Americans United for Life

September 3, 2025

Submitted Electronically via Regulations.gov Portal

Secretary Douglas A. Collins
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Re: Reproductive Health Services (RIN 2900-AS31)

Dear Secretary Collins:

On behalf of Americans United for Life ("AUL"), we are writing in support of the Proposed Rule, "Reproductive Health Services," 90 Fed. Reg. 36,415. AUL is a national pro-life, nonprofit legal advocacy organization. Founded in 1971, before the Supreme Court's decision in *Roe v. Wade*,[1] AUL has dedicated over fifty years to advocating for comprehensive legal protections for human life from conception until natural death. AUL attorneys are legal experts on statutory interpretation and bioethics, and regularly testify before state legislatures and Congress on abortion issues.[2] Supreme Court opinions have cited AUL briefs and scholarship in major bioethics cases, including *Dobbs v. Jackson Women's Health Organization*.[3]

Thank you for the opportunity to comment on the Proposed Rule, which would restore funding restrictions on abortions and abortion counseling in the medical benefits package and Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA").[4] Below, we elaborate how (I) the Proposed Rule is consistent with Section 106 of the Veterans Health Care Act of 1992, which Congress never repealed, and which prohibits the Department of Veterans Affairs ("VA") from providing, funding, or counseling for elective abortions;[5] (II) the rule promulgated under the previous Administration violated the major questions doctrine because the VA does not have the power to set a radical abortion policy; and (III) the Proposed

[1] 410 U.S. 113 (1973).
[2] *See, e.g.*, *What's Next: The Threat to Individual Freedoms in a Post-Roe World Before the H. Comm. on the Judiciary*, 117th Cong. (2022) (testimony of Catherine Glenn Foster, President & CEO, Americans United for Life).
[3] 597 U.S. 215, 271 (2022) (citing CLARKE D. FORSYTHE, ABUSE OF DISCRETION: THE INSIDE STORY OF *ROE V. WADE* 127, 141 (2012)).
[4] Reproductive Health Services, 90 Fed. Reg. 36,415, 36,417 (proposed Aug. 4, 2025) (to be codified at 38 C.F.R. pt. 17).
[5] Veterans Health Care Act of 1992, Pub. Law. No. 102-585, § 106, 106 Stat. 4943, 4947 (1992).

Rule is consistent with Congress' pro-life policy stance. We support the Proposed Rule as is, but (IV) recommend the VA include additional clarifying language in the preamble about the intent element within the legal definition of abortion to help distinguish between an elective abortion and maternal-fetal separation when the mother's life is at risk or where she is receiving treatment for a miscarriage. Accordingly, we urge the VA to finalize the funding restrictions on abortions and abortion counseling to align with federal law and channel funds towards authentic women's healthcare instead of elective abortion.

I. Congress Never Repealed Section 106, Which Prohibits the VA from Providing, Funding, or Counseling for Elective Abortions.

The Proposed Rule aligns with Section 106 of the Veterans Health Care Act of 1992 ("VHCA"), which Congress never repealed. Under Section 106, "the Secretary of Veterans Affairs may provide to women the following health care services . . . General reproductive health care . . . but not including under this section . . . abortions . . . except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition."[6] The September 9, 2022 Interim Final Rule (herein referred to as "2022 IFR")[7] and the March 4, 2024 Final Rule (herein referred to as "2024 Final Rule"),[8] contend that when Congress enacted the Veterans Health Care Eligibility Reform Act of 1996,[9] it "effectively overtook section 106 of the VCHA."[10] However, the Veterans Health Care Eligibility Reform Act of 1996 gives a general grant of power and does not mention abortion, whereas Section 106 specifically prohibits abortion. As the Supreme Court recognizes in *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, "it is a commonplace of statutory construction that the specific governs the general.'"[11] "The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one."[12] Here, Section 106's abortion prohibition acts as the "exception" to the Veterans Health Care Eligibility Reform Act's general grant of power.

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[6] *Id*.
[7] Reproductive Health Services, 87 Fed. Reg. 55,287 (issued Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17).
[8] Reproductive Health Services, 89 Fed. Reg. 15,451 (Mar. 4, 2024) (to be codified at 38 C.F.R. pt. 17).
[9] Pub. L. No. 104-262, 110 Stat. 3177 (1996).
[10] 87 Fed. Reg. at 55,289; *see also* 89 Fed. Reg. at 15,457 (noting that "the Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA").
[11] RadLAX Gatteway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) (citing Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992)).
[12] *Id*.

