Americans United for Life

May 12, 2025

Submitted Electronically via Regulations.gov Portal

Director Russell T. Vought
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: Request for Information: Deregulation

Dear Director Vought:

On behalf of Americans United for Life ("AUL"), I am writing in response to your request for information on regulations to rescind.[1] AUL is the oldest pro-life, nonprofit legal advocacy organization in the country. Founded in 1971, before the Supreme Court's decision in *Roe v. Wade*,[2] AUL has dedicated over fifty years to advocating for comprehensive legal protections for human life from conception until natural death. AUL attorneys are legal experts on statutory interpretation and bioethics, and regularly testify before state legislatures and Congress on abortion issues.[3] Supreme Court opinions have cited AUL briefs and scholarship in major bioethics cases, including *Dobbs v. Jackson Women's Health Organization*.[4]

Thank you for the opportunity to comment on these regulations.[5] Based on AUL's legal expertise, I urge rescission of the (I) U.S. Department of Health and

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[1] Request for Information: Deregulation, 90 Fed. Reg. 15,481 (Apr. 11, 2025).
[2] 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).
[3] *See, e.g.*, *What's Next: The Threat to Individual Freedoms in a Post-Roe World Before the H. Comm. on the Judiciary*, 117th Cong. (2022) (testimony of Catherine Glenn Foster, President & CEO, Americans United for Life).
[4] 597 U.S. 215, 271 (2022) (citing Clarke D. Forsythe, *Abuse of Discretion: The Inside Story of* Roe v. Wade 127, 141 (2012)).
[5] In Executive Order 14,192, President Trump recognizes that:

> "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including, without limitation, regulations, rules, memoranda, administrative orders, guidance documents, policy statements, and interagency agreements, regardless of whether the same were enacted through the processes in the Administrative Procedure Act . . . .

Human Services Centers for Medicare and Medicaid Services' July 11, 2022 memorandum[6] that interprets the Emergency Medical Treatment and Active Labor Act ("EMTALA")[7] to require abortions in certain circumstances, (II) U.S. Department of Justice Office of Legal Counsel's December 23, 2022 memorandum opinion[8] that essentially nullifies the mail-order abortion rules in the Comstock Act[9], and partial rescission of (III) the Equal Employment Opportunity Commission's final rule[10] for the Pregnant Workers Fairness Act[11] insofar as it devises protections for abortion. Below, I discuss the background of each regulation and why there is good cause[12] for rescission.

I. The Administration Should Rescind the EMTALA Abortion Mandate.

EMTALA was Congress' response to the prevalent issue of patient dumping, including the denial of care to indigent women in active labor and their unborn children. Although EMTALA protects the "unborn child" in four separate provisions, the Centers for Medicare and Medicaid Services ("CMS") has contrived an abortion mandate from the statute ("EMTALA abortion mandate"). The EMTALA abortion mandate is contrary to the statutory text and violates the major questions doctrine.

A. Congress Passed EMTALA to Address Patient Dumping of Women in Active Labor and Their Unborn Children, but CMS Has Devised an Abortion Mandate Within the Statute.

EMTALA protects women in active labor as well as their unborn children from patient dumping in emergency rooms. Nevertheless, CMS has extrapolated an abortion mandate within the statute that purportedly overrides state pro-life laws.

Unleashing Prosperity Through Deregulation, Exec. Order No. 14,192, 90 Fed. Reg. 9,065, 9,066 (Jan. 31, 2025); *see also* Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, Exec. Order 14,219, 90 Fed. Reg. 10,583, 10,584 (Feb. 25, 2025) (broadly defining "regulation"). Since this request for information ("RFI") does not define "regulation", but stems from President Trump's deregulation initiative, this comment adopts E.O. 14,192's broader definition for "regulation".

[6] Ctrs. for Medicare & Medicaid Servs., *Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss (QSO-21-22-Hospitals-UPDATED July 2022)* (rev. Aug. 25, 2022).

[7] 42 U.S.C. § 1395dd.

[8] Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortion, 46 Op. O.L.C. ___ (2022).

[9] 18 U.S.C. §§ 1461–1462.

[10] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636).

[11] 42 U.S.C. §§ 2000gg to 2000gg-6.

[12] *See Fact Sheet: President Donald J. Trump Directs Repeal of Regulations That Are Unlawful Under 10 Recent Supreme Court Decisions*, White House (Apr. 9, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-directs-repeal-of-regulations-that-are-unlawful-under-10-recent-supreme-court-decisions/.

i. EMTALA Stops Patient Dumping of Women in Active Labor and Their Unborn Children.

EMTALA's statutory and legislative history show Congress passed the statute to protect women in active labor and their unborn children from patient dumping. "Patient dumping can take many forms. The most common is for economic reasons. It can be carried out by transferring a patient to another hospital, refusing to treat them, or subjecting them to long delays before the patient finally leaves."[13] By the 1980s, patient dumping had received national attention in the United States.[14] As the House Committee on Ways and Means reported when considering EMTALA initially:

> The Committee is greatly concerned about the increasing number of reports that hospital emergency rooms are refusing to accept or treat patients with emergency conditions if the patient does not have medical insurance. The Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other instances, patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital.[15]

Women in active labor, as well as their unborn children, were common victims of patient dumping. Shortly after the enactment of EMTALA, a Subcommittee of the House Committee on Government Operations held a hearing on the issue of patient dumping.[16] Chairman Ted Weiss opened with this story:

