Attachment 1
Comstock Act

(Slip Opinion)

Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions

Section 1461 of title 18 of the U.S. Code does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully. Because there are manifold ways in which recipients in every state may lawfully use such drugs, including to produce an abortion, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully.

December 23, 2022

MEMORANDUM OPINION FOR THE GENERAL COUNSEL
UNITED STATES POSTAL SERVICE

In the wake of the United States Supreme Court's recent decision overruling *Roe v. Wade*, 410 U.S. 113 (1973),[1] you have asked for this Office's view on whether section 1461 of title 18 of the United States Code prohibits the mailing of mifepristone and misoprostol, two prescription drugs that are commonly used to produce abortions,[2] among other purposes. Memorandum for Christopher Schroeder, Assistant Attorney General, Office of Legal Counsel, from Thomas J. Marshall, General Counsel, United States Postal Service, *Re: Request for an Interpretation of 18 U.S.C. § 1461*, at 1 (July 1, 2022) ("USPS Request"). Originally enacted as part of the Comstock Act of 1873, section 1461 currently declares "[e]very article or thing designed, adapted, or intended for producing abortion," as well as "[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion," to be "nonmailable matter" that the United States Postal Service ("USPS") may not lawfully deliver. 18 U.S.C. § 1461.

We conclude that section 1461 does not prohibit the mailing, or the delivery or receipt by mail, of mifepristone or misoprostol where the sender

[1] *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

[2] *See* Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Hum. Servs., *Abortion Surveillance—United States, 2019*, 70 MMWR Surveillance Summaries, Nov. 26, 2019, at 8, https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm.

lacks the intent that the recipient of the drugs will use them unlawfully.[3] This conclusion is based upon a longstanding judicial construction of the Comstock Act, which Congress ratified and USPS itself accepted. Federal law does not prohibit the use of mifepristone and misoprostol. Indeed, the U.S. Food and Drug Administration ("FDA") has determined the use of mifepristone in a regimen with misoprostol to be safe and effective for the medical termination of early pregnancy.[4] Moreover, there are manifold ways in which recipients in every state may use these drugs, including to produce an abortion, without violating state law. Therefore, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully.[5]

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[3] A cognate provision, 18 U.S.C. § 1462, imposes similar abortion-related prohibitions on using an express company or other common carrier for "carriage" of such items. Our analysis in this memorandum is applicable to that provision as well.

Sections 1461 and 1462 refer not only to persons who transmit such items by mail or by common carrier—the senders—but also to individuals who "knowingly cause[]" such items to be mailed, *id.* § 1461; "knowingly take[]" any such items from the mail for the purpose of circulating or disposing of them, *id.*; or "knowingly take[] or receive[]" such items from an express company or common carrier, *id.* § 1462. In the different contexts of obscenity and child pornography, courts of appeals have held that section 1461 applies to the act of the recipient who orders the nonmailable material and thereby "causes" it to be mailed. *See, e.g.*, *United States v. Carmack*, 910 F.2d 748, 748 (11th Cir. 1990); *United States v. Johnson*, 855 F.2d 299, 305–06 (6th Cir. 1988). *But see Johnson*, 855 F.2d at 307–11 (Merritt, J., dissenting); *United States v. Sidelko*, 248 F. Supp. 813, 815 (M.D. Pa. 1965). As far as we know, however, these provisions have never been applied to prosecute the recipients of abortion- and contraception-related materials. Moreover, the court of appeals decisions we discuss below construed the relevant provisions of the Comstock Act to turn on the nature of the sender's intent, not that of the recipient. Consistent with this practice, we focus on the sender throughout this memorandum. To the extent a recipient might be covered, however, our analysis herein would apply and therefore section 1461 would not prohibit that person from ordering or receiving the drugs if she does not intend that they be used unlawfully.

[4] *See Mifeprex (Mifepristone) Tablets*, U.S. Food & Drug Admin. 2 (Mar. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2019/020687s022lbl.pdf (mifepristone label); *see also Mifeprex (Mifepristone) Information*, U.S. Food & Drug Admin., https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information (last updated Dec. 16, 2021).

[5] For purposes of this opinion, we assume but do not decide that section 1461 could be constitutionally applied to the mailing of drugs intended to produce abortions. We also assume without deciding that state law, as well as federal, is relevant to the application of section 1461. In addition, we do not address here whether and under what circumstances the mailing of mifepristone or misoprostol might violate other federal laws. Finally, as

I.

The Comstock Act has a long and complex history. The original 1873 law was the handiwork of Anthony Comstock—"a prominent anti-vice crusader who believed that anything remotely touching upon sex was . . . obscene"—who successfully lobbied Congress and state legislatures in the nineteenth century to enact expansive laws "to prevent the mails from being used to corrupt the public morals." *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 70 n.19 (1983) (omission in original) (quotation marks and citations omitted); *see also* Priscilla J. Smith, *Contraceptive Comstockery: Reasoning from Immorality to Illness in the Twenty-First Century*, 47 Conn. L. Rev. 971, 982–84 (2015). Originally entitled "An Act for the Suppression of Trade in, and Circulation of, obscene Literature and Articles of immoral Use," Act of Mar. 3, 1873, ch. 258, 17 Stat. 598 ("1873 Act"), the Act is perhaps best known for having prohibited the distribution of a wide range of writings until courts and the Executive Branch determined that the Free Speech Clause of the First Amendment significantly limited the permissible reach of the law, *see, e.g.*, *Bolger*, 463 U.S. at 69–75. In addition, the Act also included several restrictions on the conveyance of things designed to prevent conception or to produce abortion.[6] Congress largely repealed the references to contraceptives in

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you note, USPS Request at 3, some states have independently enacted laws to restrict the mailing of these drugs for abortion purposes within their jurisdiction. *See, e.g.*, Tex. Health & Safety Code § 171.063(b-1). We do not here assess the possible effect of federal law on such state restrictions, other than to note our agreement with your view that the doctrine of intergovernmental immunity would preclude application of such state laws against USPS employees who are complying with their duties under federal law. *See Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __, at *1–5, *10 (Sept. 21, 2022).

[6] The original 1873 Act consisted of five sections, three of which are relevant to this opinion. Section 1 of the Act prohibited, *inter alia*, the sale, distribution, or possession, in the District of Columbia and federal territories, of "any drug or medicine, or any article whatever, for the prevention of conception, or for causing *unlawful* abortion," along with advertisements for contraceptives and abortion services and information about how to obtain them. 1873 Act § 1, 17 Stat. at 598–99 (emphasis added). Congress chose not to include that prohibition when it comprehensively enacted title 18 into positive law in 1948. *See* Pub. L. No. 80-772, § 21, 62 Stat. 683, 864 (1948) (repealing, *inter alia*, 18 U.S.C. § 512 (1946)).

Section 2 of the Act, which eventually became codified as section 1461, criminalized the mailing of, *inter alia*, "obscene, lewd, or lascivious" writings; "any article or thing

1971. *See* Pub. L. No. 91-662, 84 Stat. 1973 (1971) (discussed *infra* Part I.C).

In its current form, section 1461, which is derived from section 2 of the 1873 Act, begins by declaring "[e]very obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance" to be "nonmailable matter" that "shall not be conveyed in the mails or delivered from any post office or by any letter carrier." 18 U.S.C. § 1461. The next clauses declare nonmailable "[e]very article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and [e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose." *Id.*; *see also* 39 U.S.C. § 3001(a) (likewise declaring such matter to be "nonmailable"). Section 1461 further makes it a felony to "knowingly use[] the mails for the mailing, carriage in the mails, or delivery" of any such things, or to "knowingly cause[]" them "to be delivered by mail according to the direction thereon." 18 U.S.C. § 1461. In addition, 18 U.S.C. § 1462 imposes two other, related prohibitions: it makes it unlawful to bring those same things "into the United States, or any place subject to the jurisdiction thereof," and it prohibits the knowing use of "any

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intended or adapted for any indecent or immoral use or nature"; and "any article or thing designed or intended for the prevention of conception or procuring of abortion." 1873 Act § 2, 17 Stat. at 599. Before Congress enacted title 18 into positive law in 1948, the provision that is now section 1461 was codified at 18 U.S.C. § 334 (1925–1926).

Section 3 of the 1873 Act prohibited all persons "from importing into the United States" any of the "hereinbefore-mentioned articles or things"—referring to the items prohibited by sections 1 and 2. 1873 Act § 3, 17 Stat. at 599. One year later, *see* Act of June 20, 1874, ch. 333, 18 Stat. pt. 3, at 113–14, Congress codified section 3 of the Comstock Act as section 2491 of the Revised Statutes and, in doing so, replaced the section's reference to the "hereinbefore-mentioned articles or things" with a list of articles and things pulled from the other provisions of the Comstock Act, *see* Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460; *see also* Rev. Stat. § 2491 (2d ed. 1878), 18 Stat. pt. 1, at 457. In supplying content to these words, Congress prohibited the importation of articles or things "for causing unlawful abortion," reflecting the language of section 1 of the original Comstock Act. Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460. Congress consistently retained the words "unlawful abortion" in follow-on versions of this restriction, including in subsequent Tariff Acts through 1930, after which the provision was codified at 19 U.S.C. § 1305.

express company or other common carrier or interactive computer service" for "carriage" of such items "in interstate or foreign commerce."[7]

Over the course of the last century, the Judiciary, Congress, and USPS have all settled upon an understanding of the reach of section 1461 and the related provisions of the Comstock Act that is narrower than a literal reading might suggest. This construction occurred long before the Supreme Court's decisions in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Roe* and thus was not dependent upon the Court's recognition of constitutional rights regarding the prevention or termination of pregnancy. Beginning early in the twentieth century, federal courts construed the provisions not to prohibit all mailing or other conveyance of items that can be used to prevent or terminate pregnancy. By the middle of the century, the well-established, consensus interpretation was that none of the Comstock Act provisions, including section 1461, prohibits a sender from conveying such items where the sender does not intend that they be used unlawfully. USPS accepted that construction and informed Congress of it. On several occasions, Congress reenacted and amended the Comstock Act against the backdrop of the judicial precedent in a manner that ratified the federal courts' narrowing construction.

A.

Since early in the twentieth century, federal courts have agreed that section 1461 and related Comstock Act provisions do not categorically prohibit the mailing or other conveyance of items designed, adapted, or intended for preventing or terminating pregnancy.

In 1915, in *Bours v. United States*, 229 F. 960 (7th Cir. 1915), the U.S. Court of Appeals for the Seventh Circuit reversed the conviction of a doctor who had mailed a letter addressing how a woman might procure an "operation" from him. The court noted that Congress enacted the provision that is now section 1461 pursuant to its "national power of controlling the mails" and held that, "[i]n applying the national statute to an alleged offensive use of the mails at a named place, it is immaterial what

[7] The importation prohibition—along with 19 U.S.C. § 1305 (prohibiting the importation into the United States of "any drug or medicine or any article whatever for causing unlawful abortion")—derives from section 3 of the original 1873 Act, *see* § 3, 17 Stat. at 599. The common-carrier prohibitions derive from an 1897 law extending the mailing prohibitions of the original Comstock Act to common carriers. *See* Act of Feb. 8, 1897, ch. 172, 29 Stat. 512.

the local statutory definition of abortion is, what acts of abortion are included, or what excluded." *Id.* at 964. The court further held that "[t]hough the letter of the statute would cover all acts of abortion," under a "reasonable construction," the statute should not be read to prohibit the mailing of advertisements for a procedure a doctor would perform in order "to save [the] life" of the woman. *Id.* Because the indictment had not drawn this distinction, the defendant had no opportunity to explain whether he had intended to perform the operation "only under such circumstances as would make it the duty of any reputable physician to perform the act." *Id.* at 965. Therefore, the court reversed the judgment and remanded the case. *Id.* at 966.

Fifteen years later, in *Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103 (2d Cir. 1930), the U.S. Court of Appeals for the Second Circuit also reasoned in dicta that the statute could not be construed as expansively as its language might suggest. *Youngs Rubber* was a trademark infringement suit in which the defendants argued that the plaintiff's business was unlawful because it involved sending Trojan condoms to druggists for retail sale via the mail and common carriage, a practice that—according to the defendant—violated the Comstock Act. *Id.* at 108. "Taken literally," the appeals court wrote, the Comstock Act's "language would seem to forbid the transportation by mail or common carriage of anything 'adapted,' in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately." *Id.* "Such a construction," the court cautioned, "would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes." *Id.* The court observed that New York law did not prohibit supplying such articles to physicians "or by their direction or prescription." *Id.* at 109 (quotation marks omitted). Reasoning that "[t]he intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress," the court construed the statute's contraception and abortion prohibitions to "requir[e] an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion." *Id.* at 108.

In 1933, the U.S. Court of Appeals for the Sixth Circuit embraced the same limiting construction of the Comstock Act. *Davis v. United States*,

62 F.2d 473 (6th Cir. 1933), involved a defendant who was convicted of, among other things, the sale of "rubber sundries" to druggists that were delivered by common carrier. *Id.* at 474. Invoking the "rule of reasonable construction," *id*. at 475, the *Davis* court reversed the conviction because the district court did not permit the admission of evidence that the defendant had sent the items intending that they be used for "treatment and prevention of disease" rather than to prevent conception, *id.* at 474. The court quoted with approval *Youngs Rubber*'s view that the statute should be read to "requir[e] an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes," *id.*, and noted that the "soundness of its reasoning commends itself to us," *id.* at 475. The court accordingly rejected the district court's conclusion that the statute "brings within the condemnation of each section articles or things that are capable of being used for the specified purposes without respect to their having a legitimate use, and without regard to the intent of the persons mailing [them]," *id.* at 474, holding instead that "intent that the articles . . . shipped in interstate commerce were to be used for condemned purposes is a prerequisite to conviction," *id.* at 475.

Three years later, the Second Circuit revisited the issue and adopted *Youngs Rubber*'s dicta as a holding in *United States v. One Package*, 86 F.2d 737 (2d Cir. 1936). In that case, a New York gynecologist had imported vaginal pessaries from a Japanese sender who had asked the doctor to use them in her practice to assess whether they were useful for contraceptive purposes. *Id.* at 738. At the time, New York law prohibited the sale or provision of articles for the prevention of conception, but it included an exception for the provision of such things to physicians "who may in good faith prescribe their use for the cure or prevention of disease." *Id.* (citing N.Y. Penal Law § 1145 (Consol. Laws, c. 40)). The doctor testified that she prescribed the items only where her patient had a health-related reason such that "it would not be desirable for a patient to undertake a pregnancy," which the court of appeals apparently understood to fall within the exception under New York law that permitted physicians to provide patients with contraceptives for particular purposes. *Id.*[8] The court quoted favorably, and at length, from the dicta in *Youngs Rubber*, and noted the accord of the Sixth Circuit in *Davis*. *Id.* at 738–39. It then

[8] The court of appeals noted that the accuracy and good faith of the doctor's testimony was "not questioned." *One Package*, 86 F.2d at 738.

dismissed the case because none of the relevant provisions should be read to prohibit the mailing or importation of items to prevent or terminate pregnancy with the intent that they be used for lawful purposes. *Id.* at 739–40. The court reasoned that it was appropriate to, in effect, imply the insertion of the adjective "unlawful," which expressly modified the word "abortion" in some provisions of the Comstock Act, to modify the terms "prevention of conception" and "abortion" throughout the various provisions that derived from the Act. *Id.* [9] The court elaborated:

> [W]e are satisfied that this statute, as well as all the acts we have referred to, embraced only such articles as Congress would have denounced as immoral if it had understood all the conditions under which they were to be used. Its design, in our opinion, was not to prevent the importation, sale, or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well being of their patients. The word "unlawful" would make this clear as to

[9] The case involved the "prevention of conception" prong of the Tariff Act of 1930—a descendent provision of the original Comstock Act—which prohibited importing articles "for the prevention of conception or for causing *unlawful* abortion." *One Package*, 86 F.2d at 738 (emphasis added) (quoting 19 U.S.C. § 1305(a) (1934)); *see also supra* note 6. The court noted that the original 1873 Comstock Act likewise used the adjective "unlawful" to modify "abortion" in one of its provisions (section 1—involving the sale and possession of abortifacients in federal territories) but not in others, and not as to articles for preventing conception. *One Package*, 86 F.2d at 739. The court reasoned that Congress could not reasonably have had the design to make the "unlawful" nature of the intended use an element of the offense under some of the abortion-related prohibitions but not others, or as to the importation of items used for abortion but not those used for contraception. *See id.* ("[I]n the Comstock Act, . . . the word 'unlawful' was sometimes inserted to qualify the word 'abortion,' and sometimes omitted. It seems hard to suppose that under the second and third sections articles intended for use in procuring abortions were prohibited in all cases while, under the first section, they were only prohibited when intended for use in an 'unlawful abortion.'"). Instead, the court reasoned, the adjective "unlawful" must in effect be read to modify all of the prohibitions. *Id.*; *see also id.* at 740 (Learned Hand, J., concurring) ("[I]t is of considerable importance that the law as to importations should be the same as that as to the mails; we ought not impute differences of intention upon slight distinctions in expression."). The *One Package* court's analysis that the adjective "unlawful" should be read to modify all of the provisions of the Comstock Act is bolstered by the 1874 Congress's understanding of the term "hereinbeforementioned articles" in section 3 of the Comstock Act to prohibit the import only of articles, drugs, or medicines "for causing unlawful abortion." *See supra* note 6; Rev. Stat. § 2491 (1st ed. 1875), 18 Stat. pt. 1, at 460.

> articles for producing abortion, and the courts have read an exemption into the act covering such articles even where the word "unlawful" is not used. The same exception should apply to articles for preventing conception. . . . It seems unreasonable to suppose that the national scheme of legislation involves such inconsistencies and requires the complete suppression of articles, the use of which in many cases is advocated by such a weight of authority in the medical world.

Id.

The Second Circuit again reaffirmed this construction of the statute shortly thereafter in *United States v. Nicholas*, 97 F.2d 510 (2d Cir. 1938), which involved the Comstock Act's prohibition on mailing information about contraception. Citing *Youngs Rubber* and *One Package*, the court in *Nicholas* noted: "We have twice decided that contraceptive articles may have lawful uses and that statutes prohibiting them should be read as forbidding them only when unlawfully employed." *Id*. at 512.[10] Applying this reading, the court held that USPS was required to deliver a magazine containing contraception-related information to a magazine editor who might then distribute it to persons such as physicians who could use the information lawfully. *Id.* The court further held that USPS should detain a book containing such information when it was addressed to an individual "about whom nothing" was known "except that he was not a physician," *id.* at 511, but allowed for the recipient to "prove whether he is among the privileged classes" whose possession of the book "would be lawful," *id.* at 512.

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[10] Although *Nicholas* described the relevant inquiry as being whether the articles were "unlawfully employed," rather than whether the sender *intended* that they be used unlawfully—the touchstone the court had adopted in *Youngs Rubber* and *One Package*—this difference in phrasing does not reflect a departure relevant to our analysis. The court's invocation of those two earlier decisions without qualification, as well as its further citation to *Davis*, indicates that it did not intend to deviate from the interpretation of the Act that the court had adopted in those decisions. Both the Historical and Revision Note to section 1461 and subsequent federal decisions understood *Nicholas* similarly. *See* 18 U.S.C. § 1461 (Historical and Revision Note) (observing that *Nicholas* followed "[t]he same rule" as *Davis*, which held that "the *intent* of the person" that a mailing "be used for condemned purposes was necessary for a conviction" (emphasis added)); *United States v. Gentile*, 211 F. Supp. 383, 385 n.5 (D. Md. 1962) (citing, *inter alia*, *Nicholas* for the proposition that "contraceptive devices [must be] shipped and received with intent that they be used for *illegal* contraception or abortion").

In 1944, the U.S. Court of Appeals for the D.C. Circuit also narrowly construed the statute in the context of a report about contraceptive materials that a consumer group had published and mailed to individuals who submitted a signed certificate attesting, "I am married and use prophylactic materials on the advice of a physician." *Consumers Union of United States, Inc. v. Walker*, 145 F.2d 33, 33 (D.C. Cir. 1944). The appeals court explained that it was "inclined to follow the interpretation [of the Comstock Act] which has been adopted in other circuits," citing to *Nicholas*, *Davis*, *Youngs Rubber*, and *One Package*. *Id.* at 35 & n.11. It therefore concluded that "Congress did not intend to exclude from the mails properly prepared information intended for properly qualified people," and held that the report "was proper in character within the meaning of those decisions." *Id*. at 35.

Subsequent judicial discussions of the relevant Comstock Act provisions recognized the narrowing construction upon which the courts of appeals had converged. *See, e.g.*, *United States v. Gentile*, 211 F. Supp. 383, 385 n.5 (D. Md. 1962) ("It seems clear under the authorities that in order to make out an offense under this paragraph the Government should be required to allege and prove that contraceptive devices are shipped and received with intent that they be used for *illegal* contraception or abortion or for indecent or immoral purposes." (citing *Youngs Rubber*, *Davis*, and *Nicholas*)); *United States v. H.L. Blake Co.*, 189 F. Supp. 930, 934–35 (W.D. Ark. 1960) ("It would seem reasonable to give the word 'adapted' a more limited meaning than that above suggested and to construe the whole phrase 'designed, adapted or intended' as requiring an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." (quoting *Youngs Rubber*, 45 F.2d at 108)); *United States v. 31 Photographs*, 156 F. Supp. 350, 357 (S.D.N.Y. 1957) (characterizing the appellate court decisions as "upholding importation of contraceptives and books dealing with contraception when sought to be brought into the country for purposes of scientific and medical research," such that "only contraceptives intended for 'unlawful' use were banned" (citing, *inter alia*, *One Package*, *Nicholas*, *Davis*, and *Walker*)); *see also Poe v. Ullman*, 367 U.S. 497, 546 n.12 (1961) (Harlan, J., dissenting) ("[B]y judicial interpretation . . . the absolute prohibitions of the [Comstock] law were qualified to exclude professional medical use." (citing *Youngs Rubber*, *Davis*, and *One Package*)).

As the court in one of those later cases noted, the analysis in *Youngs Rubber* "has been cited many times and has become the law to be applied to the facts where the question of a violation of the statute . . . is before the court." *H.L. Blake Co.*, 189 F. Supp. at 934. Under that "law to be applied," the court explained, "it is well established that the defendants should not be convicted unless it is established beyond a reasonable doubt that at the time they mailed the sample packages of prophylactics . . . they intended them to 'be used for illegal contraception.'" *Id.* at 935 (quoting *Youngs Rubber*, 45 F.2d at 108).[11]

B.

Congress has amended the Comstock Act's provisions numerous times since the federal courts' decisions in *Bours*, *Youngs Rubber*, *Davis*, *One Package*, *Nicholas*, and *Walker*, each time perpetuating the wording of the Act's abortion-related provisions. Moreover, as we explain in greater detail below, USPS accepted the courts' narrowing construction of the Act in administrative rulings, and it informed Congress of the agency's acceptance of that construction in connection with Congress's amendment of the contraception-related provisions of the Comstock Act.

We conclude that Congress's repeated actions, taken "[a]gainst this background understanding in the legal and regulatory system," *Texas Dep't of Housing & Cmty. Affs. v. Inclusive Cmtys. Project*, 576 U.S. 519, 536 (2015), ratified the Judiciary's settled narrowing construction. *See id.* ("If a word or phrase has been . . . given a uniform interpretation by inferior courts . . . , a later version of that act perpetuating the wording is presumed to carry forward that interpretation." (omissions in original) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpre-

[11] The leading cases that established this accepted construction—*Youngs Rubber*, *One Package*, and *Davis*—each involved items that could be used to prevent conception rather than to produce abortion. Nevertheless, the canonical passage from *Youngs Rubber*, repeated in each of the cases and in others thereafter, referred both to items designed to prevent conception and to those designed to induce abortions. Moreover, the court in *One Package* went to lengths to explain that all of the relevant Comstock Act prohibitions should be read consistently to require proof of a sender's intent to facilitate unlawful downstream use. *See supra* note 9; *see also Bours*, 229 F. 960 (construing narrowly the prohibition on mailing of information about how to obtain abortions). We therefore agree with your assessment that "there is no apparent reason why the case-law principles applicable to contraceptive articles (formerly) under Section 1461 would not also apply to abortion-inducing articles under the same provision." USPS Request at 3 n.3.

tation of Legal Texts 322 (2012))); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change."); *cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009) (holding that when Congress amended the Individuals with Disabilities Education Act without altering the text of a provision that the Supreme Court had previously interpreted, Congress "implicitly adopted [the Court's] construction of the statute").

The conclusion that Congress ratified the longstanding judicial view of the Comstock Act is strongly reinforced by the Historical and Revision Note that was included in the 1945 report of the House Committee on the Revision of the Laws[12] when Congress enacted title 18 of the U.S. Code into positive law.[13] That Note subsequently was appended to the official U.S. Code entries for sections 1461 and 1462. *See* 18 U.S.C. § 1461 (Historical and Revision Note).[14] It specifically "invited" the "attention of Congress" to the courts of appeals' decisions in *Youngs Rubber*, *Davis*, *Nicholas*, and *One Package*, and quoted at length from *Youngs Rubber*, including its conclusion that the relevant provisions of the statute should be construed to require "an intent on the part of the sender that the article

[12] *See* H.R. Rep. No. 79-152, at A96–97 (1945).

[13] *See* Pub. L. No. 80-772, 62 Stat. at 768.

[14] The Historical and Revision Notes were written by a staff of experts hired by Congress to revise the U.S. Code in the 1940s, including the editorial staffs of the West and Thompson publishing companies, the former Chief of the Appellate Section of the Department of Justice Criminal Division, and other contributors from both inside and outside of government. *See* H.R. Rep. No. 79-152, at 1–7 (1945) (describing in detail this revision process and noting that "[t]he [House] Committee on Revision of the Laws has exercised close and constant supervision over this work through its general counsel . . . and its special counsel"). The Supreme Court has discussed or relied on Historical and Revision Notes numerous times, most frequently during the middle of the twentieth century. *See, e.g.*, *Ex parte Collett*, 337 U.S. 55, 65–71 (1949) (discussing a revision note to 28 U.S.C. § 1404 and concluding that the revision note was highly significant in determining the meaning of section 1404(a)); *W. Pac. R.R. Corp. v. W. Pac. R.R. Co.*, 345 U.S. 247, 254–55 (1953); *Muniz v. Hoffman*, 422 U.S. 454, 471–73 (1975).

mailed or shipped by common carrier be used for illegal contraception or abortion." *Id.*[15]

Congress subsequently amended the Comstock Act four times (in 1955, 1958, 1971, and 1994) without changing the language in any respect that suggested disagreement with the well-established narrowing interpretation that the Historical and Revision Note had specifically brought to its attention. Congress made the third of these amendments in 1971—removing the Act's references to contraceptives—after being informed by the Post-

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[15] The Note's complete discussion of the court of appeals decisions is as follows:

> The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.
>
> In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States v. Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis v. United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation v. C. I. Lee & Co.*, *supra*, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States v. One Package*, C.C.A. 1936, 86 F. 2d 737.)
>
> 18 U.S.C. § 1461 (Historical and Revision Note).

master General that both the federal courts and USPS had adopted this narrowing interpretation. *See* H.R. Rep. No. 91-1105, at 3–4 (1970).[16] Moreover, we have found no evidence that Congress disapproved of the interpretation.[17] Indeed, in 2007 Congress legislated regarding the FDA's treatment of mifepristone in a manner consistent with the understanding that the Comstock Act does not categorically prohibit the covered modes of conveying abortion-inducing drugs.[18]

Congress's several actions "perpetuating the wording" of the Comstock Act's abortion provisions against the backdrop of a well-established, settled judicial construction that was brought to Congress's attention

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[16] *See supra* note 11 (explaining that the courts of appeals' rationales applied equally to conveyance of items to prevent conception and to produce abortion).

[17] The House report stated at the outset of its discussion that "[e]xisting statutes completely prohibit the importation, interstate transportation, and mailing of contraceptive materials, or the mailing of advertisement or information concerning how or where such contraceptives may be obtained or how conception may be prevented." H.R. Rep. No. 91-1105, at 2. That introductory remark, however, plainly was a reference to the literal text of the provisions, as opposed to their settled meaning. The report proceeded to convey the Postmaster General's description of the settled judicial and administrative narrowing construction of the statute, noting that it was in tension with the text of the contraception provisions, and neither the report nor any evidence in the legislative record of which we are aware expresses the committee's disagreement with that construction.

[18] In approving a mifepristone product for certain abortions in 2000, the FDA imposed certain restrictions on distribution as a condition of approval, pursuant to its regulatory authority. *See* Letter for Sandra P. Arnold, Vice President, Population Council, from Ctr. for Drug Evaluation & Rsch., U.S. Food & Drug Admin., *Re: NDA 20-687* (Sept. 28, 2000). In the Food and Drug Administration Amendments Act of 2007 ("FDAAA"), Congress provided that any such restrictions, identified in the FDAAA as "elements to assure safe use," were deemed to be a "Risk Evaluation and Mitigation Strategy" that would continue to be required under the new statutory regime unless and until the FDA determined that modifications were necessary. *See* Pub. L. No. 110-85, tit. IX, § 909(b), 121 Stat. 823, 950–51 (2007). In the debate preceding this amendment, critics of the FDA's 2000 approval of mifepristone for abortion purposes acknowledged that the legislation would apply to that mifepristone approval. *See* 153 Cong. Rec. S5765 (daily ed. May 9, 2007) (statement of Sen. Coburn); 153 Cong. Rec. S5469–70 (daily ed. May 2, 2007) (statement of Sen. DeMint). Yet neither those critics nor anyone else in the congressional debate mentioned the Comstock Act, even though it would have been natural to assume that the FDA's 2000 approval had resulted in the distribution of mifepristone to certified physicians through the mail or by common carrier. Congress's decision to carry forward the FDA's regulatory conditions for mifepristone without addressing such modes of distribution suggests that Congress did not understand the Comstock Act to invariably prohibit the conveyance by mail or common carrier of drugs intended to induce abortions.

establishes Congress's acceptance of that narrowing construction. *Inclusive Cmtys. Project*, 576 U.S. at 536. That construction, as noted, does not prohibit the mailing of an item that is designed, adapted, or intended for producing abortion in the absence of an intent by the sender that the item will be used unlawfully.

C.

USPS has accepted the settled judicial construction of the Comstock Act—and reported as much to Congress.

In 1951, the Solicitor of the Post Office Department, Roy C. Frank, wrote to an Arizona postmaster concerning a Planned Parenthood clinic's mailing of diaphragms and vaginal jellies to its patients "for medicinal purposes." *Contraceptive Matter—Mailings—Physicians*, 9 Op. Sol. P.O.D. 47 (1951) (No. 40). Citing "the decisions of the Federal courts," Frank opined that a "mailing of contraceptives by a physician to a patient would not be regarded as a violation" of the Comstock Act. *Id.* Similarly, in 1963, when the St. Louis Postmaster detained 490 "contraceptive devices and substances," the USPS General Counsel informed him that he should "dispatch" those items because "there is no available evidence that the items in each of these parcels were being distributed for unlawful purposes." Letter for Harriet F. Pilpel, Greenbaum, Wolff & Ernst, from Louis J. Doyle, General Counsel, Post Office Department (Oct. 24, 1963) (on file with the Smith College Libraries). In a letter to the sender Emko Company's counsel, the USPS General Counsel added that "should we obtain evidence in the future that [Emko] is distributing contraceptive devices and substances for unlawful purposes we will again look into the matter." *Id.*

Of particular importance, when Congress was considering amendments to the Comstock Act in 1970, USPS brought to Congress's attention its acceptance of the Judiciary's narrowing construction. The Postmaster General submitted a statement to Congress about his agency's understanding that "the delivery by mail of contraceptive information or materials has by court decisions, and administrative rulings based on such decisions, been considered proper in cases where a lawful and permissive purpose is present." *See* H.R. Rep. No. 91-1105, at 3–4 (1970). As a result, "[t]he lawful mailing . . . of contraceptive articles . . . is dependent on the interpretation given to the intended purpose." *Id.* at 4. The Postmaster General noted that "[w]hat is a lawful purpose within the meaning

of the interpretations given, though vaguely identifiable, has with the passage of time also been considerably broadened" and that "many States . . . have adopted positive legislation to authorize or encourage public family planning services." *Id*. As a result, by the time the Postmaster General wrote to Congress in 1970—after the Court's *Griswold* decision holding unconstitutional a state prohibition on the use of contraception—"it [was] quite clear that the cited law as presently written [was] unenforceable." *Id*.

The House Ways and Means Committee included the Postmaster General's statement in its report on the draft amendment and noted that "[i]n view of" that statement—along with statements supporting the draft amendment by the Departments of Labor and of Health, Education, and Welfare—the Committee on Ways and Means was "unanimous in recommending enactment of H.R. 4605." *Id.* Congress then amended the Comstock Act to repeal most of the Act's applications to contraceptives. *See* Pub. L. No. 91-662, 84 Stat. at 1973–74.[19]

* * * * *

Thus, before the Court's recognition of a constitutional right to contraception in *Griswold* and to abortion in *Roe*, the Judiciary, Congress, and USPS itself all understood section 1461 and the related provisions of the Comstock Act not to prohibit the conveyance of articles intended for preventing conception or producing an abortion where the sender lacks the intent that those items should be used unlawfully. We further note that, shortly after Congress amended the Comstock Act in 1971 to eliminate the restrictions on contraceptives, the Supreme Court's decision in *Roe* effectively rendered unenforceable the restrictions on articles "designed, adapted, or intended for producing abortion." For the past half century, courts have not had the occasion to elaborate further on the meaning of the Comstock Act as it relates to abortion, including regarding

[19] Although the 1971 Congress eliminated the preexisting broad prohibitions on sending contraception-related articles and information using the mails or common carriage, it added a narrower prohibition designed to prevent the mailing of unsolicited contraceptive items and advertising to private homes. *See* 39 U.S.C. § 3001(e); *see also* 18 U.S.C. § 1461 (making it a crime to knowingly use the mails to mail anything deemed "nonmailable" in section 3001(e)). In *Bolger*, the Supreme Court held that the ban on unsolicited advertisements of contraceptives violates the First Amendment. 463 U.S. at 61.

the sources of law that inform whether an abortion would be "unlawful" for purposes of the established construction of the Act.

II.

In Part I we demonstrated that, in accord with the prevailing judicial construction Congress ratified, section 1461 does not prohibit the mailing of articles that can be used to produce abortion, including mifepristone and misoprostol, where the sender lacks the intent that those items should be used unlawfully.[20] We turn now to address the many circumstances in which a sender of these drugs typically will lack an intent that they be used unlawfully.

Federal law does not prohibit the use of mifepristone and misoprostol for producing abortions. Indeed, the FDA has determined the use of mifepristone in a regimen with misoprostol to be safe and effective for the medical termination of early pregnancy. And, to the extent relevant, these drugs can serve important medical purposes and recipients in every state can use them lawfully in some circumstances. This is true even when the drugs would be delivered to an address in a jurisdiction with restrictive abortion laws, because women who receive the drugs in all fifty states may, at least in some circumstances, lawfully use mifepristone and misoprostol to induce an abortion.

We note that those sending or delivering mifepristone and misoprostol typically will lack complete knowledge of how the recipients intend to use them and whether that use is unlawful under relevant law. Therefore, even when a sender or deliverer of mifepristone or misoprostol, including USPS, knows that a package contains such drugs—or indeed that they will be used to facilitate an abortion—such knowledge alone is not a sufficient basis for concluding that section 1461 has been violated. We also recognize that USPS may have reason to consider adopting uniform policies or practices regarding the mailing of mifepristone or misoprostol. *Cf. Smith v. United States*, 431 U.S. 291, 304 n.10 (1977) ("[T]he nationwide character of the postal system argues in favor of a nationally uniform construction of [section] 1461.").

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[20] *See supra* note 3 (noting that the same test would apply to section 1462 and to recipients of the drugs to the extent those persons might be amenable to prosecution).

We have not undertaken the challenging task of a detailed review of state abortion laws, but we can offer some illustrative uses for mifepristone and misoprostol that the law of a given state would not prohibit:

- First, in most states—where a majority of the U.S. population lives—abortion continues to be lawful until at least twenty weeks' gestation. It is very unlikely that someone sending validly prescribed mifepristone or misoprostol into such states will intend for them to be used unlawfully.
- Second, even some states that in recent months have enacted or begun to enforce more restrictive abortion laws continue to allow abortion for at least some number of weeks of pregnancy. Use of mifepristone and misoprostol to terminate a pregnancy that falls within that period would be lawful.
- Third, thus far, no state that has enacted or newly begun to enforce restrictions on abortion in the wake of *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), prohibits abortions that are necessary to preserve the life of the woman.[21] Many medical conditions that make pregnancy potentially life-threatening—for instance, certain heart conditions, pulmonary hypertension, or Marfan Syndrome[22]—are known in the first trimester, when women most commonly use mifepristone and misoprostol to induce an abortion. Such a use of these drugs to terminate a life-threatening pregnancy would be lawful.
- Fourth, some state abortion restrictions also include exceptions for cases of rape or incest, to protect the health of the woman, or where there are severe fetal anomalies. The use of mifepristone or miso-

[21] *See Dobbs*, 142 S. Ct. at 2305 n.2 (Kavanaugh, J., concurring) ("Abortion statutes traditionally and currently provide for an exception when an abortion is necessary to protect the life of the mother."); *see also Roe*, 410 U.S. at 173 (Rehnquist, J., dissenting) ("[I]f [a state] statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective . . . .").

[22] *See, e.g.*, Inst. of Med., Clinical Prevention Services for Women: Closing the Gaps 103–04 (2011); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 737 (2014) (Kennedy, J., concurring) (noting that "[t]here are many medical conditions for which pregnancy is contraindicated").

prostol to produce an abortion in such cases would therefore be lawful.

- Fifth, some states that regulate the conduct of certain actors involved in abortions do not make it unlawful for the woman herself to abort her pregnancy. In those contexts, section 1461 might not prohibit the mailing of mifepristone and misoprostol to a woman in a state with restrictions on abortion, even if the sender does so with the intent that the woman use the drugs to produce an abortion.
- Sixth, even if a state prohibits a pregnant person from ingesting mifepristone or misoprostol for the purpose of inducing an abortion, such an individual has a constitutional right to travel to another state that has not prohibited that activity and to ingest the drugs there.[23] Someone sending a woman these drugs is unlikely to know where she will use them, which might be in a state in which such use is lawful.
- Seventh, federal agencies provide abortion services in some circumstances without regard to contrary state law.[24] Mailings of abortion

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[23] *See Dobbs*, 142 S. Ct. at 2309 (Kavanaugh, J., concurring) ("[M]ay a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel."); *id.* (referring to the question as "not especially difficult"); *see also Bigelow v. Virginia*, 421 U.S. 809, 824 (1975) (explaining that Virginia could not "prevent its residents from traveling to New York to obtain [abortion] services or . . . prosecute them for going there" (citing *United States v. Guest*, 383 U.S. 745, 757–59 (1966))).

[24] The Department of Veterans Affairs ("VA"), for example, recently has begun providing abortions to veterans and certain other VA beneficiaries without regard to state law when the life or health of the woman would be endangered if the pregnancy were carried to term or the pregnancy is the result of an act of rape or incest. *See* Reproductive Health Services, 87 Fed. Reg. 55,287, 55,288 (Sept. 9, 2022). "[S]tates may not restrict VA and its employees acting within the scope of their federal authority from providing abortion services as authorized by federal law, including VA's rule." *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, 46 Op. O.L.C. __, at *10; *see also* 87 Fed. Reg. at 55,294 (noting that state and local laws, including criminal laws, that "restrict[], limit[], or otherwise impede[] a VA professional's provision of care permitted by" this new rule "would be preempted" (citing 38 C.F.R. § 17.419(b))). Also, the Department of Defense ("DoD") has for many years provided service members, dependents, and other beneficiaries of DoD health care services with abortion services when a pregnancy is the result of rape or incest or when continuing the pregnancy would endanger the woman's life, and DoD has indicated it will continue to do so without regard to contrary state laws. *See*

medications intended to be used pursuant to these federal authorities would be lawful under section 1461, because contrary state law could not constitutionally be applied.

- Finally, individuals use mifepristone and misoprostol for medical purposes other than to induce abortions and the legality of those uses would remain unaffected by state restrictions on abortion. For instance, the same dosages of mifepristone and misoprostol that are used for medication abortion can be used to treat a miscarriage,[25] and misoprostol is commonly prescribed for the prevention and treatment of gastric ulcers.[26]

Thus, no matter where the drugs are delivered, a variety of uses of mifepristone and misoprostol serve important medical purposes and are lawful under federal and state law. Accordingly, USPS could not reasonably assume that the drugs are nonmailable simply because they are being sent into a jurisdiction that significantly restricts abortion. Nor would such an assumption based solely on the recipient's address be reasonable even if it is apparent that some women in a particular state are using the drugs in question in violation of state law. *Cf. Youngs Rubber*, 45 F.2d at 110 (although the volume of the plaintiff's sales nationwide justified an inference that the drug stores to which the condoms were being delivered must have been selling at least some of them for purposes that were prohibited under state law—"and that plaintiff must know this"—that was insufficient to conclude that the company intended such illegal conduct by the recipients).

In conclusion, section 1461 does not prohibit the mailing of mifepristone or misoprostol where the sender lacks the intent that the recipient will use them unlawfully. And in light of the many lawful uses of mifepristone and misoprostol, the fact that these drugs are being mailed to a

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Memorandum for Senior Pentagon Leadership from Gilbert R. Cisneros, Jr., Under Secretary of Defense for Personnel and Readiness, Department of Defense, *Re: Ensuring Access to Essential Women's Health Care Services for Service Members, Dependents, Beneficiaries, and Department of Defense Civilian Employees* (June 28, 2022).

[25] *See, e.g.*, Honor Macnaughton, Melissa Nothnagle & Jessica Early, *Mifepristone and Misoprostol for Early Pregnancy Loss and Medication Abortion*, 103 Am. Fam. Physician 473, 475 (Apr. 15, 2021).

[26] *See Cytotec Misoprostol Tablets*, U.S. Food & Drug Admin. 5–6 (Aug. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2018/019268s051lbl.pdf (misoprostol label).

jurisdiction that significantly restricts abortion is not a sufficient basis for concluding that the mailing violates section 1461.[27]

CHRISTOPHER H. SCHROEDER
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[27] While this request was pending, we received a similar request from the Department of Health and Human Services ("HHS") regarding the Comstock Act in connection with the Food and Drug Administration's Risk Evaluation and Mitigation Strategy for mifepristone. We conveyed our conclusions by e-mail to HHS on December 19, 2022, and we noted there that this memorandum was forthcoming. E-mail for Samuel Bagenstos, General Counsel, HHS, from Christopher H. Schroeder, Assistant Attorney General, Office of Legal Counsel, *Re: Advice Regarding Comstock* (Dec. 19, 2022, 8:31 PM).

Attachment 2
CDC
November 2024
article

Morbidity and Mortality Weekly Report (*MMWR*)

Abortion Surveillance — United States, 2022

Surveillance Summaries / November 28, 2024 / 73(7);1–28

Abstract

Problem/Condition: CDC conducts abortion surveillance to document the number and characteristics of women obtaining legal induced abortions and the number of abortion-related deaths in the United States.

Period Covered: 2022.

Description of System: Each year, CDC requests abortion data from the central health agencies for the 50 states, the District of Columbia, and New York City. For 2022, a total of 48 reporting areas voluntarily provided aggregate abortion data to CDC. Of these, 47 reporting areas provided data each year during 2013–2022. Census and natality data were used to calculate abortion rates (number of abortions per 1,000 women aged 15–44 years) and ratios (number of abortions per 1,000 live births), respectively. Abortion-related deaths from 2021 were assessed as part of CDC's Pregnancy Mortality Surveillance System (PMSS).

Results: For 2022, a total of 613,383 abortions were reported to CDC from 48 reporting areas. Among 47 reporting areas with data each year during 2013–2022, in 2022, a total of 609,360 abortions were reported, the abortion rate was 11.2 abortions per 1,000 women aged 15–44 years, and the abortion ratio was 199 abortions per 1,000 live births. From 2021 to 2022, the total number of abortions decreased 2% (from 622,108 total abortions), the abortion rate decreased 3% (from 11.6 abortions per 1,000 women aged 15–44 years), and the abortion ratio decreased 2% (from 204 abortions per 1,000 live births). From 2013 to 2022, the total number of reported abortions decreased 5% (from 640,154), the abortion rate decreased 10% (from 12.4 abortions per 1,000 women aged 15–44 years), and the abortion ratio increased 1% (from 198 abortions per 1,000 live births).

In 2022, women in their 20s accounted for more than half of abortions (56.5%). Women aged 20–24 and 25–29 years accounted for the highest percentages of abortions (28.3% and 28.2%, respectively) and had the highest abortion rates (18.1 and 18.7 abortions per 1,000 women aged 20–24 and 25–29 years, respectively). By contrast, adolescents aged <15 years and women aged ≥40 years accounted for the lowest percentages of abortions (0.2% and 3.6%, respectively) and had the lowest abortion rates (0.4 and 2.5 abortions per 1,000 women aged <15 and ≥40 years, respectively). However, abortion ratios were highest among adolescents (aged ≤19 years) and lowest among women aged 30–39 years. From 2021 to 2022, abortion rates decreased among women aged ≥20 years and did not change among adolescents (aged ≤19 years). Abortion rates decreased from 2013 to 2022 among all age groups, except women aged 30–34 years for whom it increased. The decrease in the abortion rate from 2013 to 2022 was highest among adolescents compared with other age groups. From 2021 to 2022, abortion ratios increased for adolescents and decreased among women aged ≥20 years. From 2013 to 2022, abortion ratios increased among adolescents and women aged 20–34 years and decreased among women aged ≥35 years. In 2022, the majority (78.6%) of abortions were performed at ≤9 weeks' gestation, and nearly all (92.8%) were performed at ≤13 weeks' gestation. During 2013–2022, the percentage of abortions performed at >13 weeks' gestation remained low (≤8.7%). In 2022, the highest

percentage of abortions were performed by early medication abortion at ≤9 weeks' gestation (53.3%), followed by surgical abortion at ≤13 weeks' gestation (35.5%), surgical abortion at >13 weeks' gestation (6.9%), and medication abortion at >9 weeks' gestation (4.3%); all other methods were uncommon (<0.1%). Among those that were eligible (≤9 weeks' gestation), 70.2% of abortions were early medication abortions. In 2021, the most recent year for which PMSS data were reviewed for pregnancy-related deaths, five women died as a result of complications from legal induced abortions.

Interpretation: Among the 47 areas that reported data continuously during 2013–2022, overall decreases were observed over this time in the number and rate of reported abortions and an increase was observed in the abortion ratio; in addition, from 2021 to 2022, decreases of 2%–3% were observed across all measures.

Public Health Action: Abortion surveillance can be used to help evaluate programs aimed at promoting equitable access to patient-centered quality contraceptive services in the United States to reduce unintended pregnancies.

Related Materials

Article PDF

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View suggested citation

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Introduction

This report summarizes data on legal induced abortions for 2022 that were provided voluntarily to CDC by the central health agencies of 48 reporting areas (46 states, the District of Columbia, and New York City, excluding California, Maryland, New Hampshire, and New Jersey) and comparisons over time for the 47 reporting areas that reported each year during 2013–2022 (46 states and New York City). This report also summarizes abortion-related deaths reported voluntarily to CDC for 2021 as part of the Pregnancy Mortality Surveillance System (PMSS). Since 1969, CDC has conducted abortion surveillance to document the number and characteristics of women obtaining legal induced abortions in the United States. After nationwide legalization of abortion in 1973, the total number, rate (number of abortions per 1,000 women aged 15–44 years), and ratio (number of abortions per 1,000 live births) of reported abortions increased rapidly, reaching the highest levels in the 1980s, before decreasing at a slow yet steady pace (*1,2*). During 2006–2008, a break occurred in the previously sustained pattern of decrease (*3,4*), although this break was followed in subsequent years by even greater decreases (*5,6*). However, from 2018 to 2019, increases of 1%–3% were observed across all measures (*7*). From 2019 to 2020, decreases were observed in the number and rate of reported abortions; however, a 2% increase was observed in the abortion ratio (*8*). From 2020 to 2021, increases of 4%–5% were observed across all measures (*9*). Abortion incidence and practices have varied over the years and continue to vary across subpopulations (*10–15*), highlighting the utility of continued surveillance.

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Methods

Description of the Surveillance System

Each year, CDC requests aggregate data from the central health agencies of the 50 states, the District of Columbia, and New York City to document the number and characteristics of women obtaining legal induced abortions in the United States. Not all persons who obtain abortions identify as women; the term "women" has been maintained in this report to be consistent with the collection and reporting of denominator data used to calculate abortion rates and ratios. This report contains data for 2022 voluntarily reported to CDC as of July 15, 2024. For the purpose of surveillance, legal induced abortion is defined as an intervention performed within the limits of state and jurisdiction law by a licensed clinician (e.g., a physician, nurse-midwife, nurse practitioner, or physician assistant) intended to terminate a suspected or known intrauterine

pregnancy and that does not result in a live birth. This definition excludes management of intrauterine fetal death, early pregnancy failure or loss, ectopic pregnancy, or retained products of conception. All abortions in this report are considered to be legally induced unless stated otherwise.

In most states and jurisdictions, collection of abortion data is facilitated by a legal requirement for hospitals, facilities, or physicians to report abortions to a central health agency (*16*); however, reporting is not complete in all areas, including in certain areas with reporting requirements (*17*). The reporting of abortion data to CDC is voluntary, and many reporting areas have developed their own data collection forms and might not collect or provide all the information requested by CDC. As a result, the level of detail reported to CDC might vary from year to year and by reporting area. To encourage uniform collection of data, the National Association for Public Health Statistics and Information Systems (NAPHSIS), with technical assistance from CDC, developed technical guidance for vital statistics personnel who collect and summarize abortion data within the United States (*18*).

