

US federal appeals court abortion pill ruling calls for further restrictions

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Last Wednesday, the 5th US Circuit Court of Appeals ruled that access to the abortion pill, mifepristone, should be further restricted. This most recent attack on the right to abortion is targeted at the most popular method for ending a pregnancy in the United States.

Although the court's ruling has no immediate effect, as there will be no change in how mifepristone is currently distributed, the issue is in line for the conservative-dominated US Supreme Court to revisit in its 2024 or 2025 session. The court overturned the constitutional right to abortion last year in its *Dobbs* decision, opening up a wave of state level bans and lawsuits. The mifepristone case could be taken up by the court just months before the next Presidential election, meaning both capitalist parties will utilize the case as a component of their platforms as they jockey for votes.

If the Supreme Court allows the lower court's decision to take effect, rules allowing online ordering, mail delivery, and pharmacy dispensing of the abortion pill would be drastically curtailed. Additionally, legal access to the pill would be cut down to seven weeks of pregnancy from the current ten weeks and an old requirement that only physicians can prescribe it, ending easier over the counter access, would be revived.

Together with misoprostol, mifepristone is FDA approved through ten weeks of pregnancy and is used in more than half of abortions nationwide.

The Alliance for Hippocratic Medicine—a coalition of anti-abortion medical groups that formed in Texas last year—challenged both the FDA's original 2000 approval of mifepristone, arguing the agency did not adequately consider the drug's safety risks, as well as later agency actions that loosened restrictions on the pills. Absurdly, the groups claim their physician

members are harmed by the pill's availability because of the possibility they would need to provide follow-up care for a patient of theirs that had a complication.

Judge James Ho, a Trump appointee on the three-judge panel, sought approval for the virtual elimination of access to mifepristone. He agreed with the most extreme position of the anti-abortion groups that the FDA's original approval of the drug should be altogether reversed, taking the pill completely off the market. However, Ho was overruled by his two fellow judges who argued it was too late to challenge the agency's initial approval over two decades ago. Nevertheless, all three Republican judges agreed to send the case to the Supreme Court.

Erin Hawley, the lead attorney on the case for the challengers, said she was "very pleased" that the court "rightly required the FDA to do its job and to restore crucial safeguards for women and girls." Hawley added that she hopes the decision discourages use of the pills even while it remains on hold, saying, it "gives women a reason to think twice about taking mifepristone unsupervised."

Judge Jennifer Walker Elrod, appointed by George W. Bush, wrote that it is a "concrete injury when [physicians] are forced to divert time and resources away from their regular patients" and when they are "forced to choose between following their conscience and providing care to a woman" who has had an abortion.

Elrod, joined by Trump appointee Cory Wilson, rejected the anti-abortion groups' challenge to the original 2000 FDA approval of mifepristone, on the grounds that they had missed the window to sue the agency. However, the judges did agree with the challenge to the FDA's actions in 2016, 2019 and 2021 to lift restrictions on who could obtain the pills and

how, calling them “arbitrary and capricious.”

“In loosening mifepristone’s safety restrictions, FDA failed to address several important concerns about whether the drug would be safe for the women who use it,” the opinion said.

In his concurrent opinion, Ho claimed that doctors would also suffer an “aesthetic injury” if the pills remain available.

“Unborn babies are a source of profound joy for those who view them,” he wrote. “Expectant parents eagerly share ultrasound photos with loved ones. Friends and family cheer at the sight of an unborn child. Doctors delight in working with their unborn patients—and experience an aesthetic injury when they are aborted.”

The Biden administration and Danco, the pharmaceutical company which manufactures mifepristone, are defending the current federal regulation of the pill. Both have warned that a success on part of the challengers could inspire copycat lawsuits targeting other contraceptive drugs. Furthermore, they argue that treating rare complications is within the parameters of a doctor’s job, not an infringement on personal or religious rights.

The Department of Justice issued a statement saying it remains committed to protecting access to reproductive care and defending the FDA’s scientific judgment.

“The Department strongly disagrees with the Fifth Circuit’s decision in *Alliance for Hippocratic Medicine v. FDA* and will be seeking Supreme Court review of that decision,” a spokesperson for the department said.

Danco suggested it will also appeal the decision. “In its rush to reach a particular outcome on the merits, the panel disregarded the actual factual record before the court and second-guessed FDA at every turn—neither of which is consistent with the rule of law in challenges to agency action,” the company said in a statement.

The 5th Circuit’s ruling is the latest chapter in a long fight over access to reproductive care, which demonstrates the impossibility to secure and protect fundamental democratic rights for the working class under bourgeois democracy.

The most recent poll from Pew Research Center indicates 61 percent of Americans believe abortion should be legal. Despite the popular support, the Democrats have proven themselves wholly incapable of defending it, refusing to codifying the right to abortion

when they have had control of Congress and the White House.

Leon Trotsky explained in *The Revolution Betrayed* that the right to abortion is one of a woman’s most important civil, political and cultural rights. That this fundamental democratic right is under growing assault is indicative of the advanced rot of the capitalist system.



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