warrant, and neglecting

a hearing—mirror Richmond Joseph's scheme to help a defendant escape via a rear exit, deemed a non-judicial "ruse" (*United States v. Joseph*, 26 F.4th 528, 531). Judges have broad discretion to manage courtrooms, but Dugan's alleged act of directing a defendant to evade arrest may exceed the limits of that authority.

The prosecution argues this was an abuse of power, not a judicial function, while Dugan frames her actions as routine courtroom control, but her interference with federal agents may suggest criminal intent. The dispute also reflects broader federalism concerns, as prosecuting a state judge for courtroom conduct could be seen as federal overreach, yet allowing such actions to go unchecked may undermine federal law enforcement. The court's decision will likely hinge on whether Dugan's conduct is deemed a protected judicial act or an unprotected criminal act, setting a significant precedent for judicial accountability.

WHAT YOU SHOULD KNOW

- On April 18, 2025, during a misdemeanor docket, Judge Dugan allegedly directed Flores-Ruiz to leave through a jury door, temporarily delaying his arrest by federal agents on an administrative warrant.[3]
- Related, in 2018, Massachusetts Judge Shelley M. Richmond Joseph was charged with obstruction of justice (18 U.S.C. §§ 1512, 1505) for allegedly helping an undocumented immigrant evade Immigration and Customs Enforcement ("ICE") by directing him through a rear sally port door, turning off the courtroom recorder, and ordering an ICE officer to leave.
- Dugan's defense asserts absolute judicial immunity, claiming her actions were part of her courtroom management authority and protected under common law principles dating back to 17th-century England. However, when Judge Richmond Joseph claimed immunity, the court found it inapplicable to allegedly corrupt acts.
- The prosecution contends that directing a defendant to evade arrest is not a judicial act, likening it to aiding a fugitive, and falls outside her jurisdiction and scope of her work as a state judge. In Richmond Joseph, the court upheld the indictment, noting that corrupt conduct falls outside judicial immunity
- The case implicates federalism, with Dugan arguing that federal prosecution infringes on Wisconsin's sovereignty, while the government emphasizes its authority to enforce federal warrants without interference. In Richmond Joseph, similar Tenth Amendment arguments were rejected, as the court found affirmative interference, not mere non-assistance, was prosecutable (United States v. Joseph, 26 F.4th 528, 534-35).

WHAT COULD HAPPEN

- If the court grants Dugan's motion to dismiss, it could set a precedent expanding judicial immunity to cover actions that obstruct federal law enforcement, potentially shielding judges from accountability in similar cases. It could also create a split in authority with the *Richmond Joseph* decision.
- If the motion is denied, the case could proceed to trial, testing what actions of a judge can be prosecuted as criminal conduct, possibly deterring judicial overreach but potentially straining federal-state relations.
- A ruling could clarify the scope of judicial immunity in criminal prosecutions, particularly under general criminal statutes like §§ 1071 and 1505, which do not explicitly abrogate immunity. Richmond Joseph's district court ruling supports prosecution without requiring abrogation for obstruction charges.
- The outcome may influence how state judges interact with federal authorities in courtrooms, especially in cases involving immigration enforcement, as seen in *Richmond Joseph*, where the prosecution, though later dropped in 2022, sparked debate over judicial independence.

LEGAL BACKGROUND

Judicial immunity, rooted in common law since the 17th century, protects judges from civil liability for official acts within their jurisdiction (*Bradley v. Fisher*, 80 U.S. 335, 1871). However, its application to criminal prosecution is less established and has traditionally applied to actions like issuing rulings or managing courtrooms, even if erroneous or malicious, but not to non-judicial acts (e.g., administrative decisions, *Forrester v. White*, 484 U.S. 219, 1988) or acts without jurisdiction (Rankin v. Howard, 633 F. 2d 844, 1980). Judicial immunity "arose because it was in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of a case without fear." *Dennis v. Sparks*, 449 U.S. 24, 31 (1980).

Furthermore, "judicial immunity was not designed to insulate the judiciary from all aspects of public accountability . . . they are subject to criminal prosecutions as are other citizens." *Id*. The Supreme Court has held that immunity does not bar criminal liability for acts like bribery (*O'Shea v. Littleton*, 414 U.S. 488, 1974) or civil rights violations (*Imbler v. Pachtman*, 424 U.S. 409, 1976). Prosecutors argue Dugan's actions—directing a defendant to evade arrest—are not judicial and fall under statutes (18 U.S.C. §§ 1071, 1505) that apply to "whoever" commits the acts, without exempting judges. The U.S. Justice Department has the ability under 8 U.S. Code § 1324 to criminally prosecute any person, including state and local officials, who violate federal immigration law or otherwise attempt to obstruct justice. They are not protected by sovereign immunity from federal prosecution.

Dugan's defense cites *Trump v. United States* (603 U.S. 593, 2024) to argue immunity extends to official acts, but Dugan's reliance on Trump may be misplaced, as presidential and judicial immunity differ. Also, the *Trump* decision recognizes that not all actions taken by an official are therefore automatically official—people in public offices retain a private capacity and may be accountable for actions taken outside their official role. Dugan is also asserting a federalism interest, as she argues prosecuting a state judge for courtroom actions infringes on state sovereignty, though federal authority to enforce immigration laws is well established (*Tennessee v. Davis*, 100 U.S. 257, 1879).

Endnotes

1 Dugan argued that an administrative warrant, issued by the Department of Homeland Security, did not grant authority to arrest someone in a courthouse setting, unlike a judicial warrant.

