

SURVEY OF SIGNIFICANT WISCONSIN COURT DECISIONS

JULY 2022–JULY 2024

The following survey prepared by LRB attorneys summarizes the most significant Wisconsin court decisions between July 2022 and July 2024. The LRB attorneys who prepared these summaries practice law, conduct research, and draft legislation in these issue areas. The case summaries presented in this report serve as a concise introduction to the court’s activities in the last two years. Please contact us at the LRB offices if you would like a fuller discussion of any of these decisions, as well as the issues litigated in these cases.

State legislative districts must consist of physically adjoining territory

In *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, the supreme court (1) held that the Wisconsin Constitution requires that state legislative districts be composed of physically adjoining territory; (2) concluded that the current districts contained separate, detached territory and therefore violated the constitution’s contiguity requirements; (3) enjoined the Wisconsin Elections Commission from using the current state legislative district maps in future elections; and (4) determined that remedial maps must be drawn prior to the 2024 elections.

This case continues the saga of redistricting that began with the 2020 census. Every ten years following the U.S. Census, the Wisconsin Legislature must establish new state legislative and congressional districts to accommodate population shifts during the previous decade. Following the 2020 census, the legislature passed legislation creating new state legislative and congressional district maps, but the governor vetoed the legislation on November 18, 2021.

Months of litigation ensued (the *Johnson* litigation),¹ resulting in multiple opinions by the Wisconsin Supreme Court and an appeal to and decision by the U.S. Supreme Court. First, in *Johnson v. Wisconsin Elections Commission*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 (*Johnson I*), the Wisconsin Supreme Court identified the principles the court would use in adopting remedial maps and determined that the court would use the “least change approach,” which required the court to adopt maps that reflected the “least change[] necessary for the maps to comport with relevant legal requirements.” Subsequently, several parties submitted remedial maps for the court’s consideration.

In *Johnson v. Wisconsin Elections Commission*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (Johnson II), the court adopted the remedial maps submitted by Governor Tony Evers. However, in *Wisconsin Legislature v. Wisconsin Elections Commission*, 595 U.S. 398 (2022), the U.S. Supreme Court summarily reversed in a per curiam opinion issued on March 23, 2022. The Court declared that the state legislative district maps adopted in *Johnson II* violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, but the Court declined to take up a challenge to the congressional district maps adopted in *Johnson II*. On remand, the Wisconsin Supreme Court, in *Johnson v. Wisconsin Elections Commission*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*) instead adopted the state legislative district maps submitted by the legislature, the same state legislative district maps the governor had vetoed. *Johnson III* was issued on April 15, 2022, ending the *Johnson* litigation.

On August 2, 2023, a group of Wisconsin voters filed a petition for original action with the Wisconsin Supreme Court challenging, on multiple grounds, the state legislative district maps adopted by the court in *Johnson III*. (The voters did not challenge the congressional district maps adopted in *Johnson II*.) The court granted the petition in part, and, on December 22, 2023, in a 4–3 opinion authored by Justice Karofsky, the court held that the state legislative district maps violated the contiguity requirement of the Wisconsin Constitution.

Wis. Const. art. IV, §§ 4 and 5, provides, among other things, that state legislative districts must consist of “contiguous territory.” The court found that the meaning of that requirement was immediately apparent, and the court used dictionary definitions to confirm that contiguous territory is territory that is touching, or in actual contact. Put another way, “a district must be physically intact such that a person could travel from one point in the district to any other point in the district without crossing district lines.”

The court acknowledged that municipalities could be made up of noncontiguous territory, created as a result of annexation, such that municipalities include one or more “municipal islands.” However, the court rejected the argument that a legislative district with separate, detached territory could nevertheless be considered contiguous for purposes of the constitutional requirement “so long as the detached territory is a ‘municipal island’ and the main body of the municipality is located elsewhere in the district.” The court stated, “There are no exceptions to contiguity in the constitution’s text, either overt or fairly implied,” and the court declined to adopt an exception for municipal islands.

The court clarified that a “district can still be contiguous if it contains territory with portions of land separated by water.” In addition, territory that touches at a single point is “touching” and does not violate the contiguity requirement.

