

No. 26-30203

In the United States Court of Appeals for the Fifth Circuit

STATE OF LOUISIANA, BY AND THROUGH ITS ATTORNEY GENERAL,
LIZ MURRILL; ROSALIE MARKEZICH,
Plaintiffs-Appellants

v.

FOOD & DRUG ADMINISTRATION; MARTY MAKARY, COMMISSIONER,
U.S. FOOD AND DRUG ADMINISTRATION; RICHARD PAZDUR, IN HIS
OFFICIAL CAPACITY AS DIRECTOR, CENTER FOR DRUG EVALUATION
& RESEARCH, U.S. FOOD & DRUG ADMINISTRATION; UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F.
KENNEDY, JR., SECRETARY, U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
Defendants-Appellees

v.

DANCO LABORATORIES, L.L.C.; GENBIOPRO, INCORPORATED,
Intervenors-Appellees

On Appeal from the United States District Court
for the Western District of Louisiana
No. 6:25-cv-01491-DCJ-DJA, Hon. David C. Joseph

**BRIEF OF AMICUS AMERICAN CENTER FOR LAW & JUSTICE
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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** Not admitted in this jurisdiction*

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Circuit Rule 28.2.1 have an interest in the outcome of this case, in addition to those listed by the parties. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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INTEREST OF AMICUS¹

The American Center for Law & Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. The ACLJ has filed amicus briefs in a variety of abortion-related cases, including several amicus briefs in the abortion pill litigation styled *Alliance for Hippocratic Medicine v. FDA*. Those charged with enforcing health and safety regulations have frequently refused or neglected to do so in the context of abortion. The FDA's elimination of the in-person dispensing requirement is a piece of that neglect. The ACLJ believes that Louisiana should have the ability to protect its citizens, including from the harm caused by the abortion pill at issue in this case.

SUMMARY OF ARGUMENT

This case addresses the FDA's loosening of restrictions on the drug Mifeprex, which is used for medical abortions. Abortion, contrary to the assertion that it is somehow safer than childbirth and beneficial to women, is unsafe for both women and preborn children, and is frequently used as a tool by nefarious actors to control and harm women.

¹ Pursuant to Fed. R. App. P. 29(2) *amicus curiae* states that all parties have consented to this filing, and no entity or person, aside from amicus curiae, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

The Biden Administration's 2023 loosening of the Risk Evaluation and Mitigation Strategy (REMS) for mifepristone rests on two deeply flawed premises: that medication abortion is safe for women, and that ready access to abortion drugs advances women's interests. Neither premise withstands scrutiny.

First, medication abortion is not safe. By design, abortion pills cause pregnancy loss — an adverse outcome that medical authorities universally warn pregnant patients to avoid. To claim that few women experience adverse events from these drugs is flatly misleading; every woman who takes them experiences the intended adverse event of pregnancy termination. Beyond this threshold point, the widely repeated claim that abortion is safer than childbirth is statistically indefensible. The underlying comparison suffers from at least five independent methodological failures: abortion deaths are double-counted within pregnancy mortality figures, inflating the apparent danger of childbirth; pregnancy mortality is measured per live birth rather than per pregnancy, artificially excluding miscarriage and stillbirth cases from the denominator while retaining associated deaths in the numerator; the statistics are not adjusted for gestational stage; abortion deaths are dramatically underreported; and delayed deaths attributable to abortion — including elevated suicide rates — are systematically excluded from the comparison. Peer-reviewed research, properly accounting for these deficiencies, indicates that abortion is in fact more dangerous than childbirth, not

less.

Second, the Biden Administration's changes are unlawful because the distribution scheme they enable — shipping abortion-inducing drugs by mail and common carrier into states where abortion is prohibited — violates the Comstock Act, 18 U.S.C. §§ 1461–1462. The FDA has no authority to promulgate regulations whose principal practical effect is to facilitate federal crimes, and this Court should not affirm a regulatory framework that does so.

Third, the premise that abortion access serves women's autonomy ignores the pervasive reality of coercion. Studies indicate that substantial majorities of women who undergo abortions report feeling pressured by others, and that many abort against their own wishes. Far from being an act of free choice, abortion is routinely weaponized by human traffickers, sexual predators, abusive partners, irresponsible men, and coercive employers to serve their own interests at women's expense. The mail-order dispensing models compounds this harm: it is far easier for an abuser to slip a pill into a drink or force a woman to swallow one than to compel her to appear at a medical facility — a vulnerability illustrated directly by plaintiff Rosalie Markezich's allegations in this case. The in-person dispensing requirement the FDA eliminated was precisely the safeguard that could have allowed a healthcare professional to detect her situation.

Finally, abortion disproportionately affects racial minorities and is used as

a tool of modern eugenics — targeting Black Americans, who account for approximately 40% of all abortions despite comprising roughly 14% of the population, and eliminating an estimated two-thirds or more of children prenatally diagnosed with Down syndrome. Easy access to abortion pills facilitates this harm at scale.

ARGUMENT

Louisiana and plaintiff Markezich allege that the FDA’s 2023 loosening of the REMS for the “abortion pill” was illegal. Moreover, as the complaint notes, so-called medication abortions have harmed many, many women. Cplt. ¶¶ 35-40. Limiting the free-for-all dispensing of this dangerous abortion drug thus would spare many more women (and their children) from harm, including death, going forward. This brief fleshes out that harm.

