



How Efforts By State Attorneys General To Restrict A Common Pill Could Trigger A Nationwide Abortion Ban

Authors: AG Studies Staff and Policy Fellows

The campaign to restrict [mifepristone](#), a common medication used as part of a two-drug regime to terminate pregnancies and treat miscarriages, could lead to a de facto abortion ban in all 50 states. State attorneys general are key players in this momentous conflict.

Role Of State Attorneys General

State attorneys general (state AGs) are key players in the ongoing legal and political battle over access to mifepristone, which is used for abortion and miscarriage management. The generic version of this [widely-used](#) medication was approved by the [Food and Drug Administration](#) (FDA) nearly 25 years ago.

As [chief legal officers](#), state AGs have the authority to represent their states' interests in legal conflicts over abortion pills. They decide whether to challenge federal guidance and regulations on mifepristone and which legal theories and interpretations to assert on behalf of their states. Additionally, through their [advisory role](#), AGs can help clarify legal questions about their states' obligation to provide this medication. They can also provide critical guidance to state residents on how to legally access abortion pills.

Now that anti-abortion groups are intent on reviving a set of [dormant federal laws](#) dating back to the 1870s (often referred to as the Comstock Act) that could be used to not only ban abortion pills in all 50 states—but also *all* abortion procedures nationwide—state AGs have more power than ever to shape the future of reproductive healthcare rights. Their actions can have a profound impact on the health, safety, and well-being of millions of patients and their families—within their own states and across the country.

The Movement To Ban Abortion Pills

In 2022, the U.S. Supreme Court [eliminated](#) the constitutional right to abortion care by overturning *Roe v. Wade*. Since then, [19 states](#) have banned or limited access to abortion care. Yet, despite these efforts, studies indicate that the number of national abortions—both [within](#) and [outside](#) the formal healthcare system—has risen.

In particular, the percentage of abortions performed through medication, also known as [medical abortions](#), rose from 53% in 2020 to [63%](#) in 2023. Under the [FDA-approved regimen](#) for medical abortions, patients up to ten weeks pregnant can end their pregnancy by taking two pills, mifepristone and misoprostol, about 24-48 hours apart.

Experts observe that taking both pills at home is [safe](#) for most patients, [likening](#) the process to an early miscarriage and explaining that it can feel similar to having a crampy, heavy period. They have also noted that mifepristone's well-established safety profile is comparable to common over-the-counter painkillers like [ibuprofen](#).

Notably, patients in states with abortion bans have obtained these pills by mail through telehealth consultations. In fact, one [survey](#) showed that by the end of 2023, about 8,000 women a month in states with severe abortion restrictions or limits on using telehealth to have one were receiving pills by mail.

Given the prevalence of medical abortions, restricting access to mifepristone has become the next major step for anti-abortion groups and allies. For example, some [state legislators](#) have introduced bills that would subject pregnant individuals who have an abortion to murder charges—arguing that this is the only way to deter them from taking abortion pills.

Other states, like [Louisiana](#), have reclassified abortion pills as controlled substances. This change has required hospitals to keep misoprostol outside of patients' rooms, even though it is also used to treat uncontrolled bleeding after childbirth. As a result, doctors must now wait longer to access this medication during childbirth emergencies, highlighting how abortion care restrictions can undermine broader reproductive healthcare and jeopardize patient safety.

With the overturning of *Roe*, abortion opponents have also set their sights on the Comstock Act. They are using its provisions to argue that it is illegal for anyone to obtain or distribute abortion pills by mail, common carrier, or other means of transport. If the U.S. Supreme Court were to agree with this interpretation it could issue a ruling that would, in effect, ban all medications used for abortion purposes—even in states that currently protect reproductive rights. Such a ruling would drastically curtail reproductive healthcare options in the country.

But even worse, it could trigger a [nationwide abortion ban](#) by emboldening abortion opponents to argue that the Comstock Act also prohibits sending and receiving the tools and equipment required for surgical abortion procedures. If this outcome seems far-fetched, consider the fact that [anti-abortion groups](#) are already urging the Department of Justice to enforce these laws in a way that would effectively create a de facto medical abortion ban across the country.

State Attorneys General Divided On Abortion Pill Access

State AGs are sharply divided on abortion pill access. On one side of this legal conflict is a group of anti-abortion AGs challenging recent efforts to make mifepristone—which is recognized as an [essential medicine](#) by the World Health Organization—less burdensome for patients to obtain.

Key among these efforts are the FDA’s regulations from [2016](#), [2021](#), and [2023](#), which expanded access to this medication. The 2016 regulations made significant changes, such as extending the time in which patients could use mifepristone from seven to ten weeks, and reducing the required in-person visits from three to one. Additionally, regulations introduced after the COVID-19 pandemic have [allowed](#) patients to get telehealth prescriptions, receive pills by mail, and pick them up at FDA-certified pharmacies, rather than having to obtain them in person from a limited number of certified clinicians.

