

January 22, 2025

Acting Attorney General James McHenry  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Acting Attorney General McHenry:

We are writing to urge the Department of Justice (DOJ) to enforce the anti-abortion trafficking rules in the so-called “Comstock Act” by (1) rescinding the Office of Legal Counsel’s (OLC) Memorandum Opinion, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions* (2022) and (2) taking immediate action to enforce the mail-order abortion prohibition within the Act, 18 U.S.C. §§ 1461–62. These laws prohibit the distribution of abortifacient matter—including the abortion pill regimen of mifepristone and misoprostol—through the United States Postal Service, express companies, common carriers, and interactive computer services. The United States Supreme Court has recognized provisions of the Act as proper exercises of Congress’ Postal and Commerce Clause powers.<sup>1</sup> Yet in recent years, there has been an alarming increase in the distribution of abortion pills by mail and online, which raises the risk of intimate partner violence and precludes essential health and safety screening for women seeking these drugs. It is imperative that the DOJ ensure compliance with the Act as a matter of public policy and patient safety.

Although the law that prohibits abortion trafficking originated in the 19th century, Congress has reaffirmed the public policy of safeguarding patient safety from the harm of chemical abortion through numerous amendments to these laws. Congress has amended Section 1461 ten times, most recently updating it in 1994. Congress has amended Section 1462 nine times, most recently amending it in 1996 when it expanded the law to apply to interactive computer services.<sup>2</sup> 18 U.S.C. § 552 bolsters these laws by directing federal officers to adhere to the prohibition on mailing abortifacients. Accordingly, federal law recognizes a “national policy of discountenancing abortion as inimical to the national life.”<sup>3</sup>

The Act furthers the public policy of safeguarding patient safety. These drugs are often sent through the mail or delivered by online pharmacies and the woman receiving these drugs never receives the necessary ultrasound. Ultrasound provides the most accurate method of determining gestational age. The Food and Drug Administration has approved abortion pills up to ten weeks gestation. Without an ultrasound, however, a woman may take the abortion pills beyond the approved window. This increases failure rates and complications, such as hemorrhage, infection, and even death. Not only does this situation present a health and safety issue, especially considering the woman’s diminished access to appropriate medical oversight and follow-up care, but “it would be impossible to tailor counseling about medication abortion to each patient if gestational ages are not confirmed.”<sup>4</sup> Likewise,

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<sup>1</sup> *Roth v. United States*, 354 U.S. 476, 493 (1957); *United States v. Orito*, 413 U.S. 139, 143 (1973); see also *Ex Parte Jackson*, 96 U.S. 727, 737 (1877).

<sup>2</sup> See Carolyn McDonnell, *Understanding the Mail-order Abortion Rules Within the Federal “Comstock Act”*, Ams. United for Life 21–30 (Aug. 27, 2024), <https://tinyurl.com/34js6nam>.

<sup>3</sup> *Bours v. United States*, 229 F.960, 964 (7th Cir. 1915).

<sup>4</sup> Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Dangers of Relaxed Restrictions on Mifepristone*, Comm. Op. No. 9, at 7 (July 2022).

in-person examinations and ultrasounds rule out ectopic pregnancy (a pregnancy implanted outside the uterus), which is a contraindication for chemical abortions. Unfortunately, “[m]ortality from ectopic pregnancy is already higher in women seeking abortion.” Women require in-person screening and treatment to prevent this outcome.<sup>5</sup>

Women also need an in-person evaluation to test for Rh antibody status and, if indicated, receive an Rh immune globulin injection to prevent complications in future pregnancies.<sup>6</sup> As a result, women are put at risk of serious complications, including hemorrhaging, infections, and even death, all while lacking appropriate medical care or follow-up.

Enforcement of the federal anti-abortion trafficking law is crucial to ensuring that abortion pills are not distributed in violation of federal and state laws. Blatant violations of the federal Act expose women to dangerous and unsafe drugs and undermine the integrity of the medical profession. We ask that the DOJ prioritize investigations and enforcement against those who are involved in the illegal distribution of abortion pills. The health and safety of women must be a priority, and the DOJ’s enforcement of these laws will help to safeguard patient safety.

We respectfully request that you take immediate action to uphold federal law, safeguard patient safety, and ensure that the distribution of abortion pills does not continue harming mothers, unborn children, and families across America. Thank you for your attention to this important matter.

Sincerely,

John Mize, CEO, Americans United for Life

Lila Rose, President and CEO, Live Action

Josh Craddock, Affiliated Scholar, James Wilson Institute

Benjamin Watson, VP of Strategic Relationships, Human Coalition

Dr. Christina Francis, CEO, AAPLOG Action

Ryan Anderson, Ph.D., President, The Ethics and Public Policy Center

R. Albert Mohler, Jr., President, Centennial Professor of Theology, The Southern Baptist Theological Seminary

Tim Chapman, President, Advancing American Freedom

Dan Steiner, Founder & President, Preborn!

Kristan Hawkins, President, Students for Life of America

Carol Tobias, President, National Right to Life

Ralph Reed, Founder & Chairman, Faith and Freedom Coalition

Abby Johnson, CEO & Founder, ATTWN & ProLove Ministries

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<sup>5</sup> *Id.*

<sup>6</sup> *Rh factor blood test*, Mayo Clinic (July 29, 2022), <https://tinyurl.com/2rmsvjsw>.

Penny Nance, President & CEO, Concerned Women for America LAC

Brent Leatherwood, President, Ethics and Religious Liberty Commission of the Southern Baptist Convention

Kristen Day, President, Democrats for Life

Herbert M. Newell I.V., President & Executive Director, Lifeline Children's Services

Jor-El Godsey, President, Heartbeat International

Roland Warren, President and CEO, Carenet

Tom Brejcha, President and Chief Counsel, Thomas More Society

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