Mark Masselli (00:04):

It's a bombshell decision. A federal judge in Texas revoked the FDA's approval of the most common pill used in medication abortion. The entire healthcare sector is worried about the implications.

Mini Timmaraju (00:18):

And it means that yes, it could affect mifepristone access for miscarriage management, but it could also affect your ability to have access to birth control. Plan B, the morning after pill and IVF procedures, which as you know and your audience know, are wildly popular in this day and age. The rest of the world is way ahead of us now. I won't name the official, but I had a conversation with someone in the administration who told me that when they go represent the administration in foreign countries, they now have to sheepishly admit we have fewer rights than they do.

Margaret Flinter (00:55):

Our guest is Mini Timmaraju, president of Naral Pro-Choice America, which states that everyone should be able to decide if, when, how, and with whom they start or grow a family. This is Conversations on Health Care.

Mark Masselli (01:18):

Well, welcome Mini Timmaraju to Conversations on Health Care.

Mini Timmaraju (01:22):

Thank you for having me.

Mark Masselli (01:24):

As we talk with you right now, President Biden's Justice Department has asked the appeals court to pause the Texas abortion pill ruling. Other Democrats have called on the administration just to ignore the ruling and HHS Secretary Becerra said they are considering all options. What do you want the Biden Administration to do and have they reached out to you?

Mini Timmaraju (01:47):

We work really closely with the Biden Administration. We were just in a call with them earlier today. We want them to do exactly what they're doing and we want them to win this case. I think calls for the FDA not to comply while emotionally satisfying are not actually helpful in a litigation strategy. And our goal is for the FDA, the DOJ prevail in this case. The ruling, the opinion by Judge Matthew Kacsmaryk in that federal court in Amarillo is riddled with significant disinformation. There's serious questions about the standing of the organization that filed the case and the forum shopping that occurred. So there's statute of limitations issues around this case. There are standing questions around this case. There is scientific evidence that was ignored in this case. So if the Fifth Circuit views this case strictly on legal precedent, they will dismiss it outright.

(02:53):

However, there is another case that democratic AGs filed in Washington state, in which a federal court in Washington state ruled to preserve FDA authority over mifepristone in about 18 states where abortion is still legal. And these two decisions are in conflict, which means this could go to the Supreme Court by the end of the week.

Mark Masselli (03:15):

These are two different districts. One's the fifth and I think one's the ninth. Is that right?

Mini Timmaraju (03:19):

In the circuit courts? Yes. That's correct.

Mark Masselli (03:23):

Any worry about the fifth in terms of upholding this?

Mini Timmaraju (03:27):

The Fifth Circuit is not a friendly circuit to freedoms and rights and fundamental liberties, but it is a very pro-business circuit and we were heartened to see pharma finally come out. Executives, like the CEO of Pfizer, AMA, ACOG had already been very active on this case. It's important the pharmaceutical companies are weighing in. So look, if there's a shot at the Fifth Circuit, it is a business route. And so we would strongly encourage our friends in pharma and an industry to really lean in hard. I think amicus research due today to the Fifth Circuit. We're really hoping pharma delivers a really robust one signaling how problematic to business and to fundamental safety in the country if the FDA's authority of over two decades is undermined by this one extremist judge in Amarillo.

Margaret Flinter (04:21):

Well, Mini, a Republican congresswoman from South Carolina, Nancy Mace has even said that the Biden Administration should ignore the ruling and says the decision's unconstitutional because the judge based his decision on an invalid law. But you have some tough words for the congresswoman based on her record. Tell us about that.

Mini Timmaraju (04:43):

So I think what we're starting to see is the beginnings of Republicans who are frankly worried that they're the proverbial dog that caught the car. As a party, they're in bed with some of the most radical extremists in this country. They have been supportive of the really extreme pro-life movement through some really horrific incidents in our country's history. They were supportive and are in multiple states across the country passing extremely egregious abortion bans. And in Congress where Nancy May sits, continuing to file and put on the floor for votes, really problematic abortion related restrictions. And Nancy Mace has a perfect voting record with the extremist anti-choice organizations and scores a hundred percent with them. So it's hard for us in this moment to take folks like Nancy Mace seriously. It's one thing to be in public, in the press, in the wake of what we just saw in Wisconsin, where a pro-choice judge was elected by a 10 point margin in a pivotal state Supreme Court election election.

