

Gov. Evers: AG Kaul and Gov. Evers announce direct legal challenge to Wisconsin's 1800s-era criminal abortion ban

Posted on Tuesday, Jun 28, 2022

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MILWAUKEE — Gov. Tony Evers and Wisconsin Attorney General Josh Kaul today announced a new lawsuit challenging Wisconsin's criminal abortion ban. The lawsuit comes just days after the U.S. Supreme Court released a decision in *Dobbs v. Jackson Women's Health Organization* to overturn *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, upending nearly 50 years of a constitutional right to abortion that Wisconsinites and Americans have relied upon for almost five decades. [Gov. Evers](#) and [Attorney General Kaul](#) blasted the Supreme Court decision last week, vowing to fight to defend reproductive freedom, including access to safe, legal abortion in Wisconsin.

Wisconsin's criminal abortion ban—which originated in 1849 before the Civil War and at a time when Wisconsin women did not have the right to vote—would ban nearly all abortions in Wisconsin, including in cases of rape and incest. In anticipation of the Supreme Court's decision in *Dobbs* and the prospect of Wisconsin's criminal abortion ban potentially going into effect, healthcare providers in Wisconsin have [already begun halting](#) abortion procedures across the state.

“We will never stop fighting to ensure every Wisconsinite has the right to consult their family, their faith, and their doctor and make the reproductive healthcare decision that is right for them—a decision that should be made without interference from politicians or members of the Supreme Court who don't know anything about their life circumstances, values, or responsibilities,” said Gov. Evers. **“The Supreme Court overturned *Roe*, effectively stripping so many of our family members,**

friends, and neighbors of their reproductive freedom. I said last week we would fight this in every way we can with every power we have, and that's what we're going to do."

In January, just days before the 49th anniversary of the landmark decision in Roe, Gov. Evers and Attorney General Kaul [called on the Wisconsin State Legislature](#) to repeal Wisconsin's criminal abortion ban. Earlier this month, they again called for legislative action, announcing a [special session](#) of the Wisconsin State Legislature to take up a clean repeal of the ban. According to the Marquette University Law School Poll, nearly 60 percent of Wisconsinites support safe and legal access to abortion. Similarly, a national survey conducted just last month by Marquette University Law School found similar support, with nearly 70 percent saying abortion should be legal in all or most cases. Yet, last week, in another direct rebuff of the people of Wisconsin, Republicans in the Wisconsin State Legislature [gaveled out of the governor's special session](#), refusing to give the repeal any consideration or debate. The lawsuit filed today names President of the Wisconsin State Senate and Co-chair of the Joint Committee on Legislative Organization Chris Kapenga, Majority Leader of the Wisconsin Senate Devin LeMahieu, and Speaker of the Wisconsin State Assembly and Co-chair of the Joint Committee on Legislative Organization Robin Vos as defendants.

"Access to safe and legal abortion stopped in Wisconsin last Friday. With this lawsuit, we are fighting to restore reproductive freedom in Wisconsin," said Attorney General Kaul. **"The Republican-led legislature's failure to act during last week's special session has left Wisconsin law regarding abortion in a state of uncertainty. This lawsuit is asking the court to clarify that Wisconsin's 19th century abortion ban with no exceptions for rape or incest has not gone back into effect."**

The lawsuit argues Wisconsin state statutes contain two sets of criminal laws that directly conflict with each other if both are applied to abortion and therefore Wisconsin's 19th century criminal abortion ban, [Wis. Stat. § 940.04](#), has been superseded by more contemporaneous legislation and cannot be enforced. Similarly, the lawsuit argues that several state laws regulating how a physician can lawfully provide an abortion conflict with the 19th-century criminal abortion ban. More specifically, provisions, including a waiting period, the use of ultrasound, and how abortion-inducing drugs are administered, among other things, by virtue of providing parameters for when a physician may lawfully perform an abortion, are incompatible with the pre-Roe statute that broadly criminalizes

abortion. The lawsuit, filed today in Dane County Circuit Court, seeks declaratory judgment and asks the court to clarify that Wis. Stat. § 940.04 was impliedly repealed by subsequently passed abortion-related statutes that conflict with it and is unenforceable.

A copy of the filing is available [here](#).