



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Hon. Randy R. Koschnick  
Director of State Courts

16 East State Capitol  
Telephone 608-266-6828  
Fax 608-267-0980

Tom Sheehan  
Court Information Officer

**CONTACT:**

Tom Sheehan  
Court Information Officer  
(608) 261-6640

**FOR IMMEDIATE RELEASE**

## Wisconsin Supreme Court accepts 10 new cases

**Madison, Wis.** (Sept. 6, 2018) – The Wisconsin Supreme Court has voted to accept 10 new cases, and the Court acted to deny review in a number of other cases. The case numbers, issues, and counties of origin of each granted case are listed below, along with a list of cases denied review. A more detailed synopsis of each case will be released before the oral argument is heard in coming months. More information about cases before the Wisconsin Supreme Court or the Court of Appeals can be found on the Wisconsin Supreme Court and Court of Appeals Access [website](#). Published Court of Appeals opinions can be found [here](#). And the status of cases pending in the Supreme Court can be found [here](#).

2016AP2258-CR

State v. Corey R. Fugere

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District III

**Circuit Court:** Chippewa County, Judge Roderick A. Cameron, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Corey R. Fugere, Defendant-Appellant-Petitioner.

**Issue presented:** For an NGI plea to be knowing, intelligent, and voluntary, is a circuit court required to accurately advise the defendant of the maximum term of commitment?

2017AP684-AC

Town of Lincoln v. City of Whitehall

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Trempealeau County, Judge Charles V. Feltes, affirmed

**Long caption:** Town of Lincoln, Plaintiff-Appellant-Petitioner, v. City of Whitehall, Defendant-Respondent

**Issues presented:**

1. Is a town from which property is being annexed barred and precluded, under Wis. Stat. § 66.0217(11)(c), from asserting that the annexation petition is not, in fact, a petition for direct annexation by unanimous approval when the annexation petition lacks all of the landowners' signatures required, by statute, for the petition to constitute a petition for direct annexation by unanimous approval?

2. Was the annexed property “contiguous” to the City of Whitehall when the annexation resulted in a balloon on a string configuration and irregular boundaries and exclusions?
3. Was the City of Whitehall a “controlling influence” in the annexation boundaries when it acted, in concert with a business owner who was not an annexation petitioner, to establish boundaries in order to facilitate a sand mining operation, including by dictating what the boundaries would be so the City could provide electrical service; requiring revisions to boundaries so that the annexation would not create an “island”; and attempting to negotiate a Development Agreement, prior to approval of the annexation, that included obligations on the part of the City regarding zoning and annexation?
4. Can a town challenge a direct annexation by unanimous consent under the last two elements of the judicially created Rule of Reason?

2017AP1618-CR

State v. Michael A. Keister

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Iowa County, Judge William Andrew Sharp, dismissed as moot

**Long caption:** State of Wisconsin, Plaintiff-Appellant, v. Michael A. Keister, Defendant-Respondent

**Issues presented:**

1. Does an individual have a fundamental liberty interest in participating in a treatment court funded by the state and county when he or she has been charged with an offense involving violent conduct, as defined in Wis. Stat. § 165.95(1)(a) (2015-16)?
2. Does Wis. Stat. § 165.95, the statute defining the Wisconsin Department of Justice’s grant funding program, have to define procedures for treatment courts to follow for the statute to survive a procedural due process challenge?

2016AP2334 Leicht Transfer & Storage Company v. Pallet Central Enterprises, Inc.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Brown County, Judge Marc A. Hammer, affirmed

**Long caption:** Leicht Transfer & Storage Company, Plaintiff-Appellant-Petitioner, v. Pallet Central Enterprises, Inc., Defendant, Travelers Property Casualty Company, Acuity, A Mutual Insurance Company and Hiscox Insurance Company Inc., Defendants-Respondents

**Issue presented:**

Did crime policies issued against forgery cover losses ensuing from forged delivery tickets that the parties utilized to direct payment for pallets?

2016AP2491

David MacLeish v. Boardman & Clark LLP

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Dane County, Judge Josann M. Reynolds, affirmed

**Long caption:** David Macleish, Hayden Macleish, Kay Macleish and Robin Macleish, Plaintiffs-Appellants-Petitioners, v. Boardman & Clark LLP, Quale Hartmann, S.C., Continental Casualty Company and OneBeacon Insurance Company, Defendants-Respondents

**Issues presented:**

1. In the context of the distribution of an estate, do the legatees have standing to sue the administering lawyer (regardless of privity) when their constitutional rights are violated by the assets not being distributed according to the will and the probate judgment?
2. Should this Court adopt the Restatement of Torts (third) § 51 test for standing to sue a lawyer in cases of errantly probated estates?

