

FILED
04-26-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
No. 2024AP000330

PLANNED PARENTHOOD OF WISCONSIN, ON BEHALF OF ITSELF, ITS
EMPLOYEES, AND ITS PATIENTS, KATHY KING, M.D., ALLISON
LINTON, M.D., M.P.H., ON BEHALF OF THEMSELVES AND THEIR
PATIENTS, MARIA L., JENNIFER S., LESLIE K., AND ANAIS L.,

Petitioners,

v.

JOEL URMANSKI, IN HIS OFFICIAL CAPACITY AS DISTRICT
ATTORNEY FOR SHEBOYGAN COUNTY, WISCONSIN, ISMAEL R. OZANNE,
IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR DANE
COUNTY, WISCONSIN AND JOHN T. CHISHOLM, IN HIS OFFICIAL
CAPACITY AS DISTRICT ATTORNEY FOR MILWAUKEE COUNTY WISCONSIN,

Respondents.

**ISMAEL R. OZANNE AND JOHN T. CHISHOLM'S JOINT RESPONSE
TO PETITION FOR LEAVE TO COMMENCE AN ORIGINAL
ACTION AND MOTION TO PROCEED USING PSEUDONYMS
AND ASSOCIATED RELIEF**

Douglas M. Poland, SBN 1055189
Clementine Uwabera, SBN 1114847
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Ave., Suite 900
P.O. Box 1784
Madison, Wisconsin 53701-1784
608.256.0226
dpoland@staffordlaw.com
cuwabera@staffordlaw.com
cgerads@staffordlaw.com

*Attorneys for Respondent Ismael R.
Ozanne in his official capacity as
District Attorney for Dane County,
Wisconsin*

Samuel J. Leib, SBN 1003889
Aaron D. Birnbaum, SBN 1054441
LEIB KNOTT GAYNOR LLC
219 North Milwaukee Street
Suite 710
Milwaukee, WI 53202
414-276-2102
sleib@lkglaw.net
abirnbaum@lkglaw.net

*Attorneys for Respondent John T.
Chisholm in his official capacity as
District Attorney for Milwaukee
County, Wisconsin*

On February 22, 2024, Petitioners Planned Parenthood of Wisconsin, Dr. Kathy King, Dr. Allison Linton, Maria L., Jennifer S., Leslie K., and Anais L. (collectively, the “Petitioners”) filed a petition for original action and motion to proceed using pseudonyms and associated relief. The petition named three individual respondents—Joel Urmanski, Ismael R. Ozanne, and John T. Chisholm—in their official capacities as the district attorneys for Sheboygan County, Dane County, and Milwaukee County, respectively. The petition seeks the Court’s determination of whether Wis. Stat. § 940.04 (as interpreted to ban almost all consensual abortions) violates the fundamental rights declared in Article I, Section 1 of the Wisconsin Constitution of Wisconsinites who may become pregnant and of the physicians who provide care to them. By order dated April 16, 2024, this Court directed the Respondents to respond to the petition and motion.

Ozanne and Chisholm take no position as to the substantive merits of the petition for leave to commence an original action. Procedurally, Ozanne and Chisholm note that the Petitioners advance essentially the same constitutional claims as those raised in the Plaintiffs-Respondents’ “Supplemental Petition in Support of Request to Bypass the Court of Appeals” filed in *Kaul v. Urmanski*, 2023AP2362, which is currently pending before this Court.

In *Kaul v. Urmanski*, the Dane County Circuit Court ruled that Wis. Stat. § 940.04 does not apply to consensual abortions. Defendant District Attorney Joel Urmanski filed a petition to bypass in that matter, which all the parties to the appeal

agreed this Court should grant. Shortly thereafter, the Plaintiffs-Respondents filed a “supplemental” petition to offer “additional support for bypass” and noted that, if the Court granted bypass, it would “present this Court with an additional basis for affirming that Wis. Stat. § 940.04 cannot be enforceable as to abortion: because such a reading would violate the Wisconsin Constitution.” *See* Supp. Pet at 7, *Kaul v. Urmanski*, 2023AP2362. The Court has not yet decided whether it will accept Defendant-Appellant Urmanski’s petition to bypass and/or the Plaintiffs-Respondents’ “supplemental” petition.

Regardless of which vehicle the Court deems the most appropriate to reach the constitutional issues (either this petition or the “supplemental petition” in *Kaul*), Ozanne and Chisholm assert that it is premature to decide the constitutional issues surrounding Article I, Section 1 of the Wisconsin Constitution because they are not ripe for adjudication unless and until the circuit court’s ruling in *Kaul* (that Wis. Stat. § 940.04 does not apply to consensual abortions) is reversed. If the Court does choose to adjudicate the constitutional issues, either by granting this petition or through the “supplemental petition,” Ozanne and Chisholm request that they be permitted an opportunity as Respondents to participate in the briefing of the issue.

Finally, Ozanne and Chisholm do not oppose Petitioners’ motion for leave to proceed anonymously by using pseudonyms and, should the Court grant this petition, do not oppose a protective order that requires the Petitioners’ identities to be kept confidential on an attorneys’ eyes-only basis.

Respectfully submitted this 26th day of April, 2024.

By: Electronically signed by Douglas M. Poland

Douglas M. Poland, SBN 1055189
Clementine Uwabera, SBN 1114847
Carly Gerads, SBN 1106808
STAFFORD ROSENBAUM LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, Wisconsin 53701-1784
608.256.0226
dpoland@staffordlaw.com
cuwabera@staffordlaw.com
cgerads@staffordlaw.com

*Attorneys for Respondent Ismael R. Ozanne in his
official capacity as District Attorney for Dane County,
Wisconsin*

By: Electronically signed by Samuel J. Leib

Samuel J. Leib, SBN 1003889
Aaron D. Birnbaum, SBN 1054441
LEIB KNOTT GAYNOR LLC
219 North Milwaukee Street
Suite 710
Milwaukee, WI 53202
414-276-2102
sleib@lkglaw.net
abirnbaum@lkglaw.net

*Attorneys for Respondent John T. Chisholm in his
official capacity as District Attorney for Milwaukee
County, Wisconsin*

CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8) (b), (bm), and (c) for a brief. The length of this brief is 494 words.

Electronically signed by Douglas M. Poland
Douglas M. Poland