2 See United States v. Joseph, 1:19-cr-10141, (D. Mass.) (listing a chronological docket of events).

3 Full docket found here: United States v. Dugan, 2:25-cr-00089 – CourtListener.com.

INSTITUTE FOR REFORMING GOVERNMENT

LAW AND PRECEDENT SUPPORT DUGAN SUSPENSION

OVERVIEW

The Wisconsin Supreme Court proactively - promptly - unanimously acted to suspend Judge Hannah Dugan after her federal felony charges. In doing so, the Court followed well-established precedent applying state judicial standards. The message to all other judges statewide is clear: obey the law and do your job while letting ICE do its job.

WHAT YOU SHOULD KNOW

The Wisconsin Supreme Court did the right thing by proactively suspending Judge Hannah Dugan from continued service on the Milwaukee County Circuit Court while a federal felony charge is pending against her.

The Court dealt with a similar case several years ago. In March 2021, Milwaukee County Circuit Court Judge Brett Blomme was charged by the state with felony possession of child pornography. "On the same day the State filed the criminal complaint, [the Wisconsin Supreme C]ourt issued an order temporarily prohibiting Attorney Blomme from exercising the powers of a circuit court judge and temporarily withholding his judicial salary." (2022 WI 80).

In another situation several decades before, a judge on the Iron County Circuit Court was facing federal felony charges related to interstate prostitution and lying to a grand jury. The Supreme Court "prohibited Judge Raineri from exercising the powers of a circuit court judge in Wisconsin pending final determination of the proceedings or further order of the court and ordered his judicial salary withheld until further order of the court." *In re Raineri*, 102 Wis. 2d 418, 419 (1981).

WHAT COULD HAPPEN

A federal magistrate judge has found probable cause sufficient to issue an arrest warrant for Judge Dugan for the commission of two federal offenses, one of which is a felony. See *United States v. Dugan*, 2:25-mj-00397-SCD (E.D.Wis.). Moreover, the particular facts of these charges relate directly to her performance on the bench as a judge. These are only allegations, and Judge Dugan is entitled to full and fair due process and is innocent until proven guilty. If she pleads guilty to a felony or is found guilty of a felony, then her office as a judge is automatically vacated by operation of law (Wis. Stat. 17.03(5)). Based on the automatic vacation requirement under Chapter 17, impeachment or removal by address would only therefore be warranted (1) prior to a judgment, (2) if Judge Dugan pled down to a misdemeanor, or (3) if she were acquitted by a jury. The Wisconsin Supreme Court would have to take a separate step following a vacation under Chapter 17 concerning her license to practice law.

LEGAL BACKGROUND

Several important provisions of law support this result, including the Wisconsin Constitution, Article VII, Section 11 ("Each justice or judge shall be subject to reprimand, censure, **suspension**, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law.") and Wis. Stat. 757.95 (providing for suspension of a judge while a disciplinary complaint is pending).

The Wisconsin Supreme Court has a duty to protect the public when a judge is charged with a felony. The commentary to the American Bar Association's model rules of judicial conduct explains: "The integrity of the judicial system demands prompt action whenever a judge has been formally charged with a serious crime."

ZOOM IN

Attorney General Josh Kaul suggested in a media interview that the Court's suspension did not reflect any view of the merits of the federal government's case against Judge Dugan. That is not necessarily so. The American Bar Association model rules of judicial disciplinary enforcement include this caveat in the comment to rule 15: "Almost all cases in which a judge is charged with a felony will result in an interim suspension; however these rules give the highest court discretion to impose an interim suspension in all cases in order to preserve the independence of the judiciary. If suspension were mandatory, the highest court would be required to suspend a judge even if the court was convinced that the complaint against the judge was filed only for political reasons." In other words, the Court had the power to decline to suspend Judge Dugan if a majority was convinced that the prosecution was meritless and only a political stunt. That the Court promptly - proactively - unanimously suspended her could indicate at least a view that the federal charges have met the standard of probable cause and were not purely political.

INSTITUTE FOR REFORMING GOVERNMENT

WISCONSIN SUPREME COURT COULD UNDERMINE ACT 10'S PUBLIC EDUCATION SUCCESS

OVERVIEW

Act 10 transformed local government in Wisconsin, including public education which is run by locally elected school boards. Act 10 gave local school boards tremendous new tools to manage their budgets and workforces, ensuring that dollars and quality teachers could stay in the classroom. Teachers unions in particular fought hard against Act 10 in court: the Wisconsin Supreme Court rejected a challenge in *Madison Teachers Inc. v. Walker*, 2014 WI 99, and the U.S. Court of Appeals for the Seventh Circuit (the regional federal court with jurisdiction over cases from Wisconsin) rejected a challenge in *Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013). After years of lawsuits that upheld Act 10, a Dane County judge declared Act 10 violates the state constitution. That decision has been appealed to the Waukesha-based District II Court of Appeals.

WHAT YOU SHOULD KNOW

- The facts are simple: Act 10 helped schools put more money into the classroom and rewarded the highest-performing teachers. The breathing room and financial flexibility districts now have is directly attributable to Act 10. Savings can now go into classrooms, to special-needs services, or to hire teachers rather than to unsustainably high fringe benefits.
- The Wisconsin Supreme Court could overturn a decade of progress in public education with a single decision overturning Act 10, which would handcuff locally elected school boards from managing their schools.

WHAT COULD HAPPEN

A reversal of Act 10 would be devastating to Wisconsin's schools. According to a report from the Wisconsin Institute for Law & Liberty, restoring collective bargaining for teacher salaries could cost districts and the state nearly $650 million annually, eliminating employee contributions to retirement would cost districts and the state about $422 million annually, and eliminating employee contributions to healthcare would cost districts and the state about $560 million annually. That amounts to about $2,000 per student in additional costs.