A key premise of the Biden Administration’s loosening of regulations surrounding abortion drugs is the assertion that availability of abortion drugs is somehow beneficial to women. The recurrent assumptions are that (1) abortions are safe and (2) women want and need abortion. Hence, ready access to abortion, including abortion drugs, is supposedly a “pro-woman” position. Such a view, however, completely disregards the adverse health effects of medication abortions. This view also disregards the reality that all too often abortion is a means of *exploiting* women – typically by irresponsible or indifferent men or others

wielding power over those women. This amicus brief addresses these oft-neglected sides of the equation.

I. MEDICATION ABORTION IS NOT SAFE.

A. Abortion Pills Induce Pregnancy Loss and Thus Inherently Cause Harm.

Abortion pills, including mifepristone, by their very design cause an adverse event: miscarriage.

Pregnancy loss is a dreaded *complication* of certain medications. Consequently, medical authorities take efforts to warn pregnant women which drugs to avoid during pregnancy. *See, e.g., Medicines to Avoid When Pregnant*, WebMD (Apr. 7, 2025), <https://www.webmd.com/baby/medicines-avoid-pregnant> (“Some drugs can harm a developing baby or cause a miscarriage or stillbirth.”); *Medicine and Pregnancy: An Overview*, CDC (Sept. 22, 2025), <https://www.cdc.gov/medicine-and-pregnancy/about/index.html> (“[C]ertain medicines during pregnancy can increase the risk for health problems, such as some birth defects, prematurity, or pregnancy loss.”); Chaunie Brusie, *Medications You Should Avoid During Pregnancy*, Healthline (May 7, 2019), <https://www.healthline.com/health/pregnancy/category-c-drugs>. The whole point of abortion pills, however, is to cause that adverse event. As the FDA concedes: “Mifepristone, when used together with another medicine called misoprostol, is

used to end an intrauterine pregnancy” *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, FDA (Apr. 8, 2026), <https://tinyurl.com/FDAMifeQA> (Question 1). *See also* Danco Appl. for Stay at 8 (mifepristone used “for the medical termination of early intrauterine pregnancy”).

It is therefore flatly misleading to claim that, of the women who take abortion pills, very few experience any adverse event. To the contrary, *every single one* of those women experiences an adverse event: pregnancy loss. Diana Cuenca, *Pregnancy Loss: Consequences for Mental Health*, *Frontiers in Glob. Women’s Health* 1 (Jan. 23, 2023) (“A pregnancy loss, in all its forms, whether it miscarriage, abortion, or fetal loss, is today one of the most common adverse pregnancy outcomes today.”). That the loss may have been *sought* by someone (not necessarily the woman, *infra* Section II) for nonmedical reasons (financial, relational, etc.) does not alter the reality of the loss. A woman who blinds herself with chemicals suffers an adverse event even if she desires the outcome. Char Adams, *Woman Claims She Blinded Herself with Drain Cleaner to Fulfill Her Life-Long Dream of Being Disabled: ‘I Should Have Been Blind from Birth,’* *People* (Oct. 1, 2015, 4:45 PM), <https://people.com/celebrity/jewel-shuping-blinds-herself-with-drain-cleaner/>.

The question whether, or under what conditions, people should be able to

cause self-harm – or, in this case, harm to innocent third parties (prenatal humans) – should not be distorted by pretending that the physical harm is not physical harm.

B. Abortion Is Not Safer than Childbirth.

Before addressing the specific methodological defects in the claim that abortion is safer than childbirth, a threshold observation is warranted. The government’s own leadership has now acknowledged the inadequacy of the FDA’s safety analysis. The Secretary of Health and Human Services has publicly stated that the FDA gave inadequate consideration to patient safety when it adopted the 2023 REMS changes and has announced that the FDA will conduct a safety review to determine whether changes to the REMS are needed. *Danco Laboratories, LLC v. Louisiana*, No. 25A1208, slip op. at 3 (2026) (Alito, J. dissenting). “Because concerns have arisen ‘about the safety of mifepristone as currently administered’ under the 2023 REMS, the Secretary announced that the FDA would conduct a study to determine whether changes to the REMS are needed.” *Id.* Justice Alito, dissenting from the grant of the stay in this case, cited that evidence as indicative that the 2023 Biden administration changes were politically rather than scientifically motivated. *Id.* The upshot is that the most forceful argument for the accuracy of the safety claims underlying the 2023 REMS now comes not from Applicants but from the government itself, acknowledging the flaw of the previous administration.

Abortion apologists often claim that “[t]he risk of maternal death associated with childbirth is approximately 14 times higher than the risk associated with abortion.” Abortion Access Fact Sheet, Am. Coll. of Obstetricians and Gynecologists, available at <https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet> (last visited May 4, 2026). The ultimate source for this claim is typically the article (linked by ACOG from the quotation above), Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childhood in the United States*, 119 *Obstet. & Gynecol.* 215 (2012).² But this claim – that continuing pregnancy is more deadly than abortion – is *unsupported and false*. See Amicus Brief of the Elliot Institute in Support of Petitioners, *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022) (No. 19-1392) [hereinafter *Elliot Dobbs Amicus*], <http://tinyurl.com/27u2tdh3>. Not only is the statistical comparison underlying the claim flawed in multiple ways, *Elliot Dobbs Amicus* § II, but peer reviewed medical research strongly indicates that in fact *abortion is more dangerous* than childbirth, *Elliot Dobbs Amicus* § III (citing multiple

² A new study, Maria W. Steenland, Kerra Mercon, & Benjamin P. Brown, *Pregnancy- and Abortion-Related Mortality in the US, 2018-2021*, *JAMA Network Open* (Jan. 21, 2026) (hereinafter *Steenland*), offers to update and improve upon the Raymond & Grimes study, but as noted *infra*, it suffers from many if not all of the same flaws.

studies). Following is a brief review of the flaws underlying the claim that abortion is safer than childbirth. *See also* Ingrid Skop, *Fact Check: ‘Abortion is 14 Times Safer than Childbirth,’* Charlotte Lozier Inst. (Apr. 25, 2024), <https://lozierinstitute.org/fact-check-abortion-is-14-times-safer-than-childbirth/>.