Section 106 of the VHCA explicitly prohibits providing abortion in VA health programming.[13] If any confusion is still lingering as to whether Congress intended abortion to be excluded, Members of Congress have reiterated that the abortion exclusion is effective.[14] The 2024 Final Rule argued that Congress repealed Section 106 of the Veterans' Health Care Eligibility Reform Act. However, the Veterans' Health Care Eligibility Reform Act never mentions abortion. Congress has passed amendments since then, which have not repealed but bolstered Section 106. For example, the Murray amendment allowed for veterans to receive infertility treatments under the VHCA if infertility is caused by a service injury.[15] However, no amendments have been made to repeal the abortion provision.

The 2024 Final Rule alternatively argued that the barred provision of abortion only applies to services provided under Section 106 and "d[oes] not limit VA's authority to provide [abortion] services under any other statutory provision."[16] This reasoning was either an oversight of the provision's application or a gross misinterpretation. Section 106 explicitly applies to "hospital care and medical services [furnished] under chapter 17 of title 38."[17] Accordingly, the VA must comply with Section 106's abortion prohibition, which the Proposed Rule aims to do.

The VA under the previous Administration also misinterpreted the Deborah Sampson Act of 2020 to argue that Section 106 does not limit the medical care the VA can provide.[18] The Deborah Sampson Act of 2020 provides that references to "health care and services" refers to health care and services provided under the VA medical benefits package, rather than under Section 106. However, the Deborah Sampson Act of 2020 explains that "health care" is defined by services provided on the day before enactment, which excluded abortion and abortion counseling just as Section 106 does.[19]

The fact that the VA relied alternatively on 38 U.S.C. § 1710(a)(1)–(3) does not automatically mean that Section 106 is no longer operative.[20] On the contrary, the

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[13] Veterans Health Care Act of 1992 § 106.
[14] Letter from Members of Congress to Denis R. McDonough, Sec'y, U.S. Dep't of Veterans Affs. (June 15, 2021), *available at* https://republicans-veterans.house.gov/uploadedfiles/2021_6_15_pro-life_letter_to_va_secretary.pdf; Letter from James Lankford, Sen., U.S. Cong. to Denis R. McDonough, Sec'y, U.S. Dep't of Veterans Affs. (Aug. 26, 2022), *available at* https://www.lankford.senate.gov/imo/media/doc/2022-08-26%20Letter%20to%20McDonough%20IFR.pdf.
[15] Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, Pub. L. 114-223, div. A, tit. II, § 260, 130 Stat. 857, 897 (2016).
[16] 89 Fed. Reg. at 15,454.
[17] Veterans Health Care Act of 1992 § 106.
[18] 89 Fed. Reg. at 15,456.
[19] Pub. L. No. 116-315, tit. V, subtit. A, § 5101, 134 Stat. 5021, 5026 (2021).
[20] 89 Fed. Reg. at 15,452; 87 Fed. Reg. at 55,288.

VA cannot rely on Section 106 for authority because the provision *is* operative and explicitly prohibits abortion services. 38 U.S.C. § 1710(a) paragraphs (1) and (2) state that the VA shall provide medical care for veterans. Paragraph (3) allows that the VA may provide medical services not referenced in paragraphs (1) and (2). There is no explicit language on abortion, yet the VA determined that abortion is "needed to protect the lives of veterans" under the statute. In doing so, the VA under the previous Administration contrived the authority to provide abortions against the explicit authority of Section 106 and inappropriately interpreted the language of 38 U.S.C. § 1710(a). Appropriately, the Proposed Rule recognizes this misstep, noting that the "VA's authority to provide abortions is, at least, dubious and, at most, nonexistent."[21] The Supreme Court has held that "absent a clearly established congressional intention, repeals by implication are not favored."[22] Thus, the VA must show a clear congressional intent to repeal, which was not present when the VA proposed the 2022 IFR nor when it published the 2024 Final Rule. Accordingly, the Proposed Rule is consistent with Section 106's restrictions on the provision of abortions.

