



Written by [Rebecca Terrell](#) on June 16, 2024

SCOTUS Shoots Down Pro-life Attempt to Protect Women

The United States Supreme Court has [dismissed](#) a challenge to the federal government's mail-order policy for abortion pills.

All nine SCOTUS justices agreed that the plaintiffs lacked standing to challenge relaxed regulatory requirements adopted by the U.S. Food & Drug Administration (FDA) in 2016 and 2021.

Those policy changes made the dangerous medication easier for doctors to prescribe and for patients to obtain.

At the crux of the case is the drug [mifepristone](#), also known as RU-486, or more commonly, "the abortion pill." FDA approved it as an abortifacient in 2000. The drug is so dangerous that the agency added to its labeling a "black box warning" for serious or life-threatening risks to the mother. (Of course, the black box ignores the obvious lethal impact on her baby.)

Because of those severe and common hazards, the FDA originally imposed strict restrictions, such as disallowing use of the drug after seven weeks of pregnancy and requiring women to have three in-person physician visits before receiving it. In 2016, despite the black box warning, the agency expanded the use of mifepristone to 10 weeks gestation, reduced the in-person visit requirement to one, and gave prescribing authority to non-physician healthcare professionals (such as nurse practitioners).

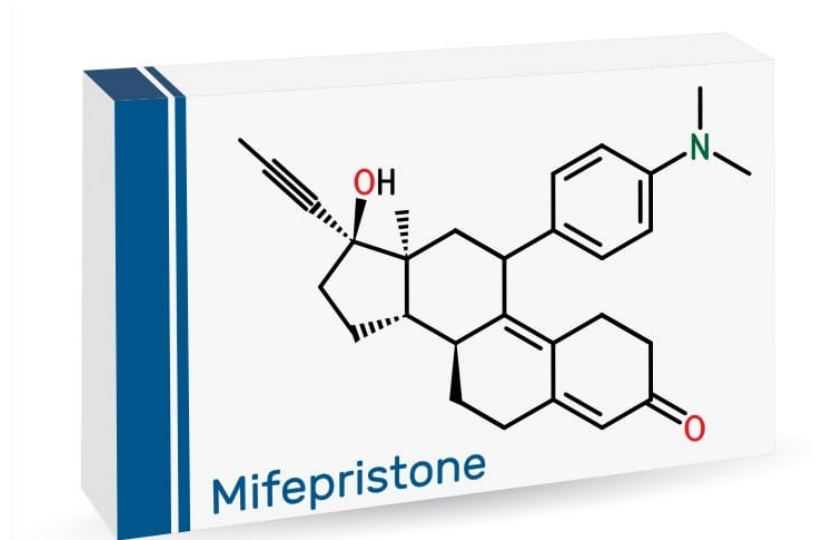
In 2021, with Covid lockdowns as an excuse, the agency announced the unthinkable: It would no longer require patients to have any in-person visits to receive the drug. A woman can now mail-order the abortion pill, provided she has a prescription.

A consortium of doctors and medical associations known as the [Alliance for Hippocratic Medicine](#) sued the FDA in 2022, seeking to force the agency to rescind either its approval of mifepristone or its subsequent regulatory relaxations.

However, SCOTUS [decided](#) that members of the alliance lack "Article III standing." In other words, they do not have a "personal stake" in the dispute. Justice Brett Kavanaugh, who delivered the Court's opinion, wrote that "federal courts do not operate as an open forum for citizens 'to press general complaints about the way in which government goes about its business.'"

He continued:

... the plaintiffs do not prescribe or use mifepristone. And FDA is not requiring them to do or refrain from doing anything. Rather, the plaintiffs want FDA to make mifepristone more



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difficult for other doctors to prescribe and for pregnant women to obtain. Under Article III of the Constitution, a plaintiff's desire to make a drug less available *for others* does not establish standing to sue.

Even pro-life conservative justices Samuel Alito and Clarence Thomas agreed. In a concurring opinion, Thomas wrote that "a plaintiff cannot establish an Article III case or controversy by asserting another person's rights."

On the contrary, the "FDA's own label says that roughly one in 25 women who take chemical abortion drugs will end up in the emergency room," says Erin Hawley, senior counsel for the [Alliance Defending Freedom](#), which represents the plaintiffs. The statistic she cited means that, thanks to FDA's reckless laxity, the doctors involved in the case will likely be forced to participate in abortions against their own consciences when these women show up in emergency rooms across the country.

Both the U.S. District Court for the Northern District of Texas (where the case originated) and the Fifth Circuit Court of Appeals previously ruled that the plaintiffs did have standing.

"Yet at the Supreme Court, the FDA changed its position and said that federal conscience laws definitively protect doctors in these circumstances," Hawley asserts. "This about-face explains why the Supreme Court parted ways with every other court to consider this case."

However, the case is not closed, according to the Christian advocacy group [Liberty Counsel](#). "Today the U.S. Supreme Court ruled unanimously that the doctors did not have standing but did not rule on the merits" of the case, reads a press release issued on June 13. "This decision leaves the door open for another challenger who can show a direct injury from Mifepristone traceable to the FDA's regulation."

"This case is far from over," said Liberty Counsel founder and chairman Mat Staver. "The FDA should no longer be allowed to circumvent safety laws to allow a eugenic drug to destroy innocent children and harm women. Chemical abortions are never safe and harm women and kill children."



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