The faulty claim rests upon a comparison of pregnancy mortality (formerly called “maternal mortality”) and abortion mortality statistics published by the federal Centers for Disease Control and Prevention (CDC). *See, e.g.,* Raymond & Grimes, *supra*, at 215-16. The comparison is fundamentally flawed for multiple reasons.

First, abortion deaths also count as “pregnancy deaths,” thereby misleadingly inflating the measure of deaths supposedly from childbirth. Elliot *Dobbs* Amicus at 15-16. This point bears emphasis: when a woman dies from abortion, that death counts *both* as an abortion mortality *and* as a pregnancy mortality. With such an approach, the results are mathematically stacked against childbirth ever being deemed safer than abortion. Consider: *even if every single woman in a single year who had an abortion died from the procedure, and only one woman that year died from a miscarriage or complication of childbirth, the total number of deaths in the “pregnancy mortality” category for that year would still exceed the total deaths in the “abortion mortality” category.* This makes

comparison of the two figures absurd.³

Second, pregnancy mortality is measured per *childbirth*, not per *pregnancy*, Elliot Dobbs Amicus at 17 n.14, and thus pregnancy mortality is further artificially inflated. That is, the relevant maternal population excludes those who experience miscarriages and stillbirths, but *if such women die, their deaths are nevertheless included in the pregnancy mortality total*. Thus, the relevant baseline population is reduced by excluding cases of pregnancy losses (no live birth), yet the total deaths still include those maternal deaths resulting from these very same excluded – uncounted – pregnancies. For example, even though many women survive ectopic pregnancies, the supposed pregnancy mortality rate for the subset of all ectopic pregnancies will be infinitely high. There will be *some maternal deaths* in the numerator but *no live births* in the denominator, yielding an infinitely large fraction. Obviously, this is a misleading, useless statistic. But this error will in turn infect and distort the overall pregnancy mortality rate by adding to the numerator (deaths) while not adding to the denominator (live births). Hence, the pregnancy mortality figure, contrary to its title, does *not* accurately depict the

³ Steenland, *supra* note 2, acknowledges (“ICD-10 Code Definition for Pregnancy-Related Mortality”) that “pregnancy-related mortality” includes death after “pregnancy termination” regardless of cause. Steenland purports to correct this by “[r]emoving pregnancies with an abortive outcome,” but this effort is only as good as the reliability of abortion reporting – which is by no means reliable, *see infra*.

mortality risk of pregnancy. Instead, the statistic *overstates* the risk.⁴

Third, the overall pregnancy mortality figures do not account for the stage of gestation, Elliot *Dobbs* Amicus at 19. A high percentage of maternal deaths are associated with miscarriages early in pregnancy. This matters. For example, a woman entering her second trimester faces zero risk of a first-trimester death from ectopic pregnancy. But the undifferentiated pregnancy mortality rate incorporates those first-trimester deaths, and thus does not reflect the actual risk going forward. For a woman who is beyond any given stage of pregnancy and considering the relative risks of continued pregnancy versus abortion, it makes no sense to compare abortion mortality with pregnancy mortality *throughout* pregnancy; the figures would have to be adjusted to subtract out deaths occurring at stages of pregnancy that have already passed. Yet pregnancy mortality statistics do not make this adjustment and thus are not properly comparable to abortion mortality statistics.⁵

⁴ Steenland (“ICD-10 Code Definition for Pregnancy-Related Mortality”), *supra* note 2, likewise acknowledges the problem of including “pregnancy-related death in the absence of a birth.” Steenland’s attempted solution – removing such deaths – should therefore result in a *lower* maternal mortality rate. But Steenland instead derives a *higher* rate of maternal mortality, suggesting either the ineffectiveness of the attempted removal of such deaths, or some other serious flaw in the methodology.

⁵ The Steenland study, *supra* note 2, likewise does not break down the risk by stage of gestation.

Fourth, abortion deaths are underreported, Elliot *Dobbs* Amicus at 13. One simply cannot make a fair assessment of abortion deaths without knowing how many have occurred. Yet one published study found that, in Finland, *an astounding 94% of abortion-associated deaths were not identified from death certificates or cause-of-death registries alone.* Mika Gissler et al., *Methods for Identifying Pregnancy-Associated Deaths: Population-based Data from Finland 1987- 2000*, 18 Paediatric & Perinatal Epidemiology 448, 451, tbl. 2 (2004). This problem infects the United States as well. *See* Elliot *Dobbs* Amicus at 13-15 (citing sources).⁶

Fifth, abortion mortality statistics likely will not include many delayed deaths that result from abortion, Elliot *Dobbs* Amicus at 15 n.11, such as those reflected in an increased rates of suicide or other longer-term fatal post-abortion outcomes, even though studies show a greater risk of death from these and other causes after abortion (as opposed to childbirth). A fair comparison of abortion with continued pregnancy, like a fair comparison of smoking with nonsmoking, would have to take into account not just immediate consequences, but also all other statistically significant increased death risks.⁷

⁶ Steenland (“Measurement of Abortion-Related Mortality”), *supra* note 2, admittedly follows this same “prior convention” for measuring deaths associated with abortion.

