

Stopping Pills that Kill

**A Vision for Human Flourishing
Free from Abortion Pills**

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Introduction



Abortion pills kill children. Approximately 642,700 chemical (abortion pill) abortions were recorded—53,558 a month, 1,761 daily, 73 hourly, and one abortion-pill abortion every 49 seconds—within the formal healthcare system alone, according to the most recent national estimates available.¹

The most recent estimated data shows that over 60% of abortions in the United States are done through the use of abortion pills.² Also referred to as chemical abortion or “medication” abortion, the dispensing of these poisonous pills has expanded from brick-and-mortar facilities to unregulated online abortion pill dispensaries and retail pharmacies.

To respond to this changing landscape, the pro-life movement must engage in the battle for life through both culture and policy at every level of government. Because law functions as a teacher, forming the hearts of the American people, law and policy is a crucial arena for pro-life advocacy to shape hearts and minds.

The American people are recovering from nearly fifty years of learned helplessness under *Roe*’s deadly thumb. The pivotal decision in *Dobbs v. Jackson Women’s Health Organization*³ provided a much-needed course correction to decades of legal and social miseducation, but there remains significant ground to cover. The Supreme Court’s refusal to address the merits in *FDA v. Alliance for Hippocratic Medicine*,⁴ which challenged the Food

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and Drug Administration’s (FDA) expansion of abortion pill usage, underscores the urgency for the pro-life movement to strategically leverage existing federal law to curtail abortion nationwide. Now, as some leaders seek to distance themselves from national efforts to protect life, we offer a new vision to protect human life from the use of what are essentially human pesticides that kill hundreds of thousands of children each year.

Central to this strategy is the existing federal abortion pill anti-trafficking law, codified at 18 U.S.C. §§ 1461-1462, which effectively prohibits the distribution and use of chemical abortion drugs nationwide. Although this federal law has not yet been enforced in the post-*Dobbs* era, harnessing its potential within a comprehensive framework that encompasses each level and branch of government is essential for protecting preborn children, empowering mothers, and strengthening an American culture of life.

1 See Rachel K. Jones & Amy Friedrich-Karnik, *Medication Abortion Accounted for 63% of All US Abortions in 2023—An Increase from 53% in 2020*, Guttmacher Inst. (Mar. 19, 2024), <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.

2 See *id.*

3 142 S. Ct. 2228 (2022), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

4 144 S. Ct. 1540 (2024), https://www.supremecourt.gov/opinions/23pdf/23-235_n7ip.pdf.



How Abortion Pills Work

In 2000, the FDA approved the drug mifepristone (200mg) for chemical abortion in a regimen with a second drug, misoprostol.⁵ Mifepristone blocks the hormone progesterone, which is necessary to sustain pregnancy. In this way, mifepristone kills the baby by cutting off blood and nourishment, causing the child to die inside the mother's womb. Next, the mother ingests the drug misoprostol, which causes contractions and bleeding to expel the dead baby from the womb.

The only drug approved by the FDA for the purpose of inducing abortions is mifepristone 200mg, also known by its brand name, Mifeprex, or RU-486. In 2016, the FDA expanded its approval of Mifeprex from the first seven weeks of pregnancy to the first 70 days (10 weeks) and weakened safety regulations around prescription and administration.⁶ By the end of the tenth week of gestation, preborn children have distinct fin-

gers and toes and highly developed brains.⁷ Due to a lack of oversight by the FDA and abortion pill manufacturers, however, the drug has been prescribed beyond ten weeks' gestation, even well into the second trimester.⁸ Many abortion businesses, including Planned Parenthood, prescribe the abortion pill beyond the ten-week limit as a matter of official policy.⁹

Many abortion businesses also use a misoprostol-only protocol.¹⁰ Misoprostol, known by the brand name Cytotec, was approved by the FDA to lower the risk of stomach ulcers caused by non-steroidal anti-inflammatory drugs.¹¹ Misoprostol is also used off-label to induce labor.¹² It is not FDA-approved for inducing abortions, so its use in the abortion-pill regimen is considered off-label.¹³ Occasionally, the drug methotrexate, which is also not FDA-approved for abortion, may be used by some abortion businesses.¹⁴ The

5 See *Alliance for Hippocratic Medicine*, 144 S. Ct. at 1552.

6 See *id.*; *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. FDA (Sept. 1, 2023) (hereinafter *FDA Q&A*), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

7 *Prenatal Form and Function: 7-8 Weeks*, *Endowment Human Dev.* (last accessed June 29, 2024), https://www.ehd.org/dev_article_unit8.php.