As a result of the financial costs, districts would be faced with painful decisions. According to one superintendent interviewed by WILL, "if the unions would recertify and we return to the old CBA format, we likely would lose our ability to use the following strategies for hiring and retaining high quality staff: offering higher compensation for hard to fill positions, offering merit pay and the ability to bonus outstanding efforts by employees, offering to compensate for specific continuing education, and the ability to assign teachers to special leadership roles."

The executive director of the Wisconsin Association of School Boards echoed these concerns, commenting if Judge Frost's decision remains in place, it provides no additional resources to school districts, but requires school districts to bargain over wages, hours and conditions of employment. As national NAEP results show Wisconsin students have not recovered from the pandemic, the stakes are high.

WHAT'S NEXT

The Frost case is working its way through the appellate system. The Wisconsin Supreme Court declined immediately hearing the case, instead allowing the Court of Appeals to weigh in. It is likely that the Wisconsin Supreme Court will eventually hear the case.

LEGAL BACKGROUND

The Dane County circuit court's decision striking down Act 10 is currently on appeal. The judge has stayed his decision, i.e., put on a temporary pause while that appeal is heard, because of the disruption that repeal would cause. A federal appeals court has already upheld Act 10 on this same legal theory, regarding the differential treatment of first responders from other types of public employees (*Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013)). The plaintiffs are asking Wisconsin's courts to ignore the federal court ruling and adopt the same theory as a matter of state constitutional law, which the Wisconsin Supreme Court can do (though it does so rarely).

ZOOM IN

Just as Act 10 had a massive impact on education for the good, a court decision striking down Act 10 would have a huge impact on local schools to the detriment of students.

The Wisconsin Institute for Law & Liberty reported last year that "[r]estoring collective bargaining for teacher salaries could cost districts and the state nearly $650 million annually." Their report continued, "Eliminating employee contributions to retirement would cost districts and the state about $422 million annually." And then, "Eliminating employee contributions to healthcare would cost districts and the state about $560 million annually." Totaled, WILL finds school districts are saving approximately $1.6 billion annually from Act 10. Those dollars are now available to go into classrooms for curriculum, higher teacher salaries, and other student-centered services rather than fringe benefits driven by union demands.

A study by Professor Barbara Biasi of the Yale School of Management found that Wisconsin school districts that used the pay flexibility afforded by Act 10 could recruit and retain the most effective teachers. Act 10 allowed districts to change from a strict seniority-based pay system to a flexible-pay system based on merit and market demand, and those districts that embraced the reform attracted many of the best teachers to their ranks.

Another study by Professor E. Jason Baron of Florida State University also found that school districts which moved to flexible pay also attracted higher quality candidates into the teaching profession. He concluded, "Comparing the quantity of individuals completing a teaching degree in Wisconsin institutions before and after Act 10 and relative to those in similar states, I find that Act 10 led to a 20% increase in the number of awarded teaching degrees. This effect was entirely driven by the most selective institutions, which suggests an increase in the quality of the prospective teacher pool in Wisconsin as a result of the compensation reform."

A February 2025 study by economists at the University of Wisconsin-Madison found: "The evidence suggests that Wisconsin's Act 10 of 2011 improved the efficiency of the state's public K-12 education system, allowing student performance to improve relative to other states despite a decline in Wisconsin's ranking of K-12 education expenditures per pupil."

The anecdotal experience of superintendents, school board members, and teachers across Wisconsin echoes this data.

INSTITUTE FOR REFORMING GOVERNMENT

PROPERTY TAXES COULD SKYROCKET IF WISCONSIN SUPREME COURT OVERTURNS ACT 10

OVERVIEW

Act 10 was a transformational moment in Wisconsin history. **Since its adoption twelve years ago, it has saved Wisconsin taxpayers $16.8 billion dollars– $5,600 per separate taxpayer.[1] On an annual basis, it provides hundreds of dollars in property tax relief to homeowners.** It also empowers state agencies and municipal governments to manage their workforces, improving public services. Despite its controversy, the people of Wisconsin re-elected Governor Scott Walker and his legislative allies in the 2012 recall and his 2014 reelection after its passage.

WHAT YOU SHOULD KNOW

- A Dane County Judge issued a decision in July that would undo "all of the collective bargaining changes" in Act 10, putting the property tax savings and savings for local governments created by Act 10 in jeopardy.
- The Wisconsin Supreme Court is now considering whether to review the decision repealing Act 10 before the Court of Appeals has a chance to weigh in. Certain members, such as Justice Janet Protasiewicz, have already indicated a desire to overturn Act 10.
- Repealing Act 10 would set the stage for devastating impacts to state and local taxpayers. It would wipe out hundreds of dollars in annual property tax savings for homeowners and result in potential mass layoffs of public employees and dramatic cuts to state and local programs.

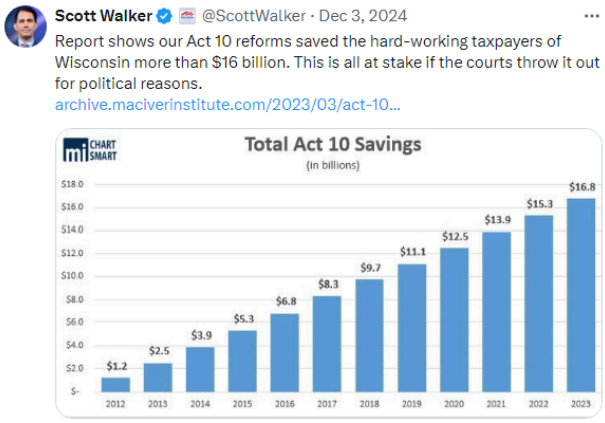
WHAT COULD HAPPEN

If Judge Frost's decision is ultimately upheld by the Wisconsin Supreme Court, local units of government would again be forced to bargain over every aspect of public employment. In addition, it remains unclear whether a reversal of Act 10 would result in ***retroactive*** backpay for public employees. In light of the levy limits that constrict the ability of local units of government to raise property taxes, the financial impact to local budgets will be devastating. A possible unintended consequence from such a scenario is the mass layoff of public employees or significant cuts to local and state programs.