With that interpretation in mind, the court examined the state legislative district maps adopted by the court in the *Johnson* litigation and concluded that at least 50 of 99 assembly districts and at least 20 of 33 senate districts included separate, detached parts and thus did not consist of “contiguous territory” within the meaning of the Wisconsin Constitution. Therefore, each of those districts violated the constitution.

Turning to the matter of the appropriate remedy, the court concluded that, given the pervasiveness of noncontiguous districts and the ripple effect that would result from modifying their boundaries, it was necessary to enjoin the use of the state legislative district maps as a whole, rather than only the specific districts that contained noncontiguous territory in violation of the constitution. Thus, remedial maps would need to be adopted in time for the August 2024 primary. The court emphasized that the legislature had the primary authority and responsibility for drawing the state legislative districts and that there would be no need for the court to adopt remedial maps if the legislative process produced new maps that met constitutional requirements. The court noted, however, that if the legislative process failed to produce new maps, the court would have to do so, and the court set forth the principles it would use if it were required to adopt remedial maps.

First, the court abandoned the least change approach created in *Johnson I*. The court noted that the course of the *Johnson* litigation illustrated that the least change approach was unworkable in practice, and the court expressly overruled it. The court explained, “It is impractical and unfeasible to apply a standard that (1) is based on fundamentals that never garnered consensus, and (2) is in tension with established districting requirements.”

Next, the court detailed the principals it would use, including traditional districting criteria and other requirements under state and federal constitutions and statutes. Finally, the court announced that it would consider, as one of many factors, partisan impact and “take care to avoid selecting remedial maps designed to advantage one political party over another.”

The court set out the details of the process by which the court would adopt remedial maps in a separate order that provided for the following: (1) all parties would be allowed the opportunity to submit remedial maps for the court’s consideration, along with expert opinions and evidence; and (2) the court would appoint one or more consultants to aid the court in evaluating the submissions.

Chief Justice Ziegler, Justice R.G. Bradley, and Justice Hagedorn each filed a dissenting opinion that accused the majority of partisan political motivation in taking up and deciding the case, maintained that the *Johnson* litigation conclusively determined the outcome and was entitled to stare decisis—the principle generally requiring courts to “stand by things decided”—and argued that various

procedural issues, such as standing, laches, and claim preclusion, precluded the claims raised in the case.

After the court issued its opinion in *Clarke*, the remedial phase of the litigation began and multiple parties submitted remedial maps for the court's consideration. However, the court ultimately did not adopt remedial maps because the legislature accepted the court's invitation to adopt new maps using the legislative process. On February 13, 2024, the legislature adopted 2023 Senate Bill 488, establishing new state legislative districts that were identical to the remedial maps the governor submitted during the remedial phase of the *Clarke* litigation. On February 19, 2024, the governor signed the maps into law as 2023 Wisconsin Act 94. On September 24, 2024, the court issued an order dismissing the case as moot.

Separation of powers

In *Evers v. Marklein*, 2024 WI 31, 412 Wis. 2d 525, 8 N.W.3d 395, the supreme court held that two statutes relating to the Knowles-Nelson Stewardship Program unconstitutionally allowed the legislative branch to impede the executive branch's power to execute the law.

The Stewardship Program allows the state, through the Department of Natural Resources (DNR), to acquire land to support various recreational and environmental conservation purposes. Wis. Stat. § 23.0917 (6m) and (8) (g) 3. allows the Joint Committee on Finance (JCF) to review certain proposed expenditures under the Stewardship Program and to block such expenditures without a vote of the full legislature. In this case, JCF prohibited or delayed a number of proposed expenditures under the Stewardship Program. The petitioners in the case—Governor Tony Evers and DNR—argued that the statutes allowing JCF to do so were unconstitutional under the separation of powers doctrine.

Wis. Const. art. IV, § 1, art. V, § 1, and art. VII, § 2, create three separate branches of government, each of which is vested with a specific core governmental power: the legislative power is vested in the senate and assembly; the executive power is vested in the governor; and the judicial power is vested in a unified court system. The courts have consistently recognized that any exercise of a core power of one branch of government by another branch is unconstitutional. The legislative power “is the authority to make laws, but not to enforce them.”² This core power includes making decisions on how to appropriate state money. The executive power, on the other hand, is the power to execute the policies passed by the legislature. This core power includes making decisions on how to enforce and effectuate the laws.