8 See Carole Novielli, *BAD ACTORS: Abortion industry openly ignores FDA's abortion pill use limits*, *Live Action News* (Feb. 28, 2023), <https://www.liveaction.org/news/bad-actors-industry-abortion-pill-fda-limits/>.

9 See *id.*

10 See *id.*

11 See *Drugs@FDA: FDA-Approved Drugs, New Drug Application No. 019268*, U.S. FDA, <https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=019268>.

12 See *Cytotec and Birth Injuries*, *Birth Injury Help Ctr.* (last accessed June 29, 2024), <https://www.birthinjuryhelpcenter.org/cytotec.html>.

13 See FDA Alert, *Misoprostol (marketed as Cytotec) Information*, U.S. FDA (July 10, 2015), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/misoprostol-marketed-cytotec-information>.

14 See Tmar Lewin, *F.D.A. Approval Sought for French Abortion Pill*, *N.Y. Times* (Apr. 1, 1996), <https://www.nytimes.com/1996/04/01/us/fda-approval-sought-for-french-abortion-pill.html>; *Methotrexate (MTX) for Early Abortion*, *Feminist Women's Health Ctr.* (last accessed June 29, 2024), <https://www.fwhc.org/abortion/mtxinfo.htm>.

Administration of the Abortion Pill Regimen



abortion industry is also testing other drugs for use in inducing abortions.

Researchers discovered that in a high percentage of cases, mifepristone is insufficient by itself to cause a complete abortion. So, the “FDA unlawfully mandated the unapproved use of a drug, misoprostol, as part of the RU-486 abortion regimen.”¹⁵

The current FDA-approved abortion pill dosing regimen is:

- On day one: 200 mg of mifepristone taken by mouth
- 24 to 48 hours after taking mifepristone: 800 mcg of misoprostol taken buccally (in the cheek pouch), at a location appropriate for the patient
- About seven to fourteen days after taking mifepristone: follow-up with the health care provider¹⁶

The abortion industry regularly deviates from this protocol in several ways. In addition to altering misoprostol dosages, some abortion businesses advise women to administer misoprostol vaginally, a practice that has been associated with

potentially fatal infections.¹⁷ In some instances, abortion businesses advise women to take both mifepristone and misoprostol at the same time.¹⁸

As a result of the FDA’s abortion-pill expansions since 2000, women are increasingly separated from their own doctors and critical medical informed consent, which would normally involve counseling about alternatives and a discussion of the risks, including the importance of accurate gestational dating, Rh negative identification and response, and confirmation of a non-ectopic pregnancy.¹⁹ The inherent physical risks of mifepristone and misoprostol include incomplete abortion, septic infection, and hemorrhage (excessive bleeding).²⁰

Within a few hours of ingesting the drugs, the mother typically begins bleeding and cramping. Eventually, she will expel the dead baby. If she does not expel the embryo or fetus, an abortionist may encourage her to take additional misoprostol pills, or the abortionist may perform a surgical abortion.²¹ Many women who have taken the abortion pill report feeling deeply disturbed by seeing the

15 Br. of Amicus Curiae Americans United for Life in Support of Respondents at 7, *FDA v. Alliance for Hippocratic Medicine*, 144 S. Ct. 1540 (2024) (Nos. 23-235, 23-236), https://www.supremecourt.gov/DocketPDF/23/23-235/301848/20240229121051265_23-235%20Amicus%20Brief%20of%20Americans%20United%20for%20Life.pdf (quoting Staff of Subcomm. on Crim. Just., Drug Pol’y & Hum. Res. of the H. Comm. on Gov’t Reform, 109th Cong., *The FDA and RU-486: Lowering the Standard for Women’s Health* 15, 23–25 (Subcomm. Print 2006)).

16 *FDA Q&A*, *supra* note 6.

17 See Novielli, *Bad Actors*, *supra* note 8.

18 See Carole Novielli, *Abortion industry’s push for same-day abortion pill protocol is risky... and isn’t FDA-approved*, Live Action News (Sept. 7, 2022), <https://www.liveaction.org/news/abortion-push-same-day-abortion-pill-fda/>.

19 See Br. of Amicus Curiae Americans United for Life, *supra* note 15, at 3.

20 *Id.* at 8-13; see also *MIFEPREX® (mifepristone) FDA Label* (Mar. 2023), https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s026lbl.pdf.

21 *How does the abortion pill work?*, Planned Parenthood (last accessed June 29, 2024), <https://www.plannedparenthood.org/learn/abortion/the-abortion-pill/how-does-the-abortion-pill-work>.