Variables and Categorization of Data

Each year, CDC sends a suggested template to central health agencies in the United States for compilation of aggregate abortion data among women obtaining legal induced abortions. Aggregate abortion numbers, without individual-level records, are requested for the following variables:

- Age group in years of women obtaining legal induced abortions (<15, 15–19 [age group and by individual year], 20–24, 25–29, 30–34, 35–39, or ≥40)
- Gestational age of pregnancy in completed weeks at the time of abortion (≤6, 7–20 by individual week, or ≥21)
- Race (Black; White; or other including Alaska Native, American Indian, Asian [Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, or other Asian], Native Hawaiian or other Pacific Islander [Native Hawaiian, Guamanian or Chamorro, Samoan, or other Pacific Islander], other races, and multiple races), ethnicity (Hispanic or non-Hispanic), and race by ethnicity
- Method type (surgical abortion, intrauterine instillation, medication [nonsurgical] abortion, or hysterectomy or hysterotomy)
- Marital status (married [including currently married or separated] or unmarried [including never married, widowed, or divorced])
- Number of previous live births (zero, one, two, three, or four or more)
- Number of previous induced abortions (zero, one, two, or three or more)
- Residence (the state, jurisdiction, territory, or foreign country in which the women obtaining the abortion lived, or, if additional details are unavailable, in-reporting area versus out-of-reporting area)

In addition, the template provided by CDC requests that aggregate abortion numbers for certain variables be cross-tabulated by a second variable. The cross-tabulations presented in this report include weeks of gestation separately by method type, by age group, and by race and ethnicity.

Beginning with 2014 data, instead of reporting the clinician's estimates of gestational age or estimates of gestational age that were based on last menstrual period, certain areas have reported "probable postfertilization age," "clinician's estimate of gestation based on date of conception," and "probable gestational age" to CDC. To facilitate consistency between data reported as postfertilization age and the data collection practices for gestational age recommended by CDC's National Center for Health Statistics (*19*), 2 weeks were added to probable postfertilization age. This method was used to account for time after last menstrual period until ovulation in a standard 28-day cycle because fertilization occurs around the time of ovulation (*20*). No modifications were made to data reported as clinician's estimate of gestational age that was based on date of conception or data reported as probable gestational age.

In this report, medication and surgical abortions are further categorized by gestational age when available in the categories reported to CDC. Early medication abortion is defined as the administration of medications (typically mifepristone followed by misoprostol) to induce an abortion at ≤9 completed weeks' gestation, consistent with U.S. Food and Drug Administration (FDA) labeling for mifepristone that was implemented in 2016 (*21*). CDC collects information only on the estimated number of weeks (not days) of gestation and acknowledges the conventional use of completed weeks of gestation to describe pregnancy duration; therefore, CDC's category of ≤9 weeks' gestation includes abortions through 9 weeks and 6 days.

Medications (typically serial prostaglandins, sometimes administered after mifepristone) also might be used to induce an abortion at >9 weeks' gestation. Surgical abortions, which include uterine aspiration (i.e., dilation and curettage, aspiration curettage, suction curettage, manual vacuum aspiration, menstrual extraction, or sharp curettage) and dilation and evacuation procedures, are categorized as having been performed at ≤13 weeks' gestation or at >13 weeks' gestation because of differences in surgical technique at these gestational ages (*22*). Finally, because intrauterine instillation is unlikely to be performed early in gestation (*23*), abortions reported to have been performed by intrauterine instillation at ≤12 weeks' gestation are excluded from calculation of the percentage of abortions by known method type and are grouped with unknown type.

Measures of Abortion

Four measures of abortion are presented in this report: 1) the number of abortions in a specific population, 2) the percentage of abortions by selected characteristics, 3) the abortion rate (number of abortions per 1,000 women within a specific population), and 4) the abortion ratio (number of abortions per 1,000 live births within a specific population). Abortion rates adjust for differences in population size. Abortion ratios measure the relative number of pregnancies in a specific population that end in abortion compared with live birth.

U.S. Census Bureau estimates of the resident female population were used as the denominator for calculating abortion rates (*24–33*). Overall abortion rates were calculated from the population of women aged 15–44 years living in the reporting areas that provided continuously reported data. For adolescents aged <15 years, abortion rates were calculated using the number of adolescents aged 13–14 years as the denominator; for women aged ≥40 years, abortion rates were calculated using the number of women aged 40–44 years as the denominator. For the calculation of abortion ratios, live birth data were obtained from CDC natality files and included births to women of all ages living in the reporting areas that provided abortion data (*34,35*). For calculation of the total abortion rates and total abortion ratios only, women with unknown data on selected characteristics (e.g., age, race and ethnicity, and marital status) were distributed according to the distribution of abortions among those with known information on the characteristic. For calculation of totals only, abortions for women with an unknown gestational age of pregnancy but known method type were distributed according to the distribution of abortions among those with known information on method type by gestational age to the following categories: surgical, ≤13 weeks' gestation; surgical, >13 weeks' gestation; medication, ≤9 weeks' gestation; and medication, >9 weeks' gestation.

Data Presentation and Analysis

This report provides aggregate and reporting area–specific abortion numbers, rates, and ratios for the 48 areas that reported to CDC for 2022, which excluded California, Maryland, New Hampshire, and New Jersey. In addition, this report describes characteristics of women who obtained abortions in 2022. The data in this report are presented by the reporting area in which the abortions were performed.

The completeness and quality of data received vary by year, by variable, and by reporting area; this report only describes the characteristics of women obtaining abortions in reporting areas that met CDC reporting standards (i.e., reported at least 20 abortions overall, provided data categorized in accordance with requested variables, and had <15% unknown values for a specific characteristic). Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these values have been suppressed in this report to maintain confidentiality in tables presented by reporting area of occurrence.

The percentage change in abortion measures (number, rate, and ratio of reported abortions) from the most recent past year (2021 to 2022) and during the 10-year period of analysis (2013–2022) were calculated for the 47 areas that reported every year during 2013–2022. The percentage change was also calculated and reported for abortions by age group, weeks of gestation, and early medication abortions (≤9 completed weeks' gestation) for areas that met reporting standards for these variables every year during 2013–2022. As a result, aggregate measures for 2022 in percentage change analyses might differ from the point estimates reported for 2022. These data describe the percentage changes in abortion measures over time and abortion measures among groups for each characteristic. No statistical testing was performed. Comparisons do not imply statistical significance, and lack of comment regarding the difference between values does not imply that no statistically significant difference exists.

Abortion Mortality

CDC has reported data on abortion-related deaths periodically since information on abortion mortality first was included in the 1972 abortion surveillance report (*9,36*). An abortion-related death is defined as a death resulting from a direct complication of an abortion (legal or illegal), an indirect complication caused by a chain of events initiated by an abortion, or an aggravation of a pre-existing condition by the physiologic effects of abortion. An abortion is categorized as legal when it is performed by a licensed clinician within the limits of state or jurisdiction law.

Since 1987, CDC has monitored abortion-related deaths through PMSS, which includes data from all 50 states, the District of Columbia, and New York City (*37*). Sources of data to identify abortion-related deaths have included state or jurisdiction vital records; media reports, including computerized searches of full-text newspaper and other media databases; and individual case reports by public health agencies, including maternal mortality review committees, and any additional data when available. For each death that is possibly related to abortion, CDC requests clinical records and autopsy reports. Two medical epidemiologists independently review these reports to determine the cause of death and whether the death was abortion related. Discrepancies are discussed and resolved by consensus. Each death is categorized by abortion type as legal induced, illegal induced, spontaneous, or unknown type.

This report provides PMSS data on induced abortion–related deaths that occurred in 2021, the most recent year for which PMSS data are available. For 1998–2021, abortion surveillance data reported to CDC cannot be used alone to calculate national case-fatality rates for legal induced abortions (number of legal induced abortion–related deaths per 100,000 reported legal induced abortions in the United States) because nine reporting areas did not report abortion data every year during this period (Alaska, 1998–2000; California, 1998–2021; the District of Columbia, 2016; Louisiana, 2005; Maryland, 2007–2021; New Hampshire, 1998–2021; New Jersey, 2021; Oklahoma, 1998–1999; and West Virginia, 2003–2004). Thus, denominator data for calculation of national legal induced abortion case-fatality rates for 1998–2021 were obtained from a published report by the Guttmacher Institute that includes estimated total numbers of abortions in the United States from a national survey of abortion-providing facilities (*38*). For 2021, denominator data for 2020 were used, the most recent year for which data from the Guttmacher Institute are available. Because rates determined on the basis of a numerator <20 are unstable (*39*), national case-fatality rates for legal induced abortion were calculated for consecutive 5-year periods during 1973–2012 and then for a consecutive 9-year period during 2013–2021.

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Results

Total Abortions Reported to CDC by Occurrence

Among the 48 reporting areas that provided data for 2022, a total of 613,383 abortions were reported (Table 1). Of these abortions, 609,360 were from 47 reporting areas that provided data every year during 2013–2022. In 2022, these continuously reporting areas had an abortion rate of 11.2 abortions per 1,000 women aged 15–44 years and an abortion ratio of 199 abortions per 1,000 live births. Among these 47 reporting areas, from 2021 to 2022, the total number of reported abortions decreased 2% (from 622,108 total abortions), the abortion rate decreased 3% (from 11.6 abortions per 1,000 women aged 15–44 years), and the abortion ratio decreased 2% (from 204 abortions per 1,000 live births). From 2013 to 2022, the total number of reported abortions decreased 5% (from 640,154), the abortion rate decreased 10% (from 12.4 abortions per 1,000 women aged 15–44 years), and the abortion ratio increased 1% (from 198 abortions per 1,000 live births) (Figure).

In 2022, reporting areas of occurrence had wide variation in abortion rates (from 0.1 to 28.8 abortions per 1,000 women aged 15–44 years in Missouri and New Mexico, respectively) and abortion ratios (from one to 543 abortions per 1,000 live births in Missouri and New Mexico, respectively) (Table 2). The percentage of abortions obtained by out-of-area residents also varied by reporting area (from 0.8% in Arizona to 68.8% in Kansas).

Age Group, Race and Ethnicity, and Marital Status

Among the 48 areas that reported abortion numbers by women's age for 2022, women in their 20s accounted for more than half of abortions (56.5%) (Table 3). Women aged 20–24 and 25–29 years accounted for the highest percentages of abortions (28.3% and 28.2%, respectively) and had the highest abortion rates (18.1 and 18.7 abortions per 1,000 women aged 20–24 and 25–29 years, respectively). By contrast, adolescents aged <15 years and women aged ≥40 years

accounted for the lowest percentages of abortions (0.2% and 3.6%, respectively) and had the lowest abortion rates (0.4 and 2.5 abortions per 1,000 adolescents aged <15 and women ≥40 years, respectively). However, abortion ratios were highest among adolescents (800 and 389 abortions per 1,000 live births among those aged <15 years and 15–19 years, respectively) and lowest among women aged ≥25 years (194, 133, 134, and 195 abortions per 1,000 live births among those aged 25–29, 30–34, 35–39 years, and ≥40 years, respectively).

Among the 43 reporting areas that provided data each year by women's age for 2013–2022, the highest percentages of abortions and the highest abortion rates occurred among women aged 20–29 years and the lowest percentages of abortions and lowest abortion rates occurred among adolescents aged <15 years and women aged ≥40 years (Table 4). From 2021 to 2022, abortion rates decreased among women aged ≥20 years and did not change among adolescents aged <15 years and adolescents aged 15–19 years.

From 2013 to 2022, abortion rates decreased among all age groups, except women aged 30–34 years for whom it increased. The decrease in the abortion rate was highest among adolescents (33% and 34% for adolescents aged <15 and 15–19 years, respectively) compared with any other age group. From 2021 to 2022, abortion ratios increased for adolescents aged <15 years and 15–19 years and decreased among women aged ≥20 years. From 2013 to 2022, abortion ratios increased among adolescents aged ≤19 years and women aged 20–34 years and decreased among women aged ≥35 years.

Among the 45 areas that reported age by individual year among adolescents for 2022, adolescents aged 18–19 years accounted for the highest percentage (71.6%) of adolescent abortions and had the highest abortion rates (8.6 and 12.4 abortions per 1,000 adolescents aged 18 and 19 years, respectively) (Table 5). Adolescents aged <15 years accounted for the lowest percentage of adolescent abortions (2.6%) and had the lowest abortion rate (0.4 abortions per 1,000 adolescents aged 13–14 years). The abortion ratio for adolescents was highest among those aged <15 years (773 abortions per 1,000 live births) and was lowest among those aged 17–19 years (363, 414, and 343 abortions per 1,000 live births among adolescents aged 17, 18, and 19 years, respectively).

Among the 32 areas that reported race by ethnicity data for 2022, non-Hispanic White (White) women and non-Hispanic Black (Black) women accounted for the highest percentages of all abortions (31.9% and 39.5%, respectively), and Hispanic women and non-Hispanic women in the other race category accounted for lower percentages (21.2% and 7.3%, respectively) (Table 6). White women had the lowest abortion rate (5.7 abortions per 1,000 women aged 15–44 years) and ratio (106 abortions per 1,000 live births), and Black women had the highest abortion rate (24.4 abortions per 1,000 women aged 15–44 years) and ratio (429 abortions per 1,000 live births).

For 2022, among the 36 areas that reported by marital status, 12.3% of women who obtained an abortion were married, and 87.7% were unmarried (Table 7). The abortion ratio was 37 abortions per 1,000 live births for married women and 376 abortions per 1,000 live births for unmarried women.

Previous Live Births and Previous Induced Abortions

For 2022, among the 41 areas that reported the number of previous live births, 40.6%, 24.1%, 19.5%, 9.4%, and 6.5% of abortions reported were among women who had zero, one, two, three, or four or more previous live births, respectively (Table 8). Among the 41 areas that reported the number of previous induced abortions, 56.1%, 24.7%, 10.9%, and 8.2% of abortions reported were among women who had had zero, one, two, or three or more previous induced abortions, respectively (Table 9).

Weeks of Gestation and Method Type

For 2022, among the 41 areas that reported gestational age at the time of abortion, 78.6% of abortions were performed at ≤9 weeks' gestation, and 92.8% were performed at ≤13 weeks' gestation (Table 10). Fewer abortions were performed at 14–20 weeks' gestation (6.1%) or at ≥21 weeks' gestation (1.1%). Among the 36 reporting areas that provided data every year on gestational age for 2013–2022, the percentage of abortions performed at ≤13 weeks' gestation changed from 92.0% in 2013 to 92.5% in 2022 (Table 11). However, within this gestational age range, a shift occurred toward earlier gestational ages, with the percentage of abortions performed at ≤6 weeks' gestation increasing 20% and the percentage of abortions performed at 7–9 weeks' and 10–13 weeks' gestation decreasing 7% and 20%, respectively.

For 2022, among the 47 areas that reported by method type and included medication abortion on their reporting form, 53.3% of abortions were early medication abortions (a nonsurgical abortion at ≤9 weeks' gestation), 35.5% were surgical abortions at ≤13 weeks' gestation, 6.9% were surgical abortions at >13 weeks' gestation, and 4.3% were medication abortions at >9 weeks' gestation; other methods, including intrauterine instillation and hysterectomy or hysterotomy, were rare (<0.1%) (Table 12). During 2013–2022, a total of 39 reporting areas (excludes California, the District of Columbia, Florida, Hawaii, Illinois, Louisiana, Maryland, Missouri, New Hampshire, New Jersey, New Mexico, Tennessee, and Wyoming) provided continuous data and included medication abortion on their reporting form. Among these 39 areas, use of early medication abortion increased 4% from 2021 to 2022 (from 52.1% to 54.0% of abortions) and 129% from 2013 to 2022 (from 23.6% to 54.0% of abortions) (data not shown).

Among the 40 areas that reported abortions categorized by weeks of gestation and method type for 2022, surgical abortion accounted for the highest percentage of abortions at >10 weeks' gestation (Table 13). Surgical abortion accounted for 25.2% of abortions at ≤6 weeks' gestation, 34.4% of abortions at 7–9 weeks' gestation, 72.4% of abortions at 10–13 weeks' gestation, 94.9%–98.1% of abortions at 14–20 weeks' gestation, and 80.0% of abortions at ≥21 weeks' gestation. In contrast, medication abortion accounted for 74.7% of abortions at ≤6 weeks' gestation, 65.6% of abortions at 7–9 weeks' gestation, 27.6% of abortions at 10–13 weeks' gestation, 1.9%–4.8% of abortions at 14–20 weeks' gestation, and 19.4% of abortions at ≥21 weeks' gestation. For each gestational age category as applicable, abortions performed by intrauterine instillation or hysterectomy or hysterotomy were rare (<0.1%–0.4% of abortions).

Weeks of Gestation by Age Group and Race and Ethnicity

In reporting areas that provided data that met CDC reporting standards, abortions that were categorized by weeks of gestation were further categorized by age and by race and ethnicity (Table 14). In every subgroup for these characteristics, the highest percentage of abortions occurred at ≤9 weeks' gestation. In 40 reporting areas, by age, 56.3% of adolescents aged <15 years and 72.5% of adolescents aged 15–19 years obtained an abortion at ≤9 weeks' gestation, compared with ≥77.7% for women aged ≥20 years. Conversely, 18.3% of adolescents aged <15 years and 9.6% of adolescents aged 15–19 years obtained an abortion after 13 weeks' gestation, compared with 6.2%–7.6% for women aged ≥20 years. In 30 reporting areas, by race and ethnicity, 77.1% of abortions obtained by Black women occurred at ≤9 weeks' gestation, compared with 79.4% by non-Hispanic women in the other race category, 80.5% by White women, and 81.8% by Hispanic women. Conversely, 5.3% of abortions obtained by Hispanic women occurred after 13 weeks' gestation, compared with 6.0% by White women, 6.8% by Black women, and 7.2% by non-Hispanic women in the other race category.

Abortion Mortality

Using national PMSS data (*37*), CDC identified five abortion-related deaths for 2021, the most recent year for which data were reviewed for abortion-related deaths (Table 15). Investigation of these cases indicated all deaths were related to legal abortion.

The annual number of deaths related to legal induced abortion has fluctuated from year to year since 1973 (Table 15). During 2013–2021, the national case-fatality rate for legal induced abortion was 0.46 deaths related to legal induced abortions per 100,000 reported legal abortions. This case-fatality rate was lower than the rates for the previous 5-year periods.

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Discussion

For 2022, a total of 613,383 abortions were reported to CDC by 48 areas. Among the 47 continuously reporting areas, the abortion rate was 11.2 abortions per 1,000 women aged 15–44 years, and the abortion ratio was 199 abortions per 1,000 live births. From 2021 to 2022, the number of abortions decreased 2%, the abortion rate decreased 3%, and the abortion ratio decreased 2%. Multiple factors influence measures of abortion, including access to health care services and contraception (*40–42*), the availability of abortion providers and clinics (*38,43–47*), changes in legal restrictions and regulations (*48–56*), parental involvement laws (*57,58*), and economic considerations that influence family planning decisions and contraceptive use (*59,60*).

Abortion measures differ by age group. Among areas that reported data continuously by age during 2013–2022, women aged 20–29 years accounted for the highest percentages of abortions and had the highest abortion rates, whereas adolescents aged <15 years accounted for the lowest percentage of abortions and had the lowest abortion rate and adolescents aged <15 years and 15–19 years had the highest abortion ratios. During 2013–2022, women aged ≥40 years accounted for a small percentage of reported abortions (≤3.7%). However, the abortion ratio among women aged ≥40 years continues to be higher than among women aged 25–39 years.

The percentage changes in adolescent abortions described in this report are important for monitoring changes in adolescent pregnancies in the United States. From 2013 to 2022, national birth data indicate that the birth rate for adolescents aged 15–19 years decreased 49% (*35*), and the findings in this report indicate that the abortion rate for the same age group decreased 34%, suggesting a decrease in adolescent pregnancies.

The factors leading to higher abortion rates among certain racial and ethnic minority groups are complex. Race and ethnicity as described in this report are markers not drivers of differences in abortion rates. In addition to disparities in rates of unintended pregnancies (*61*), structural factors, including unequal access to quality family planning services (*62*), economic inequities, and mistrust of the medical system (*63*), can contribute to observed differences. As in previous years, abortion rates and ratios differed across racial and ethnic groups. In 2022, compared with White women, abortion rates and ratios were 4.3 and 4.0 times higher among Black women and 2.0 and 1.6 times higher among Hispanic women. Similar differences by race and ethnicity have been demonstrated in other U.S.-based studies (*2,10–13*).

During 2022, approximately four of five abortions occurred early in gestation (≤9 weeks), when the risks for complications are lowest (*64–67*). During the past 10 years, this percentage increased from 75.0% in 2013 to 78.9% in 2022. Moreover, among areas that reported abortions at ≤13 weeks' gestation by individual week, the distribution of abortions by gestational age continued to shift toward earlier weeks of gestation, with the percentage of early abortions performed at ≤6 weeks' gestation increasing from 34.8% in 2013 to 41.6% in 2022. Previous research indicates that the distribution of abortions by gestational age differs by various sociodemographic characteristics (*68–70*). In this report, the percentage of adolescents aged ≤19 years who obtained abortions at >13 weeks' gestation was higher than the percentage of women aged ≥20 years. The gestational age when abortions are performed can be influenced by multiple factors, including state or jurisdiction abortion restrictions, accurate estimation of gestational age, income level, age, and presence of pregnancy-related health conditions (*48,67,69–74*).

Changes in clinical practices have facilitated the trend of obtaining abortions earlier in pregnancy. Research conducted in the United States during the 1970s indicated that surgical abortion procedures performed at ≤6 weeks' gestation, compared with 7–12 weeks' gestation, were less likely to result in successful termination of the pregnancy (*75*). However, subsequent advances in technology (e.g., improved transvaginal ultrasonography and sensitivity of pregnancy tests) have allowed early surgical abortions to be performed with completion rates exceeding 97% (*76–79*). Likewise, the development of early medication abortion regimens has allowed for abortions to be performed early in gestation, with completion rates for regimens that combine mifepristone and misoprostol reaching 96%–98% (*79–83*).

Trends for early medication abortions are reported to monitor any changes in clinical practice that might have occurred with the accumulation of evidence on the safety and effectiveness of medication abortion beyond 63 days of gestation (8 completed weeks' gestation) (*84*), changes in professional practice guidelines (*85,86*), and the 2016 FDA extension of the gestational age limit for the use of mifepristone for early medication abortion from 63 days to 70 days (9 completed weeks' gestation) (*87*). Among abortions occurring at ≤9 weeks' gestation in 2022, approximately two thirds (70.2%) were reported as early medication abortions. In 2022, the most common method among abortions reported overall was early medication abortion at ≤9 weeks' gestation (53.3%). Among continuously reporting areas that reported by method type and included medication abortion on their reporting form, the percentage of all abortions performed by early medication abortion increased 129% from 2013 to 2022 and increased 4% from 2021 to 2022.

Because the annual number of deaths related to legal induced abortion is small and statistically unstable, case-fatality rates were calculated for consecutive 5-year periods during 1973–2012 and then for a consecutive 9-year period during 2013–2021. The national case-fatality rate for legal induced abortion was 0.46 per 100,000 abortions during 2013–2021. Since 1978, all rates for the preceding 5-year periods have been <1 death per 100,000 abortions, demonstrating the low risk for death associated with legal induced abortion.

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Limitations

The findings in this report are subject to at least five limitations. First, because reporting to CDC is voluntary and reporting requirements vary by the individual reporting areas (*16,17*), CDC is unable to report the total number of abortions performed in the United States. Of the 52 areas from which CDC requested data for 2022, California, Maryland, New Hampshire, and New Jersey did not submit abortion data. In 2020, the most recent year for which data are available through the Guttmacher Institute's national survey of abortion-providing facilities, abortions performed in these states accounted for approximately 20% of all abortions in the United States (*38*). CDC receives aggregated data from the central health agencies of reporting areas, which might result in different estimates than reported by the Guttmacher Institute. Completeness of reporting might vary by reporting area. Whereas most reporting areas have a legal requirement to submit a report for every abortion performed (*16*), adherence to this requirement might vary (*17*). Access to telehealth services for abortion varies by state or jurisdiction (*47*) and reporting of abortions that occur using telehealth services also might vary by reporting area.

Second, many states and jurisdictions use abortion reporting forms that differ from the technical guidance that NAPHSIS developed with technical assistance from CDC. Consequently, certain reporting areas do not collect all variables requested by CDC (e.g., race and ethnicity), do not collect or report all variables for out-of-area residents (e.g., Nevada), or do not report the data in a manner consistent with this guidance (e.g., gestational age). Missing demographic information can reduce the extent to which the statistics in this report represent women who have had abortions. Only 32 reporting areas reported race and ethnicity data to CDC that met CDC's reporting standards. Certain areas that either do not report to CDC (e.g., California) or do not report race and ethnicity data (e.g., Illinois) have sufficiently large populations of racial and ethnic minority groups that the absence of data from these areas reduces the representativeness of CDC data for these variables. In addition, because of the variability in data collection for race and ethnicity among reporting areas, data for specific racial and ethnic groups beyond Black, White, and Hispanic are not requested or reported. In addition, certain areas collect gestational age data that are based on estimated date of conception or probable postfertilization age, which are not consistent with medical conventions for gestational age reporting. Without medical guidance on how to report these data, the validity and reliability of gestational age for these reporting areas is uncertain.

Third, abortion data are compiled and reported to CDC by the central health agency of the reporting area in which the abortion was performed rather than the reporting area in which the person lived. Thus, the available population (*24–33*) and birth data (*34,35*), which are organized by the states or jurisdictions in which women live, might differ from the population of women who undergo abortions in a specific reporting area. This likely results in an overestimation of abortion measures for reporting areas in which a higher percentage of abortions are obtained by out-of-area residents and an underestimation of abortions for reporting areas where residents more frequently obtain abortions out of area. Limited abortion services, stringent regulatory requirements for obtaining an abortion, or geographic proximity to services in another state or jurisdiction might influence where women obtain abortion services (*88,89*). Studies have demonstrated an increase in out-of-area abortions for residents of states with legal restrictions for abortion (*53,90*).

Fourth, in this report, the presentations of percentage change for abortions by variables (e.g., weeks of gestation) are limited to the aggregate of the 47 jurisdictions that met reporting standards for every year during 2013–2022. This approach allows for assessment of changes in continuously reporting areas; however, specific jurisdictions' patterns might differ from aggregate 10-year or year-to-year comparisons.

Finally, CDC reporting of sociodemographic characteristics of women obtaining abortions is limited to data collected on state or jurisdiction reporting forms. Therefore, the examination of additional demographic variables (e.g., income and education) is not possible.

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Public Health Implications

Ongoing surveillance of legal induced abortion is important for three reasons. First, abortion surveillance can be used to help evaluate programs aimed at promoting equitable access to patient-centered contraceptive care in the United States to reduce unintended pregnancies. Up to 42% of pregnancies in the United States are unintended (*61*), and use of effective contraception is a strategy to reduce unintended pregnancy (*91*). Efforts to improve contraceptive access that consider patient perspectives and remove barriers (e.g., cost) have been associated with declines in the rate of abortion (*40–42*). Providing contraception at low or no cost can increase contraceptive access and use (*92–94*). Improvements in provider

reimbursement and training, patient-centered counseling, youth-friendly services, and client awareness of available contraceptive methods also might help to improve contraceptive access (*95–97*), ensure equitable access to patient-centered contraceptive care, and promote equitable reproductive health in the United States (*98*). Second, routine abortion surveillance can be used to assess changes in clinical practice patterns over time. Information in this report on the number of abortions performed through different methods (e.g., medication or surgical) and at different gestational ages provides the denominator data that are necessary for analyses of the relative safety of abortion practices (*99*). Finally, information on the number of pregnancies ending in abortion is used in conjunction with data on births and fetal losses to estimate the number of pregnancies in the United States and determine rates for various outcomes of public health importance (*61*).

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Conflicts of Interest

All authors have completed and submitted the International Committee of Medical Journal Editors form for disclosure of potential conflicts of interest. No potential conflicts of interest were disclosed.

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TABLE 1. Number, rate,* and ratio† of reported abortions — selected reporting areas, United States, 2013–2022

Year	Selected reporting areas§	Continuously reporting areas¶		
	No.	No.	Rate	Ratio
2013	664,435	640,154	12.4	198
2014	652,639	625,668	12.0	190
2015	638,169	613,911	11.8	187
2016	623,471	599,001	11.5	184
2017	612,719	587,611	11.2	184
2018	619,591	591,884	11.2	188
2019	629,898	603,168	11.4	194
2020	620,327	592,939	11.1	197
2021	625,978	622,108	11.6	204
2022	613,383	609,360	11.2	199

* Number of abortions per 1,000 women aged 15–44 years.

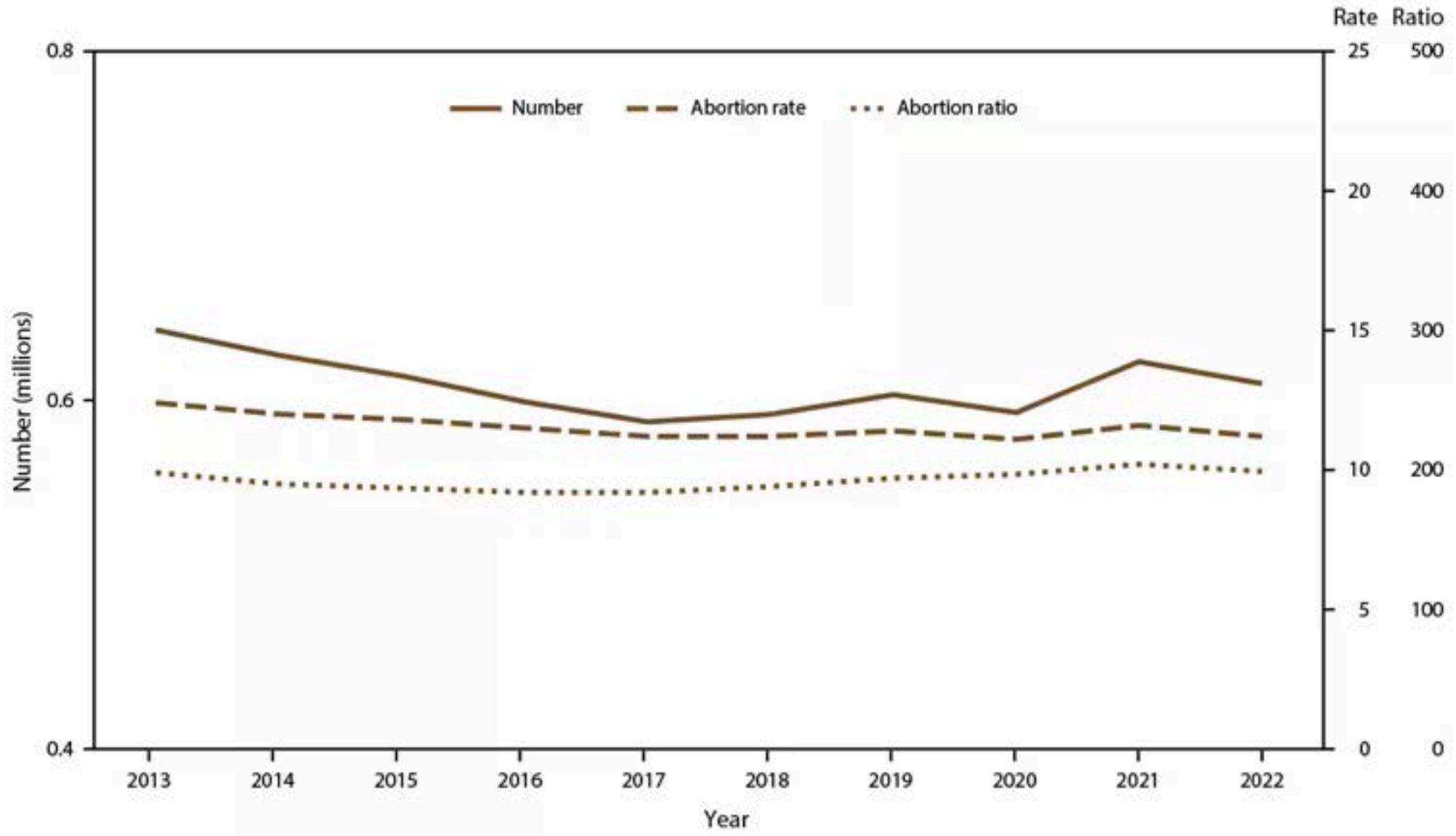
† Number of abortions per 1,000 live births.

§ For each specific year, excludes reporting areas that did not report that year's abortion numbers to CDC: California (2013–2022), District of Columbia (2016), Maryland (2013–2022), New Hampshire (2013–2022), and New Jersey (2021–2022).

¶ For all years, excludes reporting areas that did not report abortion numbers every year during the analysis period: California, District of Columbia, Maryland, New Hampshire, and New Jersey.

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FIGURE. Number, rate,* and ratio† of abortions performed, by year — selected reporting areas,§ United States, 2013–2022



* Number of abortions per 1,000 women aged 15–44 years.

† Number of abortions per 1,000 live births.

§ Data are for 47 reporting areas; excludes California, District of Columbia, Maryland, New Hampshire, and New Jersey.

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TABLE 2. Number, rate,* and ratio† of reported abortions, by reporting area of occurrence and number of abortions obtained by out-of-area residents§ — United States, 2022¶

Area	Abortions reported by area of occurrence**			Abortions obtained by out-of-area residents
	No.	Rate	Ratio	No. (%)
Alabama	3,777	3.8	65	794 (21.0)
Alaska	1,247	8.6	133	15 (1.2)
Arizona	11,530	8.1	147	97 (0.8)
Arkansas	1,621	2.8	46	437 (27.0)
Colorado	14,154	11.7	227	3,924 (27.7)

Area	Abortions reported by area of occurrence**			Abortions obtained by out-of-area residents
	No.	Rate	Ratio	No. (%)
Connecticut	11,121	16.0	315	523 (4.7)
Delaware	2,445	13.0	226	254 (10.4)
District of Columbia	4,023	22.4	498	2,696 (67.0)
Florida	82,581	20.5	368	6,721 (8.1)
Georgia	38,820	17.2	308	8,005 (20.6)
Hawaii	1,970	7.5	127	45 (2.3)
Idaho	1,027	2.7	46	49 (4.8)
Illinois	56,457	22.8	440	16,849 (29.8)
Indiana	9,530	7.1	120	1,828 (19.2)
Iowa	4,068	6.7	111	759 (18.7)
Kansas	12,317	21.6	358	8,475 (68.8)
Kentucky	2,550	3.0	49	419 (16.4)
Louisiana	4,570	5.0	81	1,662 (36.4)
Maine	2,225	9.1	184	124 (5.6)
Massachusetts	17,757	12.6	259	920 (5.2)
Michigan	30,120	15.9	294	2,758 (9.2)
Minnesota	12,175	11.1	190	2,009 (16.5)
Mississippi	2,286	3.9	66	648 (28.3)
Missouri	88	0.1	1	16 (18.2)
Montana	1,702	8.1	152	164 (9.6)
Nebraska	2,547	6.7	105	532 (20.9)
Nevada	11,957	19.2	360	1,578 (13.2)
New Mexico	11,735	28.8	543	7,323 (62.4)
New York	72,710	18.7	350	4,183 (5.8)††
New York City	46,373	26.2	498	4,463 (9.6)

Area	Abortions reported by area of occurrence**			Abortions obtained by out-of-area residents
	No.	**Rate**	**Ratio**	**No. (%)**
New York State	26,337	12.5	230	2,052 (7.8)
North Carolina	40,037	19.0	329	11,716 (29.3)
North Dakota	754	4.9	79	222 (29.4)
Ohio	18,499	8.3	144	1,287 (7.0)
Oklahoma	2,160	2.7	45	1,257 (58.2)
Oregon	8,672	10.4	220	1,036 (11.9)
Pennsylvania	34,838	14.2	267	3,311 (9.5)
Rhode Island	1,383	6.4	135	193 (14.0)
South Carolina	7,276	7.2	126	1,709 (23.5)
South Dakota	137	0.8	12	14 (10.2)
Tennessee	6,452	4.6	78	1,333 (20.7)
Texas	17,514	2.8	45	302 (1.7)
Utah	3,824	5.1	84	215 (5.6)
Vermont	1,108	9.2	208	217 (19.6)
Virginia[§§]	16,722	9.7	175	2,454 (14.7)
Washington	20,193	12.9	242	1,440 (7.1)
West Virginia	831	2.7	49	182 (21.9)
Wisconsin	3,333	3.0	56	54 (1.6)
Wyoming	540	4.9	89	166 (30.7)
Total	**613,383**	**NA**	**NA**	**NA**

Abbreviation: NA = not applicable.

* Number of abortions per 1,000 women aged 15–44 years.

† Number of abortions per 1,000 live births.

§ Additional details on the reporting area in which abortions were provided, cross-tabulated by the area of residence, are available at https://www.cdc.gov/reproductive-health/data-statistics/abortion-surveillance-findings-reports.html.

¶ Data from 48 reporting areas; excludes four reporting areas (California, Maryland, New Hampshire, and New Jersey) that did not report.

** The total abortions include those with known and unknown residence status.

†† Residents of New York State who had abortions in New York City and residents of New York City who had abortions in

New York State were excluded from the number and percentage of abortions obtained by out-of-area residents in New York.

[§§] Data reported from facilities physically situated in state only.

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TABLE 3. Number and percentage of reported abortions, by known age group and reporting area of occurrence — selected reporting areas,[*] United States, 2022

Area	Age group, yrs							Total abortions reported by known age
	<15	15–19	20–24	25–29	30–34	35–39	≥40	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Alabama	11 (0.3)	366 (9.7)	1,240 (32.8)	1,061 (28.1)	691 (18.3)	300 (7.9)	106 (2.8)	**3,775 (99.9)**
Alaska	5 (0.4)	123 (9.9)	389 (31.2)	320 (25.7)	235 (18.9)	136 (10.9)	38 (3.0)	**1,246 (99.9)**
Arizona	12 (0.1)	1,095 (9.5)	3,562 (30.9)	3,188 (27.6)	2,093 (18.2)	1,165 (10.1)	415 (3.6)	**11,530 (100.0)**
Arkansas	9 (0.6)	167 (10.3)	500 (30.9)	479 (29.6)	302 (18.7)	125 (7.7)	37 (2.3)	**1,619 (99.9)**
Colorado	47 (0.3)	1,439 (10.2)	4,434 (31.4)	3,801 (26.9)	2,582 (18.3)	1,345 (9.5)	483 (3.4)	**14,131 (99.8)**
Connecticut	22 (0.2)	1,009 (9.1)	3,036 (27.3)	3,021 (27.2)	2,322 (20.9)	1,290 (11.6)	410 (3.7)	**11,110 (99.9)**
Delaware	6 (0.2)	238 (9.7)	721 (29.5)	685 (28.0)	474 (19.4)	243 (9.9)	78 (3.2)	**2,445 (100.0)**
District of Columbia	12 (0.3)	427 (10.6)	1,147 (28.5)	1,182 (29.4)	764 (19.0)	364 (9.1)	124 (3.1)	**4,020 (99.9)**
Florida	137 (0.2)	5,756 (7.0)	22,427 (27.2)	23,231 (28.2)	17,684 (21.5)	9,718 (11.8)	3,369 (4.1)	**82,322 (99.7)**
Georgia	74 (0.2)	2,750 (7.1)	10,684 (27.5)	11,634 (30.0)	8,339 (21.5)	3,957 (10.2)	1,382 (3.6)	**38,820 (100.0)**
Hawaii	—[¶]	181 (9.2)	552 (28.0)	526 (26.7)	382 (19.4)	228 (11.6)	—[¶]	**1,970 (100.0)**
Idaho	—[¶]	125 (12.2)	349 (34.0)	277 (27.0)	155 (15.1)	94 (9.2)	—[¶]	**1,027 (100.0)**
Illinois**	75 (0.2)	3,303 (8.5)	11,189 (28.8)	11,593 (29.9)	7,827 (20.2)	3,698 (9.5)	1,128 (2.9)	**38,813 (99.6)**

Area	Age group, yrs							Total abortions reported by known age
	<15	15–19	20–24	25–29	30–34	35–39	≥40	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Indiana	22 (0.2)	840 (8.8)	2,910 (30.5)	2,677 (28.1)	1,849 (19.4)	893 (9.4)	339 (3.6)	**9,530 (100.0)**
Iowa	13 (0.3)	420 (10.3)	1,277 (31.4)	1,048 (25.8)	746 (18.4)	430 (10.6)	129 (3.2)	**4,063 (99.9)**
Kansas	35 (0.3)	1,159 (9.4)	3,908 (31.7)	3,322 (27.0)	2,232 (18.1)	1,278 (10.4)	383 (3.1)	**12,317 (100.0)**
Kentucky	10 (0.4)	201 (7.9)	831 (32.6)	691 (27.1)	498 (19.5)	245 (9.6)	74 (2.9)	**2,550 (100.0)**
Louisiana	20 (0.4)	425 (9.3)	1,379 (30.2)	1,250 (27.4)	904 (19.8)	476 (10.4)	116 (2.5)	**4,570 (100.0)**
Maine	6 (0.3)	210 (9.5)	596 (26.9)	589 (26.6)	457 (20.6)	271 (12.2)	89 (4.0)	**2,218 (99.7)**
Massachusetts	32 (0.2)	1,392 (7.8)	4,622 (26.0)	4,710 (26.5)	3,897 (22.0)	2,232 (12.6)	863 (4.9)	**17,748 (99.9)**
Michigan	85 (0.3)	2,328 (7.8)	8,297 (27.7)	8,766 (29.3)	6,742 (22.5)	2,848 (9.5)	867 (2.9)	**29,933 (99.4)**
Minnesota	26 (0.2)	1,117 (9.2)	3,431 (28.2)	3,277 (26.9)	2,523 (20.7)	1,338 (11.0)	454 (3.7)	**12,166 (99.9)**
Mississippi	7 (0.3)	200 (8.7)	738 (32.3)	705 (30.8)	416 (18.2)	171 (7.5)	49 (2.1)	**2,286 (100.0)**
Missouri	—[¶]	—[¶]	18 (20.5)	21 (23.9)	20 (22.7)	15 (17.0)	10 (11.4)	**88 (100.0)**
Montana	6 (0.4)	189 (11.1)	490 (28.8)	444 (26.1)	313 (18.4)	186 (10.9)	74 (4.3)	**1,702 (100.0)**
Nebraska	7 (0.3)	270 (10.6)	850 (33.4)	676 (26.5)	419 (16.5)	252 (9.9)	73 (2.9)	**2,547 (100.0)**
Nevada[††]	11 (0.1)	964 (8.4)	3,061 (26.7)	3,206 (28.0)	2,410 (21.1)	1,298 (11.3)	494 (4.3)	**11,444 (95.7)**
New Mexico	48 (0.4)	1,234 (10.7)	3,528 (30.7)	3,014 (26.2)	2,048 (17.8)	1,248 (10.9)	368 (3.2)	**11,488 (97.9)**

Area	Age group, yrs							Total abortions reported by known age
	<15	15–19	20–24	25–29	30–34	35–39	≥40	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
New York	169 (0.2)	5,941 (8.2)	19,084 (26.3)	20,173 (27.8)	15,544 (21.4)	8,626 (11.9)	3,132 (4.3)	**72,669 (99.9)**
New York City	89 (0.2)	3,465 (7.5)	11,748 (25.3)	13,067 (28.2)	10,140 (21.9)	5,733 (12.4)	2,131 (4.6)	**46,373 (100.0)**
New York State	80 (0.3)	2,476 (9.4)	7,336 (27.9)	7,106 (27.0)	5,404 (20.6)	2,893 (11.0)	1,001 (3.8)	**26,296 (99.8)**
North Carolina	82 (0.2)	3,154 (8.0)	11,508 (29.3)	11,532 (29.4)	7,974 (20.3)	3,864 (9.8)	1,172 (3.0)	**39,286 (98.1)**
North Dakota	6 (0.8)	90 (11.9)	215 (28.5)	191 (25.3)	160 (21.2)	79 (10.5)	13 (1.7)	**754 (100.0)**
Ohio	42 (0.2)	1,494 (8.1)	5,455 (29.5)	5,325 (28.8)	3,791 (20.5)	1,825 (9.9)	567 (3.1)	**18,499 (100.0)**
Oklahoma	12 (0.6)	244 (11.3)	732 (34.0)	574 (26.6)	353 (16.4)	190 (8.8)	50 (2.3)	**2,155 (99.8)**
Oregon	12 (0.1)	894 (10.3)	2,561 (29.5)	2,336 (26.9)	1,636 (18.9)	922 (10.6)	309 (3.6)	**8,670 (100.0)**
Pennsylvania	76 (0.2)	2,724 (7.8)	9,351 (26.8)	10,107 (29.0)	7,591 (21.8)	3,765 (10.8)	1,224 (3.5)	**34,838 (100.0)**
Rhode Island	—[¶]	114 (8.2)	362 (26.2)	368 (26.6)	294 (21.3)	190 (13.7)	—[¶]	**1,383 (100.0)**
South Carolina	19 (0.3)	641 (8.8)	2,072 (28.5)	2,087 (28.7)	1,457 (20.0)	759 (10.4)	241 (3.3)	**7,276 (100.0)**
South Dakota	—[¶]	—[¶]	51 (37.2)	32 (23.4)	25 (18.2)	16 (11.7)	—[¶]	**137 (100.0)**
Tennessee	14 (0.2)	513 (8.0)	1,846 (28.6)	1,979 (30.7)	1,318 (20.4)	584 (9.1)	197 (3.1)	**6,451 (100.0)**
Texas	14 (0.1)	1,242 (7.1)	5,154 (29.4)	5,101 (29.1)	3,566 (20.4)	1,835 (10.5)	602 (3.4)	**17,514 (100.0)**
Utah	8 (0.2)	469 (12.3)	1,313 (34.3)	928 (24.3)	623 (16.3)	350 (9.2)	133 (3.5)	**3,824 (100.0)**

Area	Age group, yrs							Total abortions reported by known age
	<15	15–19	20–24	25–29	30–34	35–39	≥40	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Vermont	—[¶]	100 (9.0)	320 (28.9)	274 (24.7)	243 (21.9)	120 (10.8)	—[¶]	**1,108 (100.0)**
Virginia[§§]	38 (0.2)	1,155 (6.9)	4,515 (27.0)	4,767 (28.5)	3,498 (20.9)	2,007 (12.0)	739 (4.4)	**16,719 (100.0)**
Washington	39 (0.2)	2,063 (10.2)	5,669 (28.1)	5,268 (26.1)	3,884 (19.2)	2,388 (11.8)	871 (4.3)	**20,182 (99.9)**
West Virginia	—[¶]	92 (11.1)	268 (32.3)	232 (28.0)	149 (18.0)	60 (7.2)	—[¶]	**830 (99.9)**
Wisconsin	13 (0.4)	337 (10.1)	1,085 (32.6)	878 (26.3)	619 (18.6)	315 (9.5)	86 (2.6)	**3,333 (100.0)**
Wyoming	0 (0.0)	41 (7.6)	141 (26.1)	143 (26.5)	115 (21.3)	70 (13.0)	30 (5.6)	**540 (100.0)**
Total	**1,292 (0.2)**	**49,251 (8.3)**	**167,868 (28.3)**	**167,689 (28.2)**	**122,164 (20.6)**	**63,809 (10.7)**	**21,573 (3.6)**	**593,646 (99.6)[¶¶]**
Abortion rate* **	**0.4**	**5.6**	**18.1**	**18.7**	**13.0**	**7.1**	**2.5**	**NA**
Abortion ratio[†††]	**800**	**389**	**301**	**194**	**133**	**134**	**195**	**NA**

Abbreviation: NA = not applicable.

* Data from 48 reporting areas; excludes four reporting areas (California, Maryland, New Hampshire, and New Jersey) that did not report, did not report by age, or did not meet reporting standards.

[†] Percentages for the individual component categories might not add to 100% because of rounding.

[§] Percentage is calculated as the number of abortions reported by known age divided by the sum of abortions reported by known and unknown age. Values ≥99.95% are rounded to 100.0%.

[¶] Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.

** Includes residents only.

[††] For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

[§§] Data reported from facilities physically situated in state only.

[¶¶] Percentage is based on a total of 613,383 abortions reported among the areas that met reporting standards for age; reporting standards for age were applied to abortions for residents of Illinois only.

