

APLC

ALABAMA PRO-LIFE COALITION, INC.

To: Interested Persons
Date: August 2026
From: A. Eric Johnston
RE: Abortifacients Continue Abortion Availability

We know many are wondering what is the state of abortion in Alabama. With a law that prohibits and criminalizes abortion, why are abortions still being done using drugs? We will give a brief explanation of the national and local state of affairs.

In 2022, *Dobbs* case overruled *Roe v. Wade* and left abortion regulation up to the states. In 2019, Alabama passed the Alabama Human Life Protection Act (“AHLPA”), which went into effect after *Dobbs* and prohibits both surgical and chemical abortions. Abortifacients still come into the state by mail in violation of the AHLPA. The Biden Administration held the Federal Comstock Act does not prohibit the mailing of abortifacients, though it specifically does. As a result, the Federal Food and Drug Administration (“FDA”) allowed mail shipments without a physician visit. Since 2013, Alabama has required a physician visit before use of abortifacients. With abortions now being illegal in Alabama, that requirement would not apply. However, as it stands, the FDA appears to overrule all protections. The Trump Administration has not corrected the Biden ruling. Louisiana, Florida, Texas and Missouri have sued the FDA to correct this as explained below. The Guttmacher Institute (Planned Parenthood’s research arm) estimates that 7800 mail order abortions were done in Alabama in 2025. A recent report finds nearly 330,000 pills have been shipped nationwide since *Dobbs* was decided.

States with laws prohibiting or significantly limiting abortion have trouble enforcing their laws. Texas and Louisiana have passed laws resulting in indictments (criminal) and judgments (civil) against physicians and companies who are sending abortifacients into those from states like New York and California. Tennessee passed a law creating a cause of action for wrongful death due to the pill. Mississippi has a law-making Mifepristone and Misoprostol illegal controlled drugs. Thus far New York and California, like 20 other states and D.C., have “shield laws” and are refusing to enforce the laws like in Texas and Louisiana, as sister states, by not giving full faith and credit to them as required by Article IV Section 1 of the U.S. Constitution. Recently, the Alabama Attorney General’s office issued an unfair trade practices cease and desist letter to companies facilitating abortion drugs in Alabama. Cases are pending in various courts on this issue and will likely reach SCOTUS to determine if those laws will be enforced. There is a significant question about whether that will happen. During this time, other states, like Alabama, should take a wait and see position, rather than pass similar uncertain laws that would result in expensive litigation.

If SCOTUS requires full faith and credit be given, that will close the “sister state mail loophole.” It will not close the loophole of the Indian and Chinese drugs coming into states in the U.S. from those countries. There are two federal possibilities to close or impede both domestic and international delivery of the drugs. If the Trump administration would enforce the Comstock Act and require physician visits, that would close all mail and courier delivery. The second possibility are bills by Senator Josh Hawley (S.4066) and Rep. Diana Harshbarger (H.R.7902), which withdraw FDA approval of abortifacients.

Trump has not changed the Biden rule permitting Comstock Act enforcement or requiring a physician visit. We are beginning to think he will not change those rules. Pro-life groups have put consistent pressure on him to change the rules, but as of yet to no avail. 70% of Republicans, 68% of Independents and 63% of Democrats would support in-person physician visits to receive abortion drugs.

Hawley’s bill faces an uphill battle and is a very uncertain remedy. Since it requires a physician’s visit, that would enable states like Alabama to stop abortifacient use, since abortions are prohibited here anyway. However, it would not probably stop international delivery of the drugs that could possibly be remedied by enforcement of the Comstock Act.

For three years, the Alabama Pro-Life Coalition has encouraged Alabama legislators to support a bill to regulate internet sales of abortifacients. (See January 2024 Educational Update). By regulating internet sales, the “Pill Bill” would stop the delivery of the drugs to Alabama. Several legislators were requested to file this bill. All but one backed out. It was clear some did not want any abortion-related bills filed. No bills to protect unborn life have been passed in four years, that is, the last quadrennium of the Alabama Legislature. The elections this year will bring in many new members. We are hopeful they, returning members and leadership, will renew its previous identity as a pro-life body.

As mentioned above, there have been federal activities on the issue. The most recent was in May 2026, when federal courts addressed, though indirectly, the Comstock Act and the *Dobbs* decision on regulating abortifacients and abortion. The case arose by action of the state of Louisiana, contesting the

FDA's decision to permit abortifacients to be prescribed without a doctor visit. The case went to the Fifth Circuit of Appeals. That court reviews cases from Louisiana, Mississippi and Texas. It is one of the more conservative federal appeals courts in the nation.