Abortion-pill related emergency room visits could be in the tens of thousands annually.

remains of their aborted babies.²² Abortion businesses advise women to flush these children down the toilet.²³

There is no FDA-approved non-abortive use for Mifeprex. But Mifeprex is often confused with Korlym, which is FDA-approved to treat Cushing syndrome and also contains mifepristone as the active ingredient, albeit at a different dosage (300 mg rather than Mifeprex's 200 mg).²⁴

There is currently no accurate collection, analysis, and reporting of data in the U.S. about mifepristone's

risks and complications for adolescents and women.²⁵ And although the FDA demanded post-marketing studies on the effect of mifepristone on women, manufacturers of Mifeprex never completed them.²⁶

The widely publicized death of Amber Thurman in Georgia illustrates the danger of chemical abortion.²⁷ Nine weeks pregnant with twins, Thurman traveled to North Carolina to obtain a surgical abortion because Georgia law would have protected her children from abortion.²⁸ She was given abortion pills instead and returned to Georgia. Days later, she began vomiting blood and passed out. She was taken to the hospital, where doctors diagnosed her with sepsis.²⁹ Thurman died on the operating table later that night. Although media outlets attempted to portray Thurman's death as the result of Georgia's pro-life law, the evidence shows that Thurman died from complications from the abortion pill and inadequate follow-up care.³⁰ Sepsis is a known

22 See *I Saw My Baby*, Live Action (last accessed June 29, 2024), <https://www.liveaction.org/wp-content/uploads/2023/06/LA-23ISMB-WhitePaper.pdf>; Carole Kitchener, *The fear and uncertainty of a post-Roe medication abortion*, Wash. Post (Apr. 11, 2024), <https://www.washingtonpost.com/politics/interactive/2024/abortion-pill-experience-stories/>.

23 See Nancy Flanders, *Woman arrested for flushing baby down a toilet – something the abortion industry does every day*, Live Action News (Sept. 23, 2021), <https://www.liveaction.org/news/women-arrested-flushing-newborn-toilet/>.

24 See Ctr. for Drug Eval. & Res., *Application No. 202107Orig1s000 Medial Review(s)*, U.S. FDA (Apr. 18, 2011), https://www.access-data.fda.gov/drugsatfda_docs/nda/2012/202107Orig1s000MedR.pdf; Carole Novielli, *FACT CHECK: Will restricting the abortion pill impact treatment for miscarriage or Cushing syndrome?*, Live Action News (May 10, 2023), <https://www.liveaction.org/news/mifepristone-miscarriage-cushing-syndrome/>.

25 See Br. of Amicus Curiae Americans United for Life, *supra* note 15, at 4.

26 See *id.* at 24.

27 See Nicholas Tomaino, *The Truth About Amber Thurman's Death*, Wall St. J. (Oct. 6, 2024), <https://www.wsj.com/opinion/the-truth-about-amber-thurmans-death-abortion-procedure-state-laws-healthcare-f302e4f9?st=3gabhvb78ed248z>.

28 See *FACT CHECK: Did Georgia's pro-life law kill a young woman?*, Live Action (Sep. 17, 2024), <https://www.liveaction.org/news/fact-check-did-georgias-law-kill-mom/>.

29 See *id.*

30 See *id.*



risk of mifepristone—one that prescribers are supposed to warn patients about.³¹ And it's not the only risk: severe side effects of abortion pills include hemorrhaging, surgical intervention, and death.³²

Scientific evidence indicates that “[m]edication abortions were 5.96 times as likely to result in a complication as first-trimester aspiration abortions.”³³ Mifeprex’s 2023 label states that one in every twenty-five women who take abortion drugs end up in the emergency room.³⁴ Abortion-pill related emergency room visits could be in the tens of thousands annually.³⁵ In addition, Mifeprex’s medication guide acknowledges that up to 7% of women who have taken the drug will require surgery afterward “to stop bleeding” or to complete the abortion.³⁶ That is one in every fourteen women.

