

# US Supreme Court to hear case on banning or restricting abortion pill

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15 December 2023

On Wednesday, the Supreme Court of the United States announced it would hear a case on the availability of medication commonly used to terminate a pregnancy, its first abortion litigation since the far-right dominated court overturned the constitutional right in *Roe v. Wade* last year.

The case was brought to the Supreme Court by the Biden administration after a panel of judges from the US Court of Appeals in New Orleans, Louisiana, ruled in September that the drug was legal but required curbs on its distribution and restrictions on patient access. Among the restrictions imposed are that mifepristone cannot be sent by mail and it cannot be prescribed by telemedicine.

The appeals court decision was in response to a preliminary ruling last April by Trump-appointed and anti-abortion activist from Texas Judge Matthew J. Kacsmaryk. Judge Kacsmaryk issued a preliminary ruling at that time which invalidated the FDA's approval of the drug and would have blocked its production.

The right-wing and Christian-fundamentalist campaign to ban entirely or curtail access to mifepristone, a drug which has been available since 2000 after it was approved as safe by the FDA, has been underway for years. A coalition of anti-abortion groups and social media activists who posed as experts in medical safety filed the lawsuit in November 2022. They argued that the FDA's approval of the drug was flawed, and that mifepristone was unsafe.

In achieving the appeals court ruling, the anti-abortion advocates have succeeded in pushing the rules of access for mifepristone back to what they were before 2016. Those rules required that the drug only be prescribed by a doctor and be picked up in person. Patients also had to visit a doctor three times during the abortion process before they could be prescribed and receive the drug.

Responding to the Supreme Court discussion prior to taking on the case, the Christian fundamentalist advocacy

group Alliance Defending Freedom argued that the high court did not need to weigh in on the matter since the appeals court ruling was a “modest decision” that “merely restores the common-sense safeguards under which millions of women have taken chemical abortion drugs.”

Mifepristone, also known as RU-486, is a medication typically used in conjunction with misoprostol to induce a medical abortion or manage an early miscarriage. According to studies, the combination of the two drugs is 97 percent effective during the first 63 days of a pregnancy.

The drug accounts for more than half of all abortions in the US, and it has been used more than 5 million times since 2000.

Mifepristone is taken by mouth and many studies have shown it is both highly safe and that serious complications are rare. Medical experts have reported that fewer than 1 percent of women who take the drug require hospitalization. Mifepristone, if taken by itself, can also be effective in abortions after one to two weeks of pregnancy.

The lawyer representing Danco Laboratories, the company that makes the name brand version of mifepristone known as Mifeprex, attacked the anti-abortion claims about the drug. Attorney Jessica Ellsworth said, “The declarants offer nonspecific statements that are untethered to actual facts about what drug a patient took. They often say, ‘The patients can't tell me what they took,’ so we don't know even that it was FDA-approved mifepristone.”

However, as Ellsworth pointed out, the examples given by the anti-abortion fanatics involved a patient who took an unidentified drug from India, which was not FDA-approved, and another instance where a pregnant woman took mifepristone while on blood thinners, after being told she was not eligible for medication abortion. Neither

example case supports the right-wing contention that mifepristone is an untested, risky medication.

By agreeing to hear the case, the Supreme Court is attempting to inject its increasingly obscurantist legal arguments into matters of science and sensitive personal decision-making between medical professionals and pregnant women. The door has been opened for another anti-abortion decision by the high court by both the Christian fundamentalist Judge Kacsmaryk—who has referred to homosexuality as “disordered” and being transgender as a “delusion”—and the panel of three appeals court judges, two of whom are Trump appointees.

In a petition submitted to the Supreme Court, Solicitor General Elizabeth Prelogar wrote, “The Fifth Circuit countermanded a scientific judgment FDA has maintained across multiple administrations; imposed unnecessary restrictions on the distribution of a drug that has been safely used by millions of Americans over more than two decades; and upset reliance interests in a healthcare system that depends on the availability of mifepristone as an alternative to surgical abortion for women who choose to lawfully terminate their early pregnancies.”

The case is scheduled to be argued in the spring, with a decision to be made by late June. This means that the Supreme Court will be making a major ruling on the fundamental right to an abortion in the middle of the 2024 presidential and congressional campaigns.

Since its decision to overturn *Roe v. Wade* in June 2022, more than two dozen states have enacted bans or restrictions on abortions that were not in place prior. However, poll after poll has shown that the public supports the right to abortion by a supermajority, even in so-called conservative leaning states.

The fact that both federal and state courts are hell-bent on making abortion illegal by overturning decades of precedent is significant proof of the collapse of democratic forms of rule in the US.



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