


Nos. 23-235, 23-236

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IN THE  
**Supreme Court of the United States**

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**No. 23-235**

FOOD AND DRUG ADMINISTRATION, ET AL.,

—v.—

*Petitioners,*

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,

*Respondents.*

*(Caption continued on inside cover)*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BRIEF OF *AMICI CURIAE* RELIGIOUS COALITION FOR  
REPRODUCTIVE CHOICE, INTERFAITH ALLIANCE,  
CATHOLICS FOR CHOICE, NATIONAL COUNCIL  
OF JEWISH WOMEN, UNITARIAN UNIVERSALIST  
ASSOCIATION, MUSLIMS FOR PROGRESSIVE VALUES,  
HINDUS FOR HUMAN RIGHTS, AND 16 OTHER FAITH-  
BASED ORGANIZATIONS, IN SUPPORT OF PETITIONERS**

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**No. 23-236**

DANCO LABORATORIES, L.L.C.,

*Petitioner,*

—v.—

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,

*Respondents.*

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici curiae* are organizations from a broad spectrum of religious traditions and faiths. *Amici* believe that every pregnant woman should be able to decide for herself whether to continue her pregnancy or seek an abortion, guided by the teachings of her own religious faith and consistent with her own values and conscience.

*Amici* are particularly concerned about the aspect of the Fifth Circuit’s decision that stays implementation of the decision by the U.S. Food and Drug Administration (“FDA”) allowing mifepristone to be prescribed by telemedicine and dispensed by mail (the “Telemedicine Stay”). Because the Telemedicine Stay would imperil the ability of many women to follow the teaching of their religious faith in making the deeply personal decision whether to seek an abortion, *amici* submit this brief supporting the petitions for *certiorari* filed by the FDA and Danco Laboratories, L.L.C. (“Danco”).

A list of *amici* appears in Appendix A.

**SUMMARY OF ARGUMENT**

Medication abortion utilizing the two-drug regimen of mifepristone and misoprostol is the most common method of medication abortion in the United

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<sup>1</sup> No party or counsel for a party in this case authored this brief in whole or in part or made any monetary contribution to its preparation or submission. Counsel of record for all parties have received notice of *amici*’s intention to file an *amicus* brief at least 10 days prior to the deadline to file the brief.

States.<sup>2</sup> By 2020, over half of abortions in the United States were medication abortions.<sup>3</sup>

Medication abortion using mifepristone is one of the safest medication regimens in medicine today. The risk of major complications from medication abortion is very low—approximately 0.3%.<sup>4</sup> The mortality rate for medication abortion is less than 0.001%.<sup>5</sup> For comparison, the risk of death from penicillin is four times greater and the risk of death from Viagra is nearly ten times greater.<sup>6</sup>

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<sup>2</sup> See *Practice Bulletin No. 225: Medication Abortion Up to 70 Days of Gestation*, ACOG (Oct. 2020, reaff'd 2023), <https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/10/medication-abortion-up-to-70-days-of-gestation>.

<sup>3</sup> Rachel K. Jones et al., *Medication Abortion Now Accounts for More Than Half of All US Abortions*, GUTTMACHER INST. (Feb 24, 2022, updated Dec. 1, 2022), <https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions>.

<sup>4</sup> See FDA CTR. FOR DRUG EVALUATION & RSCH., *Medical Review, Application No. 020687Orig1s020* at 56 (Mar. 29, 2016) (hereinafter “2016 FDA Approval”), [https://www.accessdata.fda.gov/drugsatfda\\_docs/nda/2016/020687Orig1s020MedR.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/nda/2016/020687Orig1s020MedR.pdf).

<sup>5</sup> FDA, *Mifepristone U.S. Post-Marketing Adverse Events Summary through 12/31/2018*, <https://www.fda.gov/media/112118/download>; see also 2016 FDA Approval, *supra* note 4, at 82–83.

<sup>6</sup> A.I. Neugut, A.T. Ghatak & R.L. Miller, *Anaphylaxis in the United States: an investigation into its epidemiology*, 161 ARCH INTERN MED. 1, 15–21 (2001), <https://pubmed.ncbi.nlm.nih.gov/11146694/>; Mike Mitka, *Some Men Who Take Viagra Die—Why?*, 283 JAMA 5, 590–93 (2000), <https://jamanetwork.com/journals/jama/article-abstract/1843222>.

