

Two Of Trump’s Nominees For Lifetime Appointments To The Federal Bench Recently Argued That Medication Abortion Financially Harmed States By Depriving Them Of Teen Pregnancies

SUMMARY:

In June 2024, the Supreme Court unanimously found that a group of anti-abortion doctors who challenged the FDA’s approval of mifepristone [lacked standing to sue](#). In October, Missouri [filed an amended complaint](#) alongside Idaho and Kansas seeking to continue the lawsuit in Amarillo, Texas. The move was [criticized](#) as a “nakedly political and judge-shopping ploy,” seeking to hear the case in a more favorable court than the states’ own districts. Trump’s recently announced nominees to federal district court, Joshua Divine and Maria Lanahan, both represented Missouri in the case.

In their brief in this case, Divine and Lanahan outlined a series of harms the states faced from the FDA’s approval of mifepristone, including [fewer teen pregnancies](#). The brief complained of “sovereign injuries to plaintiffs’ population interests” and cited a study that claimed access to mifepristone by mail depressed the expected birth rates for teenage mothers in the states. The [brief](#) then claimed that a loss of potential population caused “diminishment of political representation” and “loss of federal funds.”

The ongoing lawsuit also relies on unscientific claims that mifepristone and mail access are unsafe for patients, despite over [100 scientific studies](#) confirming the safety of the pills. The arguments advanced by Divine and Lanahan are not only unfounded and politically motivated but also disturbingly fringe.

The case of judge shopping was so severe that even the Trump administration recently asked the judge to [toss out the lawsuit](#) for lack of standing.

Joshua Divine Led Missouri’s Effort To Intervene In The FDA Mifepristone Case, Which Argued That Decreasing Rates Of Teenage Pregnancy Politically And Financially Harmed The State

June 2024: The Supreme Court Rejected A Lawsuit Aiming To Reverse The FDA’s Approval Of Mifepristone

June 2024: The Supreme Court Rejected A Challenge To Mifepristone, Unanimously Finding That The Group Of Anti-Abortion Doctors Who Challenged The FDA Lacked Standing. “In a blow for anti-abortion advocates, the Supreme Court on Thursday rejected a challenge to the abortion pill mifepristone, meaning the commonly used drug can remain widely available. The court found unanimously that the group of anti-abortion doctors who questioned the Food and Drug Administration’s decisions making it easier to access the pill did not have legal standing to sue.” [NBC News, [6/13/24](#)]

The Decision Did Not Consider The Legal Merits Of Whether The FDA Acted Lawfully In Lifting Mifepristone Restrictions, Allowing The Issue To Return To The Court In Another Case. “By throwing out the case on such grounds, the court avoided reaching a decision on the legal merits of whether the FDA acted lawfully in lifting various restrictions, including one making the drug obtainable via mail, meaning the same issues could yet return to the court in another case.” [NBC News, [6/13/24](#)]

October 2024: Missouri Filed An Amended Complaint In Amarillo, Texas, Seeking To Revive The Mifepristone Lawsuit And Was Represented By Joshua Divine

October 2024: Missouri, Idaho, And Kansas Filed A Revive Lawsuit In Amarillo Aiming To Continue The Case

October 2024: Missouri, Idaho, And Kansas Filed A Revised Lawsuit Seeking To Reverse FDA Regulations Expanding Mifepristone Access And Implement New Restrictions, Including Banning The Medication For Minors. “A lawsuit seeking to sharply restrict the abortion pill mifepristone — a case the Supreme Court threw out this year — has re-emerged in a version that presents new challenges for abortion-rights supporters and the federal government’s ability to regulate abortion medication. The revised lawsuit was filed this month by the conservative state attorneys general of three states — Missouri, Idaho and Kansas — against the Food and Drug Administration in the same federal district court in Texas as the original case. It seeks to reverse numerous regulatory changes the F.D.A. has made since 2016 that greatly expanded access to mifepristone. It also asks for new restrictions, including to outlaw the medication for anyone under 18.” [New York Times, [10/21/24](#)]

- **The States Were Allowed To Intervene At An Earlier Stage Of The Initial Case, But Barred From Doing So At The Supreme Court.** “The states, which had intervened in an earlier stage of the case, were barred from doing so at the Supreme Court. They vowed at the time to amend the initial lawsuit and try again. It’s not at all clear if the states will even be allowed to bring the suit before Kacsmaryk, given that the Supreme Court reversed lower courts in the underlying case.” [CNN, [10/16/24](#)]

The States’ Effort To File In Amarillo, Texas, Rather Than Missouri, Kansas, Or Idaho, Was Criticized As A “Nakedly Political And Judge-Shopping Ploy.” “David S. Cohen, who is a law professor at Drexel University and supports abortion rights, said states might have slightly more coherent claims to legal standing than the original plaintiffs, but their ability to sue in this case and claim harm from F.D.A. decisions could still face strong challenges. He said it was also legally questionable that the states had filed as plaintiffs in the same court as the original plaintiffs after the initial group was rejected. ‘It is a nakedly political and judge-shopping ploy,’ he said. ‘Missouri, Idaho and Kansas, if they really are harmed by these pills, should file in Missouri, Kansas or Idaho. But they want to be before Judge Kacsmaryk, so they are trying to piggyback on this lawsuit that had no standing in the first place, and that shouldn’t be allowed.’” [New York Times, [10/21/24](#)]

Trump Judicial Nominees Joshua Divine And Maria Lanahan Represented Missouri In The Case

May 2025: Trump Nominated Joshua Divine To The Eastern And Western Districts Of Missouri And Maria Lanahan To The Eastern District Of Missouri. “Divine was tapped to replace U.S. District Judge Rodney W. Sippel, who took senior status in 2023. Sippel’s seat is assigned to two districts in the state: the Eastern and Western Districts of Missouri. [...] Trump nominated Lanahan to a judicial seat in the Eastern District of Missouri.” [Washington Post, [5/7/25](#)]

October 2024: Joshua Divine And Maria Lanahan Signed On To The States’ Amended Complaint, Seeking To Revive The Alliance For Hippocratic Medicine’s Lawsuit Challenging FDA’s Regulation Of Mifepristone.

Dated: October 11, 2024 R

ANDREW BAILEY
Missouri Attorney General

/s/ Joshua M. Divine

*Joshua Divine, #69875MO

Solicitor General

Maria Lanahan, #65956MO

*Samuel C. Freedlund, #73707MO

Deputy Solicitors General

Office of the Missouri Attorney General

207 W. High Street

P.O. Box 899

Jefferson City, Missouri 65102

Telephone: (573) 751-8870

Facsimile: (573) 751-0774

Josh.Divine@ago.mo.gov

Maria.Lanahan@ago.mo.gov

Samuel.Freedlund@ago.mo.gov

*Counsel for Intervenor Plaintiff State of
Missouri*

[Northern District of Texas Amarillo Division, Alliance for Hippocratic Medicine v. FDA, Motion for Leave to Amend Complaint, filed [10/11/24](#)]

March 2025: Joshua Divine And Maria Lanahan Remained Involved In Missouri's Lawsuit.

Dated: March 18, 2025

ANDREW BAILEY
Missouri Attorney General

/s/ Joshua M. Divine

*Joshua M. Divine, #69875MO

Solicitor General

Maria Lanahan, #65956MO

Deputy Solicitor General

*Samuel C. Freedlund, #73707MO

Deputy Solicitor General

Office of the Attorney General

Supreme Court Building

207 W. High Street

P.O. Box 899

Jefferson City, MO 65102

(573) 751-8870

(573) 751-0774 (fax)

Josh.Divine@ago.mo.gov

Maria.Lanahan@ago.mo.gov

Samuel.Freedlund@ago.mo.gov

[Northern District of Texas Amarillo Division, Alliance for Hippocratic Medicine v. FDA, Intervenor-Plaintiffs' Brief, filed [3/18/25](#)]

Missouri's Lawsuit Argued That Mifepristone Access Caused Lower Rates Of Teenage Pregnancy, Financially And Politically Harming The State

The Amended Complaint Argued That Lower Rates Of Teenage Pregnancy Financially And Politically Harmed The State. “In making the case that the states have standing this time, the attorneys general contend access to mifepristone has lowered ‘birth rates for teenaged mothers,’ arguing it contributes to causing a population loss for the states along with ‘diminishment of political representation and loss of federal funds.’ ‘Younger women are more likely to navigate online abortion finders or websites ordering mail-order medication to self-manage abortions,’ the filing argues.” [Missouri Independent, [10/22/24](#)]

The Brief Complained Of “Sovereign Injuries to Plaintiffs’ Population Interests.” “Sovereign Injuries to Plaintiffs’ Population Interests” [Northern District of Texas Amarillo Division, Alliance for Hippocratic Medicine v. FDA, Motion for Leave to Amend Complaint, filed [10/11/24](#)]

