

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERKS OFFICE US DISTRICT COURT
AT ROANOKE, VA
FILED
September 2, 2026
LAURA A. AUSTIN, CLERK
BY: /s/ E. Jones
DEPUTY CLERK

WHOLE WOMAN'S HEALTH	)	
ALLIANCE, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No.: 3:23-CV-00019
	)	
v.	)	
	)	
UNITED STATES FOOD AND DRUG	)	By: Hon. Robert S. Ballou
ADMINISTRATION, et al.,	)	United States District Judge
	)	
Defendants.	)	
	)	

ORDER

On July 23, 2026, I granted Plaintiffs' motion for summary judgment as to Count II of the Complaint, finding that the mifepristone 2023 REMS are arbitrary and capricious. Plaintiffs did not move for summary judgment on their constitutional claims. Arbitrary and capricious agency action necessarily lacks any rational basis. Therefore, I ordered the Parties to file a joint status report setting forth their positions on future proceedings as to the still-pending constitutional claims. Dkt. 96. Pursuant to the joint status report (Dkt. 99), it is **ORDERED** that:

1. The 2023 REMS are **REMANDED** to the FDA for reconsideration consistent with the Court's July 23, 2026, Memorandum Opinion and the law, including the statutory factors set forth in 21 U.S.C. § 355-1(a)(1), (f)(1)–(2), and (g)(b)(4);
2. Counts III and IV are **DISMISSED** without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2);
3. The Parties are **DIRECTED** to submit briefing on whether the Court should maintain jurisdiction during the agency remand. Plaintiffs shall file a brief not to exceed five pages no later than September 18, 2026. Defendants shall file a response not to

exceed five pages no later than October 2, 2026. Plaintiffs shall file a reply not to
exceed two pages no later than October 9, 2026.

The Court retains jurisdiction to determine if retaining jurisdiction for the duration of the
remand is appropriate. Therefore, this Order is not a final, appealable order.

It is so **ORDERED**.

Entered: September 2, 2026

Robert S. Ballou

Robert S. Ballou
United States District Judge