In this case, the court noted that, “[o]nce the legislature appropriates funds

for a particular purpose, the executive branch possesses the power to dole out those funds in accordance with the purposes outlined by the legislature.” Further, once that power to make spending decisions is conferred, “the legislative branch lacks any constitutional authority to reject [such] an executive decision short of exercising its lawmaking power with the full participation of the legislature.” Here, “the legislature has prescribed by law the parameters of how and where the DNR may expend state funds under the [Stewardship] Program.” However, Wis. Stat. § 23.0917 (6m) and (8) (g) 3. “[gives] JFC members the power to decide how the funds should be used after the lawmaking process has been completed and the funds have been appropriated to the DNR—a quintessential executive function.” The court therefore determined that Wis. Stat. § 23.0917 (6m) and (8) (g) 3. “[violates] the Wisconsin Constitution by assigning the core executive power to carry out the law to a legislative committee.”

Justice A.W. Bradley filed a concurring opinion, in which Justices Dallet and Protasiewicz joined; Justice R.G. Bradley filed a concurring opinion; and Justice Dallet filed a concurring opinion, in which Justices A.W. Bradley, Karofsky, and Protasiewicz joined.

Chief Justice Ziegler dissented, objecting to the court’s granting of the petition for original action. Ordinarily, cases are heard by a circuit court, then by a court of appeals, and then by the supreme court. However, Wis. Const. art. VII, § 3 (2), allows a case to go directly to the supreme court, at the court’s discretion, in certain instances, under what is known as the court’s original-action jurisdiction. Here, Chief Justice Ziegler argued that this case should have gone through the normal processes. In addition, she objected to the fact that the court opted to hear and decide only one of the three issues that was originally presented by the petitioners.

Constitutional amendments

In *Wisconsin Justice Initiative, Inc. v. Wisconsin Elections Commission*, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122, the supreme court considered the validity of an amendment to the Wisconsin Constitution that codified a number of rights for victims of crimes. The constitutional amendment, commonly referred to as “Marsy’s Law,” was ratified as part of a nationwide movement advanced by the family of Marsy Nicholas, a California woman who was murdered in 1983. In the case, the supreme court ruled on challenges relating to the process laid out in Wis. Const. art. XII, § 1, for amending the constitution.

Art. XII, § 1, specifies a three-step process for amending the constitution: First, an amendment may be proposed in either house of the legislature, and if it is agreed to by a majority of the members elected to the assembly and the senate, it

can be referred to the next legislature chosen at a general election. Second, if the proposed amendment is again agreed to by a majority of the members elected to the assembly and the senate in that succeeding legislature, the proposed amendment is submitted to the people for ratification. Third, if a majority of electors vote to approve the amendment, the amendment is then considered ratified. Art. XII, § 1, also qualifies the foregoing procedure by mandating that if more than one amendment is submitted the electors be allowed to vote for or against each amendment separately.

The proposed constitutional amendment known as Marsy's Law was first introduced in the legislature during the 2017 legislative session. After being approved by both houses, the proposed amendment was again introduced in the 2019 session and approved by both houses in 2019 to be voted on at the April 2020 spring election. Several months prior to the election, the group Wisconsin Justice Initiative, Inc., and several citizens (collectively, WJI) sued, asking the circuit court for a temporary injunction to prevent the proposed amendment from appearing on the ballot, which the circuit court denied. After the amendment was approved by voters at the April 2020 election, however, the circuit court granted a declaratory judgment ruling that the ballot question had failed to meet form and content requirements. The Wisconsin Elections Commission appealed, and the court of appeals certified the appeal to the supreme court, which the supreme court accepted.

At issue in the case was the third step of the constitutional amendment process whereby the amendment was submitted to electors for a majority vote. WJI alleged that the amendment failed to satisfy the constitutionally mandated submittal process in two respects. First, WJI argued that the ballot question submitted to voters failed to sufficiently describe the proposed amendment. Second, WJI argued that the amendment in fact consisted of several amendments, and that voters therefore should have been afforded the opportunity to vote on them separately.