II. Under the Major Questions Doctrine, the 2024 Final Rule Did Not Have the Power to Set a Radical Abortion Policy.

The VA recognizes that in *Dobbs*, the Supreme Court overruled its egregiously wrong decisions in *Roe v. Wade*[23] and *Planned Parenthood of Southeastern Pennsylvania v. Casey*,[24] and properly returned the abortion issue to the democratic process.[25] The Supreme Court relinquished its position as the national "*ex officio* medical board" on abortion, and Congress and the state legislatures again have the power to set an abortion policy.[26] The VA has no authority to assume the mantle of "*ex officio* medical board," and usurp the abortion issue from the legislatures to devise protections for abortion. However, that is what the VA under the previous Administration attempted to do through its 2024 Final Rule.

Dobbs restored the legislatures' authority to create abortion policy, and now the VA *must* have *explicit* authority from Congress to regulate abortion under the major questions doctrine. The doctrine "refers to an identifiable body of law that has developed over a series of significant cases all addressing a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted."[27] As the Court recognized, "there are

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[21] 90 Fed. Reg. at 36,416.
[22] Branch v. Smith, 538 U.S. 254, 273 (2003) (plurality opinion) (citation modified).
[23] 410 U.S. 113.
[24] 505 U.S. 833 (1992).
[25] 90 Fed. Reg. at 36,416.
[26] Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 99 (1976) (White, J., concurring in in the judgment in part and dissenting in part).
[27] West Virginia v. Env't Prot. Agency, 597 U.S. 697, 724 (2022).

'extraordinary cases' that call for a different approach—cases in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."[28]

Just as the Court "f[oun]d it highly unlikely that Congress would leave to agency discretion the decision of how much coal-based generation there should be over the coming decades" in *West Virginia v. Environmental Protection Agency*,[29] it is equally unlikely that the Congress authorizes the VA to set a national abortion policy through the medical benefits package or CHAMPVA. Abortion is a highly contentious issue.[30] These statutes say nothing about permitting abortion on demand. In fact, as the Proposed Rule acknowledges, "abortion is not a 'needed' VA service for the same reasons that it is not 'medically necessary and appropriate for the treatment of a condition' under CHAMPVA."[31] Since the abortion issue has returned to the democratic process, Congress holds the federal power to legislate on the abortion issue. In putting forth its Final Rule, the VA was required to show that Congress had delegated that authority, but it could not.

The VA under the previous Administration contended that the 2024 Final Rule preempted state laws that "unduly interfere" with abortion.[32] Under this flawed reasoning, "laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA employees" would be preempted.[33] Notably, the undue interference test is reminiscent of *Casey*'s undue burden standard, which was a "shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."[34] As the Supreme Court recognized in *Dobbs*, *Casey*'s undue burden standard was unworkable.[35] "Problems begin with the very concept of an 'undue burden.'"[36] The test is subjective in the abortion context, creating circuit splits and permitting judges to act as legislators. The test does not account for legitimate governmental interests in the abortion issue, such as the protection of unborn human

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[28] *Id*. at 721 (citation omitted).
[29] *Id*. at 729 (citation modified).
[30] *Dobbs*, 597 U.S. at 231–32 ("And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.")
[31] 90 Fed. Reg. at 36,417.
[32] 89 Fed. Reg. at 15,457.
[33] *Id*.
[34] *Casey*, 505 U.S. at 877.
[35] *Dobbs*, 597 U.S. at 281 ("*Casey*'s 'undue burden' test has scored poorly on the workability scale.").
[36] *Id*.

life.[37] The VA's undue interference standard would create havoc in interpreting which pro-life laws are preempted because they "unduly interfere" with the 2024 Final Rule.

In sum, under the major questions doctrine, Congress has not given the VA the power to manufacture a national policy in favor of abortion. The VA under the current Administration has implicitly acknowledged this in its Proposed Rule by "un-do[ing]" the changes made in the 2024 Final Rule and "restor[ing] VA's medical benefits package and the CHAMPVA program to their proper, long-standing positions" of restricting funding for abortions and abortion counseling.[38]

III. The Proposed Rule Aligns with Congress' Pro-life Policy Stance.

The Proposed Rule correctly acknowledges Congress' "slew of Federal programs" that "consistently draw[] a bright line between elective abortion and health care services that taxpayers would support."[39] Conversely, the 2024 Final Rule sought to undermine these pro-life policies by establishing pro-abortion policies in reaction to the *Dobbs* decision.[40]

