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CIRCUIT COURT
DANE COUNTY, WI
2022CV001594

BY THE COURT:

DATE SIGNED: December 5, 2023

Electronically signed by Diane Schlipper
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 3

JOSH KAUL, et al.,

Plaintiffs,

and

CHRISTOPHER J. FORD, et al.,

Intervenors,

v. Case No. 22 CV 1594

JOEL URMANSKI, et al.,

Defendants.

DECISION AND ORDER

INTRODUCTION

This Court recently determined that there is no such thing as an "1849 Abortion Ban" in Wisconsin. Specifically, this Court held that Wis. Stat. § 940.04 does not apply to consensual abortions, but to feticide, consistent with the Wisconsin Supreme Court's decision in *State v. Black*, 188 Wis. 2d 639, 526 N.W.2d 132 (1994). In light of this Court's determination that § 940.04 does not apply to abortions, the Wisconsin Attorney General and several state agencies who oversee medical licensing ("the State Agencies"), and doctors who perform abortions in

Wisconsin ("the Doctors") seek both a declaration that § 940.04 does not apply to consensual abortions and an injunction in support of the same.

Defendant Joel Urmanski, the District Attorney for Sheboygan County, opposes the Doctors' and State Agencies' motions. He asks the Court to reconsider its prior decisions that the State Agencies have standing to bring a declaratory action and that § 940.04 only prohibits feticide. Accordingly, he urges the Court to deny the State Agencies' and the Doctors' motions.

For the reasons set forth below, the Court denies Urmanski's motion for reconsideration and grants summary judgment for the Doctors. The Court declares Wis. Stat. § 940.04 does not prohibit abortions. Having now awarded the plaintiffs the ultimate relief they sought, the Court denies the Doctors' motion for an injunction and also denies the State Agencies' motion for judgment on the pleadings as moot.

I. BACKGROUND

A. Brief Procedural History.

The State Agencies plaintiffs are the Wisconsin attorney general and several other state officials and entities. They commenced this action against three district attorneys seeking a declaration that Wis. Stat. § 940.04 is unenforceable as applied to abortions. Amend. Compl., dkt. 34. Shortly thereafter, the Court allowed three Wisconsin physicians—the Doctors—to intervene in the action. Decision and Order (November 18, 2022), dkt. 80.

Sheboygan County District Attorney Joel Urmanski, a named defendant, moved to dismiss the State Agencies' and Intervenor Doctors' complaints. Urmanski Mot. to Dismiss, dkt. 89-90. In a written order ("the Dismissal Order") the Court granted Urmanski's motion in part by dismissing any claims that were "premised on the assertion that Wis. Stat. § 940.04 prohibits abortions." Decision and Order (July 7, 2023); dkt. 147:21. This was because the Court determined that §

940.04 did not apply to abortions, but only applied to feticide, consistent with the supreme court's holding in *State v. Black*, 188 Wis. 2d 639.[1] Dismissal Order, dkt. 147:20 The Court allowed the Doctors and State Agencies to proceed with their remaining claims for declaratory relief. *Id.* at 21.

The State Agencies and Doctors subsequently moved for judgment on the pleadings and summary judgement, respectively.[2]

B. Factual Background.

The following facts are undisputed.

The Doctors are a group of physicians who practice emergency medicine, obstetrics and gynecology, and maternal fetal medicine. They each treat pregnant patients experiencing serious complications with their pregnancies, and at times perform abortions. Int. Compl., dkt. 75:7. The State Agencies are comprised of the Attorney General, the Wisconsin Department of Safety and Professional Services, the Wisconsin Medical Examining Board and its chairperson. Pl. Amend. Compl., dkt. 34.

The State Agencies and Doctors brought these actions for declaratory relief against district attorneys in three Wisconsin counties where abortions were performed prior to the reversal of *Roe*. Amend. Compl., dkt. 34; Int. Compl., dkt. 75. They ask the Court to declare § 940.04 unenforceable as applied to abortions. *Id.* Additionally, the Doctors seek an injunction to support the declaration. Int. Compl., dkt. 75:15.