The trial court refused to enjoin the FDA's determination that a physician's visit was not necessary. However, on review, the Fifth Circuit determined the FDA was in error and enjoined the FDA from permitting abortifacients to be sold in all fifty states. The court determined that the state of Louisiana had been damaged by this decision and therefore had standing. You may recall that an earlier Texas case, *Alliance for Hippocratic Medicine v. FDA*, had been dismissed by SCOTUS on the basis that the physician's group bringing the lawsuit had no standing, that is they could prove no actual injury. Nevertheless, some of the findings in that earlier Texas case were helpful to the Louisiana case. All of the efforts of Texas and Louisiana were beginning to prove the FDA had acted irresponsibly.

When the Fifth Circuit handed down its opinion, the drug companies in the case, DANCO Laboratories and GenBioPro asked SCOTUS to stay the Fifth Circuit opinion. An initial stay was granted for one week, but then SCOTUS lifted the stay and directed the case to be sent back to the Fifth Circuit for further proceedings. Many saw this as a weak opinion. We believe it was. We believe SCOTUS should have addressed the issues and there was an adequate record for doing so.

What is instructive and encouraging were two dissents by SCOTUS justices. First, Justice Clarence Thomas dissented on the basis that the Comstock Act prohibits the shipment of abortifacients in the mail or by courier. The specific drug is Mifepristone. He pointed out the history of the law and that it was clear it prohibited what the FDA had permitted under the Biden administration. The other dissent was by Justice Samuel Alito. Alito was the author of the *Dobbs* opinion which overruled *Roe* and returned the issue of abortion regulation or prohibition to the states. Alito's opinion was much more instructive and encouraging. He based his dissent on *Dobbs*. He pointed out that "states had effectively blocked these efforts by enacting so-called, shield laws, which prevent Louisiana from visiting any adverse legal consequences on the perpetrators... as a result, more abortions now occur each month in Louisiana than they did before *Dobbs*... by one count, nearly, 1,000 abortions occur there each month."

Alito then said "[T]his scheme [to undermine *Dobbs*] would not have been possible under FDA regulations had the federal government not taken steps in 2021 and 2023 to facilitate mail-order abortions. ...[F]or two decades REMS [Risk Evaluation and Mitigation Strategy] for mifepristone required that patients meet in person with a medical provider to administer the drug. The Biden administration had announced that it would "use every lever" to assure Americans had abortifacients. Alito said "[T]he FDA pulled one of those levers in 2023 when it formally eliminated the in-person-dispensing requirement in the mifepristone REMS, removing a significant regulatory barrier from schemes to undermine *Dobbs*". The drug companies were seeking an injunction against the Fifth Circuit opinion. To get an injunction, "irreparable injury" must be proven. Monetary losses do not support injunctive relief. The drug companies were essentially saying they would lose business unless the stay was lifted and the abortifacients could continue to be sold. Justice Alito pointed out this is not sufficient to support the stay of the Fifth Circuit opinion.

Recall a draft of the *Dobbs* opinion was leaked months before release. The leaking of the *Dobbs* opinion prior to its formal release by SCOTUS, was to give the abortion industry time to prepare for opposing or undermining *Dobbs*. By knowing several months in advance, February to June, that *Dobbs* would return the issue to the states, abortionists working with drug companies had time to prepare. Apparently, one of those preparations was to have the Biden administration undermine *Dobbs* by removing the Comstock Act requirements. More importantly, it takes away the right of states to enforce their own respective laws.

This applies to Alabama, as well as Texas, Louisiana and others. Our law prohibits abortion, both surgically and chemically, and makes it a Class A felony. That law is skirted by having drugs come into the state due to unsupported FDA determinations that Mifepristone can be sent through the mail.

We remain optimistic that the Fifth Circuit case will make its way back SCOTUS and it ultimately determines the FDA is incorrect. That may be awhile, since the Trump Administration has not actively requested the Fifth Circuit to expedite its decision against the FDA, in spite of wide support of the pro-life community, in a June 26, 2026, letter to Acting Attorney General Todd Blanche. The new FDA director, since Dr. Makary has been dismissed, said he will expedite FDA review. We hope this will move the FDA back to where it should be and require a physician's visit. By doing that, Alabama could enforce its laws prohibiting abortion. All of this will take time though and it will not happen in the immediate future.

So, this is the unhappy state of affairs in Alabama and the nation. We are hopeful that the Pill Bill will be filed in the 2027 Alabama legislative session. We expect Senator Tuberville to be Governor of Alabama. He has demonstrated a strong pro-life stance in Congress. We hope he will do so here. We hope he will support the Pill Bill, which would be a major step for stopping delivery of abortion drugs in Alabama, which could then be replicated in other states. Alternatively, the Trump Administration could act to enforce federal laws. There is a jumble of options, but some may work. Both federal and state officials must recognize *Dobbs* did not remedy the problem. It has presented us with the next chapter in this sorry saga.