Federal policy is pro-life. Following *Dobbs*, there is no federal right or interest in promoting, providing, or paying for elective abortion. Rather, there is a plethora of statutes protecting women, unborn children, families,[41] and medical professionals from the harms of abortion violence. Congress maintains a pro-life policy, but the VA under the previous Administration openly flaunted that policy by manufacturing abortion on demand through its 2024 Final Rule. Indeed, the Proposed Rule notes that the determinations within the 2024 Final Rule "contradicted *decades* of Federal policy against forced taxpayer funding for abortion."[42]

Congress has passed a multitude of pro-life laws. The Born-Alive Infants Protection Act recognizes that children born alive after attempted abortion are legal persons under federal law and cannot be left to die without medical care.[43] The Partial Birth Abortion Ban Act prohibits the horrific abortion method that induces labor just to kill the child when she is partially born.[44] Federal law bars mailing or shipping abortion-inducing drugs, including the chemical abortion regimen of mifepristone and misoprostol.[45]

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[37] *Id*. at 300–01 ("States may regulate abortion for legitimate reasons . . . [which] include[s] respect for and preservation of prenatal life at all stages of development.").
[38] 90 Fed. Reg. at 36,417.
[39] *Id*. at 36,416.
[40] 89 Fed. Reg. at 15,453.
[41] *See* Carolyn McDonnell, *Mail-Order Abortion Rules: Text, Context, and History of the Comstock Act's Restrictions on Mailing Abortifacient Matter*, 23 AVE MARIA L. REV. 101, 112–15 (2025).
[42] 90 Fed. Reg. at 36,416 (emphasis added).
[43] 1 U.S.C. § 8.
[44] 18 U.S.C. § 1531.
[45] 18 U.S.C. §§ 1461–1462; *accord* McDonnell, *supra* note 41, at 102.

Over the past half century, Congress has enacted numerous statutes protecting medical professionals that conscientiously object to taking a human life through abortion, including the Church Amendment,[46] Coats-Snowe Amendment,[47] and Weldon Amendment.[48] There are conscience protections throughout federal law, such as in the Danforth Amendment to Title IX's definition of sex discrimination,[49] amendments regulating managed-care providers in the Medicare and Medicaid programs,[50] and Affordable Care Act provisions regarding insurance.[51]

Over the years, Congress has restricted public funding of elective abortion. The Hyde Amendment has been a cornerstone of every federal health and welfare appropriations bill since Congressman Henry Hyde first proposed it in 1976.[52] The current version of the Hyde Amendment restricts abortion funding except "in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed," or in cases of rape or incest.[53] The Hyde Amendment is one of many funding restrictions within federal law. In fact, Congress has applied abortion funding restrictions to the District of Columbia,[54] foreign assistance,[55] Department of Defense,[56] Indian Health Service,[57] and various laws dealing with public health and welfare.[58]

These statutes show that federal policy opposes abortion violence. "No federal law confers a statutory right to abortion. In fact, legislation to create an abortion right has failed in recent years."[59] Rather, federal abortion policy protects infants born-alive after a botched abortion, prohibits gruesome partial-birth abortions, bans the mailing of abortion-inducing drugs, safeguards conscientious objections towards

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[46] 42 U.S.C. § 300a-7.
[47] 42 U.S.C. § 238n.
[48] *See*, *e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. V, § 507(d)(1), 136 Stat. 4459, 4908 (2022). Since 2004, Congress has annually readopted the Weldon Amendment in Health and Human Services appropriations. Safeguarding the Rights of Conscience as Protected by Federal Statutes, 89 Fed. Reg. 2078, 2079 (Jan. 11, 2024) (to be codified at 45 C.F.R. pt. 88).
[49] 20 U.S.C. § 1688.
[50] 42 U.S.C. §§ 1395w-22(j)(3)(B), 1396u-2(b)(3)(B).
[51] 42 U.S.C. § 18023(b)(4).
[52] *See* Department of Labor and Health, Education, and Welfare Appropriation Act, 1977, Pub. L. No. 94-439 tit. II, § 209, 90 Stat. 1418, 1434 (1976).
[53] Consolidated Appropriations Act, 2023 div. H, tit. V, §§ 506–507.
[54] *Id*. div. E, tit. VIII, § 810.
[55] 7 U.S.C. § 1733(k); 22 U.S.C. §§ 2151b(f)(3), 5453(b)(1), 7704(e)(4).
[56] 10 U.S.C. § 1093.
[57] 25 U.S.C § 1676.
[58] 42 U.S.C. §§ 280h-5(f)(1)(B), 290bb-36(i), 300a-6, 300z-10, 1397ee(c), 1397jj(a)(16), 2000e(k), 2996f(b)(8), 12584a(a)(9), 18023(b)(1) (also recognizing under the Affordable Care Act that states "may elect to prohibit abortion coverage in qualified health plans offered through an Exchange").
[59] McDonnell, *supra* note 41, at 112.