*** Number of abortions obtained by women in a specific age group per 1,000 women in that same age group. Adolescents aged 13–14 years were used as the denominator for the group of adolescents aged <15 years, and women aged 40–44 years were used as the denominator for the group of women aged ≥40 years. For the total abortion rate only, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

[†††] Number of abortions obtained by women in a specific age group per 1,000 live births to women in that same age group. For the total abortion ratio only, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

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TABLE 4. Percentage, rate,[*] and ratio[†] of reported abortions, by known age group and year — selected United States, 2013–2022

Age group, yrs	Year									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Reported abortions by known age (%)										
<15	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.1
15–19	11.5	10.4	9.8	9.4	9.1	8.8	8.7	8.3	8.2	8.5
20–24	32.7	32.2	31.2	30.1	29.4	28.6	27.9	28.2	28.5	28.
25–29	25.9	26.7	27.6	28.5	28.9	29.3	29.3	29.3	28.7	28.
30–34	16.8	17.2	17.7	18.0	18.3	18.8	19.4	19.7	20.2	20.
35–39	9.2	9.6	10.0	10.3	10.5	10.7	10.8	10.6	10.6	10.
≥40	3.6	3.6	3.6	3.6	3.6	3.5	3.7	3.6	3.5	3.(
Abortion rate										
<15	0.6	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4
15–19	8.2	7.3	6.7	6.2	5.9	5.8	5.8	5.5	5.4	5.4
20–24	21.8	20.8	19.9	19.0	18.3	18.1	18.1	18.1	18.6	17.
25–29	18.1	17.9	17.8	17.7	17.3	17.5	17.8	17.7	18.3	17.
30–34	11.8	11.6	11.7	11.6	11.5	11.8	12.3	12.1	12.5	12.
35–39	7.0	7.0	7.0	6.9	6.7	6.8	7.0	6.7	6.8	6.(
≥40	2.6	2.5	2.5	2.5	2.5	2.5	2.6	2.4	2.4	2.3
Abortion ratio										
<15	771	737	690	724	788	846	858	809	780	79
15–19	297	289	286	292	300	315	330	338	366	37
20–24	260	253	249	247	248	254	259	273	290	28
25–29	167	164	165	167	170	177	182	189	189	18

Age group, yrs	Year									
	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
30–34	122	116	115	113	114	119	125	127	127	12
35–39	149	145	141	137	135	136	138	135	132	12
≥40	247	240	230	221	213	209	216	207	198	18
Total no.¶	**544,986**	**531,041**	**520,602**	**508,565**	**497,249**	**500,974**	**508,955**	**502,481**	**514,695**	**498,**

Abbreviation: NA = not applicable.

* Number of abortions obtained by women in a specific age group per 1,000 women in that same age group. Adolescents aged 13–14 years were used as the denominator for the group of adolescents aged <15 years, and women aged 40–44 years were used as the denominator for the group of women aged ≥40 years. Abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

† Number of abortions obtained by women in a specific age group per 1,000 live births to women in that same age group. Abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

§ Data from 43 reporting areas; excludes nine reporting areas (California, District of Columbia, Florida, Maine, Maryland, New Hampshire, New Jersey, Tennessee, and Wyoming) that did not report, did not report by age, or did not meet reporting standards for ≥1 year.

¶ By year, the total number of abortions represent 99.5%–99.7% of all abortions reported to CDC among the areas that met reporting standards for age during 2013–2022; reporting standards for age were applied to abortions for residents of Illinois only during 2013–2019 and 2021–2022.

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TABLE 5. Number and percentage of reported abortions among adolescents, by known age and reporting area of occurrence — selected reporting areas,* United States, 2022

Area	Age, yrs						Total no.
	<15	**15**	**16**	**17**	**18**	**19**	
	No. (%)†	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**	
Alabama	11 (2.9)	24 (6.4)	33 (8.8)	39 (10.3)	109 (28.9)	161 (42.7)	**377**
Alaska	5 (3.9)	7 (5.5)	10 (7.8)	18 (14.1)	33 (25.8)	55 (43.0)	**128**
Arizona	12 (1.1)	39 (3.5)	71 (6.4)	129 (11.7)	369 (33.3)	487 (44.0)	**1,107**
Arkansas	9 (5.1)	8 (4.5)	11 (6.3)	27 (15.3)	54 (30.7)	67 (38.1)	**176**
Colorado	47 (3.2)	63 (4.2)	139 (9.4)	211 (14.2)	434 (29.2)	592 (39.8)	**1,486**
Delaware	6 (2.5)	8 (3.3)	24 (9.8)	43 (17.6)	68 (27.9)	95 (38.9)	**244**

Area	Age, yrs						Total no.
	<15	15	16	17	18	19	
	No. (%)†	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	
District of Columbia	12 (2.7)	14 (3.2)	61 (13.9)	103 (23.5)	91 (20.7)	158 (36.0)	**439**
Florida	137 (2.3)	208 (3.5)	423 (7.2)	708 (12.0)	1,730 (29.4)	2,687 (45.6)	**5,893**
Georgia	74 (2.6)	122 (4.3)	191 (6.8)	346 (12.3)	840 (29.7)	1,251 (44.3)	**2,824**
Hawaii	—§	—§	—§	—§	—§	—§	**—§**
Idaho	—§	—§	—§	—§	—§	—§	**—§**
Indiana	22 (2.6)	37 (4.3)	70 (8.1)	100 (11.6)	278 (32.3)	355 (41.2)	**862**
Iowa	13 (3.0)	22 (5.1)	30 (6.9)	74 (17.1)	119 (27.5)	175 (40.4)	**433**
Kansas	35 (2.9)	60 (5.0)	78 (6.5)	127 (10.6)	371 (31.1)	523 (43.8)	**1,194**
Kentucky	10 (4.7)	9 (4.3)	14 (6.6)	35 (16.6)	58 (27.5)	85 (40.3)	**211**
Louisiana	20 (4.5)	29 (6.5)	45 (10.1)	44 (9.9)	110 (24.7)	197 (44.3)	**445**
Maine	6 (2.8)	13 (6.0)	15 (6.9)	36 (16.7)	60 (27.8)	86 (39.8)	**216**
Massachusetts	32 (2.2)	54 (3.8)	129 (9.1)	195 (13.7)	399 (28.0)	615 (43.2)	**1,424**
Michigan	85 (3.5)	98 (4.1)	196 (8.1)	338 (14.0)	702 (29.1)	994 (41.2)	**2,413**
Minnesota	26 (2.3)	45 (3.9)	87 (7.6)	148 (12.9)	355 (31.1)	482 (42.2)	**1,143**
Mississippi	7 (3.4)	14 (6.8)	18 (8.7)	25 (12.1)	56 (27.1)	87 (42.0)	**207**
Missouri	—§	—§	—§	—§	—§	—§	**—§**
Montana	6 (3.1)	8 (4.1)	16 (8.2)	27 (13.8)	53 (27.2)	85 (43.6)	**195**
Nebraska	7 (2.5)	13 (4.7)	21 (7.6)	45 (16.2)	82 (29.6)	109 (39.4)	**277**
Nevada¶	11 (1.1)	50 (5.1)	75 (7.7)	156 (16.0)	272 (27.9)	411 (42.2)	**975**
New Mexico	48 (3.7)	66 (5.1)	115 (9.0)	208 (16.2)	352 (27.5)	493 (38.5)	**1,282**
New York	169 (2.8)	272 (4.5)	581 (9.5)	957 (15.7)	1,688 (27.6)	2,443 (40.0)	**6,110**
New York City	89 (2.5)	164 (4.6)	334 (9.4)	547 (15.4)	973 (27.4)	1,447 (40.7)	**3,554**
New York State	80 (3.1)	108 (4.2)	247 (9.7)	410 (16.0)	715 (28.0)	996 (39.0)	**2,556**
North Carolina	82 (2.5)	146 (4.5)	262 (8.1)	393 (12.1)	1,016 (31.4)	1,337 (41.3)	**3,236**

Area	Age, yrs						Total no.
	<15	15	16	17	18	19	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	
North Dakota	6 (6.3)	—[§]	—[§]	13 (13.5)	33 (34.4)	34 (35.4)	**96**
Ohio	42 (2.7)	76 (4.9)	124 (8.1)	213 (13.9)	440 (28.6)	641 (41.7)	**1,536**
Oklahoma	12 (4.7)	9 (3.5)	17 (6.6)	21 (8.2)	97 (37.9)	100 (39.1)	**256**
Oregon	12 (1.3)	28 (3.1)	68 (7.5)	138 (15.2)	292 (32.2)	368 (40.6)	**906**
Pennsylvania	76 (2.7)	147 (5.3)	207 (7.4)	331 (11.8)	828 (29.6)	1,211 (43.3)	**2,800**
Rhode Island	—[§]	—[§]	—[§]	—[§]	—[§]	—[§]	**—[§]**
South Carolina	19 (2.9)	28 (4.2)	50 (7.6)	125 (18.9)	211 (32.0)	227 (34.4)	**660**
South Dakota	—[§]	—[§]	—[§]	—[§]	—[§]	—[§]	**—[§]**
Tennessee	14 (2.7)	16 (3.0)	47 (8.9)	58 (11.0)	158 (30.0)	234 (44.4)	**527**
Texas	14 (1.1)	42 (3.3)	76 (6.1)	145 (11.5)	362 (28.8)	617 (49.1)	**1,256**
Utah	8 (1.7)	18 (3.8)	32 (6.7)	51 (10.7)	165 (34.6)	203 (42.6)	**477**
Vermont	—[§]	—[§]	—[§]	—[§]	—[§]	—[§]	**—[§]**
Virginia**	38 (3.2)	54 (4.5)	79 (6.6)	142 (11.9)	326 (27.3)	554 (46.4)	**1,193**
Washington	39 (1.9)	94 (4.5)	199 (9.5)	317 (15.1)	594 (28.3)	859 (40.9)	**2,102**
West Virginia	—[§]	—[§]	—[§]	—[§]	—[§]	—[§]	**—[§]**
Wyoming	0 (0.0)	—[§]	—[§]	—[§]	15 (36.6)	22 (53.7)	**41**
Total	**1,182 (2.6)**	**1,973 (4.3)**	**3,683 (8.0)**	**6,178 (13.5)**	**13,408 (29.3)**	**19,360 (42.3)**	**45,784**
Abortion rate[††]	**0.4**	**1.2**	**2.3**	**4.0**	**8.6**	**12.4**	**NA**
Abortion ratio[§§]	**773**	**528**	**435**	**363**	**414**	**343**	**NA**

Abbreviation: NA = not applicable.

* Data from 45 reporting areas; excludes seven reporting areas (California, Connecticut, Illinois, Maryland, New Hampshire, New Jersey, and Wisconsin) that did not report, did not report age among adolescents by individual year, or did not meet reporting standards.

[†] Percentages for the individual component categories might not add to 100% because of rounding.

[§] Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.

[¶] For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

** Data reported from facilities physically situated in state only.

[††] Number of abortions obtained by women in a specific age group per 1,000 women in that same age group. Adolescents aged 13–14 years were used as the denominator for the group of adolescents aged <15 years. For the total abortion rate only, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

[§§] Number of abortions obtained by women in a specific age group per 1,000 live births to women in that same age group. For the total abortion ratio only, abortions for women of unknown age were distributed according to the distribution of abortions among women of known age.

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TABLE 6. Number and percentage of reported abortions, by known race and ethnicity and reporting area of occurrence — selected reporting areas,* United States, 2022

Area	Non-Hispanic			Hispanic	Total abortions reported by known race and ethnicity
	Black	White	Other[†]		
	No. (%)[§]	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[¶]
Alabama	2,017 (54.0)	907 (24.3)	68 (1.8)	742 (19.9)	**3,734 (98.9)**
Alaska	98 (8.6)	547 (48.0)	467 (41.0)	27 (2.4)	**1,139 (91.3)**
Arizona	1,400 (12.7)	3,699 (33.6)	769 (7.0)	5,127 (46.6)	**10,995 (95.4)**
Delaware	1,104 (45.2)	864 (35.3)	55 (2.2)	422 (17.3)	**2,445 (100.0)**
District of Columbia	2,123 (56.6)	489 (13.0)	436 (11.6)	700 (18.7)	**3,748 (93.2)**
Florida	28,192 (36.3)	21,866 (28.2)	2,845 (3.7)	24,679 (31.8)	**77,582 (93.9)**
Georgia	24,104 (67.6)	6,492 (18.2)	1,687 (4.7)	3,399 (9.5)	**35,682 (91.9)**
Idaho	22 (2.2)	658 (65.7)	40 (4.0)	281 (28.1)	**1,001 (97.5)**
Indiana	3,370 (36.5)	4,188 (45.4)	687 (7.4)	981 (10.6)	**9,226 (96.8)**
Kansas	3,016 (24.7)	4,568 (37.5)	1,152 (9.4)	3,461 (28.4)	**12,197 (99.0)**
Kentucky	928 (36.5)	1,215 (47.8)	133 (5.2)	268 (10.5)	**2,544 (99.8)**
Maine	174 (8.3)	1,775 (84.7)	71 (3.4)	76 (3.6)	**2,096 (94.2)**
Michigan	15,901 (54.2)	10,616 (36.2)	1,525 (5.2)	1,305 (4.4)	**29,347 (97.4)**
Minnesota	2,848 (25.8)	5,198 (47.0)	1,630 (14.7)	1,377 (12.5)	**11,053 (90.8)**
Mississippi	1,767 (77.3)	438 (19.2)	22 (1.0)	59 (2.6)	**2,286 (100.0)**

Area	Non-Hispanic			Hispanic	Total abortions reported by known race and ethnicity
	Black	White	Other†		
	No. (%)§	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)¶
Missouri	34 (40.5)	40 (47.6)	—**	—**	**84 (95.5)**
Montana	30 (1.8)	1,364 (80.1)	169 (9.9)	139 (8.2)	**1,702 (100.0)**
Nevada††	1,908 (18.5)	2,865 (27.8)	799 (7.7)	4,740 (46.0)	**10,312 (86.2)**
New York State	7,007 (31.3)	8,683 (38.8)	1,722 (7.7)	4,991 (22.3)	**22,403 (85.1)**
North Carolina	19,576 (51.3)	9,936 (26.0)	3,100 (8.1)	5,579 (14.6)	**38,191 (95.4)**
North Dakota	119 (16.6)	428 (59.8)	121 (16.9)	48 (6.7)	**716 (95.0)**
Oregon	518 (6.6)	4,272 (54.7)	919 (11.8)	2,101 (26.9)	**7,810 (90.1)**
Rhode Island	202 (15.2)	803 (60.4)	69 (5.2)	255 (19.2)	**1,329 (96.1)**
South Carolina	3,463 (47.6)	2,700 (37.1)	315 (4.3)	795 (10.9)	**7,273 (100.0)**
South Dakota	15 (11.0)	84 (61.8)	26 (19.1)	11 (8.1)	**136 (99.3)**
Tennessee	3,448 (55.3)	2,028 (32.5)	213 (3.4)	548 (8.8)	**6,237 (96.7)**
Texas§§	5,194 (30.0)	4,539 (26.2)	922 (5.3)	6,659 (38.5)	**17,314 (98.9)**
Utah	186 (5.1)	1,939 (52.9)	295 (8.0)	1,248 (34.0)	**3,668 (95.9)**
Vermont	43 (4.0)	943 (88.6)	30 (2.8)	48 (4.5)	**1,064 (96.0)**
Virginia¶¶	5,386 (34.8)	3,445 (22.2)	4,586 (29.6)	2,075 (13.4)	**15,492 (92.6)**
West Virginia	109 (13.1)	692 (83.3)	—**	—**	**831 (100.0)**
Wyoming	6 (1.2)	361 (74.3)	29 (6.0)	90 (18.5)	**486 (90.0)**
Total	**134,308 (39.5)**	**108,642 (31.9)**	**24,932 (7.3)**	**72,241 (21.2)**	**340,123 (94.0)*** **
Abortion rate†††	**24.4**	**5.7**	**9.4**	**11.6**	**NA**
Abortion ratio§§§	**429**	**106**	**182**	**165**	**NA**

* Data from 32 reporting areas; excludes 20 reporting areas (Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, New York City, Ohio, Oklahoma, Pennsylvania, Washington, and Wisconsin) that did not report, did not report by race and ethnicity, or did not meet reporting standards.
† Including Alaska Native, American Indian, Asian (Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, or other Asian), Pacific Islander (Native Hawaiian, Guamanian or Chamorro, Samoan, or other Pacific Islander), other races, and multiple races.
§ Percentages for the individual component categories might not add to 100% because of rounding.
¶ Percentage is calculated as the number of abortions reported by known race and ethnicity divided by the sum of abortions reported by known and unknown race and ethnicity. Values ≥99.95% are rounded to 100.0%.
** Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.
†† For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.
§§ Reporting form contains only one question for race and ethnicity; therefore, abortions reported for women of Black, White, and other races (Asian and Native American) are not explicitly identified as non-Hispanic.
¶¶ Data reported from facilities physically situated in state only.
*** Percentage is based on a total of 361,987 abortions reported among the areas that met reporting standards for race and ethnicity.
††† Number of abortions obtained by women in a specific racial and ethnic group per 1,000 women aged 15–44 years in that same racial and ethnic group. For the total abortion rate only, abortions for women of unknown race and ethnicity were distributed according to the distribution of abortions among women of known race and ethnicity.
§§§ Number of abortions obtained by women in a specific racial and ethnic group per 1,000 live births to women in that same racial and ethnic group. For the total abortion ratio only, abortions for women of unknown race and ethnicity were distributed according to the distribution of abortions among women of known race and ethnicity.

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TABLE 7. Number and percentage of reported abortions, by known marital status and reporting area of occurrence — selected reporting areas,* United States, 2022

Area	Marital status		Total abortions reported by known marital status
	Married	Unmarried	
	No. (%)†	No. (%)	No. (% of all reported abortions)§
Alabama	389 (10.3)	3,385 (89.7)	**3,774 (99.9)**
Arizona	1,777 (15.4)	9,753 (84.6)	**11,530 (100.0)**
Arkansas	127 (7.9)	1,484 (92.1)	**1,611 (99.4)**
Colorado	2,237 (17.1)	10,858 (82.9)	**13,095 (92.5)**
Delaware	229 (9.4)	2,216 (90.6)	**2,445 (100.0)**
Florida	9,601 (13.6)	60,888 (86.4)	**70,489 (85.4)**
Georgia	3,839 (10.3)	33,503 (89.7)	**37,342 (96.2)**
Idaho	176 (17.3)	844 (82.7)	**1,020 (99.3)**
Illinois¶	4,951 (9.2)	49,018 (90.8)	**53,969 (95.6)**
Indiana	1,268 (13.3)	8,262 (86.7)	**9,530 (100.0)**

Area	Marital status		Total abortions reported by known marital status
	Married	Unmarried	
	No. (%)[†]	No. (%)	No. (% of all reported abortions)[§]
Iowa	567 (14.0)	3,490 (86.0)	**4,057 (99.7)**
Kansas	1,746 (14.6)	10,234 (85.4)	**11,980 (97.3)**
Kentucky	310 (12.2)	2,240 (87.8)	**2,550 (100.0)**
Louisiana	397 (8.8)	4,118 (91.2)	**4,515 (98.8)**
Maine	324 (15.3)	1,800 (84.7)	**2,124 (95.5)**
Michigan	3,396 (11.6)	25,792 (88.4)	**29,188 (96.9)**
Minnesota	1,617 (14.3)	9,697 (85.7)	**11,314 (92.9)**
Mississippi	144 (6.3)	2,141 (93.7)	**2,285 (100.0)**
Missouri	33 (37.5)	55 (62.5)	**88 (100.0)**
Montana	313 (18.9)	1,342 (81.1)	**1,655 (97.2)**
Nebraska	331 (13.5)	2,129 (86.5)	**2,460 (96.6)**
Nevada**	1,516 (14.3)	9,082 (85.7)	**10,598 (88.6)**
North Carolina	4,878 (13.2)	32,012 (86.8)	**36,890 (92.1)**
North Dakota	92 (12.3)	659 (87.7)	**751 (99.6)**
Ohio	2,117 (12.3)	15,075 (87.7)	**17,192 (92.9)**
Oklahoma	321 (14.9)	1,835 (85.1)	**2,156 (99.8)**
Rhode Island	180 (13.4)	1,164 (86.6)	**1,344 (97.2)**
South Carolina	936 (12.9)	6,340 (87.1)	**7,276 (100.0)**
South Dakota	24 (17.5)	113 (82.5)	**137 (100.0)**
Tennessee	733 (11.6)	5,601 (88.4)	**6,334 (98.2)**
Texas	2,452 (14.0)	15,061 (86.0)	**17,513 (100.0)**
Utah	831 (21.8)	2,977 (78.2)	**3,808 (99.6)**
Vermont	193 (18.7)	838 (81.3)	**1,031 (93.1)**
Virginia[††,§§]	1,165 (7.0)	15,557 (93.0)	**16,722 (100.0)**

Area	Marital status		Total abortions reported by known marital status
	Married	Unmarried	
	No. (%)[†]	No. (%)	No. (% of all reported abortions)[§]
West Virginia	144 (17.3)	687 (82.7)	**831 (100.0)**
Wisconsin	337 (10.2)	2,982 (89.8)	**3,319 (99.6)**
Total	**49,691 (12.3)**	**353,232 (87.7)**	**402,923 (94.0)[¶¶]**
Abortion ratio***	**37**	**376**	**NA**

Abbreviation: NA = not applicable.

* Data from 36 reporting areas; excludes 16 reporting areas (Alaska, California, Connecticut, District of Columbia, Hawaii, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York City, New York State, Oregon, Pennsylvania, Washington, and Wyoming) that did not report, did not report by marital status, or did not meet reporting standards.

[†] Percentages for the individual component categories might not add to 100% because of rounding.

[§] Percentage is calculated as the number of abortions reported by known marital status divided by the sum of abortions reported by known and unknown marital status. Values ≥99.95% are rounded to 100.0%.

[¶] Includes residents only.

** For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

[††] Recorded as patient married or not married to father.

[§§] Data reported from facilities physically situated in state only.

[¶¶] Percentage is based on a total of 428,577 abortions reported among the areas that met reporting standards for marital status; reporting standards for marital status were applied to abortions for residents of Illinois only.

*** Number of abortions obtained by marital status per 1,000 live births to women of the same marital status. For the total abortion ratio only, abortions for women of unknown marital status were distributed according to the distribution of abortions among women of known marital status.

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TABLE 8. Number and percentage of reported abortions, by known number of previous live births and reporting area of occurrence — selected reporting areas,* United States, 2022

Area	No. of previous live births					Total abortions reported by known number of previous live births
	0	1	2	3	≥4	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Alabama	1,320 (34.9)	1,052 (27.9)	778 (20.6)	401 (10.6)	226 (6.0)	**3,777 (100.0)**
Alaska	587 (47.1)	263 (21.1)	216 (17.3)	100 (8.0)	81 (6.5)	**1,247 (100.0)**
Arizona	5,432 (47.9)	2,359 (20.8)	1,939 (17.1)	917 (8.1)	695 (6.1)	**11,342 (98.4)**
Arkansas	526 (32.4)	440 (27.1)	341 (21.0)	174 (10.7)	140 (8.6)	**1,621 (100.0)**

Area	No. of previous live births					Total abortions reported by known number of previous live births
	0	1	2	3	≥4	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Colorado	8,302 (59.3)	2,478 (17.7)	1,860 (13.3)	866 (6.2)	488 (3.5)	**13,994 (98.9)**
Delaware	1,025 (41.9)	579 (23.7)	490 (20.0)	207 (8.5)	144 (5.9)	**2,445 (100.0)**
Florida	30,388 (38.1)	20,855 (26.2)	16,485 (20.7)	7,218 (9.1)	4,725 (5.9)	**79,671 (96.5)**
Georgia	15,314 (39.5)	9,444 (24.3)	7,639 (19.7)	3,767 (9.7)	2,648 (6.8)	**38,812 (100.0)**
Hawaii	1,048 (55.0)	314 (16.5)	289 (15.2)	150 (7.9)	103 (5.4)	**1,904 (96.6)**
Idaho	504 (49.4)	222 (21.8)	163 (16.0)	74 (7.3)	57 (5.6)	**1,020 (99.3)**
Indiana	3,642 (38.2)	2,295 (24.1)	1,929 (20.2)	1,007 (10.6)	653 (6.9)	**9,526 (100.0)**
Iowa	1,793 (44.2)	872 (21.5)	735 (18.1)	368 (9.1)	293 (7.2)	**4,061 (99.8)**
Kansas	5,038 (40.9)	2,863 (23.2)	2,397 (19.5)	1,226 (10.0)	793 (6.4)	**12,317 (100.0)**
Kentucky	857 (33.6)	702 (27.5)	559 (21.9)	260 (10.2)	171 (6.7)	**2,549 (100.0)**
Louisiana	1,432 (31.3)	1,203 (26.3)	1,046 (22.9)	524 (11.5)	365 (8.0)	**4,570 (100.0)**
Maine	1,113 (50.4)	465 (21.1)	368 (16.7)	164 (7.4)	97 (4.4)	**2,207 (99.2)**
Massachusetts	7,627 (48.3)	3,648 (23.1)	2,767 (17.5)	1,170 (7.4)	580 (3.7)	**15,792 (88.9)**
Michigan[¶]	10,558 (35.1)	7,627 (25.4)	6,482 (21.5)	3,161 (10.5)	2,256 (7.5)	**30,084 (99.9)**
Minnesota	5,168 (42.5)	2,700 (22.2)	2,293 (18.8)	1,190 (9.8)	821 (6.7)	**12,172 (100.0)**
Mississippi	717 (31.4)	599 (26.2)	518 (22.7)	250 (10.9)	202 (8.8)	**2,286 (100.0)**

Area	No. of previous live births					Total abortions reported by known number of previous live births
	0	1	2	3	≥4	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Missouri	28 (31.8)	19 (21.6)	17 (19.3)	12 (13.6)	12 (13.6)	**88 (100.0)**
Montana	879 (51.6)	383 (22.5)	256 (15.0)	116 (6.8)	68 (4.0)	**1,702 (100.0)**
Nebraska	1,110 (43.7)	532 (21.0)	467 (18.4)	248 (9.8)	182 (7.2)	**2,539 (99.7)**
Nevada**	5,081 (44.0)	2,517 (21.8)	2,136 (18.5)	1,066 (9.2)	758 (6.6)	**11,558 (96.7)**
New Mexico	4,764 (44.1)	2,357 (21.8)	1,906 (17.7)	1,005 (9.3)	760 (7.0)	**10,792 (92.0)**
North Carolina	13,840 (37.7)	8,790 (23.9)	7,269 (19.8)	3,731 (10.2)	3,113 (8.5)	**36,743 (91.8)**
North Dakota	312 (41.4)	163 (21.6)	144 (19.1)	77 (10.2)	58 (7.7)	**754 (100.0)**
Ohio[††]	6,348 (35.3)	4,683 (26.1)	3,795 (21.1)	1,874 (10.4)	1,269 (7.1)	**17,969 (97.1)**
Oregon	4,602 (53.7)	1,705 (19.9)	1,290 (15.1)	593 (6.9)	375 (4.4)	**8,565 (98.8)**
Pennsylvania	13,143 (37.7)	8,913 (25.6)	7,180 (20.6)	3,425 (9.8)	2,177 (6.2)	**34,838 (100.0)**
Rhode Island	646 (47.1)	334 (24.4)	230 (16.8)	111 (8.1)	50 (3.6)	**1,371 (99.1)**
South Carolina	3,137 (43.1)	1,821 (25.0)	1,320 (18.1)	669 (9.2)	329 (4.5)	**7,276 (100.0)**
South Dakota	58 (42.3)	38 (27.7)	16 (11.7)	17 (12.4)	8 (5.8)	**137 (100.0)**
Tennessee	2,183 (33.8)	1,719 (26.7)	1,386 (21.5)	693 (10.7)	469 (7.3)	**6,450 (100.0)**
Texas	7,083 (40.4)	4,054 (23.1)	3,580 (20.4)	1,778 (10.2)	1,019 (5.8)	**17,514 (100.0)**
Utah	2,012 (52.6)	773 (20.2)	576 (15.1)	266 (7.0)	197 (5.2)	**3,824 (100.0)**

Area	No. of previous live births					Total abortions reported by known number of previous live births
	0	1	2	3	≥4	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Vermont	645 (58.2)	212 (19.1)	142 (12.8)	68 (6.1)	41 (3.7)	**1,108 (100.0)**
Virginia[§§]	4,823 (28.8)	4,588 (27.4)	3,373 (20.2)	1,954 (11.7)	1,984 (11.9)	**16,722 (100.0)**
Washington	10,184 (50.6)	4,113 (20.4)	3,438 (17.1)	1,526 (7.6)	860 (4.3)	**20,121 (99.6)**
West Virginia	282 (34.0)	229 (27.6)	185 (22.3)	80 (9.6)	54 (6.5)	**830 (99.9)**
Wyoming	264 (48.9)	113 (20.9)	89 (16.5)	45 (8.3)	29 (5.4)	**540 (100.0)**
Total	**183,815 (40.6)**	**109,036 (24.1)**	**88,089 (19.5)**	**42,548 (9.4)**	**29,350 (6.5)**	**452,838 (97.7)[¶¶]**

* Data from 41 reporting areas; excludes 11 reporting areas (California, Connecticut, District of Columbia, Illinois, Maryland, New Hampshire, New Jersey, New York City, New York State, Oklahoma, and Wisconsin) that did not report, did not report by number of previous live births, or did not meet reporting standards.

[†] Percentages for the individual component categories might not add to 100% because of rounding.

[§] Percentage is calculated as the number of abortions reported by known number of previous live births divided by the sum of abortions reported by known and unknown number of previous live births. Values ≥99.95% are rounded to 100.0%.

[¶] Recorded as the number of previous pregnancies carried to term.

** For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

[††] Recorded as the number of living children.

[§§] Data reported from facilities physically situated in state only.

[¶¶] Percentage is based on a total of 463,579 abortions reported among the areas that met reporting standards for the number of previous live births.

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TABLE 9. Number and percentage of reported abortions, by known number of previous induced abortions and reporting area of occurrence — selected reporting areas,* United States, 2022

Area	No. of previous induced abortions				Total abortions reported by known number of previous induced abortions
	0	1	2	≥3	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Alabama	2,339 (61.9)	909 (24.1)	355 (9.4)	174 (4.6)	**3,777 (100.0)**
Alaska	840 (67.4)	277 (22.2)	91 (7.3)	39 (3.1)	**1,247 (100.0)**
Arizona	7,487 (66.3)	2,649 (23.4)	791 (7.0)	373 (3.3)	**11,300 (98.0)**

Area	No. of previous induced abortions				Total abortions reported by known number of previous induced abortions
	0	1	2	≥3	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Arkansas	1,036 (63.9)	334 (20.6)	132 (8.1)	119 (7.3)	**1,621 (100.0)**
Colorado	10,154 (71.9)	2,789 (19.7)	822 (5.8)	359 (2.5)	**14,124 (99.8)**
Delaware	1,595 (65.3)	547 (22.4)	198 (8.1)	101 (4.1)	**2,441 (99.8)**
Florida	36,777 (46.6)	21,328 (27.0)	11,009 (14.0)	9,776 (12.4)	**78,890 (95.5)**
Georgia	24,020 (61.9)	8,627 (22.2)	3,892 (10.0)	2,269 (5.8)	**38,808 (100.0)**
Hawaii	1,156 (60.1)	462 (24.0)	182 (9.5)	122 (6.3)	**1,922 (97.6)**
Idaho	731 (71.2)	208 (20.3)	67 (6.5)	21 (2.0)	**1,027 (100.0)**
Indiana	6,241 (65.5)	2,130 (22.4)	751 (7.9)	405 (4.3)	**9,527 (100.0)**
Iowa	2,814 (69.3)	847 (20.9)	261 (6.4)	138 (3.4)	**4,060 (99.8)**
Kansas	8,481 (68.9)	2,620 (21.3)	810 (6.6)	405 (3.3)	**12,316 (100.0)**
Kentucky	1,610 (63.2)	583 (22.9)	204 (8.0)	151 (5.9)	**2,548 (99.9)**
Louisiana	2,933 (64.2)	1,119 (24.5)	349 (7.6)	169 (3.7)	**4,570 (100.0)**
Maine	1,435 (65.5)	525 (24.0)	173 (7.9)	57 (2.6)	**2,190 (98.4)**
Massachusetts	8,505 (49.9)	4,835 (28.4)	2,054 (12.1)	1,641 (9.6)	**17,035 (95.9)**
Michigan	15,030 (50.0)	7,390 (24.6)	4,229 (14.1)	3,434 (11.4)	**30,083 (99.9)**
Minnesota	7,500 (61.7)	2,731 (22.5)	1,028 (8.5)	894 (7.4)	**12,153 (99.8)**

Area	No. of previous induced abortions				Total abortions reported by known number of previous induced abortions
	0	1	2	≥3	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Mississippi	1,549 (67.8)	494 (21.6)	175 (7.7)	68 (3.0)	**2,286 (100.0)**
Missouri	73 (83.0)	9 (10.2)	—**	—**	**88 (100.0)**
Montana	860 (50.5)	579 (34.0)	184 (10.8)	79 (4.6)	**1,702 (100.0)**
Nebraska	1,840 (72.5)	481 (19.0)	143 (5.6)	74 (2.9)	**2,538 (99.6)**
Nevada[¶]	6,906 (59.6)	2,661 (23.0)	1,160 (10.0)	853 (7.4)	**11,580 (96.8)**
New Mexico	2,141 (18.8)	6,552 (57.6)	2,044 (18.0)	636 (5.6)	**11,373 (96.9)**
North Carolina	23,053 (63.3)	7,815 (21.5)	3,436 (9.4)	2,101 (5.8)	**36,405 (90.9)**
North Dakota	522 (69.2)	147 (19.5)	47 (6.2)	38 (5.0)	**754 (100.0)**
Ohio	10,888 (60.6)	4,000 (22.3)	1,811 (10.1)	1,260 (7.0)	**17,959 (97.1)**
Oregon	5,638 (66.0)	1,765 (20.7)	687 (8.0)	453 (5.3)	**8,543 (98.5)**
Pennsylvania	18,242 (52.4)	8,480 (24.3)	4,111 (11.8)	4,005 (11.5)	**34,838 (100.0)**
Rhode Island	826 (60.0)	319 (23.2)	128 (9.3)	103 (7.5)	**1,376 (99.5)**
South Carolina	4,792 (65.9)	1,617 (22.2)	586 (8.1)	281 (3.9)	**7,276 (100.0)**
South Dakota	98 (71.5)	26 (19.0)	—**	—**	**137 (100.0)**
Tennessee	4,036 (62.6)	1,600 (24.8)	544 (8.4)	268 (4.2)	**6,448 (99.9)**
Texas	10,692 (61.0)	4,416 (25.2)	1,573 (9.0)	833 (4.8)	**17,514 (100.0)**
Utah	2,978 (77.9)	617 (16.1)	172 (4.5)	57 (1.5)	**3,824 (100.0)**
Vermont	732 (66.1)	243 (21.9)	83 (7.5)	50 (4.5)	**1,108 (100.0)**

Area	No. of previous induced abortions				Total abortions reported by known number of previous induced abortions
	0	1	2	≥3	
	No. (%)[†]	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[§]
Virginia[††]	4,823 (28.8)	4,588 (27.4)	3,373 (20.2)	3,938 (23.5)	**16,722 (100.0)**
Washington	12,308 (61.3)	4,551 (22.7)	1,793 (8.9)	1,426 (7.1)	**20,078 (99.4)**
West Virginia	591 (71.2)	153 (18.4)	55 (6.6)	31 (3.7)	**830 (99.9)**
Wyoming	389 (72.0)	109 (20.2)	31 (5.7)	11 (2.0)	**540 (100.0)**
Total	**254,661 (56.1)**	**112,132 (24.7)**	**49,549 (10.9)**	**37,216 (8.2)**	**453,558 (97.8)[§§]**

* Data from 41 reporting areas; excludes 11 reporting areas (California, Connecticut, District of Columbia, Illinois, Maryland, New Hampshire, New Jersey, New York City, New York State, Oklahoma, and Wisconsin) that did not report, did not report by number of previous induced abortions, or did not meet reporting standards.

† Percentages for the individual component categories might not add to 100% because of rounding.

§ Percentage is calculated as the number of abortions reported by known number of previous induced abortions divided by the sum of abortions reported by known and unknown number of previous induced abortions. Values ≥99.95% are rounded to 100.0%.

¶ For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

** Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.

†† Data reported from facilities physically situated in state only.

§§ Percentage is based on a total of 463,579 abortions reported among the areas that met reporting standards for the number of previous induced abortions.

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TABLE 10. Number and percentage of reported abortions, by known weeks of gestation* and reporting area of occurrence — selected reporting areas,† United States, 2022

Area	Weeks of gestation							Total abortions reported by known gestational age
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	
	No. (%)[§]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[¶]
Alabama**	848 (22.5)	1,816 (48.1)	731 (19.4)	171 (4.5)	89 (2.4)	97 (2.6)	23 (0.6)	**3,775 (99.9)**
Alaska	417 (33.4)	518 (41.5)	229 (18.4)	39 (3.1)	43 (3.4)	—[††]	—[††]	**1,247 (100.0)**
Arizona	3,444 (29.9)	5,319 (46.2)	1,885 (16.4)	382 (3.3)	188 (1.6)	172 (1.5)	115 (1.0)	**11,505 (99.8)**

Area	Weeks of gestation							Total abortions reported by known gestational age
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	
	No. (%)[§]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[¶]
Arkansas**	20 (1.2)	530 (32.7)	702 (43.3)	155 (9.6)	94 (5.8)	106 (6.5)	14 (0.9)	**1,621 (100.0)**
Colorado	4,915 (34.8)	5,829 (41.2)	1,907 (13.5)	341 (2.4)	344 (2.4)	313 (2.2)	488 (3.5)	**14,137 (99.9)**
Delaware	779 (32.3)	1,100 (45.6)	389 (16.1)	92 (3.8)	12 (0.5)	18 (0.7)	24 (1.0)	**2,414 (98.7)**
Florida	28,983 (35.1)	35,418 (42.9)	13,314 (16.1)	2,693 (3.3)	882 (1.1)	742 (0.9)	549 (0.7)	**82,581 (100.0)**
Georgia	23,286 (60.0)	10,582 (27.3)	3,278 (8.4)	630 (1.6)	426 (1.1)	492 (1.3)	125 (0.3)	**38,819 (100.0)**
Hawaii	649 (33.0)	873 (44.4)	273 (13.9)	72 (3.7)	38 (1.9)	28 (1.4)	33 (1.7)	**1,966 (99.8)**
Idaho	399 (39.9)	414 (41.4)	143 (14.3)	37 (3.7)	—[††]	5 (0.5)	—[††]	**1,000 (97.4)**
Indiana	2,332 (24.5)	5,329 (55.9)	1,765 (18.5)	28 (0.3)	19 (0.2)	28 (0.3)	29 (0.3)	**9,530 (100.0)**
Iowa	1,210 (29.8)	1,895 (46.6)	681 (16.8)	113 (2.8)	88 (2.2)	65 (1.6)	12 (0.3)	**4,064 (99.9)**
Kansas	3,165 (25.7)	5,681 (46.1)	2,381 (19.3)	485 (3.9)	282 (2.3)	273 (2.2)	50 (0.4)	**12,317 (100.0)**
Kentucky	746 (29.3)	1,192 (46.7)	399 (15.6)	95 (3.7)	48 (1.9)	59 (2.3)	11 (0.4)	**2,550 (100.0)**
Louisiana	544 (11.9)	1,760 (38.5)	1,647 (36.0)	418 (9.1)	178 (3.9)	23 (0.5)	0 (0.0)	**4,570 (100.0)**
Maine	715 (32.2)	1,075 (48.4)	325 (14.6)	46 (2.1)	36 (1.6)	—[††]	—[††]	**2,221 (99.8)**
Michigan	10,661 (35.5)	12,122 (40.4)	4,369 (14.6)	1,141 (3.8)	669 (2.2)	659 (2.2)	406 (1.4)	**30,027 (99.7)**
Minnesota	4,438 (36.7)	4,839 (40.0)	1,702 (14.1)	413 (3.4)	276 (2.3)	195 (1.6)	227 (1.9)	**12,090 (99.3)**

Area	Weeks of gestation							Total abortions reported by known gestational age
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	
	No. (%)[§]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[¶]
Mississippi	305 (13.3)	1,327 (58.0)	509 (22.3)	137 (6.0)	7 (0.3)	—[††]	—[††]	**2,286 (100.0)**
Missouri	—[††]	9 (10.2)	—[††]	14 (15.9)	14 (15.9)	24 (27.3)	15 (17.0)	**88 (100.0)**
Montana	877 (52.0)	587 (34.8)	134 (7.9)	52 (3.1)	23 (1.4)	—[††]	—[††]	**1,687 (99.1)**
Nebraska	833 (32.7)	1,031 (40.5)	487 (19.1)	91 (3.6)	61 (2.4)	31 (1.2)	13 (0.5)	**2,547 (100.0)**
Nevada[§§]	4,248 (36.8)	4,755 (41.2)	1,620 (14.1)	343 (3.0)	207 (1.8)	222 (1.9)	133 (1.2)	**11,528 (96.4)**
New Mexico	4,442 (41.9)	3,176 (29.9)	1,526 (14.4)	372 (3.5)	337 (3.2)	322 (3.0)	434 (4.1)	**10,609 (90.4)**
New York City	19,371 (41.8)	17,498 (37.8)	5,383 (11.6)	1,319 (2.8)	815 (1.8)	911 (2.0)	1,054 (2.3)	**46,351 (100.0)**
North Carolina	13,506 (33.8)	17,299 (43.3)	6,246 (15.6)	1,247 (3.1)	906 (2.3)	747 (1.9)	14 (0.0)	**39,965 (99.8)**
North Dakota	274 (36.3)	310 (41.1)	130 (17.2)	32 (4.2)	8 (1.1)	0 (0.0)	0 (0.0)	**754 (100.0)**
Ohio	6,638 (35.9)	7,639 (41.3)	2,653 (14.3)	641 (3.5)	413 (2.2)	408 (2.2)	107 (0.6)	**18,499 (100.0)**
Oklahoma	369 (17.2)	1,011 (47.0)	542 (25.2)	143 (6.7)	58 (2.7)	19 (0.9)	7 (0.3)	**2,149 (99.5)**
Oregon	3,851 (44.5)	3,190 (36.8)	907 (10.5)	199 (2.3)	158 (1.8)	185 (2.1)	171 (2.0)	**8,661 (99.9)**
Rhode Island	559 (40.4)	384 (27.8)	254 (18.4)	82 (5.9)	44 (3.2)	52 (3.8)	8 (0.6)	**1,383 (100.0)**
South Carolina**	1,850 (25.4)	2,732 (37.5)	2,350 (32.3)	305 (4.2)	10 (0.1)	14 (0.2)	15 (0.2)	**7,276 (100.0)**
South Dakota	—[††]	59 (43.1)	—[††]	—[††]	—[††]	0 (0.0)	0 (0.0)	**137 (100.0)**

Area	Weeks of gestation							Total abortions reported by known gestational age
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	
	No. (%)[§]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (% of all reported abortions)[¶]
Tennessee	1,890 (29.3)	2,707 (42.0)	1,422 (22.0)	229 (3.6)	148 (2.3)	47 (0.7)	7 (0.1)	**6,450 (100.0)**
Texas**	17,191 (98.2)	288 (1.6)	7 (0.0)	—[††]	—[††]	12 (0.1)	8 (0.0)	**17,514 (100.0)**
Utah	1,757 (45.9)	1,336 (34.9)	477 (12.5)	100 (2.6)	76 (2.0)	48 (1.3)	30 (0.8)	**3,824 (100.0)**
Vermont	493 (44.7)	399 (36.1)	129 (11.7)	21 (1.9)	23 (2.1)	23 (2.1)	16 (1.4)	**1,104 (99.6)**
Virginia[¶¶]	8,175 (48.9)	5,792 (34.6)	1,856 (11.1)	335 (2.0)	140 (0.8)	198 (1.2)	225 (1.3)	**16,721 (100.0)**
Washington	9,228 (45.8)	7,356 (36.5)	1,992 (9.9)	461 (2.3)	269 (1.3)	319 (1.6)	525 (2.6)	**20,150 (99.8)**
West Virginia	253 (30.5)	374 (45.1)	152 (18.3)	40 (4.8)	9 (1.1)	—[††]	—[††]	**829 (99.8)**
Wyoming	350 (64.9)	181 (33.6)	8 (1.5)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	**539 (99.8)**
Total	**184,042 (40.2)**	**175,732 (38.4)**	**64,961 (14.2)**	**13,518 (3.0)**	**7,444 (1.6)**	**6,892 (1.5)**	**4,896 (1.1)**	**457,485 (99.6)*** **

* Gestational age based on clinician's estimate (Alaska, Arizona, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York City, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia, and Wyoming); gestational age calculated from the last normal menstrual period (Florida, Oklahoma and Utah); clinician's estimate of gestation based on estimated date of conception (Virginia); and probable postfertilization age (Alabama, Arkansas, South Carolina, and Texas).

† Data from 41 reporting areas; excludes 11 reporting areas (California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York State, Pennsylvania, and Wisconsin) that did not report, did not report by gestational age, or did not meet reporting standards.

§ Percentages for the individual component categories might not add to 100% because of rounding.

¶ Percentage is calculated as the number of abortions reported by known gestational age divided by the sum of abortions reported by known and unknown gestational age. Values ≥99.95% are rounded to 100.0%.

** Two weeks were added to the probable postfertilization age to provide a corresponding measure to gestational age based on the clinician's estimate.

†† Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.

§§ For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

¶¶ Data reported from facilities physically situated in state only.

*** Percentage is based on a total of 459,517 abortions reported among the areas that met reporting standards for gestational age.

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TABLE 11. Percentage of reported abortions, by known weeks of gestation and year — selected reportin States, 2013–2022

Weeks of gestation	Year									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2(
≤13 weeks (%)†	**92.0**	**91.3**	**91.3**	**91.3**	**91.6**	**91.8**	**92.3**	**92.7**	**92.9**	
≤6	34.8	33.6	34.2	34.4	35.3	36.5	37.9	39.6	39.4	
7–9	40.2	40.3	40.3	40.7	40.7	40.1	39.9	39.6	39.7	
10–13	17.0	17.3	16.7	16.3	15.5	15.2	14.4	13.5	13.8	
>13 weeks (%)†	**8.0**	**8.7**	**8.7**	**8.7**	**8.4**	**8.2**	**7.7**	**7.3**	**7.1**	
14–15	3.2	3.5	3.4	3.5	3.3	3.3	3.1	3.0	2.9	
16–17	1.8	2.1	2.1	2.1	2.1	2.0	1.8	1.7	1.7	
18–20	1.8	1.9	1.9	1.9	1.9	1.9	1.7	1.6	1.6	
≥21	1.2	1.3	1.3	1.2	1.2	1.1	1.1	1.0	1.0	
Total no.§	**408,958**	**399,156**	**389,411**	**382,097**	**369,992**	**370,647**	**375,636**	**364,626**	**380,753**	**3(**

Abbreviation: NA = not applicable.

* Data from 36 reporting areas; excludes 16 areas (California, Connecticut, District of Columbia, Florida, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York State, Pennsylvania, Rhode Island, Tennessee, Wisconsin, and Wyoming) that did not report, did not report by weeks of gestation, or did not meet reporting standards for ≥1 year.

† Percentages for the individual component categories might not add to 100% because of rounding.

§ By year, the total number of abortions represents 72.7%–91.4% of all abortions reported to CDC among the areas that met reporting standards for gestational age during 2013–2022.

