

News From The States

EVENING WRAP

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By [Kate Queram](#)

The universe is testing me this week, frequently, in a variety of *imaginative* and *infuriating* ways, and I am *dealing with it* (mostly by *swearing*), but it has not been fun. And that was *before* this morning, when the U.S. Supreme Court woke up, surveyed the wreckage [it made of abortion](#), cracked its knuckles and decided to do some more damage.

It has been such a long week.

It is only Wednesday.



The Big Takeaway

Our latest judicial panic attack comes two days after the Texas Supreme Court intervened to [deny an abortion](#) for a woman whose doctors refused to terminate a medically risky pregnancy for fear of prosecution under the state's vague and near-total abortion ban. I recite those facts from memory, as if they are regular parts of the news cycle rather than proof of our increasingly dystopian reality. I should not know the details of this stranger's medical case, whose treatment should not have depended on a panel of conservative judges who do not know her and will not suffer the consequences of the decision they made on her behalf. We have been here [for 18 months](#), and yet I still cannot believe we are here.



*I am so tired of this photo.
(Photo by Getty Images)*

Most of us feel that way, I think, but it doesn't matter, because [unpopular presidents](#) did not grant us lifelong power to upend societal norms in service of our personal beliefs under the guise of jurisprudence. ("Did you mean 'uphold' societal norms?" autocorrect just asked, because even autocorrect does not understand the Supreme Court.) I cannot overstate the absurdity of this system, both in general and with regard to abortion. Since 1973, a majority of Americans have [favored legal abortion](#), but a handful of unelected judges disagree, and so abortion can now be outlawed. That decision was [unprecedented](#) and [extreme](#). It was also only the beginning.

The court revealed its next step Wednesday, [announcing](#) that it will decide whether to restrict access to mifepristone, a drug used in more than half of all abortions nationwide, [our D.C. bureau reported](#). Oral arguments will likely begin in the spring, placing abortion — and its politics — squarely in the spotlight just months ahead of a presidential election that was [not particularly](#) in need of additional drama. (Everything is unprecedented, and everyone is over it.)

The case was accepted [at the request](#) of the Biden administration, which asked the justices to overturn an appeals court ruling that would, if enacted, limit access to the drug even in states where abortion remains legal. That decision came from the [MAGA-friendly](#) 5th Circuit Court of Appeals, which ruled in August that mifepristone could remain on the market, but only under pre-2016 guidelines that

required patients to see a physician (not a nurse practitioner or other provider) in person (not via telehealth) a minimum of three times (that is so many times) before obtaining a prescription, which could only be filled in person (not by mail).



*Not pictured: A very long list of pre-2016 rules.
(Photo illustration by Anna Moneymaker/Getty Images)*

This, believe it or not, was a *less* extreme version of [an earlier ruling](#) from a Donald Trump-appointed judge in Texas, who sided with anti-abortion groups in [a lawsuit](#) alleging that the federal Food and Drug Administration exceeded its [regulatory authority](#) to evaluate and approve medication in the United States by ... evaluating and then approving medication to terminate pregnancies in the United States. The 5th circuit agreed that the agency overstepped its authority but left the drug's approval intact [at the request](#) of the Department of Justice. The Supreme Court [weighed in](#) 10 days later, ensuring nationwide access to mifepristone while the lawsuit plodded through the appeals process.

There's reason (actually, a lot of reasons) to believe the justices may rule similarly next year. (Seriously.) (But not Justices Clarence Thomas and Samuel Alito.) Mostly, that's because the lawsuit is a mess. It was filed 23 years after the FDA approved mifepristone, which is 17 years too late, according to the statute of limitations. (Even the otherwise sympathetic 5th Circuit couldn't let that one slide.) It challenges the FDA's authority to regulate drugs, which is what the FDA — and only the FDA — is authorized and *required by law* to do. The judicial branch is ...

pretty familiar with laws, which is why it has never revoked the FDA's approval of a drug. This is, simply, what the FDA is supposed to do.

That should be the end of the story, but this particular story is terrible and never-ending and mostly about an extreme court that doesn't really care about precedent unless the precedent happens to fit its current mood. And at the moment, the vibe is ... sort of mixed. Though the court agreed to hear this case, it rejected outright a request to uphold the initial ruling, which would have banned mifepristone, full stop. And I'm not sure how to interpret that. On the one hand, it's good. On the other hand, they're going to decide the issue, which seems at odds with the fine print in the majority opinion overturning *Roe v. Wade*. Now that they'd successfully upended abortion rights, the five conservative justices vowed to move along to something else.

"It is time," they wrote, "to heed the Constitution and return the issue of abortion to the people's elected representatives."

