

Striking Down the Past: Wisconsin Ends 1849 Abortion Ban, But Uncertainty Remains

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*File photo: Wisconsin Attorney General Josh Kaul filed the lawsuit in 2022, shortly after the U.S. Supreme Court overturned *Roe v. Wade* with the *Dobbs v. Jackson Women's Health Organization* decision in June 2022. The case, *Kaul v. Urmanski*, was filed to challenge the enforceability of Wisconsin's 1849 abortion ban, arguing that modern abortion laws enacted over the decades had effectively replaced it. / Source: AP*

On July 2, 2025, the Wisconsin Supreme Court's ruling to invalidate the 1849 abortion ban offered a heartfelt reprieve, restoring hope and certainty to countless women and families who had been caught in a web of legal uncertainty since the **U.S. Supreme Court's 2022 decision to overturn *Roe v. Wade***. This 4-3 ruling, split along ideological lines, invalidates a 176-year-old statute that had cast a shadow over abortion access in Wisconsin, affirming that subsequent laws have effectively replaced it. The decision not only restores clarity to the state's abortion regulations but also makes clear the profound influence of judicial elections and the broader political currents shaping reproductive rights. While celebrated by advocates as a triumph for women and healthcare providers, the ruling has sparked sharp dissent and leaves unresolved questions about constitutional protections, setting the stage for continued debate in a state with a divided government and a polarized electorate.

The 1849 law, which made it a felony to “intentionally destroy” a fetus except to save the mother’s life, had been dormant for decades under Roe v. Wade’s federal protections. Its potential revival after Roe’s fall created a legal gray area, prompting abortion providers to halt services out of fear of prosecution. The statute’s language was stark: anyone other than the pregnant woman who ended an unborn child’s life faced up to six years in prison and a \$10,000 fine, with the sole exception being a “therapeutic abortion” to preserve the mother’s life. When Republican prosecutors, like Sheboygan County District Attorney Joel Urmanski, signaled their intent to enforce this antique law, clinics across Wisconsin ceased operations for nearly 18 months, leaving patients in limbo.

Democratic leaders, including Governor Tony Evers and Attorney General Josh Kaul, swiftly challenged the ban’s validity. They argued that a web of modern abortion laws—such as a 2015 statute banning abortions after 20 weeks and regulations dictating who can perform abortions, where, and under what conditions—had effectively supplanted the 1849 statute. Their lawsuit, Kaul v. Urmanski, became the vehicle for resolving this dispute. A Dane County judge’s ruling in December 2023, which deemed the 1849 law unenforceable, allowed clinics to resume services, but the issue remained contentious until the state Supreme Court’s decision.

The court’s majority opinion, penned by Justice Rebecca Dallet, leaned heavily on the argument that the Wisconsin Legislature’s comprehensive abortion regulations over the past 50 years had implicitly repealed the 1849 ban. “Comprehensive legislation enacted over the last 50 years regulating in detail the ‘who, what, where, when, and how’ of abortion so thoroughly covers the entire subject of abortion that it was meant as a substitute for the 19th century near-total ban on abortion,” Dallet wrote. She pointed to specific statutes: only doctors can perform abortions, procedures must occur within 30 miles of a hospital where the doctor has admitting privileges, and abortions are permitted prior to viability or 20 weeks, except in cases necessary to preserve the mother’s life or health. This detailed regulatory framework, the majority argued, left no room for the outdated ban to stand.

The ruling was a clear win for reproductive rights advocates. Governor Evers hailed it as a victory for “women and families, a win for health care professionals who want to provide medically accurate care to their patients, and a win for basic freedoms in Wisconsin.” Michelle Velasquez, chief strategy officer of Planned Parenthood of Wisconsin, echoed this sentiment, emphasizing the need for “nonjudgmental and compassionate care” while acknowledging that more work remains to protect reproductive freedom. The decision ensures that abortions can continue under the state’s current laws, which allow procedures up to 20 weeks or beyond if necessary to save the mother’s life or health.

Yet, the ruling was not without fierce opposition. Conservative Justice Annette Ziegler, in a dissenting opinion, accused the majority of manipulating the law to achieve a desired outcome. “The majority’s smoke-and-mirrors legalese is nothing more than ‘painting a mule to resemble a zebra, and then going zebra hunting,’” she wrote, arguing that the court overstepped its constitutional role by nullifying a law never formally repealed by the Legislature. Ziegler’s dissent reflects a broader conservative critique, echoed by the Wisconsin Republican Party, which condemned the decision as judicial overreach. “The Wisconsin Supreme Court’s role is to follow the Constitution, not to make law,” said party chairman Brian Schimming, insisting that the issue should be resolved by the Legislature and voters, not “far-left justices parading as legislators.”

