

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 › MADISON, WI 53701 › (608) 256-8900 › WWW.FFRF.ORG

June 21, 2022

**SENT VIA EMAIL AND U.S. MAIL**

**jperez@milwaukee.gov; mayor@milwaukee.gov**

The Honorable José G. Pérez  
Milwaukee Common Council President  
200 E. Wells Street, Rm. 205  
Milwaukee, WI 53202

The Honorable Cavalier Johnson  
Mayor's Office  
200 E. Wells Street, Rm. 201  
Milwaukee, WI 53202

Re: Please consider resolution on non-enforcement of pre-*Roe* abortion ban

Dear Alderman Pérez, Mayor Johnson and Common Council Members:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to encourage you to adopt a similar resolution to that recently passed in Tucson, Arizona, protecting abortion rights for its citizens. FFRF is a Wisconsin-based national nonprofit organization with more than 36,000 members across the country, including more than 1,600 members in Wisconsin. FFRF's purposes are to protect the constitutional separation between state and church and to educate about nontheism.

On June 7, 2022, the City of Tucson passed Resolution 23477, which added protection for abortion rights in anticipation of the U.S. Supreme Court overturning *Roe v. Wade*.<sup>1</sup> Resolution 23477 supports the rights of pregnant persons and orders Tucson police to make no arrests under Arizona's abortion ban, enacted in 1901, or Arizona's recently-passed 15-week abortion ban.<sup>2</sup> This resolution accurately states the trauma, dangers, and unconstitutional nature of Arizona laws restricting abortion.

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<sup>1</sup>Resolution available at

[tucsonaz.onbaseonline.com/1801AgendaOnline/Documents/ViewDocument/RESOLUTION%2023477.pdf?meetingId=1604&documentType=Agenda&itemId=64893&publishId=96114&isSection=false](https://tucsonaz.onbaseonline.com/1801AgendaOnline/Documents/ViewDocument/RESOLUTION%2023477.pdf?meetingId=1604&documentType=Agenda&itemId=64893&publishId=96114&isSection=false).

<sup>2</sup> The Arizona Legislature recently adopted Senate Bill (S.B.) 1164, which amends Arizona's abortion statutes to add a new article banning abortions after 15 weeks of gestation except in narrowly defined medical emergencies. The Bill imposes a total ban on abortions and subjects providers to up to five years of imprisonment for performing abortions.

As you are certainly aware, Wisconsin has a similar ancient abortion ban—even older, predating the Civil War—that will become enforceable again if *Roe v. Wade*, 410 U.S. 113 (1973) is overturned, which is alarmingly expected to be imminent. Wisconsin’s archaic law is the harshest pre-*Roe* abortion ban in the country, was passed long before women had the right to vote and is massively out of touch with modern standards of reproductive rights and personal autonomy.

We strongly urge the Milwaukee Common Council to follow Tucson’s laudable example by passing a resolution, in consultation with Police Chief Jeffrey Norman, stating that Madison City Police will not make any arrests pursuant to Wis. Stat. 940.04. Sample language for this resolution is enclosed. Wisconsin Attorney General Josh Kaul has publicly stated that he will not enforce this law. Madison residents should feel confident that their city police, too, have firm instruction to disregard this barbaric law.

Public support is also strongly in favor of protecting reproductive rights—a recent Marquette Law School national survey found that more than 70 percent of Americans are opposed to overturning *Roe v. Wade*.<sup>3</sup> Among local experts in the field, support is even stronger. More than 90 percent of Wisconsin physicians think that women’s health in our state will get worse if abortion becomes illegal, and expressed “at least some level of concern about legislative interference and the doctor-patient relationship.”<sup>4</sup>

We should listen to Tucson Mayor Regina Romero, and “...protect bodily autonomy and the rights of pregnant persons from repressive state laws.”<sup>5</sup> Local government involvement is crucial to protecting the fundamental rights of Wisconsin residents.

Very truly,



Annie Laurie Gaylor & Dan Barker

Co-presidents

ALG/DB:rdj

Enclosure

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<sup>3</sup> Data available at [law.marquette.edu/poll/2022/01/26/supreme-court-poll-6-press-release/](http://law.marquette.edu/poll/2022/01/26/supreme-court-poll-6-press-release/).

<sup>4</sup> Frederica Freyberg, *The perspective doctors hold toward abortion*, PBS Wisconsin (May 20, 2022), available at [pbswisconsin.org/news-item/the-perspectives-doctors-hold-toward-abortion/](http://pbswisconsin.org/news-item/the-perspectives-doctors-hold-toward-abortion/).

<sup>5</sup> [www.kold.com/2022/06/08/tucson-passes-resolution-case-roe-v-wade-reversal/](http://www.kold.com/2022/06/08/tucson-passes-resolution-case-roe-v-wade-reversal/).

## Sample Resolution Language

RELATING TO REPRODUCTIVE HEALTH CARE; DECLARING MAYOR AND COUNCIL'S OPPOSITION TO THE DRAFT OPINION IN *DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION*; DENOUNCING WIS. STAT. § 940.04, ENACTED IN 1849, AND OTHER PROVISIONS OF WISCONSIN LAW CRIMINALIZING ABORTION; SUPPORTING THE CONSTITUTIONAL RIGHTS OF WOMEN/PREGNANT PERSONS INCLUDING THEIR ACCESS TO REPRODUCTIVE HEALTH CARE AND ABORTIONS; SUPPORTING AND AUTHORIZING REVISIONS TO THE MILWAUKEE POLICE DEPARTMENT'S GENERAL ORDERS; AND DECLARING AN EMERGENCY.