Even more problematically, the implications of Judge Frost's rational basis review could affect more conservative reforms than just Act 10. Under Wisconsin case law, a statute must meet five criteria in order to have a rational basis. Judge Frost himself emphasized the standard that "we are obligated to locate or, in the alternative, construct a rationale that might have influenced the legislative determination." By straining to ignore every possible rationale for the Legislature's decision to exempt certain categories of public safety employees from the impact of Act 10, the Court has provided a framework for arguably striking down every major reform passed during the Walker-Kleefisch era.

WHAT'S NEXT

There is an election in April for a Supreme Court seat that will decide if the majority of the Court is liberal or conservative leaning. Numerous Wisconsin groups and politicians have voiced their support or opposition to the ongoing challenge to Act 10.



LEGAL BACKGROUND

Act 10 has survived every single challenge on final appeal in state and federal court. The Wisconsin Supreme Court has upheld it, *Madison Teachers Inc. v. Walker,* 2014 WI 99, and the U.S. Court of Appeals for the Seventh Circuit (the regional federal court with jurisdiction over cases from Wisconsin) has upheld it twice, *Laborers Local 236 v. Walker*, 749 F. 3d 628 (7th Cir. 2014) and *Wisconsin Education Association v. Walker*, 705 F.3d 640 (7th Cir. 2013).

That is now all on the line over a decade later, as Judge Jacob Frost of the Dane County Circuit Court declared Act 10 violates the state constitution in December 2024, in a lawsuit filed soon after the new majority took control of the Wisconsin Supreme Court. That ruling is currently temporarily paused pending appeal. That appeal will almost assuredly reach the Supreme Court, which will have to decide whether to respect precedent or instead to accept an invitation to overturn it based on reasoning already rejected by the federal courts.

ZOOM IN

In July, as Wisconsinites prepared for Fourth of July celebrations, Dane County Judge Jacob Frost issued a decision in *Abbotsford Education Association v. WERC*, marking another challenge to Act 10 passed in 2011. In denying the Legislature's motion to dismiss, the Court signaled a desire to strike "all of the collective bargaining changes in the Act" and in the process, established a framework for gutting rational basis review. And in December Judge Frost granted Plaintiffs' Motion for Judgment on the Pleadings, effectively killing most of Act 10.

The implications of the decision are significant. While the Legislature has appealed the decision to the Waukesha-based District II Court of Appeals, a decision overturning Judge Frost's decision could then be appealed to the Wisconsin Supreme Court, where certain members, such as Justice Protasiewicz, have already indicated a desire to overturn Act 10.

In carving out public safety employees like members of the state patrol, local police officers, and deputy sheriffs, the Legislature was making a rational policy decision to provide additional employment benefits and protections for positions it deemed higher risk and more difficult to recruit for. Whether other law enforcement positions like conservation wardens or Capitol Police should have been included in the category of public safety employees was a legislative determination that Wisconsin courts have historically respected.

When reviewing the challenge to Act 10, Judge Frost refused to sever the portions of Act 10 it found violated the Equal Protection Clause. Judge Frost could have simply struck the distinction between various categories of law enforcement, preserving the remaining provisions of Act 10. Instead, it struck all of the collective bargaining changes brought about by Act 10.

Endnotes

1 According to the MacIver Institute, total savings from Act 10 has reached $16.8 billion through 2023. Full analysis found here: Act 10 Savings Total $16.8 Billion Since 2012 | MacIver Institute.

INSTITUTE FOR REFORMING GOVERNMENT

WILL THE SUPREME COURT MAKE WISCONSIN "ALABAMA NORTH" AGAIN?

OVERVIEW

A strong Wisconsin economy depends on a fair, efficient, predictable legal system that prevents a "jackpot justice" approach to civil law. Wisconsin was once known as "Alabama North," a tort hellhole for employers and a haven for trial lawyers looking to make a quick fortune. Under Governor Scott Walker, the State adopted a number of laws that better balanced the civil legal system with common-sense reforms that incorporated many principles of law from the federal courts. This improved tort climate was a key factor driving Wisconsin's rise in the "Best State for Business" rankings throughout the 2010s, rising from the 41st best state for business in 2010 to a top-ten ranking by 2017.[1]

WHAT YOU SHOULD KNOW

- In 2011 Act 2, Governor Walker and the Legislature made huge strides to rebalance Wisconsin's civil legal system to ensure economic recovery. These included punitive damage caps, a clear standard for expert witness testimony, and safeguards against industry-wide legal liability.
- Without these reforms, Wisconsin would have been an Alabama North, where trial lawyers looking to make a quick buck could take businesses to court over frivolous claims.[2]
- Wisconsin's economic well-being depends on the courts more than some employers and business owners realize. Tort climate is often placed alongside tax rates and regulatory burden as the key three factors when considering where to locate a business. Without these reforms, Wisconsin would again be a wild west of frivolous claims and nonsensical lawsuits.