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TABLE 12. Number and percentage of reported abortions, by known method type and reporting area of selected reporting areas,* United States, 2022

Area	Surgical†			Medication			Intrauterine instillation§	Hyst or hyst
	≤13 weeks' gestation	>13 weeks' gestation	Unknown gestational age	≤9 weeks' gestation	>9 weeks' gestation	Unknown gestational age		
	No. (%)¶	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No.
Alabama††	1,210 (32.1)	369 (9.8)	—§§	1,967 (52.1)	226 (6.0)	—§§	0 (0.0)	
Alaska	561 (45.0)	81 (6.5)	—§§	574 (46.1)	29 (2.3)	0 (0.0)	—§§	
Arizona	4,829 (41.9)	831 (7.2)	8 (0.1)	5,349 (46.4)	494 (4.3)	17 (0.1)	0 (0.0)	
Arkansas††	873 (53.9)	369 (22.8)	0 (0.0)	216 (13.3)	163 (10.1)	0 (0.0)	0 (0.0)	
Colorado	3,198 (24.9)	790 (6.2)	11 (0.1)	8,118 (63.3)	708 (5.5)	6 (0.0)	—§§	
Connecticut¶¶	NA	NA	3,409 (30.7)	NA	NA	7,701 (69.3)	—§§	
Delaware	512 (21.2)	125 (5.2)	16 (0.7)	1,563 (64.8)	184 (7.6)	13 (0.5)	0 (0.0)	
District of Columbia***	1,599 (39.7)	437 (10.9)	0 (0.0)	NA	NA	1,987 (49.4)	0 (0.0)	
Florida	30,101 (37.6)	4,387 (5.5)	—§§	41,469 (51.8)	4,019 (5.0)	0 (0.0)	0 (0.0)	
Georgia	9,778 (25.2)	1,664 (4.3)	—§§	26,369 (67.9)	1,006 (2.6)	—§§	0 (0.0)	
Hawaii	796 (40.8)	165 (8.5)	—§§	934 (47.8)	54 (2.8)	—§§	0 (0.0)	
Idaho	325 (31.6)	41 (4.0)	7 (0.7)	593 (57.7)	41 (4.0)	20 (1.9)	0 (0.0)	
Indiana	4,419 (46.4)	64 (0.7)	0 (0.0)	4,895 (51.4)	152 (1.6)	0 (0.0)	0 (0.0)	
Iowa	808 (19.9)	269 (6.6)	—§§	2,708 (66.6)	278 (6.8)	—§§	0 (0.0)	

Area	Surgical†			Medication			Intrauterine instillation§	Hyst or hyst
	≤13 weeks' gestation	>13 weeks' gestation	Unknown gestational age	≤9 weeks' gestation	>9 weeks' gestation	Unknown gestational age		
	No. (%)¶	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No.
Kansas	3,888 (31.6)	942 (7.6)	0 (0.0)	6,599 (53.6)	888 (7.2)	0 (0.0)	0 (0.0)	(
Kentucky	1,081 (42.4)	212 (8.3)	0 (0.0)	1,253 (49.1)	—§§	0 (0.0)	0 (0.0)	
Louisiana	2,135 (47.0)	617 (13.6)	0 (0.0)	1,635 (36.0)	160 (3.5)	0 (0.0)	0 (0.0)	(
Maine	709 (31.9)	102 (4.6)	—§§	1,275 (57.4)	130 (5.9)	—§§	0 (0.0)	(
Massachusetts†††	NA	NA	8,462 (47.7)	NA	NA	9,276 (52.3)	—§§	
Michigan	11,590 (38.6)	2,783 (9.3)	46 (0.2)	14,489 (48.2)	1,083 (3.6)	34 (0.1)	—§§	
Minnesota	3,652 (30.0)	1,100 (9.0)	29 (0.2)	6,802 (55.9)	534 (4.4)	56 (0.5)	—§§	
Mississippi	238 (10.4)	144 (6.3)	0 (0.0)	1,622 (71.0)	280 (12.3)	0 (0.0)	0 (0.0)	(
Missouri	—§§	46 (54.8)	—§§	0 (0.0)	16 (19.0)	0 (0.0)	0 (0.0)	
Montana	311 (18.3)	88 (5.2)	—§§	1,219 (71.6)	69 (4.1)	11 (0.6)	—§§	(
Nebraska	449 (17.6)	193 (7.6)	0 (0.0)	1,725 (67.8)	178 (7.0)	0 (0.0)	0 (0.0)	(
Nevada§§§	4,596 (41.7)	436 (4.0)	14 (0.1)	5,503 (49.9)	328 (3.0)	143 (1.3)	0 (0.0)	(
New Mexico	3,848 (36.7)	1,071 (10.2)	218 (2.1)	4,522 (43.1)	530 (5.0)	296 (2.8)	—§§	
New York	8,231 (11.5)	1,922 (2.7)	28,821 (40.3)	7,799 (10.9)	1,807 (2.5)	22,856 (31.9)	110 (0.2)	1
New York City	NA	NA	26,988 (58.2)	NA	NA	19,271 (41.6)	98 (0.2)	1

Area	Surgical[†]			Medication			Intrauterine instillation[§]	Hyst or hyst
	≤13 weeks' gestation	>13 weeks' gestation	Unknown gestational age	≤9 weeks' gestation	>9 weeks' gestation	Unknown gestational age		
	No. (%)[¶]	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No.
New York State	8,231 (32.7)	1,922 (7.6)	1,833 (7.3)	7,799 (31.0)	1,807 (7.2)	3,585 (14.2)	12 (0.0)	(
North Carolina	10,040 (25.4)	2,817 (7.1)	39 (0.1)	24,598 (62.3)	1,967 (5.0)	17 (0.0)	—[§§]	
North Dakota	328 (43.5)	31 (4.1)	0 (0.0)	361 (47.9)	34 (4.5)	0 (0.0)	0 (0.0)	(
Ohio	7,801 (42.2)	1,546 (8.4)	—[§§]	9,069 (49.0)	78 (0.4)	0 (0.0)	0 (0.0)	
Oklahoma	515 (24.5)	222 (10.6)	—[§§]	1,171 (55.8)	187 (8.9)	—[§§]	—[§§]	(
Oregon	2,420 (28.2)	657 (7.7)	—[§§]	5,159 (60.2)	305 (3.6)	10 (0.1)	—[§§]	1
Pennsylvania[¶¶]	NA	NA	15,715 (45.3)	NA	NA	19,011 (54.7)	0 (0.0)	(
Rhode Island	934 (67.6)	181 (13.1)	—[§§]	257 (18.6)	8 (0.6)	0 (0.0)	0 (0.0)	
South Carolina[††]	1,718 (23.6)	334 (4.6)	0 (0.0)	3,835 (52.7)	1,382 (19.0)	0 (0.0)	7 (0.1)	(
South Dakota	85 (62.0)	—[§§]	—[§§]	43 (31.4)	—[§§]	0 (0.0)	0 (0.0)	(
Tennessee	2,352 (36.5)	423 (6.6)	—[§§]	3,267 (50.7)	401 (6.2)	0 (0.0)	0 (0.0)	
Texas[††]	5,598 (32.0)	—[§§]	0 (0.0)	11,887 (67.9)	25 (0.1)	0 (0.0)	0 (0.0)	
Utah	1,282 (33.6)	220 (5.8)	—[§§]	2,216 (58.0)	92 (2.4)	0 (0.0)	7 (0.2)	
Vermont	266 (24.1)	78 (7.1)	—[§§]	705 (63.9)	51 (4.6)	—[§§]	0 (0.0)	(
Virginia[¶¶¶]	6,217 (37.3)	875 (5.3)	0 (0.0)	9,205 (55.2)	361 (2.2)	—[§§]	0 (0.0)	

Area	Surgical†			Medication			Intrauterine instillation§	Hyst or hyst
	≤13 weeks' gestation	>13 weeks' gestation	Unknown gestational age	≤9 weeks' gestation	>9 weeks' gestation	Unknown gestational age		
	No. (%)¶	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No.
Washington	5,792 (29.1)	1,515 (7.6)	—§§	12,082 (60.7)	458 (2.3)	37 (0.2)	—§§	(
West Virginia	378 (45.5)	49 (5.9)	—§§	366 (44.1)	35 (4.2)	—§§	0 (0.0)	(
Wisconsin¶¶,****	NA	NA	2,100 (64.0)	NA	NA	1,179 (36.0)	0 (0.0)	(
Wyoming	—§§	0 (0.0)	0 (0.0)	531 (98.3)	8 (1.5)	—§§	0 (0.0)	(
Total	**194,835 (35.5)**	**37,766 (6.9)**	—††††	**291,980 (53.3)**	**23,412 (4.3)**	—§§§§	**138 (0.0)**	**6**

Abbreviation: NA = not applicable.

* Data from 47 reporting areas; excludes five reporting areas (California, Illinois, Maryland, New Hampshire, and New Jersey) that did not report, did not report by method type, or did not meet reporting standards. Areas reporting by method type with unknown gestational age or gestational age reported was not compatible with categorizations presented in this table are included.

† Includes uterine aspiration (might also be called dilation and curettage, aspiration curettage, suction curettage, manual vacuum aspiration, menstrual extraction, or sharp curettage) and dilation and evacuation procedures.

§ Intrauterine instillation reported at ≤12 weeks' gestation is considered as unknown for method type.

¶ Percentages for the individual component categories might not add to 100% because of rounding.

** Percentage is calculated as the number of abortions reported by known method type divided by the sum of abortions reported by known and unknown method type. Values ≥99.95% are rounded to 100.0%.

†† Two weeks were added to the probable postfertilization age to provide a corresponding measure to gestational age based on the clinician's estimate.

§§ Cells with a numerical value in the range of 1–4 and cells that would allow for calculation of these small values have been suppressed.

¶¶ Numbers for surgical abortions ≤13 weeks' and >13 weeks' gestation and medication abortions ≤9 weeks' versus >9 weeks' gestation are not presented because gestational age reported was not compatible with these categorizations.

*** Gestational age is based on clinician's estimate. Numbers for medication abortions at ≤9 weeks versus >9 weeks are not presented because gestational age reported was not compatible with these categorizations.

††† Numbers for surgical abortions at ≤13 weeks' versus >13 weeks' gestation and for medication abortions at ≤9 weeks' versus >9 weeks' gestation are not presented because gestational age data were not provided by method type.

§§§ For August–December 2022, variable was collected for residents only and reported as unknown for nonresidents.

¶¶¶ Data reported from facilities physically situated in state only.

**** Includes residents only. Wisconsin reports as surgical, unspecified and does not differentiate surgical abortions from hysterectomy or hysterotomy. All abortions were reported as surgical or chemically induced. For this report, all surgical abortions were classified as surgical and all chemical abortions as medication.

†††† For the total only, surgical abortions reported without a gestational age were distributed among the surgical abortion

categories according to the distribution of surgical abortions at known gestational age.

§§§§ For the total only, medication abortions reported without a gestational age were distributed among the medication abortion categories according to the distribution of medication abortions at known gestational age.

¶¶¶¶ Percentage is based on a total of 556,872 abortions reported among the areas that met reporting standards for method type.

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TABLE 13. Number and percentage of reported abortions, by known weeks of gestation and method type — selected reporting areas,* United States, 2022

	Weeks of gestation							
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	Total
Method type	**No. (%)†**	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**	**No. (%)**
Surgical§								
≤13 weeks' gestation	41,971 (25.2)	57,516 (34.4)	45,997 (72.4)	NA	NA	NA	NA	**145,484 (34.1)**
>13 weeks' gestation	NA	NA	NA	12,446 (98.1)	6,900 (97.7)	5,902 (94.9)	2,952 (80.0)	**28,200 (6.6)**
Medication¶								
≤9 weeks' gestation	124,263 (74.7)	109,687 (65.6)	NA	NA	NA	NA	NA	**233,950 (54.8)**
>9 weeks' gestation	NA	NA	17,548 (27.6)	237 (1.9)	159 (2.3)	299 (4.8)	717 (19.4)	**18,960 (4.4)**
Intrauterine instillation	—**	—**	0 (0.0)	1 (0.0)	3 (0.0)	9 (0.1)	16 (0.4)	**29 (0.0)**
Hysterectomy or hysterotomy	16 (0.0)	15 (0.0)	4 (0.0)	1 (0.0)	1 (0.0)	8 (0.1)	3 (0.1)	**48 (0.0)**
Total	**166,250 (100.0)**	**167,218 (100.0)**	**63,549 (100.0)**	**12,685 (100.0)**	**7,063 (100.0)**	**6,218 (100.0)**	**3,688 (100.0)**	**426,671 (100.0)**

Abbreviation: NA = not applicable.

* Data from 40 reporting areas; excludes 12 reporting areas (California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York City, New York State, Pennsylvania, and Wisconsin) that did not report, did not report by weeks of gestation, did not meet reporting standards, or did not have medication abortion as a specific category on their reporting form.

† For each gestational age category, percentages of all method types might not add to 100% because of rounding.

§ Includes uterine aspiration (might also be called dilation and curettage, aspiration curettage, suction curettage, manual vacuum aspiration, menstrual extraction, or sharp curettage) and dilation and evacuation procedures.

¶ The administration of medication or medications to induce an abortion; at ≤9 weeks' gestation, typically involves the use of mifepristone and misoprostol and at >9 weeks' gestation, typically involves the use of vaginal prostaglandins.

** Intrauterine instillations reported at ≤12 weeks' gestation have not been included with known values.

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TABLE 14. Number and percentage of reported abortions, by known weeks of gestation, age group, and race and ethnicity — selected reporting areas, United States, 2022

Characteristic	Weeks of gestation							Total
	≤6	7–9	10–13	14–15	16–17	18–20	≥21	
	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)	No. (%)
Age group, yrs*,†								
<15	191 (21.5)	309 (34.8)	226 (25.5)	60 (6.8)	34 (3.8)	39 (4.4)	29 (3.3)	**888 (100.0)**
15–19	11,452 (33.7)	13,174 (38.8)	6,019 (17.7)	1,324 (3.9)	784 (2.3)	694 (2.0)	492 (1.4)	**33,939 (100.0)**
20–24	45,505 (38.6)	46,113 (39.1)	18,079 (15.3)	3,619 (3.1)	1,945 (1.6)	1,668 (1.4)	979 (0.8)	**117,908 (100.0)**
25–29	47,138 (40.8)	45,201 (39.1)	16,039 (13.9)	3,150 (2.7)	1,644 (1.4)	1,497 (1.3)	937 (0.8)	**115,606 (100.0)**
30–34	34,775 (41.7)	31,674 (38.0)	11,474 (13.8)	2,321 (2.8)	1,210 (1.5)	1,122 (1.3)	786 (0.9)	**83,362 (100.0)**
35–39	18,385 (42.4)	16,110 (37.2)	5,784 (13.3)	1,250 (2.9)	707 (1.6)	676 (1.6)	447 (1.0)	**43,359 (100.0)**
≥40	6,695 (46.0)	5,043 (34.7)	1,711 (11.8)	422 (2.9)	270 (1.9)	252 (1.7)	154 (1.1)	**14,547 (100.0)**
Total	**164,141 (40.1)**	**157,624 (38.5)**	**59,332 (14.5)**	**12,146 (3.0)**	**6,594 (1.6)**	**5,948 (1.5)**	**3,824 (0.9)**	**409,609 (100.0)**
Race and ethnicity*,§								
Non-Hispanic								
Black	47,820 (38.2)	48,681 (38.9)	20,098 (16.1)	4,060 (3.2)	1,942 (1.6)	1,718 (1.4)	730 (0.6)	**125,049 (100.0)**
White	41,789 (42.1)	38,105 (38.4)	13,338 (13.4)	2,615 (2.6)	1,419 (1.4)	1,314 (1.3)	723 (0.7)	**99,303 (100.0)**
Other¶	9,668 (42.5)	8,394 (36.9)	3,063 (13.5)	651 (2.9)	353 (1.6)	370 (1.6)	248 (1.1)	**22,747 (100.0)**
Hispanic	28,837 (43.4)	25,529 (38.4)	8,592 (12.9)	1,603 (2.4)	789 (1.2)	764 (1.1)	379 (0.6)	**66,493 (100.0)**
Total	**128,114 (40.9)**	**120,709 (38.5)**	**45,091 (14.4)**	**8,929 (2.8)**	**4,503 (1.4)**	**4,166 (1.3)**	**2,080 (0.7)**	**313,592 (100.0)**

* Percentages for the individual component categories might not add to 100% because of rounding.
† Data from 40 reporting areas; excludes 12 reporting areas (California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York City, New York State, Pennsylvania, and Wisconsin) that did not report, did not report weeks of gestation by age, or did not meet reporting standards.
§ Data from 30 reporting areas; excludes 22 reporting areas (Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, New York City, New York State, Ohio, Oklahoma, Pennsylvania, Washington, and Wisconsin) that did not report, did not report weeks of gestation by race and ethnicity, or did not meet reporting standards.
¶ Including Alaska Native, American Indian, Asian (Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, or other Asian), Native Hawaiian or other Pacific Islander (Native Hawaiian, Guamanian or Chamorro, Samoan, or other Pacific Islander), other races, and multiple races.

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TABLE 15. Number of deaths and case-fatality rates* for abortion-related deaths reported to CDC, by type of abortion — United States, 1973–2021†

Year	Type of abortion: Induced — Legal§	Type of abortion: Induced — Illegal	Unknown¶	Total deaths	CFR per 100,000 legal abortions
1973–1977					**2.09**
1973	25	19	3	**47**	
1974	26	6	1	**33**	
1975	29	4	1	**34**	
1976	11	2	1	**14**	
1977	17	4	0	**21**	
1978–1982					**0.78**
1978	9	7	0	**16**	
1979	22	0	0	**22**	
1980	9	1	2	**12**	
1981	8	1	0	**9**	
1982	11	1	0	**12**	

Year	Type of abortion			Total deaths	CFR per 100,000 legal abortions
	Induced				
	Legal[§]	Illegal	Unknown[¶]		
1983–1987					**0.66**
1983	11	1	0	**12**	
1984	12	0	0	**12**	
1985	11	1	1	**13**	
1986	11	0	2	**13**	
1987	7	2	0	**9**	
1988–1992					**0.74**
1988	16	0	0	**16**	
1989	12	1	0	**13**	
1990	9	0	0	**9**	
1991	11	1	0	**12**	
1992	10	0	0	**10**	
1993–1997					**0.52**
1993	6	1	2	**9**	
1994	10	2	0	**12**	
1995	4	0	0	**4**	
1996	9	0	0	**9**	
1997	7	0	0	**7**	
1998–2002					**0.63**
1998	9	0	0	**9**	
1999	4	0	0	**4**	
2000	11	0	0	**11**	
2001	7	1	0	**8**	
2002	10	0	0	**10**	

Year	Type of abortion			Total deaths	CFR per 100,000 legal abortions
	Induced				
	Legal[§]	Illegal	Unknown[¶]		
2003–2007					**0.60**
2003	10	0	0	**10**	
2004	7	1	0	**8**	
2005	7	0	0	**7**	
2006	7	0	0	**7**	
2007	6	0	0	**6**	
2008–2012					**0.65**
2008	12	0	0	**12**	
2009	8	0	0	**8**	
2010	10	0	0	**10**	
2011	2	0	0	**2**	
2012	4	0	0	**4**	
2013–2021					**0.46**
2013	4	0	0	**4**	
2014	6	0	0	**6**	
2015	2	0	1	**3**	
2016	6	1	1	**8**	
2017	3	0	0	**3**	
2018	2	0	0	**2**	
2019	4	0	0	**4**	
2020	6	0	0	**6**	
2021	5	0	0	**5**	

Abbreviation: CFR = case-fatality rate.

* Number of legal induced abortion–related deaths per 100,000 reported legal induced abortions. Because a substantial number of legal induced abortions occurred outside reporting areas that provided data to CDC, national CFRs (i.e., number of legal induced abortion–related deaths per 100,000 reported legal induced abortions in the United States) were calculated with denominator data from the Guttmacher Institute's national survey of abortion-providing facilities; for 2021,

denominator data for 2020 were used, the most recent year for which data are available. CFRs were computed for consecutive 5-year periods during 1973–2012 and then for a consecutive 9-year period during 2013–2021 because rates based on <20 cases might be unstable.

[†] Certain numbers might differ from those in reports published previously because additional information has been supplied to CDC after publication.

[§] An abortion is defined as legal if it was performed by a licensed clinician within the limits of state or jurisdiction law.

[¶] Unknown whether abortion was induced or spontaneous.

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Suggested citation for this article: Ramer S, Nguyen AT, Hollier LM, Rodenhizer J, Warner L, Whiteman MK. Abortion Surveillance — United States, 2022. MMWR Surveill Summ 2024;73(No. SS-7):1–28. DOI: http://dx.doi.org/10.15585/mmwr.ss7307a1 .

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Attachment 3 JAMA June 2024 article

Original Investigation

June 24, 2024

Comparison of No-Test Telehealth and In-Person Medication Abortion

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JAMA. Published online June 24, 2024. doi:10.1001/jama.2024.10680

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Key Points

Question Is medication abortion provided using no-test eligibility screening and mailing of medications as effective as in-person care with ultrasonography and safe overall?

Findings This prospective, observational study found that medication abortion obtained following no-test telehealth screening and mailing of medications was associated with similar rates of complete abortion compared with in-person care with ultrasonography (94.4% vs 93.3%, respectively) and met the 5% noninferiority margin, with a low prevalence of adverse events.

Meaning The findings suggest that models of medication abortion care that rely on no-test eligibility assessment and mailing medications to patients are an option for individuals considering medication abortion.

Abstract

Importance In the US, access to medication abortion using history-based (no-test) eligibility assessment, including through telehealth and mailing of mifepristone, has grown rapidly. Additional evidence on the effectiveness and safety of these models is needed.

Objective To evaluate whether medication abortion with no-test eligibility assessment and mailing of medications is as effective as in-person care with ultrasonography and safe overall.

Design, Setting, and Participants Prospective, observational study with noninferiority analysis. Sites included 4 abortion-providing organizations in Colorado, Illinois, Maryland, Minnesota, Virginia, and Washington from May 2021 to March 2023. Eligible patients were seeking medication abortion up to and including 70 days' gestation, spoke English or Spanish, and were aged 15 years or older.

Exposure Study groups reflected the model of care selected by the patient and clinicians and included: (1) no-test (telehealth) eligibility assessment and mailing of medications (no-test + mail) (n = 228); (2) no-test eligibility assessment and pickup of medications (no-test + pickup) (n = 119); or (3) in-person with ultrasonography (n = 238).

Main Outcomes and Measures Effectiveness, defined as a complete abortion without the need for repeating the mifepristone and misoprostol regimen or a follow-up procedure, and safety, defined as an abortion-related serious adverse event, including overnight hospital admission, surgery, or blood transfusion. Outcomes were derived from patient surveys and medical records. Primary analysis focused on the comparison of the no-test + mail group with the in-person with ultrasonography group.

Results The mean age of the participants (N = 585) was 27.3 years; most identified as non-Hispanic White (48.6%) or non-Hispanic Black (28.1%). Median (IQR) gestational duration was 45 days (39-53) and comparable between study groups (*P* = .30). Outcome data were available for 91.8% of participants. Overall effectiveness was 94.4% (95% CI, 90.7%-99.2%) in the no-test + mail group and 93.3% (95% CI, 88.3%-98.2%) in the in-person with ultrasonography group in adjusted models (adjusted risk difference, 1.2 [95% CI, −4.1 to 6.4]), meeting the prespecified 5% noninferiority margin. Serious adverse events included overnight hospitalization (n = 4), blood transfusion (n = 2), and emergency surgery (n = 1) and were reported by 1.1% (95% CI, 0.4%-2.4%) of participants, with 3 in the no-test + mail group, 3 in the in-person with ultrasonography group, and none in the no-test + pickup group.

Conclusions and Relevance This prospective, observational study found that medication abortion obtained following no-test telehealth screening and mailing of medications was associated with similar rates of complete abortion compared with in-person care with ultrasonography and met prespecified criteria for noninferiority, with a low prevalence of adverse events.

Introduction

Medication abortion with mifepristone and misoprostol was first approved by the US Food and Drug Administration (FDA) in 2000 and is currently approved for use through 70 days' gestation in pregnancy.[1] In 2023, medication abortion accounted for 63% of abortions in the US, an increase from 53% in 2020 and 31% in 2014.[2-4] Multiple studies have firmly established the safety and effectiveness of the mifepristone and misoprostol regimen for medication abortion; the incidence of major complications or serious adverse events (SAEs) is less than 0.5% and overall effectiveness in ending the pregnancy without the need for a follow-up procedure is 95% to 97%.[5-10]

In recent years, access to various medication abortion models has expanded rapidly, including telehealth or virtual eligibility assessment and counseling, mailing medications directly to patients, and, in some instances, forgoing the requirement for an in-person ultrasonography or physical examination to establish location and duration of pregnancy prior to provision of medication abortion.[11] The FDA's removal of the in-person dispensing requirement for mifepristone, which had long been part of the drug's Risk Evaluation and Mitigation Strategy, facilitated this expansion. Emerging research evaluating the safety and effectiveness of telehealth and in-person, no-test models[12-14] builds on prior evidence demonstrating that provision of medication abortion by telemedicine (with ultrasonography and/or physical examination) has a comparable safety and effectiveness profile to in-person provision.[15-19] A 2022 retrospective cohort study of 2379 pregnant people accessing medication abortion using history-based (no-test) eligibility assessment in the US reported 94.5% effectiveness in ending the pregnancy and rate of SAEs of 0.42%.[20] Similarly, a large, retrospective cohort study of over 50 000 patients receiving medication abortion in the UK reported effectiveness rates of 98% to 99%, with no difference between those accessing care with and without routine pretreatment ultrasonography.[21]

Further evidence on the effectiveness and safety of telehealth and in-person, no-test (without ultrasonography or physical examination) medication abortion informs expansion of these models to all pregnant people seeking abortion, particularly those now living in the 21 states where abortion is banned or heavily restricted[22] or the 6 states where abortion remains legal but telehealth or mailing of medications is banned.[23] The present study compares the effectiveness and safety of medication abortion provided using 2 models of no-test, telehealth abortion care (mailed or pickup medications) with in-person care with ultrasonography.

Methods

This was an observational, prospective study comparing medication abortion effectiveness and safety using different methods of eligibility assessment (ultrasonography vs no-test) and dispensing of medications (mail vs in-person). The study protocol, including the statistical analysis plan, was published at Open Science Framework in April 2022 prior to initiating any analyses.[24]

Participants and Procedures

Participants were recruited from 4 abortion-providing organizations in 6 states (Colorado, Illinois, Maryland, Minnesota, Virginia, and Washington) between May 2021 and March 2023. We selected organizations that offered direct-to-patient telehealth or other no-test, history-based eligibility screening models that could dispense mifepristone using a mail-order pharmacy and, to allow for an appropriate comparison group, that also offered in-person provision at a facility within the same clinic network and state. One organization had facilities in 3 states and offered telehealth services to patients in those same states through a centralized call center. Thus, there were a total of 6 facilities, 1 in each state (eFigure 1 in Supplement 1). Eligibility was restricted to

patients aged 15 years or older (3 facilities) or aged 18 years or older (3 facilities), English or Spanish speakers, seeking and eligible for medication abortion at that facility, and intending to take the medication up to and including 70 days' gestation. Participants were typically approached by facility staff during initial counseling; those interested in participating received a longer description of the study and then completed electronic informed consent and signed a Health Insurance Portability and Accountability Act waiver allowing clinic staff to review the patients' medical records with the study team. Patients then shared contact information for survey follow-up and received a $15 gift card for enrolling.

Data Collection

Study data were obtained from 2 sources. First, participants were asked to complete electronic surveys 1 day, 2 weeks, and 1 month after receiving the medications. Survey links were sent via text or email and included up to 5 reminders. Surveys were designed such that participants with an unclear abortion outcome (eg, who responded "I'm not sure" if the medications worked to end the pregnancy) were sent repeat surveys until an outcome was ascertained or the patient was considered lost to follow-up. Participants were remunerated with gift cards worth $25 for completing the first and third surveys and $15 for completing the second survey.

Clinics abstracted medical record data using a standardized tool[25] 6 weeks after the initial appointment. If care was ongoing, clinics continued to abstract clinical data until the outcome of the abortion was known or adverse events (AEs) had resolved. In-depth, follow-up chart review was conducted for all cases with an unclear abortion outcome or potential AE.

Measures

The primary exposure was model of medication abortion care received. There were 3 groups: (1) no-test (telehealth) eligibility assessment by history and mailing of medications (no-test + mail); (2) no-test eligibility assessment (via telehealth or in-person) by history and pickup of medications (no-test + pickup); or (3) in-person assessment with ultrasonography and in-person dispensing of medications (in-person).

The primary outcome was effectiveness of medication abortion defined as a complete abortion without need for procedural abortion or repeating the mifepristone and misoprostol regimen.[26] We relied on a combination of patient self-report (survey) and clinic (chart-abstracted) data to determine effectiveness. Survey questions included patients' self-assessment of whether they "believe[d] that the abortion pills worked to end the pregnancy," had taken a pregnancy test and its result, "had a suction procedure (vacuum aspiration or dilation and curettage [D&C]) to complete the abortion," or had been "given another dose of the first abortion pill (mifepristone)" as part of follow-up care. Chart-abstracted data included the clinician's assessment of the medication abortion outcome at last contact with the patient (complete, incomplete, ongoing pregnancy, unknown), any tests performed to document pregnancy outcome (ie, ultrasonography, physical examination, review of symptoms, urine pregnancy test,

serum human chorionic gonadotropin testing), and details on any follow-up care received or reported to the clinic. A flowchart was developed a priori to resolve discordant patient self-report and chart-abstracted outcomes (eFigure 2 in Supplement 1). Clinic staff completing abstraction were not blind to the study group because this information was in the patient's medical record.

A secondary outcome was safety, defined as reporting of any abortion-related SAE. This included overnight hospital admission, surgery, blood transfusion, or death. Surveys assessed whether patients had "go[ne] to a hospital, emergency department, doctor's office, or clinic (other than your regularly scheduled follow-up visit)" since taking the mifepristone and, if so, what type of care they received (including "I was given a blood transfusion" or "I stayed overnight in the hospital"). Chart-abstracted data included any documented care received at an outside facility as well as details on the care received. We searched across all chart-abstracted data fields for a list of terms related to the defined SAEs to ensure all potential cases were identified. All open-ended chart data fields were also reviewed by a physician (D.G.) to determine whether an SAE was reported.

We collected sociodemographic and pregnancy characteristics prespecified as potential confounders, including participants' age, race and ethnicity, gestational duration, parity, and prior abortion. Race and ethnicity data were based on 2 prespecified questions regarding Hispanic, Latine, or Spanish ethnicity (yes or no) and self-reported race (Asian, Black or African American, Middle Eastern or North African, Native American or Other Pacific Islander, White, or other), with the option to select all that apply and/or write in a response. Gestational duration at initial appointment collected by facility staff was estimated using date of last menstrual period for the telehealth groups and ultrasonography for the in-person with ultrasonography group. For race and ethnicity, prior abortion, and parity, we relied on participants' survey responses; when possible, missing responses were completed using medical record data.

Statistical Analysis

We described the distribution of sociodemographic and pregnancy covariates in the study sample overall. We then tested for differences in the distribution of these covariates as well as the proportion with abortion outcome data by study group using bivariable mixed effects linear or multinomial regression models adjusted for clustering of observations by facility as well as standardized mean differences. Although our prespecified statistical analysis plan describes adjusting for clustering by *site*, our subsequent inclusion of facilities from the same organization but located in different states led to a preference for adjustment for clustering at the state and facility level, in the spirit of the prespecified plan. However, to ensure robustness of findings, we also included sensitivity analyses with random effects for organization ($n = 4$).

Among enrolled participants who took mifepristone or misoprostol and had abortion outcome data available, the unadjusted proportion (with 95% CI) with a complete abortion by study group was calculated. For the primary, prespecified analysis, we

examined noninferiority of the telehealth (no-test) with mailed medications care group compared with the in-person care with ultrasonography group. From a logistic mixed effects model with a random effect for facility, we calculated the unadjusted risk difference (and 95% CI) in effectiveness between telehealth (no-test) with mailed medications and in-person care. We then reran the same model with the addition of prespecified confounders, including age and gestational duration, as well as any variables found to differ by study group in bivariable analysis. Telehealth (no-test) with mailed medications care was considered noninferior if the lower side of the 2-sided CI was above −5%, chosen to be consistent with prior research.[27-29] As secondary, prespecified analyses, we then repeated these steps to examine noninferiority of no-test + pickup (vs in-person) and either no-test (vs in-person with ultrasonography) care. We also descriptively examined the proportion (with 95% CI) in each study group that experienced an SAE and, when possible, differences in proportions by study group from adjusted models.

Prespecified analyses focused on a complete-case analysis. However, to ensure robustness of study findings, we repeated our primary, prespecified analysis using multiple imputation by chained equations. We imputed missing data for all covariates and the primary outcome (effectiveness) using all covariates in the original adjusted models as well as receipt of public assistance, educational attainment, and whether they completed a survey. We then used Stata's MI estimate command and a logistic regression model using imputed values and the mimrgns command to estimate the risk difference between study groups (StataCorp). We utilized an inverse probability of treatment-weighted regression adjustment approach to balance covariates between study groups and re-estimate the risk difference. Specifically, logistic regression was used to calculate the propensity score or probability of treatment (telehealth + mail). We then calculated weights as 1/propensity score for the treated group and 1/1-propensity score for the untreated (in-person with ultrasonography) and reran a logistic regression model applying this weight. Finally, to allow for interpretation of marginal, population-level effects, we repeated the primary analysis using a logistic regression model with robust standard errors for facility.

Sample Size

We determined the minimum sample size required to establish noninferiority of telehealth (no-test) with mailed medications care to in-person care for the primary effectiveness outcome. Assuming 20% loss to follow-up, moderate correlation of observations by site (increasing sample size by an additional 15%), and effectiveness of 95%,[7,30] a sample size of 170 participants per study group, or 510 participants overall, gave 80% power with a 1-sided α of .025 to establish noninferiority of telehealth (no-test) with mailed medications care. The study was not powered to detect noninferiority of different models with respect to safety.

All study activities were approved by the University of California San Francisco institutional review board in January 2021 (#20-32514). This manuscript was prepared in accordance with STROBE guidance.[31]

Results

A total of 1107 patients were approached, of whom 878 were eligible; 588 consented and enrolled (Figure). There were no differences in mean age (*P* = .38), appointment type (*P* = .72), or gestational duration (*P* = .51) between those eligible who enrolled vs did not enroll.

Among 588 enrolled patients, 3 were excluded from the analysis because they did not receive (n = 1) or take (n = 1) pills or because they sought emergency care for an ectopic pregnancy *before* picking up the pills (n = 1), resulting in a final sample of 585. Abortion outcome data were available for 537 of 585 (91.8%) of the participants; the proportion with abortion outcome data did not differ by study group (Table 1). Further, there were no differences by sociodemographic and pregnancy characteristics in the proportion missing abortion outcome data (eTable 1 in Supplement 1).

Median (IQR) participant age was 26 years (23-31). Nearly one-half (48.6%) were non-Hispanic White, with fewer non-Hispanic Black (28.1%), non-Hispanic other, or multiple races (12.1%) or Hispanic (9.6%). Approximately 4 in 10 participants reported a prior abortion (42.6%). Median (IQR) gestational duration at screening was 45 days (39-53) and did not differ by study group (*P* = .39). In the no-test + pickup medications study group, two-thirds (66%) completed eligibility assessment virtually and one-third (33%) completed no-test eligibility assessment in-person at a clinic.

Overall, 510 of 537 participants had a complete abortion without a procedure or repeating the mifepristone and misoprostol regimen, for an unadjusted effectiveness rate of 95.0% (95% CI, 92.8%-96.7%). Among the 27 participants classified as having an incomplete abortion, 18 had a follow-up procedure to complete the abortion, 6 reported a positive pregnancy test or uncertainty about whether the pills worked and were then lost to follow-up, 2 had a confirmed or suspected ectopic pregnancy, and 1 reported receiving outside care to complete the abortion to the study clinic. One ectopic pregnancy was confirmed by the patient, who reported to the clinic that they had sought care at an emergency department after taking the medications and had an operation to remove a fallopian tube. The other participant was referred to a hospital for evaluation and treatment of a suspected ectopic pregnancy after reporting no bleeding for more than 24 hours after taking misoprostol.

Unadjusted effectiveness was 94.1% (95% CI, 90.1%-96.8%) in the in-person group, 95.1% (95% CI, 91.2%-97.6%) in the no-test + mail group, and 96.5% (95% CI, 91.2%-99.0%) in the no-test + pickup group. After adjustment for covariates including age, race and ethnicity, and gestational duration, the risk difference between the in-person and no-test + mail groups was 1.2% (95% CI, −4.1% to 6.4%), above the limit of −5% and indicating noninferiority of telehealth (no-test) with mailed medications care. In this adjusted model, effectiveness was 94.4% (95% CI, 89.6%-99.2%) in the no-test + mail group and 93.3% (95% CI, 88.3%-98.2%) in the in-person group. Similarly, the adjusted risk difference between the in-person and no-test + pickup care groups was 1.7% (95% CI, −4.6% to 8.1%), indicating noninferiority of no-test + medications pickup care. In this

adjusted model, effectiveness was 95.0% (95% CI, 88.8%-100.0%) in the no-test + pickup care group and 93.3% (95% CI, 88.8%-97.8%) in the in-person group (Table 2).

In sensitivity analyses, rerunning models with imputed missing observations, with application of inverse probability of treatment weights, and with adjustment for clustering of observations by organization (vs facility), results were consistent and demonstrated noninferiority of the no-test model (eTable 2 in Supplement 1).

Overall, 6 of 537 participants experienced an SAE, for a rate of 1.1% (95% CI, 0.4%-2.4%). Events included 4 overnight hospitalizations, 2 blood transfusions, and 1 surgery (for treatment of ectopic pregnancy). The unadjusted rate of SAEs was 1.5% (95% CI, 0.3%-4.2%) in the telehealth + mail group (n = 3) and 1.4% (95% CI, 0.3%-3.9%) in the in-person group (n = 3); no SAEs were reported in the no-test + pickup care group. In adjusted logistic models with robust standard errors for state, the adjusted risk difference between the in-person with ultrasonography and no-test + mail care group was 0.4 (95% CI, −1.0 to 1.7), indicating noninferiority of the no-test + mail model (eTable 3 in Supplement 1).

Discussion

In this prospective, observational study of 585 people obtaining medication abortion, it was found that medication abortion following no-test telehealth screening and mail-order pharmacy dispensing of medications was associated with similar rates of complete abortion as in-person care with ultrasonography, met the prespecified threshold for noninferiority, and had a low rate of AEs overall. Further, medication abortion following no-test screening with pickup of medications was also associated with similar outcomes as in-person care with ultrasonography and had low rates of AEs overall. Levels of effectiveness with models of care incorporating telehealth and eligibility assessment in this study were comparable to large 2022 and 2024 studies of no-test telehealth patients.[20,32] This study contributes new evidence pertaining to no-test telehealth models in direct comparison with a concurrent control group of people receiving care from similar facilities through in-person care with ultrasonography. Taken together, these findings indicate that no-test and telehealth models with mailing of medications may be offered as an option to people seeking abortion. Although geographic and logistical barriers have always delayed and complicated pregnant people's access to abortion,[33,34] these barriers have become increasingly problematic following the Supreme Court's June 2022 decision revoking federal protections on abortion.[35,36] Thus, expansion of telehealth and no-test or history-based models offers a safe and effective, as well as urgently needed, way to overcome at least some of the logistical and geographic barriers to accessing abortion.[37]

Study findings may also be used to refute ongoing efforts to further regulate and restrict access to medication abortion, most notably in the *Alliance for Hippocratic Medicine v FDA* case currently before the US Supreme Court. One of the central issues being considered in this case is the quality of the evidence the FDA relied on when it removed

the in-person dispensing requirement for mifepristone in 2021.[38] Although the data were robust in 2021 when the FDA performed its review, this current analysis, as well as other research published since then,[20,32] further strengthens the evidence documenting the safety and effectiveness of medication abortion provided using no-test telehealth screening for eligibility and dispensing the medications by mail.

Limitations

This study has limitations. First, approximately 8% of the participants were lost to follow-up and did not complete a survey or have any follow-up contact with the clinic. Although this follow-up rate represents an improvement over prior research that relied only on chart-abstracted outcomes,[12,13,19,20] the possibility that those who were lost to follow-up had worse outcomes remains. Second, only patient-reported outcomes up to 4 weeks after initiation of treatment were collected; it is possible that additional treatment could have been accessed after that point. Third, as an observational study in which patients could select which model of medication abortion care they received, some differences in the sociodemographic and pregnancy characteristics by study group were expected and therefore the study relied on adjustment for these characteristics to account for them in analyses. Reassuringly, differences were not observed in gestational duration by study group, which is likely most strongly correlated with outcomes of safety and effectiveness,[7] and models with imputed data produced comparable findings. However, confounding on unobserved covariates always remains a possibility in observational data. Fourth, this study sample size was not powered to detect noninferiority of, or differences in, safety of different models of care. Although few SAEs (n = 6 [1.1%]), including ectopic pregnancy, were observed, the estimate is qualitatively higher than a large 2022 retrospective study of patients receiving medication abortion through history-based screening, which found that 0.5% experienced an SAE.[20] Inclusion of patient self-reported outcomes, including overnight hospitalization, in defining SAEs likely contributed to this. Notably, the concurrent control group allowed direct comparison of the rate of SAEs between those receiving no-test telehealth medication abortion with mailing of medications vs in-person care with ultrasonography.

Conclusions

This prospective, observational study found that medication abortion following no-test telehealth screening and mailing of medications was associated with similar rates of abortion completion compared with in-person care with ultrasonography, meeting the prespecified threshold for noninferiority and with a low prevalence of adverse events.

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Article Information

Accepted for Publication: May 17, 2024.

Published Online: June 24, 2024. doi:10.1001/jama.2024.10680

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Acquisition, analysis, or interpretation of data: All authors.

Drafting of the manuscript: Ralph, Baba.

Critical review of the manuscript for important intellectual content: All authors.

Statistical analysis: Ralph, Baba, Biggs.

Obtained funding: Grossman.

Administrative, technical, or material support: Ralph, Baba, McNicholas, Hagstrom Miller, Grossman.

Supervision: Grossman.

Conflict of Interest Disclosures: Dr McNicholas reported receiving grants from University of California San Francisco (UCSF) as co-investigator during the conduct of the study and being the Chief Medical Officer for Planned Parenthood of the St. Louis Region. Ms Hagstrom Miller reported receiving grants from UCSF during the conduct of the study. Dr Grossman reported receiving personal fees from The Lawyering Project and Planned Parenthood Federation of America for serving as an expert witness in cases challenging abortion restrictions, including restrictions on telemedicine. No other disclosures were reported.

Funding/Support: This study was supported by grants from the Demartini Family Foundation and The Susan Thompson Buffett Foundation.

Role of the Funder/Sponsor: The Demartini Family Foundation and The Susan Thompson Buffett Foundation had no role in the design and conduct of the study; collection, management, analysis, and interpretation of the data; preparation, review, or approval of the manuscript; and decision to submit the manuscript for publication.

Data Sharing Statement: See Supplement 2.

Additional Contributions: The authors express deep gratitude to members of this study's Community Advisory Board for their input on survey questions and study design.

Members include Claudie Kiti Bustamante, BA (Black Women for Wellness); Sung Yeon Choimorrow, MDiv (National Asian Pacific American Women's Forum); Debra Hauser, MPH (Advocates for Youth); Yamani Hernandez, MArch (National Network of Abortion Funds); Tammi Kromenaker, BSW (Red River Women's Clinic); Ghazaleh Moayedi, DO (Pegasus Health Justice Center); Jamila Perritt, MD (Physicians for Reproductive Health); and Ena Valladares, MPH (California Latinas for Reproductive Justice). We are also grateful to John Boscardin, PhD, for statistical guidance; Rosalyn Shroeder, MSc, for analysis support; and Rana Barar, MPH, Sabrina Serrano, BA, Tanvi Gurazada, MS, Gillian Borges, BA, and Jessica Navarro, MPH, for study support activities (University of California San Francisco).

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Attachment 4 Loper Bright Enterprises v. Raimondo

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LOPER BRIGHT ENTERPRISES ET AL. *v.* RAIMONDO, SECRETARY OF COMMERCE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22–451. Argued January 17, 2024—Decided June 28, 2024*

The Court granted certiorari in these cases limited to the question whether *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, should be overruled or clarified. Under the *Chevron* doctrine, courts have sometimes been required to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. *Id.*, at 843. In each case below, the reviewing courts applied *Chevron*'s framework to resolve in favor of the Government challenges by petitioners to a rule promulgated by the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act, 16 U. S. C. §1801 *et seq.*, which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq*.

Held: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled. Pp. 7–35.

(a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned

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*Together with No. 22–1219, *Relentless, Inc., et al.* v. *Department of Commerce, et al.*, on certiorari to the United States Court of Appeals for the First Circuit.

that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." The Federalist No. 78, p. 525 (A. Hamilton). As Chief Justice Marshall declared in the foundational decision of *Marbury* v. *Madison*, "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177. In the decades following *Marbury*, when the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515.

The Court recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who may well have drafted the laws at issue. *United States* v. *Moore*, 95 U. S. 760, 763. "Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. "[I]n cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *United States* v. *Dickson*, 15 Pet. 141, 162.

During the "rapid expansion of the administrative process" that took place during the New Deal era, *United States* v. *Morton Salt Co.*, 338 U. S. 632, 644, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings," *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 51. But the Court did not extend similar deference to agency resolutions of questions of *law*. "The interpretation of the meaning of statutes, as applied to justiciable controversies," remained "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 544. The Court also continued to note that the informed judgment of the Executive Branch could be entitled to "great weight." *Id.*, at 549. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140.

Occasionally during this period, the Court applied deferential review after concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by

the agency. See *Gray* v. *Powell*, 314 U. S. 402; *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111. But such deferential review, which the Court was far from consistent in applying, was cabined to factbound determinations. And the Court did not purport to refashion the longstanding judicial approach to questions of law. It instead proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." *Id.*, at 130–131. Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes under *Chevron*. Pp. 7–13.

(b) Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. The APA prescribes procedures for agency action and delineates the basic contours of judicial review of such action. And it codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. As relevant here, the APA specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, 5 U. S. C. §706 (emphasis added)—even those involving ambiguous laws. It prescribes no deferential standard for courts to employ in answering those legal questions, despite mandating deferential judicial review of agency policymaking and factfinding. See §§706(2)(A), (E). And by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, §706, it makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. The APA's history and the contemporaneous views of various respected commentators underscore the plain meaning of its text.

Courts exercising independent judgment in determining the meaning of statutory provisions, consistent with the APA, may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. See *Skidmore*, 323 U. S., at 140. And when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries. *Michigan* v. *EPA*, 576 U. S. 743, 750 (quoting *Allentown Mack Sales &*

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Service, Inc. v. *NLRB*, 522 U. S. 359, 374). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts. Pp. 13–18.

(c) The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA. Pp. 18–29.

(1) *Chevron*, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional judicial approach of independently examining each statute to determine its meaning. The question in the case was whether an Environmental Protection Agency (EPA) regulation was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action. The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. But in a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand, a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Id.*, at 843 (footnote omitted). Instead, at *Chevron*'s second step, a court had to defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865.

Although the Court did not at first treat *Chevron* as the watershed decision it was fated to become, the Court and the courts of appeals were soon routinely invoking its framework as the governing standard in cases involving statutory questions of agency authority. The Court eventually decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741. Pp. 18–20.

(2) Neither *Chevron* nor any subsequent decision of the Court attempted to reconcile its framework with the APA. *Chevron* defies the command of the APA that "the reviewing court"—not the agency whose

action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. *Chevron* insists on more than the "respect" historically given to Executive Branch interpretations; it demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time, see *id.*, at 863, and even when a pre-existing judicial precedent holds that an ambiguous statute means something else, *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982. That regime is the antithesis of the time honored approach the APA prescribes.

Chevron cannot be reconciled with the APA by presuming that statutory ambiguities are implicit delegations to agencies. That presumption does not approximate reality. A statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. Many or perhaps most statutory ambiguities may be unintentional. And when courts confront statutory ambiguities in cases that do not involve agency interpretations or delegations of authority, they are not somehow relieved of their obligation to independently interpret the statutes. Instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity. But in an agency case as in any other, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. *Chevron* gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate. Pp. 21–23.

(3) The Government responds that Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer;

because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

As the Court recently noted, interpretive issues arising in connection with a regulatory scheme "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor* v. *Wilkie*, 588 U. S. 558, 578. Under *Chevron*'s broad rule of deference, though, ambiguities of all stripes trigger deference, even in cases having little to do with an agency's technical subject matter expertise. And even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions, and courts did so without issue in agency cases before *Chevron*. After all, in an agency case in particular, the reviewing court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. An agency's interpretation of a statute "cannot bind a court," but may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 98, n. 8. Delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise.

Nor does a desire for the uniform construction of federal law justify *Chevron*. It is unclear how much the *Chevron* doctrine as a whole actually promotes such uniformity, and in any event, we see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

Finally, the view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken because it rests on a profound misconception of the judicial role. Resolution of statutory ambiguities involves legal interpretation, and that task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575. Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. To stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.

By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* prevents judges from judging. Pp. 23–26.

(4) Because *Chevron*'s justifying presumption is, as Members of the Court have often recognized, a fiction, the Court has spent the better part of four decades imposing one limitation on *Chevron* after another. Confronted with the byzantine set of preconditions and exceptions that has resulted, some courts have simply bypassed *Chevron* or failed to heed its various steps and nuances. The Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. But because *Chevron* remains on the books, litigants must continue to wrestle with it, and lower courts—bound by even the Court's crumbling precedents—understandably continue to apply it. At best, *Chevron* has been a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). Pp. 26–29.

(d) *Stare decisis*, the doctrine governing judicial adherence to precedent, does not require the Court to persist in the *Chevron* project. The *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*, 588 U. S. 180, 203 (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 917)—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. It reshaped judicial review of agency action without grappling with the APA, the statute that lays out how such review works. And its flaws were apparent from the start, prompting the Court to revise its foundations and continually limit its application.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, but the concept of ambiguity has always evaded meaningful definition. Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U. S. 111, 125. The Court has also been forced to clarify the doctrine again and again, only adding to *Chevron*'s unworkability, and the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. And its continuing import is far from clear, as courts have often declined to engage with the doctrine, saying it makes no difference.

Nor has *Chevron* fostered meaningful reliance. Given the Court's constant tinkering with and eventual turn away from *Chevron*, it is

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hard to see how anyone could reasonably expect a court to rely on *Chevron* in any particular case or expect it to produce readily foreseeable outcomes. And rather than safeguarding reliance interests, *Chevron* affirmatively destroys them by allowing agencies to change course even when Congress has given them no power to do so.

The only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U. S. 254, 265, is for the Court to leave *Chevron* behind. By overruling *Chevron*, though, the Court does not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U. S. 442, 457. Mere reliance on *Chevron* cannot constitute a "'special justification'" for overruling such a holding. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (quoting *Dickerson* v. *United States*, 530 U. S. 428, 443). Pp. 29–35.

No. 22–451, 45 F. 4th 359 & No. 22–1219, 62 F. 4th 621, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, ALITO, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., and GORSUCH, J., filed concurring opinions. KAGAN, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, and in which JACKSON, J., joined as it applies to No. 22–1219. JACKSON, J., took no part in the consideration or decision of the case in No. 22–451.

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SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL., PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Since our decision in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), we have sometimes required courts to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. In these cases we consider whether that doctrine should be overruled.

I

Our *Chevron* doctrine requires courts to use a two-step

framework to interpret statutes administered by federal agencies. After determining that a case satisfies the various preconditions we have set for *Chevron* to apply, a reviewing court must first assess "whether Congress has directly spoken to the precise question at issue." *Id.*, at 842. If, and only if, congressional intent is "clear," that is the end of the inquiry. *Ibid.* But if the court determines that "the statute is silent or ambiguous with respect to the specific issue" at hand, the court must, at *Chevron*'s second step, defer to the agency's interpretation if it "is based on a permissible construction of the statute." *Id.*, at 843. The reviewing courts in each of the cases before us applied *Chevron*'s framework to resolve in favor of the Government challenges to the same agency rule.

