

Wisconsin Supreme Court Declares 1849 Abortion Ban Unenforceable

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— Categories: Human Rights



Wisconsin's highest court has ruled that a 176-year-old law banning nearly all abortions cannot be enforced, marking a significant victory for reproductive rights advocates and providing clarity after years of legal uncertainty.

In a 4-3 decision announced Wednesday, the Wisconsin Supreme Court upheld a lower court's finding that the 1849 law, which made it a felony to "intentionally destroy" a fetus except to save the mother's life, had been effectively replaced by newer state laws. The

ruling comes just three years after the United States Supreme Court overturned *Roe v. Wade*, the landmark 1973 decision that protected the constitutional right to abortion.

Attorney General Josh Kaul, a Democrat, filed the lawsuit challenging the old ban in 2022, shortly after the federal ruling returned abortion regulation to the states. He argued that more recent Wisconsin laws, including a 2015 statute that bans abortions after 20 weeks of pregnancy, were intended as substitutes for the 19th-century near-total ban.

Justice Rebecca Dallet, writing for the majority, agreed. She noted that lawmakers had created a “comprehensive” framework regulating abortion in modern times. “That comprehensive legislation so thoroughly covers the entire subject of abortion that it was meant as a substitute,” she wrote.

The decision was not without controversy. Republican District Attorney Joel Urmanski of Sheboygan County maintained that the 1849 ban was still valid after *Roe* fell. Some providers stopped performing abortions out of fear of prosecution. But last year, a state judge ruled the law unenforceable, allowing services to resume.

On Wednesday, Kaul called the ruling a significant step forward for women’s health and autonomy in Wisconsin. “This decision is a major victory for reproductive freedom in our state,” he said at a press conference, standing alongside Planned Parenthood of Wisconsin leaders.

Not everyone welcomed the outcome. In a strongly worded dissent, Justice Annette Ziegler accused the majority of manipulating legal arguments to fit a political agenda. She compared the opinion to “painting a mule to resemble a zebra, and then going zebra hunting.”

Planned Parenthood’s Wisconsin chapter expressed mixed feelings. While praising the outcome, they were disappointed that the court dismissed their separate lawsuit arguing the ban violated the state constitution. “At a time when politicians are doing everything in their power to strip away rights, our state courts must step up to protect fundamental freedoms,” said Michelle Velasquez, the group’s chief strategy officer.

The case underscored how much abortion rights have reshaped Wisconsin politics. Last year, liberals secured a majority on the court for the first time in 15 years after a high-profile

election centered on reproductive rights. The newly elected justice, Susan Crawford, campaigned in support of abortion access and will join the bench next month.

For now, abortions remain legal in Wisconsin up to 20 weeks of pregnancy, offering relief to providers and patients across the state.