abortion, and restricts the public funding of abortion. Accordingly, federal policy is pro-life since "federal statutory law shows Congress has set a public policy of limiting abortion."[60] In line with such policy, the Proposed Rule seeks to "restore VA's medical benefits package and the CHAMPVA program to their proper, long-standing positions,"[61] thereby acknowledging that the 2024 Final Rule subverted Congress' pro-life policy stance by allowing abortion on demand within the medical benefits package and CHAMPVA.

IV. The Proposed Rule's Abortion Funding Restrictions Only Apply to Elective Abortion.

As discussed above, the Proposed Rule recognizes "Congress has consistently drawn a bright line between elective abortion and health care services that taxpayers would support."[62] These abortion funding restrictions are throughout federal law.[63] As the Proposed Rule also affirms, the funding prohibition on elective abortion does not "prohibit providing care to pregnant women in life-threatening circumstances, including treatment for ectopic pregnancies or miscarriages."[64]

AUL does not ask the VA to change the language of the proposed rule. However, AUL urges the VA to clarify within the preamble that the legal intent in an elective abortion is distinguishable from the legal intent to save the mother's life through a medically-indicated maternal-fetal separation—including the removal of ectopic pregnancy—or in treating a miscarriage. This is important because the Proposed Rule does not state that the funding restriction in the medical benefits package contains an exception for procedures to save the mother's life.[65] However, abortion is a term of art that implicitly does not apply to procedures to save the mother's life.

A. Intent Is the Key Legal Element in Determining Whether the Proposed Rule Restricts Funding for an "Abortion."

"Abortion" is an ambiguous word. In fact, it "is a vague term with a multitude of definitions depending on the context in which it is being used."[66] Even "medical organizations define abortion differently, sometimes including all situations in which

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[60] *Id*.
[61] 90 Fed. Reg. at 36,417.
[62] *Id*. at 36,416.
[63] *Id*.; *accord* McDonnell, *supra* note 41, at 115.
[64] 90 Fed. Reg. at 36,416.
[65] *See id*. at 36,417.
[66] *Glossary of Medical Terms for Life-Affirming Medical Professionals*, AM. ASS'N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS 1, 1 (June 2023), https://aaplog.org/wp-content/uploads/2023/06/Glossary-of-Medical-Terms_20230615_7.pdf.

a pregnancy terminates, such as removal of an ectopic pregnancy or miscarriage management."[67]

Congress has not defined abortion even though it "has expressed a public policy of limiting the practice" through statutory law.[68] These laws range from the Partial-Birth Abortion Ban Act and Born-Alive Infants Protection Act to conscience protections and abortion funding restrictions.[69] "Although many federal laws . . . have abortion-related provisions, they do not include a definition of the word."[70] Congress, rather, has discussed abortion in terms of what it is not. For example, the Hyde Amendment prohibits funding for "abortion," but it does not apply to scenarios where the mother's life is at risk or in cases of rape or incest.[71]

Abortion, however, is a legal term of art.[72] According to Black's Law Dictionary, an abortion is "[a]n artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus."[73] Since "abortion" is a legal term of art, courts use its technical sense, not the "ordinary, everyday meaning[]" of the word abortion.[74]

The intent element is critical to understanding what procedures meet the legal definition of abortion. As recent scholarship described, abortion laws in the United States "all require conduct *intended to cause a pregnancy to end* and do not apply to pregnancies that end due to natural causes occurring spontaneously."[75] The intent element is essential, since abortions laws "apply only to intentional actions that *begin* the process of terminating a pregnancy, that is, to physician interventions *intended* to prevent an ongoing pregnancy from continuing and progressing to live birth."[76]

The intent element is key in differentiating between legally permissible and prohibited procedures. Two cases exemplify this distinction.