Dispensing abortion pills without an in-person doctor’s visit—such as through the mail or via telehealth—heightens the risk of abortion coercion. It enables abusers and predators to more easily acquire abortion pills, which they can then pressure mothers to consume or even surreptitiously administer to unsuspecting women.³⁷ The American College of Obstetricians and Gynecologists reported that “[i]n 2007, the prevalence of IPV [intimate partner violence] was nearly three times greater for women seeking an abortion compared with women who were continuing their pregnancies.”³⁸ But neither the CDC or the Guttmacher Institute record or report coerced abortions, and coerced chemical abortions are not reported or recorded in the FDA’s publication of Adverse Event Reports.³⁹

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- 31 Mifepristone comes with a “black box” warning that “[s]erious and sometimes fatal infections occur very rarely...following MIFEPREX use.” See FDA, 2023, *Abortion pill black box warning*, https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/020687Orig1s025Lbl.pdf. It notes that “patients with serious bacterial infections and sepsis can present without fever, bacteremia or significant findings on pelvic examination. A high index of suspicion is needed to rule out serious infection and sepsis.” *Id.* It further notes that “prolonged heavy bleeding may be a sign of incomplete abortion or other complications and prompt medical or surgical intervention may be needed.” *Id.*
 - 32 See Charlotte Lozier Inst., *Chemical Abortion: FDA Ignores ‘Inconvenient’ Science and Data Confirming Public Health Threat* (Dec. 16, 2021), <https://lozierinstitute.org/chemical-abortion-fda-ignores-inconvenient-science-and-data-confirming-public-health-threat/>.
 - 33 Upadhyay, et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *Obstet. Gynecol.* 175, 181 (Jan. 2015), https://www.ansirh.org/sites/default/files/publications/files/upadhyay-jan15-incidence_of_emergency_department_visits.pdf.
 - 34 See Mifeprex Label, *supra* note 31.
 - 35 See Carole Novielli, *Emergency room visits from abortion pill estimated in the tens of thousands*, Live Action News (Mar. 8, 2024), <https://www.liveaction.org/news/emergency-room-visits-abortion-pill-tens-thousands/>.
 - 36 *Medication Guide Mifeprex (Mifepristone) tablets, 200mg*, Danco Lab’y (Jan. 2023), https://www.earlyoptionpill.com/wp-content/uploads/2023/03/DANCO_MedGuide_ENG_Web.pdf.
 - 37 Cassy Fiano-Chesser, *Mail-order abortion pill profiteers want you to believe abortion coercion is a myth*, Live Action News (Mar. 23, 2024), <https://www.liveaction.org/news/mail-order-abortion-profiteers-coercion-myth/>.
 - 38 *Reproductive and sexual coercion*, Comm. Op. No. 554, American College of Obstetricians and Gynecologists (Feb. 2013; reaffirmed 2022), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion>.
 - 39 Br. of Amicus Curiae Americans United for Life, *supra* note 15, at 30.



The History of the National Abortion Pill Anti-Trafficking Law

In 1873, Congress enacted a statute to encourage public virtue and prohibit acts contrary to America’s moral heritage, known colloquially as the Comstock Act.⁴⁰ A key focus of the Act was a national prohibition on the sale and shipment of abortion drugs and devices through the U.S. Mail. Section 1 of the Act prohibited the sale, distribution, or possession, in the District of Columbia and federal territories, of “any drug or medicine, or any article whatever ... for causing unlawful abortion.” Section 2, later codified as 18 U.S.C. § 1461, prohibited the mailing of “any article or thing designed or intended for the ... procuring of abortion.” And Section 3 prohibited any person from “importing into the United States” any of the “hereinbefore-mentioned articles or things.”⁴¹ In 1897, Congress extended the Act to prohibit the interstate shipment of abortion drugs and de-

vices through common carriers.⁴² Today, common carriers include FedEx, DHL, and UPS.

When Congress adopted these statutes, elective abortion was consistently treated as the unlawful killing of a human being and had long been a crime in every state.⁴³ Criminal abortion referred to the direct and intentional killing of a preborn child, but did not extend to either miscarriage treatment or necessary medical interventions intended to preserve a mother’s life but which necessarily risked the life of the child in the womb.⁴⁴ For that reason, an early federal court decision interpreting the Comstock Act held that the term “abortion” “must be taken in its general medical sense” to exclude “the necessity of an operation to save life”—i.e., medical interventions necessary to save the life of the mother.⁴⁵ The court found that this understanding of “abortion” in Section 2 of

40 Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, ch. 258, 17 Stat. 598, 599 (1873), <https://www.govinfo.gov/content/pkg/STATUTE-17/pdf/STATUTE-17-Pg598-3.pdf#page=1>.