Medication abortion offers unique benefits. Women may choose medication abortion over procedural abortion to avoid sedation or anesthesia, to avoid a procedure involving genital contact due to prior sexual assault or trauma, or to have the abortion in the comfort of one's home surrounded by family, among many other reasons.<sup>7</sup>

Since 2021, the FDA has allowed mifepristone to be dispensed by mail. Following this decision, medication abortion prescribed via telehealth and dispensed by mail has become commonplace and proven to be as safe as when medication abortion is dispensed in a clinic.<sup>8</sup> It is the most accessible form of abortion for many women across the country and is generally less costly.

Many religions, including those represented by *amici*, teach that the decision to seek an abortion is a woman's moral prerogative, and that abortion is morally permissible or even required under certain circumstances. By threatening to vastly limit access to a safe and widely used drug, the Fifth Circuit's Telemedicine Stay impairs women's ability to follow the dictates of their conscience and the teachings of their religious faith on whether to have an abortion.

For these and the reasons set forth below, *amici* urge the Court to grant the FDA's and Danco's

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<sup>7</sup> See UCLA HEALTH, *Family Planning: Medical vs. Surgical Abortion*, <https://www.uclahealth.org/medical-services/obgyn/family-planning/patient-resources/medical-vs-surgical-abortion> (last visited Oct. 10, 2023).

<sup>8</sup> Julia E. Kohn et al., *Medication Abortion Provided Through Telemedicine in Four U.S. States*, 134 *OBSTET GYNECOL* 2, 343–50 (2019), <https://pubmed.ncbi.nlm.nih.gov/31306317/>.

petitions for a writ of *certiorari* and on *certiorari*, to reverse the Telemedicine Stay.

## ARGUMENT

### I. RELIGIOUS TRADITIONS AFFIRM WOMEN’S MORAL RIGHT TO DECIDE WHETHER AND UNDER WHAT CIRCUMSTANCES TO SEEK AN ABORTION.

#### A. Many Religious Traditions View Abortion as a Morally Acceptable Choice.

A broad range of religious traditions recognize the moral right of each woman to make her own decisions about her pregnancy in accordance with her faith and conscience—including by accessing abortion care through a safe and effective means.

Many Protestant denominations teach that the decision to seek an abortion is a morally permissible choice that is consistent with Christian ethics, at least in certain circumstances.

For instance, the Presbyterian Church teaches that “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy.”<sup>9</sup> The Presbyterian Church affirms that “[t]he considered decision of a woman to terminate a

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<sup>9</sup> Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006), [https://www.pcusa.org/site\\_media/media/uploads/oga/publications/journal2006.pdf](https://www.pcusa.org/site_media/media/uploads/oga/publications/journal2006.pdf).

pregnancy can be morally acceptable,” and “therefore should not be restricted by law.”<sup>10</sup>

Similarly, the United Church of Christ embraces the view that “[e]very woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy.”<sup>11</sup>

The Episcopal Church of America recognizes “the moral option for termination of [a] pregnancy in specific instances” and expresses a “deep conviction” that any legislation surrounding abortion “must take special care to see that individual conscience is respected,”<sup>12</sup> and must not “abridge[] the right of a woman to reach an informed decision about the termination of pregnancy” or limit her access “to safe means of acting on her decision.”<sup>13</sup> The Episcopal

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<sup>10</sup> PRESBYTERIAN CHURCH (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/> (last visited Oct. 10, 2023).

<sup>11</sup> UNITED CHURCH OF CHRIST, *General Synod Statements and Resolutions Regarding Freedom of Choice, Thirteenth General Synod*, 81-GS-60 (1981), [https://d3n8a8pro7vnmx.cloudfront.net/unitedchurchofchrist/legacy\\_url/2038/GS-Resolutions-Freedom-of-Choice.pdf?1418425637](https://d3n8a8pro7vnmx.cloudfront.net/unitedchurchofchrist/legacy_url/2038/GS-Resolutions-Freedom-of-Choice.pdf?1418425637).

<sup>12</sup> EPISCOPAL CHURCH, *Standing Commission on Human Affairs and Health*, Resolution #A087 (1988), [https://www.episcopalarchives.org/e-archives/gc\\_reports/reports/1988/bb\\_1988-R016.pdf](https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf).