(05:57):

And in the same week, this deeply unpopular case comes out in Texas. We know from public polling that 49% of Republicans disagree with bans on medication abortion. So I understand why Nancy Mace is coming forward and saying her party needs to show compassion, but my problem is it's all rhetoric and no substance and her voting record completely shows the opposite. And we cannot, as advocates, Naral Pro-Choice America and our 4 million members, we cannot let Republicans get a pass in this moment. We have to be very crystal clear about who the villains are and who brought us to this moment. And it's folks like Nancy Mace.

Mark Masselli (06:35):

Mini, medication abortion is legal in, I think, some form in most of the US. Naral estimates that the ruling could mean that 64 million women in the United States would lose access to this option. There are very various legal maneuvers going on right now, but I think the key question is how real is the threat of losing access and what are the health consequences if that does happen?

Mini Timmaraju (07:05):

I think with this Supreme Court that obviously you have multiple justices who appeared before the US Senate and committed to preservation of Roe as precedent and then turned around and undermined Roe and invalidated Roe. Anything could happen. We believe pretty strongly this could go all the way to the Supreme Court, as I said, as soon as this week. So I think, look, we'd love to be optimistic that cooler heads will prevail, more cautious pro-business heads will prevail in the courts, but we as a movement have to be prepared for the worst outcome. So a couple of things. Medication abortion is only legal in the states that still have abortion access. 17 states have abortion bans in place. 21 states plus the District of Columbia have some protection of abortion access. And then there's a handful of states that are still, that haven't quite banned abortion access but may have other types of restrictions based on length of pregnancy.

(08:15):

So we are already in a moment where we have millions of Americans who have lost this access. Taking away any additional form of access in this moment in states where abortion is legal is a public health crisis and emergency. So we're seeing democratic governors and attorney generals fight back. That's why we saw the Washington State case. We're seeing folks like Governor Gavin Newsom in California talking about stockpiling misoprostol. That is the other abortion pill. The abortion pill, when we talk about medication abortion is actually a cocktail of two pills, mifepristone and misoprostol. This case in Texas is about mifepristone, but there is, you can still get medication abortion through just misoprostol only, but our contention is you shouldn't have any access taken away. And mifepristone protocol is the most popular. It accounts for over 50% of all abortions in the United States.

Margaret Flinter (09:13):

Well, I think you raise such an important point that needs to be out there and with mifepristone part of a two drug abortion regimen that's gotten the attention, but it's also used for miscarriage care, spontaneous miscarriages or spontaneous abortions is we sometimes call them. So are we correct in understanding that if the ruling is upheld, it will not be allowed for the purpose of medical management of a miscarriage or a spontaneous abortion either?

Mini Timmaraju (09:45):

It's a great question and it is an argument that has been made. I think the way, if you read, you don't even have to read it between the lines. If you read Judge Kacsmaryk's opinion, when I talked about it being riddled with disinformation and misinformation. You will see that the type of language he uses, which is straight out of a right wing extremist blog rhetoric, it leads towards language that would support the so-called personhood amendment. And I bring this up because anti-choice extremists, their end goal has never just been about eliminating abortion. It's been about eliminating birth control. It's been about eliminating IVF and there is no compassion for folks who are suffering from miscarriage management, septic pregnancies, et cetera, sepsis related pregnancy complications, et cetera. Because

the concern is the "sanctity of life" of the "unborn child" and not the health and safety of the mother or the pregnant person. This is the fundamental thing that undergirds this fight.

(10:58):

And it sounds wild and irrational that it could have come to this, but it's so important to know that this is what is driving opponents of abortion. And it means that yes, it could affect mifepristone access for miscarriage management, but it could also affect your ability to have access to birth control, plan B, the morning after pill and IVF procedures, which as you know and your audience knows, are wildly popular in this day and age and very safe.