41 One year later, Congress re-enacted Section 3 of the Act as part of the Tariff Act and replaced the section’s reference to “hereinbefore-mentioned articles or things” with a list of articles and things, including those intended “for causing unlawful abortion.” Act of June 20, 1874, ch. 333, 18 Stat. C113-14, <https://www.govinfo.gov/content/pkg/STATUTE-18/pdf/STATUTE-18-PgC113.pdf>. This provision was eventually codified at 19 U.S.C. § 1305, <https://www.govinfo.gov/content/pkg/USCODE-2023-title19/html/USCODE-2023-title19-chap4-subtitleI-partI-sec1305.htm>. Congress also made it a criminal offense for any officer, agent, or employee of the United States to aid or abet the unlawful importation, advertisement, or distribution of articles that provide “means for procuring abortion.” 18 U.S.C. § 552, <https://www.govinfo.gov/content/pkg/USCODE-2023-title18/pdf/USCODE-2023-title18-partI-chap27-sec552.pdf>.

42 Act of Feb. 8, 1897, ch. 172, 29 Stat. 512, <https://www.govinfo.gov/content/pkg/STATUTE-29/pdf/STATUTE-29-Pg512-3.pdf>.

43 See *Dobbs*, *supra* note 3 at 2252-53 (2022); see also generally John Finnis & Robert P. George, *Equal Protection and the Unborn Child: A Dobbs Brief*, 45 Harv. J.L. & Pub. Pol’y 927 (2022); Joshua J. Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, 40 Harv. J.L. & Pub. Pol’y 539 (2017).

44 See, e.g., *State v. Moore*, 25 Iowa 128, 131 (1868) (approving a jury instruction explaining that “[t]o attempt to produce a miscarriage, except when in proper professional judgment it is necessary to preserve the life of the woman, is an unlawful act”); Horatio Storer & Franklin Fiske Heard, *Criminal Abortion: Its Nature, Its Evidence, and Its Law* 89 (1868) (explaining that criminal abortion did not extend to the “very rare instances . . . where abortion is necessitated at the hands of physicians to save the mother’s life; and to those other cases, more frequent but still rare, where the child having died in utero, and being retained in whole or in part, it becomes imperative to [facilitate] its removal”); Edwin Hale, *A Systematic Treatise on Abortion* 314 (1866) (explaining that medical interventions lack criminal intent to produce an abortion when “justified by the rules of medicine, whether to save the life of the mother or the child.”).

45 *Bours v. United States*, 229 F. 960, 964 (7th Cir. 1915) (reversing conviction under Section 1461 because, under a “reasonable construction” of the statute, the mailing of information related to treatments “to save [the] life” of the mother was not prohibited).



the Comstock Act was consistent with the statute’s “national policy of discountenancing abortion as inimical to the national life,” and held that it was “immaterial what the local statutory definition of abortion is, what acts of abortion are included, or what excluded.”⁴⁶

Similarly, courts distinguished criminal liability for selling or shipping articles “designed, adapted, or intended for” accomplishing an unlawful purpose, from the permissible, legitimate use of such articles “for proper medical purposes.”⁴⁷ In other words, the use of articles for non-abortifacient purposes is not subject to statutory prohibition. For example, the law does not prohibit the sale or shipment of misoprostol for the prevention and treatment of gastric ulcers or for miscarriage treatment.

In 1948, Congress codified Section 2 of the original act and the 1897 law as sections 1461 and 1462 of title 18 of the U.S. Code, respectively.⁴⁸ Today, Section 1461 of Title 18 reads, in relevant part:

Every article or thing designed, adapted, or intended for producing abortion ... and [e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion ... [i]s declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section ... to be nonmailable ... or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition

46 *Id.*

47 Each of the cases applying this principle addressed the statute’s contraceptive prohibitions. See, e.g., *Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103, 108 (2d Cir. 1930) (reasoning in dicta that the statute would not prohibit shipment or sale of articles “capable of legitimate uses” that “the sender in good faith supposed . . . would be used only legitimately”); *Davis v. United States*, 62 F.2d 473, 475 (6th Cir. 1933) (concluding that use “for condemned purposes is a prerequisite to conviction” (emphasis added)); *United States v. One Package*, 86 F.2d 737, 739 (2d Cir. 1936) (acknowledging that the “design” of statute “was not to prevent the importation, sale, or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well being of their patients” but rather to prevent uses that the 1873 Congress “would have denounced as immoral if it had understood all the conditions under which they were to be used”); *United States v. Nicholas*, 97 F.2d 510, 512 (2d Cir. 1938) (confirming that liability turns on whether the articles are “unlawfully employed”).