<sup>13</sup> THE ARCHIVES OF THE EPISCOPAL CHURCH, *Reaffirm General Convention Statement on Childbirth and Abortion*, J. GEN. CONVENTION OF THE EPISCOPAL CHURCH, INDIANAPOLIS 323, 323–25 (1994) (expressing “unequivocal opposition to any legislative,



Church of America has affirmed that the “decision to terminate a pregnancy . . . properly belongs to the couple, in consultation with their physician and the Church.”<sup>14</sup>

Likewise, the Disciples of Christ has resolved that “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”<sup>15</sup>

Similarly, the Unitarian Universalist Association posits that “the personal right to choose in regard to contraception and abortion” is an important aspect of the “right of individual conscience” and the “inherent worth and dignity of every person.”<sup>16</sup> Many

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executive or judicial action . . . that abridges the right of a woman to reach an informed decision about the termination of pregnancy or that would limit the access of a woman to safe means of acting on her decision”), [https://episcopalarchives.org/cgi-bin/acts/acts\\_generate\\_pdf.pl?resolution=1994-A054](https://episcopalarchives.org/cgi-bin/acts/acts_generate_pdf.pl?resolution=1994-A054).

<sup>14</sup> EPISCOPAL CHURCH, *supra* note 12.

<sup>15</sup> Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution S9854 (1989) and 7524 (1975)).

<sup>16</sup> UNITARIAN UNIVERSALIST ASS’N, *General Resolution on the Right to Choose* (1987), <https://www.uua.org/action/statements/right-choose>.

other Protestant denominations embrace similar views.<sup>17</sup>

And the Evangelical Lutheran Church in America affirms that “there can be sound reasons for ending a pregnancy through induced abortion,” and that there are situations where obtaining an abortion may be a “morally responsible” choice.<sup>18</sup> The Lutheran Church has therefore asserted its opposition to “laws that deny access to safe and affordable services for morally justifiable abortions.”<sup>19</sup> Other Protestant denominations, including the United Church of Christ and the Disciples of Christ, espouse similarly expansive views about abortion access.<sup>20</sup>

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<sup>17</sup> See, e.g., AM. BAPTIST ASS’N, *Resolution Concerning Abortion and Ministry in the Local Church* (1987), <http://www.abc-usa.org/wp-content/uploads/2012/06/Abortion-and-Ministry-in-the-Local-Church.pdf>; Brief for Religious Coalition for Reproductive Choice et al. as Amici Curiae Supporting Respondent at app. A, *Stenberg v. Carhart*, 530 U.S. 914 (2000) (No. 99-830) (describing views of American Friends Service Committee affirming “a woman’s right to follow her own conscience concerning child-bearing, abortion, and sterilization”).

<sup>18</sup> EVANGELICAL LUTHERAN CHURCH IN AM., *A Social Statement on: Abortion* at 6–7 (1991), [https://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf?\\_ga=2.126669897.557303659.1627007329-314140115.1627007329](https://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf?_ga=2.126669897.557303659.1627007329-314140115.1627007329).

<sup>19</sup> *Id.* at 9–10.

<sup>20</sup> See UNITED CHURCH OF CHRIST, *supra* note 11; Freedom of Choice Act of 1989, *supra* note 15.

The LDS Church likewise “defers to [the] moral agency” of the pregnant woman in making this decision.<sup>21</sup>

While the official stance of the Catholic Church is that abortion is impermissible,<sup>22</sup> the majority of American Catholics believe that abortion can be a morally acceptable choice,<sup>23</sup> and that abortion should be legal in all or most cases.<sup>24</sup> Moreover, Catholic women in this country have abortions at

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<sup>21</sup> Peggy Fletcher Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why.*, THE SALT LAKE TRIBUNE (June 1, 2019, 11:01 AM, updated June 2, 2019, 7:27 PM) (citing the work of Courtney Campbell, a Mormon professor of religion and culture at Oregon State University), <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; see also THE LATTER-DAY SAINTS TRADITION: RELIGIOUS BELIEFS AND HEALTHCARE DECISIONS 10–11 (Deborah Abbott ed., 2002) (affirming the “right of a woman to make her own decision” in the matter of whether to have an abortion), [https://www.advocatehealth.com/assets/documents/faith/latter-day\\_saints\\_tradition.pdf](https://www.advocatehealth.com/assets/documents/faith/latter-day_saints_tradition.pdf).

<sup>22</sup> VATICAN CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation* (Feb. 22, 1987), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).