In *Vacco v. Quill*, the Supreme Court recognized that a patient withdrawing or withholding life-sustaining medical treatment was not similarly situated as an assisted suicide patient under the Equal Protection Clause and, thus, a state law banning assisted suicide only merited rational-basis review.[77] According to the Court, "[t]he distinction comports with fundamental legal principles of causation and

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[67] McDonnell, *supra* note 41, at 110.
[68] *Id*. at 111 (citation modified).
[69] *See supra* Section III.
[70] McDonnell, *supra* note 41, at 111.
[71] *E.g.*, Consolidated Appropriations Act, 2023 div. H, tit. V, §§ 506–07(c).
[72] *See* McDonnell, *supra* note 41, at 111.
[73] *Abortion*, BLACK'S LAW DICTIONARY (12th ed. 2024).
[74] ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69 (2012).
[75] Maura K. Quinlan & Paul B. Linton, *Medically Necessary Abortions After* Dobbs*: What, If Anything, Has Changed?*, 39 NOTRE DAME J.L. ETHICS & PUB. POL'Y 87, 97–98 (2025).
[76] *Id*. at 98.
[77] 521 U.S. 793, 799, 801 (1997).

intent. . . . [W]hen a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication."[78] The *Vacco* Court recognized that "[t]he law has long used actors' intent or purpose to distinguish between two acts that may have the same result."[79]

In *United States v. Skrmetti,* the Supreme Court reaffirmed that rational-basis review is appropriate for a law that distinguishes between the medical indication of the drug or procedure—*i.e.*, legal intent of the medical practitioner.[80] The *Skrmetti* Court upheld a state law under which "[h]ealthcare providers may administer puberty blockers or hormones to minors to treat certain conditions but not to treat gender dysphoria, gender identity disorder, or gender incongruence."[81] In this regard, the Court acknowledged that the legal intent of a medical practitioner may vary based upon the "administration of specific drugs for particular medical uses."[82] Thus, the intent of a medical intervention is critical to distinguishing between legally permitted and proscribed acts.

There is a different intent within a medically-indicated maternal-fetal separation—sometimes known as an "abortion" to save the mother's life, which includes the treatment of ectopic pregnancy—and an elective induced abortion. "Today, every state allows medical interventions to save the pregnant mother's life, even if these interventions foreseeably, but indirectly, result in the unborn child's death."[83] As the American Association of Pro-Life Obstetricians and Gynecologists ("AAPLOG") explains, a "[m]edically-indicated maternal-fetal separation" is "[d]one to prevent the mother's death or immediate, irreversible bodily harm, which cannot be mitigated in any other way. Examples include treatment of ectopic pregnancy, previable delivery for early pre-eclampsia with severe features, or previable delivery for other life-threatening conditions in pregnancy."[84] Notably, this includes the removal of an ectopic pregnancy "[b]ecause of . . . the clear medical necessity of terminating the pregnancy when diagnosed."[85] In fact, "there is no doubt that prompt termination of an ectopic pregnancy would be permissible under all existing abortion laws" in the United States.[86] However, medical professionals accomplish these procedures with the acknowledgement that they "are treating two patients, the

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[78] *Id*. at 801.
[79] *Id*. at 802.
[80] 145 S. Ct. 1816, 1829 (2025).
[81] *Id*.
[82] *Id*. at 1831.
[83] Clarke D. Forsythe & Carolyn McDonnell, *The States' Response to* Dobbs v. Jackson Women's Health Organization, 39 NOTRE DAME J.L. ETHICS & PUB. POL'Y 171, 209–11 & n. 281 (2025).
[84] *Glossary of Medical Terms*, *supra* note 66, at 2.
[85] Quinlan & Linton, *supra* note 75, at 108.
[86] *Id*.

mother and the baby, and every reasonable attempt to save the baby's life would also be a part of [the] medical intervention."[87] Thus, a medically-indicated maternal-fetal separation does not meet the legal definition of abortion, because it lacks the intent to "destroy[] an embryo or fetus."[88]

In contrast, an elective induced abortion has the direct intent of ending the unborn child's life. "[E]lective abortions make up the vast majority of all abortions."[89] According to AAPLOG, "elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb."[90] As such, "elective abortions [are] those sought for socio-economic, not medical, reasons."[91] Since the intervention is elective, this means that "by definition, there is no medical indication for elective induced abortion, since it cures no medical disease. In fact, there is no medical indication for elective induced abortion. Pregnancy is not a disease, and the killing of human beings in utero is not medical care."[92] In other words, medical professionals perform elective induced abortions for *non-medical* reasons, with the direct intent to end the unborn child's life. This meets the legal definition of abortion, since there the legal intent or "purpose [is to] destroy[] an embryo or fetus."[93] Accordingly, "[e]lective induced abortion procedures are fundamentally different in their intent as well as practice from emergency parturition procedures."[94]

Thus, the legal intent is different in a medically-indicated maternal-fetal separation and an elective induced abortion.

