

Wisconsin Supreme Court Overturns 1849 Abortion Ban

The Wisconsin Supreme Court struck down the state's 176-year-old abortion ban, ruling that more recent laws supersede the 19th-century policy.

"We conclude that 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," Justice Rebecca Frank Dallet wrote in the opinion. "Accordingly, we hold that the legislature impliedly repealed [the 1849 ban] to abortion, and that [that law] therefore does not ban abortion in the State of Wisconsin."

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"We conclude that, under the unique circumstances presented here, the legislature impliedly repealed § (1) as to abortion by enacting comprehensive legislation about virtually every aspect of abortion including where, when, and how healthcare providers may lawfully perform abortions," the decision declares. "That comprehensive legislation so thoroughly covers the entire subject of abortion that it was clearly meant as a substitute for the 19th century near-total ban on abortion. As a result, we hold that § (1) does not prohibit abortion in the State of Wisconsin."

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State Justice Annette Ziegler wrote in her dissent to the decision that the ruling is “a jaw-dropping exercise of judicial will.”

“In this dangerous departure from our constitutional design, four members of the court make up and apply their own version of implied repeal, failing to hew to any semblance of traditional judicial decision-making or jurisprudence,” she wrote.

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Under the 1849 law, anyone other than the mother who “intentionally destroys the life of an unborn child” is guilty of a felony.

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