<sup>23</sup> BELDEN RUSSONELLO STRATEGISTS, *2016 Survey of Catholic Likely Voters* at 5 (Oct. 2016) (“Sixty percent of Catholic likely voters overall say that ‘deciding to have an abortion can be a morally acceptable position.’”), <https://www.rifuture.org/wp-content/uploads/2016-Catholic-Voter-Poll.pdf>.

<sup>24</sup> PUB. RELIGION RSCH. INST., *Abortion Attitudes in a Post-Roe World: Findings From the 50-State 2022 American Values Atlas* (Feb. 23, 2023), <https://www.prri.org/research/abortion-attitudes-in-a-post-roe-world-findings-from-the-50-state-2022-american-values-atlas/>.

approximately the same rate as do women of other (or no) faith traditions.<sup>25</sup>

Traditional Jewish teachings view abortion as not only permissible but even *required* when necessary to safeguard the well-being of the pregnant woman, at any stage of pregnancy.<sup>26</sup> Moreover, Reform, Reconstructionist, and Conservative Judaism all adopt the view that “women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion.”<sup>27</sup> Hundreds of Jewish leaders have recently reaffirmed the importance of ensuring

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<sup>25</sup> Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INST. (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>; see also GUTTMACHER INST., *Fact Sheet: Induced Abortion in the United States* at 1 (Sept. 2019), [https://www.guttmacher.org/sites/default/files/factsheet/fb\\_induced\\_abortion.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf).

<sup>26</sup> See Elissa Strauss, *When Does Life Begin? It's Not So Simple.*, SLATE (Apr. 4, 2017, 5:55 AM), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html>; NAT'L COUNCIL OF JEWISH WOMEN, *Abortion and Jewish Values Toolkit* at 16 (2020), [https://www.ncjw.org/wp-content/uploads/2020/05/NCJW\\_ReproductiveGuide\\_Final.pdf](https://www.ncjw.org/wp-content/uploads/2020/05/NCJW_ReproductiveGuide_Final.pdf); Mishnah Ohalot 7:6, [https://www.sefaria.org/Mishnah\\_Oholot.7.6?lang=bi](https://www.sefaria.org/Mishnah_Oholot.7.6?lang=bi); Rashi on Sanhedrin 72b:14, <https://www.sefaria.org/sheets/234926.14?lang=bi>.

<sup>27</sup> 144 Cong. Rec. S10491 (daily ed. Sept. 17, 1998) (quoting Letter of 729 Rabbis in Support of President Clinton's Veto of H.R. 1122 (Sept. 10, 1998)).

women’s access to reproductive healthcare, including abortion, as an essential matter of religious freedom.<sup>28</sup>

Other major religions likewise teach that abortion is both permissible and moral under certain circumstances and embrace the ultimate authority of a woman to make the decision whether to seek an abortion, consistent with her faith and values. For instance, many schools of Islamic thought permit abortion under certain circumstances, at any point up to 120 days from conception, or approximately 19–20 weeks gestation.<sup>29</sup> The Buddhist Churches of America teach that “it is the woman carrying the fetus; and no one else, who must in the end make this most difficult decision.”<sup>30</sup> And while there are various views within Hinduism on the propriety of abortion, many Hindus believe that “each case [of abortion] requires unique consideration” and that the “final decisions will be based on a long series of choices made by the woman on her lifestyle, morals, and values.”<sup>31</sup> Consistent with

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<sup>28</sup> Letter of Jewish Clergy Leaders to the Senate Committee on the Judiciary (July 16, 2021), [https://www.ncjw.org/wp-content/uploads/2021/07/06-16-2021\\_Jewish-Clergy-Leaders-WHPA-Letter-FINAL-1.pdf](https://www.ncjw.org/wp-content/uploads/2021/07/06-16-2021_Jewish-Clergy-Leaders-WHPA-Letter-FINAL-1.pdf).

<sup>29</sup> Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. FAM. CMTY. MED. 25, 29–32 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439741/>; see also Strauss, *supra* note 26.

<sup>30</sup> *A Shin Buddhist Stance on Abortion*, 6 BUDDHIST PEACE FELLOWSHIP NEWSLETTER 3, 6 (July 1984), <https://www.lib.uidaho.edu/digital/objects/bpf/turningwheel-summer1984.pdf>.

