

Update: March 23, 2023

From: Jennifer Popik, J.D. - Director of Federal Legislation National Right to Life

Friends,

Congress is in session the rest of this week and next. Both the House and Senate will adjourn for recess starting on April 1st and will not return to DC until Monday, April 17th.

While we had earlier anticipated that votes might occur this week on S.J.Res.4 (ERA) and on S. J. Res.10 (abortion funding at the VA), several absences have complicated the schedule. Two Democratic senators (Feinstein of California and Fetterman of Pennsylvania) have been absent for weeks for health reasons, and this week Senate Judiciary Committee chairman Dick Durbin (D-II.) also is out (with COVID). The vote on S.J.Res. 10 (abortion funding at the VA) has been postponed until the Senate returns after Easter recess.

In addition, a ruling in a Texas court case regarding chemical abortion drugs and the FDA is imminent and could have nationwide implications.

Our current scorecard of roll call votes can be found at:

<https://www.votervoice.net/NRLC/Campaigns/97970/Respond>

1. **FDA Chemical Abortion Drugs – court decision imminent**
2. **Equal Rights Amendment (ERA) – latest developments**
3. **Congressional Review Act and Veterans Affairs Abortion Rule -- Update**

1. **FDA Chemical Abortion Drugs – court decision imminent**

A preliminary ruling in the case, *Alliance for Hippocratic Medicine v. U.S. Food and Drug Administration (FDA)*, is expected at any time. The case is overseen by Trump-appointed U.S. District Judge Matthew Kacsmaryk in the Northern District of Texas. National Right to Life is preparing press releases in anticipation of the decision. Last week, the judge heard arguments from both sides and said he would not wait long to rule.

The heart of the case concerns the original FDA approval process of chemical abortion drugs and could have nationwide implications.

Following arguments last week, Alliance Defending Freedom (representing four national medical associations and four doctors) Senior Counsel Erik Baptist commented:

Today, we asked the court to put the health and wellbeing of women and girls first by undoing the harms that the FDA has caused by illegally approving dangerous chemical abortion drugs and removing necessary protections. The FDA's approval of chemical abortion drugs over 20 years ago has always stood on shaky legal and moral ground, and after years of evading responsibility, it's time for the government to do what it's legally required to do: protect the health and safety of vulnerable women and girls. As we

stated in court, the FDA never had the authority to approve these drugs and remove important safeguards, despite the substantial evidence of the harms women and girls who undergo this dangerous drug regimen could suffer.

This case is made even more important due to the recent actions of the Biden Administration (more below) revoking the in-person dispensing requirement for patients and permitting distribution in pharmacies.

This initial ruling could break in any number of ways including a nationwide injunction on the approval of the drugs, or something more limited involving the recent Biden expansion to remove the in-person visit requirement. Immediate appeal would be expected in any event.

National Right to Life anticipates releasing a comprehensive Fact/Myth piece on this case shortly.

In the interim, you can find more information from National Right to Life Education Director Dr. Randall O'Bannon below.

<https://www.nrlc.org/wp-content/uploads/23-0302-White-Paper-FDA-Decision-on-Pharmacies-and-Mifepristone-1.pdf>

<https://www.nationalrighttolifenews.org/2023/03/qa-nrl-news-today-interviews-dr-randall-k-obannon-on-the-fdas-decision-to-allow-pharmacies-to-stock-and-sell-the-abortion-pill-mifepristone/>

Background on 2023 Biden Actions:

In early January, the Food and Drug Administration (FDA) updated labeling for mifepristone (generic for Mifeprex) that would allow pharmacies to dispense the drug. In issuing the new regulations, the FDA formalized a decision made in 2021 to permanently drop the in-person requirement for the distribution of the abortion pill. Numerous chains including Walgreens, CVS and Rite Aid announced that they intended to seek certification to dispense abortion drugs.

In response to the Biden Administration actions, 21 attorneys general issued a [letter](#), writing “Though the FDA has abdicated its responsibility to protect women’s health, we have not... To be crystal clear, you have not negated any of our laws that forbid the remote prescription, administration, and use of abortion-inducing drugs. The health and safety of our citizens—women and children included—is of paramount concern. Nothing in the FDA’s recent changes affects how we will protect our people.”

Walgreens responded to the State AGs, stating that it would comply and not distribute abortion drugs in those 21 States. We have seen numerous Democrat Senators and Governors criticize the pharmacy. Gov. Gavin Newsom of California [announced](#) that California would terminate a multi-million dollar contract with Walgreens in retaliation.

It is critical to keep up the pressure on these pharmacy chains.

