

Anti-abortion zealots, federal judge conspire to ban abortion pill mifepristone

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A coalition of religious anti-abortion organizations has filed a lawsuit in Amarillo, Texas, aimed at overturning FDA approval for mifepristone, a medication used in medical abortions. The lawsuit is unprecedented, with no previous cases having sought to overturn FDA approval for a drug.

Like many other lawsuits by conservatives, it was deliberately filed in a US District Court dominated by a Trump-appointed judge. The division in question, US District Court for the Northern District of Texas, has only one judge, Matthew Kacsmaryk, a Trump appointee known for his far-right Christian fundamentalist politics and virulent opposition to abortion. He has delayed rendering a verdict on the case until February 24.

The lawsuit is based on the reactionary Comstock Act of 1873, named after its arch-reactionary founder and religious bigot Anthony Comstock, which criminalized the *sending and possession* of anything falling into the vague category of “obscenities,” as well as contraceptives, abortifacients, sex toys, as well as any writings including advertisements, books or even personnel letters pertaining to the former categories. In 1971, Congress deleted the section on prohibiting contraception, while retaining the prohibition on information about it. In 1973, *Roe v. Wade* the law only applied to “unlawful” abortions.

In 1996, US Representative Patricia Schroeder, a Democrat, spoke on the House floor on amending the Telecommunications Act, which extended the Comstock Act provisions to cyberspace. She said:

Americans were living with censorship of their mail, druggists lived in constant fear of being prosecuted by this man or people enforcing this law, having anything that looked like a contraceptive, publishers were terrified and had to change an awful lot of the text book and scientific information because, again, this could happen, and [famous Irish playwright] George Bernard Shaw said from across

the ocean, as he looked at this: “Comstockery is the world’s standing joke at the expense of the United States. It confirms the deep-seated conviction of the Old World that America really is a provincial place, and second-rate civilization after all.”

The Texas lawsuit calls not only for the overturn of the FDA approval of mifepristone but for the overturn of more recent legislation allowing the medication to be shipped by mail and manufactured in a generic version. CNBC remarked, “It’s possible the judge could block these 2019 and 2021 actions by the FDA rather than completely withdraw mifepristone from the U.S. market.”

The group filing the suit, the Alliance Defending Freedom (ADF), has been designated by the Southern Poverty Law Center as a hate group. The legal advocacy group was involved in the Mississippi case that led to the overturning of *Roe v. Wade* last year. The ADF claims that a “homosexual agenda” will destroy Christianity and society, defends state-sanctioned sterilization of trans people, and smears LGBTQ people as pedophiles. It also opposes vaccine mandates and closing of nonessential businesses in response to the COVID-19 pandemic and invoked religion to block COVID-19 safety measures.

Fifty-one percent of all abortions in 2020 were performed with mifepristone, followed by misoprostol, at or before the ninth week of pregnancy, according to the Centers for Disease Control and Prevention. Abortion rights group NARAL Pro-Choice America estimates that 40 million women would lose access to the medication if the lawsuit succeeds. It would effectively ban most abortions performed in the United States, placing the US even further behind most industrialized countries in terms of a woman’s democratic right to an abortion.

Many states already have abortion laws that are even more restrictive than those in place in Saudi Arabia and Iran, with the US being only the fourth country to roll back abortion rights in the past 25 years. The Texas case would extend the

reach of anti-abortion measures to the entire country, not just to the states with Republican-controlled state governments.

The anti-abortion zealots filing the suit claim that the pill is dangerous to women and more dangerous than surgical abortions. FDA lawyers argue that mifepristone, which is taken alongside misoprostol for abortions, is proven to be safer than natural pregnancy or abortion via surgery, and that overturning FDA approval for mifepristone would result in worse health outcomes for the millions of women who rely on the medication to safely end pregnancies.

In fact, mifepristone's safety has already been settled. As Bloomberg previously reported in February 2022, mifepristone "sends fewer people to the ER than Tylenol or Viagra." The two-pill method is 96 percent to 98 percent effective at ending early pregnancies.

In fact, World Health Organization experts decided in 2019 that enough scientific evidence existed to strike the recommendation that the medication require "close medical supervision." The WHO includes it on its List of Essential Medicines that it defines as "those [medicines] that satisfy the priority health care needs of a population."

Mifepristone was only made available in the US at the tail-end of the Clinton administration, being approved in September 2000 by the FDA more than four years after being submitted for approval, but with extraordinary restrictions. In 2011, the FDA added it to its Risk Evaluation and Mitigation Strategy (REMS) program, a designation usually reserved for risky medications. These political compromises made by the Democrats with far-right Republicans have only served to lend credence to lies about the supposed dangers of the drug.

The removal of mifepristone's FDA approval would negatively affect more than patients seeking an abortion. While mifepristone was developed for abortions, it also has applications for cancer, Cushing's disease and uterine leiomyomas (uterine fibroids or myomas). According to the Mayo Clinic, uterine fibroids, which affect some 75 to 80 percent of people with a uterus at some point, can cause infertility or miscarriage, as well as raise the risk of certain pregnancy complications. That is, one can expect worse pregnancy outcomes should the drug be effectively banned as the far-right "defenders of the unborn" seek to do.

Judge Kacsmaryk is a "Christian rights" activist and right-wing political hack hailing from the same reactionary milieu that filed the lawsuit. His recent judicial record reflects this. He ordered the Biden administration to reinstate Trump's "stay in Mexico" policy; issued an opinion that it was unlawful for minors to obtain free contraception through the Title X federal program without parental consent, in *Deanda v. Becerra*, despite having no jurisdiction in the case; and handed down a decision in *Neese v. Becerra* removing

federal protections against certain types of LGBTQ discrimination by health providers. This comes as no surprise given Kacsmaryk's public statements that being transgender is a "mental disorder," and that gay people are "disordered."

Kacsmaryk served as the deputy general counsel of the First Liberty Institute (FLI), a Christian-right organization, from 2014 to 2019. Trump nominated him in 2017 to the United States Northern District of Texas along with Jeff Marteer, former general counsel to the FLI. Kacsmaryk was confirmed by the Senate in 2019, while Mateer was forced to withdraw his nomination after a May 2015 speech became public in which he called transgender children "Satan's plan."

In 2022, in a case brought by the FLI, the Supreme Court ruled in *Kennedy v. Bremerton School District* in favor of Christian religious ceremonies in schools, conducted in this case by a football coach at the end of a game, in flagrant violation of the separation of church and state enshrined in the First Amendment. Another case taken on by the FLI resulted in the Supreme Court ordering the funding of private religious schools in Maine, while a third and fourth argued against vaccine mandates in the Army and Navy, respectively.

Regardless of the outcome, the lawsuit seeking to overturn FDA approval for mifepristone further demonstrates that the democratic rights to abortion cannot be defended through the courts, which are ever more exposed as centers of conspiracy against the public, or through the Democratic Party, but only through a struggle for socialism carried out by the working class.



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