2016AP2503/2017AP13      Enbridge Energy Company, Inc. v. Dane Co.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Dane County, Judge Peter C. Anderson, reversed and cause remanded with directions

**Long caption:** Enbridge Energy Company, Inc. and Enbridge Energy, Limited Partnership, Petitioners-Respondents, v. Dane County, Respondent-Appellant, Dane County Board of Supervisors, Dane County Zoning and Land Regulation Committee and Roger Lane, Dane County Zoning Administrator, Respondents

**Issues presented:**

1. Wisconsin law expressly preempts counties from imposing certain insurance requirements on pipeline operators as conditions in a conditional use permit [(CUP)]. Can a county, while conceding that state law prevents it from enforcing a particular insurance requirement, nonetheless include that requirement as a condition in a CUP granted to a pipeline operator?
2. Wisconsin law permits property owners, under certain circumstances, to enforce county “zoning ordinances.” Under this law, (1) can a property owner bring a citizen suit to enforce a particular condition in a CUP issued by a county, and (2) if so, can a property owner bring a citizen suit to enforce that condition when the county concedes that the condition is unenforceable?
3. If the holder of an approved CUP successfully challenges a particular condition in that permit—but not the permit in its entirety—as unlawful, is striking the unlawful condition a proper remedy? Does this Court’s remedy jurisprudence under Adams v. [State] Livestock Facilit[ies] Siting Review Board[, 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404] apply to land-use permitting more generally?

2017AP141-CR      State v. Dennis L. Schwind

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Walworth County, Judge David M. Reddy, summarily affirmed circuit court (summary disposition order)

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Dennis L. Schwind, Defendant-Appellant-Petitioner

**Issues presented:**

1. Did the circuit court have inherent authority to reduce the length of Schwind's probation?
2. If circuit courts have inherent authority to reduce the length of probation, what standard applies to their exercise of that authority?

2017AP1408

Security Finance v. Brian Kirsch

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Washington County, Judge Todd K. Martens, affirmed

**Long caption:** Security Finance, Plaintiff-Respondent, v. Brian Kirsch, Defendant-Appellant-Petitioner

**Issue presented:** Whether a customer sued on a consumer credit transaction without first receiving a notice of right to cure default may sue the merchant for damages under chapter 427 of the Wisconsin Consumer Act?

2017AP850-CR

State v. Joseph B. Reinwand

**Supreme Court case type:** Certification

**Court of Appeals:** Dist. IV

**Circuit Court:** Wood County, Judge Gregory J. Potter

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Joseph B. Reinwand, Defendant-Appellant

**Issues presented:**

1. Whether the "forfeiture by wrongdoing" doctrine applies at a homicide trial where the declarant is the homicide victim, but where the defendant killed the declarant to prevent him or her from testifying at a separate proceeding (emphasis in original); and
2. Whether preventing the declarant from testifying must be the defendant's primary purpose for the wrongful act that prevented the declarant from testifying in that separate proceeding (emphasis in original).

2017AP1593

Alan W. Pinter v. Village of Stetsonville

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Taylor County, Judge Ann Knox-Bauer, affirmed

**Long caption:** Alan W. Pinter, Plaintiff-Appellant, v. Village of Stetsonville, Defendant-Respondent

**Issues presented:**

1. Whether a Village's oral policy, as testified to unequivocally by the Village president and all of its employees, that raw sewage accumulating in a lift station was to be pumped into a ditch when the raw sewage reached a certain level,

- creates a ministerial duty that upon its breach results in an exception to the governmental immunity of Wis. Stat. § 893.80(4)?
2. What must a plaintiff alleging that a private nuisance maintained by a municipality caused damage to the plaintiff show regarding causation in order to avoid dismissal on summary judgment, especially in the context of a backup from a municipal sewer system? Is expert testimony always required? Why or why not? If so, what must be included in the expert's testimony?
  3. Were the evidence and the inferences from that evidence in the summary judgment record sufficient to create a genuine issue of material fact regarding causation on plaintiff-appellant-petitioner's claim for private nuisance?

**Review denied:** The Supreme Court denied review in the following cases. As the state's law-developing court, the Supreme Court exercises its discretion to select for review only those cases that fit certain [statutory criteria](#) (see Wis. Stat. § 809.62). Except where indicated, these cases came to the Court via petition for review by the party who lost in the lower court:

**Barron**

17AP729-CR                      State v. Johnson

**Brown**

16AP2206-CR                      State v. Stevens

17AP115-CR                      State v. Chavez

17AP182-83                      State v. Streckenbach

17AP225-W                      Clark v. Foster

17AP1891-CR                      State v. Stowe (BYP)

