

Fifth Circuit Court Keeps Abortion Medication Legal, But with Restrictions

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The 5th Circuit Court of Appeals in New Orleans upheld parts of a Texas District Court ruling by restricting the use of Mifepristone, while allowing Mifepristone to remain on the market. This is the latest ruling in an ongoing legal battle that has left the future of abortion medications in a state of flux. Dinsmore [previously discussed](#) the original April 2023 ruling that led to the most recent development. In April, two contradictory court opinions offered opposing views on the legality of Mifepristone. A U.S. District Court Judge in Texas opined that Mifepristone was improperly approved by the Food and Drug Administration (FDA) in 2000. While a U.S. District Court in Washington blocked the FDA from “altering the status quo and rights as it relates to the availability of Mifepristone.” After a round of appeals from both sides of the issue, the status quo for Mifepristone remained in place.

In the latest ruling, a 2-1 majority in the 5th Circuit ruled that Mifepristone should not be prescribed pursuant to an in-person or telemedicine encounter with an authorized health care practitioner past seven weeks of pregnancy. The Court also ruled that Mifepristone should not be available by mail. The majority expressed concerns about the safety of Mifepristone and that is why they left the restrictions from the Texas District Court in place. With that being said, due to a previous stay by the United States Supreme Court in April, these restrictions will not go into effect until the Supreme Court decides whether they will pick up the case, and rule on the matter at hand.

One part of the previous Texas District Court ruling that was *not* upheld was the challenge to the initial legality of Mifepristone’s approval by the FDA. The 5th Circuit Court indicated it was too late to challenge the initial approval’s legality, which is the main rationale why the 5th Circuit Court let Mifepristone remain on the market for now.

So what happens next? The Justice Department said in a statement that it will ask the Supreme Court to review the latest ruling. This sets the stage for another Supreme Court battle related to abortion that could also include the previously mentioned Washington case. If the 5th Circuit ruling is upheld, patients would no longer be able to obtain Mifepristone prescribed via telehealth or by mail. Instead, their only option would be if the medication is prescribed pursuant to an in-person encounter with an authorized health care practitioner, and within the first seven weeks. Until then, patients are still free to obtain Mifepristone via telehealth and through the mail.

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