District Attorney Urmanski has the authority to prosecute crimes in Sheboygan County. Answer to Int. Compl., ¶ 11, dkt. 153. He has publicly interpreted § 940.04(1) as prohibiting

[1] A more comprehensive view of Wisconsin's history of abortion regulation is provided in the July 7 Dismissal Order. Dkt. 147. Additionally, this Court will not repeat the parties' arguments or the Court's rationale in determining the meaning of § 940.04—they, too, can be found in the Dismissal Order. Dkt. 147.

[2] The Doctors originally moved for judgment on the pleadings, but since they provided affidavits as evidence in support of their motion, the Court converted their motion to a motion for summary judgment. Dkt. 158; dkt. 160.

abortions (including consensual abortions) from conception until birth, subject to the exceptions in § 940.04(5) to save the life of the mother. Answer to Int. Compl., ¶¶ 11, 21-22, 24, 31-34, 36, 28, 41-43, dkt. 153.

Given his interpretation, Urmanski has said he will prosecute abortions that he believes violate § 940.04(1). Int. Compl, ¶ 11, dkt. 75; Answer to Int. Compl., ¶ 11, dkt. 153. In a public interview, Urmanski stated that he would enforce § 940.04 in cases of consensual medical abortions if referred, and he further stated he had reached out to law enforcement offices in Sheboygan County regarding his interpretation of the statute.[3] Ben Jordan, *Sheboygan County D.A. says he'll prosecute providers accused of performing abortions in violation of state law,* (June 29, 2022). https://www.tmj4.com/news/local-news/sheboygan-county-d-a-says-hell-prosecute-providers-accused-of-performing-abortions-in-violation-of-state-law; Emilee Fannon, *Wisconsin DA plans to prosecute doctors accused of performing abortions*, (June 30, 2022), https://abc7chcago.com/abortion-wisconsin-sheboygan-county-district-attorney/12006862/.

Though Urmanski voiced his intention to enforce § 940.04 as applied to consensual abortions, Defendant District Attorneys Chisholm and Ozanne from Milwaukee and Dane Counties, respectively, have taken no position on whether § 940.04(1) applies to consensual abortions. Chisholm and Ozanne ask this Court to deny the Doctors' motion for injunctive relief, claiming it interferes with their discretion to charge criminal cases. Chisholm Resp. Br., dkt. 167; Ozanne Resp. Br., dkt. 168. All three district attorneys agree they will abide by any order this Court issues regarding the meaning of § 940.04. *Id*.; Chisholm Resp. Br., dkt. 167; Urmanski Aff., ¶¶ 6-7, dkt. 171.

[3] This Court will take judicial notice of Urmanski's statements under Wis. Stat. § 902.01(2)(b), as they are public and recorded. The statements are capable of accurate and ready determination by resort to watching the video that cannot be reasonably questioned.

One of the Doctors, Dr. Kristin Lyerly, is licensed as a physician in Wisconsin and resides in Brown County. Lyerly Aff., ¶ 1, dkt. 164. She practiced as an obstetrician-gynecologist throughout the state, including Sheboygan County, and provided full scope care to women who may become pregnant, are pregnant, or may be experiencing complications with their pregnancies. Lyerly Aff. ¶¶ 1,3-5, 9, dkt. 164. Due to some of these complications, at times she performed abortions in Sheboygan County and elsewhere in Wisconsin, up until late June 2022. *Id.* ¶¶ 9-10.

In June 2022, as Dr. Lyerly was aware, the Supreme Court reversed *Roe v. Wade*, holding that there is no federal constitutional right to abortion at any stage and that "the Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. __, 142 S. Ct. 2228, 2284 (2022); Lyerly Aff., ¶ 12, dkt. 164. In reversing *Roe,* the Supreme Court placed abortion regulation back in the hands of the states. *Id.*

Prior to the Supreme Court's decision in *Dobbs,* Dr. Lyerly practiced medicine in Sheboygan County without fear of criminal prosecution. Lyerly Aff., ¶ 11, dkt. 164. After *Roe* was reversed, Dr. Lyerly learned through various media outlets that Sheboygan County District Attorney Joel Urmanski intended to prosecute abortion providers under § 940.04(1) if the cases were referred to his office by law enforcement agencies. *Id.* ¶12. Dr. Lyerly was so concerned about her continued practice in Sheboygan County and Wisconsin generally, that she temporarily relocated her medical practice to Minnesota and Arizona, where she knew she did not face criminal prosecution. *Id.* ¶¶ 16-23.