A

Before 1976, unregulated foreign vessels dominated fishing in the international waters off the U. S. coast, which began just 12 nautical miles offshore. See, *e.g.*, S. Rep. No. 94–459, pp. 2–3 (1975). Recognizing the resultant overfishing and the need for sound management of fishery resources, Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA). See 90 Stat. 331 (codified as amended at 16 U. S. C. §1801 *et seq*.). The MSA and subsequent amendments extended the jurisdiction of the United States to 200 nautical miles beyond the U. S. territorial sea and claimed "exclusive fishery management authority over all fish" within that area, known as the "exclusive economic zone." §1811(a); see Presidential Proclamation No. 5030, 3 CFR 22 (1983 Comp.); §§101, 102, 90 Stat. 336. The National Marine Fisheries Service (NMFS) administers the MSA under a delegation from the Secretary of Commerce.

The MSA established eight regional fishery management councils composed of representatives from the coastal States, fishery stakeholders, and NMFS. See 16 U. S. C.

§§1852(a), (b). The councils develop fishery management plans, which NMFS approves and promulgates as final regulations. See §§1852(h), 1854(a). In service of the statute's fishery conservation and management goals, see §1851(a), the MSA requires that certain provisions—such as "a mechanism for specifying annual catch limits . . . at a level such that overfishing does not occur," §1853(a)(15)—be included in these plans, see §1853(a). The plans may also include additional discretionary provisions. See §1853(b). For example, plans may "prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment," §1853(b)(4); "reserve a portion of the allowable biological catch of the fishery for use in scientific research," §1853(b)(11); and "prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery," §1853(b)(14).

Relevant here, a plan may also require that "one or more observers be carried on board" domestic vessels "for the purpose of collecting data necessary for the conservation and management of the fishery." §1853(b)(8). The MSA specifies three groups that must cover costs associated with observers: (1) foreign fishing vessels operating within the exclusive economic zone (which *must* carry observers), see §§1821(h)(1)(A), (h)(4), (h)(6); (2) vessels participating in certain limited access privilege programs, which impose quotas permitting fishermen to harvest only specific quantities of a fishery's total allowable catch, see §§1802(26), 1853a(c)(1)(H), (e)(2), 1854(d)(2); and (3) vessels within the jurisdiction of the North Pacific Council, where many of the largest and most successful commercial fishing enterprises in the Nation operate, see §1862(a). In the latter two cases, the MSA expressly caps the relevant fees at two or three percent of the value of fish harvested on the vessels. See §§1854(d)(2)(B), 1862(b)(2)(E). And in general, it author-

izes the Secretary to impose "sanctions" when "any payment required for observer services provided to or contracted by an owner or operator . . . has not been paid." §1858(g)(1)(D).

The MSA does not contain similar terms addressing whether Atlantic herring fishermen may be required to bear costs associated with any observers a plan may mandate. And at one point, NMFS fully funded the observer coverage the New England Fishery Management Council required in its plan for the Atlantic herring fishery. See 79 Fed. Reg. 8792 (2014). In 2013, however, the council proposed amending its fishery management plans to empower it to require fishermen to pay for observers if federal funding became unavailable. Several years later, NMFS promulgated a rule approving the amendment. See 85 Fed. Reg. 7414 (2020).

With respect to the Atlantic herring fishery, the Rule created an industry funded program that aims to ensure observer coverage on 50 percent of trips undertaken by vessels with certain types of permits. Under that program, vessel representatives must "declare into" a fishery before beginning a trip by notifying NMFS of the trip and announcing the species the vessel intends to harvest. If NMFS determines that an observer is required, but declines to assign a Government-paid one, the vessel must contract with and pay for a Government-certified third-party observer. NMFS estimated that the cost of such an observer would be up to $710 per day, reducing annual returns to the vessel owner by up to 20 percent. See *id.*, at 7417–7418.

B

Petitioners Loper Bright Enterprises, Inc., H&L Axelsson, Inc., Lund Marr Trawlers LLC, and Scombrus One LLC are family businesses that operate in the Atlantic herring fishery. In February 2020, they challenged the Rule under the MSA, 16 U. S. C. §1855(f), which incorporates

the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq*. In relevant part, they argued that the MSA does not authorize NMFS to mandate that they pay for observers required by a fishery management plan. The District Court granted summary judgment to the Government. It concluded that the MSA authorized the Rule, but noted that even if these petitioners' "arguments were enough to raise an ambiguity in the statutory text," deference to the agency's interpretation would be warranted under *Chevron*. 544 F. Supp. 3d 82, 107 (DC 2021); see *id.*, at 103–107.

A divided panel of the D. C. Circuit affirmed. See 45 F. 4th 359 (2022). The majority addressed various provisions of the MSA and concluded that it was not "wholly unambiguous" whether NMFS may require Atlantic herring fishermen to pay for observers. *Id.*, at 366. Because there remained "some question" as to Congress's intent, *id.*, at 369, the court proceeded to *Chevron*'s second step and deferred to the agency's interpretation as a "reasonable" construction of the MSA, 45 F. 4th, at 370. In dissent, Judge Walker concluded that Congress's silence on industry funded observers for the Atlantic herring fishery—coupled with the express provision for such observers in other fisheries and on foreign vessels—unambiguously indicated that NMFS lacked the authority to "require [Atlantic herring] fishermen to pay the wages of at-sea monitors." *Id.*, at 375.

C

Petitioners Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC own two vessels that operate in the Atlantic herring fishery: the F/V *Relentless* and the F/V *Persistence*.[1] These vessels use small-mesh bottom-trawl gear and can freeze fish at sea, so they can catch more species of fish and take longer trips than other vessels (about 10 to 14 days, as

[1] For any landlubbers, "F/V" is simply the designation for a fishing vessel.

opposed to the more typical 2 to 4). As a result, they generally declare into multiple fisheries per trip so they can catch whatever the ocean offers up. If the vessels declare into the Atlantic herring fishery for a particular trip, they must carry an observer for that trip if NMFS selects the trip for coverage, even if they end up harvesting fewer herring than other vessels—or no herring at all.

This set of petitioners, like those in the D. C. Circuit case, filed a suit challenging the Rule as unauthorized by the MSA. The District Court, like the D. C. Circuit, deferred to NMFS's contrary interpretation under *Chevron* and thus granted summary judgment to the Government. See 561 F. Supp. 3d 226, 234–238 (RI 2021).

The First Circuit affirmed. See 62 F. 4th 621 (2023). It relied on a "default norm" that regulated entities must bear compliance costs, as well as the MSA's sanctions provision, Section 1858(g)(1)(D). See *id.*, at 629–631. And it rejected petitioners' argument that the express statutory authorization of three industry funding programs demonstrated that NMFS lacked the broad implicit authority it asserted to impose such a program for the Atlantic herring fishery. See *id.*, at 631–633. The court ultimately concluded that the "[a]gency's interpretation of its authority to require at-sea monitors who are paid for by owners of regulated vessels does not 'exceed[] the bounds of the permissible.'" *Id.*, at 633–634 (quoting *Barnhart* v. *Walton*, 535 U. S. 212, 218 (2002); alteration in original). In reaching that conclusion, the First Circuit stated that it was applying *Chevron*'s two-step framework. 62 F. 4th, at 628. But it did not explain which aspects of its analysis were relevant to which of *Chevron*'s two steps. Similarly, it declined to decide whether the result was "a product of *Chevron* step one or step two." *Id.*, at 634.

We granted certiorari in both cases, limited to the question whether *Chevron* should be overruled or clarified. See

601 U. S. ___ (2023); 598 U. S. ___ (2023).[2]

II

A

Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear. Cognizant of the limits of human language and foresight, they anticipated that "[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation," would be "more or less obscure and equivocal, until their meaning" was settled "by a series of particular discussions and adjudications." The Federalist No. 37, p. 236 (J. Cooke ed. 1961) (J. Madison).

The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." *Id.*, No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." *Id.*, at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches. *Id.*, at 522; see *id.*, at 522–524; *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011).

This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of *Marbury* v. *Madison*, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137,

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[2] Both petitions also presented questions regarding the consistency of the Rule with the MSA. See Pet. for Cert. in No. 22–451, p. i; Pet. for Cert. in No. 22–1219, p. ii. We did not grant certiorari with respect to those questions and thus do not reach them.

177 (1803). And in the following decades, the Court understood "interpret[ing] the laws, in the last resort," to be a "solemn duty" of the Judiciary. *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

The Court also recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. For example, in *Edwards' Lessee* v. *Darby*, 12 Wheat. 206 (1827), the Court explained that "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." *Id.*, at 210; see also *United States* v. *Vowell*, 5 Cranch 368, 372 (1809) (Marshall, C. J., for the Court).

Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. See *Dickson*, 15 Pet., at 161; *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892); *National Lead Co.* v. *United States*, 252 U. S. 140, 145–146 (1920). That is because "the longstanding 'practice of the government'"—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.'" *NLRB* v. *Noel Canning*, 573 U. S. 513, 525 (2014) (first quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 401 (1819); then quoting *Marbury*, 1 Cranch, at 177). The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who were "[n]ot unfrequently . . . the draftsmen of the laws they [were] afterwards called upon to interpret." *United*

States v. *Moore*, 95 U. S. 760, 763 (1878); see also *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912).

"Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge "certainly would not be bound to adopt the construction given by the head of a department." *Decatur*, 14 Pet., at 515; see also *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932). Otherwise, judicial judgment would not be independent at all. As Justice Story put it, "in cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *Dickson*, 15 Pet., at 162.

B

The New Deal ushered in a "rapid expansion of the administrative process." *United States* v. *Morton Salt Co.*, 338 U. S. 632, 644 (1950). But as new agencies with new powers proliferated, the Court continued to adhere to the traditional understanding that questions of law were for courts to decide, exercising independent judgment.

During this period, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 51 (1936). "When the legislature itself acts within the broad field of legislative discretion," the Court reasoned, "its determinations are conclusive." *Ibid.* Congress could therefore "appoint[] an agent to act within that sphere of legislative authority" and "endow the agent with power to make *findings of fact* which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily." *Ibid.* (emphasis added).

But the Court did not extend similar deference to agency

resolutions of questions of *law*. It instead made clear, repeatedly, that "[t]he interpretation of the meaning of statutes, as applied to justiciable controversies," was "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 544 (1940); see also *Social Security Bd.* v. *Nierotko*, 327 U. S. 358, 369 (1946); *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678, 681–682, n. 1 (1944). The Court understood, in the words of Justice Brandeis, that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied." *St. Joseph Stock Yards*, 298 U. S., at 84 (concurring opinion). It also continued to note, as it long had, that the informed judgment of the Executive Branch—especially in the form of an interpretation issued contemporaneously with the enactment of the statute—could be entitled to "great weight." *American Trucking Assns.*, 310 U. S., at 549.

Perhaps most notably along those lines, in *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944), the Court explained that the "interpretations and opinions" of the relevant agency, "made in pursuance of official duty" and "based upon . . . specialized experience," "constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance," even on legal questions. *Id.*, at 139–140. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.*, at 140.

On occasion, to be sure, the Court applied deferential review upon concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency. For example, in *Gray* v. *Powell*, 314 U. S. 402 (1941), the Court deferred to an administrative conclusion that a coal-burning railroad that

had arrangements with several coal mines was not a coal "producer" under the Bituminous Coal Act of 1937. Congress had "specifically" granted the agency the authority to make that determination. *Id.*, at 411. The Court thus reasoned that "[w]here, as here, a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched" so long as the agency's decision constituted "a sensible exercise of judgment." *Id.*, at 412–413. Similarly, in *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111 (1944), the Court deferred to the determination of the National Labor Relations Board that newsboys were "employee[s]" within the meaning of the National Labor Relations Act. The Act had, in the Court's judgment, "assigned primarily" to the Board the task of marking a "definitive limitation around the term 'employee.'" *Id.*, at 130. The Court accordingly viewed its own role as "limited" to assessing whether the Board's determination had a "'warrant in the record' and a reasonable basis in law." *Id.*, at 131.

Such deferential review, though, was cabined to fact-bound determinations like those at issue in *Gray* and *Hearst*. Neither *Gray* nor *Hearst* purported to refashion the longstanding judicial approach to questions of law. In *Gray*, after deferring to the agency's determination that a particular entity was not a "producer" of coal, the Court went on to discern, based on its own reading of the text, whether another statutory term—"other disposal" of coal—encompassed a transaction lacking a transfer of title. See 314 U. S., at 416–417. The Court evidently perceived no basis for deference to the agency with respect to that pure legal question. And in *Hearst*, the Court proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." 322 U. S., at 130–131. At least with

respect to questions it regarded as involving "statutory interpretation," the Court thus did not disturb the traditional rule. It merely thought that a different approach should apply where application of a statutory term was sufficiently intertwined with the agency's factfinding.

In any event, the Court was far from consistent in reviewing deferentially even such factbound statutory determinations. Often the Court simply interpreted and applied the statute before it. See K. Davis, Administrative Law §248, p. 893 (1951) ("The one statement that can be made with confidence about applicability of the doctrine of Gray v. Powell is that sometimes the Supreme Court applies it and sometimes it does not."); B. Schwartz, Gray vs. Powell and the Scope of Review, 54 Mich. L. Rev. 1, 68 (1955) (noting an "embarrassingly large number of Supreme Court decisions that do not adhere to the doctrine of *Gray v. Powell*"). In one illustrative example, the Court rejected the U. S. Price Administrator's determination that a particular warehouse was a "public utility" entitled to an exemption from the Administrator's General Maximum Price Regulation. Despite the striking resemblance of that administrative determination to those that triggered deference in *Gray* and *Hearst*, the Court declined to "accept the Administrator's view in deference to administrative construction." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 156 (1944). The Administrator's view, the Court explained, had "hardly seasoned or broadened into a settled administrative practice," and thus did not "overweigh the considerations" the Court had "set forth as to the proper construction of the statute." *Ibid.*

Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes. Instead, just five years after *Gray* and two after *Hearst*, Congress codified the opposite rule: the traditional understanding that *courts* must "decide all relevant questions of

law." 5 U. S. C. §706.[3]

C

Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. It was the culmination of a "comprehensive rethinking of the place of administrative agencies in a regime of separate and divided powers." *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 670–671 (1986).

In addition to prescribing procedures for agency action, the APA delineates the basic contours of judicial review of such action. As relevant here, Section 706 directs that "[t]o

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[3]The dissent plucks out *Gray*, *Hearst*, and—to "gild the lily," in its telling—three more 1940s decisions, claiming they reflect the relevant historical tradition of judicial review. *Post*, at 21–22, and n. 6 (opinion of KAGAN, J.). But it has no substantial response to the fact that *Gray* and *Hearst* themselves endorsed, implicitly in one case and explicitly in the next, the traditional rule that "questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight"—not outright deference—"to the judgment of those whose special duty is to administer the questioned statute." *Hearst*, 322 U. S., at 130–131. And it fails to recognize the deep roots that this rule has in our Nation's judicial tradition, to the limited extent it engages with that tradition at all. See *post*, at 20–21, n. 5. Instead, like the Government, it strains to equate the "respect" or "weight" traditionally afforded to Executive Branch interpretations with binding deference. See *ibid.*; Brief for Respondents in No. 22–1219, pp. 21–24. That supposed equivalence is a fiction. The dissent's cases establish that a "*contemporaneous* construction" shared by "not *only* . . . the courts" but also "the departments" could be "controlling," *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) (emphasis added), and that courts might "lean in favor" of a "contemporaneous" and "continued" construction of the Executive Branch as strong evidence of a statute's meaning, *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892). They do not establish that Executive Branch interpretations of ambiguous statutes—no matter how inconsistent, late breaking, or flawed—always *bound* the courts. In reality, a judge was never "bound to adopt the construction given by the head of a department." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706. It further requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law." §706(2)(A).

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, §706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it. And it prescribes no deferential standard for courts to employ in answering those legal questions. That omission is telling, because Section 706 *does* mandate that judicial review of agency policymaking and factfinding be deferential. See §706(2)(A) (agency action to be set aside if "arbitrary, capricious, [or] an abuse of discretion"); §706(2)(E) (agency factfinding in formal proceedings to be set aside if "unsupported by substantial evidence").

In a statute designed to "serve as the fundamental charter of the administrative state," *Kisor* v. *Wilkie*, 588 U. S. 558, 580 (2019) (plurality opinion) (internal quotation marks omitted), Congress surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart from the settled pre-APA understanding that deciding such questions was "exclusively a judicial function," *American Trucking Assns.*, 310 U. S., at 544. But nothing in the APA hints at such a dramatic departure. On the contrary, by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, Section 706 makes clear that

agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. Under the APA, it thus "remains the responsibility of the court to decide whether the law means what the agency says." *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 109 (2015) (Scalia, J., concurring in judgment).[4]

The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning. According to both the House and Senate Reports on the legislation, Section 706 "provide[d] that questions of law are for courts *rather than agencies* to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946) (emphasis added); accord, S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). Some of the legislation's most prominent supporters articulated the same view. See 92 Cong. Rec. 5654 (1946) (statement of Rep. Walter); P. McCarran, Improving "Administrative Justice": Hearings and Evidence; Scope of Judicial Review, 32 A. B. A. J. 827, 831 (1946). Even the Department of Justice—an agency with every incentive to endorse a view of the APA favorable to the Executive Branch—opined after its enactment that Section 706 merely "restate[d] the present law as to the scope of judicial review." Dept. of Justice, Attorney General's Manual on the

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[4]The dissent observes that Section 706 does not say expressly that courts are to decide legal questions using "a *de novo* standard of review." *Post*, at 16. That much is true. But statutes can be sensibly understood only "by reviewing text in context." *Pulsifer* v. *United States*, 601 U. S. 124, 133 (2024). Since the start of our Republic, courts have "decide[d] . . . questions of law" and "interpret[ed] constitutional and statutory provisions" by applying their own legal judgment. §706. Setting aside its misplaced reliance on *Gray* and *Hearst*, the dissent does not and could not deny that tradition. But it nonetheless insists that to codify that tradition, Congress needed to expressly reject a sort of deference the courts had never before applied—and would not apply for several decades to come. It did not. "The notion that some things 'go without saying' applies to legislation just as it does to everyday life." *Bond* v. *United States*, 572 U. S. 844, 857 (2014).

Administrative Procedure Act 108 (1947); see also *Kisor*, 588 U. S., at 582 (plurality opinion) (same). That "present law," as we have described, adhered to the traditional conception of the judicial function. See *supra*, at 9–13.

Various respected commentators contemporaneously maintained that the APA required reviewing courts to exercise independent judgment on questions of law. Professor John Dickinson, for example, read the APA to "impose a clear mandate that all [questions of law] shall be decided by the reviewing Court itself, and in the exercise of its own independent judgment." Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review, 33 A. B. A. J. 434, 516 (1947). Professor Bernard Schwartz noted that §706 "would seem . . . to be merely a legislative restatement of the familiar review principle that questions of law are for the reviewing court, at the same time leaving to the courts the task of determining in each case what are questions of law." Mixed Questions of Law and Fact and the Administrative Procedure Act, 19 Ford. L. Rev. 73, 84–85 (1950). And Professor Louis Jaffe, who had served in several agencies at the advent of the New Deal, thought that §706 leaves it up to the reviewing "court" to "decide as a 'question of law' whether there is 'discretion' in the premises"—that is, whether the statute at issue delegates particular discretionary authority to an agency. Judicial Control of Administrative Action 570 (1965).

The APA, in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions. In exercising such judgment, though, courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. Such interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" consistent with the APA. *Skidmore*, 323 U. S., at 140. And

interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning. See *ibid.*; *American Trucking Assns.*, 310 U. S., at 549.

In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[]" to an agency the authority to give meaning to a particular statutory term. *Batterton* v. *Francis*, 432 U. S. 416, 425 (1977) (emphasis deleted).[5] Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman* v. *Southard*, 10 Wheat. 1, 43 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan* v. *EPA*, 576 U. S. 743, 752 (2015), such as "appropriate" or "reasonable."[6]

When the best reading of a statute is that it delegates

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[5] See, *e.g.*, 29 U. S. C. §213(a)(15) (exempting from provisions of the Fair Labor Standards Act "any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (*as such terms are defined and delimited by regulations of the Secretary*)" (emphasis added)); 42 U. S. C. §5846(a)(2) (requiring notification to Nuclear Regulatory Commission when a facility or activity licensed or regulated pursuant to the Atomic Energy Act "contains a defect which could create a substantial safety hazard, *as defined by regulations which the Commission shall promulgate*" (emphasis added)).

[6] See, *e.g.*, 33 U. S. C. §1312(a) (requiring establishment of effluent limitations "[w]henever, in the judgment of the [Environmental Protection Agency (EPA)] Administrator . . . , discharges of pollutants from a point source or group of point sources . . . would interfere with the attainment or maintenance of that water quality . . . which shall assure" various outcomes, such as the "protection of public health" and "public water supplies"); 42 U. S. C. §7412(n)(1)(A) (directing EPA to regulate power plants "if the Administrator finds such regulation is appropriate and necessary").

discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority," H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in "'reasoned decisionmaking'" within those boundaries, *Michigan*, 576 U. S., at 750 (quoting *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 522 U. S. 359, 374 (1998)); see also *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29 (1983). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.

III

The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.

A

In the decades between the enactment of the APA and this Court's decision in *Chevron*, courts generally continued to review agency interpretations of the statutes they administer by independently examining each statute to determine its meaning. Cf. T. Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 972–975 (1992). As an early proponent (and later critic) of *Chevron* recounted, courts during this period thus identified delegations of discretionary authority to agencies on a "statute-by-statute basis." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516.

Chevron, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional approach. The question in the case was whether an EPA regulation "allow[ing] States to treat all of the pollution-

emitting devices within the same industrial grouping as though they were encased within a single 'bubble'" was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question of statutory interpretation, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action.

The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. To discern such intent, the Court noted, a reviewing court was to "employ[] traditional tools of statutory construction." *Ibid.*

Without mentioning the APA, or acknowledging any doctrinal shift, the Court articulated a second step applicable when "Congress ha[d] not directly addressed the precise question at issue." *Id.*, at 843. In such a case—that is, a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand—a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Ibid.* (footnote omitted). A court instead had to set aside the traditional interpretive tools and defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. That directive was justified, according to the Court, by the understanding that administering statutes "requires the formulation of policy" to fill statutory "gap[s]"; by the long judicial tradition of according "considerable weight" to Executive Branch interpretations; and by a host of other considerations, including the complexity of the regulatory scheme, EPA's "detailed

and reasoned" consideration, the policy-laden nature of the judgment supposedly required, and the agency's indirect accountability to the people through the President. *Id.*, at 843, 844, and n. 14, 865.

Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865. It did not matter *why* Congress, as the Court saw it, had not squarely addressed the question, see *ibid.*, or that "the agency ha[d] from time to time changed its interpretation," *id.*, at 863. The latest EPA interpretation was a permissible reading of the Clean Air Act, so under the Court's new rule, that reading controlled.

Initially, *Chevron* "seemed destined to obscurity." T. Merrill, The Story of *Chevron*: The Making of an Accidental Landmark, 66 Admin. L. Rev. 253, 276 (2014). The Court did not at first treat it as the watershed decision it was fated to become; it was hardly cited in cases involving statutory questions of agency authority. See *ibid.* But within a few years, both this Court and the courts of appeals were routinely invoking its two-step framework as the governing standard in such cases. See *id.*, at 276–277. As the Court did so, it revisited the doctrine's justifications. Eventually, the Court decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996); see also, *e.g.*, *Cuozzo Speed Technologies, LLC* v. *Lee*, 579 U. S. 261, 276–277 (2016); *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 315 (2014); *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982 (2005).

B

Neither *Chevron* nor any subsequent decision of this Court attempted to reconcile its framework with the APA. The "law of deference" that this Court has built on the foundation laid in *Chevron* has instead been "[h]eedless of the original design" of the APA. *Perez*, 575 U. S., at 109 (Scalia, J., concurring in judgment).

1

Chevron defies the command of the APA that "the reviewing court"—not the agency whose action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. And although exercising independent judgment is consistent with the "respect" historically given to Executive Branch interpretations, see, *e.g.*, *Edwards' Lessee*, 12 Wheat., at 210; *Skidmore*, 323 U. S., at 140, *Chevron* insists on much more. It demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time. See 467 U. S., at 863. Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else—unless the prior court happened to also say that the statute is "unambiguous." *Brand X*, 545 U. S., at 982. That regime is the antithesis of the time honored approach the APA prescribes. In fretting over the prospect of "allow[ing]" a judicial interpretation of a statute "to override an agency's" in a dispute before a court, *ibid.*, *Chevron* turns the statutory scheme for judicial review of agency action upside down.

Chevron cannot be reconciled with the APA, as the Government and the dissent contend, by presuming that statutory ambiguities are implicit delegations to agencies. See

Brief for Respondents in No. 22–1219, pp. 13, 37–38; *post*, at 4–15 (opinion of KAGAN, J.). Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality. *Chevron*'s presumption does not, because "[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two." C. Sunstein, Interpreting Statutes in the Regulatory State, 103 Harv. L. Rev. 405, 445 (1989). As *Chevron* itself noted, ambiguities may result from an inability on the part of Congress to squarely answer the question at hand, or from a failure to even "consider the question" with the requisite precision. 467 U. S., at 865. In neither case does an ambiguity necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. And many or perhaps most statutory ambiguities may be unintentional. As the Framers recognized, ambiguities will inevitably follow from "the complexity of objects, . . . the imperfection of the human faculties," and the simple fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist No. 37, at 236.

Courts, after all, routinely confront statutory ambiguities in cases having nothing to do with *Chevron*—cases that do not involve agency interpretations or delegations of authority. Of course, when faced with a statutory ambiguity in such a case, the ambiguity is not a delegation to anybody, and a court is not somehow relieved of its obligation to independently interpret the statute. Courts in that situation do not throw up their hands because "Congress's instructions have" supposedly "run out," leaving a statutory "gap." *Post*, at 2 (opinion of KAGAN, J.). Courts instead understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; "every statute's meaning is fixed at the time of enactment." *Wisconsin Cen-*

tral Ltd. v. *United States*, 585 U. S. 274, 284 (2018) (emphasis deleted). So instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.

In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even *Chevron* itself reaffirmed that "[t]he judiciary is the final authority on issues of statutory construction" and recognized that "in the absence of an administrative interpretation," it is "necessary" for a court to "impose its own construction on the statute." *Id.*, at 843, and n. 9. *Chevron* gravely erred, though, in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate.

2

The Government responds that Congress must generally

intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. The dissent offers more of the same. See *post*, at 9–14. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

Beginning with expertise, we recently noted that interpretive issues arising in connection with a regulatory scheme often "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor*, 588 U. S., at 578 (opinion of the Court). We thus observed that "[w]hen the agency has no comparative expertise in resolving a regulatory ambiguity, Congress presumably would not grant it that authority." *Ibid.* *Chevron*'s broad rule of deference, though, demands that courts presume just the opposite. Under that rule, ambiguities of all stripes trigger deference. Indeed, the Government and, seemingly, the dissent continue to defend the proposition that *Chevron* applies even in cases having little to do with an agency's technical subject matter expertise. See Brief for Respondents in No. 22–1219, p. 17; *post*, at 10.

But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions. "[M]any statutory cases" call upon "courts [to] interpret the mass of technical detail that is the ordinary diet of the law," *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 161 (2001) (Breyer, J., dissenting), and courts did so without issue in agency cases before *Chevron*, see *post*, at 30 (GORSUCH, J., concurring). Courts, after all, do not decide such questions blindly. The parties and

amici in such cases are steeped in the subject matter, and reviewing courts have the benefit of their perspectives. In an agency case in particular, the court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. And although an agency's interpretation of a statute "cannot bind a court," it may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 98, n. 8 (1983). Such expertise has always been one of the factors which may give an Executive Branch interpretation particular "power to persuade, if lacking power to control." *Skidmore*, 323 U. S., at 140; see, *e.g.*, *County of Maui* v. *Hawaii Wildlife Fund*, 590 U. S. 165, 180 (2020); *Moore*, 95 U. S., at 763.

For those reasons, delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise. The better presumption is therefore that Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch. And to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute.

Nor does a desire for the uniform construction of federal law justify *Chevron*. Given inconsistencies in how judges apply *Chevron*, see *infra*, at 30–33, it is unclear how much the doctrine as a whole (as opposed to its highly deferential second step) actually promotes such uniformity. In any event, there is little value in imposing a uniform interpretation of a statute if that interpretation is wrong. We see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

The view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken, for it rests on a profound misconception of the judicial role. It is reasonable to assume that Congress intends to leave policymaking to political actors. But resolution of statutory ambiguities involves legal interpretation. That task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575 (opinion of the Court). Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522–525. They were to construe the law with "[c]lear heads . . . and honest hearts," not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896).

That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA. By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* does not prevent judges from making policy. It prevents them from judging.

3

In truth, *Chevron*'s justifying presumption is, as Members of this Court have often recognized, a fiction. See *Buffington* v. *McDonough*, 598 U. S. ___, ___ (2022) (GORSUCH,

J., dissenting from denial of certiorari) (slip op., at 11); *Cuozzo*, 579 U. S., at 286 (THOMAS, J., concurring); Scalia, 1989 Duke L. J., at 517; see also *post*, at 15 (opinion of KAGAN, J.). So we have spent the better part of four decades imposing one limitation on *Chevron* after another, pruning its presumption on the understanding that "where it is in doubt that Congress actually intended to delegate particular interpretive authority to an agency, *Chevron* is 'inapplicable.'" *United States* v. *Mead Corp.*, 533 U. S. 218, 230 (2001) (quoting *Christensen* v. *Harris County*, 529 U. S. 576, 597 (2000) (Breyer, J., dissenting)); see also *Adams Fruit Co.* v. *Barrett*, 494 U. S. 638, 649 (1990).

Consider the many refinements we have made in an effort to match *Chevron*'s presumption to reality. We have said that *Chevron* applies only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Mead*, 533 U. S., at 226–227. In practice, that threshold requirement—sometimes called *Chevron* "step zero"—largely limits *Chevron* to "the fruits of notice-and-comment rulemaking or formal adjudication." 533 U. S., at 230. But even when those processes are used, deference is still not warranted "where the regulation is 'procedurally defective'—that is, where the agency errs by failing to follow the correct procedures in issuing the regulation." *Encino Motorcars, LLC* v. *Navarro*, 579 U. S. 211, 220 (2016) (quoting *Mead*, 533 U. S., at 227).

Even where those procedural hurdles are cleared, substantive ones remain. Most notably, *Chevron* does not apply if the question at issue is one of "deep 'economic and political significance.'" *King* v. *Burwell*, 576 U. S. 473, 486 (2015). We have instead expected Congress to delegate such authority "expressly" if at all, *ibid.*, for "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s],'"

West Virginia v. *EPA*, 597 U. S. 697, 723 (2022) (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001); alteration in original). Nor have we applied *Chevron* to agency interpretations of judicial review provisions, see *Adams Fruit Co.*, 494 U. S., at 649–650, or to statutory schemes not administered by the agency seeking deference, see *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 519–520 (2018). And we have sent mixed signals on whether *Chevron* applies when a statute has criminal applications. Compare *Abramski* v. *United States*, 573 U. S. 169, 191 (2014), with *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 704, n. 18 (1995).

Confronted with this byzantine set of preconditions and exceptions, some courts have simply bypassed *Chevron*, saying it makes no difference for one reason or another.[7] And even when they do invoke *Chevron*, courts do not always heed the various steps and nuances of that evolving doctrine. In one of the cases before us today, for example, the First Circuit both skipped "step zero," see 62 F. 4th, at 628, and refused to "classify [its] conclusion as a product of *Chevron* step one or step two"—though it ultimately appears to have deferred under step two, *id.*, at 634.

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[7] See, *e.g.*, *Guedes* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 45 F. 4th 306, 313–314 (CADC 2022), abrogated by *Garland* v. *Cargill*, 602 U. S. ___ (2024); *County of Amador* v. *United States Dept. of Interior*, 872 F. 3d 1012, 1021–1022 (CA9 2017); *Estrada-Rodriguez* v. *Lynch*, 825 F. 3d 397, 403–404 (CA8 2016); *Nielsen* v. *AECOM Tech. Corp.*, 762 F. 3d 214, 220 (CA2 2014); *Alaska Stock, LLC* v. *Houghton Mifflin Harcourt Publishing Co.*, 747 F. 3d 673, 685, n. 52 (CA9 2014); *Jurado-Delgado* v. *Attorney Gen. of U. S.*, 498 Fed. Appx. 107, 117 (CA3 2009); see also D. Brookins, Confusion in the Circuit Courts: How the Circuit Courts Are Solving the *Mead*-Puzzle by Avoiding It Altogether, 85 Geo. Wash. L. Rev. 1484, 1496–1499 (2017) (documenting *Chevron* avoidance by the lower courts); A. Vermeule, Our Schmittian Administrative Law, 122 Harv. L. Rev. 1095, 1127–1129 (2009) (same); L. Bressman, How *Mead* Has Muddled Judicial Review of Agency Action, 58 Vand. L. Rev. 1443, 1464–1466 (2005) (same).

This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. See *Cuozzo*, 579 U. S., at 280 (most recent occasion). But *Chevron* remains on the books. So litigants must continue to wrestle with it, and lower courts—bound by even our crumbling precedents, see *Agostini* v. *Felton*, 521 U. S. 203, 238 (1997)—understandably continue to apply it.

The experience of the last 40 years has thus done little to rehabilitate *Chevron*. It has only made clear that *Chevron*'s fictional presumption of congressional intent was always unmoored from the APA's demand that courts exercise independent judgment in construing statutes administered by agencies. At best, our intricate *Chevron* doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added).

IV

The only question left is whether *stare decisis*, the doctrine governing judicial adherence to precedent, requires us to persist in the *Chevron* project. It does not. *Stare decisis* is not an "inexorable command," *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991), and the *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*, 588 U. S. 180, 203 (2019) (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 917 (2018))—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. Despite reshaping judicial review of agency action, neither it nor any case of ours applying it grappled with the APA—

the statute that lays out how such review works. Its flaws were nonetheless apparent from the start, prompting this Court to revise its foundations and continually limit its application. It has launched and sustained a cottage industry of scholars attempting to decipher its basis and meaning. And Members of this Court have long questioned its premises. See, *e.g.*, *Pereira* v. *Sessions*, 585 U. S. 198, 219–221 (2018) (Kennedy, J., concurring); *Michigan*, 576 U. S., at 760–764 (THOMAS, J., concurring); *Buffington*, 598 U. S. ___ (opinion of GORSUCH, J.); B. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2150–2154 (2016). Even Justice Scalia, an early champion of *Chevron*, came to seriously doubt whether it could be reconciled with the APA. See *Perez*, 575 U. S., at 109–110 (opinion concurring in judgment). For its entire existence, *Chevron* has been a "rule in search of a justification," *Knick*, 588 U. S., at 204, if it was ever coherent enough to be called a rule at all.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, which requires deference at the doctrine's second step. But the concept of ambiguity has always evaded meaningful definition. As Justice Scalia put the dilemma just five years after *Chevron* was decided: "How clear is clear?" 1989 Duke L. J., at 521.

We are no closer to an answer to that question than we were four decades ago. "'[A]mbiguity' is a term that may have different meanings for different judges." *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 572 (2005) (Stevens, J., dissenting). One judge might see ambiguity everywhere; another might never encounter it. Compare L. Silberman, Chevron—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 822 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. En Banc 315, 323 (2017). A rule of law that is so wholly "in the eye of the

beholder," *Exxon Mobil Corp.*, 545 U. S., at 572 (Stevens, J., dissenting), invites different results in like cases and is therefore "arbitrary in practice," *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 283 (1988). Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U. S. 111, 125 (1965).

The dissent proves the point. It tells us that a court should reach *Chevron*'s second step when it finds, "at the end of its interpretive work," that "Congress has left an ambiguity or gap." *Post*, at 1–2. (The Government offers a similar test. See Brief for Respondents in No. 22–1219, pp. 7, 10, 14; Tr. of Oral Arg. 113–114, 116.) That is no guide at all. Once more, the basic nature and meaning of a statute does not change when an agency happens to be involved. Nor does it change just because the agency has happened to offer its interpretation through the sort of procedures necessary to obtain deference, or because the other preconditions for *Chevron* happen to be satisfied. The statute still has a best meaning, necessarily discernible by a court deploying its full interpretive toolkit. So for the dissent's test to have any meaning, it must think that in an agency case (unlike in any other), a court should give up on its "interpretive work" before it has identified that best meaning. But how does a court know when to do so? On that point, the dissent leaves a gap of its own. It protests only that some other interpretive tools—all with pedigrees more robust than *Chevron*'s, and all designed to help courts identify the meaning of a text rather than allow the Executive Branch to displace it—also apply to ambiguous texts. See *post*, at 27. That this is all the dissent can come up with, after four decades of judicial experience attempting to identify ambiguity under *Chevron*, reveals the futility of the

exercise.[8]

Because *Chevron* in its original, two-step form was so indeterminate and sweeping, we have instead been forced to clarify the doctrine again and again. Our attempts to do so have only added to *Chevron*'s unworkability, transforming the original two-step into a dizzying breakdance. See *Adams Fruit Co.*, 494 U. S., at 649–650; *Mead*, 533 U. S., at 226–227; *King*, 576 U. S., at 486; *Encino Motorcars*, 579 U. S., at 220; *Epic Systems*, 584 U. S., at 519–520; on and on. And the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. See, *e.g.*, *Cargill* v. *Garland*, 57 F. 4th 447, 465–468 (CA5 2023) (plurality opinion) (May the Government waive reliance on *Chevron*? Does *Chevron* apply to agency interpretations of statutes imposing criminal penalties? Does *Chevron* displace the rule of lenity?), aff'd, 602 U. S. ___ (2024).

Four decades after its inception, *Chevron* has thus become an impediment, rather than an aid, to accomplishing the basic judicial task of "say[ing] what the law is." *Marbury*, 1 Cranch, at 177. And its continuing import is far from clear. Courts have often declined to engage with the doctrine, saying it makes no difference. See n. 7, *supra*. And as noted, we have avoided deferring under *Chevron* since 2016. That trend is nothing new; for decades, we have often declined to invoke *Chevron* even in those cases where it might appear to be applicable. See W. Eskridge & L. Baer, The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From *Chevron* to *Hamdan*, 96 Geo. L. J. 1083, 1125 (2008). At this point, all

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[8] Citing an empirical study, the dissent adds that *Chevron* "fosters *agreement* among judges." *Post*, at 28. It is hardly surprising that a study might find as much; *Chevron*'s second step is supposed to be hospitable to agency interpretations. So when judges get there, they tend to agree that the agency wins. That proves nothing about the supposed ease or predictability of identifying ambiguity in the first place.

that remains of *Chevron* is a decaying husk with bold pretensions.

Nor has *Chevron* been the sort of "'stable background' rule" that fosters meaningful reliance. *Post*, at 8, n. 1 (opinion of KAGAN, J.) (quoting *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 261 (2010)). Given our constant tinkering with and eventual turn away from *Chevron*, and its inconsistent application by the lower courts, it instead is hard to see how anyone—Congress included—could reasonably expect a court to rely on *Chevron* in any particular case. And even if it were possible to predict accurately when courts will apply *Chevron*, the doctrine "does not provide 'a clear or easily applicable standard, so arguments for reliance based on its clarity are misplaced.'" *Janus*, 585 U. S., at 927 (quoting *South Dakota* v. *Wayfair, Inc.*, 585 U. S. 162, 186 (2018)). To plan on *Chevron* yielding a particular result is to gamble not only that the doctrine will be invoked, but also that it will produce readily foreseeable outcomes and the stability that comes with them. History has proved neither bet to be a winning proposition.

Rather than safeguarding reliance interests, *Chevron* affirmatively destroys them. Under *Chevron*, a statutory ambiguity, no matter why it is there, becomes a license authorizing an agency to change positions as much as it likes, with "[u]nexplained inconsistency" being "at most . . . a reason for holding an interpretation to be . . . arbitrary and capricious." *Brand X*, 545 U. S., at 981. But statutory ambiguity, as we have explained, is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so. By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.

Chevron accordingly has undermined the very "rule of law" values that *stare decisis* exists to secure. *Michigan* v.

Bay Mills Indian Community, 572 U. S. 782, 798 (2014). And it cannot be constrained by admonishing courts to be extra careful, or by tacking on a new batch of conditions. We would need to once again "revis[e] its theoretical basis . . . in order to cure its practical deficiencies." *Montejo* v. *Louisiana*, 556 U. S. 778, 792 (2009). *Stare decisis* does not require us to do so, especially because any refinements we might make would only point courts back to their duties under the APA to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706. Nor is there any reason to wait helplessly for Congress to correct our mistake. The Court has jettisoned many precedents that Congress likewise could have legislatively overruled. See, *e.g.*, *Patterson* v. *McLean Credit Union*, 485 U. S. 617, 618 (1988) (*per curiam*) (collecting cases). And part of "judicial humility," *post*, at 3, 25 (opinion of KAGAN, J.,), is admitting and in certain cases correcting our own mistakes, especially when those mistakes are serious, see *post*, at 8–9 (opinion of GORSUCH, J.).

This is one of those cases. *Chevron* was a judicial invention that required judges to disregard their statutory duties. And the only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986), is for us to leave *Chevron* behind.

By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U. S. 442, 457 (2008). Mere reliance on *Chevron* cannot constitute a "'special justification'" for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, "just an argument that the precedent was wrongly decided." *Halliburton Co.* v. *Erica P. John Fund,*

Inc., 573 U. S. 258, 266 (2014) (quoting *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000)). That is not enough to justify overruling a statutory precedent.

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The dissent ends by quoting *Chevron*: "'Judges are not experts in the field.'" *Post*, at 31 (quoting 467 U. S., at 865). That depends, of course, on what the "field" is. If it is legal interpretation, that has been, "emphatically," "the province and duty of the judicial department" for at least 221 years. *Marbury*, 1 Cranch, at 177. The rest of the dissent's selected epigraph is that judges "'are not part of either political branch.'" *Post*, at 31 (quoting *Chevron*, 467 U. S., at 865). Indeed. Judges have always been expected to apply their "judgment" *independent* of the political branches when interpreting the laws those branches enact. The Federalist No. 78, at 523. And one of those laws, the APA, bars judges from disregarding that responsibility just because an Executive Branch agency views a statute differently.

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Because the D. C. and First Circuits relied on *Chevron* in deciding whether to uphold the Rule, their judgments are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL.,
PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF
COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

JUSTICE THOMAS, concurring.

I join the Court's opinion in full because it correctly concludes that *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), must finally be overruled. Under *Chevron*, a judge was required to adopt an agency's interpretation of an ambiguous statute, so long as the agency had a "permissible construction of the statute." See *id.*, at 843. As the Court explains, that deference does not comport with the Administrative Procedure Act, which requires judges to decide "all relevant questions of law" and "interpret constitutional and statutory provisions" when reviewing an agency action. 5 U. S. C. §706; see also *ante,* at 18–23; *Baldwin* v. *United States*, 589 U. S. ___, ___–___ (2020) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 4–5).

I write separately to underscore a more fundamental problem: *Chevron* deference also violates our Constitution's separation of powers, as I have previously explained at length. See *Baldwin*, 589 U. S., at ___–___ (dissenting opinion) (slip op., at 2–4); *Michigan* v. *EPA*, 576 U. S. 743, 761–763 (2015) (concurring opinion); see also *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 115–118 (2015) (opinion concurring in judgment). And, I agree with JUSTICE GORSUCH that we should not overlook *Chevron*'s constitutional defects in overruling it.* *Post*, at 15–20 (concurring opinion). To provide "practical and real protections for individual liberty," the Framers drafted a Constitution that divides the legislative, executive, and judicial powers between three branches of Government. *Perez*, 575 U. S., at 118 (opinion of THOMAS, J.). *Chevron* deference compromises this separation of powers in two ways. It curbs the judicial power afforded to courts, and simultaneously expands agencies' executive power beyond constitutional limits.

Chevron compels judges to abdicate their Article III "judicial Power." §1. "[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws." *Perez*, 575 U. S., at 119 (opinion of THOMAS, J.); accord, *post*, at 17–18 (opinion of GORSUCH, J.). The Framers understood that "legal texts . . . often contain ambiguities," and that the judicial power included "the power to resolve these ambiguities over time." *Perez*, 575 U. S., at 119 (opinion of THOMAS, J.); accord, *ante,* at 7–9. But, under *Chevron*, a judge must accept an agency's interpretation of an ambiguous law, even if he thinks another interpretation is correct. *Ante*, at 19. *Chevron* deference thus prevents judges from

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*There is much to be commended in JUSTICE GORSUCH's careful consideration from first principles of the weight we should afford to our precedent. I agree with the lion's share of his concurrence. See generally *Gamble* v. *United States*, 587 U. S. 678, 710 (2019) (THOMAS, J., concurring).

exercising their independent judgment to resolve ambiguities. *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3); see also *Michigan*, 576 U. S., at 761 (opinion of THOMAS, J.); see also *Perez*, 575 U. S., at 123 (opinion of THOMAS, J.). By tying a judge's hands, *Chevron* prevents the Judiciary from serving as a constitutional check on the Executive. It allows "the Executive . . . to dictate the outcome of cases through erroneous interpretations." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 4); *Michigan*, 576 U. S., at 763, n. 1 (opinion of THOMAS, J.); see also *Perez*, 575 U. S., at 124 (opinion of THOMAS, J.). Because the judicial power requires judges to exercise their independent judgment, the deference that *Chevron* requires contravenes Article III's mandate.

Chevron deference also permits the Executive Branch to exercise powers not given to it. "When the Government is called upon to perform a function that requires an exercise of legislative, executive, or judicial power, only the vested recipient of that power can perform it." *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 68 (2015) (THOMAS, J., concurring in judgment). Because the Constitution gives the Executive Branch only "[t]he executive Power," executive agencies may constitutionally exercise only that power. Art. II, §1, cl. 1. But, *Chevron* gives agencies license to exercise judicial power. By allowing agencies to definitively interpret laws so long as they are ambiguous, *Chevron* "transfer[s]" the Judiciary's "interpretive judgment to the agency." *Perez*, 575 U. S., at 124 (opinion of THOMAS, J.); see also *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 4); *Michigan*, 576 U. S., at 761–762 (opinion of THOMAS, J.); *post*, at 18 (GORSUCH, J., concurring).

Chevron deference "cannot be salvaged" by recasting it as deference to an agency's "formulation of policy." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (internal quotation marks omitted) (slip op., at 3). If that were true, *Chevron*

would mean that "agencies are unconstitutionally exercising 'legislative Powers' vested in Congress." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3) (quoting Art. I, §1). By "giv[ing] the force of law to agency pronouncements on matters of private conduct as to which Congress did not actually have an intent," *Chevron* "permit[s] a body other than Congress to perform a function that requires an exercise of legislative power." *Michigan*, 576 U. S., at 762 (opinion of THOMAS, J.) (internal quotation marks omitted). No matter the gloss put on it, *Chevron* expands agencies' power beyond the bounds of Article II by permitting them to exercise powers reserved to another branch of Government.

Chevron deference was "not a harmless transfer of power." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3). "The Constitution carefully imposes structural constraints on all three branches, and the exercise of power free of those accompanying restraints subverts the design of the Constitution's ratifiers." *Ibid.* In particular, the Founders envisioned that "the courts [would] check the Executive by applying the correct interpretation of the law." *Id.*, at ___ (slip op., at 4). *Chevron* was thus a fundamental disruption of our separation of powers. It improperly strips courts of judicial power by simultaneously increasing the power of executive agencies. By overruling *Chevron*, we restore this aspect of our separation of powers. To safeguard individual liberty, "[s]tructure is everything." A. Scalia, Foreword: The Importance of Structure in Constitutional Interpretation, 83 Notre Dame L. Rev. 1417, 1418 (2008). Although the Court finally ends our 40-year misadventure with *Chevron* deference, its more profound problems should not be overlooked. Regardless of what a statute says, the type of deference required by *Chevron* violates the Constitution.

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[June 28, 2024]

JUSTICE GORSUCH, concurring.

In disputes between individuals and the government about the meaning of a federal law, federal courts have traditionally sought to offer independent judgments about "what the law is" without favor to either side. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Beginning in the mid-1980s, however, this Court experimented with a radically different approach. Applying *Chevron* deference, judges began deferring to the views of executive agency officials about the meaning of federal statutes. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). With time, the error of this approach became widely appreciated. So much so that this Court has refused to apply *Chevron* deference since 2016. Today, the Court places a tombstone on *Chevron* no one can miss. In doing

so, the Court returns judges to interpretive rules that have guided federal courts since the Nation's founding. I write separately to address why the proper application of the doctrine of *stare decisis* supports that course.

I

A

Today, the phrase "common law judge" may call to mind a judicial titan of the past who brilliantly devised new legal rules on his own. The phrase "*stare decisis*" might conjure up a sense that judges who come later in time are strictly bound to follow the work of their predecessors. But neither of those intuitions fairly describes the traditional common-law understanding of the judge's role or the doctrine of *stare decisis*.

At common law, a judge's charge to decide cases was not usually understood as a license to make new law. For much of England's early history, different rulers and different legal systems prevailed in different regions. As England consolidated into a single kingdom governed by a single legal system, the judge's task was to examine those pre-existing legal traditions and apply in the disputes that came to him those legal rules that were "common to the whole land and to all Englishmen." F. Maitland, Equity, Also the Forms of Action at Common Law 2 (1929). That was "common law" judging.

