



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Josh Kaul
Attorney General

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September 12, 2022

Attorney Matthew Fernholz, Counsel for:
Wisconsin Senate President Chris Kapenga,
Wisconsin Senate Majority Leader Devin LeMahieu
Wisconsin Assembly Speaker Robin Vos
VIA EMAIL

Re: *Kaul, et al. v. Kapenga, et al.*,
Dane Cnty. Case No. 22-CV-1594

Dear Counsel for Senator Kapenga, Senator LeMahieu, and Speaker Vos:

On behalf of Attorney General Kaul and all Plaintiffs, we write concerning your motion to dismiss the Complaint in *Kaul, et al. v. Kapenga, et al.*, No. 22-CV-1594 (Wis. Cir. Ct. Dane Cnty.). The Complaint seeks a declaration that Wis. Stat. § 940.04(1), commonly called Wisconsin's "1849 abortion ban," is unenforceable.

Your motion makes the argument that Senator Kapenga, Senator LeMahieu, and Speaker Vos are not proper defendants because "legislators wield only the power to enact laws, not to enforce them." (Leg. Br. 6.) That you make this argument is surprising in light of the Legislature's repeated efforts to become involved in cases concerning the enforceability of state law. Now, in this case to determine the urgent and crucial question of which set of diametrically opposed laws is enforceable (the pre- or post-*Roe* laws), you argue that legislators should not be involved. You argue we should instead sue district attorneys.

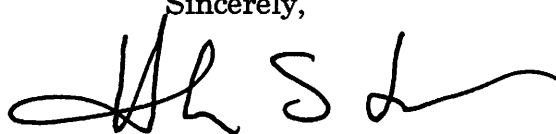
Attorney General Kaul and all Plaintiffs want the Wisconsin public and medical care providers to have clarity in the law, not to waste time or taxpayer money. We believe your clients are proper defendants because of the specific claims in this case, and we would prefer not to name district attorneys as defendants, particularly given that your brief makes clear that your clients' position is adverse to ours. But it would be contrary to the public interest to allow the resolution of this case potentially to be unnecessarily delayed by protracted arguments about who the defendants should be.

Therefore, if you do not withdraw your argument that your clients are improper defendants (Argument I.A. of your brief) by **Thursday, September 15, 2022**, we will file an amended complaint removing your clients and instead naming as defendants the district attorneys of Sheboygan, Dane, and Milwaukee counties, as they are relevant jurisdictions where legal abortion services were being provided.

Counsel for Senator Kapenga, Senator LeMahieu, and Speaker Vos
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If you do not withdraw that argument, we will hold your clients to their position—that they should *not* be involved—throughout this and any related litigation on this abortion-law question. Should your clients seek to intervene at any later point, we will object that your clients have waived any ability to be involved.

Sincerely,

A handwritten signature in black ink, appearing to read 'H S J', with a long horizontal flourish extending to the right.

Hannah S. Jurss
Assistant Attorney General

A handwritten signature in black ink, appearing to read 'A Russomanno', with a long horizontal flourish extending to the right.

Anthony D. Russomanno
Assistant Attorney General

A handwritten signature in black ink, appearing to read 'S. Michael Murphy', with a long horizontal flourish extending to the right.

S. Michael Murphy
Assistant Attorney General

Attorneys for Plaintiffs

HSJ:jrs