

Washington

[Washington v. United States FDA, No. 1:23-CV-3026-TOR, 2023 U.S. Dist. LEXIS 61776 \(E.D. Wash. Apr. 7, 2023\)](#) 17 states (Washington, Oregon, Arizona, Colorado, Connecticut, Delaware, Illinois, Michigan, Nevada, New Mexico, Rhode Island, Vermont, Hawaii, Maine, Maryland, Minnesota, Pennsylvania and District of Columbia) file Motion for Preliminary Injunction requesting the Court to affirm "...FDA's original conclusion that mifepristone is safe and effective...", prevent FDA's removal of mifepristone from the market and enjoin FDA's "unnecessary and burdensome" January 2023 REMS restrictions (plaintiffs argument is to prevent the application of any REMS to mifepristone). Plaintiffs motion is granted in part. Defendants are enjoined from changing the status quo and making mifepristone unavailable under the current January 2023 REMS. The ruling applies to plaintiffs' jurisdictions and not nationwide.

RCW § 9.02.110. Right to have and provide.

The state may not deny or interfere with a pregnant individual's right to choose to have an abortion prior to viability of the fetus, or to protect the pregnant individual's life or health.

A physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice may terminate and a health care provider may assist a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice in terminating a pregnancy as permitted by this section.

RCW § 9.02.120. Unauthorized abortions — Penalty.

Unless authorized by [RCW 9.02.110](#), any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes. Nor shall the state penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.

RCW § 9.02.130. Defenses to prosecution.

The good faith judgment of a physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the provider's scope of practice as to viability of the fetus or as to the risk to life or health of a pregnant individual and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue.

RCW 9.73.040:

(1) An ex parte order for the interception of any communication 29 or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and

(b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and

(c) There are no other means readily available for obtaining such information.

(2) Any application pursuant to this section that seeks communications or conversations related to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington shall include an attestation, made under penalty of perjury, stating that the application seeks information related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

(3) Where statements are solely upon the information and belief 19 of the applicant, the grounds for the belief must be given.

(4) The applicant must state whether any prior 21 application has been made to obtain such communications on the same 22 instrument or for the same person and if such prior application 23 exists the applicant shall disclose the current status thereof.

(5) The application and any order issued under RCW 25 9.73.030 through 9.73.080 shall identify as fully as possible the 26 particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(6) The court may examine upon oath or affirmation the 29 applicant and any witness the applicant desires to produce or the court requires to be produced.

(7) Orders issued under this section shall be effective 32 for fifteen days, after which period the court which issued the order 33 may upon application of the officer who secured the original order 34 renew or continue the order for an additional period not to exceed fifteen days.

(8) No order issued under this section shall authorize or 37 purport to authorize any activity which would violate any laws of the United States.

(9) The court shall not issue an order for the interception of 40 any communication or conversation for the purpose of investigating or p. 5 ESHB 1469.PL 1 recovering evidence that relates to an investigation that alleges 2 criminal liability for the provision, receipt, attempted provision or 3 receipt, assistance in the provision or receipt, or attempted 4 assistance in the provision or receipt of protected health care 5 services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 9.73.260 (7)(a)

(7)(a) If an application for the installation and use of a pen register, trap and trace device, or cell site simulator device is for the purpose of investigating or recovering evidence that relates to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington, the applicant shall include an attestation, made under penalty of perjury, stating that the application seeks information related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

(b) The court shall not issue an order for the installation and use of pen registers, trap and trace devices, and cell site simulator devices for the purpose of investigating or recovering evidence that relates to an investigation that alleges criminal liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.250 (2)

(2) The governor of this state shall not surrender any person described in subsection (1) of this section where the charge against the person is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.320 (2)-(3)

(2) Any person making such charge or complaint and affidavit under this section with information that the charge for the commission of the crime in another state is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington has an affirmative duty to disclose to the judge or magistrate that the charge for the commission of the crime in another state is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington and shall provide an attestation stating whether such charge or complaint relates to criminal liability that is based on such protected health care services. Any false attestation submitted under this subsection is subject to a statutory penalty of \$10,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of Washington state for any suit, penalty, or damages arising out of a false attestation under this section.

(3) Except in cases arising under RCW 10.88.220, the issuance of a warrant is prohibited for a charge or complaint that is related to criminal liability that is based on the provision, receipt,

attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.88.330 (c)- (3)

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection.

(3) The arrest of a person is prohibited if the arrest is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.

RCW 10.96.040:

(1) A Washington recipient, when served with process that was issued by or in another state that on its face purports to be valid criminal process, shall comply with that process as if that process had been issued by a Washington court if the criminal process includes an attestation, made under penalty of perjury, stating that such process does not relate to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington. Any false attestation submitted under this section is subject to a statutory penalty of \$10,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of Washington state for any suit, penalty, or damages arising out of a false attestation under this section.

(2) A Washington recipient shall not be required to comply with a criminal process issued by or in another state that is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington.