

Wisconsin Right to Life: Dane County judge rules that Wisconsin's 1849 'Abortion Ban' only applies to feticide and rejects motion to dismiss lawsuit

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Earlier today, Dane County Judge Diane Schlipper rejected a motion to dismiss Attorney General Josh Kaul's lawsuit that attempts to throw out Wisconsin's long-standing abortion ban. In this ruling, Judge Schlipper also ruled that [state statute 940.04](#), commonly referred to as Wisconsin's 'abortion ban,' only applies to the practice of feticide.

The [ruling](#), in part, states:

"The Court DENIES the motion to dismiss because the Doctors state a claim upon which relief may be granted. Specifically, they allege Urmanski threatens to prosecute Wisconsin physicians under § 940.04 for performing consensual medical abortions. Urmanski has no authority to do this because according to State v. Black, 188 Wis. 2d 639, 526 N.W.2d 132 (1994), this pre-Roe statute says nothing about abortion—there is no such thing as an "1849 Abortion Ban" in Wisconsin. A physician who performs a consensual medical abortion commits a crime only "after the fetus or unborn child reaches viability" Wis. Stat. § 940.15(2). Accordingly, the Doctors may proceed with their claims for declaratory and injunctive relief."

Heather Weininger, executive director of Wisconsin Right to Life, commented, "This is a devastating setback in our ongoing fight to protect Wisconsin's preborn children. In the year since *Roe v. Wade* was overturned, we know that countless lives have been saved because of § 940.04."

Gracie Skogman, Wisconsin Right to Life legislative/PAC director, added, “No matter what the courts decide, we will continue to advocate for the protection of life in Wisconsin, including comprehensive care and resources for mothers and their preborn babies.”

Because Judge Schlipper did not dismiss the lawsuit, the case will continue in her courtroom and almost certainly will rise to be decided by Wisconsin’s Supreme Court.