WHAT COULD HAPPEN

Many reforms signed by Gov. Walker are at risk of being overturned by future Supreme Court action. The items detrimental to employers and the economy include:

- Helping trial attorneys get a big payday by eliminating personal injury punitive damage caps.
- Reversing product liability limits, potentially making manufacturers liable for injuries caused by products they did not produce.
- Encouraging frivolous lawsuits by no longer requiring the filing party to pay all fees if a suit is found frivolous.
- No longer requiring expert witnesses in trials to base their testimony on facts and data.
- Eliminating statutes of limitations for medical malpractice claims that incentivize prompt filing of cases and resolution of obvious injuries.

WHAT'S NEXT

The power of the Wisconsin Supreme Court hangs in the balance, with a progressive and conservative candidate running for an open seat in April.

The Wisconsin Supreme Court is currently considering a case (*Estate of Lorbiecki v. Pabst Brewing Co.*) which could fundamentally alter Wisconsin's punitive damages scheme. The case could also be the first to set a precedent undermining the caps, with the second strike coming in future years.

LEGAL BACKGROUND

Under a previous liberal majority led by Chief Justice Shirley Abrahamson, the Wisconsin Supreme Court ruled in favor of those bringing lawsuits, even to the point of striking down duly enacted laws that limited civil liability. In one particularly egregious case, the Court found that the Legislature lacked a "rational basis" for the statute capping medical malpractice damages (*Ferdon v. Wisconsin Patients Compensation Fund, 2005*). The med-mal caps, along with the state's fund for injured patients, are two pillars of our state's health care policy that protect patients, keep costs low, and prevent a physician shortage. Med-mal caps keep insurance affordable for practitioners and hospitals while ensuring injured persons can recover from their suffering. The Supreme Court's activist decision threatened to spiral health insurance premiums in Wisconsin while also exacerbating a physician shortage, especially in rural areas of our state. The Legislature has since enacted new, higher med-mal caps, but these protections are only one Supreme Court decision away from throwing the medical system back into danger.

During that same Abrahamson era, the Court adopted an extraordinarily aggressive and novel theory of industry-wide negligence that held the entire industry liable when a plaintiff could not determine which particular company had provided the harmful product (*Thomas v. Mallett, 2005*). That means that industry could be liable for harmful products that they did not even produce. That decision cast aside centuries of American and British precedent, which had always connected legal responsibility to the particular damage caused. The decision opened the door such that a future court could use it as a precedent to impose industry-wide liability in other settings where multiple companies are engaged in the same business, like firearms production or manufacturing.

ZOOM IN

The Wisconsin Supreme Court has traditionally deferred to the Legislature to make policy judgments about how to structure Wisconsin's civil legal system. Though the judges must apply and live with the system, it is the Legislature's prerogative to make the policy that undergirds the system: should losers pay for frivolous cases, should there be limits on punitive damages, when do claims go stale? However, at various points the Wisconsin Supreme Court has gone beyond its limited role of applying the law to make big rulings based on the common law or the state constitution that undermines these policy judgments, as we saw in the Abrahamson era.

Endnotes

1 See Chief Executive, "2017 Best States for Business," found here: Business-Friendliness, Location Fuel Wisconsin's Rise.

2 See Wall Street Journal, Alabama North, Aug. 9, 2005, found here: Alabama North - WSJ.

INSTITUTE FOR REFORMING GOVERNMENT

THE WISCONSIN SUPREME COURT CAN SAVE OR DESTROY VOTER ID AND ELECTION INTEGRITY

OVERVIEW

Wisconsinites overwhelmingly support voter ID and other common-sense election integrity measures. **The current liberal majority on the Wisconsin Supreme Court has already reversed two key election law cases, and more could be in the pipeline.**

WHAT YOU SHOULD KNOW

- The rules for Wisconsin's elections are written into state law, so they are frequently interpreted and applied by Wisconsin courts. That means Voter ID, absentee balloting, redistricting, and decisions from the Wisconsin Elections Commission often end up in court.
- The liberal majority has already overturned a key election integrity case that had limited the use of absentee ballot drop boxes.

WHAT COULD HAPPEN

Though voter ID is a widely popular[1] election security measure in Wisconsin, left-wing activists still consider it a tool of voter suppression and actively litigate against it. Some have also suggested[2] the Court could revisit the congressional maps, overturning another precedent to impose Court-drawn lines that favor Democrats for two additional US House seats.

LEGAL BACKGROUND

Free and fair elections, conducted according to law, with transparent and verifiable results, are absolutely essential to our republic. Questions of election administration are resolved either in state law or by the Wisconsin Elections Commission; either way, they regularly end up before the state courts. Public confidence in our elections depends on a court that follows the law.

Yet the current majority on the Wisconsin Supreme Court has displayed a disregard for the law as it is written and previous election decisions in this area. In *Teigen v. Wisconsin Elections Commission*, 2022 WI 64, the Court had held absentee ballot drop boxes did not meet statutory requirements for ballot security. Just two years later, in *Priorities USA v. Wisconsin Elections Commission*, 2024 WI 32, the Court reversed that holding. The only thing that changed was the replacement of conservative Justice Roggensack by liberal Justice Protasiewicz.

Voter ID remains a top issue of concern for many Wisconsinites. The Wisconsin Supreme Court has upheld voter ID in two separate cases. *Milwaukee Branch of the NAACP v. Walker*, 2014 WI 98, and *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*, 2014 WI 97. If another Voter ID case is brought, the current majority could reverse these precedents just like it reversed *Teigen* and *Johnson*.

ZOOM IN

Other important election issues also depend on the Court. In *Jefferson v. Dane County*, 2020 WI 90, the then-extant conservative majority on the Wisconsin Supreme Court granted a petition from the Republican Party of Wisconsin to clarify that the "indefinitely confined voter" exception could not be abused to avoid the voter identification requirements of state law. The Court rejected an attempt by the Dane County Clerk to expand the "indefinitely confined voter" under the guise of COVID to create a permanent vote-by-mail option without a requirement to show ID.

