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Dane County judge rules 1849 Wisconsin law doesn’t bar abortions

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Gov. Tony Evers and Dem AG Josh Kaul are hailing a Dane County judge’s ruling that an 1849 Wisconsin law doesn’t ban consensual abortions.

Meanwhile, anti-abortion advocates called for the ruling to be promptly appealed.

Despite her ruling on the 1849 law, Judge Diane Schlipper declined to issue a permanent injunction late yesterday barring its enforcement because the three district attorneys who were named as defendants in the case had all pledged to abide by her ruling. Thus, she found there was no need to issue an injunction.

Shortly after the ruling, Planned Parenthood of Wisconsin announced it planned to resume providing abortions in Sheboygan after previously starting back up the services in Madison and Milwaukee after an earlier Schlipper ruling.

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Evers called it an “important victory in our fight to restore reproductive freedom” while Kaul vowed to defend the ruling if it’s appealed.

The case is expected to ultimately end up before the state Supreme Court.

“Freedom wins. Equality wins. Women’s health wins,” Kaul said.

Kaul originally challenged the state’s 1849 law on several fronts, including that it had been superseded by subsequent changes in state statute. A group of doctors then intervened in the case, arguing the law didn’t bar consensual abortions.

Schlipper in July signaled how she would ultimately rule when she found “there is no such thing as an ‘1849 Abortion Ban’ in Wisconsin” and instead the 174-year-old

law only applies to feticide. That was part of a decision rejecting a motion by Sheboygan County DA Joel Urmanski that sought to dismiss the challenge.

Pro-Life Wisconsin Legislative Director Matt Sande called yesterday's ruling "egregious" and hoped it would be appealed. Meanwhile, Wisconsin Right to Life Legislative and PAC Director Gracie Skogman called it disappointing, charging that "pro-choice activists on the court" are using the 1849 law "as a tool for their cause, they are putting lives on the line."

Prior to the U.S. Supreme Court overturning a 1973 law guaranteeing the right to an abortion, Planned Parenthood of Wisconsin offered services in Madison, Milwaukee and Sheboygan. Planned Parenthood resumed services in Madison and Milwaukee in September and said it will begin again in Sheboygan "as soon possible."

Urmanski, one of the three DAs named as defendants, was the only prosecutor involved in the case who had indicated he would enforce the law if it was found to ban abortion.

Michelle Velasquez, Planned Parenthood's chief strategy officer, said, "Today's ruling is another important step forward in restoring and expanding access to abortion in Wisconsin."

Read the decision.

See reaction at the press release page.

Note: This story was updated at 8:30 a.m., Dec., 6, 2023.