INSTITUTE FOR REFORMING GOVERNMENT

UNANIMOUS COURT AFFIRMS LEGISLATIVE POWER TO REFORM CIVIL LIABILITY

OVERVIEW

On April 10, 2026, a unanimous Wisconsin Supreme Court reversed a court of appeals decision that had declared Wisconsin's COVID-era civil immunity statute for health care providers facially unconstitutional. Chief Justice Jill Karofsky's opinion for the Court reaffirmed a bedrock principle of Wisconsin constitutional law: the Legislature has the power under Article XIV, Section 13 to alter or suspend common law causes of action, and when it does so, no jury trial right attaches to a claim that no longer exists. The result is a narrow but important ruling that preserves the constitutional architecture supporting Wisconsin's civil-liability reform regime. *Wren v. Columbia St. Mary's Hosp. Milwaukee, Inc.*, 2026 WI 11.

WHAT YOU SHOULD KNOW

- The decision is unanimous, authored by Chief Justice Karofsky, and reverses a court of appeals ruling that had struck down the statute under strict scrutiny.
- The Court upheld **WIS. STAT.** § 895.4801, the COVID-era statute that immunizes health care providers for actions between March 12, 2020 and July 11, 2020, except for reckless, wanton, or intentional misconduct.
- The reasoning is a clean two-step: Article XIV, Section 13 empowers the Legislature to abrogate common law causes of action, and Article I, Section 5's jury trial right applies only to "cases at law"—causes of action that existed at ratification. No cause of action, no jury trial right, no constitutional violation.
- The holding is narrow. The Court expressly limited review to the jury-trial claim. Wren's due process, equal protection, vagueness, overbreadth, and redress arguments return to the court of appeals on remand.

WHAT COULD HAPPEN

The case now returns to the court of appeals to resolve Wren's remaining constitutional claims. Expect the plaintiffs to concentrate their fire on due process, equal protection, and the right to redress. Each is a separate theory that could reach the statute through a different door. The Supreme Court did not decide any of them; it only closed the particular door of the jury-trial right.

As a practical matter, the ruling protects doctors, hospitals, and their insurers from a wave of late-filed COVID-era malpractice suits. More importantly, it preserves Wisconsin's broader civil-immunity architecture—recreational land-use immunity, Good Samaritan protections, charitable immunity for emergency medical supplies, and hazardous-substance cleanup immunity—all of which share the structural logic the court of appeals had rejected. Wren's theory, if it had prevailed, would have destabilized every one of them.

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ZOOM IN

Footnote 5 of the opinion is doing a great deal of work. The Court went out of its way to observe that accepting Wren's reasoning would "necessarily call into question the constitutionality of numerous other instances in which the legislature eliminated common law causes of action," and it then listed **WIS. STAT.** § 895.48 (Good Samaritan civil immunity), § 895.51(3r) (charitable organizations distributing emergency medical supplies), § 895.52(2) (recreational land-use immunity for property owners), and § 895.4802 (hazardous substance cleanup immunity). That is a deliberate signal. The Court understood that a contrary ruling would have kicked out a load-bearing leg of every civil-immunity statute in Wisconsin.

The decision also quietly reinforces *Mayo v. Wisconsin Injured Patients & Families Compensation Fund*, 2018 WI 78, the medical malpractice damages cap case that reversed the Abrahamson-era detour of *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125. *Mayo* said the Legislature may make policy choices about Wisconsin's civil-liability system. *Wren* reconfirms it. What deserves notice: this is the Karofsky Court—a court with a liberal majority—reaffirming the conservative doctrinal frame without splinter or concurrence. A contrary result would not have surprised anyone who remembers *Ferdon*. The fact that it did not happen matters.

LEGAL BACKGROUND

Two constitutional provisions did the work. Article XIV, Section 13 provides that the common law "continue[s] part of the law of this state until altered or suspended by the legislature." Article I, Section 5 provides that "[t]he right of trial by jury shall remain inviolate" in "all cases at law." Wisconsin courts have long read "cases at law" to mean "causes of action at law, where a jury trial was guaranteed before the passage of the state constitution." *Village Food & Liquor Mart v. H&S Petroleum, Inc.*, 2002 WI 92, ¶10. When the Legislature abolishes or suspends a cause of action, the predicate for the jury trial right disappears.

That principle is not new. Wisconsin's Worker's Compensation Act eliminates common law tort claims against employers and substitutes an exclusive administrative remedy with no jury trial. *Mulder v. Acme-Cleveland Corp.*, 95 Wis. 2d 173, 183 (1980); *Messner v. Briggs & Stratton Corp.*, 120 Wis. 2d 127, 134 (Ct. App. 1984). The Wisconsin Supreme Court has never thought that scheme violated the state constitutional right to a jury trial, and it was not about to start now. The court of appeals below had applied strict scrutiny on the theory that § 895.4801 "burdens" the fundamental jury right; the Supreme Court rejected that move outright—no cause of action, no burden, no scrutiny. Under *Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund*, 2000 WI 98, ¶51, "[t]he legislature's authority includes the power to define and limit causes of action and to abrogate common law on policy grounds."

WHAT'S NEXT

The case returns to the court of appeals to address Wren's remaining constitutional challenges. Watch whether that court reaches for a different constitutional hook—due process, equal protection, the redress clause, or vagueness—to arrive at the same result it reached the first time. If it does, the Supreme Court may well have to take *Wren* a second time, and the broader deference question will return with it.

For the Legislature, the decision is a green light. The structural power to abrogate common law causes of action—the power that underwrites everything from medical malpractice damages caps to recreational immunity to Good Samaritan protections—has been reaffirmed by a unanimous Court that includes all four members of the liberal majority. Any future expansion of Wisconsin's civil immunity regime now stands on firmer ground than it did on April 9, 2026.

For more information, contact the Institute for Reforming Government:

Info@ReformingGovernment.org
PO Box 180291 Delafield, WI 53018

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