Mark Masselli (11:31):

I'd pick up on your comment a little earlier that some governors, in particular Governor Newsom in California, with stockpiling abortion pills and that activity has picked up since Friday's decision was handed down. Is stockpiling a good strategy or are there other options that governors could choose? And also it is interesting that at a state level you've got healthcare operations, we also have the Veterans Affairs, which is a federal agency. And I'm wondering what you think the impact may be on that. So a couple questions mixed there.

Mini Timmaraju (12:13):

So we think that democratic governors need to use every tool in their administrative toolbox. So would we say stockpiling medication abortion is the number one strategy? I'm not sure. I think it depends on the state. I think it depends on the nexus of providers, the pharmacies. I think in California it might make more sense, in Washington state it might make more sense than in some other states. We know that in those states, the pharmacy, the commercial and private pharmacies are doing [inaudible 00:12:45] work right now in providing access and care. So I think the idea is, depending on how this case is decided, manufacturing and future distribution may be affected, but existing inventory may not. We don't know for sure, but that is a bet some democratic governors are making and we support them being as creative as possible. Because if this goes to the heart, this is important distinction to repeat.

(13:15):

The heart of this case is about the FDA's authorization of this medication. It is not about whether abortion is legal in your state. So that's why we've been calling it a backdoor abortion ban. Opponents of abortion have been trying to pass a nationwide federal abortion ban for years and have only increased efforts post Dobbs because so many states are codifying access to abortion. So many states are proving, places like Kansas, Montana, Kentucky, that abortion when you take it to the people is incredibly popular. So now opponents of abortion are doing these backdoor [inaudible 00:13:52] dirty tricks ways to try to get at legal scientifically proven safe, effective abortion care in places like California and Michigan where they've codified abortion access in their state constitution. And that should be frightening to folks. So we support democratic governors, these democratic AGs who file this other suit in Washington state. It's a brilliant strategy because now we have the two conflicting courts and a real discussion about the authority of the FDA.

Mark Masselli (14:22):

Margaret, I should note that we had the FDA commissioner on just a few weeks ago, and we asked him specifically did he still support the ruling, their decision, I think it was 20 or 22 years ago and they-

Mini Timmaraju (14:35):

23 years ago.

Margaret Flinter (14:36):

That's right.

Mark Masselli (14:37):

He stood by it.

Mini Timmaraju (14:38):

It wasn't a quick and dirty trial, it was an extensive set of right trials and it's a medication that's been on the market for so long with a proven safety record. There's tons of evidence.

Margaret Flinter (14:49):

Absolutely. You referenced a few minutes ago, Mini, the group that brought forth this suit, which is a group called the Alliance for Hippocratic Medicine. And I wonder if you could share with us what do you know about them?

Mini Timmaraju (15:06):

They are a right-wing funded organization. They were formed post Dobbs and they filed inn Amarillo, Texas. So here's really important to understand, they did not exist before Dobbs, and not one member of their association has ties to Amarillo, Texas, but Judge Matthew Kacsmaryk is the single federal judge in that federal court in Amarillo. So if you file an Amarillo, you're going to get Judge Matthew Kacsmaryk and they knew that. So when I say made up organization, forum shopping, actually another attorney general I was on a show with recently pointed out. It's not actually forum shopping, it's judge shopping because there's just one judge. Usually you forum shop, there's multiple judges and you hope you're going to get the judging who's favorable to you. But in this case, because there's one single judge in this federal court, you knew they were going to get them.

[NEW_PARAGRAPH]And Judge Kacsmaryk has a really problematic history and a longtime affiliation with several extremist anti-choice organizations. He's been an advisor, he's been on the board, he's a Federalist Society candidate. He's very problematic. In fact, even Susan Collins voted against him. So something to know.

Mark Masselli (16:33):

I want to pull the thread on your comments about the safety record of medication abortion care, and talk a little bit about its implication. You say it's safer than Tylenol and the World Health Organization endorses medication abortion up to 12 weeks. I'm wondering though what will be the effect of the American court fight here around the globe? What do you think the implications might be?

Mini Timmaraju (17:03):

The irony is as we go further and further backwards in our democracy and our fundamental freedoms and in science, the rest of the world is leaping forward, including our friends in Latin America and in Europe, where we have traditional Catholic societies. Because as we learn more about the science, the science shows us that these medications, these procedures are safe. And we understand that maternal health outcomes are deeply connected to pregnancy. We know that. We understand that pregnancy can be the most dangerous time for many women's lives, and we understand... Our opponents like to put

out language like pregnancy is not a disease. Of course, pregnancy is not a disease, but we know there are many pregnancy related negative health outcomes for folks who can get pregnant.

