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Republican States Can Move Ahead With Abortion Pill Lawsuit in Texas

Thursday, January 16, 2025 03:54 PM

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Three Republican-led states can go forward with their lawsuit that seeks to restrict the availability of the abortion pill mifepristone, a judge ruled on Thursday.

U.S. District Judge Matthew Kacsmaryk in Amarillo, Texas, ruled that Idaho, Missouri and Kansas can continue their case against the U.S. Food and Drug Administration in his court, where they last year joined a lawsuit originally brought by anti-abortion groups and doctors.

Those original plaintiffs dropped their case after the U.S. Supreme Court found they did not have legal standing to challenge the FDA's regulation of mifepristone.

The FDA had argued that the states' claims should be dismissed because, with the original plaintiffs gone, they had no connection to Kacsmaryk's court.

Mifepristone has been approved by the FDA since 2000 for use along with another drug, misoprostol, to terminate pregnancy. Medication abortion accounts for a majority of abortions in the United States.

In their 2022 lawsuit, the newly formed Texas group Alliance for Hippocratic Medicine and other abortion opponents sought to have mifepristone pulled from the market altogether. In April 2023, they won an order from Kacsmaryk granting the request, but the 5th U.S. Circuit Court of Appeals reversed, finding it was too late to challenge the original approval.

The 5th Circuit nonetheless found that the FDA had acted unlawfully in loosening restrictions on the drug since 2016, including by approving it for use in the first 10 weeks of pregnancy, up from seven, and allowing it to be prescribed by telemedicine and dispensed by mail.

On appeal, the Supreme Court found that the plaintiffs had no standing because the FDA's actions did not harm them, without addressing the merits of their case.

Neither Kacsmaryk's nor the 5th Circuit's order was allowed to take effect while the FDA appealed, and mifepristone's availability has so far remained unchanged.

The Republican states have argued they have standing to sue because their Medicaid health insurance programs will likely have to pay to treat patients who have suffered complications from using mifepristone. They have also said they should be allowed to remain in Texas even without the original plaintiffs because it would be inefficient to send the case to another court after nearly more than two years of litigation.

A group of Democratic-led states is separately pursuing a case seeking to block the FDA from imposing any further restrictions on mifepristone.

It is not clear how Republican President-elect Donald Trump, who during his first term appointed Kacsmaryk and two of the three 5th Circuit judges in the case, will handle mifepristone and the lawsuits over it after taking office next year. Trump said during his campaign that he would not ban the drug.

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