SCOTUS SURVIVAL GUIDE

TLDR:

- A recent court decision threatens the national availability of Mifepristone, one of two abortion pill medications used for more than half of abortions in the US.
- Abortion pills are still available as the court case is being decided, but an adverse court decision could have a devastating impact on access.
- Even if the court restricts access to mifepristone, abortion pills will still be available by mail in all 50 states, even in states that ban abortion care.
- You can help by sharing information about abortion pill access and advocating for laws that protect and expand access to abortion.

What's happening with Mifepristone?

On Wednesday, August 26, the 5th Circuit Court of Appeals issued a mixed ruling about Mifepristone, one of two medications commonly used for abortion. The ruling both affirmed the Food and Drug Administration's 2000 and 2019 decisions to approve Mifepristone and its generic version, and it also restricted access to Mifepristone by rescinding previous FDA guidance which allowed Mifepristone to be dispensed through mail or retail pharmacies.

Is Mifepristone dangerous? Is that why this ruling was made?

No. More than five million women have used Mifepristone to have safe abortions at home, and it has been approved by dozens of countries around the world. Despite falsified claims by anti-abortion advocates, decades of research support the safety and efficacy of Mifepristone. In fact, Mifepristone is safer than some drugs that have been approved by the FDA for over-the-counter use, such as Tylenol.

What happens next with Mifepristone?

Due to a stay issued by the Supreme Court in April, the availability of Mifepristone will not change until judicial proceedings are over. This decision has been appealed to the Supreme Court, and both sides are waiting to see whether the Supreme Court will let the appeals court ruling stand or decide to consider the case themselves. Last year, the Supreme Court ruled to rescind federal abortion protections in *Dobbs v. Jackson Women's Health Organization*. Since the *Dobbs* decision, twenty states have proposed bans or restrictions on abortion access. Others still enacted policies that include language to restrict access to Mifepristone and other drugs used to self-manage abortion.

Is it likely that SCOTUS will take up the case and further restrict access to Mifepristone?

This is unclear, because while many of the judges on the court oppose abortion, they also feel legislating from the bench is not their role. In *Dobbs*, Chief Justice Roberts expressed support for a 15-week abortion ban but sided with the liberal justices to uphold federal abortion rights. Justice Gorsuch and Justice Barrett have both expressed their moral objections to abortion, and although Justices Alito, Thomas, and Kavanaugh are no friends to abortion, they have all expressed concern with judges making public health decisions. In his concurring opinion in *Dobbs*, Justice Kavanaugh argued that there is no mention of abortion in the constitution and so, the question of abortion should not be left for judges to decide.

He writes, “The nine members of this court will no longer decide the basic legality of pre-viability abortion for all 330 million Americans.”

In a previous decision to overturn a district court judge's ruling on medication abortion, Justice Alito and Thomas criticize the judge for taking it “upon himself to overrule the FDA on a question of drug safety.”

What happens if the Supreme Court upholds the current ruling on Mifepristone?

If the Supreme Court upholds the appeals court ruling, Mifepristone will still be available but access will be severely limited. More damaging, this decision could pave the way for all sorts of challenges to the FDA’s drug approval process. The Food and Drug Administration is not infallible – the Network has a long history of criticizing decisions made by the FDA – but allowing federal judges (political appointees) to overturn decisions made by well-documented, scientific evidence comprises the independence of the agency’s drug safety and approval process.

Specifically, if the Supreme Court upholds the appeals court ruling, the Risk Evaluation and Mitigation Strategy (REMS) for Mifepristone will return to the pre-pandemic status-quo, undoing years of access progress. In 2021, the FDA removed the in-person examination and dispensing requirement to increase access to medication abortion during the pandemic. This change was made permanent in 2023. **If the appeals court ruling prevails, pregnant women will need to make three in-person visits to a clinic or hospital to access Mifepristone.** This ruling does not ban Mifepristone but it does make it harder to access Mifepristone for people who live in health care deserts, and people living in restrictive states.

