

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSIS MAY 2019

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol. This calendar includes cases that originated in the following counties:

Dane

WEDNESDAY, MAY 15, 2019

9:45 a.m. 19AP559 - The League of Women Voters v. Tony Evers

Note: The Supreme Court calendar may change between the time you receive these synopses and when the case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any camera coverage of Supreme Court oral argument, contact media coordinator Stephanie Fryer at WISC-TV, sfryer@wisctv.com. The synopsis provided is not a complete analysis of the issues.

WISCONSIN SUPREME COURT

May 15, 2019

9:45 a.m.

2019AP559

The League of Women Voters v. Tony Evers

This appeal comes to the Supreme Court on a petition to bypass the Court of Appeals. The Supreme Court has taken jurisdiction because the questions presented concern real and significant questions of state constitutional law, have considerable state-wide impact, and have not been resolved in previous decisions of this Court.

This appeal asks the Supreme Court to resolve the question of the validity of the actions taken by the Wisconsin Legislature during the session it convened in December 2018.

This matter began in the Dane County Circuit Court as Case No. 2019CV84, League of Women Voters of Wisconsin v. Knudson.¹ In their amended complaint, a group of non-profit organizations, individual citizens, and a county clerk (hereinafter, “the plaintiffs”) alleged that the Legislature’s December 2018 passage of the three bills that became 2017 Wis. Act 368, 2017 Wis. Act 369, and 2017 Wis. Act 370 (collectively, the Three Acts) and the Senate’s confirmation of 82 appointees to various state boards and commissions were defective in two respects. First, they alleged that the Legislature’s calling itself into an “extraordinary session” in December 2018 had failed to comply with Art. IV, § 11 of the Wisconsin Constitution, which in their view allows for only “regular sessions” referenced in Wis. Stat. § 13.02 and “special sessions” called by the Governor. Second, they alleged that the December 2018 “extraordinary session,” even if otherwise permissible, was invalid in this instance because a quorum of the members of each house did not vote to convene it, in violation of Wis. Const. Art. IV, § 7.

The complaint asked for a declaratory judgment that the Three Acts and the Senate confirmations of the 82 appointees were invalid. The plaintiffs also asked for a temporary injunction barring any state official from enforcing any provision of the Three Acts or the commissions awarded to the 82 appointees by virtue of the Senate confirmations.

The Legislature was allowed to intervene in the Circuit Court. It filed a motion to dismiss the plaintiffs’ amended complaint for failure to state a claim and a memorandum in opposition to the plaintiffs’ injunction motion. The Legislature also filed a motion asking the circuit court to stay any injunction it might decide to issue so that the Legislature could seek appellate review.

On March 21, 2019, after oral argument, the Circuit Court issued a written decision and order denying the Legislature’s motion to dismiss and granting an injunction to the plaintiffs, which enjoined the defendants from enforcing any provision of any of the Three Acts and vacated the 82 appointments that had been confirmed during the December 2018 session. The Circuit Court concluded that the December 2018 session had failed to comply with both the state constitution and the relevant statutes, which rendered invalid any action taken by the Legislature during that session. It then denied the Legislature’s motion for a stay of its injunction.

¹ Dean Knudson was dismissed from the case after the circuit court issued its injunction decision. Thus, the caption on appeal has been changed to League of Women Voters of Wisconsin v. Evers, No. 2019AP559.

The Legislature filed an appeal as of right from the Circuit Court’s injunction. It also filed a petition for leave to appeal, which the Court of Appeals ultimately dismissed as unnecessary.

The Legislature sought a stay of the Circuit Court’s injunction while its appeal was pending. Before the Court of Appeals ruled on the stay motion, Governor Evers sent a letter to the Chief Clerk of the Senate advising that, based on the Circuit Court’s vacation of the 82 confirmations, he was withdrawing the appointments of those 82 individuals. The Court of Appeals subsequently granted the Legislature’s stay motion, but it ruled that its stay was prospective only and did not affect the Governor’s withdrawal of the 82 appointments.

During the events in the Court of Appeals, the plaintiffs filed a petition for bypass to the Supreme Court. The Supreme Court granted the petition to bypass on April 15, 2019. The Legislature renewed its motion for temporary relief pending appeal in the Supreme Court. In an order dated April 30, 2019, the Supreme Court granted the Legislature’s motion. In addition to continuing the stay of the Circuit Court’s injunction originally issued by the Court of Appeals, the Supreme Court also temporarily restored the 82 appointees to their respective positions while it considered the appeal.

In its opening brief in this appeal, the Legislature identified the following issues as presented for review:

1. Whether the Legislature complied with Article IV, Section 11 of the Wisconsin Constitution when it “[m]et at the seat of government” in January 2017, and did not finally adjourn its 2017-18 biennial session until January 2019;
2. Whether the Circuit Court had jurisdiction to consider if the Legislature complied with Section 13.02 of the Wisconsin Statutes when it met in a floor period in December 2018;
3. Whether the Legislature, in fact, complied with Section 13.02; and
4. Whether the circuit court abused its discretion in issuing its temporary injunction.

In their petition for bypass, the plaintiffs framed the issues to be reviewed by the Supreme Court as follows:

1. What does Article IV, Section 11’s requirement that the Legislature meet “at such time as shall be provided by law” mean?
2. Does the Legislature violate Article IV, Section 7’s quorum requirement when it convenes, for the purpose of conducting legislative business, absent a vote by the majority of the members of each house?