⁷ *See supra* note 6.

Finally, it should be noted that peer reviewed medical research strongly indicates that abortion, rather than being safer than childbirth, is in fact more dangerous. Elliot *Dobbs* Amicus §III (citing studies). Thus, the canard that abortion is safer than pregnancy is not just unsupported, it reflects the exact opposite of the truth.

In sum, the claim that abortion is 14 times safer (or, indeed, safer at all) than continuing pregnancy is unsupported and inaccurate. No serious advocate should make that assertion.

C. The Comstock Act Forecloses Medication Abortion

The manufacturers ask this Court to reinstate regulatory changes that enable mifepristone to be shipped by mail and common carrier into Louisiana, where abortion is illegal, causing nearly one thousand abortions per month. But the distribution scheme they seek to protect is not merely contrary to Louisiana law—it is criminal under federal law. The FDA has no lawful authority to adopt REMS changes whose principal practical effect in certain states is to facilitate federal crimes, and this Court should not affirm a regulatory framework that does so.

The Comstock Act provides, in relevant part, that it is a crime to use “the mails” to ship any “drug . . . for producing abortion.” 18 U.S.C. § 1461. It also makes it a felony to use “any express company or other common carrier” to ship “any drug . . . designed, adapted, or intended for producing abortion.” *Id.*

§ 1462(c). Together, these provisions comprehensively prohibit the use of any mail, common carrier, or interactive computer service to distribute abortion-inducing drugs. As Justice Thomas emphasized in his dissent at the stay stage, the manufacturers’ distribution system falls squarely within these prohibitions as applied to Louisiana. *Danco Laboratories, LLC v. Louisiana*, No. 25A1208, slip op. at 2 (2026) (Thomas, J., dissenting). The manufacturers ship mifepristone to certified pharmacies, which in turn provide them to individuals via mail. As the manufacturers themselves effectively concede, mifepristone shipped into Louisiana, where abortion is illegal, causes nearly one thousand abortions per month. *Id.* The chain of distribution at issue—shipping drugs designed to produce abortion by mail and common carrier into a state where abortion is banned—is precisely what the Comstock Act forbids. *Id.* (“All of this violates the Comstock Act.”) (quoting *Alliance for Hippocratic Medicine v. FDA*, 78 F. 4th 210, 268 (CA5 2023) (Ho, J., concurring in part and dissenting in part), rev’d on other grounds, 602 U. S. 367 (2024)).

The Comstock Act, enacted by Congress and never repealed, remains valid law. As Justice Thomas emphasized, “Applicants are not entitled to a stay of an adverse court order based on lost profits from their criminal enterprise. They cannot, in any legally relevant sense, be irreparably harmed by a court order that makes it more difficult for them to commit crimes.” *Id.* This principle holds even

more true on the merits. Violations of federal law, the Comstock Act, are not subject to protection under administrative regulations.⁸

II. ABORTION, RATHER THAN AN ACT OF FEMALE AUTONOMY, IS TOO OFTEN A HANDY TOOL FOR THOSE PURSUING NEFARIOUS PURPOSES AT THE EXPENSE OF WOMEN.

Contrary to the clichéd pro-abortion argument that abortion is a woman’s *choice* that brings freedom, many women, if not an overwhelming majority, “choose” abortion because they are pressured – or coerced – by others. Often, that pressure comes from those who prioritize their own interests above the best interests and wishes of the pregnant woman: “once abortion becomes available, it becomes the most attractive option for everyone *around* the pregnant woman.” Frederica Mathewes-Green, *When Abortion Suddenly Stopped Making Sense*, Nat’l Rev. (Jan. 22, 2016), <https://www.nationalreview.com/2016/01/abortion-roe-v-wade-unborn-children-women-feminism-march-life/> (emphasis in original). Moreover, abortion can serve as a tool for furthering broader eugenic or racist goals. *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265, 284-85 (5th Cir. 2019) (Ho, J., concurring

⁸ The Biden Administration offered an interpretation that would seriously blunt the force of the Comstock Act. Intervenors may repeat those efforts here. Amicus ACLJ has thoroughly rebutted the arguments for hamstringing the Comstock Act in a prior Supreme Court amicus filing. See ACLJ Amicus, *FDA v. AHM*, Nos. 23-235 & 23-236, available at <https://tinyurl.com/ACLJComstockBr>.

in judgment), *rev'd on other grounds*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 495-512 (2019) (Thomas, J., concurring). Relevant here, women may *take* abortion pills; but whether that action reflects their *choice* is a different question.

In a study that compared the experiences of Russian and American women with abortion, 64% of the American women surveyed reported feeling pressured by others to obtain an abortion. Vincent M. Rue et al., *Induced Abortion and Traumatic Stress: a Preliminary Comparison of American and Russian Women*, 10 *Med. Sci. Monitor* 9, SR6 (2004).⁹ Another study, published in the *Journal of American Physicians and Surgeons*, similarly found that nearly 74% of the post-abortive women surveyed admitted “that their decision to abort was [not] entirely free from even subtle pressure from others to abort,” over 58% “reported aborting to make others happy,” and 28.4% of the women specifically chose abortion “out of fear of losing their partner if they did not abort.” Priscilla K. Coleman et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their*

