

Congress of the United States

Washington, DC 20515

May 15, 2023

Karen Lynch
President and Chief Executive Officer
CVS Health
One CVS Drive
Woonsocket, Rhode Island 02895

Rosalind Brewer
Chief Executive Officer
Walgreens Boots Alliance, Inc.
200 Wilmont Road
Deerfield, IL 60015

Elizabeth Burr
Interim Chief Executive Officer
Rite Aid Corporation
1200 Intrepid Avenue, 2nd Fl.
Philadelphia, PA 19112

Dear Ms. Lynch, Ms. Brewer, and Ms. Burr:

We are deeply disappointed by your organization's announcement that it has applied to become certified to dispense the chemical abortion drug mifepristone¹. There is substantial evidence that mifepristone harms women and girls, and your organization's choice to dispense it for the sole purpose of killing the unborn child of a woman known to be pregnant violates your organization's mission of protecting public health by ensuring the safe use of pharmaceuticals. Furthermore, dispensing mifepristone through the mail or a common carrier appears to be in direct conflict with federal law (18 USC 1461-1462) and several state laws.²

We seek acknowledgement from your organization regarding the relevant federal and state laws and specific information about how it intends to comply with them. Federal law (18 U.S.C. 1461-1462) provides criminal penalties prohibiting the sending or receiving of any drug that is "designed, adapted, or intended for producing abortion" using the mail or interstate shipment by any express company or common carrier. Violations of these two statutes also constitute instances of "racketeering activity" covered by The Racketeer Influenced and Corrupt Organizations (RICO) Act (18 U.S. Code Chapter 96).³ Penalties for violating the RICO Act include imprisonment, fines, and forfeiture of property.

In addition, 27 states have passed laws limiting or prohibiting the use of chemical abortion drugs.⁴ 19 states do not allow abortion-by-mail.⁵ Attorneys General from 21 states have highlighted their state laws and emphasize their own responsibilities to uphold them to "protect the health, safety, and well-being of women and unborn children in [their] states."⁶

As you know, under President Biden's Administration, the Department of Justice's Office of Legal Counsel (OLC) has issued a memorandum opinion for the United States Postal Service claiming that federal mail-order abortion laws do not prohibit the mailing of chemical abortion drugs "where the sender lacks the intent that the recipient of the drugs will use them unlawfully."⁷ However, as Members of Congress wrote directly to Attorney

¹ Walgreens Statement on Mifepristone. March 6, 2023. <https://news.walgreens.com/press-center/walgreens-statement-on-mifepristone.htm>

² Ibid.

³ 18 USC Chapter 96. <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-96>

⁴ Medication Abortion. Guttmacher Institute. March 1, 2023. <https://www.guttmacher.org/state-policy/explore/medication-abortion>

⁵ Abortion Drug Facts. Charlotte Lozier Institute. <https://lozierinstitute.org/abortion-drug-facts/#state-action>

⁶ Letter to Danielle Gray, Executive Vice President of Walgreens. February 1, 2023. https://ago.mo.gov/docs/default-source/press-releases/2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf?sfvrsn=ff1e6652_2

⁷ "Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions." Department of Justice Office of Legal Counsel. December 23, 2022. <https://www.justice.gov/olc/opinion/file/1560596/download>

General Merrick Garland in January 2023, neither Congress nor the courts have articulated views consistent with OLC's interpretation of the law. It radically departs from the plain text and clear meaning of the law. In fact, directly counter to the OLC's argument, in 1978 the House of Representatives rejected a proposal to modify 18 USC 1461 to refer only to an illegal abortion.⁸ A federal district court recently found that the plain text of these federal criminal provisions clearly prohibit the distribution of these drugs by the U.S. mail, common carrier, and express company.⁹ Therefore, we join with 21 State Attorneys General in unequivocally rejecting the Biden Administration's dismissal of the plain meaning of the law.¹⁰

We ask that your organization clarify its stated commitment to follow Federal and State law by responding in writing to the following questions:

