

Pro-Life Wisconsin: Denounces AG Kaul's lawsuit to overturn Wisconsin's 1849 Abortion Ban

Posted on Wednesday, Jun 29, 2022

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(Brookfield, WI) – Yesterday, Wisconsin Attorney General Josh Kaul sued in Dane County Circuit Court to overturn Wisconsin's 1849 abortion ban, arguing that s.940.04 has been superseded or impliedly repealed by Wisconsin's post-Roe abortion regulations and is therefore unenforceable. Pro-Life Wisconsin Legislative Director Matt Sande offered the following comments:

Wisconsin's 1849 criminal abortion ban, statute 940.04, is in full effect and that is why Wisconsin's abortion providers, Planned Parenthood of Wisconsin and Affiliated Medical Services, are no longer performing abortions. It is the job of our state's top law enforcement officer, Attorney General Kaul, to enforce laws protecting human life, not sue to overturn them.

The Wisconsin Supreme Court has consistently stated that acts of the legislature are presumed to be constitutional.

In *State v. Zawistowski* (1980), the Court specifically held: 'All statutes passed and retained by the legislature should be held valid unless the earlier statute is completely repugnant to the later enactment.' Section 940.04 of the Wisconsin Statutes is clearly not repugnant to our state's post-Roe abortion regulations and therefore its constitutionality is not threatened by them.

In *Hui v. Castenada* (2010), the Court found disfavor with repeal by implication stating, 'As we have emphasized, repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest.' It has been the clear intent of post-*Roe* pro-life legislators to enact laws regulating abortion to the extent allowed under the oppressive *Roe* legal regime. It was never their intent to repeal and replace our state's dormant abortion ban, s.940.04.

Pro-Life Wisconsin will stand with the defendants in this legal challenge, Assembly Speaker Vos, Senate Majority Leader LeMahieu, and Senate President Kapenga. Although we are confident our state courts will uphold s.940.04, it is imperative that we elect a pro-life governor and attorney general this Fall.