



Protecting the Equal Rights
of Nonreligious Americans

April 14, 2023

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The Honorable Merrick Garland
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland,

We write in support of your intention to appeal the ruling of Judge Kacsmaryk to the Supreme Court in *Alliance for Hippocratic Medicine v. FDA* and urge you to take every available step to overturn or ameliorate it.

Judge Kacsmaryk's decision is a travesty of justice that cannot be allowed to stand. We find ourselves in this situation due to a combination of forum shopping and a judge whom no reasonable person would expect to be unbiased on the issue of abortion. Judge Kacsmaryk's education and employment history virtually ensured that he would rule against the availability of mifepristone on even the shakiest of grounds, which is exactly what was presented to him.

Contrary to what the plaintiffs argued, the safety of mifepristone is upheld by science and research; on this the medical community agrees. Through multiple reviews the FDA has determined that the pill is very safe to use, with complications occurring in fewer than one percent of cases. In fact, the FDA regulates mifepristone with a framework of extra restrictions applied to only 60 drugs in the country.

The lack of standing by the plaintiffs is obvious; none of them have been directly harmed by the drug and they present no evidence to buttress their claim about stress on the health care system they say the drug has been causing. The timing of the case, 23 years after the drug was approved but less than a year after the *Dobbs v. Jackson* decision, further undermines the sincerity of the plaintiffs' concerns for those who actually use mifepristone.

Many of us in the Secular Coalition for America opposed Judge Kacsmaryk's nomination because of his years of advocacy (his word) for the pro-life movement, his views on LGBTQ rights, his concern about "the demise of America's Christian heritage," and many other problematic views. He has lived up to our expectations. He issued an order rife with judicial malpractice, so it now falls to the Department of Justice to take every step necessary to prevent the damage Judge Kacsmaryk's decision will cause.

The damage would not end with the withdrawal of mifepristone from the market, creating a nationwide ban on the most common method of abortion. If this decision stands it sets a precedent for judges to



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overrule the FDA on questions of drug safety. If drug manufacturers cannot count on the certainty of a drug's marketability following FDA approval, they will be less likely to invest in the costly development phase of new drugs. The bias of one district court judge must not be allowed to interfere with drug availability or drug development affecting millions of Americans.

We urge you to take every step necessary to return the availability of mifepristone to where it was before this misguided decision devoid of standing was handed down in Amarillo, including an appeal to the Supreme Court, which we wholeheartedly encourage. In closing, we note that Justices Alito and Thomas' dissent in *FDA v. American College of Obstetricians and Gynecologists*, stated disapprovingly that "a District Court Judge in Maryland took it upon himself to overrule the FDA on a question of drug safety," as they phrased it. This was a case in which the district court judge ruled in favor of making mifepristone more available by mail during the pandemic. We hope there is not a different set of standards for making it less available and encourage the administration to use all tools at their disposal to invalidate this rogue ruling.

Sincerely,

Steven Emmert
Executive Director

American Atheists

American Ethical Union

American Humanist Association

Association of Secular Elected Officials

Atheist Alliance of America

Black Nonbelievers

Center For Inquiry/Richard Dawkins Foundation for Reason & Science

Camp Quest

Cultural & Secular Jewish Organization

Ex-Muslims of North America

Freedom From Religion Foundation

Freethought Society

GO Humanity

Hispanic American Freethinkers

Military Association of Atheists and Freethinkers

Recovering From Religion

Secular Student Alliance

Secular Woman

Society for Humanistic Judaism

The Clergy Project

Unitarian Universalist Humanist Association