48 Act of June 25, 1948, ch. 645, 62 Stat. 683, 768, <https://www.govinfo.gov/content/pkg/STATUTE-62/pdf/STATUTE-62-Pg683.pdf>.

thereof, shall be fined under this title or imprisoned not more than five years, or both, for the first such offense, and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.⁴⁹

Section 1462 of Title 18 similarly prohibits anyone from “knowingly us[ing] any express company or other common carrier or interactive computer service” to send or receive “in interstate or foreign commerce ... any drug, medicine, article, or thing designed, adapted, or intended for producing abortion.”⁵⁰

Despite Congressional amendments in 1971 to remove Section 1461’s prohibition against mailing contraceptives, Congress has consistently maintained its prohibition against trafficking abortion pills and devices.⁵¹ Indeed, Congress considered and ultimately rejected proposed amendments in 1978 that would have limited the application of Sections 1461 and 1462 to drugs and devices “used to produce an illegal abortion.”⁵² To the contrary, far from narrowing the scope of the national abortion pill trafficking law, Congress and President Clinton acted in 1996 to expand Section 1462’s application to “interactive computer services,”⁵³ making it illegal to use the internet to ship or receive abortifacients. Section 1461 continues to be included in the most recent edition of the U.S. Post Office’s Publication 52,

Following the overturn of *Roe*, the national abortion pill trafficking law can be used to save preborn lives and effectively prohibit abortion nationwide.

which states that “[a]ny article or instrument designed, adapted, or intended for producing abortion is nonmailable.”⁵⁴

Of course, the Supreme Court’s 1973 decision in *Roe v. Wade* neutralized enforcement of the federal abortion pill anti-trafficking law for nearly fifty years. But the law itself was never repealed or revoked. That’s because courts have a judgment power to adjudicate disputes between parties, but not a veto power to erase statutes. *Roe* was, in effect, a temporary non-enforcement policy that left the anti-trafficking law intact. As pro-abortion Representative Pat Schroeder admitted in 1996, “[T]he Comstock Act has never been repealed; it is still on the books.”⁵⁵ Now, following the overturn of *Roe*, the federal abortion pill anti-trafficking law can be used to save preborn lives nationwide.

When President Clinton and the U.S. Congress expanded the anti-trafficking law in 1996,

49 18 U.S.C. § 1461.

50 18 U.S.C. § 1462, <https://www.govinfo.gov/content/pkg/USCODE-2023-title18/pdf/USCODE-2023-title18-part1-chap71-sec1462.pdf>.

51 Pub. L. 91-662, Jan. 8, 1971, 84 Stat. 1973 <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1970.pdf>.

52 See H.R. 13959, 95th Cong. § 6702(1)(C)(i) (1978) (emphasis added); see also Rep. of the Subcomm. on Crim. Just., 95th Cong., Rep. on Recodification of Fed. Crim. L. 40, H.R. Rep. No. 95-29, pt. 3, at 42 (Comm. Print 1978) (noting that the amendment would “change[] current law by requiring proof that the relevant material or object to be used to produce an illegal abortion,” where illegal would mean “contrary to the law of the state in which the abortion is performed”).

53 Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 137, <https://www.govinfo.gov/content/pkg/STATUTE-110/pdf/STATUTE-110-Pg56.pdf>.

54 U.S. Postal Service, Publication 52 — Hazardous, Restricted, and Perishable Mail, § 454.221, https://pe.usps.com/text/pub52/pub52c4_020.htm.

55 142 Cong. Rec. 24313, 24313 (Sept. 24, 1996) (statement of Rep. Pat Schroeder, sponsor of H.R. 3057), <https://www.govinfo.gov/content/pkg/GPO-CRECB-1996-pt17/pdf/GPO-CRECB-1996-pt17-5-2.pdf>.

A National Vision for Freedom from Abortion Pill Trafficking



they were affirming that law orients a people toward what uplifts persons and away from what degrades or harms. Abortion pills are pushed by those who falsely promise liberation, but the role of the law must be to promote true liberty and equal justice through a national vision that provides life-affirming support to mothers and families. Demand for abortion pills must be reduced, so that they become the least desirable option for mothers experiencing pregnancy.

At the same time, sound policy must address the supply side of abortion pill trafficking. Americans will only be free from the corporate predators and reckless ideologues who promote abortion pills once a strong, protective national policy has been established. Each branch and level of government should pursue a policy that leverages the existing federal abortion pill anti-trafficking law to empower mothers to choose life, strengthen American families, and protect preborn children nationwide.

Congress must maintain the federal abortion pill trafficking law that was strengthened under President Clinton and incrementally advance statutory protections for mothers and children. It is imperative to reject efforts to repeal or otherwise neuter the effectiveness of federal law's existing protections for preborn children.