You can find our NRLC petition regarding CVS, Walgreens, and Rite Aid here: <https://www.voterveice.net/NRLC/Petitions/3665/Respond>

You can also find our Action Alert here:
<https://www.voterveice.net/NRLC/Campaigns/99767/Respond>

Please distribute/share freely.

2. Equal Rights Amendment (ERA) – latest developments

Douglas Johnson, director of the NRLC *ERA Project*, now anticipates that a Senate vote on whether to advance a joint resolution (S.J. Res. 4), which purports to put the Equal Rights Amendment into the U.S. Constitution, will be delayed until after Congress' Easter break -- that is, until mid-April or later. The measure, which NRLC has denounced as triply unconstitutional, has been co-sponsored by all 51 Senate Democrats, and by Republican Senators Lisa Murkowski (Alaska) and Susan Collins (Maine). Sixty votes would be required to advance the measure on the Senate floor.

Senate Majority Leader Charles Schumer had previously indicated that he would force a Senate vote (cloture vote) on the measure before April. As we previously reported, on February 28 the Senate Judiciary Committee held a hearing on the ERA, as a warm-up for the floor debate. However, the absence of several Democratic senators for health reasons has complicated Majority Leader Schumer's scheduling on multiple matters.

On March 15, Senator Cindy Hyde-Smith (R-Miss.), who chairs the Senate Pro-life Caucus, introduced a counter-measure-- Senate Resolution 107 (S. Res. 107). The resolution (you can download the PDF from [this link](#)) cites court decisions and other authorities to support its conclusions that Congress lacks the authority to act on a proposed constitutional amendment after submitting it to the states, and lacks the authority to revive an expired proposed amendment (except by re-starting the entire constitutional amendment process). We can be sure that Senator Schumer is not going to allow a vote on Sen. Hyde-Smith's resolution, but senators can "vote" for it by co-sponsoring it, and 16 Republican senators have already done so (in alphabetical order by state): Boozman (Ark.), Cotton (Ark.), Rubio (Fla.), Risch (Idaho), Braun (Ind.), Marshall (Kans.), Kennedy (La.), Cassidy (La.), Ricketts (Neb.), Vance (Ohio), Lankford (Okla.), Mullin (Okla.), Graham (SC), Cruz (Texas), Lee (Utah), and Barrasso (Wy.).

We hope to see that list of co-sponsors grow substantially before the start of the Easter recess. If your Republican senators are not yet on the list, please urge them to add their names, post-haste.

On the House side, the Democrat companion measure (H.J. Res. 25), sponsored by Rep. Ayanna Pressley (D-Mass.), now has 169 co-sponsors. Only one of the 222 Republicans in the House has co-sponsored the measure (Rep. Brian Fitzpatrick, Pa.). This joint resolution cannot reach the House floor for a vote, even with the active support of every Democrat, unless at least five Republicans sign a discharge petition. Under House rules, a discharge petition cannot be filed on

H.J. Res. 25 until around mid-May. Members of the majority party are always strongly discouraged from signing discharge petitions, so they are seldom successful. Pressley and many others in the pro-ERA ranks continue to vigorously promote the potential application of the ERA as a pro-abortion legal weapon-- for example, in [this March 9 article in Jezebel](#).

Those who have questions about the ERA, or receive ERA-related media inquiries, should direct them to Douglas Johnson, director of the NRLC *ERA Project*, at djohnson@nrlc.org.

3. Congressional Review Act and Veterans Affairs Abortion Rule -- Update

Senator Tommy Tuberville (R-Ala.), and Representative Michael Cloud (R-Texas), along with more than 65 colleagues, introduced a joint resolution of disapproval (S.J. Res. 10/ H.J.Res.31) under the Congressional Review Act (CRA) to nullify a September 9, 2022 Biden Administration Department of Veterans Affairs (VA) [rule](#) that provides abortion services through the taxpayer-funded VA health care system. Put simply, this rule is attempting to transform VA facilities into abortion centers for Veterans, their spouses, and dependants.

If Congress disapproves of a rule via resolution, the rule will be nullified and the administration, along with future administrations, would be prevented from enacting something similar. Although the measure only needs a simple majority, it would almost certainly face a veto from President Biden.

The Senate is expected to vote on [S.J. Res. 10](#) following the Easter recess, sometime around April 18th or 19th. There are 35 co-sponsors in the Senate.

Background:

Since 1992, the VA has been statutorily prohibited from using taxpayer dollars for abortion. In the fall of 2022, the administration disregarded this longstanding statutory prohibition on taxpayer funding for abortion at the VA and issued a [new rule](#) that includes funding abortion for health reasons. The undefined reference to health will mean, as in *Doe v. Bolton* (the companion case to *Roe v. Wade*), that abortions can be done for virtually any reason. The Court held in *Doe* that, “medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient. All these factors may relate to health.”