This view of the judge's role had consequences for the authority due judicial decisions. Because a judge's job was to find and apply the law, not make it, the "opinion of the judge" and "the law" were not considered "one and the same thing." 1 W. Blackstone, Commentaries on the Laws of England 71 (1765) (Blackstone) (emphasis deleted). A judge's decision might bind the parties to the case at hand. M. Hale, The History and Analysis of the Common Law of England 68 (1713) (Hale). But none of that meant the judge had the power to "make a Law properly so called" for society

at large, "for that only the King and Parliament can do." *Ibid.*

Other consequences followed for the role precedent played in future judicial proceedings. Because past decisions represented something "less than a Law," they did not bind future judges. *Ibid.* At the same time, as Matthew Hale put it, a future judge could give a past decision "Weight" as "Evidence" of the law. *Ibid.* Expressing the same idea, William Blackstone conceived of judicial precedents as "evidence" of "the common law." 1 Blackstone 69, 71. And much like other forms of evidence, precedents at common law were thought to vary in the weight due them. Some past decisions might supply future courts with considerable guidance. But others might be entitled to lesser weight, not least because judges are no less prone to error than anyone else and they may sometimes "mistake" what the law demands. *Id.*, at 71 (emphasis deleted). In cases like that, both men thought, a future judge should not rotely repeat a past mistake but instead "vindicate" the law "from misrepresentation." *Id.*, at 70.

When examining past decisions as evidence of the law, common law judges did not, broadly speaking, afford overwhelming weight to any "single precedent." J. Baker, An Introduction to English Legal History 209–210 (5th ed. 2019). Instead, a prior decision's persuasive force depended in large measure on its "Consonancy and Congruity with Resolutions and Decisions of former Times." Hale 68. An individual decision might reflect the views of one court at one moment in time, but a consistent line of decisions representing the wisdom of many minds across many generations was generally considered stronger evidence of the law's meaning. *Ibid.*

With this conception of precedent in mind, Lord Mansfield cautioned against elevating "particular cases" above the "general principles" that "run through the cases, and govern the decision of them." *Rust* v. *Cooper*, 2 Cowp. 629,

632, 98 Eng. Rep. 1277, 1279 (K. B. 1777). By discarding aberrational rulings and pursuing instead the mainstream of past decisions, he observed, the common law tended over time to "wor[k] itself pure." *Omychund* v. *Barker*, 1 Atk. 22, 33, 26 Eng. Rep. 15, 23 (Ch. 1744) (emphasis deleted). Reflecting similar thinking, Edmund Burke offered five principles for the evaluation of past judicial decisions: "They ought to be shewn; first, to be numerous and not scattered here and there;—secondly, concurrent and not contradictory and mutually destructive;—thirdly, to be made in good and constitutional times;—fourthly, not to be made to serve an occasion;—and fifthly, to be agreeable to the general tenor of legal principles." Speech of Dec. 23, 1790, in 3 The Speeches of the Right Honourable Edmund Burke 513 (1816).

Not only did different decisions carry different weight, so did different language within a decision. An opinion's holding and the reasoning essential to it (the *ratio decidendi*) merited careful attention. Dicta, stray remarks, and digressions warranted less weight. See N. Duxbury, The Intricacies of Dicta and Dissent 19–24 (2021) (Duxbury). These were no more than "the vapours and fumes of law." F. Bacon, The Lord Keeper's Speech in the Exchequer (1617), in 2 The Works of Francis Bacon 478 (B. Montagu ed. 1887) (Bacon).

That is not to say those "vapours" were worthless. Often dicta might provide the parties to a particular dispute a "fuller understanding of the court's decisional path or related areas of concern." B. Garner et al., The Law of Judicial Precedent 65 (2016) (Precedent). Dicta might also provide future courts with a source of "thoughtful advice." *Ibid.* But future courts had to be careful not to treat every "hasty expression . . . as a serious and deliberate opinion." *Steel* v. *Houghton*, 1 Bl. H. 51, 53, 126 Eng. Rep. 32, 33 (C. P. 1788). To do so would work an "injustice to [the] memory" of their predecessors who could not expect judicial

remarks issued in one context to apply perfectly in others, perhaps especially ones they could not foresee. *Ibid.* Also, the limits of the adversarial process, a distinctive feature of English law, had to be borne in mind. When a single judge or a small panel reached a decision in a case, they did so based on the factual record and legal arguments the parties at hand have chosen to develop. Attuned to those constraints, future judges had to proceed with an open mind to the possibility that different facts and different legal arguments might dictate different outcomes in later disputes. See Duxbury 19–24.

B

Necessarily, this represents just a quick sketch of traditional common-law understandings of the judge's role and the place of precedent in it. It focuses, too, on the horizontal, not vertical, force of judicial precedents. But there are good reasons to think that the common law's understandings of judges and precedent outlined above crossed the Atlantic and informed the nature of the "judicial Power" the Constitution vests in federal courts. Art. III, §1.

Not only was the Constitution adopted against the backdrop of these understandings and, in light of that alone, they may provide evidence of what the framers meant when they spoke of the "judicial Power." Many other, more specific provisions in the Constitution reflect much the same distinction between lawmaking and lawfinding functions the common law did. The Constitution provides that its terms may be amended only through certain prescribed democratic processes. Art. V. It vests the power to enact federal legislation exclusively in the people's elected representatives in Congress. Art. I, §1. Meanwhile, the Constitution describes the judicial power as the power to resolve cases and controversies. Art. III, §2, cl. 1. As well, it delegates that authority to life-tenured judges, see §1, an assignment that would have made little sense if judges could

usurp lawmaking powers vested in periodically elected representatives. But one that makes perfect sense if what is sought is a neutral party "to interpret and apply" the law without fear or favor in a dispute between others. 2 The Works of James Wilson 161 (J. Andrews ed. 1896) (Wilson); see *Osborn* v. *Bank of United States*, 9 Wheat. 738, 866 (1824).

The constrained view of the judicial power that runs through our Constitution carries with it familiar implications, ones the framers readily acknowledged. James Madison, for example, proclaimed that it would be a "fallacy" to suggest that judges or their precedents could "repeal or alter" the Constitution or the laws of the United States. Letter to N. Trist (Dec. 1831), in 9 The Writings of James Madison 477 (G. Hunt ed. 1910). A court's opinion, James Wilson added, may be thought of as "effective la[w]" "[a]s to the parties." Wilson 160–161. But as in England, Wilson said, a prior judicial decision could serve in a future dispute only as "evidence" of the law's proper construction. *Id.*, at 160; accord, 1 J. Kent, Commentaries on American Law 442–443 (1826).

The framers also recognized that the judicial power described in our Constitution implies, as the judicial power did in England, a power (and duty) of discrimination when it comes to assessing the "evidence" embodied in past decisions. So, for example, Madison observed that judicial rulings "*repeatedly confirmed*" may supply better evidence of the law's meaning than isolated or aberrant ones. Letter to C. Ingersoll (June 1831), in 4 Letters and Other Writings of James Madison 184 (1867) (emphasis added). Extending the thought, Thomas Jefferson believed it would often take "numerous decisions" for the meaning of new statutes to become truly "settled." Letter to S. Jones (July 1809), in 12 The Writings of Thomas Jefferson 299 (A. Bergh ed. 1907).

From the start, too, American courts recognized that not everything found in a prior decision was entitled to equal

weight. As Chief Justice Marshall warned, "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." *Cohens* v. *Virginia*, 6 Wheat. 264, 399 (1821). To the extent a past court offered views "beyond the case," those expressions "may be respected" in a later case "but ought not to control the judgment." *Ibid.* One "obvious" reason for this, Marshall continued, had to do with the limits of the adversarial process we inherited from England: Only "[t]he question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." *Id.*, at 399–400.

Abraham Lincoln championed these traditional understandings in his debates with Stephen Douglas. Douglas took the view that a single decision of this Court—no matter how flawed—could definitively resolve a contested issue for everyone and all time. Those who thought otherwise, he said, "aim[ed] a deadly blow to our whole Republican system of government." Speech at Springfield, Ill. (June 26, 1857), in 2 The Collected Works of Abraham Lincoln 401 (R. Basler ed. 1953) (Lincoln Speech). But Lincoln knew better. While accepting that judicial decisions "absolutely determine" the rights of the parties to a court's judgment, he refused to accept that any single judicial decision could "fully settl[e]" an issue, particularly when that decision departs from the Constitution. *Id.*, at 400–401. In cases such as these, Lincoln explained, "it is not resistance, it is not factious, it is not even disrespectful, to treat [the decision] as not having yet quite established a settled doctrine for the country." *Id.*, at 401.

After the Civil War, the Court echoed some of these same points. It stressed that every statement in a judicial opin-

ion "must be taken in connection with its immediate context," *In re Ayers*, 123 U. S. 443, 488 (1887), and stray "remarks" must not be elevated above the written law, see *The Belfast*, 7 Wall. 624, 641 (1869); see also, *e.g.*, *Trebilcock* v. *Wilson*, 12 Wall. 687, 692–693 (1872); *Mason* v. *Eldred*, 6 Wall. 231, 236–238 (1868). During Chief Justice Chase's tenure, it seems a Justice writing the Court's majority opinion would generally work alone and present his work orally and in summary form to his colleagues at conference, which meant that other Justices often did not even review the opinion prior to publication. 6 C. Fairman, History of the Supreme Court of the United States 69–70 (1971). The Court could proceed in this way because it understood that a single judicial opinion may resolve a "case or controversy," and in so doing it may make "effective law" for the parties, but it does not legislate for the whole of the country and is not to be confused with laws that do.

C

From all this, I see at least three lessons about the doctrine of *stare decisis* relevant to the decision before us today. Each concerns a form of judicial humility.

First, a past decision may bind the parties to a dispute, but it provides this Court no authority in future cases to depart from what the Constitution or laws of the United States ordain. Instead, the Constitution promises, the American people are sovereign and they alone may, through democratically responsive processes, amend our foundational charter or revise federal legislation. Unelected judges enjoy no such power. Part I–B, *supra*.

Recognizing as much, this Court has often said that *stare decisis* is not an "'inexorable command.'" *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997). And from time to time it has found it necessary to correct its past mistakes. When it comes to correcting errors of constitutional interpretation, the Court has stressed the importance of doing so, for they

can be corrected otherwise only through the amendment process. See, *e.g.*, *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U. S. 230, 248 (2019). When it comes to fixing errors of statutory interpretation, the Court has proceeded perhaps more circumspectly. But in that field, too, it has overruled even longstanding but "flawed" decisions. See, *e.g.*, *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 904, 907 (2007).

Recent history illustrates all this. During the tenures of Chief Justices Warren and Burger, it seems this Court overruled an average of around three cases per Term, including roughly 50 statutory precedents between the 1960s and 1980s alone. See W. Eskridge, Overruling Statutory Precedents, 76 Geo. L. J. 1361, 1427–1434 (1988) (collecting cases). Many of these decisions came in settings no less consequential than today's. In recent years, we have not approached the pace set by our predecessors, overruling an average of just one or two prior decisions each Term.[1] But the point remains: Judicial decisions inconsistent with the written law do not inexorably control.

Second, another lesson tempers the first. While judicial decisions may not supersede or revise the Constitution or federal statutory law, they merit our "respect as embodying the considered views of those who have come before." *Ramos* v. *Louisiana*, 590 U. S. 83, 105 (2020). As a matter of professional responsibility, a judge must not only avoid confusing his writings with the law. When a case comes before him, he must also weigh his view of what the law demands against the thoughtful views of his predecessors. After all, "[p]recedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom

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[1] For relevant databases of decisions, see Congressional Research Service, Table of Supreme Court Decisions Overruled by Subsequent Decisions, Constitution Annotated, https://constitution.congress.gov/resources/decisions-overruled/; see also H. Spaeth et al., 2023 Supreme Court Database, http://supremecourtdatabase.org.

richer than what can be found in any single judge or panel of judges." Precedent 9.

Doubtless, past judicial decisions may, as they always have, command "greater or less authority as precedents, according to circumstances." Lincoln Speech 401. But, like English judges before us, we have long turned to familiar considerations to guide our assessment of the weight due a past decision. So, for example, as this Court has put it, the weight due a precedent may depend on the quality of its reasoning, its consistency with related decisions, its workability, and reliance interests that have formed around it. See *Ramos*, 590 U. S., at 106. The first factor recognizes that the primary power of any precedent lies in its power to persuade—and poorly reasoned decisions may not provide reliable evidence of the law's meaning. The second factor reflects the fact that a precedent is more likely to be correct and worthy of respect when it reflects the time-tested wisdom of generations than when it sits "unmoored" from surrounding law. *Ibid.* The remaining factors, like workability and reliance, do not often supply reason enough on their own to abide a flawed decision, for almost any past decision is likely to benefit some group eager to keep things as they are and content with how things work. See, *e.g.*, *id.*, at 108. But these factors can sometimes serve functions similar to the others, by pointing to clues that may suggest a past decision is right in ways not immediately obvious to the individual judge.

When asking whether to follow or depart from a precedent, some judges deploy adverbs. They speak of whether or not a precedent qualifies as "demonstrably erroneous," *Gamble* v. *United States*, 587 U. S. 678, 711 (2019) (THOMAS, J., concurring), or "egregiously wrong," *Ramos*, 590 U. S., at 121 (KAVANAUGH, J., concurring in part). But the emphasis the adverb imparts is not meant for dramatic effect. It seeks to serve instead as a reminder of a more substantive lesson. The lesson that, in assessing the weight

due a past decision, a judge is not to be guided by his own impression alone, but must self-consciously test his views against those who have come before, open to the possibility that a precedent might be correct in ways not initially apparent to him.

Third, it would be a mistake to read judicial opinions like statutes. Adopted through a robust and democratic process, statutes often apply in all their particulars to all persons. By contrast, when judges reach a decision in our adversarial system, they render a judgment based only on the factual record and legal arguments the parties at hand have chosen to develop. A later court assessing a past decision must therefore appreciate the possibility that different facts and different legal arguments may dictate a different outcome. They must appreciate, too, that, like anyone else, judges are "innately digressive," and their opinions may sometimes offer stray asides about a wider topic that may sound nearly like legislative commands. Duxbury 4. Often, enterprising counsel seek to exploit such statements to maximum effect. See *id.*, at 25. But while these digressions may sometimes contain valuable counsel, they remain "vapours and fumes of law," Bacon 478, and cannot "control the judgment in a subsequent suit," *Cohens*, 6 Wheat., at 399.

These principles, too, have long guided this Court and others. As Judge Easterbrook has put it, an "opinion is not a comprehensive code; it is just an explanation for the Court's disposition. Judicial opinions must not be confused with statutes, and general expressions must be read in light of the subject under consideration." *United States* v. *Skoien*, 614 F. 3d 638, 640 (CA7 2010) (en banc); see also *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979) (stressing that an opinion is not "a statute," and its language should not "be parsed" as if it were); *Nevada* v. *Hicks*, 533 U. S. 353, 372 (2001) (same). If *stare decisis* counsels respect for the thinking of those who have come before, it also counsels against doing an "injustice to [their] memory" by

overreliance on their every word. *Steel*, 1 Bl. H., at 53, 126 Eng. Rep., at 33. As judges, "[w]e neither expect nor hope that our successors will comb" through our opinions, searching for delphic answers to matters we never fully explored. *Brown* v. *Davenport*, 596 U. S. 118, 141 (2022). To proceed otherwise risks "turn[ing] *stare decisis* from a tool of judicial humility into one of judicial hubris." *Ibid.*

II

Turning now directly to the question what *stare decisis* effect *Chevron* deference warrants, each of these lessons seem to me to weigh firmly in favor of the course the Court charts today: Lesson 1, because *Chevron* deference contravenes the law Congress prescribed in the Administrative Procedure Act. Lesson 2, because *Chevron* deference runs against mainstream currents in our law regarding the separation of powers, due process, and centuries-old interpretive rules that fortify those constitutional commitments. And Lesson 3, because to hold otherwise would effectively require us to endow stray statements in *Chevron* with the authority of statutory language, all while ignoring more considered language in that same decision and the teachings of experience.

A

Start with Lesson 1. The Administrative Procedure Act of 1946 (APA) directs a "reviewing court" to "decide all relevant questions of law" and "interpret" relevant "constitutional and statutory provisions." 5 U. S. C. §706. When applying *Chevron* deference, reviewing courts do not interpret all relevant statutory provisions and decide all relevant questions of law. Instead, judges abdicate a large measure of that responsibility in favor of agency officials. Their interpretations of "ambiguous" laws control even when those interpretations are at odds with the fairest reading of the law an independent "reviewing court" can muster. Agency

officials, too, may change their minds about the law's meaning at any time, even when Congress has not amended the relevant statutory language in any way. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982–983 (2005). And those officials may even disagree with and effectively overrule not only their own past interpretations of a law but a court's past interpretation as well. *Ibid.* None of that is consistent with the APA's clear mandate.

The hard fact is *Chevron* "did not even bother to cite" the APA, let alone seek to apply its terms. *United States* v. *Mead Corp.*, 533 U. S. 218, 241 (2001) (Scalia, J., dissenting). Instead, as even its most ardent defenders have conceded, *Chevron* deference rests upon a "*fictionalized* statement of legislative desire," namely, a judicial supposition that Congress implicitly wishes judges to defer to executive agencies' interpretations of the law even when it has said nothing of the kind. D. Barron & E. Kagan, Chevron's Nondelegation Doctrine, 2001 S. Ct. Rev. 201, 212 (Kagan) (emphasis added). As proponents see it, that fiction represents a "policy judgmen[t] about what . . . make[s] for good government." *Ibid.*[2] But in our democracy unelected judges possess no authority to elevate their own fictions over the laws adopted by the Nation's elected representatives. Some might think the legal directive Congress provided in the APA unwise; some might think a different arrangement preferable. See, *e.g.*, *post*, at 9–11 (KAGAN, J., dissenting). But it is Congress's view of "good government," not ours, that controls.

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[2] See also A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516–517 (1989) (describing *Chevron*'s theory that Congress "delegat[ed]" interpretive authority to agencies as "fictional"); S. Breyer, Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986) (describing the notion that there exists a "'legislative intent to delegate the law-interpreting function' as a kind of legal fiction").

Much more could be said about *Chevron*'s inconsistency with the APA. But I have said it in the past. See *Buffington* v. *McDonough*, 598 U. S. ___, ___–___ (2022) (opinion dissenting from denial of certiorari) (slip op., at 5–6); *Gutierrez-Brizuela* v. *Lynch*, 834 F. 3d 1142, 1151–1153 (CA10 2016) (concurring opinion). And the Court makes many of the same points at length today. See *ante*, at 18–22. For present purposes, the short of it is that continuing to abide *Chevron* deference would require us to transgress the first lesson of *stare decisis*—the humility required of judges to recognize that our decisions must yield to the laws adopted by the people's elected representatives.[3]

B

Lesson 2 cannot rescue *Chevron* deference. If *stare decisis* calls for judicial humility in the face of the written law, it also cautions us to test our present conclusions carefully against the work of our predecessors. At the same time and as we have seen, this second form of humility counsels us to remember that precedents that have won the endorsement of judges across many generations, demonstrated coherence with our broader law, and weathered the tests of time and experience are entitled to greater consideration than those that have not. See Part I, *supra*. Viewed by each of these lights, the case for *Chevron* deference only grows weaker still.

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[3]The dissent suggests that we need not take the APA's directions quite so seriously because the "finest administrative law scholars" from Harvard claim to see in them some wiggle room. *Post*, at 18 (opinion of KAGAN, J.). But nothing in the APA commands deference to the views of professors any more than it does the government. Nor is the dissent's list of Harvard's finest administrative law scholars entirely complete. See S. Breyer et al., Administrative Law and Regulatory Policy 288 (7th ed. 2011) (acknowledging that *Chevron* deference "seems in conflict with . . . the apparently contrary language of 706"); Kagan 212 (likewise acknowledging *Chevron* deference rests upon a "fictionalized statement of legislative desire").

1

Start with a look to how our predecessors traditionally understood the judicial role in disputes over a law's meaning. From the Nation's founding, they considered "[t]he interpretation of the laws" in cases and controversies "the proper and peculiar province of the courts." The Federalist No. 78, p. 467 (C. Rossiter ed. 1961) (A. Hamilton). Perhaps the Court's most famous early decision reflected exactly that view. There, Chief Justice Marshall declared it "emphatically the province and duty of the judicial department to say what the law is." *Marbury*, 1 Cranch, at 177. For judges "have neither FORCE nor WILL but merely judgment"—and an obligation to exercise that judgment independently. The Federalist No. 78, at 465. No matter how "disagreeable that duty may be," this Court has said, a judge "is not at liberty to surrender, or to waive it." *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J.). This duty of independent judgment is perhaps "the defining characteristi[c] of Article III judges." *Stern* v. *Marshall*, 564 U. S. 462, 483 (2011).

To be sure, this Court has also long extended "great respect" to the "contemporaneous" and consistent views of the coordinate branches about the meaning of a statute's terms. *Edwards' Lessee* v. *Darby*, 12 Wheat. 206, 210 (1827); see also *McCulloch* v. *Maryland*, 4 Wheat. 316, 401 (1819); *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803).[4] But traditionally, that did not mean a court had to "defer" to any "reasonable"

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[4] Accord, *National Lead Co.* v. *United States*, 252 U. S. 140, 145–146 (1920) (affording "great weight" to a "contemporaneous construction" by the executive that had "been long continued"); *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912) ("find[ing] no ambiguity in the act" but also finding "strength" for the Court's interpretation in the executive's "immediate and continued construction of the act"); *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) (treating as "controlling" a "contemporaneous construction" of a law endorsed "not only [by] the courts but [also by] the departments").

construction of an "ambiguous" law that an executive agency might offer. It did not mean that the government could propound a "reasonable" view of the law's meaning one day, a different one the next, and bind the judiciary always to its latest word. Nor did it mean the executive could displace a pre-existing judicial construction of a statute's terms, replace it with its own, and effectively overrule a judicial precedent in the process. Put simply, this Court was "not bound" by any and all reasonable "administrative construction[s]" of ambiguous statutes when resolving cases and controversies. *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932). While the executive's consistent and contemporaneous views warranted respect, they "by no means control[led] the action or the opinion of this court in expounding the law with reference to the rights of parties litigant before them." *Irvine* v. *Marshall*, 20 How. 558, 567 (1858); see also A. Bamzai, The Origins of Judicial Deference to Executive Interpretation, 126 Yale L. J. 908, 987 (2017).

Sensing how jarringly inconsistent *Chevron* is with this Court's many longstanding precedents discussing the nature of the judicial role in disputes over the law's meaning, the government and dissent struggle for a response. The best they can muster is a handful of cases from the early 1940s in which, they say, this Court first "put [deference] principles into action." *Post*, at 21 (KAGAN, J., dissenting). And, admittedly, for a period this Court toyed with a form of deference akin to *Chevron*, at least for so-called mixed questions of law and fact. See, *e.g.*, *Gray* v. *Powell*, 314 U. S. 402, 411–412 (1941); *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944). But, as the Court details, even that limited experiment did not last. See *ante*, at 10–12. Justice Roberts, in his *Gray* dissent, decried these decisions for "abdicat[ing our] function as a court of review" and "complete[ly] revers[ing] . . . the normal and usual method of construing a statute." 314 U. S., at 420–421. And just a few years later, in *Skidmore* v. *Swift & Co.*, 323

U. S. 134 (1944), the Court returned to its time-worn path.

Echoing themes that had run throughout our law from its start, Justice Robert H. Jackson wrote for the Court in *Skidmore*. There, he said, courts may extend respectful consideration to another branch's interpretation of the law, but the weight due those interpretations must always "depend upon the[ir] thoroughness . . . , the validity of [their] reasoning, [their] consistency with earlier and later pronouncements, and all those factors which give [them] power to persuade." *Id.*, at 140. In another case the same year, and again writing for the Court, Justice Jackson expressly rejected a call for a judge-made doctrine of deference much like *Chevron*, offering that, "[i]f Congress had deemed it necessary or even appropriate" for courts to "defe[r] to administrative construction[,] . . . it would not have been at a loss for words to say so." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 156 (1944).

To the extent proper respect for precedent demands, as it always has, special respect for longstanding and mainstream decisions, *Chevron* scores badly. It represented not a continuation of a long line of decisions but a break from them. Worse, it did not merely depart from our precedents. More nearly, *Chevron* defied them.

2

Consider next how uneasily *Chevron* deference sits alongside so many other settled aspects of our law. Having witnessed first-hand King George's efforts to gain influence and control over colonial judges, see Declaration of Independence ¶ 11, the framers made a considered judgment to build judicial independence into the Constitution's design. They vested the judicial power in decisionmakers with life tenure. Art. III, §1. They placed the judicial salary beyond political control during a judge's tenure. *Ibid.* And they rejected any proposal that would subject judicial decisions to review by political actors. The Federalist No. 81, at 482;

United States v. *Hansen*, 599 U. S. 762, 786–791 (2023) (THOMAS, J., concurring). All of this served to ensure the same thing: "A fair trial in a fair tribunal." *In re Murchison*, 349 U. S. 133, 136 (1955). One in which impartial judges, not those currently wielding power in the political branches, would "say what the law is" in cases coming to court. *Marbury*, 1 Cranch, at 177.

Chevron deference undermines all that. It precludes courts from exercising the judicial power vested in them by Article III to say what the law is. It forces judges to abandon the best reading of the law in favor of views of those presently holding the reins of the Executive Branch. It requires judges to change, and change again, their interpretations of the law as and when the government demands. And that transfer of power has exactly the sort of consequences one might expect. Rather than insulate adjudication from power and politics to ensure a fair hearing "without respect to persons" as the federal judicial oath demands, 28 U. S. C. §453, *Chevron* deference requires courts to "place a finger on the scales of justice in favor of the most powerful of litigants, the federal government." *Buffington*, 598 U. S., at ___ (slip op., at 9). Along the way, *Chevron* deference guarantees "systematic bias" in favor of whichever political party currently holds the levers of executive power. P. Hamburger, *Chevron* Bias, 84 Geo. Wash. L. Rev. 1187, 1212 (2016).

Chevron deference undermines other aspects of our settled law, too. In this country, we often boast that the Constitution's promise of due process of law, see Amdts. 5, 14, means that "'no man can be a judge in his own case.'" *Williams* v. *Pennsylvania*, 579 U. S. 1, 8–9 (2016); *Calder* v. *Bull*, 3 Dall. 386, 388 (1798) (opinion of Chase, J.). That principle, of course, has even deeper roots, tracing far back into the common law where it was known by the Latin maxim *nemo iudex in causa sua*. See 1 E. Coke, Institutes

of the Laws of England §212, *141a. Yet, under the *Chevron* regime, all that means little, for executive agencies may effectively judge the scope of their own lawful powers. See, *e.g., Arlington* v. *FCC*, 569 U. S. 290, 296–297 (2013).

Traditionally, as well, courts have sought to construe statutes as a reasonable reader would "when the law was made." Blackstone 59; see *United States* v. *Fisher*, 2 Cranch 358, 386 (1805). Today, some call this "textualism." But really it's a very old idea, one that constrains judges to a lawfinding rather than lawmaking role by focusing their work on the statutory text, its linguistic context, and various canons of construction. In that way, textualism serves as an essential guardian of the due process promise of fair notice. If a judge could discard an old meaning and assign a new one to a law's terms, all without any legislative revision, how could people ever be sure of the rules that bind them? *New Prime Inc.* v. *Oliveira*, 586 U. S. 105, 113 (2019). Were the rules otherwise, Blackstone warned, the people would be rendered "slaves to their magistrates." 4 Blackstone 371.

Yet, replace "magistrates" with "bureaucrats," and Blackstone's fear becomes reality when courts employ *Chevron* deference. Whenever we confront an ambiguity in the law, judges do not seek to resolve it impartially according to the best evidence of the law's original meaning. Instead, we resort to a far cruder heuristic: "The reasonable bureaucrat always wins." And because the reasonable bureaucrat may change his mind year-to-year and election-to-election, the people can never know with certainty what new "interpretations" might be used against them. This "fluid" approach to statutory interpretation is "as much a trap for the innocent as the ancient laws of Caligula," which were posted so high up on the walls and in print so small that ordinary people could never be sure what they required. *United States* v. *Cardiff*, 344 U. S. 174, 176 (1952).

The ancient rule of lenity is still another of *Chevron*'s victims. Since the founding, American courts have construed ambiguities in penal laws against the government and with lenity toward affected persons. *Wooden* v. *United States*, 595 U. S. 360, 388–390 (2022) (GORSUCH, J., concurring in judgment). That principle upholds due process by safeguarding individual liberty in the face of ambiguous laws. *Ibid.* And it fortifies the separation of powers by keeping the power of punishment firmly "'in the legislative, not in the judicial department.'" *Id.*, at 391 (quoting *United States* v. *Wiltberger*, 5 Wheat. 76, 95 (1820)). But power begets power. And pressing *Chevron* deference as far as it can go, the government has sometimes managed to leverage "ambiguities" in the written law to penalize conduct Congress never clearly proscribed. Compare *Guedes* v. *ATF*, 920 F. 3d 1, 27–28, 31 (CADC 2019), with *Garland* v. *Cargill*, 602 U. S. 604 (2024).

In all these ways, *Chevron*'s fiction has led us to a strange place. One where authorities long thought reserved for Article III are transferred to Article II, where the scales of justice are tilted systematically in favor of the most powerful, where legal demands can change with every election even though the laws do not, and where the people are left to guess about their legal rights and responsibilities. So much tension with so many foundational features of our legal order is surely one more sign that we have "taken a wrong turn along the way." *Kisor* v. *Wilkie*, 588 U. S. 558, 607 (2019) (GORSUCH, J., concurring in judgment).[5]

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[5] The dissent suggests that *Chevron* deference bears at least something in common with surrounding law because it resembles a presumption or traditional canon of construction, and both "are common." *Post*, at 8, n. 1, 28–29 (opinion of KAGAN, J.). But even that thin reed wavers at a glance. Many of the presumptions and interpretive canons the dissent cites—including lenity, *contra proferentem*, and others besides—"'embod[y] . . . legal doctrine[s] centuries older than our Republic.'" *Opati* v. *Republic of Sudan*, 590 U. S. 418, 425 (2020). *Chevron* deference can make no such boast. Many of the presumptions and canons the dissent cites also

Finally, consider workability and reliance. If, as I have sought to suggest, these factors may sometimes serve as useful proxies for the question whether a precedent comports with the historic tide of judicial practice or represents an aberrational mistake, see Part I–C, *supra*, they certainly do here.

Take *Chevron*'s "workability." Throughout its short life, this Court has been forced to supplement and revise *Chevron* so many times that no one can agree on how many "steps" it requires, nor even what each of those "steps" entails. Some suggest that the analysis begins with "step zero" (perhaps itself a tell), an innovation that traces to *United States* v. *Mead Corp.*, 533 U. S. 218. *Mead* held that, before even considering whether *Chevron* applies, a court must determine whether Congress meant to delegate to the agency authority to interpret the law in a given field. 533 U. S., at 226–227. But that exercise faces an immediate challenge: Because *Chevron* depends on a judicially implied, rather than a legislatively expressed, delegation of interpretive authority to an executive agency, Part II–A, *supra*, when should the fiction apply and when not? *Mead* fashioned a multifactor test for judges to use. 533 U. S., at

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serve the Constitution, protecting the lines of authority it draws. Take just two examples: The federalism canon tells courts to presume federal statutes do not preempt state laws because of the sovereignty States enjoy under the Constitution. *Bond* v. *United States*, 572 U. S. 844, 858 (2014). The presumption against retroactivity serves as guardian of the Constitution's promise of due process and its ban on *ex post facto* laws, *Landgraf* v. *USI Film Products*, 511 U. S. 244, 265 (1994). Once more, however, *Chevron* deference can make no similar claim. Rather than serve the Constitution's usual rule that litigants are entitled to have an independent judge interpret disputed legal terms, *Chevron* deference works to undermine that promise. As explored above, too, *Chevron* deference sits in tension with many traditional legal presumptions and interpretive principles, representing nearly the *inverse* of the rules of lenity, *nemo iudex*, and *contra proferentem*.

229–231. But that test has proved as indeterminate in application as it was contrived in origin. Perhaps for these reasons, perhaps for others, this Court has sometimes applied *Mead* and often ignored it. See *Brand X*, 545 U. S., at 1014, n. 8 (Scalia, J., dissenting).

Things do not improve as we move up the *Chevron* ladder. At "step one," a judge must defer to an executive official's interpretation when the statute at hand is "ambiguous." But even today, *Chevron*'s principal beneficiary—the federal government—still cannot say when a statute is sufficiently ambiguous to trigger deference. See, *e.g.*, Tr. of Oral Arg. in *American Hospital Assn.* v. *Becerra*, O. T. 2021, No. 20–1114, pp. 71–72. Perhaps thanks to this particular confusion, the search for ambiguity has devolved into a sort of Snark hunt: Some judges claim to spot it almost everywhere, while other equally fine judges claim never to have seen it. Compare L. Silberman, *Chevron*—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 826 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. En Banc 315, 323 (2017).

Nor do courts agree when it comes to "step two." There, a judge must assess whether an executive agency's interpretation of an ambiguous statute is "reasonable." But what does that inquiry demand? Some courts engage in a comparatively searching review; others almost reflexively defer to an agency's views. Here again, courts have pursued "wildly different" approaches and reached wildly different conclusions in similar cases. See B. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2152 (2016) (Kavanaugh).

Today's cases exemplify some of these problems. We have before us two circuit decisions, three opinions, and at least as many interpretive options on the *Chevron* menu. On the one hand, we have the D. C. Circuit majority, which deemed the Magnuson-Stevens Act "ambiguous" and upheld the

agency's regulation as "'permissible.'" 45 F. 4th 359, 365 (2022). On the other hand, we have the D. C. Circuit dissent, which argues the statute is "unambiguou[s]" and that it plainly forecloses the agency's new rule. *Id.*, at 372 (opinion of Walker, J.). And on yet a third hand, we have the First Circuit, which claimed to have identified "clear textual support" for the regulation, yet refused to say whether it would "classify [its] conclusion as a product of *Chevron* step one or step two." 62 F. 4th 621, 631, 634 (2023). As these cases illustrate, *Chevron* has turned statutory interpretation into a game of bingo under blindfold, with parties guessing at how many boxes there are and which one their case might ultimately fall in.

Turn now from workability to reliance. Far from engendering reliance interests, the whole point of *Chevron* deference is to upset them. Under *Chevron*, executive officials can replace one "reasonable" interpretation with another at any time, all without any change in the law itself. The result: Affected individuals "can never be sure of their legal rights and duties." *Buffington*, 598 U. S., at ___ (slip op., at 12).

How bad is the problem? Take just one example. *Brand X* concerned a law regulating broadband internet services. There, the Court upheld an agency rule adopted by the administration of President George W. Bush because it was premised on a "reasonable" interpretation of the statute. Later, President Barack Obama's administration rescinded the rule and replaced it with another. Later still, during President Donald J. Trump's administration, officials replaced that rule with a different one, all before President Joseph R. Biden, Jr.'s administration declared its intention to reverse course for yet a fourth time. See Safeguarding and Securing the Open Internet, 88 Fed. Reg. 76048 (2023); *Brand X*, 545 U. S., at 981–982. Each time, the government claimed its new rule was just as "reasonable" as the last. Rather than promoting reliance by fixing the meaning of

the law, *Chevron* deference engenders constant uncertainty and convulsive change even when the statute at issue itself remains unchanged.

Nor are these antireliance harms distributed equally. Sophisticated entities and their lawyers may be able to keep pace with rule changes affecting their rights and responsibilities. They may be able to lobby for new "'reasonable'" agency interpretations and even capture the agencies that issue them. *Buffington*, 598 U. S., at ___, ___ (slip op., at 8, 13). But ordinary people can do none of those things. They are the ones who suffer the worst kind of regulatory whiplash *Chevron* invites.

Consider a couple of examples. Thomas Buffington, a veteran of the U. S. Air Force, was injured in the line of duty. For a time after he left the Air Force, the Department of Veterans Affairs (VA) paid disability benefits due him by law. But later the government called on Mr. Buffington to reenter active service. During that period, everyone agreed, the VA could (as it did) suspend his disability payments. After he left active service for a second time, however, the VA turned his patriotism against him. By law, Congress permitted the VA to suspend disability pay only "for any period for which [a servicemember] receives active service pay." 38 U. S. C. §5304(c). But the VA had adopted a self-serving regulation requiring veterans to file a form asking for the resumption of their disability pay after a second (or subsequent) stint in active service. 38 CFR §3.654(b)(2) (2021). Unaware of the regulation, Mr. Buffington failed to reapply immediately. When he finally figured out what had happened and reapplied, the VA agreed to resume payments going forward but refused to give Mr. Buffington all of the past disability payments it had withheld. *Buffington*, 598 U. S., at ___–___ (slip op., at 1–4).

Mr. Buffington challenged the agency's action as inconsistent with Congress's direction that the VA may suspend disability payments only for those periods when a veteran

returns to active service. But armed with *Chevron*, the agency defeated Mr. Buffington's claim. Maybe the self-serving regulation the VA cited as justification for its action was not premised on the best reading of the law, courts said, but it represented a "'permissible'" one. 598 U. S., at ___ (slip op., at 7). In that way, the Executive Branch was able to evade Congress's promises to someone who took the field repeatedly in the Nation's defense.

In another case, one which I heard as a court of appeals judge, *De Niz Robles* v. *Lynch*, 803 F. 3d 1165 (CA10 2015), the Board of Immigration Appeals invoked *Chevron* to overrule a judicial precedent on which many immigrants had relied, see *In re Briones*, 24 I. & N. Dec. 355, 370 (BIA 2007) (purporting to overrule *Padilla–Caldera* v. *Gonzales*, 426 F. 3d 1294 (CA10 2005)). The agency then sought to apply its new interpretation retroactively to punish those immigrants—including Alfonzo De Niz Robles, who had relied on that judicial precedent as authority to remain in this country with his U. S. wife and four children. See 803 F. 3d, at 1168–1169. Our court ruled that this retrospective application of the BIA's new interpretation of the law violated Mr. De Niz Robles's due process rights. *Id.*, at 1172. But as a lower court, we could treat only the symptom, not the disease. So *Chevron* permitted the agency going forward to overrule a judicial decision about the best reading of the law with its own different "reasonable" one and in that way deny relief to countless future immigrants.

Those are just two stories among so many that federal judges could tell (and have told) about what *Chevron* deference has meant for ordinary people interacting with the federal government. See, *e.g.*, *Lambert* v. *Saul*, 980 F. 3d 1266, 1268–1276 (CA9 2020); *Valent* v. *Commissioner of Social Security*, 918 F. 3d 516, 525–527 (CA6 2019) (Kethledge, J., dissenting); *Gonzalez* v. *United States Atty. Gen.*, 820 F. 3d 399, 402–405 (CA11 2016) (*per curiam*).

What does the federal government have to say about this?

It acknowledges that *Chevron* sits as a heavy weight on the scale in favor of the government, "oppositional" to many "categories of individuals." Tr. of Oral Arg. in No. 22–1219, p. 133 (Relentless Tr.). But, according to the government, *Chevron* deference is too important an innovation to undo. In its brief reign, the government says, it has become a "fundamenta[l] . . . ground rul[e] for how all three branches of the government are operating together." Relentless Tr. 102. But, in truth, the Constitution, the APA, and our longstanding precedents set those ground rules some time ago. And under them, agencies cannot invoke a judge-made fiction to unsettle our Nation's promise to individuals that they are entitled to make their arguments about the law's demands on them in a fair hearing, one in which they stand on equal footing with the government before an independent judge.

C

How could a Court, guided for 200 years by Chief Justice Marshall's example, come to embrace a counter-*Marbury* revolution, one at war with the APA, time honored precedents, and so much surrounding law? To answer these questions, turn to Lesson 3 and witness the temptation to endow a stray passage in a judicial decision with extraordinary authority. Call it "power quoting."

Chevron was an unlikely place for a revolution to begin. The case concerned the Clean Air Act's requirement that States regulate "stationary sources" of air pollution in their borders. See 42 U. S. C. §7401 *et seq*. At the time, it was an open question whether entire industrial plants or their constituent polluting parts counted as "stationary sources." The Environmental Protection Agency had defined entire plants as sources, an approach that allowed companies to replace individual plant parts without automatically triggering the permitting requirements that apply to new sources. *Chevron*, 467 U. S., at 840.

This Court upheld the EPA's definition as consistent with the governing statute. *Id.*, at 866. The decision, issued by a bare quorum of the Court, without concurrence or dissent, purported to apply "well-settled principles." *Id.*, at 845. "If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue," *Chevron* provided, then "that intention is the law and must be given effect." *Id.*, at 843, n. 9. Many of the cases *Chevron* cited to support its judgment stood for the traditional proposition that courts afford respectful consideration, not deference, to executive interpretations of the law. See, *e.g.*, *Burnet*, 285 U. S., at 16; *United States* v. *Moore*, 95 U. S. 760, 763 (1878). And the decision's sole citation to legal scholarship was to Roscoe Pound, who long championed *de novo* judicial review. 467 U. S., at 843, n. 10; see R. Pound, The Place of the Judiciary in a Democratic Polity, 27 A. B. A. J. 133, 136–137 (1941).

At the same time, of course, the opinion contained bits and pieces that spoke differently. The decision also said that, "if [a] statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U. S., at 843. But it seems the government didn't advance this formulation in its brief, so there was no adversarial engagement on it. T. Merrill, The Story of *Chevron*: The Making of an Accidental Landmark, 66 Admin. L. Rev. 253, 268 (2014) (Merrill). As we have seen, too, the Court did not pause to consider (or even mention) the APA. See Part II–A, *supra.* It did not discuss contrary precedents issued by the Court since the founding, let alone purport to overrule any of them. See Part II–B–1, *supra.* Nor did the Court seek to address how its novel rule of deference might be squared with so much surrounding law. See Part II–B–2, *supra.* As even its defenders have acknowledged, "*Chevron* barely bothered to justify its rule of deference, and the few brief passages on this matter pointed in disparate

directions." Kagan 212–213. "[T]he quality of the reasoning," they acknowledge, "was not high," C. Sunstein, *Chevron* as Law, 107 Geo. L. J. 1613, 1669 (2019).

If *Chevron* meant to usher in a revolution in how judges interpret laws, no one appears to have realized it at the time. *Chevron*'s author, Justice Stevens, characterized the decision as a "simpl[e] . . . restatement of existing law, nothing more or less." Merrill 255, 275. In the "19 argued cases" in the following Term "that presented some kind of question about whether the Court should defer to an agency interpretation of statutory law," this Court cited *Chevron* just once. Merrill 276. By some accounts, the decision seemed "destined to obscurity." *Ibid.*

It was only three years later when Justice Scalia wrote a concurrence that a revolution began to take shape. *Buffington*, 598 U. S., at ___ (slip op., at 8). There, he argued for a new rule requiring courts to defer to executive agency interpretations of the law whenever a "'statute is silent or ambiguous.'" *NLRB* v. *Food & Commercial Workers*, 484 U. S. 112, 133–134 (1987) (opinion of Scalia, J.). Eventually, a majority of the Court followed his lead. *Buffington*, 598 U. S., at ___ (slip op., at 8). But from the start, Justice Scalia made no secret about the scope of his ambitions. See Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 521 (1989) (Scalia). The rule he advocated for represented such a sharp break from prior practice, he explained, that many judges of his day didn't yet "understand" the "old criteria" were "no longer relevant." *Ibid.* Still, he said, overthrowing the past was worth it because a new deferential rule would be "easier to follow." *Ibid.*

Events proved otherwise. As the years wore on and the Court's new and aggressive reading of *Chevron* gradually exposed itself as unworkable, unfair, and at odds with our separation of powers, Justice Scalia could have doubled down on the project. But he didn't. He appreciated that

stare decisis is not a rule of "if I thought it yesterday, I must think it tomorrow." And rather than cling to the pride of personal precedent, the Justice began to express doubts over the very project that he had worked to build. See *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 109–110 (2015) (opinion concurring in judgment); cf. *Decker* v. *Northwest Environmental Defense Center*, 568 U. S. 597, 617–618, 621 (2013) (opinion concurring in part and dissenting in part). If *Chevron*'s ascent is a testament to the Justice's ingenuity, its demise is an even greater tribute to his humility.[6]

Justice Scalia was not alone in his reconsideration. After years spent laboring under *Chevron*, trying to make sense of it and make it work, Member after Member of this Court came to question the project. See, *e.g.*, *Pereira* v. *Sessions*, 585 U. S. 198, 219–221 (2018) (Kennedy, J., concurring); *Michigan* v. *EPA*, 576 U. S. 743, 760–764 (2015) (THOMAS, J., concurring); *Kisor*, 588 U. S., at 591 (ROBERTS, C. J., concurring in part); *Gutierrez-Brizuela*, 834 F. 3d, at 1153; *Buffington*, 598 U. S., at ___–___ (slip op., at 14–15); Kavanaugh 2150–2154. Ultimately, the Court gave up. Despite repeated invitations, it has not applied *Chevron* deference since 2016. Relentless Tr. 81; App. to Brief for Respondents in No. 22–1219, p. 68a. So an experiment that began only in the mid-1980s effectively ended eight years ago. Along the way, an unusually large number of federal appellate judges voiced their own thoughtful and extensive

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[6] It should be recalled that, when Justice Scalia launched the *Chevron* revolution, there were many judges who "abhor[red] . . . 'plain meaning'" and preferred instead to elevate "legislative history" and their own curated accounts of a law's "purpose[s]" over enacted statutory text. Scalia 515, 521. *Chevron*, he predicted, would provide a new guardrail against that practice. Scalia 515, 521. As the Justice's later writings show, he had the right diagnosis, just the wrong cure. The answer for judges eliding statutory terms is not deference to agencies that may seek to do the same, but a demand that all return to a more faithful adherence to the written law. That was, of course, another project Justice Scalia championed. And as we like to say, "we're all textualists now."

criticisms of *Chevron*. *Buffington*, 598 U. S., at ___–___ (slip op., at 14–15) (collecting examples). A number of state courts did, too, refusing to import *Chevron* deference into their own administrative law jurisprudence. See 598 U. S., at ___ (slip op., at 15).

Even if all that and everything else laid out above is true, the government suggests we should retain *Chevron* deference because judges simply cannot live without it; some statutes are just too "technical" for courts to interpret "intelligently." *Post*, at 9, 32 (dissenting opinion). But that objection is no answer to *Chevron*'s inconsistency with Congress's directions in the APA, so much surrounding law, or the challenges its multistep regime have posed in practice. Nor does history counsel such defeatism. Surely, it would be a mistake to suggest our predecessors before *Chevron*'s rise in the mid-1980s were unable to make their way intelligently through technical statutory disputes. Following their lead, over the past eight years this Court has managed to resolve even highly complex cases without *Chevron* deference, and done so even when the government sought deference. Nor, as far as I am aware, did any Member of the Court suggest *Chevron* deference was necessary to an intelligent resolution of any of those matters.[7] If anything, by affording *Chevron* deference a period of repose before addressing whether it should be retained, the Court has enabled its Members to test the propriety of that precedent and reflect more deeply on how well it fits into the broader architecture of our law. Others may see things differently, see *post*, at 26–27 (dissenting opinion), but the caution the

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[7] See, *e.g., Becerra* v. *Empire Health Foundation, for Valley Hospital Medical Center*, 597 U. S. 424, 434 (2022) (resolving intricate Medicare dispute by reference solely to "text," "context," and "structure"); see also *Sackett* v. *EPA*, 598 U. S. 651 (2023) (same in a complex Clean Water Act dispute); *Johnson* v. *Guzman Chavez*, 594 U. S. 523 (2021) (same in technical immigration case).

Court has exhibited before overruling *Chevron* may illustrate one of the reasons why the current Court has been slower to overrule precedents than some of its predecessors, see Part I–C, *supra*.

None of this, of course, discharges any Member of this Court from the task of deciding for himself or herself today whether *Chevron* deference itself warrants deference. But when so many past and current judicial colleagues in this Court and across the country tell us our doctrine is misguided, and when we ourselves managed without *Chevron* for centuries and manage to do so today, the humility at the core of *stare decisis* compels us to pause and reflect carefully on the wisdom embodied in that experience. And, in the end, to my mind the lessons of experience counsel wisely against continued reliance on *Chevron*'s stray and unconsidered digression. This Court's opinions fill over 500 volumes, and perhaps "some printed judicial word may be found to support almost any plausible proposition." R. Jackson, Decisional Law and Stare Decisis, 30 A. B. A. J. 334 (1944). It is not for us to pick and choose passages we happen to like and demand total obedience to them in perpetuity. That would turn *stare decisis* from a doctrine of humility into a tool for judicial opportunism. *Brown*, 596 U. S., at 141.

III

Proper respect for precedent helps "keep the scale of justice even and steady," by reinforcing decisional rules consistent with the law upon which all can rely. 1 Blackstone 69. But that respect does not require, nor does it readily tolerate, a steadfast refusal to correct mistakes. As early as 1810, this Court had already overruled one of its cases. See *Hudson* v. *Guestier*, 6 Cranch 281, 284 (overruling *Rose* v. *Himely*, 4 Cranch 241 (1808)). In recent years, the Court may have overruled precedents less frequently than it did during the Warren and Burger Courts. See Part I–C, *supra*.

But the job of reconsidering past decisions remains one every Member of this Court faces from time to time.[8]

Justice William O. Douglas served longer on this Court than any other person in the Nation's history. During his tenure, he observed how a new colleague might be inclined initially to "revere" every word written in an opinion issued before he arrived. W. Douglas, Stare Decisis, 49 Colum. L. Rev. 735, 736 (1949). But, over time, Justice Douglas reflected, his new colleague would "remembe[r] . . . that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it." *Ibid.* And "[s]o he [would] com[e] to formulate his own views, rejecting some earlier ones as false and embracing others." *Ibid.* This process of reexamination, Justice Douglas explained, is a "necessary consequence of our system" in which each judge takes an oath—both "personal" and binding—to discern the law's meaning for himself and apply it faithfully in the cases that come before him. *Id.*, at 736–737.

