MEMORANDUM

To: Interested Parties
From: Connor Fitzgerald, Scholars Intern
Michael Best Strategies
Date: July 2nd, 2025
Subject: *Kaul v. Urmanski* – Supreme Court Strikes Down 1849 Abortion Ban

In *Kaul v. Urmanski*, the Wisconsin Supreme Court considered whether a criminal statute passed in 1849 banning the destruction of an unborn child could still be enforced as an almost total abortion ban following the U.S. Supreme Court's *Dobbs* decision.

On July 2, 2025, the Court ruled 4–3 that the statute is no longer enforceable as applied to abortion. The majority held that the law had been **"**impliedly repealed" by decades of legislation regulating nearly every aspect of abortion access in Wisconsin. The Court found that these newer laws were clearly intended to replace, not coexist with, the older statute, and that enforcing both would be legally contradictory.

The plaintiffs, including Attorney General Josh Kaul and several medical professionals, argued that the 1849 statute either does not apply to abortion at all or had been overridden by a more modern set of abortion laws passed over the last 50 years. They emphasized that the existing legal framework assumes abortion is lawful under certain circumstances and that retaining the older statute would make much of that framework incoherent. In response, District Attorney Joel Urmanski contended that the plain language of the 1849 law still prohibits most abortions and that the Legislature had never expressly repealed it. He argued that the newer abortion regulations could be enforced in addition to the 1849 ban, and that the absence of an explicit repeal by the Legislature meant the older law remained valid.

The decision affirms a lower court ruling and states that abortion is not currently prohibited under Wisconsin law. The Court emphasized that this outcome reflects the structure of existing legislation, and that the Legislature remains free to revise the law going forward.

In dissent, the justices argued that the Court overstepped by invalidating a longstanding statute without explicit legislative action. Justice Ziegler wrote, "Today, four justices discard a duly enacted law not because it is unconstitutional, but because they find it outdated."

The ruling leaves in place the post-*Roe* regulatory framework, under which elective abortions remain legal in Wisconsin up to 20 weeks of pregnancy.

Justice Dallet authored the majority opinion, joined by Chief Justice Karofsky and Justices Ann Walsh Bradley and Protasiewicz. Justices Ziegler, Rebecca Grassl Bradley, and Hagedorn each filed dissenting opinions.

Governor Tony Evers praised the decision as a "win for women and families," stating it protects access to reproductive healthcare in Wisconsin and fulfills his promise to defend personal medical freedoms. He emphasized that the ruling ensures Wisconsin women are no longer subject to a law enacted before they had the right to vote. In contrast, Heather Weininger, Executive Director of Wisconsin Right to Life, called the ruling "deeply disappointing." She criticized the majority for failing to identify any law that explicitly repealed the 1849 ban, stating, "To assert that a repeal is implied is to legislate from the bench."