

1. Mark your confusion.
2. Show evidence of a close reading.
3. Write a 1+ page reflection.

7 Questions from the Texas Ruling on Abortion Pills

A Texas judge's preliminary ruling invalidating the FDA's approval of the abortion pill could make it harder for patients to get abortions even in states where it remains legal.

Source: Politico.com, April 8, 2023

A federal judge on Friday suspended the FDA's approval of mifepristone — the most popular method for terminating a pregnancy.

The ruling — as much as any since the Supreme Court overturned *Roe v. Wade* in June — could upend the national landscape, threatening abortion access for hundreds of thousands of people whether they live in a state that prohibits almost all abortions, such as Texas, or a liberal haven like California.

Here's what you need to know about mifepristone and Friday's ruling:

What are abortion pills and why are they important?

The FDA first approved Mifeprex in 2000 and mifepristone, a generic version, in 2019. The drug, which blocks a hormone called progesterone needed for a viable pregnancy, is usually taken in combination with a medicine called misoprostol to end a pregnancy during the first 10 weeks. Numerous studies have found the pills to be safe and effective.

Republican lawmakers have outlawed most abortions in about a quarter of the country in the nine months since *Roe v. Wade* was overturned, often threatening doctors who perform abortions with jail. But a recent FDA decision, allowing the pills to be mailed and taken at home, offered a way around some of those laws and made the pills a prime target for anti-abortion advocates and conservative lawmakers.

Can I still obtain abortion pills?

Yes. U.S. District Court Judge Matthew Kacsmaryk, an appointee of former President Donald Trump, delayed the effect of his ruling for one week, and the Biden administration on Friday appealed the decision.

What was this case really about?

The most important implications of this ruling have to do with abortion. But the legal arguments centered on procedure and whether mifepristone received proper scrutiny from the FDA more than two decades ago.

The Alliance Defending Freedom, a conservative Christian legal group that brought the case on behalf of providers who oppose abortion, argued that the FDA went beyond its authority when it approved the medication. Their lawyers also argued that a 19th century anti-obscenity law, the Comstock Act, prohibits the mailing of any medication used for abortion.

What did the judge say?

Kacsmaryk ruled that both the initial approval of the pills in 2000 and a more recent decision to allow them to be prescribed via telemedicine were unlawful.

"The Court does not second-guess FDA's decision-making lightly," he wrote. "But here, FDA acquiesced on its legitimate safety concerns — in violation of its statutory duty — based on plainly

unsound reasoning and studies that did not support its conclusions. There is also evidence indicating FDA faced significant political pressure to forego its proposed safety precautions to better advance the political objective of increased ‘access’ to chemical abortion — which was the ‘whole idea of mifepristone.’”

The judge also agreed that mailing the pills likely violates the Comstock Act, writing the plaintiffs have a “substantial likelihood of prevailing on their claim that defendants’ decision to allow the dispensing of chemical abortion drugs through mail violates unambiguous federal criminal law.”

Why did the judge allow this to happen 23 years after a medicine was approved?

“Simply put, FDA stonewalled judicial review — until now,” Kacsmaryk wrote in his ruling. “Before Plaintiffs filed this case, FDA ignored their petitions for over sixteen years, even though the law requires an agency response within ‘180 days of receipt of the petition.’ ... Had FDA responded to Plaintiffs’ petitions within the 360 total days allotted, this case would have been in federal court decades earlier. Instead, FDA postponed and procrastinated for nearly 6,000 days.”

How can a federal judge in Amarillo, Texas, prohibit access in blue states like California and New York?

Kacsmaryk issued a nationwide injunction, meaning the ruling will take effect across the country in a week unless a higher court issues a stay. These types of rulings have become increasingly common over the last 20 years, and judges have used them to halt former President Barack Obama’s plan to offer quasi-legal status to certain undocumented immigrants and former President Donald Trump’s ban on travelers from certain countries. The Department of Justice during the Bush, Obama and Trump administrations, argued that nationwide injunctions are overused and “inconsistent with constitutional limitations on judicial power.”

What will happen next?

The Department of Justice quickly appealed the ruling Friday night to conservative-leaning 5th U.S. Circuit Court of Appeals in New Orleans.

Kacsmaryk’s ruling came out the same day as a federal judge in Washington state ruled that the FDA is placing overly burdensome regulations on mifepristone. This will also likely be appealed to the more liberal-leaning 9th U.S. Circuit Court of Appeals in San Francisco and possibly set up dueling circuit court rulings, teeing up a case over abortion pills for the Supreme Court.

Possible Response Questions

- What are your thoughts about Judge Kacsmaryk’s ruling? Explain.
- Did something in the article surprise you? Discuss.
- Pick a word/line/passage from the article and respond to it.
- Discuss a “move” made by the writer in this piece that you think is good/interesting. Explain.