

News From The States

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From Kate Queram

GOT QUESTIONS? ASK KATE

It's been almost two years since the U.S. Supreme Court chucked 50 years of legal precedent to overturn the constitutional right to abortion, so we're probably ready for them to wade back into it, right?

...Anybody?



The Big Takeaway

The U.S. Supreme Court on Tuesday seemed deeply skeptical of efforts to limit access to [mifepristone](#), questioning whether a coalition of anti-abortion groups had the right to challenge the Food and Drug Administration's [approval of the drug](#) or a pair of decisions that broadened access to it, [our D.C. bureau reported](#).



Just a normal day at the office. (Photo by Ashley Murray/States Newsroom)

“We have before us a handful of individuals who have asserted a conscience objection.” said Justice Neil Gorsuch. “This case seems like a prime example of turning what could be a small lawsuit into a nationwide legislative assembly on an FDA rule, or any other federal government action.”

The court had accepted the case [at the request](#) of the Biden administration, which asked the justices to overturn an appeals court ruling that would, if enacted, limit access to mifepristone 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).

This was, believe it or not, 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 FDA 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.



Not pictured: A teetering tower of court documents. (Photo by Anna Moneymaker/Getty Images)

The justices seemed poised to issue a similar ruling this year. (Except for 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.

Attorneys for the plaintiffs failed to prove — or really even argue — otherwise. They could not furnish proof that the current regulations have injured anyone, or that keeping them in place would inflict “concrete harm” on the doctors involved in the case (a [requirement](#) for bringing the suit in the first place). The anti-abortion groups [had previously argued](#) that wider access to mifepristone infringed on the religious beliefs of doctors who could be required to treat patients who suffer complications from the drug, but that rarely happens, and doctors who have conscientious objections to abortion are not required to care for patients when it does, according to Solicitor General Elizabeth Prelogar.

“Only an exceptionally small number of women suffer the kinds of serious complications that could trigger any need for emergency treatment,” Prelogar said. “It’s speculative that any of those women would seek care from the two specific doctors who asserted conscience injuries. And even if that happened, federal conscience protections would guard against the injury the doctors face.”

The case marked the court’s first return to the issue of abortion since it [overturned *Roe v. Wade*](#) in 2022, clearing the way for ... well, stupid lawsuits just like this one. The ruling, expected this summer, will have an immediate impact on the 2024 presidential race as well as down-ballot congressional contests, particularly in swing states where Democrats have [outperformed expectations](#) by campaigning heavily on reproductive rights.



Meanwhile, in Montana (Photo by Pixsooz/Adobe Stock)

Republicans have done what they can to push back, often by attempting to block the issue altogether. Montana Attorney General Austin Knudsen followed that playbook Monday, injecting a host of anti-abortion language into a proposal to enshrine abortion rights in the state constitution, [the Daily Montanan reported](#).

Knudsen, a Republican, had initially attempted to scuttle the proposed amendment altogether under the guise of [“legal insufficiency”](#) due to language that failed to give voters an accurate understanding of how the proposed initiative will change current law. The amendment, he argued, also precluded the state “from enforcing medical malpractice standards of using pregnancy outcomes, like babies who are born drug-addicted, to enforce other state policies.”

Those arguments failed to persuade the state Supreme Court, which [ordered him](#) last week to prepare the ballot statement for [the initiative](#). In response, Knudsen created his own method of compliance, [citing his own failed legal arguments](#) as justification for rewriting the proposal entirely. The new version, submitted Monday to the secretary of state’s office,

transformed the referendum from a [straightforward codification](#) of reproductive rights to a [mess of anti-abortion rhetoric](#), including disclaimers that the amendment “eliminates the state’s compelling interest in preserving prenatal life,” “may increase the number of taxpayer-funded abortions” and leaves things like “fetal viability” and “extraordinary medical measures” to the “subjective judgment of an abortion provider rather than objective legal or medical standards.”

The move was not surprising for the groups behind the amendment, which filed [an emergency petition](#) Tuesday asking the state Supreme Court to overturn the rewritten statement in [an expedited ruling](#) to ensure adequate time to collect thousands of petition signatures ahead of a June 21 deadline. The groups, known collectively as Montanans Securing Reproductive Rights, also requested a Friday deadline for both Knudsen’s response and any friend-of-the-court briefs. As of late Tuesday, the court had not set a schedule.

“The attorney general’s strategy here is obvious and desperate: To force MSRR to go to court again, causing more delay in hopes of denying Montanans the opportunity to secure their right to abortion,” the group said in a statement. “Montanans deserve better and MSRR is determined to give voters a shot at a fair, sensible abortion rights initiative.”