**Chippewa**

17AP931-CR                      State v. Poirier

**Columbia**

17AP2367-CR                      State v. Wall

**Crawford**

17AP1419-CR                      State v. Garbacz

**Dane**

16AP2430                      State v. Cuesta

17AP324-CR                      State v. Weber

17AP749                      Local 311 v. City of Sun Prairie

17AP1836-W                      Sanders v. Esqueda

17AP1875-CR	<u>State v. Sallay</u>
<b><u>Dodge</u></b>	
17AP388-CR	<u>State v. Wingers</u>
<b><u>Douglas</u></b>	
17AP1439-CR	<u>State v. Swanson</u>
<b><u>Grant</u></b>	
17AP1375-CR	<u>State v. Holt</u>
<b><u>Iowa</u></b>	
17AP1525-CR	<u>State v. Popple</u>
<b><u>Jackson</u></b>	
17AP1994	<u>Jackson County v. C.S.W.</u>
<b><u>Kenosha</u></b>	
17AP1739-CR	<u>State v. Landry</u>
<b><u>Lafayette</u></b>	
17AP1403-CR	<u>State v. Gallagher</u>
<b><u>Manitowoc</u></b>	
17AP168	<u>State v. Vega</u>
<b><u>Marathon</u></b>	
17AP367-CR	<u>State v. Schertz</u>
17AP873-74-CR	<u>State v. Richter</u>
<b><u>Milwaukee</u></b>	
14AP2050	<u>Johnson Controls v. Central National Insurance Co. of Omaha</u> <i>Chief Justice Patience Drake Roggensack and Justice Rebecca Grassl Bradley dissent.</i>
15AP384-CR	<u>State v. Amaya</u>
15AP1848-49	<u>State v. Hambright</u> <i>Justice Rebecca Frank Dallet did not participate.</i>
16AP119-CR	<u>State v. White</u> <i>Justice Rebecca Frank Dallet did not participate.</i>
16AP939	<u>Marathon Petroleum Co. v. City of Milwaukee</u> <i>Chief Justice Patience Drake Roggensack and Justice Annette Kingsland Ziegler dissent.</i> <i>Justice Rebecca Frank Dallet did not participate.</i>
16AP2043-44	<u>State v. Farrell</u>

16AP2240-CR	<u>State v. Newsom</u>
16AP2275-CR	<u>State v. Johnson</u>
16AP2337	<u>State v. Smith</u>
17AP648-49-CR	<u>State v. Johnson</u>
17AP734	<u>Johnson v. Hayes</u>
17AP817-18-CR	<u>State v. Ards</u>
17AP941-CR	<u>State v. Wells, Jr.</u>
17AP952	<u>State v. Tyler</u>
17AP1089-92-CR	<u>State v. Voegeli</u>
17AP1117-CR	<u>State v. Foster</u>
17AP1276-CR	<u>State v. Roberts</u>
<i>Chief Justice Patience Drake Roggensack did not participate.</i>	

17AP1362-CR	<u>State v. Brister</u>
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17AP1404-CR	<u>State v. Harmon</u>
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17AP1673-74-CR	<u>State v. Holland</u>
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17AP1773-74	<u>State v. A.E.</u>
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18AP376-81	<u>State v. P.J.</u>
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**Monroe**

18AP825	<u>Monroe County DHS v. A.D.</u>
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**Outagamie**

17AP272-CRNM	<u>State v. Flatoff</u>
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**Pierce**

17AP711-CR	<u>State v. Brown</u>
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**Polk**

16AP2481	<u>Wilmington Savings Fund Society, FSB v. Hiltner</u>
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17AP1268-CR	<u>State v. McMahon</u>
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**Racine**

17AP426-CR	<u>State v. Orta</u>
17AP1287	<u>Wichita Falls Investors v. G and R Integration Services</u>
<b><u>Rock</u></b>	
16AP2347-CR	<u>State v. Weston</u>
17AP1363-CR	<u>State v. Ulmer</u>
17AP957-CR	<u>State v. Hill</u>
17AP984-CR	<u>State v. Johnson</u>
<b><u>St. Croix</u></b>	
16AP1300	<u>Hielkema v. Forrest Construction</u>
17AP1675-CR	<u>State v. Nelson</u>
<b><u>Sawyer</u></b>	
17AP116	<u>State v. Roalson</u>
<b><u>Taylor</u></b>	
16AP2184	<u>James v. Estate of Wicke</u>
<b><u>Walworth</u></b>	
15AP2162-CR	<u>State v. Villegas</u>
16AP1971-CR	<u>State v. Shannon</u>
<b><u>Waukesha</u></b>	
16AP2368-CR	<u>State v. Nybo</u>
17AP15-CR	<u>State v. Kline</u>
17AP173-CR	<u>State v. Vesper</u>
17AP641-CR	<u>State v. Kline</u>
17AP1457	<u>State v. Congdon</u>
17AP1553-CR	<u>State v. Witt</u>
17AP1807-CR	<u>State v. Smith</u>
<b><u>Waupaca</u></b>	
17AP1022-CR	<u>State v. Volk</u>
<b><u>Winnebago</u></b>	
16AP1945-CR	<u>State v. Parisi</u>



16AP1982

Winnebago County v. C.S.

17AP413-CR

State v. Rolon

17AP1462

Simonson v. Baivier

**Wood**

17AP1336

State v. White