Anti-abortion state AGs claim that loosening restrictions on mifepristone is [dangerous](#). However, leading medical societies throughout the country have fully supported the FDA’s decision to ease restrictions, observing that over 420 randomized controlled studies have proven mifepristone’s [safety](#). They also [note](#) that it is “exceedingly rare” for patients to need emergency treatment due to complications, describing the risk of dying from taking mifepristone as “almost non-existent.”

But anti-abortion state AGs are not just looking to reinstate prior FDA restrictions on mifepristone. They have also tried to persuade [national retail pharmacies](#) and federal courts that sending or receiving abortion pills by mail is a federal crime under [the Comstock Act](#).

On the other side of this conflict stands a coalition of pro-choice state AGs committed to countering efforts to use the Comstock Act to hinder abortion pill access. Additionally, given mifepristone’s solid safety record, these state AGs are fighting to not only preserve the regulatory changes that have made it more accessible, but also to remove other heavy restrictions that remain in place.

Strategically, they have also teamed up to enhance and broaden legal protections for in-state abortion pill providers. Together, pro-choice state AGs are leveraging their power to uphold and expand access to this essential reproductive healthcare medication for patients across the country.

State Attorneys General Actions

Here are five key ways state AGs are shaping medical abortion access.

1. Defending and Challenging State Laws That Restrict Mifepristone Access.

State AGs play a pivotal role in influencing abortion pill cases that challenge restrictive state laws—with some defending these laws, and others backing the challengers. For example, in

2023, different parties filed similar lawsuits against [West Virginia](#) and [North Carolina](#), arguing that federal law preempts these states from imposing stricter restrictions on mifepristone than those set by the FDA.

Significantly, state legislative leaders [intervened](#) in the North Carolina case after then AG Josh Stein chose not to defend the state's mifepristone restrictions. He instead filed a [memorandum](#) agreeing with the plaintiff's arguments. In contrast, then [AG Patrick Morrisey](#) asked the court to dismiss the challenge against West Virginia's restrictions, asserting that states retain authority over abortion-related matters.

Litigation is ongoing, but these cases illustrate how pro-choice and anti-abortion state AGs can approach comparable lawsuits in opposite ways. By siding with parties challenging restrictive abortion pill laws, pro-choice state AGs provide strong legal support for the argument that these laws are indefensible. Conversely, by defending these laws in court, anti-abortion state AGs are instrumental in legitimizing and upholding them.

2. Suing the FDA Over Abortion Pill Regulations.

State AGs are also at the forefront of national legal battles over federal mifepristone regulations, with some pushing for tighter restrictions, and others fighting to remove them. In November 2022, anti-abortion plaintiffs sued the FDA in [federal court in Texas](#), challenging the agency's approval of mifepristone and its branded version, Mifeprex, along with certain regulatory actions that have expanded access.

On appeal to the Supreme Court, anti-abortion state AGs argued in an [amicus brief](#) that making mifepristone available by mail violates the Comstock Act. A pro-choice state AG coalition also filed an [amicus brief](#), noting that federal courts had "expressly rejected" this interpretation. Two Justices [questioned](#) whether the Comstock Act applied, but the Court sidestepped the issue by returning the case to the lower court in Texas with a [ruling](#) that the original plaintiffs lacked standing to sue.

Now, AGs from Missouri, Kansas, and Idaho have [joined](#) the Texas lawsuit, [arguing](#) that they should be allowed to continue the case even if the original plaintiffs lacked standing because the challenged FDA actions harm their states. One of their claims is that easier access to abortion pills *lowers* teen birth rates, potentially leading to population decline, reduced federal funding, and diminished political representation. This AG trio has also raised the Comstock Act argument, which could lead to a Supreme Court decision on this issue.

While anti-abortion state AGs advocate for restrictions that would severely limit mifepristone access, pro-choice state AGs are doing the opposite. In February 2023, a pro-choice coalition of 18 AGs [sued](#) in federal court in Washington to block the FDA from enforcing restrictions on

mifepristone that the agency imposes for a small class of dangerous drugs. The coalition [argued](#) that these restrictions create additional burdens and complications for providers, patients, and pharmacies alike, and are excessive and unnecessary given mifepristone's proven long-term safety record.

For example, the complaint highlighted how even miscarriage patients who need mifepristone to treat a sudden, involuntary pregnancy loss—an event that occurs in at least [10-20%](#) of pregnancies—must sign a form stating that they agree to terminate their pregnancy. Beyond forcing these patients to sign a false statement that remains in their medical records, this avoidable, harsh restriction may create unwarranted confusion and additional anguish for those already grieving their unintentional pregnancy loss.

In a major win, the district court in Washington issued an [order](#) barring the FDA from reducing mifepristone's availability in the participating jurisdictions while the case plays out. For now, thanks to these pro-choice state AGs, mifepristone's availability remains protected in 17 states and the District of Columbia as the [case](#) moves forward.