(17:55):

And it is absolutely unconscionable to pretend that it's not the case and the rest of the world is way ahead of us now. I won't name the official, but I had a conversation with someone in the administration who told me that when they go represent the administration in foreign countries, they now have to sheepishly admit we have fewer rights than they do. That women and their countries have fewer rights than we do. And it's deeply disturbing and disheartening. I also want to note that medication abortion, mifepristone was approved in France in 1987. We were late in the first place. We've been behind and now we're slipping further behind.

Margaret Flinter (18:34):

Well look Mini, I want to sort of stay with the FDA issues for a moment because I think one of the really dramatic things is what this means for the FDA overall. And I think as you've made reference to before, 400 drug company executives have said that the Texas judge decision is wrong because it overlooks the scientific and the legal precedence of FDA's approval process, which is generally well known, well-developed and respected. So it would seem the ruling has implications potentially for every drug the FDA approves, whether that's vaccines to puberty blockers. Are people making that argument at this point?

Mini Timmaraju (19:17):

Yes, absolutely. It's actually the argument that's at the core of what our friends at the AMA and pharma are saying. What's disturbing is every American should be concerned about this decision. Because if you can undermine the FDA, if one federal judge in one court can undermine 23 years of FDA precedent, that has devastating consequences for all of the FDA's authorities. And to the whole process of trials, approvals of medications in this country, and it means anyone with an ideological opposition to a drug could be COVID and the vaccines. As you said, it could be puberty blockers and gender-affirming care. It could be anything from drugs that were created because of research that was rooted in something you don't feel is ethically responsible. All of these things could be challenged on very thin, thin evidence and maybe no scientific evidence at all as this case was. So every rational person who goes to the pharmacy picks up that Tylenol, uses Viagra, uses any kind of, it's allergy season. I just popped a Zyrtec earlier today. We should all be concerned.

Mark Masselli (20:39):

You want to sort of talk a little bit about the politics. Obviously, President Trump appointed the federal judge who made this decision. But one pollster says Democrats have yet to fully realize that the country is now 10 to 15% more pro-choice than it was before the Dobbs Supreme Court decision. 2024 is a big year for Senate Democrats. Just the un-luck or the luck of the draw, I'm wondering what your political calculus as you look at this decision and also the Dobbs decision of how that's going to impact the political parties.

Mini Timmaraju (21:22):

I mean, we think, listen at Naral, we had research and data showing eight to 10 Americans supported legal access to abortion well before the Dobbs decision. I will say as a movement, we've collectively had a believability challenge with the press and with our friends in Washington DC. We've been talking

about, since Planned Parenthood v. Casey, the erosion of abortion access and abortion rights in this country for decades. Now I started my career with Planned Parenthood in Texas and we've had really, really problematic restrictions, targeted restrictions against abortion providers in Texas since the nineties. So we've already got places... The Dobbs decision was based in Mississippi, about a Mississippi clinic. One clinic in the entire state of Mississippi was the subject of that litigation. So when you don't have access, just because you have the constitutional right, it negates the effect of the right.

(22:16):

So what does the right mean to me if I can't access the care? I preface this by saying that we've known all along that this was going to be a watershed moment, and we've been warning the American people for a long time that you cannot take this right for granted. It was at the core of the Clinton versus Trump election, and we saw very quickly what happened. Now, as you said, more Americans than ever... There was a study that showed right before the midterms, 95% penetration in the American people have understanding that the abortion crisis in the country. 95% of Americans don't know much, don't know the same thing about much, right? I mean, it's a remarkable number. So what you have now is a grounds rule of support. The more and more people learn about the restrictions and the crisis and an unprecedented amount of penetration and awareness with the American people.