And yet here we are, again: [Arizona Supreme Court weighs the future of legal abortion](#) ... [Commission recommends design for 'monument to the unborn' at Arkansas Capitol](#) ... [Kentucky woman who sued for right to abortion now carrying embryo with no 'cardiac activity'](#) ... [Michigan Gov. Gretchen Whitmer signs bill repealing abortion insurance law she fought against a decade ago](#) ... [Missouri attorney general seeks to block subpoena in abortion amendment lawsuit](#) ... [Anti-abortion ordinances tested today at New Mexico Supreme Court](#) ... [Oregon Democrats lead congressional inquiry that finds pharmacies fail to protect medical privacy](#) ... [Planned Parenthood now serving patients with federal funds](#) [Tennessee lost after abortion ban](#) ... [Kate Cox's case reveals how far Texas intends to go to enforce abortion laws](#) ... [After pause, this Texas city is set to reconsider banning travel to access an abortion](#) ... [Wyoming high court ponders whether anti-abortion lawmakers, group can assist in bans' defense](#)



State of Our Democracy

Oklahoma Gov. Kevin Stitt on Wednesday signed an executive order banning state agencies colleges and universities from spending state funds on diversity, equity and inclusion initiatives, effectively eliminating entire departments from campuses without legislative input or public hearings, [the Oklahoma Voice reported](#). The order also bans the use of state funds for a bunch of things that ... don't really require funding, like asking job applicants to provide DEI statements

or making people disclose their pronouns, all of which Stitt framed as important anti-discrimination measures (yes really).



*Society has just become The Onion, I guess.
(Photo by Carmen Forman/Oklahoma Voice)*

“I’m signing this executive order today to remind all state-funded institutions that we see all Oklahomans as equal regardless of race, color, sex, ethnicity or national origin,” he said from behind a lectern adorned with a “defunding discrimination” sign.

Per the order, state agencies and public colleges and universities must review their DEI programs and ax everything that isn’t required for “compliance, accreditation, or student and employee support services.” That could mean everything and also nothing, depending on your interpretation of “support services,” which would seem to include things like programs for veterans, single mothers, disabled people and international students, all of which also fall under the DEI umbrella.

Either way, it’s a dumb and pointless order, said state Rep. Annie Menz, a Democrat from Norman.

“This action will have a negative impact on faculty and staff at our universities but also on students with disabilities, international students, veterans, and so many others who rely on these services to support their education,” she said in a statement. “As state leaders we should be invested in preparing our students for the realities of the workplace they’ll one day join, not using them to score some cheap political points with a handful of extremists.”

It will probably stay in place anyway. The order correlates with a national right-wing push to defund and get rid of anything that attempts to increase (or celebrate, or acknowledge the existence of) diversity, which has marched on despite widespread criticism. Oklahoma Republicans appeared on board; as of Wednesday, they’d filed four separate bills targeting DEI initiatives in accordance with Stitt’s plan.

Democracy at work: [What did University of Alabama students think of Vivek Ramaswamy calling ‘the climate change agenda’ a hoax?](#) ... [Maine utilities, media groups sue state over foreign electioneering ban](#) ... [Michigan secretary of state unveils new online FOIA portal for state Department of Elections](#) ... [AG defends pace of three year investigation into Nevada fake electors](#) ... [Ballot bites: North Carolina challengers line up as the 2024 candidate filing period winds down](#) ... [Democrat-turned-Republican Tricia Cotham draws a Democratic challenger in North Carolina](#) ... [Democrat introduces bill requiring Ohio Supreme Court justices, court of appeals to appear on nonpartisan ballot](#) ... [Three court of criminal appeal judges up for reelection targeted by Ken Paxton’s political revenge machine](#) ... [Election deniers oppose bill to process absentee ballots on Monday before Wisconsin elections](#)



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- [White House to meet with dozens of Democratic state legislators on gun violence prevention](#)



One Last Thing

South Dakota will use an online dictionary to keep “vulgar and swear words” off vanity license plates instead of deciding on its own whether a particular term is “offensive to good taste and decency,” [per South Dakota Searchlight](#).

[The updated policy](#), released Tuesday, was crafted as part of a legal settlement in a lawsuit that successfully argued the original rules were “subjective and inconsistently applied,” violating the First Amendment. The new guidelines replace the problematic “good taste” standard with a more objective metric: Any word that meets Merriam-Websters’ definition of “vulgar, profane, offensive, or having a sexual connotation.” (Also verboten: Dollar signs, exclamation points, and plates that might confuse law enforcement, among other non-vulgar things.)

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