

Access to the abortion pill A victory in the form of the status quo

<https://www.lapresse.ca/international/etats-unis/2024-06-14/acces-a-la-pilule-abortive/une-victoire-sous-forme-de-statu-quo.php> (French)



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Pro-choice demonstration in front of the Supreme Court last March

Pro-choice groups won a battle Thursday in a U.S. Supreme Court ruling over access to mifepristone, a drug used for abortions. But the unanimous decision does not close the question.

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What is the consequence of the Supreme Court's decision?

Access to mifepristone remains the same, as judges rejected a request from medical associations and anti-abortion doctors to suspend the drug's approval by the Food and Drug Administration (FDA) – which would have resulted in to make mifepristone, used in

60% of abortions in the United States, more difficult to obtain anywhere in the United States.

“Mifepristone is widely used as an abortion pill in the United States and has become even more popular in various states that have sought to ban surgical abortions,” explains law professor Seth Chandler of the University of Houston.

Will the abortion pill be easier to obtain?

The Supreme Court's judgment does not facilitate access to mifepristone, however: with the bans and restrictions on abortion, states have also adopted measures to regulate drugs used in termination of pregnancy.

The Supreme Court has not ruled on the legal limits surrounding access to abortion pills. Instead, she dismissed the case, concluding that the plaintiffs had knocked on the wrong door.

“The federal courts are not the appropriate avenue to address plaintiffs' concerns about the FDA's actions,” Justice Brett Kavanaugh wrote in the decision, adding that plaintiffs can turn to political forums to address their concerns. .

How did this cause start?

Four medical associations and doctors opposed to abortion have questioned the FDA's approval of mifepristone. They accused the federal agency of having approved a dangerous drug, and of having subsequently relaxed the rules surrounding it, without having weighed the risks – despite studies which deny their allegations.

What were these relaxations?

Although the distribution of mifepristone has been authorized in the United States by the FDA since 2000, the federal agency revised certain restrictions from 2016: the period during which it can be used to terminate a pregnancy increased from 7 to 10 weeks. A generic drug has been approved. The FDA ruled in 2021 that in-person visits were no longer necessary to obtain it, opening the door to prescriptions made via telemedicine and sent by mail.

What were the plaintiffs asking for?

A withdrawal of the FDA authorization granted to mifepristone or, otherwise, a step back on the relaxations put forward between 2016 and 2021.

The case was brought in 2022 before a Texas magistrate known for his anti-abortion positions; Judge Matthew Kacsmaryk suspended the authorization granted by the FDA in

April 2023, jeopardizing its distribution across the country. The Court of Appeal reviewed the judgment, finding that the drug could remain accessible, but that its use should be restricted. The application of the decision was suspended.

The case was brought before the Supreme Court.

Is the decision surprising?

Since the 2022 ruling, in which the Supreme Court restored the right to states to legislate on abortion, the context has changed and judges are considered less predictable.

In another era, a decision like this would have been entirely predictable and probably would not have made it to the Supreme Court,” comments Terry McGovern, professor of health policy and management at the City University of New York.

The doctors suffered no harm or damage, she explains, they were completely free not to prescribe a drug to which they objected.

This is also what the judges of the Supreme Court unanimously held.

“Under Article III of the Constitution, a plaintiff’s desire to make a drug less accessible to others does not provide standing,” Justice Brett Kavanaugh wrote in the decision.

What should we expect next?

Missouri, Kansas and Idaho could take up the mantle regarding the FDA's approval of mifepristone, as all three states had sought to join the lawsuit that made its way to the Supreme Court.

The magistrates of the highest court will also be called upon to render a decision soon concerning emergency medical care in the context of restrictions on abortion.

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