II. LEGAL STANDARDS

The State Agencies and the Doctors seek similar relief—a declaration that § 940.04 does not apply to consensual abortions—but they rely on two different procedures. The State Agencies move for judgment on the pleadings. "A judgment on the pleadings is essentially a summary

judgment decision without affidavits and other supporting documents." *McNally v. Capital Cartage, Inc.*, 2018 WI 46, ¶ 23, 381 Wis. 2d 349, 912 N.W.2d 35. Courts "[d]etermine first whether the complaint has stated a claim." *Id.* If so, courts "next examine the responsive pleading to ascertain whether an issue of material fact exists." *Id.* "Judgment on the pleadings is proper only if there are no genuine issues of material fact." *Id.*

The Doctors move for summary judgment because, unlike the State Agencies, they have provided supporting affidavits. A party is entitled to summary judgement if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Everson v. Lorenz*, 2005 WI 51, ¶ 9, 280 Wis. 2d 1, 695 N.W.2d 298; Wis. Stat. § 802.08(2).

The power of the courts to issue a declaration is broad in scope. *Loy v. Bunderson*, 107 Wis. 2d 400, 407, 320 N.W.2d 175 (1982). Section 806.04(1) gives courts the authority to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." Any interested person whose rights, status or other legal action are affected by, among other things, a statute, may have determined any question of construction or validity arising from the statute and obtain a declaration of rights. Wis. Stat. § 806.04(2).

Declaratory judgments allow courts to "anticipate and resolve identifiable, certain disputes between adverse parties." *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 28, 309 Wis. 2d 365, 749 N.W.2d 211 (citations omitted). Courts may use declarations to settle justiciable controversies prior to the time that a wrong has been threatened or committed, providing "a remedy which is primarily anticipatory or preventative in nature." *Lister v. Bd. of Regents of Univ. Wisconsin Sys.*, 72 Wis. 2d 282, 307, 240 N.w.2d 610 (1976). A controversy is justiciable when the following factors are present:

(1) A controversy in which a claim of right is asserted against one who has an interest in contesting it.

(2) The controversy must be between persons whose interests are adverse.

(3) The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectable interest.

(4) The issue involved in the controversy must be ripe for judicial determination.

Olson, 2008 WI 51, ¶29 (citing *Loy*, 107 Wis. 2d at 410).

Finally, in addition to declaratory relief, the Doctors also seek to permanently enjoin the prosecution of abortions under § 940.04. Permanent injunctions should not be issued lightly. *Pure Milk Prod. Co-op v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979). "To obtain an injunction, a plaintiff must show a sufficient probability that future conduct of the defendant will violate a right of will and injure the plaintiff." *Id.* The Plaintiff must establish the injury is irreparable. *Id.* The court must reconcile competing interests and be satisfied that on balance, equity favors issuing an injunction. *Id.*

III. ANALYSIS

To summarize, the State Agencies seek judgment on the pleadings, the Doctors seek summary judgment, and Urmanski opposes both motions arguing that the Court must reconsider its conclusions in the Dismissal Order. The Court need not address each of the arguments raised by each of these three motions, however, because Urmanski concedes that one of the Doctors, Dr. Lyerly, presents a justiciable controversy. Urmanski Resp. Br., dkt. 170:14. What this means is that, if the Court denies part of Urmanski's motion to reconsider—that is, if the Court concludes it did not commit a manifest error of law by concluding § 940.04 does not prohibit abortions—then the Court must also conclude that Dr. Lyerly has satisfied her burden to show there is no genuine issue of material fact and that she is entitled to judgment as a matter of law. In other words, given Urmanski's concession, this Court need not consider whether the State Agencies or all three of the Doctors present a justiciable claim—one doctor is enough.