<sup>31</sup> *Hindus in America Speak Out On Abortion Issues*, HINDUISM TODAY (Sept. 1985),

this view, the majority of Hindus in the United States believe that abortion should be legal.<sup>32</sup>

This acceptance of abortion—as morally and religiously acceptable, and sometimes even required—is consistent with the commitment to the agency of the pregnant woman and consistent with the refusal of many faiths and denominations to adopt the view that human life begins at the moment of conception.<sup>33</sup>

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<https://www.hinduismtoday.com/magazine/september-1985/1985-09-hindus-in-america-speak-out-on-abortion-issues/>.

<sup>32</sup> PEW RSCH. CTR., *2014 Religious Landscape Study* at 110, <https://www.pewforum.org/about-the-religious-landscape-study/>.

<sup>33</sup> See, e.g., PRESBYTERIAN CHURCH (U.S.A.), *supra* note 10; UNITED CHURCH OF CHRIST, *Statement on Reproductive Health and Justice* (noting the “many religious and theological perspectives on when life and personhood begin”), [https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy\\_url/455/reproductive-health-and-justice.pdf?1418423872](https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872); EVANGELICAL LUTHERAN CHURCH IN AM., *supra* note 18 (explaining that embryology provides insight into the “complex mystery of God’s creative activity” but that individual interpretation of the scientific information leads to various understandings of when life begins), <https://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>; Fletcher Stack, *supra* note 21 (noting that the Church of Jesus Christ of Latter-Day Saints has never taken an official position on when a fetus acquires personhood); Strauss, *supra* note 26 (explaining that, in the Jewish tradition, the creation of a human life is generally viewed as something that happens gradually over time); *id.* (explaining that the Muslim tradition does not have a “universally agreed-upon moment when the fetus becomes a person.”); VATICAN SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Procured Abortion* at n.19 (Nov. 18, 1974) (acknowledging Catholic tradition’s lack of consistent teaching on when life begins), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html).

**B. Many Religious Traditions  
Recognize the Importance of  
Medication Abortion.**

As a corollary to their acceptance of abortion as a morally acceptable choice, many religious traditions recognize the value and importance of medication abortion. The Religious Coalition for Reproductive Choice has affirmed that medication abortion is a vital piece of overall access to abortion. That is because medication abortion can make abortion accessible to someone who otherwise would lack access to abortion because of state bans, distance, transportation, time limitations or cost considerations. The Religious Coalition for Reproductive Choice recognizes that medication abortion gives pregnant women the dignity of more options for when and how to have their abortions, including in the privacy and comfort of their own homes.

These views are shared by many faiths and denominations. For example, the Unitarian Universalist Association has a long legacy of support for abortion access—including by medication abortion—as one of the key arenas of bodily autonomy. Denying women the ability to safeguard their sacred bodily autonomy and to secure access to an authorized health care provider for medication abortion violates Unitarian Universalists’ deeply held beliefs.

Likewise, the Metropolitan Community Churches affirm that if a woman chooses abortion, she needs to be able to access a medically safe abortion, including medication abortions.<sup>34</sup>

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<sup>34</sup> Metropolitan Community Churches provided this statement to *amici* for use in this brief.

Catholics for Choice reject any ban on mifepristone as an “attack on the reproductive freedom and bodily autonomy of women and pregnant people in the United States” because such bans violate the “fundamental values” of their faith.<sup>35</sup>

And Sadhana: Coalition of Progressive Hindus (“Sadhana”) rejects any ban on access to medication abortion because Sadhana believes that medication abortion is a vital subset of abortion access, that support for abortion access reflects a Hindu value that individuals must be allowed to make well-considered choices for themselves, and that conscientious decision-making is a core part of the Hindu philosophical framework. Likewise, Hindus for Human Rights believes that practicing Hindus must be allowed to make conscientious choices about their own bodies and their reproductive health, and abortion bans—including medication abortion bans—interrupt the way Hindus are allowed to practice their faith in the United States.

Medication abortion also has widespread public support. Indeed, a recent Pew Research Center survey shows that Protestants and Catholics in the United States support medication abortion being legal in their states by almost double the rate of those from the same religions who believe it should be illegal.<sup>36</sup>

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<sup>35</sup> See CATHOLICS FOR CHOICE, *Catholics for Choice Responds to Federal Appeals Court Decision on Mifepristone* (Aug. 16, 2023), <https://www.catholicsforchoice.org/press-releases/catholics-for-choice-responds-to-federal-appeals-court-decision-on-mifepristone/>.