WHEREAS, access to health care promotes the general welfare of Milwaukee residents; and

WHEREAS, access to reproductive health care is critical to women's physical, psychological, and socioeconomic well-being; and

WHEREAS, abortion is a safe medical intervention that roughly one in four women have had in their lifetime;<sup>1</sup> and

WHEREAS, the right to decide to have an abortion before viability has been United States Supreme Court precedent for nearly 50 years; and

WHEREAS, the leaked draft majority opinion in *Dobbs v. Jackson Women's Health Organization* would overturn the constitutional right to abortion as recognized in *Roe v. Wade*, 410 U.S. 113 (1973), and reaffirmed in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); and

WHEREAS, if the United States Supreme Court maintains its draft judgment, Wis. Stat.

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<sup>1</sup> *Dobbs v. Jackson Women's Health Organization*. Brief of amici curiae Am. Coll. of Obstetricians and Gynecologists, Am. Med. Ass'n., et al., <https://reproductiverights.org/wp-content/uploads/2021/09/Major-Medical-Groups-Amicus-Brief.pdf#page=23>.

§ 940.04 and other laws that currently are unenforceable because of *Roe v. Wade* and *Planned Parenthood v. Casey* will be allowed to go into effect, prompting the Center for Reproductive Rights to designate Wisconsin “hostile” to abortion care;<sup>2</sup> and

WHEREAS, the American College of Obstetricians and Gynecologists and other prominent medical organizations have determined that abortion bans will harm, rather than improve, patient health;<sup>3</sup> and

WHEREAS, abortion bans disproportionately target minority and lower-income patients, with up to 75 percent of those seeking abortion care living at or below 200 percent of the federal poverty level, and the majority identifying as Black, Hispanic, Asian, or Pacific Islander;<sup>4</sup> and

WHEREAS, forcing patients to continue pregnancy subjects them to complications and a risk of death that is 14-times higher than abortion;<sup>5</sup> and

WHEREAS, research shows that women denied a wanted abortion are less financially secure in subsequent years than those who received an abortion and being denied an abortion increases the chances that a woman’s existing children live in poverty.<sup>6</sup>

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MILWAUKEE, WISCONSIN AS FOLLOWS:

SECTION 1. The Mayor and Council support the rights of pregnant persons in the City to obtain access to the full spectrum of reproductive healthcare, including abortion care. SECTION

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<sup>2</sup> <https://reproductiverights.org/maps/what-if-roe-fell/?state=WI>.

<sup>3</sup> *Dobbs v. Jackson Women’s Health Organization*. Brief of amici curiae American College of Obstetricians and Gynecologists, American Medical Association, et al., [https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042\\_19-1392%20bsacACOGetal.pdf#page=29](https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042_19-1392%20bsacACOGetal.pdf#page=29).

<sup>4</sup> *Id.* at [https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042\\_19-1392%20bsacACOGetal.pdf#page=39](https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042_19-1392%20bsacACOGetal.pdf#page=39).

<sup>5</sup> *Id.* at [https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042\\_19-1392%20bsacACOGetal.pdf#page=40](https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042_19-1392%20bsacACOGetal.pdf#page=40).

<sup>6</sup> *Dobbs v. Jackson Women’s Health Organization*. Brief of amici curiae Social Science Experts, [https://www.supremecourt.gov/DocketPDF/19/19-1392/192992/20210920145519814\\_19-1392\\_Amicus%20Brief.pdf#page=51](https://www.supremecourt.gov/DocketPDF/19/19-1392/192992/20210920145519814_19-1392_Amicus%20Brief.pdf#page=51).

2. The Mayor and Council oppose the draft majority opinion in *Dobbs v. Jackson Women's Health Organization*.

SECTION 3. The Mayor and Council denounce and oppose the implementation of Wis. Stat. § 940.04 and other Wisconsin laws that prohibit and criminalize abortions, including Wis. Stat. § 940.15, which prohibits non-physicians from performing abortions, even though other medical professionals, such as nurse practitioners, certified nurse midwives, and physician assistants can and do provide safe abortions in other states.<sup>7</sup>

SECTION 4. The Mayor and Council support Milwaukee Police Chief Jeffrey Norman in establishing law enforcement priorities that consider the need to protect the physical, psychological, and socioeconomic well-being of pregnant people and their care providers.

SECTION 5. If the United States Supreme Court overturns *Roe* and/or *Casey*, and/or if the Court upholds Mississippi's 15-week ban, the Mayor and Council support and authorize the Chief of Police to revise the Milwaukee Police Department's (MPD) General Orders to reflect that no physical arrest will be made by an officer for an alleged violation of Wis. Stat. § 940.04 and any charge arising out of those laws can proceed only by long form in lieu of arrest, where the conduct in question occurs at a medical facility.

SECTION 6. If the United States Supreme Court overturns *Roe* and/or *Casey*, or in the alternative, the United States Supreme Court does not formally overturn *Roe* and/or *Casey* but nevertheless upholds Mississippi's 15-week ban, the Mayor and Council support and authorize the Chief of Police to revise MPD's General Orders to reflect that if or when MPD receives a complaint asserting solely a violation of Wis. Stat. § 940.04, MPD will refer the matter to the Wisconsin Department of Health Services for investigation and will not respond to the premises if that premises is a licensed medical facility.

SECTION 7. The City Clerk is instructed to provide copies of this Resolution to

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<sup>7</sup> <https://pbswisconsin.org/news-item/wisconsin-has-a-tangled-series-of-abortion-laws-dating-back-to-1849/>.

the Milwaukee Police Department and the Milwaukee County Attorney's Office.

SECTION 8. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

SECTION 9. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Milwaukee that this Resolution become effective immediately, an emergency hereby is declared to exist, and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Milwaukee, Wisconsin, DATE, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM: REVIEWED BY:

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CITY ATTORNEY

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CITY MANAGER