- **Executive Branch Enforcement.** The next pro-life president should ensure that the Department of Justice enforces the existing criminal prohibitions codified at 18 U.S.C. §§ 1461-62 against abortion pill manufacturers (such as Danco Laboratories and GenBioPro) and distributors (such as Walgreens, CVS, and HoneyBee Health), abortion clinics (such as Planned Parenthood), and abortion funds (such as the Lilith Fund). The federal abortion pill trafficking law is subject to a five-year statute of limitations, so even violations of federal law that occur now may be prosecuted by a future pro-life administration.⁵⁶ Pill manufacturers and distributors, abortion clinics, and abortion funds must understand that they face legal jeopardy for their unlawful conduct today.

Federal prosecutors may also charge violations of the federal abortion pill trafficking law as predicate violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”).⁵⁷ That is because Section 1461 is among the statutes listed in the definition of “racketeering activity.”⁵⁸ To supplement federal criminal enforcement, private parties who suffer damages to “business or property” may also bring

56 See 18 U.S.C. § 3282(a), <https://www.govinfo.gov/content/pkg/USCODE-2023-title18/pdf/USCODE-2023-title18-partII-chap213-sec3282.pdf>.

57 See 18 U.S.C. §§ 1961 et seq., <https://www.govinfo.gov/content/pkg/USCODE-2023-title18/pdf/USCODE-2023-title18-partI-chap96.pdf>.

58 See 18 U.S.C. § 1961(1).

civil actions against violators of Section 1461 under RICO’s civil cause of action.⁵⁹

Because abortion pills and devices are “nonmailable” under federal law,⁶⁰ the Postmaster General must maintain Publication 52’s prohibition against mailing “[a]ny article or instrument designed, adapted, or intended for producing abortion.” In appropriate circumstances, unlawfully mailed abortifacient articles should be referred to the U.S. Postal Inspection Service as “hazardous materials or devices that may present an immediate threat to persons.”⁶¹

The president should direct the Department of Homeland Security to develop regulations allowing the U.S. Customs and Border Protection Agency to inspect and interdict shipments of unlawful abortion drugs and devices into the United States from overseas. One study found that illegal online orders of abortion pills from international sources surged 120% in the months immediately following the *Dobbs* decision.⁶² News reports have revealed an extensive international cabal of abortion pill traffickers sending deadly abortive

drugs into the United States from India, Mexico, Vietnam, and elsewhere around the world.⁶³ The substantial increase in international abortion pill trafficking makes rigorous customs enforcement essential.

Finally, the president should direct the Food and Drug Administration to comply with federal law and withdraw its approval of Mifeprex. As a federal appellate judge has opined, the FDA’s existing approval of Mifeprex is contrary to federal law.⁶⁴ Drugs specifically designed to poison preborn children can never be considered “safe and effective” medicine.

- **States**, acting through their attorneys general, have already taken steps to prevent abortion pill trafficking within their jurisdictions.⁶⁵ And some states have existing legislation that mirrors aspects of the federal abortion pill anti-trafficking law.⁶⁶ But states can do much more to supplement enforcement of federal law.

Where states have “Baby RICO” statutes,⁶⁷ the legislature should enact legislation to add violations of 18 U.S.C. §§ 1461-62 as

59 See 18 U.S.C. § 1964(c).

60 See 39 U.S.C. § 3001(a), <https://www.govinfo.gov/content/pkg/USCODE-2022-title39/pdf/USCODE-2022-title39-partIV-chap30.pdf>.

61 Postal Operations Manual § 139.117 (updated May 18, 2023), https://about.usps.com/postal-bulletin/2023/pb22624/html/updt_009.htm.

62 See Abigail R.A. Aiken et al., *Requests for Self-managed Medication Abortion Provided Using Online Telemedicine in 30 US States Before and After the Dobbs v Jackson Women’s Health Organization Decision*, J. Am. Med. Ass’n., 2022;328(17):1768-70. doi:10.1001/jama.2022.18865, <https://jamanetwork.com/journals/jama/fullarticle/2797883>.

63 See Allison McCann, *Inside the Online Market for Overseas Abortion Pills*, N.Y. Times (Apr. 14, 2023), <https://www.nytimes.com/interactive/2023/04/13/us/abortion-pill-order-online-mifepristone.html>.

64 *All. for Hippocratic Med. v. FDA*, 78 F.4th 210, 266 (5th Cir.) (Ho, J., concurring and dissenting in part).