- **The Brief Cited A Study Which Claimed Access To Mifepristone By Mail And Online Depressed The Expected Birth Rates For Teenaged Mothers In The Plaintiff States.** “The study thus concludes that ‘one explanation may be that younger women are more likely to navigate online abortion finders or websites ordering mail-order medication to self-manage abortions. This study thus suggests that remote dispensing of abortion drugs by mail, common carrier, and interactive computer service is depressing expected birth rates for teenaged mothers in Plaintiff States, even if other overall birth rates may have been lower than otherwise was projected.” [Northern District of Texas Amarillo Division, Alliance for Hippocratic Medicine v. FDA, Motion for Leave to Amend Complaint, filed [10/11/24](#)]
- **The Brief Claimed That A Loss Of Potential Population Caused “Diminishment Of Political Representation” And “Loss Of Federal Funds.”** “A loss of potential population causes further injuries as well: the States subsequent ‘diminishment of political representation’ and ‘loss of federal funds,’ such as potentially ‘losing a seat in Congress or qualifying for less federal funding if their populations are’ reduced or their increase diminished. Dep’t of Com. v. New York, 588 U.S. 752, 766–67, (2019).” [Northern District of Texas Amarillo Division, Alliance for Hippocratic Medicine v. FDA, Motion for Leave to Amend Complaint, filed [10/11/24](#)]

Missouri Has One Of The Highest Teen Pregnancy Rates In The Country. “Missouri’s teen pregnancy birth rate, which is 16.9 births per 1,000 girls 15-19 years of age, has steadily declined over the past several years, according to the Centers for Disease Control and Prevention, though it still remains among the highest in the country.” [Idaho Capital Sun, [10/23/24](#)]

The Lawsuit Cited Discredited Junk Science Fear Mongering About The Safety Of Mifepristone

January 2024: The ACLU And Center For Reproductive Rights Criticized The Unreliable Testimony And Flawed Research From Anti-Abortion Witnesses In The Original Lawsuit. “The American Civil Liberties Union filed an amicus brief with the Supreme Court today in FDA v. Alliance for Hippocratic Medicine, a case that could have serious effects on people’s ability to access abortion and miscarriage care nationwide. The brief — joined by the Center for Reproductive Rights and the Lawyering Project — details how, in overriding FDA’s scientific judgment and the medical consensus about mifepristone’s safety, the Texas federal district court and the Fifth Circuit Court of Appeals relied heavily on unreliable testimony and flawed research from a handful of witnesses who oppose abortion in all circumstances and want to see it banned nationwide. These so-called experts regularly testify in defense of abortion restrictions in cases brought by the ACLU and partners, and both they and the studies on which they rely have routinely been found by other courts to lack any credibility.” [ACLU, [1/30/24](#)]

Accountable .US

The Ongoing Lawsuit Was Criticized For Evoking “Purely Political” Arguments Not Based In Scientific Evidence. “The foundation of these extreme politicians’ arguments are purely political, rather than based in scientific evidence,” said Skye Perryman, the president and chief executive of Democracy Forward. ‘The threat this case brings to abortion access nationwide cannot be understated.’ [New York Times, [2/25/25](#)]

Opponents Of Mifepristone Claimed In-Person Medical Visits Were Necessary For Patients, Despite More Than 100 Scientific Studies Confirming The Pills To Be Safe. “Abortion opponents have asked the administration to roll back rules that allow the pills to be prescribed by telehealth appointments and sent through the mail. They argue that in-person medical visits are necessary to safeguard patients. Such efforts are part of their mission to end all abortions. More than 100 scientific studies, conducted over decades, have found the pills to be safe and to rarely cause serious complications.” [New York Times, [2/25/25](#)]

May 2025: The Trump Administration Asked The Judge To Toss Out Missouri’s Lawsuit

May 2025: The Trump Administration Asked The Judge To Toss Out Missouri’s Lawsuit, Claiming The State Did Not Have Standing To Sue. “The Trump administration on Monday asked a judge to toss out a lawsuit from three GOP-led states seeking to cut off telehealth access to abortion medication mifepristone. Justice Department attorneys stayed the legal course charted by Biden administration, though they didn’t directly weigh in on the underlying issue of access to the drug that’s part of the nation’s most common method of abortion. Rather, the government argued the states don’t have the legal right, or standing, to sue.” [Associated Press, [5/6/25](#)]

###