

# WISCONSIN SUPREME COURT

November 11, 2024

9:45 a.m.

23AP2362 Josh Kaul v. Joel Urmanski

*The Wisconsin Supreme Court accepted jurisdiction of this case following a bypass of the Court of Appeals. This is a review of a decision of the Dane County Circuit Court, Judge Diane Schlipper presiding, that declared Wisconsin's pre-Roe abortion statute, Wis. Stat. § 940.04, unenforceable as applied to consensual abortions. District Attorney Joel Urmanski ("the appellant") argues that the statute remains enforceable in light of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*. Attorney General Josh Kaul, along with the Wisconsin Department of Safety and Professional Services, the Wisconsin Medical Examining Board, and Dr. Clarence P. Chou (collectively, the "State Plaintiffs"), seek a declaration that the 19th-century statute does not apply to consensual abortions and should not be enforced.*

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The statute in question, Wis. Stat. § 940.04, originally enacted in 1849, criminalizes abortion unless it is performed to save the life of the mother. The State Plaintiffs, including Attorney General Josh Kaul and the Wisconsin Department of Safety and Professional Services, argue that the statute has been superseded by more recent laws regulating abortion, such as Wis. Stat. § 940.15, which outlines specific conditions under which abortion is legal in Wisconsin. The circuit court agreed, relying on the Wisconsin Supreme Court's decision in *State v. Black* (1994), which interpreted Wis. Stat. § 940.04 as addressing only feticide and not consensual abortions.

District Attorney Urmanski has appealed, arguing that *Black* should either be overturned or does not apply to this case. He contends the *Dobbs* decision, which returned regulatory authority of abortion to the states, revives Wis. Stat. § 940.04 unless it is explicitly repealed or found unenforceable. The State Plaintiffs also argue that even if the statute were still applicable, it has been impliedly repealed by subsequent legislation that establishes a comprehensive framework for regulating lawful abortions.

The Wisconsin Supreme Court granted the petition to bypass the Court of Appeals and will now determine whether Wis. Stat. § 940.04 is enforceable as to consensual abortions and whether it has been impliedly repealed by later legislation.

The issues for the Supreme Court to decide are:

- 1) Whether Wis. Stat. § 940.04 applies to consensual abortions, or whether it is limited to acts of feticide, as interpreted by *State v. Black*.

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- 2) Whether Wis. Stat. § 940.04 has been impliedly repealed by subsequent legislative enactments, including Wis. Stat. § 940.15, which regulates lawful abortions in Wisconsin.