<sup>36</sup> PEW RSCH. CTR., *By more than two-to-one, Americans say medication abortion should be legal in their state* (Apr. 11, 2023),



## II. THE TELEMEDICINE STAY WOULD IMPAIR THE ABILITY OF MANY WOMEN TO ACCESS ABORTION CONSISTENT WITH THE TEACHINGS OF THEIR RELIGIOUS FAITH.

The Telemedicine Stay will make mifepristone more inaccessible in significant portions of the country, thereby depriving many women of the ability to choose if and how they seek abortion consistent with their conscience and religious faith.

Common reasons for utilizing telemedicine to obtain abortion pills include distance to the abortion provider, convenience, privacy, cost, flexibility of appointment times, and state laws imposing waiting periods or restrictive policies.<sup>37</sup> If the Telemedicine Stay were to become effective, it would be unreasonably difficult—if not impossible—for women to obtain an abortion in many parts of the country. For example, in some states where there are limited brick-and-mortar registered abortion providers, pregnant women may need to drive hundreds of miles, each way, to get mifepristone dispensed in person.<sup>38</sup>

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<https://www.pewresearch.org/short-reads/2023/04/11/by-more-than-two-to-one-americans-say-medication-abortion-should-be-legal-in-their-state/>.

<sup>37</sup> F.A. Kumsa, R. Prasad & A. Shaban-Nejad, *Medication abortion via digital health in the United States: a systematic scoping review*, NPJ DIGIT. MED. 6, 128 (2023), <https://doi.org/10.1038/s41746-023-00871-2>.

<sup>38</sup> See Allison McCann & Amy Schoenfeld Walker, *Where Restrictions on Abortion Pills Could Matter Most in the U.S.*, N.Y. TIMES (updated Apr. 7, 2023), <https://www.nytimes.com/interactive/2023/03/02/us/abortion-pill-lawsuit-mifepristone.html>.

Studies show that requiring individuals to travel prevents a substantial number from reaching providers at all.<sup>39</sup> Increases in travel distances by as few as 25 miles decreased abortion rates by 10%, and increases by 50 miles decreased abortion rates by 18%.<sup>40</sup> And for pregnant women with certain medical conditions, disabilities, or other extenuating life circumstances (such as lack of access to child care, the inability to take time off work, not being able to travel long distances, and the need for women experiencing intimate partner violence to conceal appointments or travel), medication abortion prescribed via telemedicine is by far the most accessible option.

The FDA's decision allowing mifepristone to be prescribed by telemedicine and delivered by mail aids women's health. Indeed, studies show that the FDA's earlier requirement—that mifepristone could only be dispensed in person in a healthcare facility—did not make care safer.<sup>41</sup> In 2021, after reviewing the

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<sup>39</sup> Jason M. Lindon et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUMAN RES. 4, 1137–60 (2020), <https://jhr.uwpress.org/content/55/4/1137>.

<sup>40</sup> *Id.*

<sup>41</sup> See D. Grossman et al., *Induced Abortion Provision Among A National Sample of Obstetrician-Gynecologists*, 133 OBSTET GYNECOL 3, 477–83 (2019), <https://pubmed.ncbi.nlm.nih.gov/30741798/>; Mifeprex REMS Study Group et al., *Sixteen Years of Overregulation: Time to Unburden Mifeprex*, 376 N ENGL J. MED. 8, 790–94 (2017), <https://pubmed.ncbi.nlm.nih.gov/28225670/>; AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, *Improving Access to Mifepristone for Reproductive Health Indications*, Washington, DC: ACOG (2018), <https://www.acog.org/clinical-information/policy-and-position-statements/position->

mifepristone REMS program, “the FDA determined that the available data and information support[ed] modification of the REMS to reduce burden on the health care delivery system and to ensure that the benefits of the product outweigh[ed] the risks.”<sup>42</sup>

Instead of protecting women, the Telemedicine Stay would create unnecessary burdens and harm women seeking medication abortion. It would force patients seeking medication abortion to make medically unnecessary trips to obtain prescriptions and to receive the medication, and it would prevent access to reproductive healthcare for many women who live far from an abortion provider or who face other barriers to making an in-person health care visit. If access to mifepristone via mail and telemedicine were suspended, abortion clinics and telehealth organizations could provide misoprostol-only medication abortions, which may carry greater side effects than the two-drug combination using mifepristone.<sup>43</sup>

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statements/2018/improving-access-to-mifepristone-for-reproductive-health-indications.