(23:09):

So I think it makes it very clear this is a winning issue for Democrats. The reason the Democrats held the Senate was 100% because of abortion. The reason the Democrats lost the House by such an incredibly narrow margin was because of abortion. And in the fight like we just saw in Wisconsin, we are winning by incredible numbers when we campaign on abortion. I think it's important to note that not one Republican presidential candidate has commented on this decision in Texas, and you see folks like Nancy Mace, but she's the minority of one right now. And again, her voting record belies her statement. I think you're going to see more nervousness. I think we just saw Ann Coulter warning the party that they needed to moderate themselves, which was frankly kind of wild.

(23:59):

But I think it's important for advocates like us going into 2024, into these Senate races and into the presidential election to make it very, very clear that Republicans cannot run away from their 20 plus year record of being in bed with anti-choice extremists and their crusade to overturn Roe v. Wade. Because they fought so hard to overturn Roe v. Wade, we are here where we are and they will have to suffer the consequences and we believe they will.

Margaret Flinter (24:27):

Well, maybe speaking of consequences or the lack thereof, when the judge in this case testified under oath during his Senate confirmation hearing. He said, and we quote, "As a judge, I'm no longer in the advocate role." But he used very strong advocacy wording in his ruling. What do you think is going on there?

Mini Timmaraju (24:47):

With Kacsmaryk?

Margaret Flinter (24:49):

Exactly.

Mini Timmaraju (24:51):

I mean, I think it's pretty obvious. He is an advocate. We read the case and we were like, "Gosh, this guy is literally..." We released research memos and background on him, and I was like, "Wow, he's just going out of his way to prove us right in the most problematic ways." The term chemical abortion is a right wing talking point. Instead of saying medication abortion, he report, he refers to mifepristone as starving the unborn child. I mean, there's really inflammatory, medically inaccurate stuff riddled throughout the opinion. What I think he did on Good Friday, no less, was deliver a gift to his evangelical base that had no bearing in precedent, legal authority, and science, and it's par for the course of that movement. He came up through organizations like First Liberty Institute. I mean, he's definitely a star pupil of some of the most extremist ideologues in that movement. And I think what's going on is he's making it clear that he's made this a religious fight, a religious war.

Mark Masselli (26:06):

Mini, you have a long and accomplished career as an advocate, but the past few days must have been a disappointment to you in Naral. Beyond this legal fight, what do you see on the horizon?

Mini Timmaraju (26:20):

I'm an optimist. I don't think you can do work like this if you're not an optimist. My friend, some of my colleagues have joked that I'm pathologically optimistic. I choose to look at the silver lining. We knew back in December the minute that this case was going to go to Matthew Kacsmaryk's court, that this was the outcome. Just like we knew when the Supreme Court was going to hear the Dobbs case that we were going to have the outcome we had. And that might sound pessimistic, but I call it being planning and well planning and well-prepared, right? So what I've seen in the last week though has been really heartening. The polling that shows 49% of Republicans support medication abortion is very, very positive. The Wisconsin election earlier this week, last week, positive. I was just in Michigan with Governor Gretchen Whitmer, where she signed the legislation to repeal their 18, I think it was 1859.

[NEW_PARAGRAPH]I need to get the number correctly, but it was like pre-statehood abortion ban. I mean, it was wild, right? And what Gretchen Whitmer has been able to do in Michigan to expand access is incredible. So we're actually winning in more places than we're losing. I said 17 states have bans, but over 21 states have codified some sort of access. And that's so important for folks who care so much about these rights to understand that we have a role as activists and voters and as everyday citizens to be engaged. And the wind is at our backs and we have some solutions in sight but it comes from elections and it comes from representative democracy. And if there's anything that keeps me up at night and makes me worried, it is the state of our democracy, the state of our courts.

(28:08):

The bad news that came out about Clarence Thomas and his ethical challenges, not a shock, but really disturbing, should give everybody pause when a case like this could go back to the Supreme Court. But I'm excited to see Senate Democrats stand up and say they're going to have a robust hearing next week about Justice Thomas. And I think that's the right direction for us to be going in.

Margaret Flinter (28:31):

Well, thank you Mini Timmaraju for being here with us for this important discussion. Thank you to our audience for joining us as well. There's more online about Conversations on Health Care, including a way to keep up with our updates. Our address is chcradio.com. Mini, thank you so much for joining us today.

Mini Timmaraju (28:49):

Thank you for having me.