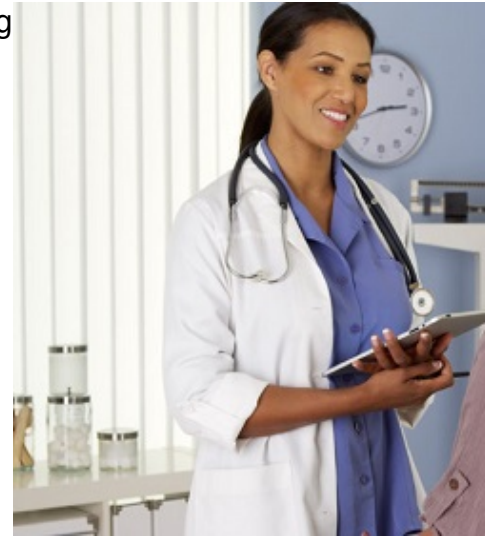


Special Session Called to Allow Repeal of 1849-era Criminal Abortion Ban

Written by GOV Press Wisconsin
Wednesday, 21 September 2022 08:39

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Currently, there is no process by which Wisconsinites can introduce referenda or initiatives to reject existing state statutes like the abortion ban. Legislature in special session could create one.

MADISON — Gov. Tony Evers today signed [Executive Order #175](#) calling a special session of the Wisconsin State Legislature at 10 a.m. on Wed., Oct. 5, 2022, to create a pathway for Wisconsinites to repeal Wisconsin’s 1849-era criminal abortion ban, which—if

[a direct challenge](#)

to the ban brought by Gov. Evers and Attorney General Josh Kaul is unsuccessful—could ban abortion in nearly all instances in Wisconsin, even in cases of rape and incest. Gov. Evers’ announcement today is his most recent effort at restoring reproductive freedom in Wisconsin in the wake of the U.S. Supreme Court decision in

Dobbs v. Jackson Women’s Health Organization

to overturn

Roe v. Wade

and

Planned Parenthood of Southeastern Pa. v. Casey

, stripping millions of Wisconsinites and Americans of the reproductive rights and freedoms they had relied upon for nearly five decades.

The governor’s call comes as last week U.S. Sen. Ron Johnson (R-Wisconsin) newly [suggested](#)

Wisconsin voters could challenge the state’s 1800s-era criminal abortion ban directly through a statewide referendum. However, unlike more than 20 other states in the United States,

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including Michigan, Illinois, and Ohio, Wisconsin's current laws do not allow voters to change state law by referendum, and voters cannot introduce referenda or initiatives to be voted on by the people of Wisconsin. According to the

[Legislative Reference Bureau](#)

, "Unlike a number of other states, Wisconsin does not have any statewide initiative process that would allow electors to propose new state laws or constitutional amendments through a petition and to compel a referendum vote."

That is, there is no process by which Wisconsinites can vote to reject existing state statutes like the state's existing 1849-era criminal abortion ban, which originated before the Civil War and at a time when Wisconsin women did not have the right to vote and, if it were to go into effect, would ban nearly all abortions in Wisconsin, including in cases of rape and incest.



"On the ceiling of the Governor's Conference Room in the Capitol is a phrase I've often repeated over the last three years: 'the will of the people is the law of the land.' Well, right now in Wisconsin, when it comes to reproductive freedom, the will of the people isn't the law of the land—but it damn well should be," said Gov. Evers. "Today, I'm calling the Legislature into special session to create a pathway for Wisconsinites to be able to repeal our 1849-era criminal abortion ban and to ensure women across our state will go back to having the same rights now that they did the day before the U.S. Supreme Court overturned *Roe v. Wade* without having to wait for the courts."

Gov. Evers' plan announced today would create a pathway for Wisconsinites to directly challenge the state's criminal abortion ban and repeal the archaic law, which has caused healthcare providers to largely cease abortion procedures and has left safe, legal abortion access for women in jeopardy as long as the ban is in litigation limbo awaiting clarity from the courts.

"As far as I'm concerned, the right of Wisconsinites to make their own reproductive healthcare decisions without interference from politicians is a fundamental freedom that shouldn't have to be put to a vote—it was a right for nearly 50 years, it was a right until June 23rd, and it should still be a right today," Gov. Evers continued. "But Legislative Republicans have left no other choice. If they aren't going to uphold the will of the people, then the people of this state should have the right to take a stand at the ballot

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box. At the end of the day, Wisconsinites—and women in particular—were not only stripped of their reproductive freedom, but they currently don’t have a right to enact the change they need to protect that freedom without having to get permission from the Legislature. That’s just wrong, and it’s time for us to change that.”

Changes under the governor’s proposal would allow the majority of Wisconsinites who support safe and legal access to abortion to bypass the Legislature by voting directly to repeal Wisconsin’s 1849-era criminal abortion ban from state law. For a constitutional amendment to be adopted in Wisconsin, an identical amendment proposal must pass two consecutive legislatures before it is sent to Wisconsin voters to approve the amendment in an election thereafter.

The governor’s proposal would create a statewide binding referendum process through a constitutional amendment, allowing voters to file petitions with the Wisconsin Elections Commission (WEC) to hold a vote on proposed state laws and constitutional amendments or to repeal current state law. If a sufficient number of signatures by qualified electors are validated by WEC, a vote would be held at the next general election at least 120 days after the petition is filed. Under the proposal, a simple majority vote is required to decide the referendum.

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 v. Wade*.

Earlier this year, Gov. Evers joined legislative Democrats and Wisconsin Attorney General Kaul in [calling on the Legislature](#) to repeal Wisconsin’s archaic criminal abortion ban, and when legislators packed up and concluded their regular session work without taking action, the governor called the Legislature into a [special session](#) to press legislative action to protect reproductive freedom. Unfortunately, and despite broad public support, Republican Legislators [gaveled in and out](#)

of the special session in moments without any discussion or debate, and as anticipated, only days later, the U.S. Supreme Court released their decision in

Dobbs v. Jackson Women’s Health Organization

, overturning

Roe v. Wade

and

Planned Parenthood of Southeastern Pa. v. Casey

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Following the U.S. Supreme Court’s decision in *Dobbs*, Gov. Evers and Attorney General Kaul [announced](#)

a new lawsuit challenging the state’s abortion ban and naming three Republican legislative leaders as the defendants. However, Wisconsin Republicans

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[delayed](#)

responding to the lawsuit for months, and in effort to prevent further delay at taxpayer expense, Attorney General Kaul

[last week](#)

named three district attorneys as new defendants in the suit.

Gov. Evers' announcement today is a continuation of his vigorous defense against attacks on access to reproductive healthcare in Wisconsin. Over the course of the past three years, the governor has vetoed several bills passed by the Legislature, including [several this biennium](#), that would have restricted access to abortion, inserted politics into the personal and private conversations between patients and their healthcare providers and made it harder for doctors to provide medically accurate information and treatment. Many of these bills also sought to limit healthcare options for people seeking basic, necessary care, such as pregnancy care, cancer screening and prevention, sexually transmitted disease screening and treatment, and wellness exams.

Gov. Evers' Executive Order #175 calls the Wisconsin State Legislature on Wed., Oct. 5, 2022, at 10 a.m., solely to act on [LRB-6542/1](#) and [LRB-6543/1](#), relating to reserving to the people the power of referendum to reject acts of the Legislature and the power of initiative to propose and approve at an election laws and constitutional amendment (first consideration).