⁹ Study participants were “[w]omen who had experienced a pregnancy loss (spontaneous abortion, induced abortion, stillbirth, or adoption) [who] were asked to participate in a study of women’s reactions to a pregnancy loss. Data were collected in 1994 at U.S. and Russian healthcare facilities (public and private hospitals, and health care clinics). The sample used in [this] study includes only those women who had one or more induced abortion and no miscarriages, stillbirths, or adoptions.” *Id.*

Experiences, 22 J. Amer. Physicians & Surgeons 113, 115 (2017).¹⁰ Sixty-six percent of the women reported “know[ing] in their hearts that they were making a mistake when they underwent the abortion.” *Id.* Even the abortion-sympathetic Guttmacher Institute reports that 14% of women seeking abortions gave as a “specified reason[.]” for their abortion that a “[h]usband or partner wants me to have the abortion.” Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 Persps. on Sexual & Reprod. Health 110, 113 (2005) (Table 2). These statistics reveal that a substantial number of women in America who supposedly “choose” abortion, rather than being empowered to make a “choice,” are being pressured by others into abortions they may not want. As one former abortion supporter observed, “No one wants an abortion as she wants an ice cream cone or a Porsche. She wants an abortion as an animal, caught in a trap, wants to gnaw off its own leg.” Mathewes-Green, *supra* p. 9 (internal quotation marks omitted). This becomes even clearer when examining specific types of coercion to abort.

Abortion and Human Trafficking

Human trafficking is a widespread and highly profitable crime that spans the entire world. *See* 2023 Trafficking in Persons Report, U.S. Dep’t of State

¹⁰ The women who responded to this survey were women who voluntarily contacted crisis pregnancy centers for post-abortion care.

(2023), <http://tinyurl.com/3p8dbwwf>. Roughly two-thirds of this \$150 billion industry arises out of commercial sexual exploitation, or sex trafficking. *ILO Says Forced Labour Generates Annual Profits of US \$ 150 Billion*, Int’l Lab. Org. (May 20, 2014), <https://tinyurl.com/yn9wwdsx>. The National Human Trafficking Hotline’s recent statistics covering about eight months of 2025 show 10,896 *identified* cases of potential human trafficking in the United States alone. National Human Trafficking Hotline Reports to Law Enforcement, Child Welfare, and Referrals to Services Since January 20, 2025, Nat’l Hum. Trafficking Hotline Data, <https://tinyurl.com/NHTHdata> (last visited May 4, 2026).¹¹

According to a 2005 report funded by the Department of Justice, “[h]uman traffickers are engaged in a wide range of crimes both against their victims (rape, assault, extortion, homicide, forced abortion, etc.) and against the state.” Kevin Bales & Steven Lize, *Trafficking in Persons in the United States: A Report to the National Institute of Justice* 6 (2005), Croft Inst. for Int’l Studs., <https://tinyurl.com/3ah32n3z>. Another study found “[t]he prevalence of forced

¹¹ As noted in the 2019 Data Report, the “[t]rafficking situations learned about through the Trafficking Hotline likely represent only a small subset of actual trafficking occurring in the United States. Therefore, this data must not be confused with the prevalence of human trafficking in the United States.” Nat’l Hum. Trafficking Hotline 2, *available at* <https://tinyurl.com/2nwe7dfj> (see “About this Data” box).

abortions is an especially disturbing trend in sex trafficking.” Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *Annals Health L.* 61, 73 (2014), <https://tinyurl.com/3hvjednk>. The survivors of sex trafficking studied “reported that they often did not freely choose the abortions they had while being trafficked.” *Id.* at 73.

One victim noted that “in most of [my six abortions,] I was under serious pressure from my pimps to abort the babies.” Another survivor, whose abuse at the hands of her traffickers was particularly brutal, reported seventeen abortions and indicated that at least some of them were forced on her.

Id. at 73-74. Forced abortions in the context of sex trafficking, whether by subtle or more forceful pressure, cannot in any way be viewed as a liberating “choice” for women. Yet the abortion industry does little if anything to combat forced abortion at the hands of sex traffickers.

In 2017, a former Planned Parenthood employee stated that Planned Parenthood did not “train[] employees how to spot and report sex trafficking – but [instead] how not to get caught saying incriminating things to undercover journalists.” Bradford Richardson, *Planned Parenthood Failed to Take Sex Trafficking Seriously After Infamous Sting, Ex-Employee Says*, *Wash. Times* (Jan. 17, 2017), <https://tinyurl.com/yec5dcnw>. The training responded to “Live Action’s 2011 investigation [which] caught on camera eight Planned Parenthood workers at

seven facilities who were willing to help a man who identified himself as a sex trafficker covertly obtain abortions and other reproductive health care services for minors as young as 14.” *Id.* If abortion providers give a pass to one who openly admits to trafficking, they are even more likely to “serve” pimps and traffickers who pretend to be the woman’s boyfriend or relative. And relevant here, remotely authorizing abortion pill distribution makes it that much easier for the pimp to hide behind the computer screen.