Other issues remain on the horizon, including the legal authority of Wisconsin Elections Commission to issue guidance, including on the requirements for witness signatures on absentee ballots (some issues were left unresolved after *Trump v. Biden*, 2020 WI 91), interpretation of the new constitutional amendment barring non-citizen voting, and efforts to clean up the voter rolls (a question initially confronted in *State ex rel. Zignego v. Wis. Elections Commission*, 2021 WI 32).

The same is true of the legislative districts, where the Court, through a raw exercise of judicial power, changed the outcome from its prior ruling, impacting which political party had the upper hand in legislative elections. Compare *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, with *Johnson v. Wisconsin Elections Commission*, 2021 WI 87.

Endnotes

1 Pew Research Center
2 Milwaukee Journal Sentinel
3 Court House News

INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

WISCONSIN SUPREME COURT CAN PROTECT OR DAMAGE FAMILY VALUES & FREEDOM FOR PEOPLE OF FAITH

OVERVIEW

For millions of Wisconsinites, their religious faith is central to their lives. They are grateful to God to live in a land where their religious freedom is protected in the very first clause of the U.S. Constitution. At the same time, they look around contemporary culture and see their values under attack from transgender activists, public schools, DEI, and the Left. The courts are often where questions around abortion, parents rights, and religious liberty are finally resolved.

WHAT YOU SHOULD KNOW

» Right now, the United States Supreme Court is considering whether to reverse a 4-3 decision by the liberal majority on the WIsconsin Supreme Court to permit a state agency to tax church-affiliated charitable ministries because they aren't "churchy" enough. The liberal majority found that Catholic Charities had to pay taxes even though it is an integrated ministry of the Catholic Diocese of Superior. If the Wisconsin Supreme Court's decision stands, ministries that serve individuals with physical and developmental disabilities will have to start paying taxes to the state Department of Workforce Development.

» The Left is on a relentless campaign to transform American culture in ways that would wipe out religious liberty and parents rights for millions of Wisconsinites. Biological boys in girls' sports, biological boys in girls' bathrooms, "social transitions" at school hidden from parents–across the board, but especially in public schools, the Left is on a mission to prioritize trangender rights over any

WHAT COULD HAPPEN

Several years ago, WILL filed a case on behalf of parents challenging whether the Madison school district can have an explicit policy barring teachers from telling parents when children ask to "socially transition" between genders at school but to hide that decision from their parents. Many other school districts across Wisconsin have implicit or explicit policies along the same lines. One of those policies is likely to end up back in front of the Wisconsin Supreme Court.

WHAT'S NEXT

The Wisconsin Supreme Court has two cases pending before it right now on abortion. The first, brought by Attorney General Josh Kaul, challenges the legality of the state's 1849 criminal statute against abortion. The second, brought by Planned Parenthood, asks the court to find a constitutional right to abortion in the state constitution, essentially recreating the *Roe v. Wade* regime on the state level.

The Wisconsin Supreme Court has a case pending before it right now to determine whether the Legislature has the power to check the unelected bureaucrats at a state agency who want to tell faith-based counselors what they can and can't say to their patients struggling with same-sex attraction. A legislative committee has suspended a rule that would stop Christian counselors from providing counseling in line with their faith and the faith preferences of their patients. The legality of the Legislature's decision is now before the Wisconsin Supreme Court.

LEGAL BACKGROUND

The Wisconsin Supreme Court used to be extraordinarily protective of religious liberty. In a case called *State v. Miller*, 202 Wis.2d 56 (1996), the Wisconsin Supreme Court first recognized that the Wisconsin Constitution is more robust in its provision protecting religious liberty. The Court confirmed that more recently in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, with a ringing endorsement of religious liberty. Several years later, a plurality opinion for the Court upheld the right of religious organizations to hire and fire their own leaders free from judicial scrutiny. *DeBruin v. St. Patrick Congregation*, 2012 WI 94. More recently, during COVID, a majority opinion by Justice Rebecca G. Bradley recognized the importance of the religious liberty burden imposed unconstitutionally by overly restrictive public health orders. *James v. Heinrich*, 2021 WI 58.

Most recently, the Wisconsin Supreme Court upheld a law that preferences married couples in adoption proceedings. Justice Jill Karofsky agreed that the law had a "rational basis," and was therefore constitutional, but nevertheless wrote a concurring opinion attacking the law's "outdated values that fail to reflect the practical realities of modern family life." She criticized "an outdated set of values positioning marriage as the moral center of family and society." She continued, "Times have changed, of course, but the justification that marriage is the moral core of society and the family is as weak as it ever was." She concludes, "The notion that marriage serves as the foundation of society is at best outdated, and at worst misogynistic." *AMB v. Circuit Court for Ashland County*, 2024 WI 18.

ZOOM IN

As the DEI ideology has taken hold of more and more institutions, we see increasing conflict between the free speech, religious liberty, and parental rights of people of faith and the radical agenda of the Left. Those conflicts often end up in Wisconsin's courts, where judges are called upon to either enforce contemporary social norms or longstanding constitutional freedoms. These conflicts will not stop anytime soon, making who sits on the Wisconsin Supreme Court all the more important.

INSTITUTE FOR REFORMING GOVERNMENT

K-12 EDUCATIONAL OPPORTUNITIES DEBATE AT ISSUE IN WISCONSIN SUPREME COURT RACE

OVERVIEW

Liberal activists have continually tried to destroy School Choice through lawsuits. If successful today, that would put the education of nearly 59,000 Wisconsin children in jeopardy. These efforts would leave children and parents throughout the state without options. That includes approximately 30,000 students in Milwaukee who currently use the parental choice program to flee failing public schools in Milwaukee. School Choice opens up the ability for parents to find the best education for their child, giving them new opportunities for success in school and beyond.