3. Challenging And Supporting Efforts By Retail Pharmacies to Provide Abortion Pills.

As highly influential officials, state AGs have the power to shape abortion pill access outside the courtroom as well. Anti-abortion AGs have used this power to dissuade major pharmacies from selling mifepristone in their states. For example, in 2023, after receiving a warning [letter](#) from a group of anti-abortion AGs, [Walgreens](#) decided not to sell mifepristone in the 20 states where the AGs had objected—even though some of these states had not yet banned abortion pills. The letter asserted that the Comstock Act prohibits sending or receiving abortion pills through the mail and that many states have enacted similar prohibitions. This example shows how anti-abortion AGs can deter companies from distributing mifepristone in their states simply by raising the threat of legal action.

In contrast, pro-choice state AGs have leveraged their influence to encourage top retail pharmacies to follow through with their plans to sell mifepristone. In 2023, a coalition of pro-choice state AGs [wrote](#) to Walgreens and CVS explaining that over a century of legal precedent contradicts the claim that federal law prohibits pharmacies from lawfully distributing mifepristone. Additionally, [Illinois State AG Kwame Raoul](#) met personally with Walgreen's global chief legal officer, who assured him that the company would dispense mifepristone in his state. [New York State AG Letitia James](#) also sent a separate letter to Walgreens, Rite Aid, and CVS emphasizing that abortion is a fundamental right under New York law.

These efforts proved successful as Walgreens has started dispensing mifepristone in [over 20 states](#), including [New York](#) and [Illinois](#). By proactively reaching out to major pharmacy chains

and encouraging them to dispense and mail mifepristone, pro-choice AGs played an important role in making abortion pills more accessible in their states.

4. Providing Legal Guidance On Mifepristone To State Officials And Residents.

Providing clarity on the status of mifepristone is another crucial way state AGs help preserve and enhance abortion pill access. For example, in April 2023, [Connecticut State AG William Tong](#) issued a [formal opinion](#) addressing conflicting federal rulings from Texas and Washington on mifepristone restrictions. He explained to the governor that the state was still required to cover mifepristone prescriptions for its Medicaid beneficiaries because only the Washington ruling applied to Connecticut. Additionally, he emphasized that the state could not discipline a provider simply for prescribing mifepristone in accordance with relevant regulations and procedures. By reminding the state of its legal obligations regarding mifepristone, AG Tong played a critical role in ensuring that Connecticut residents would continue to have access to this essential medication during legally confusing times.

Similarly, in March 2024, former [Pennsylvania State AG Michelle Henry](#) issued a brief [document](#) answering residents' frequently asked questions about the status and availability of mifepristone. She did so in response to two pharmacies announcing that they had become certified to dispense mifepristone in Pennsylvania. The document informed residents that they could get a prescription from a certified medical provider via telehealth, and that only doctors and pharmacies with the appropriate certification could dispense it. By clearly explaining to residents how to legally access mifepristone, former State AG Henry took a simple, yet powerful step to expand abortion pill access in her state.

5. Strengthening and Testing Shield Laws That Protect Abortion Pill Providers.

Pro-choice state AGs have strategically [collaborated](#) on ways to strengthen and expand [shield laws](#) in their efforts to protect abortion pill access. Shield laws are an essential tool for safeguarding patients' private reproductive healthcare information and protecting in-state providers who perform surgical or medical abortions for out-of-state residents. For example, some shield law provisions [protect providers](#) against out-of-state investigations and prosecution, civil liability, and professional discipline.

[Texas State AG Ken Paxton](#) is the first anti-abortion state AG to start testing these laws by filing a lawsuit against a licensed provider in New York who allegedly provided telehealth medical abortion care to a patient in Texas. While Texas has adopted a [near-total abortion ban](#), [researchers](#) note that New York has shield law provisions that explicitly protect reproductive healthcare services lawfully performed by in-state providers, regardless of the patient's location. [New York State AG Letitia James](#) has also made it clear that she remains committed to protecting residents from unjust "out-of-state anti-choice attacks."

The question is what happens now when New York refuses to enforce the \$100,000 civil penalty recently [issued](#) by a Texas district court against the New York provider. As the [first lawsuit](#) of its kind, this case raises many legal questions. However, if the Supreme Court were to decide that the Comstock Act effectively bans abortion pills, many of these questions would likely become moot, as shield laws would no longer protect providers.

Still, this case illustrates the vital role that state AGs play in shaping abortion pill access through their stance on shield laws. While pro-choice state AGs are working to strengthen these laws to protect access to essential reproductive healthcare medication, anti-abortion state AGs are testing them to constrain it.

Conclusion

On the surface, the legal conflict between state AGs over medical abortion appears to center on mifepristone's accessibility. One side is pushing for more burdensome restrictions, and the other is utilizing different tools to champion greater access. Given the growing number of individuals who rely on mifepristone for safe abortion care, not to mention its role in managing life-threatening miscarriages, this conflict alone raises serious concerns.

However, now that anti-abortion state AGs are arguing for an interpretation of the Comstock Act that could effectively outlaw all abortion pill shipments in the U.S.—and potentially open the door to a nationwide abortion ban—the stakes are even higher. How state AGs challenge or support access to this common abortion pill could determine the future of reproductive healthcare rights for patients across the country.

Learn more about how state AGs are leveraging their power to shape reproductive healthcare access in their own states and beyond by visiting our recent publication at www.agstudies.org.

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