Fortunately, there are also alternative ways to access these pills by mail in all 50 states,[1] and no court ruling will change that.

[1] https://www.plancpills.org/

Is there another way to access safe self-managed abortion care without Mifepristone?

Yes – and many providers are already prescribing it. Due to the current legal landscape surrounding Mifepristone, many providers are or soon will dispense with the two-pill regimen commonly used for medication abortion and only prescribe Misoprotsol.

Mifepristone and Misoprotosol are often prescribed together, but you don't have to take both pills to have a safe abortion. Evidence shows that Misoprotsol is safe and effective when taken on its own. Typically, when you have a medical abortion you take Mifepristone first, which blocks a hormone called progesterone. Progesterone is a naturally occurring hormone that is necessary for your body to support a pregnancy. Without progesterone, an embryo cannot develop and the lining of your uterus thins which prevents the embryo from staying implanted in your uterus. You can either take Misoprostol right away or 24-hours later to empty your uterus.

The Misoprostol-only regimen is actually faster than the two-pill regimen. Misoprostol is taken twice in the span of 4-6 hours which causes the uterus to contract. The process is then repeated 3-4 times until the pregnancy passes. The misoprostol-only regimen typically has more side effects than the mifepristone plus misoprostol regimen, and it also can be less effective, which is why it remains so important to advocate for access to both medications.

You can also access abortion pills (mifepristone plus misoprostol) from alternate suppliers that serve all 50 states, like community networks and websites that sell pills. Plan C has a Guide to help you find pills in your state, or connect you to a provider who works across state lines.

Can I get in trouble for taking abortion pills?

This depends – but there are ways to protect yourself. The risk can vary based on where you live, your identity and your gestational age. For example, some states have enacted shield laws to protect health care providers who prescribe abortion pills via telehealth to out-of-state patients. **It should also be noted that a naturally occurring miscarriage is indistinguishable from a self-managed abortion – and there is no way for a provider to test for use of abortion pills.** The Plan C Guide mentioned above also includes valuable information about whether you can get in trouble for accessing pills[2] through alternative routes. The Guide kept continually updated based on the ever-changing landscape.

[2] https://www.plancpills.org/guide-how-to-get-abortion-pills#faq-safety

What if the Supreme Court sides with abortion advocates? Does that mean that the fight over Mifepristone is over?

Sadly, it does not. House appropriators have passed a bill that would reinstate the in-person examination requirement, and prohibit access to Mifepristone through mail or retail pharmacies. Even if the Supreme Court decides that it is not the court's jurisdiction to manage the FDA's approval process, they may punt that responsibility to Congress. In his concurring opinion in *Dobbs v. Jackson*, Justice Kavanaugh argues that the legality of abortion needs to be resolved by Congress, state legislatures and ballot initiatives.

What can I do to ensure access to self-managed abortion options for myself and others?

While we wait for the Supreme Court to make a decision, here are things that you can do to help pregnant people across the United States.

- ***Share information.*** Share information through social media and your informal networks about where people can find abortion pills in all 50 states, even states with bans. Follow @plancpills and @thenwhn on social media for key messaging.
- ***Stock up on pills.*** Abortion pills are still available as we wait on the Supreme Court's decision, and you can get them even if you don't have an immediate need for an abortion. Get pills in advance and keep them at home, just in case.
- ***Donate to abortion funds***. Donate to your state's abortion fund[3] to help supplement the cost of abortion for someone who can't afford one. Some national funds[4] specifically help people in restricted states get pills by mail via telehealth.
- ***Speak up and speak out.*** Your voice matters in the fight to protect abortion care, reach out to your local officials and urge them to pass laws that protect and expand abortion access.
- **Promote Charley Chatbot.** Add Charley[5] on your socials or consider hosting on your website. Charley Chatbot is a tool that can be used to connect people with accurate and timely information about abortion access.

[3] https://abortionfunds.org/
[4] https://abortionfreedomfund.org/
[5] https://nwhn.org/charley-the-abortion-chatbot/