

Kaul, doctors ask Dane County judge for final ruling on abortion ban

Posted on Tuesday, Aug 8, 2023

Dem AG Josh Kaul and a group of Wisconsin doctors asked a Dane County judge for a final ruling that an 1849 Wisconsin law doesn't apply to abortion, but refers to feticide instead.

They also sought yesterday to keep alive their arguments that the 1849 law isn't enforceable as applied to abortion because subsequent statutes supersede it, in case the suit goes to an appeal.

Judge Diane Schlipper last month rejected a motion to dismiss the suit Kaul filed challenging the 1849 law. As part of that ruling, she opined "there is no such thing as an '1849 Abortion Ban' in Wisconsin" and instead the 174-year-old law only applies to feticide. That part of her ruling, though, wasn't final.

Kaul and a group of doctors who intervened in the case had briefs due yesterday. Additional filings are due next month, including from defendant Sheboygan County DA Joel Urmanski.

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Kaul asked Schlipper yesterday to issue a final ruling without another hearing.

The physicians, meanwhile, asked for a judgment and permanent injunction barring enforcement of the 1849 law to ensure they couldn't be prosecuted for performing an abortion.

The current briefing schedule could result in a final decision this fall. The case is expected to eventually land before the state Supreme Court, which is now controlled 4-3 by liberals.

The briefs from the AG and the doctors lay out their arguments on two tracks: that the 1849 law doesn't apply to abortion, as Schlipper signaled last month, and that it can no longer be enforced because of other abortion laws that have been implemented since 1849.

Schlipper's July 7 decision rejecting Urmanski's motion to dismiss also dismissed arguments from Kaul seeking to overturn the 1849 law on the grounds subsequent changes in the law make it unenforceable. She wrote that was because those arguments were premised on the idea that the 1849 law applies to abortion, and she found it doesn't.

By including arguments on that issue in yesterday's filings, Kaul and the doctors are seeking to preserve their option to raise those issues during an expected appeal.

Kaul added a footnote to yesterday's filing that if an appeals court found he wasn't entitled to a judgment on the arguments the law doesn't apply to abortion, that he would return to Dane County Circuit Court to raise additional arguments on his second argument.

Read the AG's filing [here](#).

Read the brief from the doctors [here](#).