WHAT YOU SHOULD KNOW

- The ability of disadvantaged parents to send their kids to a private school using state assistance was first enacted by Gov. Tommy Thompson and bipartisan lawmakers in 1990.
- Originally only serving a couple hundred kids in Milwaukee, now parents of nearly 59,000 Wisconsin children statewide use School Choice to send their children to preferred schools, oftentimes allowing the kids to escape failing schools in a variety of areas across the state.
- For decades, activist groups on the left have attempted to use the courts to declare School Choice unconstitutional in Wisconsin.
- Conservative majorities in the Wisconsin Supreme Court have stopped previous attempts to declare Wisconsin's School Choice program unconstitutional. Liberal majorities have signaled openness to overturning the program, pulling the upcoming fight for the majority of the court into focus for School Choice advocates.

WHAT COULD HAPPEN

Without a conservative majority that believes in the constitutionality of School Choice, Wisconsin's School Choice students are at risk of losing access to their schools. Opponents to parental options could file a new lawsuit against the program if they believe the new liberal justices would take the drastic step of ruling it unconstitutional–even though the Wisconsin Supreme Court in the past concluded that school choice was constitutional.

If School Choice goes away, there would also be a crisis in the public school systems as public schools do not have the space or teachers to take on nearly 59,000 new students.

LEGAL BACKGROUND

Despite the widespread use of School Choice by the parents of nearly 59,000 students, left-wing groups – such as the teachers unions, ACLU, Americans United for Separation of Church & State, the NAACP – have attempted to challenge the constitutionality of School Choice through the courts throughout its existence. The Wisconsin Supreme Court first upheld the Milwaukee Parental Choice Program ("MPCP") in 1992 in *Davis v. Grover*, 166 Wis.2d 501 (1992). The Court held the MPCP was not a private or local bill and, thus, was not subject to the procedural requirements of Wis. Const. art. IV, sec. 18, did not violate art. X, sec. 3 of the Wisconsin Constitution because the participating private schools did not constitute "district schools," even though they received some public monies to educate students participating in the program, and not violate the public purpose doctrine. The majority noted the MPCP "represents another illustration of Wisconsin's innovation and willingness to lead the nation in its attempts to further improve the quality of education and life."

Six years later the Court reaffirmed the MPCP's lawfulness in *Jackson v. Benson*, 218 Wis. 2d 835 (1998), that challenged the choice program based on the participation of religious schools. Once again, the conservative majority upheld the lawfulness of the program. There, the majority held the program did not violate the Establishment Clause of the First Amendment to the United States Constitution, did not violate the religious establishment provisions of Wisconsin Constitution art. I, § 18, was not a private or local bill enacted in violation of the procedural requirements mandated by Wis. Const. art. IV, § 18, did not violate the uniformity provision of Wis. Const. art. X, § 3, and did not violate Wisconsin's public purpose doctrine. In its key holding relating to established clause, the majority held the amended MPCP "does not violate the Establishment Clause because it has a secular purpose, it will not have the primary effect of advancing religion, and it will not lead to excessive entanglement between the State and participating sectarian private schools."

Both of the above cases were decided along ideological lines, with the conservative court majorities finding the programs constitutional and the liberal justices in dissent. But for these conservative majorities, the ability of parents to choose a school that worked best for their child would not exist as we know it.

ZOOM IN

The education establishment in Wisconsin has repeatedly resurrected claims against Wisconsin's parental choice program. Most recently, in 2023 the liberal activist political action committee, Minocqua Brewing Company PAC, raised thousands of dollars to launch a renewed attack on Wisconsin's School Choice program, filing a lawsuit at the state highest court. The Wisconsin Supreme Court declined the petition without comment, but activists could revisit the claim at any time, or start in trial court and force a decision. If successful, the nearly 59,000 students in the choice program would have their education upended. Across the country, these same special interests are using the courts to attack and kill School Choice programs, from Alaska to Arizona to South Carolina.

Another legal line of attack focuses on faith-based schools. These schools have long had concern about the danger of participating in a government-funded program. If faith-based schools perceive that they will have to give up their religious beliefs and values in order to participate in government-funded programs like School Choice, many will choose to forgo participating in the choice program in order to retain their religious mission and identity. Decisions negatively impacting religious schools could substantially decrease the number of seats available for School Choice students. The Wisconsin Supreme Court previously has been protective of faith-based schools participating in the choice program. *See Coulee Catholic Schools v. LIRC*, 2009 WI 88. More recently, however, the new majority has ruled against religious liberty, paving the way for the state to tax religious charities. One such case is now being appealed to the United States Supreme Court. See *Catholic Charities v. LIRC*, 2024 WI 13. With a majority of Wisconsin choice schools being faith based, attacks on religious liberty are another path to destroy Education Freedom in Wisconsin as we know it.

INSTITUTE FOR REFORMING GOVERNMENT

HOW THE WISCONSIN SUPREME COURT CAN IMPACT 2ND AMENDMENT AND SPORTSMEN RIGHTS

OVERVIEW

The Second Amendment right to gun ownership is a core value for many Wisconsinites, including the 458,000 Wisconsinites who rely on concealed carry for their personal safety. Wisconsin is a state defined by our collective love for the outdoors. Hunting, fishing, target shooting, camping, boating—these are favorite pastimes for many families. **And the protection of these important rights depends in large part on a Wisconsin Supreme Court's view of the right to bear arms and the legal limits on how much say bureaucrats can have in interfering with those rights.**

WHAT YOU SHOULD KNOW

- As some policy leaders discuss anti-gun initiatives like "universal background checks" and "red flag laws," control of the Wisconsin Supreme Court for the next decade could determine whether these laws are upheld or are struck as unconstitutional.
- Conservative majorities have protected the right to bear arms while liberal majorities have chipped away at those rulings, pulling the race for Wisconsin Supreme Court into focus for both concerned gun rights activists and anti-gun organizations.
- When bureaucrats take action contrary to law or outside of their authority, the courts have the ability to step in and keep bureaucracy in check.