A. The Court Stands by its Interpretation of § 940.04.

Urmanski's argument in opposition to Dr. Lyerly's motion for summary judgment relies entirely on the Court reconsidering the Dismissal Order. The Wisconsin Supreme Court explains the standard for reconsideration as follows:

> [A] circuit court possesses inherent discretion to entertain motions to reconsider "nonfinal" pre-trial rulings. To succeed, a reconsideration movant must either present newly discovered evidence or establish a manifest error of law or fact.
>
> Newly discovered evidence is not new evidence that could have been [submitted earlier]. Similarly, a "manifest error" must be more than disappointment or umbrage with the ruling; it requires a heightened showing of wholesale disregard, misapplication, or failure to recognize controlling precedent. Simply stated, a motion for reconsideration is not a vehicle for making new arguments or submitting new evidentiary materials that could have been submitted earlier after the court has decided a motion ….

Bauer v. Wisconsin Energy Corp., 2022 WI 11, ¶¶ 13-14, 400 Wis. 2d 592, 970 N.W.2d 243 (citations, some quotation marks, and original alterations omitted).

Urmanski says the Court made several errors in the Dismissal Order's analysis. Urmanski Reply Br., dkt. 170. To explain why, Urmanski essentially repackages all of the arguments that he made in his motion to dismiss. Dkt. 111. Reconsideration "requires a heightened showing of wholesale disregard, misapplication, or failure to recognize a controlling precedent." *Bauer*, 2022 WI 11, ¶14. This kind of heightened showing does not mean re-submitting the same arguments that a court has already rejected. This Court understands the need to preserve issues for appeal, but will not restate its rationale for deciding that § 940.04 applies to feticide and not abortions. That has been fully fleshed out in the Dismissal Order. Dkt. 147.

Urmanski continues to argue that "*Black* is objectively wrong …" for several reasons. Urmanski Resp. Br., dkt. 170:26-29. This is not a reason to reconsider the Dismissal Order because the supreme court is the "only state court with the power to overrule, modify or withdraw language

from a previous supreme court case." *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246. (1997). As such, this Court has no authority to overrule *State v. Black*.

In sum, Urmanski fails to make any "heightened showing of wholesale disregard, misapplication, or failure to recognize controlling precedent." *Bauer,* 2022 WI 11, ¶ 14. Accordingly, the Court denies Urmanski's motion for reconsideration.

B. Dr. Lyerly Presents a Justiciable Claim and is Entitled to a Declaratory Judgment that § 940.04 does not Prohibit Abortions.

Dr. Lyerly fears that she may be subjected to criminal investigation or prosecution based on some prosecutors' public statements that § 940.04 could be used to prosecute abortion providers. Lyerly Aff., ¶¶ 16-17, dkt. 164. The threat of prosecution, even for abortions that may preserve the health and well-being of a pregnant patient, has caused her to stop caring for pregnant patients in Wisconsin. *Id.* ¶¶ 12-13, 16-18, 20-21, 24.

It is undisputed that Sheboygan County District Attorney Urmanski, like all district attorneys in Wisconsin, has the authority to prosecute criminal actions within his county. Answer to Int. Compl., ¶ 11, dkt. 153. Urmanski holds the position that § 940.04 prohibits performing abortions (including consensual abortions) from conception to birth (subject to specified exceptions). *Id.* ¶¶ 11, 21-22, 24, 31-34, 36, 38, 41-43.

Following the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* decision, Dr. Lyerly learned through the media and conversations with colleagues, that DA Urmanski and other Wisconsin prosecutors stated that they would prosecute medical providers who provided abortions that violated Wis. Stat. § 940.04. Lyerly Aff., ¶¶ 16-17, dkt. 164. Additionally, she learned through media coverage that Urmanski "proactively contacted law enforcement in Sheboygan County to inform them about his interpretation that Wis. Stat. § 940.04 prohibits abortions." Lyerly Aff., ¶ 12, dkt. 164.

As a result, Dr. Lyerly moved her obstetrics practice out of Sheboygan County and out of Wisconsin altogether in June 2022, though she still resides in Wisconsin. Lyerly Aff. ¶¶ 1, 18, dkt. 164. She regularly cared for women who presented with complications during pregnancy and it was not uncommon for those women to have abortions. Prior to June 2022 and the reversal of *Roe*, she also provided elective abortions. *Id.* ¶¶ 9-10, dkt. 164.