The ideological divide on the court mirrors Wisconsin’s broader political fault lines. The court’s liberal majority, secured after high-stakes elections in 2023 and 2025, played a decisive role. Justice Janet Protasiewicz’s 2023 election, where she openly campaigned on abortion rights, tipped the court to a 4-3 liberal majority for the first time in 15 years. The April 2025 election, which saw Susan Crawford replace Justice Ann Walsh Bradley, maintained this balance. That contest, the most expensive judicial election in U.S. history, drew over \$20 million from groups tied to billionaire Elon Musk in support of Crawford’s conservative opponent, underscoring the national attention on Wisconsin’s judiciary. Abortion was a central issue in both races, reflecting the state’s role as a battleground for reproductive rights.

The court’s decision also touched on a related case from Planned Parenthood of Wisconsin, which argued that the 1849 law violated the state Constitution’s guarantees of life, liberty, the pursuit of happiness, and equal protection. The court dismissed this case, reasoning that its ruling in *Kaul v. Urmanski* rendered the constitutional question moot. This dismissal disappointed some advocates, including Velasquez, who stressed the need for courts to protect “fundamental freedoms” amid efforts to restrict rights. Bryna Godar, a staff attorney at the University of Wisconsin Law School, noted that the unresolved constitutional question could fuel future litigation or calls for a constitutional amendment to enshrine abortion rights, though Wisconsin’s lack of a citizen-initiated ballot measure process complicates such efforts.

Wisconsin’s experience is not unique. Pre-Roe bans like the 1849 statute exist in other states, where they have similarly shaped electoral and legal battles. In Michigan, concern over a similar law drove a successful 2022 ballot measure to establish a constitutional right to abortion. Arizona’s territorial-era ban was upheld by its Supreme Court but later repealed by the Legislature, followed by a 2024 voter-approved constitutional amendment

protecting abortion rights. These examples illustrate how old laws, once thought obsolete, have reemerged as flashpoints in the post-Roe era, forcing states to confront their legal histories.

The Wisconsin ruling clarifies the immediate legal landscape but does not end the debate. The state's divided government—a Republican-controlled Legislature and a Democratic governor—makes significant legislative changes unlikely before the 2026 midterm elections, when the governor's office and many legislative seats will be contested. Any attempt to impose new abortion restrictions or establish constitutional protections would require political alignment that currently does not exist. Governor Evers has vowed to oppose any efforts to limit reproductive healthcare, including access to birth control, IVF, or fertility treatments, stating, "I will continue to fight any effort that takes away Wisconsinites' reproductive freedom or makes reproductive health care... any less accessible in Wisconsin than it is today." His promise reflects the stakes for Democrats, who see reproductive rights as a galvanizing issue.

For conservatives, the ruling is a setback but not a surrender. The Republican Party's call for legislative and voter-driven solutions suggests a strategy of mobilizing their base for future elections. The dissent's argument that the court overreached could resonate with voters skeptical of judicial activism, particularly in a state where elections for Supreme Court justices are openly political. The 2023 and 2025 judicial races, fueled by record-breaking spending and national interest, demonstrate how abortion has transformed Wisconsin's courts into a proxy for broader ideological battles.

The ruling also highlights the human impact of legal uncertainty. When prosecutors threatened to enforce the 1849 ban, providers stopped offering abortions, leaving patients without access for nearly 18 months. A November 2024 hearing exposed the ban's harsh implications, with justices pressing Urmanski's lawyer to admit that it would force a 12-year-old rape victim to carry a pregnancy to term. Such scenarios underscore the real-world consequences of reviving antiquated laws in a modern context.

As far as the future is concerned, Wisconsin's abortion debate is still far from reaching a conclusion. The dismissal of Planned Parenthood's constitutional challenge leaves open questions about the state Constitution's role in protecting reproductive rights. Godar's observation that future court cases or ballot measures could emerge points to a dynamic legal and political landscape. Without a mechanism for citizens to initiate constitutional amendments, any such effort would depend on the Legislature, where partisan gridlock currently prevails. The 2026 elections could shift this balance, either entrenching or dismantling the status quo.

There is no doubt that the Wisconsin Supreme Court's decision is a significant step toward securing abortion access, but it is not a panacea. It resolves a specific legal question while exposing deeper tensions over judicial authority, legislative intent, and individual rights. For now, abortions remain available under the state's modern regulatory framework, and providers can operate without the looming threat of a 19th-century ban. Yet, the dissent's warnings, the Republican Party's defiance, and the unresolved constitutional questions ensure that reproductive rights will remain a central issue in Wisconsin's political and legal arenas, with implications for both its citizens and the nation watching closely.

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