The majority opinion was written by Justice Hagedorn and was joined in full by three other justices and in part by two additional justices. The majority began with some words on how constitutional provisions ought to be interpreted, offering an originalist view on the role of courts. The role of judges, the majority wrote, was to determine what the text of a provision meant around the time the provision was originally written, and not to create new rights or protections not originally contemplated. Turning to the Marsy's Law amendment, the majority then considered WJI's two arguments in turn. WJI first argued that the ballot question presented to voters inadequately described the amendment at issue in a number of respects, and that "every essential" element of the amendment ought to be described. Looking to the practice in the days of early statehood, the majority

concluded that there was no requirement that the ballot question even provide a substantive description of the proposed amendment, just that it be submitted to voters. The only circumstance in which an otherwise valid ballot question would violate this requirement would be if the question was worded in a “fundamentally counterfactual” manner, and the majority found that such was not the case for the Marsy’s Law amendment. WJI also argued that the amendment was invalid because it constituted several amendments, each of which should have been put to voters separately. The majority rejected this argument as well, citing earlier cases holding that only changes that have different objects and purposes must be submitted for separate votes. Although the changes in the amendment would have varying impacts, they were validly submitted as a single question, said the majority, because they were aimed at the same goal and related to the same general purpose.

Justice R.G. Bradley, joined by Chief Justice Ziegler and Justice Roggensack, wrote separately in concurrence. In Bradley’s view, the propositions urged by WJI raised separation of powers questions vis-à-vis the legislature and the judiciary. Citing the “political question” doctrine, Bradley wrote that the kind of matters in the case at hand could not fairly be resolved by courts and would improperly invite judges to second guess the work of the legislature, to whom the constitution assigns the duty of submitting questions for the ballot.

Justice Dallet, joined by Justice Karofsky in full and by Justice A.W. Bradley in part, concurred in the result reached by the majority. Dallet first wrote in opposition to the majority’s stated dedication to originalism, advocating instead for a more “pluralistic” approach that allowed judges to consult a broader array of factors when interpreting constitutional provisions. As to the Marsy’s Law ballot question, Dallet wrote that while the majority’s result was correct, its holding was too narrow. In her view, a ballot question submitted to voters could also be declared invalid if it was so incomplete, inaccurate, or deceptive as to be misleading. She largely agreed with the majority as to whether the amendment should have been submitted as multiple questions.

Justice A.W. Bradley dissented. In her view, the ballot question presented failed to convey “every essential” element of the amendment because it did not mention the amendment’s diminishment of the rights of criminal defendants. She therefore did not address whether the amendment should have been submitted as multiple questions.

Justice Hagedorn, joined in part by Justice Dallet, also wrote separately in concurrence about the use of language in court opinions that was not essential to the holding, which is commonly known as dicta. Hagedorn criticized the trend toward treating all of an opinion as binding precedent, suggesting that lawyers and judges should be more willing to treat tangential discussion in court opinions as dicta.

Use of ballot drop boxes

In *Priorities USA v. Wisconsin Elections Commission*, 2024 WI 32, 412 Wis. 2d 594, 8 N.W.3d 429, the supreme court held that the use of ballot drop boxes is authorized under Wis. Stat. § 6.87 (4) (b) 1., overruling the court’s previous decision in *Teigen v. Wisconsin Elections Commission*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519.

Petitioners Priorities USA, Wisconsin Alliance for Retired Americans, and William Franks Jr. (collectively, Priorities USA) sued the Wisconsin Elections Commission (WEC) in Dane County Circuit Court, challenging certain election procedures, including the requirement that absentee ballots be returned only by mail or in person to the clerk’s office and not to a secure drop box. The circuit court granted a motion to dismiss that claim, determining that it was bound by the supreme court’s decision in *Teigen*, which held that Wis. Stat. § 6.87 precludes the use of secure drop boxes for the return of absentee ballots to municipal clerks.

Priorities USA appealed and petitioned for bypass of the court of appeals. The supreme court granted bypass on the single issue of whether to overrule the court’s holding in *Teigen*. The court, in a majority opinion authored by Justice A.W. Bradley, reversed the circuit court, holding that Wis. Stat. § 6.87 (4) (b) 1. allows the use of ballot drop boxes. Wis. Stat. § 6.87 (4) (b) 1. provides that “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” The majority observed that there was no assertion in the case that using a drop box is “mailing” a ballot and so focused its analysis on the statute’s requirement that the ballot be “delivered in person, to the municipal clerk issuing the ballot or ballots.”