Based on Urmanski's comments, Dr. Lyerly fears criminal prosecution if she continues her medical practice in Wisconsin. Lyerly Aff., ¶¶ 16-23, dkt. 164. This continuing threat of prosecution infringes on her right to practice medicine in the best interest of patients without fear of an unfounded investigation, prosecution, and potential conviction. Dr. Lyerly wishes to resume her practice in Wisconsin but believes she cannot do so until there is certainty about § 940.04. *Id.*. She reasonably fears that district attorneys could try to enforce § 940.04 as an abortion ban. *Id.*.

It is well settled that a proper case for declaratory judgment is presented when requested by the party threatened by the application of penal law. *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 671, 239 N.W.2d 313 (1976) *superseded on other grounds via statute as stated in State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). Though Urmanski has not threatened her directly, it is well established that "potential defendants may seek a construction of a statute … without subjecting themselves to forfeitures or prosecution." *Miller Brands-Milwaukee, Inc. v. Case*, 162 Wis. 2d 684, 695, 470 N.W.2d 290 (1991). It is not a prerequisite for Dr. Lyerly to suffer an actual injury. A matter must be sufficiently developed to allow a conclusive adjudication. *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2001 WI 65, ¶ 41, 244 Wis. 2d 333, 627 N.W.2d 866.

Dr. Lyerly presents evidence to satisfy each of the four elements of a justiciable controversy. Specifically, Dr. Lyerly claims a right to perform abortions in compliance with

applicable state law, without being subject to criminal prosecution for the misapplication of § 940.04. Additionally, her interests are adverse to Urmanski. As the district attorney in Sheboygan County, Urmanski has the authority to prosecute criminal actions. Answer to Int. Compl., ¶ 11, dkt. 153. Accordingly, his interpretation of § 940.04(1) as prohibiting consensual abortions is adverse to Dr. Lyerly's claim of right to perform lawful abortions. Answer to Int. Compl., ¶¶ 11, 21-22, 24, 31-34, 36, 38, 41-43, dkt. 153. Finally, Dr. Lyerly has a legally protectable interest in this case. Her fear of enforcement of § 940.04 as applied to abortions has caused her to stop performing abortions in Sheboygan County and in Wisconsin in general.

Urmanski agrees. He "does not dispute that Lyerly presents a justiciable controversy with respect to her claims that § 940.04(1) does not apply to abortions." Urmanski Br., dkt. 170:15. Therefore, the Court need not further address any other plaintiffs' claims. It is enough that Dr. Lyerly presents a justiciable claim that is ripe for judicial determination and that there are no genuine disputes over material facts.

For all of the reasons above, this Court GRANTS the Doctors' motion for summary judgment and declares that § 940.04 does not apply to abortions.

C. The Doctors' Request for an Injunction is Denied.

In addition to declaratory relief, the Doctors also seek an order enjoining any prosecution for consensual abortion under § 940.04. In support of the Doctors' request for an injunction, the State Agencies argue that this case "presents 'unique issues of interest to this state,' reflecting the importance of complete clarity for all Wisconsinites." Pl. Br., dkt. 157:21 (quoting *State ex rel. Lynch,* 71 Wis. 2d at 668).[4] This Court has discretion to grant injunctive relief in aid of a declaratory judgment, "where necessary or proper to make the judgment effective." *Town of*

[4] The State Agencies do not seek injunctive relief in the Amended Complaint and only address an injunction in support of the Doctors' claims. Compl., dkt. 34; Pl. Br., dkt. 157:20.

Blooming Grove v. City of Madison, 275 Wis. 328, 336, 81 N.W.2d 713 (1957) (citing *Morris v. Ellis*, 221 Wis. 307, 315, 266 N.W. 921 (1936)).

1. The Doctors have Not Satisfied this Court of an Irreparable Injury.

While true that this case presents unique issues of interest for Wisconsin, the Doctors must show "a sufficient probability that future conduct of the defendant will violate a right or will and injure the plaintiff" and the injury is irreparable. *Pure Milk Prods.*, 90 Wis. 2d at 800. They have not satisfied this Court that the future conduct of the defendants, here three Wisconsin district attorneys, will violate a right or will and injure the plaintiff.