Abortion and Sexual Predators

Abortion supplies a handy means for sexual predators to conceal obvious evidence – pregnancy and childbirth – of their exploitation. *See, e.g., United States v. Ranieri*, 2019 U.S. Dist. LEXIS 84634 (E.D.N.Y. May 3, 2019) (abortions for women impregnated by leader of apparent cult); Cole Waterman, *Saginaw Man Gets Prison Time for Raping Minor, Trying to Force Her into Getting Abortion*, MLive Mich. (Aug. 23, 2023), <https://tinyurl.com/ejhn5dk8>; ‘ABUSED FOR YEARS’ ‘Evil’ Father, 51, ‘Raped Daughter, 10, and Got Stepdaughter Pregnant Several Times – But Performed Sick Home Abortions,’ U.S. Sun, <https://tinyurl.com/4au3bs7v> (May 18, 2020, 3:03 PM); Tonya Alanez, *58 Porno Videos of 15-Year-Old Girl Lead to Davie Man’s Arrest*, S. Fla. Sun Sentinel, <https://tinyurl.com/tbff54wz> (last updated Oct. 24, 2019, 9:59 AM) (“The victim stated that she got pregnant from the defendant and he took her to the clinic to have

an abortion”); Carole Novielli, *Man Took 14-Year-Old For Three Abortions After Impregnating Her, Clinics Ignored the Rapes*, LifeNews (July 30, 2014), <https://tinyurl.com/5a9mcfk4>; David McFadden, *Probation Revoked for Man in Impregnating 11-Year-Old, Forcing to Get Abortion*, ABC13 News, <https://tinyurl.com/mrwddyzt> (last updated July 19, 2018); *Settlement Reached in Suit Over Teen Abortion*, The Columbus Dispatch (last updated Apr. 28, 2011), <https://tinyurl.com/3cnrdemh> (soccer coach impregnated 14-year-old, then pretended to be her father in consenting to the abortion). Again, remote dispensing facilitates such exploitation.

Abortion and Domestic Abuse

Abortion violently takes the life of a prenatal child. Often, the woman getting an abortion is also a victim of violence – which greatly influences the woman’s “choice.” *E.g.*, *Klein v. Martin*, U.S. 607 U.S. 213 (Jan. 26, 2026) (per curiam) (attempted murder of woman after she refused to abort defendant’s baby). One study revealed that among women who chose abortion, “the probability of being a victim of [intimate partner violence] in the past year . . . was almost three times higher than for women [who chose to continue their pregnancy].” Dominique Bourassa & Jocelyn Bérubé, *The Prevalence of Intimate Partner Violence Among Women and Teenagers Seeking Abortion Compared with Those Continuing Pregnancy*, 29 J. Obstetrics And Gynaecology Can. 415, 415 (2007).

According to abortion advocates, a woman should be able to obtain an abortion as a means of escaping future abuse. The truth, however, is that abortion does not free a woman from abuse.

A survey of 1127 women undergoing a second or subsequent abortion found that they were more likely to have experienced physical abuse by a male partner, sexual abuse or coercion. Of women presenting for a first abortion, 24% reported a major conflict and fights with the man involved in the pregnancy; 30% of women having a second abortion reported relationship violence; and women having a third or subsequent abortion were >2.5 times as likely to report a history of physical or sexual abuse by a male partner.

Gillian Aston & Susan Bewley, *Abortion and Domestic Violence*, 11 *Obstetrician & Gynaecologist* 163, 165 (2009).

In short, abortion is too often a tool for abusive *males* to rid *themselves* of an unwanted pregnancy. Consider the following examples in addition to the Supreme Court's recent decision in *Klein v. Martin*:

- David Harris, *'I'm Gonna Crop Her Out': Man Who Shot Pregnant Girlfriend Dead Because She Refused to Have an Abortion Facing the Ultimate Punishment*, Law&Crime (Oct. 28, 2025), <https://www.msn.com/en-us/news/crime/i-m-gonna-crop-her-out-man-who-shot-pregnant-girlfriend-dead-because-she-refused-to-have-an-abortion-facing-the-ultimate-punishment/ar-AA1PISZE>;
- Christine Pelisek, *Pregnant Woman Was Allegedly Killed by Navy Officer*

— *and Family Says It Happened After She Refused Abortion*, People (Aug. 18, 2022), <https://tinyurl.com/4b25f9cp>;

- Eryn Taylor, *Police: Man Beats Girlfriend After She Refuses to Have an Abortion*, News Channel 3, <https://wreg.com/news/suspect-beats-girlfriend-after-she-refuses-to-have-abortion/> (last updated Sep. 5, 2016) (man beat his girlfriend because she refused to get an abortion; he “told the woman she needed to get rid of her baby,” and when she refused, the man “allegedly began hitting her with his fist and began choking her. The victim frantically tried to get out of the car, but [he] pulled her back in. He then parked the car, pulled the victim out and reportedly began kicking her in the head creating a large gash to her head.”).
- Joe Nelson, *Charges: Pregnant Woman Beaten by Duo After Refusing to Have an Abortion*, Bring Me The News: Minn. News (May 1, 2021), <https://bringmethenews.com/minnesota-news/charges-pregnant-woman-beaten-by-duo-after-refusing-to-have-abortion> (woman, six months pregnant, was beaten by two men who “specifically target[ed] her abdomen”; woman stated that the father “consistently pressured her to have an abortion and threatened to get people to jump her and cause her to lose the baby. She told police that [he] once told her, ‘I’m gonna get somebody to stomp that baby out of you.’”).

- *Ohio Man Dominic Holt-Reid Sentenced to 13 Years for Attempted Forced Abortion*, CBS News (June 10, 2011), <https://www.cbsnews.com/news/ohio-man-dominic-holt-reid-sentenced-to-13-years-for-attempted-forced-abortion/> (man took his pregnant girlfriend to abortion clinic at gunpoint; prosecutor said man grabbed Burgess by the neck and began strangling her while saying, “We are not having this baby, Yolanda”).

