

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 9.02.100 Reproductive Privacy—Public Policy.

The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

- (1) Every individual has the fundamental right to choose or refuse birth control;
- (2) Every pregnant individual has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW **9.02.100** through **9.02.170** and **9.02.900** through **9.02.902**;
- (3) Except as specifically permitted by RCW **9.02.100** through **9.02.170** and **9.02.900** through **9.02.902**, the state shall not deny or interfere with a pregnant individual's fundamental right to choose or refuse to have an abortion; and
- (4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information.
[**2022 c 65 s 2**; **1992 c 1 s 1** (Initiative Measure No. 120, approved November 5, 1991).]

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 9.02.140

State regulation.

Any regulation promulgated by the state relating to abortion shall be valid only if:

- (1) The regulation is medically necessary to protect the life or health of the pregnant individual who is terminating the pregnancy,
- (2) The regulation is consistent with established medical practice, and
- (3) Of the available alternatives, the regulation imposes the least restrictions on the pregnant individual's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902.

[2022 c 65 s 5; 1992 c 1 s 5 (Initiative Measure No. 120, approved November 5, 1991).]

RCW 18.71.240 Abortion

Right to medical treatment of infant born alive. The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age. [1981 c 328 s 1.]

RCW 9.73.040:

(1) An ex parte order for the interception of any communication 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.

RCW 9A.50.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter. (1) "Health care facility" means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home. (2) "Health care provider" has the same meaning as defined in RCW 7.70.020 (1) and (2), and also means an officer, director, employee, or agent of a health care facility who sues or testifies regarding matters within the scope of his or her employment. (3) "Aggrieved" means: (a) A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded; (b) A person, physically present at the health care facility when the prohibited actions occur, whose care is or is about to be disrupted; (c) The health care facility, its employees, or agents; (d) The owner of the health care facility or the building or property upon which the health care facility is located. [1993 c 128 s 2.]

RCW 9A.50.020 Interference with health care facility.

It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by: (1) Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located; (2) Making noise that unreasonably disturbs the peace within the facility; (3) Trespassing on the facility or the common areas of the real property upon which the facility is located; (4) Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or (5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose. [1993 c 128 s 3.]

RCW 9A.50.030 Penalty.

(1) A violation of RCW **9A.50.020** is a gross misdemeanor. A person convicted of violating RCW **9A.50.020** shall be punished as follows:

(a) For a first offense, a fine of not less than two hundred fifty dollars and a jail term of not less than twenty-four consecutive hours;

(b) For a second offense, a fine of not less than five hundred dollars and a jail term of not less than seven consecutive days; and

(c) For a third or subsequent offense, a fine of not less than one thousand dollars and a jail term of not less than thirty consecutive days.

(2) The fines imposed by this section apply to adult offenders only.

[2015 c 265 s 17; 1993 c 128 s 4.]

RCW 9A.50.040 Civil remedies.

- (1) A person or health care facility aggrieved by the actions prohibited by RCW 9A.50.020 may seek civil damages from those who committed the prohibited acts and those acting in concert with them. A plaintiff in an action brought under this chapter shall not recover more than his or her actual damages and additional sums authorized in RCW 9A.50.050. Once a plaintiff recovers his or her actual damages and any additional sums authorized under this chapter, additional damages shall not be recovered. A person does not have to be criminally convicted of violating RCW 9A.50.020 to be held civilly liable under this section. It is not necessary to prove actual damages to recover the additional sums authorized under RCW 9A.50.050, costs, and attorneys' fees. The prevailing party is entitled to recover costs and attorneys' fees. (2) The superior courts of this state shall have authority to grant temporary, preliminary, and permanent injunctive relief to enjoin violations of this chapter. In appropriate circumstances, any superior court having personal jurisdiction over one or more defendants may issue injunctive relief that shall have binding effect on the original defendants and persons acting in concert with the original defendants, in any county in the state. Due to the nature of the harm involved, injunctive relief may be issued without bond in the discretion of the court, notwithstanding any other requirement imposed by statute. The state and its political subdivisions shall cooperate in the enforcement of court injunctions that seek to protect against acts prohibited by this chapter. [1993 c 128 s 6.]

RCW 9A.50.050 Civil damages.

In a civil action brought under this chapter, an individual plaintiff aggrieved by the actions prohibited by RCW 9A.50.020 may be entitled to recover up to five hundred dollars for each day that the actions occurred, or up to five thousand dollars for each day that the actions occurred if the plaintiff aggrieved by the actions prohibited under RCW 9A.50.020 is a health care facility. [1993 c 128 s 7.]

RCW 9A.50.070

Protection of health care patients and providers. A court having jurisdiction over a criminal or civil proceeding under this chapter shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient or health care provider who is a party or witness in a proceeding, including granting protective orders and orders in limine. [1993 c 128 s 9.]

RCW 9A.50.900 Construction.

Nothing in this chapter shall be construed to limit the right to seek other available criminal or civil remedies. The remedies provided in this chapter are cumulative, not exclusive. [1993 c 128 s 11.]