The majority held that delivery of an absentee ballot to a drop box constitutes delivery “to the municipal clerk” within the meaning of Wis. Stat. § 6.87 (4) (b) 1. Noting that even when located somewhere other than the municipal clerk’s office, drop boxes are set up, maintained, secured, and emptied by the municipal clerk, the majority found that “[a]s analyzed, the statute does not specify a location to which a ballot must be returned and requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates.” This interpretation of the statute, according to the majority, is consistent with the discretion afforded to municipal clerks in running elections. The majority thus concluded that the *Teigen* court incorrectly interpreted Wis. Stat. § 6.87 (4) (b) 1. and that, contrary to the *Teigen* decision, the statute allows the use of ballot drop boxes.

The majority then considered whether stare decisis nonetheless required the court to uphold *Teigen*. The majority concluded that because the *Teigen* decision “was unsound in principle,” stare decisis did not compel the court to uphold the decision, and therefore the majority overruled it. Accordingly, the majority

reversed the circuit court’s dismissal of the drop-box claim and remanded the case to the circuit court. The majority emphasized that its decision does not force or require the use of drop boxes but “merely acknowledges what Wis. Stat. § 6.87 (4) (b) 1. has always meant: that clerks may lawfully utilize secure drop boxes in an exercise of their statutorily-conferred discretion.”

Justice R.G. Bradley dissented, joined by Chief Justice Ziegler and Justice Hagedorn.

Overruling the *Shiffra/Green* standard: ending the practice of in camera review of privately held medical records

In *State v. Johnson*, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d 174, the supreme court overturned thirty years of precedent first established in *State v. Shiffra*, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993). As it did thirty years ago, Wis. Stat. § 905.04 provides that a patient has a privilege to refuse to disclose confidential communications they have made for purposes of their medical treatment.

In *Johnson*, the defendant Alan Johnson was charged with several felonies in connection with his alleged sexual assault of his children. Johnson filed a *Shiffra/Green* motion seeking to have the court conduct an in camera review of one of his children’s mental health and counseling records.

A *Shiffra/Green* motion is based on longstanding precedent established in *State v. Shiffra*. In the case, the defendant was charged with sexually assaulting a woman, P.P. Before his trial, the defendant asked the court to require P.P. to reveal to himself and the court the privately held records related to her psychiatric history. In accordance with Wis. Stat. § 905.04, P.P. invoked her privilege to keep the records confidential. The court acknowledged that in accordance with the statute it could not force P.P. to release her records, and upon the request of the defendant, it issued an order barring P.P. from testifying at trial. In *Shiffra* and subsequent cases, including *State v. Green*, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, the following standard developed: if a defendant seeks access to an alleged victim’s health records designated as confidential under Wis. Stat. § 905.04, the defendant must make a preliminary, good faith showing to the court that sets forth a specific factual basis of a reasonable likelihood that the records contain relevant, noncumulative information necessary to a determination of the defendant’s guilt or innocence. If such a motion is successful, the court may require the alleged victim to provide the information to the court so that the court can privately review the records (in camera review) and determine what records, if any, should be released to the defendant in support of their defense. If the alleged victim then still refuses to provide the records, it is permissible for a court to bar the alleged victim’s testimony in the trial at hand.

In *Johnson*, the child opposed Johnson's *Shiffra/Green* motion, but the circuit court found that the child did not have standing to object. The court of appeals reversed on the standing issue, and the case was appealed to the supreme court, where the court pivoted to a completely different question: Should *Shiffra* be overruled? In an opinion authored by Justice Dallet, joined by Justices Roggensack, Hagedorn, and Karofsky, and joined in part by Justice R.G. Bradley, the court overruled *Shiffra* on the basis of three justifications, as follows.

First, the court concluded that the *Shiffra* rationale was unsound in principle because it undermines the therapist-patient relationship, and because it made incorrect conclusions regarding and expanded the holding of a U.S. Supreme Court case, *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). The *Ritchie* case concerned a Pennsylvania law that kept the state's child protective services agency records confidential but included an exception that the agency could disclose the records to a court pursuant to a court order. The defendant in the case, George Ritchie, had been accused of various sexual offenses against his minor daughter, and asked the trial court to order the child protective services agency to release records relating to his child. The trial court did not so order, and Ritchie was convicted. The U.S. Supreme Court held that Ritchie's conviction must be vacated, noting that the records in the case were in possession of the state, and per the law it developed in *Brady v. Maryland*, 373 U.S. 83 (1963), it was "well settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." Reflecting on this case history, the *Johnson* court found that the court of appeals in the 1993 *Shiffra* decision "incorrectly concluded that *Ritchie* applied to privately held and statutorily privileged health records."

Second, the *Johnson* court concluded that the *Shiffra/Green* standard for obtaining in camera review of records was unworkable in practice because it could not be applied consistently by courts and that the standard was inherently speculative as judges must decide, often on the basis of vague allegations and an affidavit from the defendant, whether it is reasonably likely that records that the judge has never seen contain information "necessary to a determination of guilt or innocence."

Third, the court overturned *Shiffra* et al. on the basis of two related developments in the law since those cases had been decided: the removal of procedural and evidentiary barriers to prosecuting sexual assault cases, and the passage of statutory and constitutional protections for crime victims, including Marsy's Law. The court noted that "[h]istorically, the law adopted a 'stance of overt suspicion toward rape accusers'" but then detailed how over the last several decades the removal of procedural and evidentiary barriers to prosecuting sexual assault

cases now indicates that the law has “evolved away from this distrust of sexual assault victims.” Accordingly, *Shiffra* was “detrimental to coherence in the law.”

The court also based its justification for overturning *Shiffra* on the subsequent development of victims’ rights laws, including Marsy’s Law. A week after *Shiffra* was decided, the Wisconsin Constitution was amended to affirm that the state must treat crime victims with fairness, dignity, and respect for their privacy. A few years later, the legislature passed a “comprehensive crime victims’ bill of rights,” which was amended to grant crime victims an enforceable right to fairness and respect. Finally, in 2020, Wisconsin voters ratified what is commonly referred to as “Marsy’s Law”: a constitutional amendment that guarantees crime victims the rights to be treated with dignity, respect, courtesy, sensitivity, and fairness, to privacy, and to reasonable protection from the accused throughout the criminal justice process and that requires those rights to be protected by law in a manner no less vigorous than the protections afforded the accused. The court noted that, in light of these developments, a “victim has an individual interest in privacy guaranteed by Marsy’s Law and in preserving the atmosphere of trust and confidence necessary to obtain effective medical treatment,” and found that because *Shiffra* was in tension with these constitutional rights, “*Shiffra* is detrimental to coherence in the law.”

In a concurring opinion, Justice R.G. Bradley wrote separately to agree that *Shiffra* should be overruled, but to disagree with the majority that it is legally proper to read public policy considerations into the rationale for overruling *Shiffra*. The justice also wrote to add on to the majority opinion a reflection on a recent development regarding stare decisis. The justice wrote about how, until 2022, the supreme court had recognized a particular form of stare decisis that required it to treat court of appeals precedent as its own, but the supreme court now recognizes that it is not bound by court of appeals decisions, and that “[a]s the state’s highest court, we interpret legal questions independently.”

Justice Karofsky wrote a separate concurring opinion “to illustrate the practical reality of how *Shiffra* was unworkable,” demonstrating the “sheer breadth of privileged mental health information that some victims were ordered to turn over” and the “equally unworkable” option for the victim to refuse disclosure, which resulted in the suppression of the victim’s testimony and resulted in perpetrators “often not held to account.”

Finally, Justice A.W. Bradley filed a dissenting opinion, in which Chief Justice Ziegler joined. The dissenting justices concluded that while “*Shiffra* may not provide a perfect procedure . . . the procedure is well-established, and has proven to be a workable means of balancing the important interests at stake.” The dissent found that the majority in overruling *Shiffra* “discounts the principle of stare decisis and misapplies the stare decisis factors.” **BB**

NOTES

1. For an in-depth discussion of the *Johnson* litigation, see Wis. Legis. Reference Bureau, “Survey of Significant Wisconsin Court Decisions: July 2020–July 2022,” *Wisconsin Blue Book: 2023–2024* (Madison, WI: Legislative Reference Bureau, 2023), 386–92.
2. *Koschkee v. Taylor*, 2019 WI 76, ¶ 11, 387 Wis.2d 552.