<sup>42</sup> FDA, *Mifeprex (mifepristone) Information: Postmarket Drug Safety Information for Patients and Providers* (Mar. 23, 2023), <https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm111323.htm>.

<sup>43</sup> Ushma D. Upadhyay et al., *Outcomes and Safety of History-Based Screening for Medication Abortion*, 182 JAMA INTERN MED. 5, 482–91 (2022), <https://pubmed.ncbi.nlm.nih.gov/35311911/>; Abigail R.A. Aiken et al., *Safety and effectiveness of self-managed medication abortion provided using online telemedicine in the United States: A population based study*, 10 LANCET REG'L HEALTH AM. 100200 (2022),

Various religious traditions affirm a woman's right to follow her conscience and the teachings of her religious faith in deciding whether to use medication abortion. For the reasons stated above, the Telemedicine Stay would impede their ability to do so.

### III. THE TELEMEDICINE STAY WOULD DISPROPORTIONATELY HARM WOMEN FROM MARGINALIZED GROUPS.

A broad array of religions, including those represented by *amici*, embrace, as a central tenet of their faith, the importance of serving and supporting vulnerable and marginalized communities. Decreased access to safe abortion methods would disproportionately affect low-income and marginalized populations.

Due to existing inequities in healthcare access, women with incomes below the poverty line have an unintended pregnancy rate of more than five times higher—and an abortion rate of six times higher—than those of women with higher incomes.<sup>44</sup> Furthermore, people of color account for the majority

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[https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(22\)00017-5/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(22)00017-5/fulltext); Dana M. Johnson et al., *Safety and effectiveness of self-managed abortion using misoprostol alone acquired from an online telemedicine service in the United States*, 55 PERSPECT SEX REPROD HEALTH 1, 4–11 (2023), <https://pubmed.ncbi.nlm.nih.gov/36744631/>.

<sup>44</sup> Elizabeth B. Harned & Liza Fuentes, *Abortion Out of Reach: The Exacerbation of Wealth Disparities After Dobbs v. Jackson Women's Health Organization*, AM. BAR ASS'N (Jan. 6, 2023), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/wealth-disparities-in-civil-rights/abortion-out-of-reach/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/abortion-out-of-reach/).

of abortion patients in the United States,<sup>45</sup> and they will be the most severely affected by restrictions on access to medication abortion.<sup>46</sup> Restrictive abortion policies may also compound existing racial/ethnic, socioeconomic, and intersecting racial/ethnic and socioeconomic perinatal and infant health inequalities.<sup>47</sup> In particular, women who live farther from a medical clinic and those who identify as multiracial are more likely to use telemedicine than visit a clinic for access to abortion pills.<sup>48</sup> A lack of access to abortion medication through the mail will impact these women.

Numerous faith traditions teach that people of faith have a moral obligation to protect, succor, uplift, and advocate on behalf of those who are poor and low-income and those who have historically been disenfranchised and discriminated against, including

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<sup>45</sup> See R.K. Jones & J. Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 9 AM. J. OF PUB. HEALTH 112, 1284–96 (2022), <https://doi.org/10.2105/AJPH.2017.304042>; KFF, *Reported Legal Abortions by Race of Women Who Obtained Abortion by the State of Occurrence* (2020), <https://www.kff.org/womens-health-policy/state-indicator/abortions-by-race/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>46</sup> See S.K. Redd et al., *Racial/ethnic and educational inequities in restrictive abortion policy variation and adverse birth outcomes in the United States*, 21 BMC HEALTH SERV RSCH. 1139 (2021), <https://doi.org/10.1186/s12913-021-07165-x>.

<sup>47</sup> *Id.*

<sup>48</sup> Anna E. Fiastro et al., *Telehealth vs In-Clinic Medication Abortion Services*, 6 JAMA NETW OPEN 9 (2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2809068>.

people of color, people with disabilities, immigrants, and LGBTQ+ individuals. And numerous religious traditions support the ability of women from low-income or marginalized communities to have access to abortion, and the freedom to make decisions concerning their reproductive health.