Justice Douglas saw, too, how appeals to precedent could be overstated and sometimes even overwrought. Judges, he reflected, would sometimes first issue "new and startling decision[s]," and then later spin around and "acquire an acute conservatism" in their aggressive defense of "their

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[8] Today's dissenters are no exceptions. They have voted to overrule precedents that they consider "wrong," *Hurst* v. *Florida*, 577 U. S. 92, 101 (2016) (opinion for the Court by SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J.); *Obergefell* v. *Hodges*, 576 U. S. 644, 665, 675 (2015) (opinion for the Court, joined by, *inter alios*, SOTOMAYOR and KAGAN, JJ.); that conflict with the Constitution's "original meaning," *Alleyne* v. *United States*, 570 U. S. 99, 118 (2013) (SOTOMAYOR, J., joined by, *inter alias*, KAGAN, J., concurring); and that have proved "unworkable," *Johnson* v. *United States*, 576 U. S. 591, 605 (2015) (opinion for the Court, joined by, *inter alios*, SOTOMAYOR and KAGAN, JJ.); see also *Erlinger* v. *United States*, 602 U. S. ___, ___ (2024) (JACKSON, J., dissenting) (slip op., at 1) (arguing *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and the many cases applying it were all "wrongly decided").

new *status quo*." *Id.*, at 737. In that way, even the most novel and unlikely decisions became "coveted anchorage[s]," defended heatedly, if ironically, under the banner of "*stare decisis*." *Ibid.*; see also *Edwards* v. *Vannoy*, 593 U. S. 255, 294, n. 7 (2021) (GORSUCH, J., concurring).

That is *Chevron*'s story: A revolution masquerading as the status quo. And the defense of it follows the same course Justice Douglas described. Though our dissenting colleagues have not hesitated to question other precedents in the past, they today manifest what Justice Douglas called an "acute conservatism" for *Chevron*'s "startling" development, insisting that if this "coveted anchorage" is abandoned the heavens will fall. But the Nation managed to live with busy executive agencies of all sorts long before the *Chevron* revolution began to take shape in the mid-1980s. And all today's decision means is that, going forward, federal courts will do exactly as this Court has since 2016, exactly as it did before the mid-1980s, and exactly as it had done since the founding: resolve cases and controversies without any systemic bias in the government's favor.

Proper respect for precedent does not begin to suggest otherwise. Instead, it counsels respect for the written law, adherence to consistent teachings over aberrations, and resistance to the temptation of treating our own stray remarks as if they were statutes. And each of those lessons points toward the same conclusion today: *Chevron* deference is inconsistent with the directions Congress gave us in the APA. It represents a grave anomaly when viewed against the sweep of historic judicial practice. The decision undermines core rule-of-law values ranging from the promise of fair notice to the promise of a fair hearing. Even on its own terms, it has proved unworkable and operated to undermine rather than advance reliance interests, often to the detriment of ordinary Americans. And from the start, the whole project has relied on the overaggressive use of snippets and stray remarks from an opinion that carried

mixed messages. *Stare decisis*'s true lesson today is not that we are bound to respect *Chevron*'s "startling development," but bound to inter it.

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL.,
PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF
COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join,* dissenting.

For 40 years, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), has served as a cornerstone of administrative law, allocating responsibility for statutory construction between courts and agencies. Under *Chevron*, a court uses all its normal interpretive tools to determine whether Congress has spoken to an issue. If the court finds Congress has done so, that is the end of the matter; the agency's views make no difference. But if the court finds, at the end of its interpretive work, that

*JUSTICE JACKSON did not participate in the consideration or decision of the case in No. 22–451 and joins this opinion only as it applies to the case in No. 22–1219.

Congress has left an ambiguity or gap, then a choice must be made. Who should give content to a statute when Congress's instructions have run out? Should it be a court? Or should it be the agency Congress has charged with administering the statute? The answer *Chevron* gives is that it should usually be the agency, within the bounds of reasonableness. That rule has formed the backdrop against which Congress, courts, and agencies—as well as regulated parties and the public—all have operated for decades. It has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds—to name a few, keeping air and water clean, food and drugs safe, and financial markets honest.

And the rule is right. This Court has long understood *Chevron* deference to reflect what Congress would want, and so to be rooted in a presumption of legislative intent. Congress knows that it does not—in fact cannot—write perfectly complete regulatory statutes. It knows that those statutes will inevitably contain ambiguities that some other actor will have to resolve, and gaps that some other actor will have to fill. And it would usually prefer that actor to be the responsible agency, not a court. Some interpretive issues arising in the regulatory context involve scientific or technical subject matter. Agencies have expertise in those areas; courts do not. Some demand a detailed understanding of complex and interdependent regulatory programs. Agencies know those programs inside-out; again, courts do not. And some present policy choices, including trade-offs between competing goods. Agencies report to a President, who in turn answers to the public for his policy calls; courts have no such accountability and no proper basis for making policy. And of course Congress has conferred on that expert, experienced, and politically accountable agency the authority to administer—to make rules about and otherwise implement—the statute giving rise to the ambiguity or

gap. Put all that together and deference to the agency is the almost obvious choice, based on an implicit congressional delegation of interpretive authority. We defer, the Court has explained, "because of a presumption that Congress" would have "desired the agency (rather than the courts)" to exercise "whatever degree of discretion" the statute allows. *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996).

Today, the Court flips the script: It is now "the courts (rather than the agency)" that will wield power when Congress has left an area of interpretive discretion. A rule of judicial humility gives way to a rule of judicial hubris. In recent years, this Court has too often taken for itself decision-making authority Congress assigned to agencies. The Court has substituted its own judgment on workplace health for that of the Occupational Safety and Health Administration; its own judgment on climate change for that of the Environmental Protection Agency; and its own judgment on student loans for that of the Department of Education. See, *e.g.*, *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022); *West Virginia* v. *EPA*, 597 U. S. 697 (2022); *Biden* v. *Nebraska*, 600 U. S. 477 (2023). But evidently that was, for this Court, all too piecemeal. In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law. As if it did not have enough on its plate, the majority turns itself into the country's administrative czar. It defends that move as one (suddenly) required by the (nearly 80-year-old) Administrative Procedure Act. But the Act makes no such demand. Today's decision is not one Congress directed. It is entirely the majority's choice.

And the majority cannot destroy one doctrine of judicial humility without making a laughing-stock of a second. (If opinions had titles, a good candidate for today's would be Hubris Squared.) *Stare decisis* is, among other things, a

way to remind judges that wisdom often lies in what prior judges have done. It is a brake on the urge to convert "every new judge's opinion" into a new legal rule or regime. *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215, 388 (2022) (joint opinion of Breyer, SOTOMAYOR, and KAGAN, JJ., dissenting) (quoting 1 W. Blackstone, Commentaries on the Laws of England 69 (7th ed. 1775)). *Chevron* is entrenched precedent, entitled to the protection of *stare decisis*, as even the majority acknowledges. In fact, *Chevron* is entitled to the supercharged version of that doctrine because Congress could always overrule the decision, and because so many governmental and private actors have relied on it for so long. Because that is so, the majority needs a "particularly special justification" for its action. *Kisor* v. *Wilkie*, 588 U. S. 558, 588 (2019) (opinion of the Court). But the majority has nothing that would qualify. It barely tries to advance the usual factors this Court invokes for overruling precedent. Its justification comes down, in the end, to this: Courts must have more say over regulation—over the provision of health care, the protection of the environment, the safety of consumer products, the efficacy of transportation systems, and so on. A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority. The majority disdains restraint, and grasps for power.

I

Begin with the problem that gave rise to *Chevron* (and also to its older precursors): The regulatory statutes Congress passes often contain ambiguities and gaps. Sometimes they are intentional. Perhaps Congress "consciously desired" the administering agency to fill in aspects of the legislative scheme, believing that regulatory experts would be "in a better position" than legislators to do so. *Chevron*, 467 U. S., at 865. Or "perhaps Congress was unable to forge a coalition on either side" of a question, and the contending

parties "decided to take their chances with" the agency's resolution. *Ibid.* Sometimes, though, the gaps or ambiguities are what might be thought of as predictable accidents. They may be the result of sloppy drafting, a not infrequent legislative occurrence. Or they may arise from the well-known limits of language or foresight. Accord, *ante*, at 7, 22. "The subject matter" of a statutory provision may be too "specialized and varying" to "capture in its every detail." *Kisor*, 588 U. S., at 566 (plurality opinion). Or the provision may give rise, years or decades down the road, to an issue the enacting Congress could not have anticipated. Whichever the case—whatever the reason—the result is to create uncertainty about some aspect of a provision's meaning.

Consider a few examples from the caselaw. They will help show what a typical *Chevron* question looks like—or really, what a typical *Chevron* question *is*. Because when choosing whether to send some class of questions mainly to a court, or mainly to an agency, abstract analysis can only go so far; indeed, it may obscure what matters most. So I begin with the concrete:

- Under the Public Health Service Act, the Food and Drug Administration (FDA) regulates "biological product[s]," including "protein[s]." 42 U. S. C. §262(i)(1). When does an alpha amino acid polymer qualify as such a "protein"? Must it have a specific, defined sequence of amino acids? See *Teva Pharmaceuticals USA, Inc.* v. *FDA*, 514 F. Supp. 3d 66, 79–80, 93–106 (DC 2020).
- Under the Endangered Species Act, the Fish and Wildlife Service must designate endangered "vertebrate fish or wildlife" species, including "distinct population segment[s]" of those species. 16 U. S. C. §1532(16); see §1533. What makes one population segment "distinct" from another? Must the Service treat the Washington State population of western gray squirrels as "distinct"

because it is geographically separated from other western gray squirrels? Or can the Service take into account that the genetic makeup of the Washington population does not differ markedly from the rest? See *Northwest Ecosystem Alliance* v. *United States Fish and Wildlife Serv.*, 475 F. 3d 1136, 1140–1145, 1149 (CA9 2007).

- Under the Medicare program, reimbursements to hospitals are adjusted to reflect "differences in hospital wage levels" across "geographic area[s]." 42 U. S. C. §1395ww(d)(3)(E)(i). How should the Department of Health and Human Services measure a "geographic area"? By city? By county? By metropolitan area? See *Bellevue Hospital Center* v. *Leavitt*, 443 F. 3d 163, 174–176 (CA2 2006).
- Congress directed the Department of the Interior and the Federal Aviation Administration to reduce noise from aircraft flying over Grand Canyon National Park—specifically, to "provide for substantial restoration of the natural quiet." §3(b)(1), 101 Stat. 676; see §3(b)(2). How much noise is consistent with "the natural quiet"? And how much of the park, for how many hours a day, must be that quiet for the "substantial restoration" requirement to be met? See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F. 3d 455, 466–467, 474–475 (CADC 1998).
- Or take *Chevron* itself. In amendments to the Clean Air Act, Congress told States to require permits for modifying or constructing "stationary sources" of air pollution. 42 U. S. C. §7502(c)(5). Does the term "stationary source[]" refer to each pollution-emitting piece of equipment within a plant? Or does it refer to the entire plant, and thus allow escape from the permitting requirement when increased emissions from one piece of equipment are offset by reductions from another? See 467 U. S., at 857, 859.

In each case, a statutory phrase has more than one reasonable reading. And Congress has not chosen among them: It has not, in any real-world sense, "fixed" the "single, best meaning" at "the time of enactment" (to use the majority's phrase). *Ante*, at 22. A question thus arises: Who decides which of the possible readings should govern?

This Court has long thought that the choice should usually fall to agencies, with courts broadly deferring to their judgments. For the last 40 years, that doctrine has gone by the name of *Chevron* deference, after the 1984 decision that formalized and canonized it. In *Chevron*, the Court set out a simple two-part framework for reviewing an agency's interpretation of a statute that it administers. First, the reviewing court must determine whether Congress has "directly spoken to the precise question at issue." 467 U. S., at 842. That inquiry is rigorous: A court must exhaust all the "traditional tools of statutory construction" to divine statutory meaning. *Id.*, at 843, n. 9. And when it can find that meaning—a "single right answer"—that is "the end of the matter": The court cannot defer because it "must give effect to the unambiguously expressed intent of Congress." *Kisor*, 588 U. S., at 575 (opinion of the Court); *Chevron*, 467 U. S., at 842–843. But if the court, after using its whole legal toolkit, concludes that "the statute is silent or ambiguous with respect to the specific issue" in dispute—for any of the not-uncommon reasons discussed above—then the court must cede the primary interpretive role. *Ibid.*; see *supra*, at 4–5. At that second step, the court asks only whether the agency construction is within the sphere of "reasonable" readings. *Chevron*, 467 U. S., at 844. If it is, the agency's interpretation of the statute that it every day implements will control.

That rule, the Court has long explained, rests on a presumption about legislative intent—about what Congress wants when a statute it has charged an agency with implementing contains an ambiguity or a gap. See *id.*, at 843–

845; *Smiley*, 517 U. S., at 740–741. An enacting Congress, as noted above, knows those uncertainties will arise, even if it does not know what they will turn out to be. See *supra*, at 4–5. And every once in a while, Congress provides an explicit instruction for dealing with that contingency—assigning primary responsibility to the courts, or else to an agency. But much more often, Congress does not say. Thus arises the need for a presumption—really, a default rule—for what should happen in that event. Does a statutory silence or ambiguity then go to a court for resolution? Or to an agency? This Court has long thought Congress would choose an agency, with courts serving only as a backstop to make sure the agency makes a reasonable choice among the possible readings. Or said otherwise, Congress would select the agency it has put in control of a regulatory scheme to exercise the "degree of discretion" that the statute's lack of clarity or completeness allows. *Smiley*, 517 U. S., at 741. Of course, Congress can always refute that presumptive choice—can say that, really, it would prefer courts to wield that discretionary power. But until then, the presumption cuts in the agency's favor.[1] The next question is why.

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[1] Note that presumptions of this kind are common in the law. In other contexts, too, the Court responds to a congressional lack of direction by adopting a presumption about what Congress wants, rather than trying to figure that out in every case. And then Congress can legislate, with "predictable effects," against that "stable background" rule. *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 261 (2010). Take the presumption against extraterritoriality: The Court assumes Congress means for its statutes to apply only within the United States, absent a "clear indication" to the contrary. *Id.*, at 255. Or the presumption against retroactivity: The Court assumes Congress wants its laws to apply only prospectively, unless it "unambiguously instruct[s]" something different. *Vartelas* v. *Holder*, 566 U. S. 257, 266 (2012). Or the presumption against repeal of statutes by implication: The Court assumes Congress does not intend a later statute to displace an earlier one unless it makes that intention "clear and manifest." *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 510 (2018). Or the (so far unnamed) presumption against treating a procedural requirement as "jurisdictional" unless "Congress

For one, because agencies often know things about a statute's subject matter that courts could not hope to. The point is especially stark when the statute is of a "scientific or technical nature." *Kisor*, 588 U. S., at 571 (plurality opinion). Agencies are staffed with "experts in the field" who can bring their training and knowledge to bear on open statutory questions. *Chevron*, 467 U. S., at 865. Consider, for example, the first bulleted case above. When does an alpha amino acid polymer qualify as a "protein"? See *supra*, at 5. I don't know many judges who would feel confident resolving that issue. (First question: What even *is* an alpha amino acid polymer?) But the FDA likely has scores of scientists on staff who can think intelligently about it, maybe collaborate with each other on its finer points, and arrive at a sensible answer. Or take the perhaps more accessible-sounding second case, involving the Endangered Species Act. See *supra*, at 5–6. Deciding when one squirrel population is "distinct" from another (and thus warrants protection) requires knowing about species more than it does consulting a dictionary. How much variation of what kind—geographic, genetic, morphological, or behavioral—should be required? A court could, if forced to, muddle through that issue and announce a result. But wouldn't the Fish and Wildlife Service, with all its specialized expertise, do a better job of the task—of saying what, in the context of species protection, the open-ended term "distinct" means? One idea behind the *Chevron* presumption is that Congress—

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clearly states that it is." *Boechler* v. *Commissioner*, 596 U. S. 199, 203 (2022). I could continue, except that this footnote is long enough. The *Chevron* deference rule is to the same effect: The Court generally assumes that Congress intends to confer discretion on agencies to handle statutory ambiguities or gaps, absent a direction to the contrary. The majority calls that presumption a "fiction," *ante*, at 26, but it is no more so than any of the presumptions listed above. They all are best guesses—and usually quite good guesses—by courts about congressional intent.

the same Congress that charged the Service with implementing the Act—would answer that question with a resounding "yes."

A second idea is that Congress would value the agency's experience with how a complex regulatory regime functions, and with what is needed to make it effective. Let's stick with squirrels for a moment, except broaden the lens. In construing a term like "distinct" in a case about squirrels, the Service likely would benefit from its "historical familiarity" with how the term has covered the population segments of other species. *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 153 (1991); see, *e.g.*, *Center for Biological Diversity* v. *Zinke*, 900 F. 3d 1053, 1060–1062 (CA9 2018) (arctic grayling); *Center for Biological Diversity* v. *Zinke*, 868 F. 3d 1054, 1056 (CA9 2017) (desert eagle). Just as a common-law court makes better decisions as it sees multiple variations on a theme, an agency's construction of a statutory term benefits from its unique exposure to all the related ways the term comes into play. Or consider, for another way regulatory familiarity matters, the example about adjusting Medicare reimbursement for geographic wage differences. See *supra*, at 6. According to a dictionary, the term "geographic area" could be as large as a multi-state region or as small as a census tract. How to choose? It would make sense to gather hard information about what reimbursement levels each approach will produce, to explore the ease of administering each on a nationwide basis, to survey how regulators have dealt with similar questions in the past, and to confer with the hospitals themselves about what makes sense. See *Kisor*, 588 U. S., at 571 (plurality opinion) (noting that agencies are able to "conduct factual investigations" and "consult with affected parties"). Congress knows the Department of Health and Human Services can do all those things—and that courts cannot.

Still more, *Chevron*'s presumption reflects that resolving

statutory ambiguities, as Congress well knows, is "often more a question of policy than of law." *Pauley* v. *BethEnergy Mines, Inc.*, 501 U. S. 680, 696 (1991). The task is less one of construing a text than of balancing competing goals and values. Consider the statutory directive to achieve "substantial restoration of the [Grand Canyon's] natural quiet." See *supra*, at 6. Someone is going to have to decide exactly what that statute means for air traffic over the canyon. How many flights, in what places and at what times, are consistent with restoring enough natural quiet on the ground? That is a policy trade-off of a kind familiar to agencies—but peculiarly unsuited to judges. Or consider *Chevron* itself. As the Court there understood, the choice between defining a "stationary source" as a whole plant or as a pollution-emitting device is a choice about how to "reconcile" two "manifestly competing interests." 467 U. S., at 865. The plantwide definition relaxes the permitting requirement in the interest of promoting economic growth; the device-specific definition strengthens that requirement to better reduce air pollution. See *id.*, at 851, 863, 866. Again, that is a choice a judge should not be making, but one an agency properly can. Agencies are "subject to the supervision of the President, who in turn answers to the public." *Kisor*, 588 U. S., at 571–572 (plurality opinion). So when faced with a statutory ambiguity, "an agency to which Congress has delegated policymaking responsibilities" may rely on an accountable actor's "views of wise policy to inform its judgments." *Chevron*, 467 U. S., at 865.

None of this is to say that deference to agencies is always appropriate. The Court over time has fine-tuned the *Chevron* regime to deny deference in classes of cases in which Congress has no reason to prefer an agency to a court. The majority treats those "refinements" as a flaw in the scheme, *ante*, at 27, but they are anything but. Consider the rule that an agency gets no deference when construing a statute it is not responsible for administering. See *Epic Systems*

Corp. v. *Lewis*, 584 U. S. 497, 519–520 (2018). Well, of course not—if Congress has not put an agency in charge of implementing a statute, Congress would not have given the agency a special role in its construction. Or take the rule that an agency will not receive deference if it has reached its decision without using—or without using properly—its rulemaking or adjudicatory authority. See *United States* v. *Mead Corp.*, 533 U. S. 218, 226–227 (2001); *Encino Motorcars, LLC* v. *Navarro*, 579 U. S. 211, 220 (2016). Again, that should not be surprising: Congress expects that authoritative pronouncements on a law's meaning will come from the procedures it has enacted to foster "fairness and deliberation" in agency decision-making. *Mead*, 533 U. S., at 230. Or finally, think of the "extraordinary cases" involving questions of vast "economic and political significance" in which the Court has declined to defer. *King* v. *Burwell*, 576 U. S. 473, 485–486 (2015). The theory is that Congress would not have left matters of such import to an agency, but would instead have insisted on maintaining control. So the *Chevron* refinements proceed from the same place as the original doctrine. Taken together, they give interpretive primacy to the agency when—but only when—it is acting, as Congress specified, in the heartland of its delegated authority.

That carefully calibrated framework "reflects a sensitivity to the proper roles of the political and judicial branches." *Pauley*, 501 U. S., at 696. Where Congress has spoken, Congress has spoken; only its judgments matter. And courts alone determine when that has happened: Using all their normal interpretive tools, they decide whether Congress has addressed a given issue. But when courts have decided that Congress has not done so, a choice arises. Absent a legislative directive, either the administering agency or a court must take the lead. And the matter is more fit for the agency. The decision is likely to involve the agency's subject-matter expertise; to fall within its sphere of regulatory

experience; and to involve policy choices, including cost-benefit assessments and trade-offs between conflicting values. So a court without relevant expertise or experience, and without warrant to make policy calls, appropriately steps back. The court still has a role to play: It polices the agency to ensure that it acts within the zone of reasonable options. But the court does not insert itself into an agency's expertise-driven, policy-laden functions. That is the arrangement best suited to keep every actor in its proper lane. And it is the one best suited to ensure that Congress's statutes work in the way Congress intended.

The majority makes two points in reply, neither convincing. First, it insists that "agencies have no special competence" in filling gaps or resolving ambiguities in regulatory statutes; rather, "[c]ourts do." *Ante*, at 23. Score one for self-confidence; maybe not so high for self-reflection or -knowledge. Of course courts often construe legal texts, hopefully well. And *Chevron*'s first step takes full advantage of that talent: There, a court tries to divine what Congress meant, even in the most complicated or abstruse statutory schemes. The deference comes in only if the court cannot do so—if the court must admit that standard legal tools will not avail to fill a statutory silence or give content to an ambiguous term. That is when the issues look like the ones I started off with: When does an alpha amino acid polymer qualify as a "protein"? How distinct is "distinct" for squirrel populations? What size "geographic area" will ensure appropriate hospital reimbursement? As between two equally feasible understandings of "stationary source," should one choose the one more protective of the environment or the one more favorable to economic growth? The idea that courts have "special competence" in deciding such questions whereas agencies have "no[ne]" is, if I may say, malarkey. Answering those questions right does not mainly demand the interpretive skills courts possess. Instead, it demands one or more of: subject-matter expertise,

long engagement with a regulatory scheme, and policy choice. It is courts (not agencies) that "have no special competence"—or even legitimacy—when those are the things a decision calls for.

Second, the majority complains that an ambiguity or gap does not "necessarily reflect a congressional intent that an agency" should have primary interpretive authority. *Ante*, at 22. On that score, I'll agree with the premise: It doesn't "necessarily" do so. *Chevron* is built on a *presumption*. The decision does not maintain that Congress in every case wants the agency, rather than a court, to fill in gaps. The decision maintains that when Congress does not expressly pick one or the other, we need a default rule; and the best default rule—agency or court?—is the one we think Congress would generally want. As to *why* Congress would generally want the agency: The answer lies in everything said above about Congress's delegation of regulatory power to the agency and the agency's special competencies. See *supra*, at 9–11. The majority appears to think it is a showstopping rejoinder to note that many statutory gaps and ambiguities are "unintentional." *Ante*, at 22. But to begin, many are not; the ratio between the two is uncertain. See *supra*, at 4–5. And to end, why should that matter in any event? Congress may not have deliberately introduced a gap or ambiguity into the statute; but it knows that pretty much everything it drafts will someday be found to contain such a "flaw." Given that knowledge, *Chevron* asks, what would Congress want? The presumed answer is again the same (for the same reasons): The agency. And as with any default rule, if Congress decides otherwise, all it need do is say.

In that respect, the proof really is in the pudding: Congress basically never says otherwise, suggesting that *Chevron* chose the presumption aligning with legislative intent (or, in the majority's words, "approximat[ing] reality," *ante*, at 22). Over the last four decades, Congress has authorized

or reauthorized hundreds of statutes. The drafters of those statutes knew all about *Chevron*. See A. Gluck & L. Bressman, Statutory Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I, 65 Stan. L. Rev. 901, 928 (fig. 2), 994 (2013). So if they had wanted a different assignment of interpretive responsibility, they would have inserted a provision to that effect. With just a pair of exceptions I know of, they did not. See 12 U. S. C. §25b(b)(5)(A) (exception #1); 15 U. S. C. §8302(c)(3)(A) (exception #2). Similarly, Congress has declined to enact proposed legislation that would abolish *Chevron* across the board. See S. 909, 116th Cong., 1st Sess., §2 (2019) (still a bill, not a law); H. R. 5, 115th Cong., 1st Sess., §202 (2017) (same). So to the extent the majority is worried that the *Chevron* presumption is "fiction[al]," *ante*, at 26—as all legal presumptions in some sense are—it has gotten less and less so every day for 40 years. The congressional reaction shows as well as anything could that the *Chevron* Court read Congress right.

II

The majority's principal arguments are in a different vein. Around 80 years after the APA was enacted and 40 years after *Chevron*, the majority has decided that the former precludes the latter. The APA's Section 706, the majority says, "makes clear" that agency interpretations of statutes "are *not* entitled to deference." *Ante*, at 14–15 (emphasis in original). And that provision, the majority continues, codified the contemporaneous law, which likewise did not allow for deference. See *ante,* at 9–13, 15–16. But neither the APA nor the pre-APA state of the law does the work that the majority claims. Both are perfectly compatible with *Chevron* deference.

Section 706, enacted with the rest of the APA in 1946, provides for judicial review of agency action. It states: "To the extent necessary to decision and when presented, the

reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706.

That text, contra the majority, "does not resolve the *Chevron* question." C. Sunstein, *Chevron* As Law, 107 Geo. L. J. 1613, 1642 (2019) (Sunstein). Or said a bit differently, Section 706 is "generally indeterminate" on the matter of deference. A. Vermeule, Judging Under Uncertainty 207 (2006) (Vermeule). The majority highlights the phrase "decide all relevant questions of law" (italicizing the "all"), and notes that the provision "prescribes no deferential standard" for answering those questions. *Ante*, at 14. But just as the provision does not prescribe a deferential standard of review, so too it does not prescribe a *de novo* standard of review (in which the court starts from scratch, without giving deference). In point of fact, Section 706 does not specify *any* standard of review for construing statutes. See *Kisor*, 588 U. S., at 581 (plurality opinion). And when a court uses a deferential standard—here, by deciding whether an agency reading is reasonable—it just as much "decide[s]" a "relevant question[] of law" as when it uses a *de novo* standard. §706. The deferring court then conforms to Section 706 "by determining whether the agency has stayed within the bounds of its assigned discretion—that is, whether the agency has construed [the statute it administers] reasonably." J. Manning, *Chevron* and the Reasonable Legislator, 128 Harv. L. Rev. 457, 459 (2014); see *Arlington* v. *FCC*, 569 U. S. 290, 317 (2013) (ROBERTS, C. J., dissenting) ("We do not ignore [Section 706's] command when we afford an agency's statutory interpretation *Chevron* deference; we respect it").[2]

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[2]The majority tries to buttress its argument with a stray sentence or two from the APA's legislative history, but the same response holds. As the majority notes, see *ante*, at 15, the House and Senate Reports each stated that Section 706 "provid[ed] that questions of law are for courts

Section 706's references to standards of review in other contexts only further undercut the majority's argument. The majority notes that Section 706 requires deferential review for agency fact-finding and policy-making (under, respectively, a substantial-evidence standard and an arbitrary-and-capricious standard). See *ante*, at 14. Congress, the majority claims, "surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart" from *de novo* review. *Ibid.* Surely? In another part of Section 706, Congress explicitly referred to *de novo* review. §706(2)(F). With all those references to standards of review—both deferential and not—running around Section 706, what is "telling" (*ante*, at 14) is the absence of any standard for reviewing an agency's statutory constructions. That silence left the matter, as noted above, "generally indeterminate": Section 706 neither mandates nor forbids *Chevron*-style deference. Vermeule 207.[3]

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rather than agencies to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946); S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). But that statement also does not address the standard of review that courts should then use. When a court defers under *Chevron*, it reviews the agency's construction for reasonableness "in the last analysis." The views of Representative Walter, which the majority also cites, further demonstrate my point. He stated that the APA would require courts to "determine independently all relevant questions of law," but he also stated that courts would be required to "exercise . . . independent judgment" in applying the substantial-evidence standard (a deferential standard if ever there were one). 92 Cong. Rec. 5654 (1946). He therefore did not equate "independent" review with *de novo* review; he thought that a court could conduct independent review of agency action using a deferential standard.

[3] In a footnote responding to the last two paragraphs, the majority raises the white flag on Section 706's text. See *ante*, at 15, n. 4. Yes, it finally concedes, Section 706 does not *say* that *de novo* review is required for an agency's statutory construction. Rather, the majority says, "some things go without saying," and *de novo* review is such a thing. See *ibid.* But why? What extra-textual considerations force us to read Section 706 the majority's way? In its footnote, the majority repairs only to history.

And contra the majority, most "respected commentators" understood Section 706 in that way—as allowing, even if not requiring, deference. *Ante*, at 16. The finest administrative law scholars of the time (call them that generation's Manning, Sunstein, and Vermeule) certainly did. Professor Louis Jaffe described something very like the *Chevron* two-step as the preferred method of reviewing agency interpretations under the APA. A court, he said, first "must decide as a 'question of law' whether there is 'discretion' in the premises." Judicial Control of Administrative Action 570 (1965). That is akin to step 1: Did Congress speak to the issue, or did it leave openness? And if the latter, Jaffe continued, the agency's view "if 'reasonable' is free of control." *Ibid.* That of course looks like step 2: defer if reasonable. And just in case that description was too complicated, Jaffe conveyed his main point this way: The argument that courts "must decide all questions of law"—as if there were no agency in the picture—"is, in my opinion, unsound." *Id.*, at 569. Similarly, Professor Kenneth Culp Davis, author of the then-preeminent treatise on administrative law, noted with approval that "reasonableness" review of agency interpretations—in which courts "refused to substitute judgment"—had "survived the APA." Administrative Law 880, 883, 885 (1951) (Davis). Other contemporaneous scholars and experts agreed. See R. Levin, The APA and the Assault on Deference, 106 Minn. L. Rev. 125, 181–183 (2021) (Levin) (listing many of them). They did not see in their own time what the majority finds there today.[4]

But as I will explain below, the majority also gets wrong the most relevant history, pertaining to how judicial review of agency interpretations operated in the years before the APA was enacted. See *infra*, at 19–23.

[4] I concede one exception (whose view was "almost completely isolated," Levin 181), but his comments on Section 706 refute a different aspect of the majority's argument. Professor John Dickinson, as the majority notes, thought that Section 706 precluded courts from deferring to agency interpretations. See Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review, 33 A. B. A. J. 434, 516 (1947)

Nor, evidently, did the Supreme Court. In the years after the APA was enacted, the Court "never indicated that section 706 rejected the idea that courts might defer to agency interpretations of law." Sunstein 1654. Indeed, not a single Justice so much as floated that view of the APA. To the contrary, the Court issued a number of decisions in those years deferring to an agency's statutory interpretation. See, *e.g.*, *Unemployment Compensation Comm'n of Alaska* v. *Aragon*, 329 U. S. 143, 153–154 (1946); *NLRB* v. *E. C. Atkins & Co.*, 331 U. S. 398, 403 (1947); *Cardillo* v. *Liberty Mut. Ins. Co.*, 330 U. S. 469, 478–479 (1947). And that continued right up until *Chevron*. See, *e.g.*, *Mitchell* v. *Budd*, 350 U. S. 473, 480 (1956); *Zenith Radio Corp.* v. *United States*, 437 U. S. 443, 450 (1978). To be clear: Deference in those years was not always given to interpretations that would receive it under *Chevron*. The practice then was more inconsistent and less fully elaborated than it later became. The point here is only that the Court came nowhere close to accepting the majority's view of the APA. Take the language from Section 706 that the majority most relies on: "decide all relevant questions of law." See *ante*, at 14. In the decade after the APA's enactment, those words were used only four times in Supreme Court opinions (all in footnotes)—and never to suggest that courts could not defer to agency interpretations. See Sunstein 1656.

The majority's view of Section 706 likewise gets no support from how judicial review operated in the years leading up to the APA. That prior history matters: As the majority recognizes, Section 706 was generally understood to "restate[] the present law as to the scope of judicial review."

(Dickinson); *ante*, at 16. But unlike the majority, he viewed that bar as "a change" to, not a restatement of, pre-APA law. Compare Dickinson 516 with *ante*, at 15–16. So if the majority really wants to rely on Professor Dickinson, it will have to give up the claim, which I address below, that the law before the APA forbade deference. See *infra*, at 19–23.

Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 108 (1947); *ante*, at 15–16. The problem for the majority is that in the years preceding the APA, courts became ever more deferential to agencies. New Deal administrative programs had by that point come into their own. And this Court and others, in a fairly short time, had abandoned their initial resistance and gotten on board. Justice Breyer, wearing his administrative-law-scholar hat, characterized the pre-APA period this way: "[J]udicial review of administrative action was curtailed, and particular agency decisions were frequently sustained with judicial obeisance to the mysteries of administrative expertise." S. Breyer et al., Administrative Law and Regulatory Policy 21 (7th ed. 2011). And that description extends to review of an agency's statutory constructions. An influential study of administrative practice, published five years before the APA's enactment, described the state of play: Judicial "review may, in some instances at least, be limited to the inquiry whether the administrative construction is a permissible one." Final Report of Attorney General's Committee on Administrative Procedure (1941), reprinted in Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess., 78 (1941). Or again: "[W]here the statute is reasonably susceptible of more than one interpretation, the court may accept that of the administrative body." *Id.*, at 90–91.[5]

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[5] Because the APA was meant to "restate[] the present law," the judicial review practices of the 1940s are more important to understanding the statute than is any earlier tradition (such as the majority dwells on). But before I expand on those APA-contemporaneous practices, I pause to note that they were "not built on sand." *Kisor* v. *Wilkie*, 588 U. S. 558, 568–569 (2019) (plurality opinion). Since the early days of the Republic, this Court has given significant weight to official interpretations of "ambiguous law[s]." *Edwards' Lessee* v. *Darby*, 12 Wheat. 206, 210 (1827). With the passage of time—and the growth of the administrative sphere—those "judicial expressions of deference increased." H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 15 (1983). By

Two prominent Supreme Court decisions of the 1940s put those principles into action. *Gray* v. *Powell*, 314 U. S. 402 (1941), was then widely understood as "the leading case" on review of agency interpretations. Davis 882; see *ibid.* (noting that it "establish[ed] what is known as 'the doctrine of Gray v. Powell'"). There, the Court deferred to an agency construction of the term "producer" as used in a statutory exemption from price controls. Congress, the Court explained, had committed the scope of the exemption to the agency because its "experience in [the] field gave promise of a better informed, more equitable, adjustment of the conflicting interests." *Gray*, 314 U. S., at 412. Accordingly, the Court concluded that it was "not the province of a court" to "substitute its judgment" for the agency's. *Ibid.* Three years later, the Court decided *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111 (1944), another acknowledged "leading case." Davis 882; see *id.*, at 884. The Court again deferred, this time to an agency's construction of the term "employee" in the National Labor Relations Act. The scope of that term, the Court explained, "belong[ed] to" the agency to answer based on its "[e]veryday experience in the administration of the statute." *Hearst*, 322 U. S., at 130. The Court therefore "limited" its review to whether the agency's reading had "warrant in the record and a reasonable basis in

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the early 20th century, the Court stated that it would afford "great weight" to an agency construction in the face of statutory "uncertainty or ambiguity." *National Lead Co.* v. *United States*, 252 U. S. 140, 145 (1920); see *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) ("controlling" weight in "all cases of ambiguity"); *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892) ("decisive" weight "in case of ambiguity"); *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912) (referring to the "rule which gives strength" to official interpretations if "ambiguity exist[s]"). So even before the New Deal, a strand of this Court's cases exemplified deference to executive constructions of ambiguous statutes. And then, as I show in the text, the New Deal arrived and deference surged—creating the "present law" that the APA "restated."

law." *Id.*, at 131.[6] Recall here that even the majority accepts that Section 706 was meant to "restate[] the present law" as to judicial review. See *ante*, at 15–16; *supra*, at 19–20. Well then? It sure would seem that the provision allows a deference regime.

The majority has no way around those two noteworthy decisions. It first appears to distinguish between "pure legal question[s]" and the so-called mixed questions in *Gray* and *Hearst*, involving the application of a legal standard to a set of facts. *Ante*, at 11. If in drawing that distinction, the majority intends to confine its holding to the pure type of legal issue—thus enabling courts to defer when law and facts are entwined—I'd be glad. But I suspect the majority has no such intent, because that approach would preserve *Chevron* in a substantial part of its current domain. Cf. *Wilkinson* v. *Garland*, 601 U. S. 209, 230 (2024) (ALITO, J., dissenting) (noting, in the immigration context, that the universe of mixed questions swamps that of pure legal ones). It is frequently in the consideration of mixed questions that the scope of statutory terms is established and their meaning defined. See H. Monaghan, *Marbury* and the

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[6]The majority says that I have "pluck[ed] out" *Gray* and *Hearst*, impliedly from a vast number of not-so-helpful cases. *Ante*, at 13, n. 3. It would make as much sense to say that a judge "plucked out" *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474 (1951), to discuss substantial-evidence review or "plucked out" *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29 (1983), to discuss arbitrary-and-capricious review. *Gray* and *Hearst*, as noted above, were the leading cases about agency interpretations in the years before the APA's enactment. But just to gild the lily, here are a number of other Supreme Court decisions from the five years prior to the APA's enactment that were of a piece: *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 536 (1946); *ICC* v. *Parker*, 326 U. S. 60, 65 (1945); *Federal Security Administrator* v. *Quaker Oats Co.*, 318 U. S. 218, 227–228 (1943). The real "pluck[ing]" offense is the majority's—for taking a stray sentence from *Hearst* (*ante*, at 13, n. 3) to suggest that both *Hearst* and *Gray* stand for the opposite of what they actually do.

Administrative State, 83 Colum. L. Rev. 1, 29 (1983) ("Administrative application of law is administrative formulation of law whenever it involves elaboration of the statutory norm"). How does a statutory interpreter decide, as in *Hearst*, what an "employee" is? In large part through cases asking whether the term covers people performing specific jobs, like (in that case) "newsboys." 322 U. S., at 120. Or consider one of the examples I offered above. How does an interpreter decide when one population segment of a species is "distinct" from another? Often by considering that requirement with respect to particular species, like western gray squirrels. So the distinction the majority offers makes no real-world (or even theoretical) sense. If the *Hearst* Court was deferring to an agency on whether the term "employee" covered newsboys, it was deferring to the agency on the scope and meaning of the term "employee."

The majority's next rejoinder—that "the Court was far from consistent" in deferring—falls equally flat. *Ante*, at 12. I am perfectly ready to acknowledge that in the pre-APA period, a deference regime had not yet taken complete hold. I'll go even further: Let's assume that deference was then an on-again, off-again function (as the majority seems to suggest, see *ante*, at 11–12, and 13, n. 3). Even on that assumption, the majority's main argument—that Section 706 *prohibited* deferential review—collapses. Once again, the majority agrees that Section 706 was not meant to change the then-prevailing law. See *ante*, at 15–16. And even if inconsistent, that law cannot possibly be thought to have *prohibited* deference. Or otherwise said: "If Section 706 did not change the law of judicial review (as we have long recognized), then it did not proscribe a deferential standard then known and in use." *Kisor*, 588 U. S., at 583 (plurality opinion).

The majority's whole argument for overturning *Chevron* relies on Section 706. But the text of Section 706 does not support that result. And neither does the contemporaneous

practice, which that text was supposed to reflect. So today's decision has no basis in the only law the majority deems relevant. It is grounded on air.

III

And still there is worse, because abandoning *Chevron* subverts every known principle of *stare decisis*. Of course, respecting precedent is not an "inexorable command." *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991). But overthrowing it requires far more than the majority has offered up here. *Chevron* is entitled to *stare decisis*'s strongest form of protection. The majority thus needs an exceptionally strong reason to overturn the decision, above and beyond thinking it wrong. And it has nothing approaching such a justification, proposing only a bewildering theory about *Chevron*'s "unworkability." *Ante*, at 32. Just five years ago, this Court in *Kisor* rejected a plea to overrule *Auer* v. *Robbins*, 519 U. S. 452 (1997), which requires judicial deference to agencies' interpretations of their own regulations. See 588 U. S., at 586–589 (opinion of the Court). The case against overruling *Chevron* is at least as strong. In particular, the majority's decision today will cause a massive shock to the legal system, "cast[ing] doubt on many settled constructions" of statutes and threatening the interests of many parties who have relied on them for years. 588 U. S., at 587 (opinion of the Court).

Adherence to precedent is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 798 (2014). *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827. It enables people to order their lives in reliance on judicial decisions. And it "contributes to the actual and perceived integrity of the judicial process," by ensuring that those decisions are founded in the law, and not in the "personal preferences" of judges. *Id.*, at 828; *Dobbs*, 597 U. S., at 388 (dissenting opinion).

Perhaps above all else, *stare decisis* is a "doctrine of judicial modesty." *Id.*, at 363. In that, it shares something important with *Chevron*. Both tell judges that they do not know everything, and would do well to attend to the views of others. So today, the majority rejects what judicial humility counsels not just once but twice over.

And *Chevron* is entitled to a particularly strong form of *stare decisis*, for two separate reasons. First, it matters that "Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 173 (1989); see *Kisor*, 588 U. S., at 587 (opinion of the Court) (making the same point for *Auer* deference). In a constitutional case, the Court alone can correct an error. But that is not so here. "Our deference decisions are balls tossed into Congress's court, for acceptance or not as that branch elects." 588 U. S., at 587–588 (opinion of the Court). And for generations now, Congress has chosen acceptance. Throughout those years, Congress could have abolished *Chevron* across the board, most easily by amending the APA. Or it could have eliminated deferential review in discrete areas, by amending old laws or drafting new laws to include an anti-*Chevron* provision. Instead, Congress has "spurned multiple opportunities" to do a comprehensive rejection of *Chevron*, and has hardly ever done a targeted one. *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 456 (2015); see *supra*, at 14–15. Or to put the point more affirmatively, Congress has kept *Chevron* as is for 40 years. It maintained that position even as Members of this Court began to call *Chevron* into question. See *ante*, at 30. From all it appears, Congress has not agreed with the view of some Justices that they and other judges should have more power.

Second, *Chevron* is by now much more than a single decision. This Court alone, acting as *Chevron* allows, has upheld an agency's reasonable interpretation of a statute at least 70 times. See Brief for United States in No. 22–1219,

p. 27; App. to *id.*, at 68a–72a (collecting cases). Lower courts have applied the *Chevron* framework on thousands upon thousands of occasions. See K. Barnett & C. Walker, *Chevron* and Stare Decisis, 31 Geo. Mason L. Rev. 475, 477, and n. 11 (2024) (noting that at last count, *Chevron* was cited in more than 18,000 federal-court decisions). The *Kisor* Court observed, when upholding *Auer*, that "[d]eference to reasonable agency interpretations of ambiguous rules pervades the whole corpus of administrative law." 588 U. S., at 587 (opinion of the Court). So too does deference to reasonable agency interpretations of ambiguous statutes—except more so. *Chevron* is as embedded as embedded gets in the law.

The majority says differently, because this Court has ignored *Chevron* lately; all that is left of the decision is a "decaying husk with bold pretensions." *Ante*, at 33. Tell that to the D. C. Circuit, the court that reviews a large share of agency interpretations, where *Chevron* remains alive and well. See, *e.g.*, *Lissack* v. *Commissioner*, 68 F. 4th 1312, 1321–1322 (2023); *Solar Energy Industries Assn.* v. *FERC*, 59 F. 4th 1287, 1291–1294 (2023). But more to the point: The majority's argument is a bootstrap. This Court has "avoided deferring under *Chevron* since 2016" (*ante*, at 32) because it has been preparing to overrule *Chevron* since around that time. That kind of self-help on the way to reversing precedent has become almost routine at this Court. Stop applying a decision where one should; "throw some gratuitous criticisms into a couple of opinions"; issue a few separate writings "question[ing the decision's] premises" (*ante*, at 30); give the whole process a few years . . . and voila!—you have a justification for overruling the decision. *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 950 (2018) (KAGAN, J., dissenting) (discussing the overruling of *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977)); see also, *e.g.*, *Kennedy* v. *Bremerton School Dist.*, 597 U. S. 507, 571–572 (2022) (SOTOMAYOR, J., dissenting) (similar

for *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971)); *Shelby County* v. *Holder*, 570 U. S. 529, 587–588 (2013) (Ginsburg, J., dissenting) (similar for *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966)). I once remarked that this overruling-through-enfeeblement technique "mock[ed] *stare decisis*." *Janus*, 585 U. S., at 950 (dissenting opinion). I have seen no reason to change my mind.

The majority does no better in its main justification for overruling *Chevron*—that the decision is "unworkable." *Ante*, at 30. The majority's first theory on that score is that there is no single "answer" about what "ambiguity" means: Some judges turn out to see more of it than others do, leading to "different results." *Ante*, at 30–31. But even if so, the legal system has for many years, in many contexts, dealt perfectly well with that variation. Take contract law. It is hornbook stuff that when (but only when) a contract is ambiguous, a court interpreting it can consult extrinsic evidence. See *CNH Industrial N.V.* v. *Reese*, 583 U. S. 133, 139 (2018) (*per curiam*). And when all interpretive tools still leave ambiguity, the contract is construed against the drafter. See *Lamps Plus, Inc.* v. *Varela*, 587 U. S. 176, 186–187 (2019). So I guess the contract rules of the 50 States are unworkable now. Or look closer to home, to doctrines this Court regularly applies. In deciding whether a government has waived sovereign immunity, we construe "[a]ny ambiguities in the statutory language" in "favor of immunity." *FAA* v. *Cooper*, 566 U. S. 284, 290 (2012). Similarly, the rule of lenity tells us to construe ambiguous statutes in favor of criminal defendants. See *United States* v. *Castleman*, 572 U. S. 157, 172–173 (2014). And the canon of constitutional avoidance instructs us to construe ambiguous laws to avoid difficult constitutional questions. See *United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483, 494 (2001). I could go on, but the point is made. There are ambiguity triggers all over the law. Somehow everyone seems to get by.

And *Chevron* is an especially puzzling decision to criticize on the ground of generating too much judicial divergence. There's good empirical—meaning, non-impressionistic—evidence on exactly that subject. And it shows that, as compared with *de novo* review, use of the *Chevron* two-step framework fosters *agreement* among judges. See K. Barnett, C. Boyd, & C. Walker, Administrative Law's Political Dynamics, 71 Vand. L. Rev. 1463, 1502 (2018) (Barnett). More particularly, *Chevron* has a "powerful constraining effect on partisanship in judicial decisionmaking." Barnett 1463 (italics deleted); see Sunstein 1672 ("[A] predictable effect of overruling *Chevron* would be to ensure a far greater role for judicial policy preferences in statutory interpretation and far more common splits along ideological lines"). So if consistency among judges is the majority's lodestar, then the Court should not overrule *Chevron*, but return to using it.

The majority's second theory on workability is likewise a makeweight. *Chevron*, the majority complains, has some exceptions, which (so the majority says) are "difficult" and "complicate[d]" to apply. *Ante*, at 32. Recall that courts are not supposed to defer when the agency construing a statute (1) has not been charged with administering that law; (2) has not used deliberative procedures—*i.e.,* notice-and-comment rulemaking or adjudication; or (3) is intervening in a "major question," of great economic and political significance. See *supra*, at 11–12; *ante*, at 27–28. As I've explained, those exceptions—the majority also aptly calls them "refinements"—fit with *Chevron*'s rationale: They define circumstances in which Congress is unlikely to have wanted agency views to govern. *Ante*, at 27; see *supra*, at 11–12. And on the difficulty scale, they are nothing much. Has Congress put the agency in charge of administering the statute? In 99 of 100 cases, everyone will agree on the answer with scarcely a moment's thought. Did the agency use notice-and-comment or an adjudication before rendering an

interpretation? Once again, I could stretch my mind and think up a few edge cases, but for the most part, the answer is an easy yes or no. The major questions exception is, I acknowledge, different: There, many judges have indeed disputed its nature and scope. Compare, *e.g.*, *West Virginia*, 597 U. S., at 721–724, with *id.*, at 764–770 (KAGAN, J., dissenting). But that disagreement concerns, on everyone's view, a tiny subset of all agency interpretations. For the most part, the exceptions that so upset the majority require merely a rote, check-the-box inquiry. If that is the majority's idea of a "dizzying breakdance," *ante*, at 32, the majority needs to get out more.