Each of the three defendants claims they will abide by the Court's order in this matter. Urmanski has filed an affidavit that acknowledges that if the Court issues a declaration that § 940.04 does not apply to consensual abortions, this would be binding on the parties to this case. Urmanski Aff., ¶¶ 6-7, Dkt. 171. Similarly, Chisholm agrees that after the Court's July 7 Decision and Order, interpreting § 940.04 as applying to feticide and not consensual abortion, "there is no basis to prosecute medical consensual abortion under § 940.04." Chisholm Resp. Br., dkt. 167:5. Likewise, Ozanne "intends to await the Court's declaration of Wisconsin law, and to abide as the Court declares it to be." Ozanne Resp. Br., dkt. 168:3. The defendants in this action, as parties, admit that they are bound by the Court's declaration.

The Doctors argue that although declaratory judgments should be the functional equivalent of injunctions when applied to government parties, this is not always the case. Int. Resp. Br., dkt. 163:20. They point to Chief Justice Abrahamson's dissent in *Madison Teachers., Inc. v. Walker*, for the premise that the supreme court's decision essentially "authorizes the executive to disobey the declaratory judgments of the judiciary," and strips the circuit courts of the ability to protect those judgments. 2013 WI 91, ¶ 24, 351 Wis. 2d 237, 839 N.W.2d 388 (Abrahamson, C.J.

dissenting). In that case, the circuit court declared that certain statutory provisions were unconstitutional. *Id.* ¶¶ 3, 19. After a government party ignored the court's order and "just forged ahead enforcing a law that had been declared null and void," the circuit court ultimately held the party in contempt and granted injunctive relief. *Id.* ¶¶ 10, 20.

The Doctors urge the Court to grant an injunction because they think *Madison Teachers* opened the door for a governmental actor to argue that a declaratory judgment does not have the same legal effect as an injunction. Int. Br., dkt. 163:21. Merely opening the door to the possibility that a government actor may disregard a declaratory judgment does not reach the level of a sufficient probability that the future conduct of the defendants will violate a right and injure the doctors—especially in light of their statements otherwise. Because government actors in a separate case, ten years ago, ignored the circuit court's order, does not mean that there is a sufficient probability that these defendants will do the same.

Simply put, the Defendants all say they will abide by this Court's order. The Doctors do not show any reason why these district attorneys would renege on that promise. Accordingly, the Doctors do not satisfy their burden to show an irreparable injury.

2. Equity Does Not Favor Issuing an Injunction.

The Court must then reconcile competing interests and the Doctors must satisfy the Court that on balance equity favors issuing the injunction. *Pure Milk Prods.,* 90 Wis. 2d at 800.

Here, there are several competing interests to consider. Urmanski correctly points out that any order to enjoin the conduct of the parties would only grant injunctive relief against three particular district attorneys, and potentially their successors—not all Wisconsin district attorneys. Urmanski Resp. Br., dkt. 170:39. Subject to some exceptions that have not been presented here, injunctions are binding only on parties to the action. *Dalton v. Meister*, 84 Wis. 2d 303, 311-12,

267 N.W.2d 326 (1978). Therefore, to grant the injunction would mean that only three Wisconsin district attorneys, and their successors, would be enjoined from unlawfully enforcing § 940.04. Though they are the district attorneys in the three counties where abortion clinics existed prior to the overturning of *Roe*, the Doctors do not show why it would be equitable to enjoin only these Defendant prosecutors, subjecting them to penalties not faced by other district attorneys.

In conclusion, the Doctors do not satisfy their burden to show future conduct of the Defendants will irreparably injure the Doctors and, after balancing the equity factors as explained above, this Court DENIES the Doctors' motion for injunctive relief.

ORDER

For the reasons stated,

The Court GRANTS Dr. Kristin Lyerly's motion for summary judgment. The Court DECLARES that Wis. Stat. § 940.04 does not apply to abortions.

The Court DENIES all other pending motions.

This is a final order for purpose of appeal. Wis. Stat. § 808.03(1).