For example, the United Church of Christ has adopted resolutions supporting measures to ensure that “women with limited financial means” are able to “exercise [their] legal right to the full range of reproductive health services,” and affirming that “[w]hat is legally available to women must be accessible to all women.”<sup>49</sup> And the Unitarian Universalist Association has affirmed its support for the reproductive justice movement as an extension of its core theological teachings, acknowledging the ways that an individual’s right to make reproductive choices is shaped by “social and political systems as well as by factors such as racial/cultural identity, economic status, immigration/citizenship status, relationship with the justice system, health status, and ability.”<sup>50</sup> Consistent with these teachings, the Unitarian Universalist Association seeks to ensure “control of personal reproductive decisions” for people of “all

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<sup>49</sup> UNITED CHURCH OF CHRIST, *supra* note 33; *see also* CONN. CONFERENCE OF THE UNITED CHURCH OF CHRIST, *Resolution: Freedom of Choice Concerning Abortion* (1971), [https://www.sneucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971\\_freedom\\_of\\_choice.pdf](https://www.sneucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971_freedom_of_choice.pdf) (affirming that laws that “severely limit[] access to safe abortions” “have the effect of discriminating against the poor” and are therefore “neither just nor enforceable”).

<sup>50</sup> UNITARIAN UNIVERSALIST ASS’N, *Statement of Conscience on Reproductive Justice*, <https://www.uua.org/action/statements/reproductive-justice>.

genders, sexual orientations, abilities, gender identities, ages, classes, and cultural and racial identities,” and “especially the most vulnerable and marginalized,”<sup>51</sup> and has condemned attempts “to restrict access to birth control and abortion by overriding individual decisions of conscience” which “often result in depriving poor women of their right to medical care.”<sup>52</sup>

In addition, many Catholics believe that protecting the right of poor and vulnerable women to choose whether to end their pregnancies is a natural and necessary outgrowth of core principles of Catholic social justice.<sup>53</sup> Similarly, many believers from the Jewish tradition expressly link the Jewish teaching of *tzedek tzedek tirdof*—*i.e.*, to pursue justice for all—to the obligation to advocate for the reproductive rights of *all* persons as a matter integral to religious liberty, so that each individual can make their own moral or faith-based decisions about their body, health, and family.<sup>54</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> UNITARIAN UNIVERSALIST ASS’N, *supra* note 16.

<sup>53</sup> See CATHOLICS FOR CHOICE, *Social Justice*, <https://www.catholicsforchoice.org/issues/social-justice/> (last visited Oct. 11, 2023); CATHOLICS FOR CHOICE, *Reproductive Equity*, <https://www.catholicsforchoice.org/issues/reproductive-choice/> (last visited Oct. 11, 2023); CATHOLICS FOR CHOICE, *Advocate’s Bible: A Guide for Pro-Choice Catholics and Co-Conspirators* at 37–46 (June 2022), <https://www.catholicsforchoice.org/wp-content/uploads/2022/09/AdvocatesBible.23.webreduced.pdf>.

<sup>54</sup> See Strauss, *supra* note 26; NAT. COUNCIL OF JEWISH WOMEN, *supra* note 26; Rashi on Sanhedrin 72b:14, *supra* note 26.

By placing a disproportionate burden on women from marginalized communities, and by limiting their freedom to make determinations about their reproductive health and family formation in accordance with their own beliefs, the Telemedicine Stay would further undermine religious liberty.

### CONCLUSION

For the foregoing reasons, *amici* urge this Court to grant the petitions filed by the FDA and Danco for a writ of *certiorari* and on *certiorari*, to reverse the Telemedicine Stay.

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Respectfully submitted,

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**APPENDIX A: LIST OF *AMICI CURIAE***

Religious Coalition for Reproductive Choice

Interfaith Alliance

Catholics for Choice

National Council of Jewish Women

Unitarian Universalist Association

Muslims for Progressive Values

Hindus for Human Rights

ALEPH: Alliance for Jewish Renewal

Ameinu

Avodah

Hadassah, The Women's Zionist Organization of  
America

Jewish Council for Public Affairs

Jewish Orthodox Feminist Alliance

Jewish Women International

Keshet

Reconstructionist Rabbinical Association

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SACReD – Spiritual Alliance of Communities for  
Reproductive Dignity

Sadhana: Coalition of Progressive Hindus

The Shalom Center

T'ruah: The Rabbinic Call for Human Rights

Women's Alliance for Theology, Ethics, and Ritual  
(WATER)

Women's Rabbinic Network

Zioness