And anyway, difficult as compared to what? The majority's prescribed way of proceeding is no walk in the park. First, the majority makes clear that what is usually called *Skidmore* deference continues to apply. See *ante*, at 16–17. Under that decision, agency interpretations "constitute a body of experience and informed judgment" that may be "entitled to respect." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944). If the majority thinks that the same judges who argue today about where "ambiguity" resides (see *ante*, at 30) are not going to argue tomorrow about what "respect" requires, I fear it will be gravely disappointed. Second, the majority directs courts to comply with the varied ways in which Congress in fact "delegates discretionary authority" to agencies. *Ante*, at 17–18. For example, Congress may authorize an agency to "define[]" or "delimit[]" statutory terms or concepts, or to "fill up the details" of a statutory scheme. *Ante*, at 17, and n. 5. Or Congress may use, in describing an agency's regulatory authority, inherently "flexib[le]" language like "appropriate" or "reasonable." *Ante*, at 17, and n. 6. Attending to every such delegation, as the majority says, is necessary in a world without *Chevron*. But that task involves complexities of its own. Indeed, one reason Justice Scalia supported *Chevron* was that it re-

placed such a "statute-by-statute evaluation (which was assuredly a font of uncertainty and litigation) with an across-the-board presumption." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516. As a lover of the predictability that rules create, Justice Scalia thought the latter "unquestionably better." *Id.*, at 517.

On the other side of the balance, the most important *stare decisis* factor—call it the "jolt to the legal system" issue—weighs heavily against overruling *Chevron*. *Dobbs*, 597 U. S., at 357 (ROBERTS, C. J., concurring in judgment). Congress and agencies alike have relied on *Chevron*—have assumed its existence—in much of their work for the last 40 years. Statutes passed during that time reflect the expectation that *Chevron* would allocate interpretive authority between agencies and courts. Rules issued during the period likewise presuppose that statutory ambiguities were the agencies' to (reasonably) resolve. Those agency interpretations may have benefited regulated entities; or they may have protected members of the broader public. Either way, private parties have ordered their affairs—their business and financial decisions, their health-care decisions, their educational decisions—around agency actions that are suddenly now subject to challenge. In *Kisor*, this Court refused to overrule *Auer* because doing so would "cast doubt on" many longstanding constructions of rules, and thereby upset settled expectations. 588 U. S., at 587 (opinion of the Court). Overruling *Chevron*, and thus raising new doubts about agency constructions of statutes, will be far more disruptive.

The majority tries to alleviate concerns about a piece of that problem: It states that judicial decisions that have upheld agency action as reasonable under *Chevron* should not be overruled on that account alone. See *ante*, at 34–35. That is all to the good: There are thousands of such decisions, many settled for decades. See *supra*, at 26. But first,

reasonable reliance need not be predicated on a prior judicial decision. Some agency interpretations never challenged under *Chevron* now will be; expectations formed around those constructions thus could be upset, in a way the majority's assurance does not touch. And anyway, how good is that assurance, really? The majority says that a decision's "[m]ere reliance on *Chevron*" is not enough to counter the force of *stare decisis*; a challenger will need an additional "special justification." *Ante*, at 34. The majority is sanguine; I am not so much. Courts motivated to overrule an old *Chevron*-based decision can always come up with something to label a "special justification." Maybe a court will say "the quality of [the precedent's] reasoning" was poor. *Ante*, at 29. Or maybe the court will discover something "unworkable" in the decision—like some exception that has to be applied. *Ante*, at 30. All a court need do is look to today's opinion to see how it is done.

IV

> Judges are not experts in the field, and are not part of either political branch of the Government.
>
> —*Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 865 (1984)

Those were the days, when we knew what we are not. When we knew that as between courts and agencies, Congress would usually think agencies the better choice to resolve the ambiguities and fill the gaps in regulatory statutes. Because agencies *are* "experts in the field." And because they *are* part of a political branch, with a claim to making interstitial policy. And because Congress has charged them, not us, with administering the statutes containing the open questions. At its core, *Chevron* is about respecting that allocation of responsibility—the conferral of primary authority over regulatory matters to agencies, not courts.

Today, the majority does not respect that judgment. It gives courts the power to make all manner of scientific and technical judgments. It gives courts the power to make all manner of policy calls, including about how to weigh competing goods and values. (See *Chevron* itself.) It puts courts at the apex of the administrative process as to every conceivable subject—because there are always gaps and ambiguities in regulatory statutes, and often of great import. What actions can be taken to address climate change or other environmental challenges? What will the Nation's health-care system look like in the coming decades? Or the financial or transportation systems? What rules are going to constrain the development of A.I.? In every sphere of current or future federal regulation, expect courts from now on to play a commanding role. It is not a role Congress has given to them, in the APA or any other statute. It is a role this Court has now claimed for itself, as well as for other judges.

And that claim requires disrespecting, too, this Court's precedent. There are no special reasons, of the kind usually invoked for overturning precedent, to eliminate *Chevron* deference. And given *Chevron*'s pervasiveness, the decision to do so is likely to produce large-scale disruption. All that backs today's decision is the majority's belief that *Chevron* was wrong—that it gave agencies too much power and courts not enough. But shifting views about the worth of regulatory actors and their work do not justify overhauling a cornerstone of administrative law. In that sense too, today's majority has lost sight of its proper role.

And it is impossible to pretend that today's decision is a one-off, in either its treatment of agencies or its treatment of precedent. As to the first, this very Term presents yet another example of the Court's resolve to roll back agency authority, despite congressional direction to the contrary. See *SEC* v. *Jarkesy*, 603 U. S. ___ (2024); see also *supra*, at 3. As to the second, just my own defenses of *stare decisis*—

my own dissents to this Court's reversals of settled law—by now fill a small volume. See *Dobbs*, 597 U. S., at 363–364 (joint opinion of Breyer, SOTOMAYOR, and KAGAN, JJ.); *Edwards* v. *Vannoy*, 593 U. S. 255, 296–297 (2021); *Knick* v. *Township of Scott*, 588 U. S. 180, 207–208 (2019); *Janus*, 585 U. S., at 931–932. Once again, with respect, I dissent.

Attachment 5 Mifeprex FDA package insert

HIGHLIGHTS OF PRESCRIBING INFORMATION
These highlights do not include all the information needed to use MIFEPREX safely and effectively. See full prescribing information for MIFEPREX.

MIFEPREX® (mifepristone) tablets, for oral use
Initial U.S. Approval: 2000

WARNING: SERIOUS AND SOMETIMES FATAL INFECTIONS OR BLEEDING

See full prescribing information for complete boxed warning.

Serious and sometimes fatal infections and bleeding occur very rarely following spontaneous, surgical, and medical abortions, including following MIFEPREX use.

- **Atypical Presentation of Infection. Patients with serious bacterial infections and sepsis can present without fever, bacteremia or significant findings on pelvic examination. A high index of suspicion is needed to rule out serious infection and sepsis. (5.1)**
- **Bleeding. Prolonged heavy bleeding may be a sign of incomplete abortion or other complications and prompt medical or surgical intervention may be needed. (5.2)**

MIFEPREX is only available through a restricted program called the MIFEPREX REMS Program (5.3).
Before prescribing MIFEPREX, inform the patient about these risks. Ensure the patient knows whom to call and what to do if she experiences sustained fever, severe abdominal pain, prolonged heavy bleeding, or syncope, or if she experiences abdominal pain or discomfort or general malaise for more than 24 hours after taking misoprostol.
Advise the patient to take the MEDICATION GUIDE with her if she visits an emergency room or another healthcare provider who did not prescribe MIFEPREX, so that provider knows that she is undergoing a medical abortion. (5.1, 5.2)

----------RECENT MAJOR CHANGES----------

Boxed Warning	3/2016
Indications and Usage (1)	3/2016
Dosage and Administration, Dosing Regimen (2.1)	3/2016
Dosage and Administration, Post-treatment Assessment: Day 7 to 14 (2.3)	3/2016
Warnings and Precautions, MIFEPREX REMS Program (5.3)	3/2016
Warnings and Precautions, Ectopic Pregnancy (5.4)	3/2016

----------INDICATIONS AND USAGE----------

MIFEPREX is a progestin antagonist indicated, in a regimen with misoprostol, for the medical termination of intrauterine pregnancy through 70 days gestation. (1)

----------DOSAGE AND ADMINISTRATION----------

- 200 mg MIFEPREX on Day 1, followed 24-48 hours after MIFEPREX dosing by 800 mcg buccal misoprostol. (2.1)
- Instruct the patient what to do if significant adverse reactions occur. (2.2)
- Follow-up is needed to confirm complete termination of pregnancy. (2.3)

----------DOSAGE FORMS AND STRENGTHS----------

Tablets containing 200 mg of mifepristone each, supplied as 1 tablet on one blister card (3)

----------CONTRAINDICATIONS----------

- Confirmed/suspected ectopic pregnancy or undiagnosed adnexal mass (4)
- Chronic adrenal failure (4)
- Concurrent long-term corticosteroid therapy (4)
- History of allergy to mifepristone, misoprostol, or other prostaglandins (4)
- Hemorrhagic disorders or concurrent anticoagulant therapy (4)
- Inherited porphyria (4)
- Intrauterine device (IUD) in place (4)

----------WARNINGS AND PRECAUTIONS----------

- Ectopic pregnancy: Exclude before treatment. (5.4)
- Rhesus immunization: Prevention needed as for surgical abortion. (5.5)

----------ADVERSE REACTIONS----------

Most common adverse reactions (>15%) are nausea, weakness, fever/chills, vomiting, headache, diarrhea, and dizziness. (6)

To report SUSPECTED ADVERSE REACTIONS, contact Danco Laboratories, LLC at 1-877-432-7596 or medicaldirector@earlyoptionpill.com or www.earlyoptionpill.com or FDA at 1-800-FDA-1088 or *www.fda.gov/medwatch*.

----------DRUG INTERACTIONS----------

- CYP3A4 inducers can lower mifepristone concentrations. (7.1)
- CYP3A4 inhibitors can increase mifepristone concentrations. Use with caution. (7.2)
- CYP3A4 substrate concentrations can be increased. Caution with coadministration of substrates with narrow therapeutic margin. (7.3)

----------USE IN SPECIFIC POPULATIONS----------

- Pregnancy: Risk of fetal malformations in ongoing pregnancy if not terminated is unknown. (8.1)

See 17 for PATIENT COUNSELING INFORMATION, Medication Guide.

Revised: 3/2016

FULL PRESCRIBING INFORMATION: CONTENTS*

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*Sections or subsections omitted from the full prescribing information are not listed.

FULL PRESCRIBING INFORMATION

WARNING: SERIOUS AND SOMETIMES FATAL INFECTIONS OR BLEEDING

Serious and sometimes fatal infections and bleeding occur very rarely following spontaneous, surgical, and medical abortions, including following MIFEPREX use. No causal relationship between the use of MIFEPREX and misoprostol and these events has been established.

- **Atypical Presentation of Infection. Patients with serious bacterial infections (e.g., *Clostridium sordellii*) and sepsis can present without fever, bacteremia, or significant findings on pelvic examination following an abortion. Very rarely, deaths have been reported in patients who presented without fever, with or without abdominal pain, but with leukocytosis with a marked left shift, tachycardia, hemoconcentration, and general malaise. A high index of suspicion is needed to rule out serious infection and sepsis *[see Warnings and Precautions (5.1)]*.**
- **Bleeding. Prolonged heavy bleeding may be a sign of incomplete abortion or other complications and prompt medical or surgical intervention may be needed. Advise patients to seek immediate medical attention if they experience prolonged heavy vaginal bleeding *[see Warnings and Precautions (5.2)]*.**

Because of the risks of serious complications described above, MIFEPREX is available only through a restricted program under a Risk Evaluation and Mitigation Strategy (REMS) called the MIFEPREX REMS Program *[see Warnings and Precautions (5.3)]*.

Before prescribing MIFEPREX, inform the patient about the risk of these serious events. Ensure that the patient knows whom to call and what to do, including going to an Emergency Room if none of the provided contacts are reachable, if she experiences sustained fever, severe abdominal pain, prolonged heavy bleeding, or syncope, or if she experiences abdominal pain or discomfort, or general malaise (including weakness, nausea, vomiting or diarrhea) for more than 24 hours after taking misoprostol.

Advise the patient to take the Medication Guide with her if she visits an emergency room or a healthcare provider who did not prescribe MIFEPREX, so that the provider knows that she is undergoing a medical abortion.

1 INDICATIONS AND USAGE

MIFEPREX is indicated, in a regimen with misoprostol, for the medical termination of intrauterine pregnancy through 70 days gestation.

2 DOSAGE AND ADMINISTRATION

2.1 Dosing Regimen

For purposes of this treatment, pregnancy is dated from the first day of the last menstrual period. The duration of pregnancy may be determined from menstrual history and clinical examination. Assess the pregnancy by ultrasonographic scan if the duration of pregnancy is uncertain or if ectopic pregnancy is suspected.

Remove any intrauterine device ("IUD") before treatment with MIFEPREX begins [*see Contraindications (4)*].

The dosing regimen for MIFEPREX and misoprostol is:

- MIFEPREX 200 mg orally + misoprostol 800 mcg buccally
  - *Day One:* MIFEPREX Administration
    One 200 mg tablet of MIFEPREX is taken in a single oral dose.
  - *Day Two or Three:* Misoprostol Administration (minimum 24-hour interval between MIFEPREX and misoprostol)
    Four 200 mcg tablets (total dose 800 mcg) of misoprostol are taken by the buccal route.

    Tell the patient to place two 200 mcg misoprostol tablets in each cheek pouch (the area between the cheek and gums) for 30 minutes and then swallow any remnants with water or another liquid (see Figure 1).

    Figure 1

    2 pills between cheek and gum on left side + 2 pills between cheek and gum on right side

Patients taking MIFEPREX must take misoprostol within 24 to 48 hours after taking MIFEPREX. The effectiveness of the regimen may be lower if misoprostol is administered less than 24 hours or more than 48 hours after mifepristone administration.

Because most women will expel the pregnancy within 2 to 24 hours of taking misoprostol *[see Clinical Studies (14)]*, discuss with the patient an appropriate location for her to be when she takes the misoprostol, taking into account that expulsion could begin within 2 hours of administration.

2.2 Patient Management Following Misoprostol Administration

During the period immediately following the administration of misoprostol, the patient may need medication for cramps or gastrointestinal symptoms *[see Adverse Reactions (6)].*

Give the patient:

- Instructions on what to do if significant discomfort, excessive vaginal bleeding or other adverse reactions occur
- A phone number to call if she has questions following the administration of the misoprostol

- The name and phone number of the healthcare provider who will be handling emergencies.

2.3 Post-treatment Assessment: Day 7 to 14

Patients should follow-up with their healthcare provider approximately 7 to 14 days after the administration of MIFEPREX. This assessment is very important to confirm that complete termination of pregnancy has occurred and to evaluate the degree of bleeding. Termination can be confirmed by medical history, clinical examination, human Chorionic Gonadotropin (hCG) testing, or ultrasonographic scan. Lack of bleeding following treatment usually indicates failure; however, prolonged or heavy bleeding is not proof of a complete abortion.

The existence of debris in the uterus (e.g., if seen on ultrasonography) following the treatment procedure will not necessarily require surgery for its removal.

Women should expect to experience vaginal bleeding or spotting for an average of 9 to 16 days. Women report experiencing heavy bleeding for a median duration of 2 days. Up to 8% of women may experience some type of bleeding for more than 30 days. Persistence of heavy or moderate vaginal bleeding at the time of follow-up, however, could indicate an incomplete abortion.

If complete expulsion has not occurred, but the pregnancy is not ongoing, women may be treated with another dose of misoprostol 800 mcg buccally. There have been rare reports of uterine rupture in women who took Mifeprex and misoprostol, including women with prior uterine rupture or uterine scar and women who received multiple doses of misoprostol within 24 hours. Women who choose to use a repeat dose of misoprostol should have a follow-up visit with their healthcare provider in approximately 7 days to assess for complete termination.

Surgical evacuation is recommended to manage ongoing pregnancies after medical abortion *[see Use in Specific Populations (8.1)]*. Advise the patient whether you will provide such care or will refer her to another provider as part of counseling prior to prescribing MIFEPREX.

2.4 Contact for Consultation

For consultation 24 hours a day, 7 days a week with an expert in mifepristone, call Danco Laboratories at 1-877-4 Early Option (1-877-432-7596).

3 DOSAGE FORMS AND STRENGTHS

Tablets containing 200 mg of mifepristone each, supplied as 1 tablet on one blister card. MIFEPREX tablets are light yellow, cylindrical, and bi-convex tablets, approximately 11 mm in diameter and imprinted on one side with “MF.”

4 CONTRAINDICATIONS

- Administration of MIFEPREX and misoprostol for the termination of pregnancy (the “treatment procedure”) is contraindicated in patients with any of the following conditions:
  - Confirmed or suspected ectopic pregnancy or undiagnosed adnexal mass (the treatment procedure will not be effective to terminate an ectopic pregnancy) *[see Warnings and Precautions (5.4)]*
  - Chronic adrenal failure (risk of acute renal insufficiency)
  - Concurrent long-term corticosteroid therapy (risk of acute renal insufficiency)

- History of allergy to mifepristone, misoprostol, or other prostaglandins (allergic reactions including anaphylaxis, angioedema, rash, hives, and itching have been reported *[see Adverse Reactions (6.2)]*)
- Hemorrhagic disorders or concurrent anticoagulant therapy (risk of heavy bleeding)
- Inherited porphyrias (risk of worsening or of precipitation of attacks)

- Use of MIFEPREX and misoprostol for termination of intrauterine pregnancy is contraindicated in patients with an intrauterine device ("IUD") in place (the IUD might interfere with pregnancy termination). If the IUD is removed, MIFEPREX may be used.

5 WARNINGS AND PRECAUTIONS

5.1 Infection and Sepsis

As with other types of abortion, cases of serious bacterial infection, including very rare cases of fatal septic shock, have been reported following the use of MIFEPREX *[see Boxed Warning]*. Healthcare providers evaluating a patient who is undergoing a medical abortion should be alert to the possibility of this rare event. A sustained (> 4 hours) fever of 100.4°F or higher, severe abdominal pain, or pelvic tenderness in the days after a medical abortion may be an indication of infection.

A high index of suspicion is needed to rule out sepsis (e.g., from *Clostridium sordellii*) if a patient reports abdominal pain or discomfort or general malaise (including weakness, nausea, vomiting or diarrhea) more than 24 hours after taking misoprostol. Very rarely, deaths have been reported in patients who presented without fever, with or without abdominal pain, but with leukocytosis with a marked left shift, tachycardia, hemoconcentration, and general malaise. No causal relationship between MIFEPREX and misoprostol use and an increased risk of infection or death has been established. *Clostridium sordellii* infections have also been reported very rarely following childbirth (vaginal delivery and caesarian section), and in other gynecologic and non-gynecologic conditions.

5.2 Uterine Bleeding

Uterine bleeding occurs in almost all patients during a medical abortion. Prolonged heavy bleeding (soaking through two thick full-size sanitary pads per hour for two consecutive hours) may be a sign of incomplete abortion or other complications and prompt medical or surgical intervention may be needed to prevent the development of hypovolemic shock. Counsel patients to seek immediate medical attention if they experience prolonged heavy vaginal bleeding following a medical abortion *[see Boxed Warning]*.

Women should expect to experience vaginal bleeding or spotting for an average of 9 to 16 days. Women report experiencing heavy bleeding for a median duration of 2 days. Up to 8% of all subjects may experience some type of bleeding for 30 days or more. In general, the duration of bleeding and spotting increased as the duration of the pregnancy increased.

Decreases in hemoglobin concentration, hematocrit, and red blood cell count may occur in women who bleed heavily.

Excessive uterine bleeding usually requires treatment by uterotonics, vasoconstrictor drugs, surgical uterine evacuation, administration of saline infusions, and/or blood transfusions. Based on data from several large clinical trials, vasoconstrictor drugs were used in 4.3% of all subjects, there was a decrease in hemoglobin of more than 2 g/dL in 5.5% of subjects, and blood transfusions were administered to ≤ 0.1% of subjects. Because heavy bleeding requiring

surgical uterine evacuation occurs in about 1% of patients, special care should be given to patients with hemostatic disorders, hypocoagulability, or severe anemia.

5.3 MIFEPREX REMS Program

MIFEPREX is available only through a restricted program under a REMS called the MIFEPREX REMS Program, because of the risks of serious complications *[see Warnings and Precautions (5.1, 5.2)]*.

Notable requirements of the MIFEPREX REMS Program include the following:

- Prescribers must be certified with the program by completing the Prescriber Agreement Form
- Patients must sign a Patient Agreement Form.
- MIFEPREX must be dispensed to patients only in certain healthcare settings, specifically clinics, medical offices and hospitals by or under the supervision of a certified prescriber

Further information is available at 1-877-4 Early Option (1-877-432-7596).

5.4 Ectopic Pregnancy

MIFEPREX is contraindicated in patients with a confirmed or suspected ectopic pregnancy because MIFEPREX is not effective for terminating ectopic pregnancies *[see Contraindications (4)].* Healthcare providers should remain alert to the possibility that a patient who is undergoing a medical abortion could have an undiagnosed ectopic pregnancy because some of the expected symptoms experienced with a medical abortion (abdominal pain, uterine bleeding) may be similar to those of a ruptured ectopic pregnancy. The presence of an ectopic pregnancy may have been missed even if the patient underwent ultrasonography prior to being prescribed MIFEPREX.

Women who became pregnant with an IUD in place should be assessed for ectopic pregnancy.

5.5 Rhesus Immunization

The use of MIFEPREX is assumed to require the same preventive measures as those taken prior to and during surgical abortion to prevent rhesus immunization.

6 ADVERSE REACTIONS

The following adverse reactions are described in greater detail in other sections:

- Infection and sepsis *[see Warnings and Precautions (5.1)]*
- Uterine bleeding *[see Warnings and Precautions (5.2)]*

6.1 Clinical Trials Experience

Because clinical studies are conducted under widely varying conditions, adverse reaction rates observed in the clinical studies of a drug cannot be directly compared to rates in the clinical studies of another drug and may not reflect the rates observed in practice.

Information presented on common adverse reactions relies solely on data from US studies, because rates reported in non-US studies were markedly lower and are not likely generalizable to the US population. In three US clinical studies totaling 1,248 women through 70 days gestation who used mifepristone 200 mg orally followed 24-48 hours later by misoprostol 800 mcg buccally, women reported adverse reactions in diaries and in interviews at the follow-up visit. These studies enrolled generally healthy women of reproductive age without contraindications to mifepristone or misoprostol use according to the MIFEPREX product label.

Gestational age was assessed prior to study enrollment using the date of the woman's last menstrual period, clinical evaluation, and/or ultrasound examination.

About 85% of patients report at least one adverse reaction following administration of MIFEPREX and misoprostol, and many can be expected to report more than one such reaction. The most commonly reported adverse reactions (>15%) were nausea, weakness, fever/chills, vomiting, headache, diarrhea, and dizziness (see Table 1). The frequency of adverse reactions varies between studies and may be dependent on many factors including the patient population and gestational age.

Abdominal pain/cramping is expected in all medical abortion patients and its incidence is not reported in clinical studies. Treatment with MIFEPREX and misoprostol is designed to induce uterine bleeding and cramping to cause termination of an intrauterine pregnancy. Uterine bleeding and cramping are expected consequences of the action of MIFEPREX and misoprostol as used in the treatment procedure. Most women can expect bleeding more heavily than they do during a heavy menstrual period *[see Warnings and Precautions (5.2)]*.

Table 1 lists the adverse reactions reported in U.S. clinical studies with incidence >15% of women.

Table 1
Adverse Reactions Reported in Women Following Administration of Mifepristone (oral) and Misoprostol (buccal) in U.S. Clinical Studies

Adverse Reaction	# US studies	Number of Evaluable Women	Range of frequency (%)	Upper Gestational Age of Studies Reporting Outcome
Nausea	3	1,248	51-75%	70 days
Weakness	2	630	55-58%	63 days
Fever/chills	1	414	48%	63 days
Vomiting	3	1,248	37-48%	70 days
Headache	2	630	41-44%	63 days
Diarrhea	3	1,248	18-43%	70 days
Dizziness	2	630	39-41%	63 days

One study provided gestational-age stratified adverse reaction rates for women who were 57-63 and 64-70 days; there was little difference in frequency of the reported common adverse reactions by gestational age.

Information on serious adverse reactions was reported in six U.S. and four non-U.S. clinical studies, totaling 30,966 women through 70 days gestation who used mifepristone 200 mg orally followed 24-48 hours later by misoprostol 800 mcg buccally. Serious adverse reaction rates were similar between U.S. and non-U.S. studies, so rates from both U.S. and non-U.S. studies are presented. In the U.S. studies, one studied women through 56 days gestation, four through 63 days gestation, and one through 70 days gestation, while in the non-U.S. studies, two studied women through 63 days gestation, and two through 70 days gestation. Serious adverse reactions were reported in <0.5% of women. Information from the U.S. and non-U.S. studies is presented in Table 2.

Table 2
Serious Adverse Reactions Reported in Women Following Administration of Mifepristone (oral) and Misoprostol (buccal) in U.S. and Non-US Clinical Studies

Adverse Reaction	US			Non-US		
	# of studies	Number of Evaluable Women	Range of frequency (%)	# of studies	Number of Evaluable Women	Range of frequency (%)
Transfusion	4	17,774	0.03-0.5%	3	12,134	0-0.1%
Sepsis	1	629	0.2%	1	11,155	<0.01%*
ER visit	2	1,043	2.9-4.6%	1	95	0
Hospitalization Related to Medical Abortion	3	14,339	0.04-0.6%	3	1,286	0-0.7%
Infection without sepsis	1	216	0	1	11,155	0.2%
Hemorrhage	NR	NR	NR	1	11,155	0.1%

NR= Not reported
* This outcome represents a single patient who experienced death related to sepsis.

6.2 Postmarketing Experience

The following adverse reactions have been identified during postapproval use of MIFEPREX and misoprostol. Because these reactions are reported voluntarily from a population of uncertain size, it is not always possible to reliably estimate their frequency or establish a causal relationship to drug exposure.

Infections and infestations: post-abortal infection (including endometritis, endomyometritis, parametritis, pelvic infection, pelvic inflammatory disease, salpingitis)
Blood and the lymphatic system disorders: anemia
Immune system disorders: allergic reaction (including anaphylaxis, angioedema, hives, rash, itching)
Psychiatric disorders: anxiety
Cardiac disorders: tachycardia (including racing pulse, heart palpitations, heart pounding)
Vascular disorders: syncope, fainting, loss of consciousness, hypotension (including orthostatic), light-headedness
Respiratory, thoracic and mediastinal disorders: shortness of breath
Gastrointestinal disorders: dyspepsia
Musculoskeletal, connective tissue and bone disorders: back pain, leg pain
Reproductive system and breast disorders: uterine rupture, ruptured ectopic pregnancy, hematometra, leukorrhea
General disorders and administration site conditions: pain

7 DRUG INTERACTIONS

7.1 Drugs that May Reduce MIFEPREX Exposure (Effect of CYP 3A4 Inducers on MIFEPREX)

CYP450 3A4 is primarily responsible for the metabolism of mifepristone. CYP3A4 inducers such as rifampin, dexamethasone, St. John's Wort, and certain anticonvulsants (such as phenytoin, phenobarbital, carbamazepine) may induce mifepristone metabolism (lowering serum concentrations of mifepristone). Whether this action has an impact on the efficacy of the dose

regimen is unknown. Refer to the follow-up assessment *[see Dosage and Administration (2.3)]* to verify that treatment has been successful.

7.2 Drugs that May Increase MIFEPREX Exposure (Effect of CYP 3A4 Inhibitors on MIFEPREX)

Although specific drug or food interactions with mifepristone have not been studied, on the basis of this drug's metabolism by CYP 3A4, it is possible that ketoconazole, itraconazole, erythromycin, and grapefruit juice may inhibit its metabolism (increasing serum concentrations of mifepristone). MIFEPREX should be used with caution in patients currently or recently treated with CYP 3A4 inhibitors.

7.3 Effects of MIFEPREX on Other Drugs (Effect of MIFEPREX on CYP 3A4 Substrates)

Based on *in vitro* inhibition information, coadministration of mifepristone may lead to an increase in serum concentrations of drugs that are CYP 3A4 substrates. Due to the slow elimination of mifepristone from the body, such interaction may be observed for a prolonged period after its administration. Therefore, caution should be exercised when mifepristone is administered with drugs that are CYP 3A4 substrates and have narrow therapeutic range.

8 USE IN SPECIFIC POPULATIONS

8.1 Pregnancy

Risk Summary

Mifepristone is indicated, in a regimen with misoprostol, for the medical termination of intrauterine pregnancy through 70 days gestation. Risks to pregnant women are discussed throughout the labeling.

Refer to misoprostol labeling for risks to pregnant women with the use of misoprostol.

The risk of adverse developmental outcomes with a continued pregnancy after a failed pregnancy termination with MIFEPREX in a regimen with misoprostol is unknown; however, the process of a failed pregnancy termination could disrupt normal embryo-fetal development and result in adverse developmental effects. Birth defects have been reported with a continued pregnancy after a failed pregnancy termination with MIFEPREX in a regimen with misoprostol. In animal reproduction studies, increased fetal losses were observed in mice, rats, and rabbits and skull deformities were observed in rabbits with administration of mifepristone at doses lower than the human exposure level based on body surface area.

Data

Animal Data

In teratology studies in mice, rats and rabbits at doses of 0.25 to 4.0 mg/kg (less than 1/100 to approximately 1/3 the human exposure based on body surface area), because of the antiprogestational activity of mifepristone,fetal losses were much higher than in control animals. Skull deformaties were detected in rabbit studies at approximately 1/6 the human exposure, although no teratogenic effects of mifepristone have been observed to date in rats or mice. These deformities were most likely due to the mechanical effects of uterine contractions resulting from inhibition of progesterone action.

8.2 Lactation

MIFEPREX is present in human milk. Limited data demonstrate undetectable to low levels of the drug in human milk with the relative (weight-adjusted) infant dose 0.5% or less as compared to maternal dosing. There is no information on the effects of MIFEPREX in a regimen with

misoprostol in a breastfed infant or on milk production. Refer to misoprostol labeling for lactation information with the use of misoprostol. The developmental and health benefits of breast-feeding should be considered along with any potential adverse effects on the breast-fed child from MIFEPREX in a regimen with misoprostol.

8.4 Pediatric Use

Safety and efficacy of MIFEPREX have been established in pregnant females. Data from a clinical study of MIFEPREX that included a subset of 322 females under age 17 demonstrated a safety and efficacy profile similar to that observed in adults.

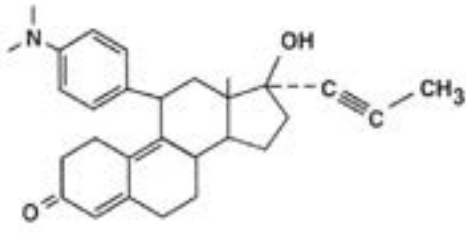
10 OVERDOSAGE

No serious adverse reactions were reported in tolerance studies in healthy non-pregnant female and healthy male subjects where mifepristone was administered in single doses greater than 1800 mg (ninefold the recommended dose for medical abortion). If a patient ingests a massive overdose, she should be observed closely for signs of adrenal failure.

11 DESCRIPTION

MIFEPREX tablets each contain 200 mg of mifepristone, a synthetic steroid with antiprogestational effects. The tablets are light yellow in color, cylindrical, and bi-convex, and are intended for oral administration only. The tablets include the inactive ingredients colloidal silica anhydrous, corn starch, povidone, microcrystalline cellulose, and magnesium stearate.

Mifepristone is a substituted 19-nor steroid compound chemically designated as 11ß-[*p*-(Dimethylamino)phenyl]-17ß-hydroxy-17-(1-propynyl)estra-4,9-dien-3-one. Its empirical formula is $C_{29}H_{35}NO_2$. Its structural formula is:



The compound is a yellow powder with a molecular weight of 429.6 and a melting point of 192-196°C. It is very soluble in methanol, chloroform and acetone and poorly soluble in water, hexane and isopropyl ether.

12 CLINICAL PHARMACOLOGY

12.1 Mechanism of Action

The anti-progestational activity of mifepristone results from competitive interaction with progesterone at progesterone-receptor sites. Based on studies with various oral doses in several animal species (mouse, rat, rabbit, and monkey), the compound inhibits the activity of endogenous or exogenous progesterone, resulting in effects on the uterus and cervix that, when combined with misoprostol, result in termination of an intrauterine pregnancy.

During pregnancy, the compound sensitizes the myometrium to the contraction-inducing activity of prostaglandins.

12.2 Pharmacodynamics

Use of MIFEPREX in a regimen with misoprostol disrupts pregnancy by causing decidual necrosis, myometrial contractions, and cervical softening, leading to the expulsion of the products of conception.

Doses of 1 mg/kg or greater of mifepristone have been shown to antagonize the endometrial and myometrial effects of progesterone in women.

Antiglucocorticoid and antiandrogenic activity: Mifepristone also exhibits antiglucocorticoid and weak antiandrogenic activity. The activity of the glucocorticoid dexamethasone in rats was inhibited following doses of 10 to 25 mg/kg of mifepristone. Doses of 4.5 mg/kg or greater in human beings resulted in a compensatory elevation of adrenocorticotropic hormone (ACTH) and cortisol. Antiandrogenic activity was observed in rats following repeated administration of doses from 10 to 100 mg/kg.

12.3 Pharmacokinetics

Mifepristone is rapidly absorbed after oral ingestion with non-linear pharmacokinetics for Cmax after single oral doses of 200 mg and 600 mg in healthy subjects.

Absorption

The absolute bioavailability of a 20 mg mifepristone oral dose in women of childbearing age is 69%. Following oral administration of a single dose of 600 mg, mifepristone is rapidly absorbed, with a peak plasma concentration of 1.98 ± 1.0 mg/L occurring approximately 90 minutes after ingestion.

Following oral administration of a single dose of 200 mg in healthy men (n=8), mean Cmax was 1.77 ± 0.7 mg/L occurring approximately 45 minutes after ingestion. Mean $AUC_{0-\infty}$ was 25.8 ± 6.2 mg*hr/L.

Distribution

Mifepristone is 98% bound to plasma proteins, albumin, and α_1-acid glycoprotein. Binding to the latter protein is saturable, and the drug displays nonlinear kinetics with respect to plasma concentration and clearance.

Elimination

Following a distribution phase, elimination of mifepristone is slow at first (50% eliminated between 12 and 72 hours) and then becomes more rapid with a terminal elimination half-life of 18 hours.

Metabolism

Metabolism of mifepristone is primarily via pathways involving N-demethylation and terminal hydroxylation of the 17-propynyl chain. *In vitro* studies have shown that CYP450 3A4 is primarily responsible for the metabolism. The three major metabolites identified in humans are: (1) RU 42 633, the most widely found in plasma, is the N-monodemethylated metabolite; (2) RU 42 848, which results from the loss of two methyl groups from the 4-dimethylaminophenyl in position 11ß; and (3) RU 42 698, which results from terminal hydroxylation of the 17-propynyl chain.

Excretion

By 11 days after a 600 mg dose of tritiated compound, 83% of the drug has been accounted for by the feces and 9% by the urine. Serum concentrations are undetectable by 11 days.

Specific Populations

The effects of age, hepatic disease and renal disease on the safety, efficacy and pharmacokinetics of mifepristone have not been investigated.

13 NONCLINICAL TOXICOLOGY

13.1 Carcinogenesis, Mutagenesis, Impairment of Fertility

Carcinogenesis

No long-term studies to evaluate the carcinogenic potential of mifepristone have been performed.

Mutagenesis

Results from studies conducted *in vitro* and in animals have revealed no genotoxic potential for mifepristone. Among the tests carried out were: Ames test with and without metabolic activation; gene conversion test in *Saccharomyces cerevisiae* D4 cells; forward mutation in *Schizosaccharomyces pompe* P1 cells; induction of unscheduled DNA synthesis in cultured HeLa cells; induction of chromosome aberrations in CHO cells; *in vitro* test for gene mutation in V79 Chinese hamster lung cells; and micronucleus test in mice.

Impairment of Fertility

In rats, administration of 0.3 mg/kg mifepristone per day caused severe disruption of the estrus cycles for the three weeks of the treatment period. Following resumption of the estrus cycle, animals were mated and no effects on reproductive performance were observed.

14 CLINICAL STUDIES

Safety and efficacy data from clinical studies of mifepristone 200 mg orally followed 24-48 hours later by misoprostol 800 mcg buccally through 70 days gestation are reported below. Success was defined as the complete expulsion of the products of conception without the need for surgical intervention. The overall rates of success and failure, shown by reason for failure based on 22 worldwide clinical studies (including 7 U.S. studies) appear in Table 3.

The demographics of women who participated in the U.S. clinical studies varied depending on study location and represent the racial and ethnic variety of American females. Females of all reproductive ages were represented, including females less than 18 and more than 40 years of age; most were 27 years or younger.

Table 3
Outcome Following Treatment with Mifepristone (oral) and Misoprostol (buccal) Through 70 Days Gestation

	U.S. Trials	Non-U.S. Trials
N	16,794	18,425
Complete Medical Abortion	97.4%	96.2%
Surgical Intervention*	2.6%	3.8%
Ongoing Pregnancy**	0.7%	0.9%

* Reasons for surgical intervention include ongoing pregnancy, medical necessity, persistent or heavy bleeding after treatment, patient request, or incomplete expulsion.
** Ongoing pregnancy is a subcategory of surgical intervention, indicating the percent of women who have surgical intervention due to an ongoing pregnancy.

The results for clinical studies that reported outcomes, including failure rates for ongoing pregnancy, by gestational age are presented in Table 4.

Table 4
Outcome by Gestational Age Following Treatment with Mifepristone and Misoprostol (buccal) for U.S. and Non-U.S. Clinical Studies

	<49 days			50-56 days			57-63 days			64-70 days		
	N	%	Number of Evaluable Studies	N	%	Number of Evaluable Studies	N	%	Number of Evaluable Studies	N	%	Number of Evaluable Studies
Complete medical abortion	12,046	98.1	10	3,941	96.8	7	2,294	94.7	9	479	92.7	4
Surgical intervention for ongoing pregnancy	10,272	0.3	6	3,788	0.8	6	2,211	2	8	453	3.1	3

One clinical study asked subjects through 70 days gestation to estimate when they expelled the pregnancy, with 70% providing data. Of these, 23-38% reported expulsion within 3 hours and over 90% within 24 hours of using misoprostol.

16 HOW SUPPLIED/STORAGE AND HANDLING

MIFEPREX is only available through a restricted program called the MIFEPREX REMS Program *[see Warnings and Precautions (5.3)].*

MIFEPREX is supplied as light yellow, cylindrical, and bi-convex tablets imprinted on one side with “MF.” Each tablet contains 200 mg of mifepristone. One tablet is individually blistered on one blister card that is packaged in an individual package (National Drug Code 64875-001-01).

Store at 25°C (77°F); excursions permitted to 15 to 30°C (59 to 86°F) [see USP Controlled Room Temperature].

17 PATIENT COUNSELING INFORMATION

Advise the patient to read the FDA-approved patient labeling (Medication Guide), included with each package of MIFEPREX. Additional copies of the Medication Guide are available by contacting Danco Laboratories at 1-877-4 Early Option (1-877-432-7596) or from www.earlyoptionpill.com.

Serious Infections and Bleeding

- Inform the patient that uterine bleeding and uterine cramping will occur [see Warnings and Precautions (5.2)].
- Advise the patient that serious and sometimes fatal infections and bleeding can occur very rarely [see Warnings and Precautions (5.1, 5.2)].
- MIFEPREX is only available through a restricted program called the MIFEPREX REMS Program [see Warnings and Precautions (5.3)]. Under the Mifeprex REMS Program:
    - Patients must sign a Patient Agreement Form.
    - MIFEPREX is only available in clinics, medical offices and hospitals and not through retail pharmacies.

Provider Contacts and Actions in Case of Complications

- Ensure that the patient knows whom to call and what to do, including going to an Emergency Room if none of the provided contacts are reachable, or if she experiences complications including prolonged heavy bleeding, severe abdominal pain, or sustained fever *[see Boxed Warning]*.
- Advise the patient to take the Medication Guide with her if she visits an emergency room or another healthcare provider who did not prescribe MIFEPREX, so that provider will be aware that the patient is undergoing a medical abortion with MIFEPREX.

Compliance with Treatment Schedule and Follow-up Assessment

- Advise the patient that it is necessary to complete the treatment schedule, including a follow-up assessment approximately 7 to14 days after taking MIFEPREX *[see Dosage and Administration (2.3)]*.
- Explain that
    - prolonged heavy vaginal bleeding is not proof of a complete abortion,
    - if the treatment fails and the pregnancy continues, the risk of fetal malformation is unknown,
    - it is recommended that ongoing pregnancy be managed by surgical termination *[see Dosage and Administration (2.3)]*. Advise the patient whether you will provide such care or will refer her to another provider.

Subsequent Fertility

- Inform the patient that another pregnancy can occur following medical abortion and before resumption of normal menses.
- Inform the patient that contraception can be initiated as soon as pregnancy expulsion has been confirmed, or before she resumes sexual intercourse.

MIFEPREX is a registered trademark of Danco Laboratories, LLC.

Manufactured for:
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1-877-4 Early Option (1-877-432-7596)
www.earlyoptionpill.com

3/2016

MEDICATION GUIDE

Mifeprex (MIF-eh-prex) (mifepristone) tablets, for oral use

Read this information carefully before taking Mifeprex and misoprostol. It will help you understand how the treatment works. This Medication Guide does not take the place of talking with your healthcare provider.

What is the most important information I should know about Mifeprex?

What symptoms should I be concerned with? Although cramping and bleeding are an expected part of ending a pregnancy, rarely, serious and potentially life-threatening bleeding, infections, or other problems can occur following a miscarriage, surgical abortion, medical abortion, or childbirth. Seeking medical attention as soon as possible is needed in these circumstances. Serious infection has resulted in death in a very small number of cases. There is no information that use of Mifeprex and misoprostol caused these deaths. If you have any questions, concerns, or problems, or if you are worried about any side effects or symptoms, you should contact your healthcare provider. You can write down your healthcare provider's telephone number here _____.

Be sure to contact your healthcare provider promptly if you have any of the following:

- **Heavy Bleeding.** Contact your healthcare provider right away if you bleed enough to soak through two thick full-size sanitary pads per hour for two consecutive hours or if you are concerned about heavy bleeding. In about 1 out of 100 women, bleeding can be so heavy that it requires a surgical procedure (surgical aspiration or D&C).
- **Abdominal Pain or "Feeling Sick."** If you have abdominal pain or discomfort, or you are "feeling sick," including weakness, nausea, vomiting, or diarrhea, with or without fever, more than 24 hours after taking misoprostol, you should contact your healthcare provider without delay. These symptoms may be a sign of a serious infection or another problem (including an ectopic pregnancy, a pregnancy outside the womb).
- **Fever.** In the days after treatment, if you have a fever of 100.4°F or higher that lasts for more than 4 hours, you should contact your healthcare provider right away. Fever may be a symptom of a serious infection or another problem.

If you cannot reach your healthcare provider, go to the nearest hospital emergency room. Take this Medication Guide with you. When you visit an emergency room or a healthcare provider who did not give you your Mifeprex, you should give them your Medication Guide so that they understand that you are having a medical abortion with Mifeprex.

What to do if you are still pregnant after Mifeprex with misoprostol treatment. If you are still pregnant, your healthcare provider will talk with you about a surgical procedure to end your pregnancy. In many cases, this surgical procedure can be done in the office/clinic. The chance of birth defects if the pregnancy is not ended is unknown.

Talk with your healthcare provider. Before you take Mifeprex, you should read this Medication Guide and you and your healthcare provider should discuss the benefits and risks of your using Mifeprex.

What is Mifeprex?

Mifeprex is used in a regimen with another prescription medicine called misoprostol, to end an early pregnancy. Early pregnancy means it is 70 days (10 weeks) or less since your last menstrual period began. Mifeprex is not approved for ending pregnancies that are further along. Mifeprex blocks a hormone needed for your pregnancy to continue. When you use Mifeprex on Day 1, you also need to take another medicine called misoprostol 24 to 48 hours after you take Mifeprex, to cause the pregnancy to be passed from your uterus.

The pregnancy is likely to be passed from your uterus within 2 to 24 hours after taking Mifeprex and misoprostol. When the pregnancy is passed from the uterus, you will have bleeding and cramping that will likely be heavier than your usual period. About 2 to 7 out of 100 women taking Mifeprex will need a surgical procedure because the pregnancy did not completely pass from the uterus or to stop bleeding.

Who should not take Mifeprex?

Some women should not take Mifeprex. Do not take Mifeprex if you:

- Have a pregnancy that is more than 70 days (10 weeks). Your healthcare provider may do a clinical examination, an ultrasound examination, or other testing to determine how far along you are in pregnancy.
- Are using an IUD (intrauterine device or system). It must be taken out before you take Mifeprex.
- Have been told by your healthcare provider that you have a pregnancy outside the uterus (ectopic pregnancy).
- Have problems with your adrenal glands (chronic adrenal failure).
- Take a medicine to thin your blood.
- Have a bleeding problem.
- Have porphyria.
- Take certain steroid medicines.
- Are allergic to mifepristone, misoprostol, or medicines that contain misoprostol, such as Cytotec or Arthrotec.

Ask your healthcare provider if you are not sure about all your medical conditions before taking this medicine to find out if you can take Mifeprex.

What should I tell my healthcare provider before taking Mifeprex?

Before you take Mifeprex, tell your healthcare provider if you:

- cannot follow-up within approximately 7 to 14 days of your first visit
- are breastfeeding. Mifeprex can pass into your breast milk. The effect of the Mifeprex and misoprostol regimen on the breastfed infant or on milk production is unknown.
- are taking medicines, including prescription and over-the-counter medicines, vitamins, and herbal supplements.
  Mifeprex and certain other medicines may affect each other if they are used together. This can cause side effects.

How should I take Mifeprex?

- Mifeprex will be given to you by a healthcare provider in a clinic, medical office, or hospital.
- You and your healthcare provider will plan the most appropriate location for you to take the misoprostol, because it may cause bleeding, cramps, nausea, diarrhea, and other symptoms that usually begin within 2 to 24 hours after taking it.
- Most women will pass the pregnancy within 2 to 24 hours after taking the misoprostol tablets.

Follow the instruction below on how to take Mifeprex and misoprostol:

Mifeprex (1 tablet) orally + misoprostol (4 tablets) buccally

Day 1:

- Take 1 Mifeprex tablet by mouth.
- Your healthcare provider will either give you or prescribe for you 4 misoprostol tablets to take 24 to 48 hours later.

24 to 48 hours after taking Mifeprex:

- Place 2 misoprostol tablets in each cheek pouch (the area between your teeth and cheek - see Figure A) for 30 minutes and then swallow anything left over with a drink of water or another liquid.
- The medicines may not work as well if you take misoprostol sooner than 24 hours after Mifeprex or later than 48 hours after Mifeprex.
- Misoprostol often causes cramps, nausea, diarrhea, and other symptoms. Your healthcare provider may send you home with medicines for these symptoms.



Figure A (2 tablets between your left cheek and gum and 2 tablets between your right cheek and gum).

Follow-up Assessment at Day 7 to 14:

- This follow-up assessment is very important. You must follow-up with your healthcare provider about 7 to 14 days after you have taken Mifeprex to be sure you are well and that you have had bleeding and the pregnancy has passed from your uterus.
- Your healthcare provider will assess whether your pregnancy has passed from your uterus. If your pregnancy continues, the chance that there may be birth defects is unknown. If you are still pregnant, your healthcare provider will talk with you about a surgical procedure to end your pregnancy.
- If your pregnancy has ended, but has not yet completely passed from your uterus, your provider will talk with you about other choices you have, including waiting, taking another dose of misoprostol, or having a surgical procedure to empty your uterus.

When should I begin birth control?

You can become pregnant again right after your pregnancy ends. If you do not want to become pregnant again, start using birth control as soon as your pregnancy ends or before you start having sexual intercourse again.

What should I avoid while taking Mifeprex and misoprostol?

Do not take any other prescription or over-the-counter medicines (including herbal medicines or supplements) at any time during the treatment period without first asking your healthcare provider about them because they may interfere with the treatment. Ask your healthcare provider about what medicines you can take for pain and other side effects.

What are the possible side effects of Mifeprex and misoprostol?

Mifeprex may cause serious side effects. See "What is the most important information I should know about Mifeprex?"

Cramping and bleeding. Cramping and vaginal bleeding are expected with this treatment. Usually, these symptoms mean that the treatment is working. But sometimes you can get cramping and bleeding and still be pregnant. This is why you must follow-up with your healthcare provider approximately 7 to 14 days after taking Mifeprex. See "How should I take Mifeprex?" for more information on your follow-up assessment. If you are not already bleeding after taking Mifeprex, you probably will begin to bleed once you take misoprostol, the medicine you take 24 to 48 hours after Mifeprex. Bleeding or spotting can be expected for an average of 9 to16 days and may last for up to 30 days. Your bleeding may be similar to, or greater than, a normal heavy period. You may see blood clots and tissue. This is an expected part of passing the pregnancy.

The most common side effects of Mifeprex treatment include: nausea, weakness, fever/chills, vomiting, headache, diarrhea and dizziness. Your provider will tell you how to manage any pain or other side effects.These are not all the possible side effects of Mifeprex.

Call your healthcare provider for medical advice about any side effects that bother you or do not go away. You may report side effects to FDA at 1-800-FDA-1088.

General information about the safe and effective use of Mifeprex.

Medicines are sometimes prescribed for purposes other than those listed in a Medication Guide. This Medication Guide summarizes the most important information about Mifeprex. If you would like more information, talk with your healthcare provider. You may ask your healthcare provider for information about Mifeprex that is written for healthcare professionals.

For more information about Mifeprex, go to www.earlyoptionpill.com or call 1-877-4 Early Option (1-877-432-7596).

Manufactured for: *Danco Laboratories, LLC*
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This Medication Guide has been approved by the U.S. Food and Drug Administration. Approval 3/2016