

POLITICS

Court revives doctors' lawsuit saying FDA overstepped its authority with anti-ivermectin campaign



FILE - A box of ivermectin is shown in a pharmacy as pharmacists work in the background, Thursday, Sept. 9, 2021, in Ga. A federal appeals court Friday, Sept. 1, 2023 revived a lawsuit by three doctors who say the Food and Drug Administration overstepped its authority in a campaign against treating COVID-19 with the anti-parasite drug ivermectin (AP Photo/Mike Stewart, File)

Photos 1**BY KEVIN MCGILL**

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NEW ORLEANS (AP) — A federal appeals court Friday revived a lawsuit by three doctors who say the Food and Drug Administration overstepped its authority in a campaign against treating [COVID-19](#) with the anti-parasite drug ivermectin.

Ivermectin is commonly used to treat parasites in livestock. It can also be prescribed for humans and it has been championed by some conservatives as a treatment for COVID-19. The FDA has not approved ivermectin as a COVID-19 treatment because studies have not proven it is effective.

The agency did not immediately respond to requests for comment.

Friday's ruling from a panel of three judges on the 5th U.S. Circuit Court of Appeal in New Orleans focused on various aspects of an [FDA campaign](#) against ivermectin as a COVID-19 treatment.

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The ruling acknowledged FDA's receiving reports of some people requiring hospitalization after self-medicating with ivermectin intended for livestock. But the ruling said the

campaign — which at times featured the slogan “You are not a horse!” — too often left out that the drug is sometimes prescribed for humans.

The doctors can proceed with their lawsuit contending that the FDA’s campaign exceeded the agency’s authority under federal law, the ruling said.

“FDA is not a physician. It has authority to inform, announce, and apprise—but not to endorse, denounce, or advise,” Judge Don Willett wrote for a panel that also included Jennifer Walker Elrod and Edith Brown Clement. “The Doctors have plausibly alleged that FDA’s Posts fell on the wrong side of the line between telling about and telling to.”

Drs. Robert L. Apter, Mary Talley Bowden and Paul E. Marik filed the lawsuit last year. All three said their reputations were harmed by the FDA campaign. Bowden [lost admitting privileges](#) at a Texas hospital, the ruling noted. Marik alleged he lost his positions at a medical school and at a hospital for promoting the use of ivermectin.

The lawsuit was dismissed in December by U.S. District Judge Jeffrey Vincent Brown, who ruled that the complaints didn’t overcome the FDA’s “sovereign immunity,” a concept that protects government entities from many civil lawsuits regarding their responsibilities. The appellate panel said the FDA’s alleged overstepping of its authority opened the door for the lawsuit.

Willett was nominated to the 5th Circuit by former President Donald Trump; Clement and Elrod, by former President George W. Bush. Brown was nominated to the district court bench by Trump.