WHAT COULD HAPPEN

Governor Tony Evers called for several new gun control measures in his January 2025 State of the State address, including regulating private transfers of firearms, a red flag law, and reinstatement of a 48-hour waiting period to buy a gun. If these ideas were ever enacted, the Wisconsin Supreme Court would be the final arbitrator of what is allowed under the state constitution.

WHAT'S NEXT

There is an election in April for a Supreme Court seat that will decide if the majority of the Court is liberal or conservative leaning. Future lawsuits surrounding potential red flag laws and the right to hunt and fish could end up before the court.

LEGAL BACKGROUND

The Wisconsin Constitution includes both a right to own firearms (Article I, Section 25: "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.") and the right to hunt and fish ("The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law."). The Wisconsin right to bear arms has been the subject of several court decisions. The abilities for Wisconsin Sportsmen to hunt and fish becomes more and more challenging under the supervision of unelected bureaucrats at the Wisconsin Department of Natural Resources.

Conservative majorities have protected the right to bear arms while liberal majorities have chipped away at those rulings. When the Wisconsin Supreme Court first addressed the right to self-defense and to carry a firearm, a conservative majority vindicated that right for a small business owner in a dangerous neighborhood. *State v. Hamdan*, 2003 WI 113. Three years later, a new liberal majority significantly undercut that ruling, finding no protected right to carry a firearm for personal protection in an individual's personal vehicle (*State v. Fisher*, 2006 WI 44). More recently, a conservative majority protected the right of firearm owners to concealed carry on Madison municipal buses. *Wisconsin Carry Inc. v. City of Madison*, 2017 WI 19.

ZOOM IN

Separate from the Second Amendment itself, sportsmen are concerned about what the court may do on issues like the wolf hunt, the power of DNR wardens (*State v. Seitz*, 2017 WI 58), and the makeup of the Natural Resources Board (*State ex rel Kaul v. Prehn*, 2022 WI 50). A progressive Federal Judge in California overturned a federal rule delisting the gray wolf, preventing a wolf hunt from occurring in Wisconsin. Wolf attacks in Wisconsin have increased for the past three years. Many hunters and property owners in northern Wisconsin are concerned about the broad powers of DNR wardens, who enter onto private land without a warrant in a way historically unique from other law enforcement. In *Seitz*, conservative justices on the Wisconsin Supreme Court questioned the DNR's lack of respect for private property, but the liberal majority refused to rein in the DNR wardens. In *Prehn*, the four conservative justices turned back an attack from Attorney General Josh Kaul and environmental activists on the Walker majority on the Natural Resources Board, over a dissent from the three liberals. Governor Evers and General Kaul tried to illegally remove the board chair, a Walker appointee, in a way that would undermine the State Senate in its right to confirm (or not confirm) an Evers nominee as his replacement.

Conclusion

Why Judicial Power Determines Everything Else

The Wisconsin Supreme Court does not command armies, levy taxes, or draft legislation. Yet few institutions exert greater influence over the direction of the state. Through interpretation, enforcement, and restraint—or the absence of it—the Court determines how power is allocated, how disputes are resolved, and how durable the rule of law remains over time.

The materials in this collection have shown that judicial decisions are never isolated. A court's philosophy in one area inevitably carries over into others. A judiciary willing to abandon precedent in election law will not hesitate to revisit settled economic reforms. A court that defers excessively to administrative agencies will struggle to enforce meaningful limits when civil liberties are at stake. And a court that substitutes its own values for constitutional text will steadily displace the judgment of voters and their elected representatives.

These dynamics are not theoretical. They shape how Wisconsinites vote, work, worship, educate their children, and pay their taxes. They determine whether laws enacted through the democratic process endure—or are undone through litigation. Over time, they answer a fundamental question of self-government: *who decides?*

The constitutional system assumes that judges will exercise power differently from legislators and executives. Courts are not meant to be engines of social change or guardians of preferred outcomes. Their legitimacy rests on adherence to law, fidelity to precedent, and respect for institutional limits. When those constraints weaken, judicial authority expands—but public trust erodes.

This does not require bad faith. Courts often justify expansive decisions as necessary, compassionate, or modern. But good intentions do not substitute for constitutional authority. History shows that once courts move beyond interpretation into governance, there are few internal mechanisms to pull them back. Correction comes slowly, if at all.

The stakes, therefore, are structural. Elections matter not only because they select policymakers, but because they shape the judiciary that will interpret and constrain those policies for decades. Judicial philosophy matters not because it predicts outcomes in a single case, but because it determines whether the system remains governed by law rather than by discretion.

Ultimately, the health of Wisconsin's constitutional order depends on courts that know what they are empowered to do—and just as importantly, what they are not. Judicial restraint is not weakness. It is the condition that allows democratic governance, economic stability, civil society, and individual liberty to coexist.

That is the choice before Wisconsin—not between outcomes, but between systems.

INSTITUTE FOR REFORMING GOVERNMENT

ReformingGovernment.org

PO Box 180291
Delafield, WI 53018

info@reforminggovernment.org

ReformingGovernment
@ReformingGovt