Ah yes, just who you’d prefer to be making decisions about reproductive health care. (Photo by Sherman Smith/Kansas Reflector)

Kansas Republicans approved a delay of their own Tuesday, advancing a bill that would force pregnant patients to answer a host of survey questions prior to obtaining an abortion. Allegedly, this will “help lawmakers make better decisions.” But opponents are pretty sure it’s just a deeply invasive way to push anti-abortion nonsense, [the Kansas Reflector reported](#).

[The bill](#), approved [27-13](#), would require abortion providers to record each patient’s reason for terminating a pregnancy, then report that information to the state twice each year. Patients would select from a list “the most important factor” influencing their choice to have an abortion. (Is your partner abusive? Do you “not feel mature enough” to raise a child? Do you “not want others to know” you had sex? Is your pregnancy the result of a rape?) Patients can opt not to answer, but even that would go into the written record, along with a slew of demographic information, including age, race, marital status and level of education.

The information would be anonymized before it goes to the state health department, which would (allegedly) use it to inform policy for pregnant Kansans, according to Mackenzie Haddix, a spokeswoman for Kansans For Life, an anti-abortion group that helped draft the bill. But the state already collects comprehensive data on abortion patients, which it publishes in an annual report, said Senate Minority Leader Dinah Sykes, a Lenexa Democrat.

“I think it is a farce that we are saying this is what we’re passing so that we can address good policy,” she said. “Because we have the data, we have the information, and we choose not to use it.”

But not everything should be a choice, according to state Sen. Mark Steffen, a Republican best known for his love of [horse dewormers](#) and also for [attempting to convert](#) a reporter and a Muslim constituent to Christianity.

“Abortion is the pathway to a life of regret and emptiness,” Steffen said. “Every abortion kills an innocent child. That’s a fact. Every abortion kills an innocent child.”

That’s a fact

- [Photos from outside the U.S. Supreme Court during the abortion pill arguments](#)
 - [Few states cover fertility treatment for same-sex couples, but that could be changing](#)
 - [Anti-abortion, anti-LGBTQ resolutions to be voted on at North Dakota Republican convention](#)
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Also Trending

[A proposed bill](#) in Tennessee aims to stop the potential release of climate-controlling chemicals into the atmosphere, *not* to ban “chemtrails,” according to state Rep. Monty Fritts, a Republican who will present the proposal to a House committee Wednesday.

But also, there’s a bit of connection there, according to state Sen. Steve Southerland, the Republican who sponsored the bill.

“If you look at a thousand planes, you won’t see one [chemtrail]. But then all of a sudden you see one,” he [told the Tennessee Lookout](#). “So we’re just asking the question: Are they putting anything in the air that could be toxic?”



They're just clouds, man. (Photo via the Tennessee Lookout)

I mean, where to begin? Here, I guess: Chemtrails are not a thing. The word you are looking for is [contrails](#), a portmanteau for “condensation trail,” which are basically long, skinny clouds that form when water vapor condenses and freezes around small particles in aircraft exhaust. [Most often](#), you’ll see contrails at cruising altitude, or somewhere between 32,000 and 42,000 feet. They form most easily, and last the longest, when the air contains more moisture, which is another way of saying that you won’t always see them, because the atmospheric conditions are constantly changing. Bottom line: Contrails are normal, and so is the absence of contrails.

This is not a matter of opinion, but people still have *all kinds of opinions* about it, most of them stemming from the misguided belief that the contrails are chemtrails [sprayed by the government](#) in hopes of controlling our minds or implanting 5G in our veins or implementing a “new world order.” (If this were true, one assumes, I would not be here refuting the idea of chemtrails, but I digress.)

For what it’s worth, the bill *appears* to be a response to an actual policy

signed into law by President Joe Biden in 2022 directing the Office of Science and Technology Policy to work with NASA on “climate intervention.” The crux of that research appears to focus on the feasibility of releasing tiny particles into the atmosphere that, theoretically, could reflect enough sunlight to slow down the Earth’s warming. In other instances, groups could try to determine whether the release of particles might stop cirrus clouds from trapping heat against the Earth, according to a news report.

That type of research would be banned in Tennessee under the bill, which would bar “intentional injection, release, or dispersion, by any means, of chemicals, chemical compounds, substances, or apparatus within the borders of this state into the atmosphere with the express purpose of affecting temperature, weather, or the intensity of the sunlight is prohibited.”

Man literally yells at cloud

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- [Tennessee House GOP votes to end flu, whooping cough vaccine rules for foster and adoptive families](#)



One Last Thing

A Swedish land owner [will get to keep](#) a 31-pound meteorite after an appeals court ruled that space rocks should be considered “immovable property” and part of the land where they are found.

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