Countless further instances could be added. *See, e.g.*, Micaiah Bilger, *When She Refused Abortion, Her Boyfriend Threatened to Kill Their Unborn Baby With a Coat Hanger*, LifeNews (Mar. 14, 2022), <http://tinyurl.com/46jv98bu> (linking to forty-eight other instances). The abortion, rather than freeing the woman, only adds to the list of emotional and physical traumas she has suffered.

It cannot be ignored, particularly in this case, that it is much *easier for an abuser to force a woman to ingest abortion pills* than to drag her to a facility for a surgical abortion. *E.g.* Conrad Hoyt, *Man Secretly Drugged Mother of His Unborn Child With Abortion Pill Despite Her Wanting to Keep the Baby, Cops Say*, Law & Crime (Feb. 25, 2026), <https://lawandcrime.com/crime/man-secretly-drugged-mother-of-his-unborn-child-with-abortion-pill-despite-her-wanting-to-keep-the-baby-cops-say/>; Lesley Cosme Torres, *Married Man Accused of Sneaking Abortion Pills Inside Body of Pregnant Mistress During Sex Can Remove Ankle*

Monitor, People (May 8, 2025), <https://people.com/man-accused-sneaking-abortion-pills-into-womans-body-remove-ankle-monitor-11730927>; Jerry Lambe, *Attorney Who Secretly Slipped Abortion Pills in Wife's Drink 7 Times Because Pregnancy Would 'Ruin His Plans' Sentenced to 6 Months*, Law&Crime (Feb. 8, 2024), <http://tinyurl.com/4b9spy6p>; Nancy Dillon, *California Man Accused of Forcing Pregnant Girlfriend to Take Miscarriage Pills at Gunpoint*, N.Y. Daily News, <http://tinyurl.com/36z4jd4d> (last updated Dec. 12, 2019, 6:06 PM); *Doctor Gets 3 Years for Spiking Drink to Induce Abortion*, Associated Press (May 19, 2018), <http://tinyurl.com/p8952j64>; *Cops: NY Man Forced Woman to Swallow Abortion Pill*, Associated Press (Dec. 5, 2014), <http://tinyurl.com/4pmzu33s>.

Abortion and Male Irresponsibility

Abortion also provides an escape hatch for irresponsible men generally. Some will use drastic means for imposing their will, *e.g.*, Associated Press, *Man Uses Sex Video in Abortion Plot*, L.A. Times (Nov. 8, 1998), <https://www.latimes.com/archives/la-xpm-1998-nov-08-mn-40405-story.html> (threatening to distribute a sex tape of an ex-girlfriend unless the woman agreed to get an abortion). Others will exert less blatant pressure, perhaps suggesting an abortion would preserve the relationship or that waiting until “a better time” would be wise. *E.g.*, Michele Corrison, *Charlie Sheen's Ex-Fiancée Brett Rossi on Their*

Allegedly Abusive Relationship: 'It Was Just So Toxic and So Violent,' People (Dec. 7, 2015, 6:15 PM), <https://people.com/crime/charlie-sheens-ex-brett-rossi-opens-up-about-allegedly-abusive-relationship/> (describing Brett Rossi, a woman who “alleges . . . she had [an] abortion after ‘much pressure and threats’ from Sheen”). See Ann M. Moore et al., *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 Soc. Sci. & Med. 1737, 1739 (2010) (describing a study where roughly 74% of women who experienced intimate-partner violence also experienced “reproductive control”).

There are many examples of shiftless and sneaky men accessing abortion pills for nefarious purposes even prior to the changes made by the FDA that made access to these pills easier. *E.g.*, *Man Gets 22 Years in Prison for Slipping Abortion Pill Into Pregnant Girlfriend's Drink*, Inside Edition, <https://tinyurl.com/2vfdaybv> (last updated Oct. 11, 2018); Mark Osborne, *Former Doctor Who Slipped Abortion Drug into Girlfriend's Tea Sentenced to 3 Years in Prison*, ABC News (May 19, 2018), <http://tinyurl.com/236tmhws>; Josh Saul, *Man Slipped Pregnant Girlfriend Abortion Pills: Prosecutors*, N.Y. Post (Mar. 18, 2014), <http://tinyurl.com/wzjy8mjn>.

Indeed, in this case, that is exactly what plaintiff Rosalie Markezich has alleged: that her boyfriend ordered the drug Mifeprex “from an out-of-state provider in her name,” then had the abortion-inducing drug “delivered to her home

through the U.S. Postal Service.” Cplt. ¶ 150. When Rosalie told her boyfriend she wanted to keep her baby, Cplt. ¶ 151, the boyfriend “became angry,” “shouted,” and then forced Rosalie to consume the drugs while they were alone in his car and watched her to make sure she swallowed. Cplt. ¶ 152. The drug worked as designed and caused Rosalie’s abortion. *Id.* She lost her baby. *Id.* Every stage of this scheme was made possible by the 2023 REMS changes. The out-of-state provider dispensed the drug without an in-person encounter—the precise interaction that would have given Rosalie an opportunity to appear alone before a medical professional and disclose her situation. The mail-order delivery allowed the boyfriend to obtain the drug in her name without her knowledge. The pharmacy never saw or spoke to her. None of the safeguards that the in-person dispensing requirement would have provided were available to Rosalie because the FDA had eliminated them.

Congress created procedures for the FDA to protect consumers. But abusers and traffickers who use abortion pills are not the kind of consumers the FDA should be assisting. The 2023 REMS changes facilitated their access at the direct expense of the women they target.