65 See Letter from Andrew Bailey, Mo. Att’y Gen., to Tom Moriarty, Gen. Couns., CVS Health, (Feb. 1, 2023), https://ago.mo.gov/wp-content/uploads/attachments/2023-02-01-fda-rule---cvs-letter-tom-moriarty.pdf?sfvrsn=d42cfc2b_2.

66 See, e.g., Mo. Rev. Stat. § 188.021.1, <https://revisor.mo.gov/main/OneSection.aspx?section=188.021>; Ind. Code § 16-34-2-1, <https://iga.in.gov/laws/2024/ic/titles/16#16-34-2-1>.

67 These include Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Washington, and Wisconsin.



predicate violations of the state anti-racketeering law. States may also enforce existing consumer protection laws that prohibit unfair or deceptive trade practices, which is a tack that Arkansas Attorney General Tim Griffin is pursuing.⁶⁸ In many cases, such laws may be enforced against commercial entities that violate the federal abortion pill anti-trafficking law, because trade practices that violate federal law are inherently unfair and deceptive.

States may also enact legislation to confer a private cause of action on private parties to supplement enforcement of the federal anti-trafficking law. Texas led the way in empowering citizens to use private rights of action to enforce anti-abortion policy through its SB 8 legislation (which prohibited abortion after the detection of an unborn child's heartbeat), but private rights of action are common and have proven effective in other areas of law, too. Many states, such as California, allow private individu-

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als to sue to enforce laws focused on unfair competition, false advertising, privacy, civil rights, and many other areas. New state legislation could create a cause of action allowing private persons to sue abortion pill traffickers that violate federal law in their state.

Finally, states may enter into interstate agreements with other pro-life states to assist with enforcement of the federal anti-trafficking law.⁶⁹ These agreements would commit the member states to exert reasonable best efforts to collaborate with and assist other states and the federal government to enforce the federal abortion pill trafficking law.

68 Tim Griffin, *Attorney General Griffin Issues Cease and Desist Letters to Abortion Pill Companies Advertising in Arkansas*, Ark. Att'y Gen. Off. (May 21, 2024), https://arkansasag.gov/news_releases/attorney-general-griffin-issues-cess-and-desist-letters-to-abortion-pill-companies-advertising-in-arkansas/.

69 Because such interstate compacts do not increase the political power of the states at the expense of federal sovereignty, congressional consent would likely not be required. See *Ne. Bancorp, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 472 U.S. 159, 175-76 (1985).



- **Localities** also have a role to play. Like states, incorporated cities and counties can often pass binding ordinances to acknowledge federal law as “as the supreme Law of the Land” under Article VI of the Constitution, regardless of contrary state law allowing abortion. Such ordinances may also create private civil causes of action to ensure compliance with federal law within the locality. At the time of this writing, at least seventy-eight political subdivisions throughout the United States have become “Sanctuary Cities for the Unborn” by passing similar ordinances.⁷⁰

American lawmakers must address the predatory corporate powers promoting abortion while at the same time embracing an “all of the above” approach to pro-life and pro-family policies. We must affirm and advance substantive policies that make the choice for life irresistible. Abortion should never be cheaper than the choice for life. Amending the Affordable Care Act to exempt pregnancy and childbirth costs from copays and deductibles in healthcare policies is a crucial step towards ending abortion nationwide.

Extending the child tax credit and the formation of a bipartisan caucus on paid family leave are

just a few examples of substantive federal pro-family policy. Future actions could include fiscal and tax policies that encourage a culture of family and home, including a three-digit national lifeline for mothers seeking abortion alternatives; the establishment of new federal and state holidays; and support for stay-at-home parents, for raising children at home, and for caring for aging relatives. Barriers to adoption must also be eliminated, so that financial costs and red tape do not prevent expectant mothers from connecting with loving adoptive families. Abortion and family policy are intimately bound together, and the prevalence of abortion pills encourages a culture of indifference and viciousness toward life-honoring customs at all stages of human life.

Abortion is not healthcare, and drugs designed to kill are not medicine. Together, we can protect human dignity and promote flourishing families by enforcing existing laws against abortion pill trafficking. Together, we can shape a future where the dignity of every human life is cherished and protected, where justice prevails, and where compassion triumphs over indifference. The fight for the human right to life demands our collective commitment, our unwavering faith, and our steadfast advocacy.

70 See Sanctuary Cities for the Unborn (last accessed January 10, 2025), <https://sanctuarycitiesfortheunborn.org/>.



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