B. The Proposed Rule Does Not Restrict Funding for Miscarriage and Stillbirth Treatment.

Elective induced abortion is distinguishable from miscarriage and stillbirth treatment. According to the Centers for Disease Control and Prevention ("CDC"), "[a] stillbirth is the loss of a pregnancy after 20 weeks and before birth. Stillbirth is different from miscarriage. In the United States, a miscarriage is usually defined as the loss of a fetus before the 20th week of pregnancy."[95] Sometimes miscarriage is

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[87] *What is AAPLOG's Position on "Abortion to Save the Life of the Mother?"*, AM. ASS'N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 9, 2009), https://aaplog.org/what-is-aaplogs-position-on-abortion-to-save-the-life-of-the-mother/.
[88] *Abortion*, *supra* note 73.
[89] Quinlan & Linton, *supra* note 75, at 122.
[90] *AAPLOG Statement: Clarification of Abortion Restrictions*, AM. ASS'N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS (July 14, 2022), https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/.
[91] Quinlan & Linton, *supra* note 75, at 88 (emphasis omitted).
[92] PRO. ETHICS COMM., AM. ASS'N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, HIPPOCRATIC OBJECTION TO KILLING HUMAN BEINGS IN MEDICAL PRACTICE, COMM. OP. NO. 1, at 8 (2017).
[93] *Abortion*, *supra* note 73.
[94] Pro. Ethics Comm., *supra* note 93, at 7.
[95] *About Stillbirth*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 26, 2025), https://www.cdc.gov/stillbirth/about/index.html.

called "spontaneous abortion."[96] According to Mayo Clinic, "[a]bout 10% to 20% of known pregnancies end in miscarriage. But the actual number is likely higher. This is because many miscarriages happen early on, before people realize they're pregnant."[97] The CDC indicates that "[s]tillbirth affects about 1 in 175 births, and each year about 21,000 babies are stillborn in the United States."[98]

When a woman's body does not naturally pass the unborn child's remains, she needs a medical professional to remove the remains to preserve her health. Accordingly, miscarriage and stillbirth may involve surgery or medication to remove fetal tissue from the woman's body.[99] However, "[t]he removal of an embryo or fetus who has died of natural causes . . . is not an induced abortion."[100] As such, "the medical management of [miscarriage and stillbirth] does not involve any issue of abortion as the baby has already died spontaneously and there is no physician-initiated termination of pregnancy intended to cause the baby's death."[101] Thus, miscarriage and stillbirth treatment contrast with elective induced abortion, in which the unborn child is alive, and the surgical or chemical intervention's primary intent is to end that unborn child's life.

In sum, the legal intent in an elective abortion is different from the intent in a medically-indicated maternal-fetal separation to save the mother's life, including the removal of an ectopic pregnancy, or in the treatment of a miscarriage. We ask the VA to clarify the intent element in an elective abortion within the preamble.

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[96] *Glossary of Medical Terms*, *supra* note 66, at 2.
[97] *Miscarriage*, MAYO CLINIC (Sept. 8, 2023) https://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/symptoms-causes/syc-20354298.
[98] *Data and Statistics on Stillbirth*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 26, 2025), https://www.cdc.gov/stillbirth/data-research/index.html.
[99] RSCH. COMM., AM. ASS'N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, ETHICAL CONSIDERATIONS IN ENDING A PRE-VIABLE PREGNANCY FOR MATERNAL-FETAL VITAL CONFLICT, PRAC. GUIDELINE NO. 13, at 3 (2025).
[100] *Id.*
[101] Quinlan & Linton, *supra* note 75, at 106 n.95; *accord* McDonnell, *supra* note 41, at 120 n.126.

V. Conclusion.

For the foregoing reasons, we urge the VA to finalize the funding restrictions on abortions and abortion counseling within the medical benefits package and CHAMPVA.

Sincerely,

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