Abortion and Employer Coercion

Abortion has apparently long been an appealing “solution” for an employer who does not want pregnancy or childcare to hamper an employee’s devotion to the

company. *See, e.g.,* Mike Stevenson, *Pussycat Dolls Issue: Former Member Kaya Jones Allegedly Forced to Have an Abortion In Between Rehearsals*, Music Times (Apr. 11, 2023, 6:43 PM), <https://www.musictimes.com/articles/91857/20230411/pussycat-dolls-issue-former-member-kaya-jones-allegedly-forced-abortion.htm>; Marcie Bianco & Merryn Johns, *Classic Hollywood's Secret: Studios Wanted Their Stars to Have Abortions*, Vanity Fair (July 15, 2016), <http://tinyurl.com/n2nn6uha>. The passage of the Pregnancy Discrimination Act of 1978 (five years after *Roe v. Wade*, 410 U.S. 113 (1973),) reflects this very real concern with employer hostility to pregnancies that are “inconvenient” for the employer. Cases illustrate the problem as well. *See, e.g., Bergstrom-Ek v. Best Oil Co.*, 153 F.3d 851 (8th Cir. 1998) (manager repeatedly pressured employee to have an abortion, contending bearing child would wreck her life and her career); Jessica Hopp & Greg Sandoval, *Mystics Coach Was Cited in Pregnancy Suit*, Wash. Post (Sept. 16, 2002), <https://www.washingtonpost.com/archive/politics/2002/09/16/mystics-coach-was-cited-in-pregnancy-suit/75f3fd03-184c-4292-9264-3ba074460c4c/> (head coach allegedly told assistant to choose between aborting or quitting; suit was settled); Lindsay Watts, *Exclusive: Another DC Police Officer Says She Was Told End Pregnancy to Keep Her Job*, Fox5 (Oct. 20, 2021), <http://tinyurl.com/mux42brm>.

Abortion and Eugenics and Racism

As Justice Thomas noted in his concurring opinion in *Box v. Planned Parenthood of Ind. & Ky., Inc.*,

[t]he use of abortion to achieve eugenic goals is not merely hypothetical. The foundations for legalizing abortion in America were laid during the early 20th-century birth-control movement. That movement developed alongside the American eugenics movement. And significantly, Planned Parenthood founder Margaret Sanger recognized the eugenic potential of her cause.

587 U.S. at 495 (Thomas, J., concurring). It is well-known that Sanger, Planned Parenthood's founder, embraced eugenics. Indeed, Planned Parenthood's current CEO admitted as much. Alexis McGill Johnson, *I'm the Head of Planned Parenthood. We're Done Making Excuses for Our Founder*, N.Y. Times (Apr. 17, 2021), <http://tinyurl.com/mut5xjs2>. Planned Parenthood is the major abortion provider in this country, doing 434,450 abortions in a year according to a recent report. Planned Parenthood, Annual Report 2023-2024, <https://tinyurl.com/PP2024-25Rpt>. A report from the Center for Urban Renewal and Education highlights that “[b]lack women have the highest abortion ratio in the country, with 474 abortions per 1,000 live births. Percentages at these levels illustrate that more than 19 million black babies have been aborted since 1973.” Star Parker et al., Ctr. for Urban Renewal & Educ., *Policy Report: The Effects of Abortion on the Black Community* 3 (2015), <https://tinyurl.com/4fu47w3v>. In

addition, “79% of Planned Parenthood’s surgical abortion facilities are strategically located within walking distance of African and/or Hispanic communities.” *Id.* And while blacks make up only about 14% of the population of the United States, Christine Tamir, et al., *Facts About the U.S. Black Population*, Pew Rsch. Ctr. (Jan. 23, 2025), available at <https://tinyurl.com/ch4va2e4>, they get 40% of the abortions, *Reported Legal Abortions by Race of Women Who Obtained Abortion by the State of Occurrence*, Kaiser Fam. Found., <https://tinyurl.com/ynw6u6cu> (last visited May 4, 2026) (describing 2022 data), meaning that black babies are aborted far in excess of their proportion of the population.

Indeed, abortion is publicly defended as preventing certain segments of the population, disproportionately racial minorities, from having more children than would supposedly be good for society. *See, e.g.*, Jacqueline Mitchell, *Abortion Restrictions May Be Linked to Rise in Children Entering Foster Care*, Harv. Med. Sch. News & Rsch. (Nov. 16, 2023), <https://tinyurl.com/3n5h3f9b> (“Policies that restrict abortion may contribute to the overrepresentation of racial and ethnic minority children in the foster care system, perpetuating inequities and further straining vulnerable populations.”) (quoting study author Ashley O’Donoghue).

Meanwhile, abortion appears to be the principal means for eliminating Down syndrome children. Julian Quinones & Arijeta Lajka, *‘What Kind of Society Do You Want to Live In?’: Inside the Country Where Down Syndrome*

is Disappearing, CBS News, <https://tinyurl.com/2s395xhh> (last updated Aug. 15, 2017) (“Other countries aren’t lagging too far behind [Iceland] in Down syndrome termination rates. According to the most recent data available, the United States has an estimated termination rate for Down syndrome of 67 percent (1995-2011); in France it’s 77 percent (2015); and Denmark, 98 percent (2015)”). And, of course, Down syndrome is merely one example of a disability that is targeted for extermination through abortion. But abortion is not a “cure.” It simply gets rid of the one with the disability. Easy access to abortion pills facilitates do-it-yourself eugenics.

CONCLUSION

This Court should affirm the district court's judgment and hold that the FDA's 2023 REMS changes were arbitrary, capricious, and contrary to law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 19, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all parties or their counsel of record have been served via the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,615 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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