VIA EMAIL & FEDEX

March 3, 2025

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RE: Urgent request to enforce the statutory prohibition of mail-order abortions of the Comstock Act and to rescind the Office of Legal Counsel's 2022 Memorandum Opinion entitled Application of the Comstock Act to the Mailing of Prescription Drugs that Can Be Used for Abortions

Dear Attorney General Bondi, Secretary Kennedy, Mr. Boynton, General Counsel Moore, Director Maltz & Commissioner Brenner:

Greetings and thank you for your service to all Americans, including pregnant women and the Unborn. Praise God for your appointments.

This Letter is addressed to those federal agencies, commissions, administration and departments that have an impact on the distribution and regulation of abortion pills, especially through the U.S. Mail ("Mail").

As you know, abortion pills pose substantial medical and health risks, upend legal and regulatory frameworks, adversely affect women's health, and have detrimental impacts on societal well-being. This danger is made particularly egregious by the former administration's explicit endorsement of the unlawful and essentially unregulated distribution of abortion pills through the Mail.

I am writing on behalf of 40 Days for Life to respectfully urge the Department of Justice ("DOJ") to rescind the Office of Legal Counsel's Memorandum Opinion entitled *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions,* December 23, 2022 ("DOJ Memo"); to ban abortion pills distribution by Mail; and to encourage those others in control of U.S. agencies and departments to take those steps necessary to do the same.

The DOJ Memo wrongfully concludes that U.S. law allows the distribution of abortion pills by Mail under the *Comstock Act,* 18 U.S.C. §1461, *et seq.* and other federal law.

40 Days for Life

40 Days for Life is the largest pro-life organization in the world with over 1,000,000 participants in 1,800 cities in all 50 U.S. states and 64 countries around the world. 40 Days for Life provides continuous, peaceful, prayerful and lawful vigil on the street, in front of abortion facilities

worldwide. Our constant vigils allow us unprecedented access to the devastation of abortion on women, the Unborn and our Nation.

The grave harm to women and our Nation has been exacerbated to untold effect with the advent of the abortion pill and especially its distribution through the Mail, with little or no regulation or oversight (as detailed below).

As you know, over half of all U.S. abortions (600,000+ per year) are now committed by the abortion pill (medication abortion), making this one of the monumental issues of our time.

This letter delineates the medical, legal and societal issues presented by distribution of abortion pills by Mail.

Medical Concerns

The abortion pill, Mifepristone (Mifeprex), is classified as a Risk Evaluation and Mitigation Strategy ("REMS") medication due to the potential for serious complications, particularly in medication abortions.

This classification necessitates stringent Federal Drug Administration ("FDA") oversight and regulation of both distribution and prescription, ensuring that patients receive proper evaluation, counseling and monitoring by qualified healthcare providers. *In the case of abortion pills, these safeguards are absent and/or woefully inadequate.*

Recent data underscores these safety concerns: The Centers for Disease Control ("CDC") reported 613,383 abortions in 2022, with early medication abortions comprising 53.3% of these procedures. Those are only the reported cases.

In 2021 alone it is reported that five women *died* from complications related to *legally* induced medication abortions.

A June 2024 JAMA article revealed that 1.1% of study participants experienced serious side effects, including hospitalizations and surgeries, a rate notably higher than previous studies. On a national scale that would be *over 6,000 women per year suffering serious medical complications from a pill that is routinely mailed to them*.

The FDA approves the use of abortion pills by women whose unborn babies are up to ten (10) weeks of gestation. The FDA plans to extend that, presumably without Congressional or DOJ

oversight, perhaps into the second trimester. Recent lawsuits have extensively delineated why and how the FDA's procedure to approve abortion pills was unlawful. The Trump Administration has declared that the *Unborn are protected from conception*.

Abortion pills, especially through the Mail, are often prescribed by "healthcare providers" never having seen nor having laid hands on the "patients." This is unprecedented in medicine.

Without a medical visit, let alone ultrasounds and other routine testing, the use of abortion pills increases risks like hemorrhage, infection and death. In-person exams are also crucial to rule out ectopic pregnancies, which pose higher mortality risks.

Despite being a REMS medication, Mifeprex's use is rising without adequate FDA monitoring, raising questions about its safety compared to over-the-counter drugs.

Furthermore, the healthcare care provider is unable to verify even the basic medical issues including age of the "patient," age of the unborn child, whether in fact the "patient" is in fact pregnant, whether and when she receives the pills, whether and when she takes the pills, complications and aftercare.

The distribution of abortion pills by Mail creates a perfect storm of risk, including lack of medical testing and supervision, insufficient patient education, and the dangers of self-administration or administration by unqualified individuals and a host of other unmanageable concerns.

