



In 1973, the Supreme Court of the United States (SCOTUS) held in *Roe v. Wade* that the US Constitution protects the right to have an abortion. Decades later, in *Whole Woman's Health v. Hellerstedt*, the Supreme Court added that while states can regulate abortion, those regulations have to benefit patient health more than they burden their access. All of the Court's rulings on abortion rights have had an enormous impact on abortion access in Wisconsin.

In 1849, Wisconsin made it a felony to have or provide an abortion. While that law became unenforceable after *Roe v. Wade*, Wisconsin never took its criminal abortion ban off the books. This law is incredibly harsh and does not have exceptions for rape, incest, or the health of the mother. The only way an individual could legally have an abortion under this law would be if they were about to die as a result of their pregnancy.

Since *Roe*, the Supreme Court has held that the Constitution protects the right to have an abortion, but that right is under serious threat. Now that Justice Kavanaugh has been appointed to the Supreme Court, the Court is controlled by an anti-abortion majority that might act to roll back abortion rights or reverse *Roe v. Wade* entirely.

If *Roe* were overturned, Wisconsin's criminal abortion law could be enforceable once again, and Wisconsin could return to a time where individuals are simply not allowed to make their own health care decisions.

However, our state legislature and Governor have the power to stand between a hostile Supreme Court and the people of Wisconsin – our lawmakers can act to protect access to abortion and reproductive healthcare by repealing our archaic 1849 criminal law and passing new laws that protect our health and rights.

**Now that Justice Kavanaugh is seated on the Supreme Court, Wisconsinites face a few possible future scenarios, explained in detail below. But if the Wisconsin state legislature takes action to protect our rights and health, then even a hostile Supreme Court won't mean a return to the 1800s in our state.**



## SCOTUS Doesn't Take Up the Issue & Current Federal Law Stands

- Wisconsin criminal abortion ban remains unconstitutional and abortion remains legal in Wisconsin
- Although existing restrictions to abortion access (see scenario 2) may remain in place, many could be found unconstitutional under *Whole Woman's Health*
- This scenario seems now seems unlikely since Justice Kavanaugh was confirmed.

**"GOOD"  
SCENARIO**  
Status Quo



## SCOTUS Doesn't Reverse Roe Outright, but Upholds Additional Abortion Restrictions & Weakens Legal Protections for Abortion Rights

- Wisconsin criminal abortion ban likely still unconstitutional and unenforceable
- Abortion access continues to exist but with same barriers in place - unless Wisconsin legislators step up to repeal the restrictions and protect our health and rights.
- Existing restrictions include: 20 week ban, 24 hour mandatory waiting period, mandatory ultrasound, ban on tele-medicine for medication abortion, prohibition against non-physicians providing abortions
- New, even harsher restrictions could be proposed by anti-abortion legislators, include abortion bans replicating whatever extreme restrictions had been passed in other states and upheld by SCOTUS

**BAD  
SCENARIO**



## SCOTUS Explicitly Overturns Roe

- Unless state lawmakers act to protect the rights and health of Wisconsinites, without *Roe*, prosecutors could begin to prosecute doctors who provide abortions in the state.
- While the current law doesn't criminalize a patient for having an abortion, a provider or anyone else that helps an individual obtain an abortion could face up to 6 years in prison and a \$10,000 fine.

**UGLY  
SCENARIO**

For more information and to stay up-to-date, visit [www.supportwomenshealth.org/scotus](http://www.supportwomenshealth.org/scotus).

