

## Governor, AG Challenge Wisconsin's 1800s-era Criminal Abortion Ban in Court

Written by GOV Press Wisconsin  
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<http://newiprogressive.com/images/stories/S5/women-1849-s424.jpg>



***Lawsuit challenges archaic abortion statute banning nearly all abortions in Wisconsin, including in cases of rape and incest.***

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MADISON — Gov. Tony Evers and Wisconsin Attorney General Josh Kaul filed a new brief Tuesday in their direct challenge to Wisconsin's criminal abortion ban. The lawsuit, [originally filed by Gov. Evers and Attorney General Kaul in June](#), came only days after the U.S. Supreme Court released its decision in *Dobbs v. Jackson Women's Health Organization* overturning *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, upending the constitutional right to an abortion that Wisconsinites and Americans had relied on for nearly 50 years.

At the crux of the governor's and attorney general's challenge is Wisconsin's existing 1800s-era criminal statute that bans nearly all abortions, even in cases of rape and incest. The statute, which originated in 1849 before the Civil War and at a time when women in Wisconsin did not have the right to vote, was never removed from the books even as U.S. Supreme Court decisions superseded the law by affirming the right to an abortion in the United States for almost five decades.

In the wake of the *Dobbs* decision by the U.S. Supreme Court to reverse course on their nearly 50 years of jurisprudence and the resulting potential for the ban to go into effect, Wisconsin's 1800s-era criminal abortion ban that remains on the books has thrown reproductive healthcare access into chaos in the ensuing months. Healthcare providers have

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[already begun halting abortion procedures](#)

across Wisconsin. The lawsuit filed by Gov. Evers and Attorney General Kaul argues Wisconsin's 19th century criminal abortion ban,

[Wis. Stat. § 940.04](#)

, has been superseded by more and cannot be enforced. Specifically, the lawsuit asks the courts to clarify that Wis. Stat. § 940.04 was impliedly repealed by subsequently passed abortion restrictions that conflict with it and it is therefore unenforceable.



Wisconsin Republicans have repeatedly refused to protect reproductive rights and repeal the state's criminal abortion ban despite safe, legal access to abortion having broad, bipartisan support in Wisconsin. According to the Marquette Law School Poll, nearly 60 percent of Wisconsin voters support safe, legal access to abortion and more than 60 percent oppose the decision to overturn *Roe*.



**“We shouldn’t be beholden to a law from the 1800s passed well before Wisconsin women had the right to vote,”** said Gov. Evers. **“We’ve said all along that we’d never stop fighting to ensure every Wisconsinite has the freedom to make their own reproductive healthcare decisions without interference from politicians, and that fight continues today. It’s time for the courts to provide clarity on this issue so that we can restore the reproductive freedom and the rights Wisconsinites relied on right up until the Supreme Court reversed *Roe* and turned back the clock on reproductive freedom by 50 years last summer.”**

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