

This is KPTZ 91.9 FM in Port Townsend. I'm Jim Burke, with your local news and commentary for Wednesday, January 31, 2024.

Yesterday, U.S. Senator Maria Cantwell (D-WA) joined 263 members of Congress in submitting an amicus brief to the U.S. Supreme Court in the case of *FDA v. Alliance for Hippocratic Medicine*. The court announced yesterday that oral arguments in the case will be held on Tuesday, March 26. In the amicus brief, the members urged the court to reverse the Fifth Circuit Court of Appeals' ruling that would restrict access to mifepristone, a key abortion medication. The Fifth Circuit ruled in August that although the FDA's approval of mifepristone in 2000 can remain in place, other steps that the FDA took to expand access, like allowing mifepristone to be accessed via telemedicine, must be overturned. The Fifth Circuit ruling has not gone into effect.

In April, the Supreme Court issued a stay of the lower court ruling that allows mifepristone to remain on the market while the case is under review. Sen. Cantwell said, "The evidence overwhelmingly demonstrates that medication abortion is safe and effective, despite ongoing litigation led by anti-choice crusaders. The FDA approved mifepristone over twenty years ago, and studies show the medication causes fewer complications than Tylenol. More than half of the abortions provided in Washington state are medication abortions. Patients must be able to access necessary health care without undue interference or harassment." The amicus brief was led by U.S. Senator Patty Murray (D-WA).

The members argued that the Fifth Circuit's decision has no basis in law, poses a serious health risk to pregnant women and other individuals by limiting access to mifepristone – a safe and effective medication widely used in abortion care and miscarriage management for years – therefore patients' access to a wide array of other medications by threatening FDA's drug approval process, which was designed and mandated by Congress. Accordingly, they ask the Supreme Court to reject the Fifth Circuit's decision. The members wrote, "Since mifepristone's initial approval in 2000, FDA has repeatedly and consistently affirmed that the medication is safe and effective for the approved conditions of use. FDA's process and conclusions have been validated by both Congress and the Government Accountability Office – and by the lived experience of over 5 million patients who have used the drug in the United States. The consequences of the Fifth Circuit's decision could extend far beyond mifepristone, for it undermines the science-based, expert-driven process that Congress designed for determining whether drugs are safe and effective. By disrupting FDA's current regulation of mifepristone, the Fifth Circuit has countenanced judicial interference that erroneously substitutes a court's judgment for FDA's scientific determination." The lawmakers cite reports from doctors and journalists highlighting the increased importance of mifepristone for reproductive health care in the wake of the "Dobbs decision" and outline concerns that additional restrictions on access to medication abortion threaten to further increase the maternal mortality rate.

Since the Supreme Court's decision in *Dobbs*, abortion has become inaccessible in much of the United States. The resulting delays and denials of care have already had baleful effects on the health of pregnant individuals, for some of whom pregnancy is a life-threatening condition, regardless of their desire to carry their fetus to term. If left to stand, the Fifth Circuit's order would exacerbate these adverse health outcomes by placing unnecessary restrictions on access to the most common method of early abortion – a two-drug regimen of mifepristone and misoprostol. Moreover, restricting access to mifepristone – also used in combination with misoprostol for the management of early miscarriage – will mean fewer options for treating early pregnancy loss, which includes a spontaneous abortion, missed abortion, incomplete abortion, or inevitable abortion. These conditions can be life-threatening, including posing a risk of sepsis or loss of future pregnancy capacity, if not treated quickly.

The lawmakers' amicus brief to the Supreme Court can be read in full at
https://www.cantwell.senate.gov/imo/media/doc/01302024_mifepristone_amicus_brief.pdf.

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