1. Will your organization use the U.S. Postal Service for the mailing of, or use any express company or common carrier like FedEx or UPS for the interstate shipment of, mifepristone and/or misoprostol for abortions directly to patients? Does your organization acknowledge that doing so would violate 18 U.S.C. 1461-1462? If your organization does plan to commit such acts, in which States does your organization intend to do so?
2. How will your organization operate the supply chain of abortion drugs to stock its pharmacies? Will your organization use the U.S. Postal Service for the mailing of, or use any express company or common carrier like FedEx or UPS for the interstate shipment of, mifepristone and/or misoprostol for abortions from the drug manufacturer to your organization's pharmacies? Does your organization acknowledge that doing so would violate 18 U.S.C. 1461-1462? If your organization does plan to commit such acts, in which States does your organization intend to do so?
3. In which States does your organization intend to sell abortion drugs? And in which States will it not? In States where your organization intends to sell abortion drugs, does it intend to distribute abortion drugs throughout all stores in the State or only in some of them?
4. What processes and procedures will your organization put in place to ensure its dispensing of abortion drugs in States that limit or prohibit abortion comply with all applicable State laws, including any applicable gestational limits, parental involvement laws, informed consent laws, or any other applicable legal requirements?
5. How will your organization ensure that any abortion drugs dispensed from its stores do not fall into the hands of abusers?
6. Your organization has legal responsibilities under Federal law to protect its employees from being forced to violate their religious beliefs or moral convictions under the Church Amendments (42 U.S.C. § 300a-7(c)-(d)) and Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.), in addition to any applicable conscience protections under State law. Does your organization acknowledge and intend to comply with these obligations? What policies or procedures does your organization have in place, or plan to put in place, to protect pharmacists, pharmacy technicians, and other employees from being forced to participate in abortion against their religious beliefs or moral convictions?

Sincerely,

⁸ Report of the Subcommittee on Criminal Justice on Recodification of Federal Criminal Law. December 1978. Page 40. <https://www.ojp.gov/pdffiles1/Digitization/63344NCJRS.pdf>

⁹ District Court, N.D. Texas. Memorandum Opinion and Order. Alliance for Hippocratic Medicine v. U.S. Food and Drug Administration. April 7, 2023. <https://www.courtlistener.com/docket/65768749/137/alliance-for-hippocratic-medicine-v-us-food-and-drug-administration/>

¹⁰ Bicameral letter to Attorney General Merrick Garland. January 25, 2023.



Earl L. "Buddy" Carter
Member of Congress



Christopher H. Smith
Member of Congress



Bruce Westerman
Member of Congress



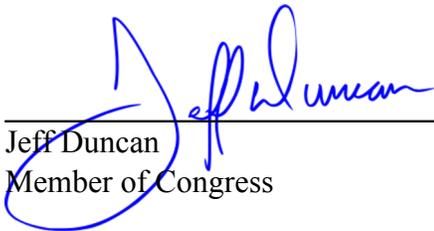
Brad R. Wenstrup, D.P.M.
Member of Congress



Dan Crenshaw
Member of Congress



Mike Bost
Member of Congress



Jeff Duncan
Member of Congress



Robert E. Latta
Member of Congress



Jim Banks
Member of Congress



Kat Cammack
Member of Congress



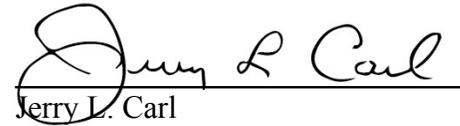
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Ralph Norman
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Mike Ezell
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Andrew S. Clyde
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Keith Self
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David Rouzer
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James C. Moylan
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Bill Posey
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W. Gregory Steube
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Claudia Tenney
Member of Congress



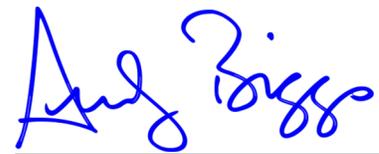
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Andy Biggs
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Bob Good
Member of Congress



Clay Higgins
Member of Congress



Alex X. Mooney
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C. Scott Franklin
Member of Congress



Gus M. Bilirakis
Member of Congress



Eric Burlison
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A. Drew Ferguson IV
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Glenn "GT" Thompson
Member of Congress