Legal Concerns
Abortion pill distribution by Mail is unlawful.

The DOJ Memo wrongfully opines that U.S. law allows distribution of abortion pills through the Mail so long as the sender does not intend for them to be used unlawfully.

<u>Agency Authority</u>
The DOJ Memo flies in the face of U.S. law and gives impermissible deference to the FDA under the recent U.S. Supreme Court case of *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024). *Loper* overturned the *Chevron Doctrine*, making clear that the FDA and other federal agency decisions have no presumptive weight in court. This evolving legal landscape requires careful consideration of federal and state law and regulation.

The frequent prescription and distribution by Mail of abortion pills, its documented adverse effects, and the rising rate of medication-induced abortions highlight the urgent need for strict enforcement of federal law and regulation.

The current lack of oversight undermines state authority and endangers patient safety.

Federal Law

Further, the *Comstock Act* directly prohibits distributing abortifacient materials via Mail and online services.

The DOJ must enforce the *Comstock Act* to protect public policy and patient safety.

Human Sex Trafficking

In addition, the implications of mail-order abortion pills on *human sex trafficking* are manifest.

A significant number of human sex-trafficking victims seek medical care during their victimization. A study by Richie-Zavaleta, *et al.* (2020) reveals that victims access two primary types of traditional healthcare settings while being trafficked: Emergency Departments (76.2%) and community clinics (71.4%). Notably, nearly all who visited community clinics sought services at Planned Parenthood clinics. Other healthcare settings frequented by victims included urgent care clinics (28.6%), mental health clinics or hospitals (23.8%), abortion clinics (19%), private medical practices (14.3%), dental offices (9.5%), OB/GYN clinics (4.8%) and marijuana dispensaries (4.8%).

A significant percentage of human sex trafficking victims visiting healthcare facilities remain unidentified due to the clandestine nature of trafficking, lack of awareness, and inadequate identification protocols. Healthcare providers are unable to see incidents of abuse such as bruising, cuts and burns; as well as identify tattoos and other markings of human sex traffickers.

Additionally, human sex traffickers often control the victims' interactions with healthcare providers, further hindering disclosure.

The availability of mail-order abortion pills facilitates the human sex trafficker's control over the victim, effectively removing the victim from potential identification by healthcare providers. This poses a significant challenge to efforts aimed at identifying and assisting human sex trafficking victims.

The *Mann Act*, 18 U.S.C. 2421, *et seq*., criminalizes the transportation of minors and women across state lines "for the purpose of prostitution or debauchery, or for any other immoral purpose." While originally designed to combat forced prostitution, this law could also apply to traffickers transporting women across state lines for abortions in furtherance of their illicit activities.

Abortion by Mail clearly allows, facilitates and encourages the transportation of women and minors across state lines for the purpose of obtaining abortion pills, sometimes by Mail. These activities fall squarely under the *Mann Act*.

Mandatory Reporters

Finally, in most if not all states, healthcare providers are mandatory reporters of abuse and human sex trafficking. Without in person visits, there is little opportunity for doctors and nurses to see and report and help victims of abuse. Healthcare providers are unable to see incidents of abuse such as bruising, cuts and burns; as well as identify tattoos and other markings of human sex traffickers.

Pro Life and Societal Issues

The distribution of abortion pills through the Mail is not only bad medicine and bad law, but hurts women, society and obviously, the Unborn.

With millions of participants in the U.S. and worldwide, 40 Days for Life has first-hand knowledge of the damage caused by abortion pills, especially by Mail.

Information about who is requesting, receiving and ingesting the abortion pills is often unverified and unverifiable.

Healthcare providers often never see or lay hands on their “patients,” let alone provide follow-up care.

The date of conception, age of the unborn child and timing of ingestion are all unknown.

Mandatory reporting of abuse and sex trafficking is not possible, as health care providers never see the signs if there are no personal visits.

Abortion pills by Mail increase the incidence of domestic violence, sexual violence and human sex trafficking.

Conclusion

We urge the DOJ and all Offices, Agencies, Administrations and Departments of the federal government to end the illegal distribution of abortion pills by Mail and to reinstate stringent requirements on abortion pills, essential for supporting the safety of women and the Unborn.

These measures will uphold law and protect public health.

Thank you for your attention to this urgent matter. We are at your disposal should you need further.

Shawn Carney
Shawn Carney (Mar 3, 2025 10:42 MST)

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President & CEO
40 Days for Life

Matt Britton (Mar 3, 2025 11:06 MST)

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Attachments:
Comstock Act
CDC November 2024 article
JAMA June 2024 article
Loper Bright Enterprises v. Raimondo
Mifeprex FDA Package Insert