> A pregnant woman, whose labor pains have begun, knows she is about to give birth. She goes to the emergency room of a nearby private hospital. The emergency intake staff interview her and ask her about her ability to pay and her insurance status.
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> She is uninsured and has no means to pay the hospital for delivering her baby. Preliminary tests that might have shown that her baby is in

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[13] *Equal Access to Health Care: Patient Dumping: Hearing Before the Subcomm. on Hum. Res. & Intergov'tal Rels. of the H. Comm. on Gov't Operations*, 100th Cong. 1–2 (1987) (statement of Ted Weiss, Chairman, Subcomm. on Hum. Res. & Intergov'tal Rels. of the H. Comm. on Gov't Operations).
[14] Lauren A. Dame, *The Emergency Medical Treatment and Active Labor Act: The Anomalous Right to Health Care*, 8 Health Matrix 3, 6 (1998). Historically, there was a "common-law 'no duty' rule, which allowed [hospitals] to refuse treatment to anyone. Hospitals believed indigent patients should receive care through charitable organizations or through uncompensated care provided by hospitals." U.S. Comm'n on Civ. Rts., *Patient Dumping* 2 (2014). Congress' first major effort to address patient dumping—the Hill-Burton Act—fell short. *See* 42 U.S.C. §§ 291 to 291o-1. The Hill-Burton Act did not define "emergency" and had enforcement issues. U.S. Comm'n on Civ. Rts., *supra* note 14, at 3.
[15] H.R. Rep. No. 99-241(I), at 27 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 579, 605.
[16] *Equal Access to Health Care*, *supra* note 13.

> trouble are not done. The hospital staff refuse to admit her, and she has no way of knowing her baby is having difficulty.
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> After waiting 3 hours in the emergency room, in active labor, she prevails upon the hospital staff to send her by ambulance to the nearest public hospital. After she arrives at the public hospital, her baby is born, but it is dead. According to the physician in the public hospital, had she received prompt attention, her baby's life could have been saved.[17]

This was not the only tragic example of patient dumping of women in active labor. The Subcommittee heard numerous stories during the hearing, detailing the horrors pregnant women and unborn children endured from patient dumping:

- A woman at six and a half months pregnancy "began having labor pains and passing blood clots." "Once at the hospital, the woman was told by a nurse that because she did not have a private doctor, nothing could be done for her." The woman traveled two hours to a university hospital, where she delivered a premature baby. The baby died minutes after birth.[18]
- An uninsured woman presented to a hospital in active labor. "The hospital kept her two hours and fifteen minutes, in a wheelchair in their lobby. She was checked only once, and no tests were done which would have shown that the fetus was in profound distress." She left the facility to go to a county hospital where she delivered a stillborn child.[19]
- A hospital denied admittance to a woman in active labor because she had Medicaid coverage. The woman could not present her insurance card at a second private facility, so it sent her to the county hospital "[e]ven though the baby was found to be in trouble." "[T]he baby was born dead. . . . Her baby might have lived if she had been given thorough care at either of the two private hospitals."[20]
- A woman who was "9 months pregnant and with no insurance, sat in labor for three hours in the Brookside Hospital waiting room" without a medical evaluation. She transferred to a county hospital where "her baby was born dead." If she had received "prompt

[17] *Id*. at 1 (statement of Ted Weiss, Chairman, Subcomm. on Hum. Res. & Intergov'tal Rels. of the H. Comm. on Gov't Operations).
[18] *Id*. at 43 (statement of Judith G. Waxman, Managing Att'y, Nat'l Health L. Program).
[19] *Id*. at 258 (statement of Lois Salisbury, Att'y, Coal. to Stop Patient Dumping).
[20] *Id*. at 270–271.

> attention at [the initial hospital, it] might well have helped increase[] her baby's chances of survival."[21]

Spurred by these types of tragic stories of patient dumping, Congress explicitly has protected women in active labor as well as unborn children throughout EMTALA's statutory history. The original statute, "Examination and Treatment for Emergency Medical Conditions and Women in Active Labor," ensured stabilizing treatment or an appropriate transfer for women in active labor.[22] Congress included within the "active labor" definition "a time at which . . . a transfer may pose a threat of the health and safety of the patient *or the unborn child*."[23]

In 1989, Congress expanded protections for unborn children within EMTALA, recognizing that transferring hospitals must "minimize[] the risks to . . . the health *of the unborn child*."[24] An "emergency medical condition" includes "acute symptoms of sufficient severity . . . such that the absence of immediate medical attention could reasonably be expected to result in . . . placing . . . , with respect to a pregnant woman, the health of the woman *or her unborn child*[] in serious jeopardy."[25] For pregnant women having contractions, an "emergency medical condition" includes situations in which a "transfer may pose a threat to the health or safety of the woman *or the unborn child*."[26]

EMTALA's statutory and legislative history display Congress' commitment to safeguarding both women and unborn children from the harms of patient dumping. EMTALA says nothing about abortion, let alone mandates "stabilizing" abortions.

ii. CMS Devised an Abortion Mandate within EMTALA.

The EMTALA abortion mandate emerged as a direct response to the Supreme Court's decision to overrule *Roe v. Wade*'s purported constitutional right to abortion[27] in *Dobbs v. Jackson Women's Health Organization*.[28] As Justice Alito described in *Moyle v. United States*:

> President Biden instructed members of his administration to find ways to limit *Dobbs*'s reach. In response, Government lawyers hit upon the novel argument that, under EMTALA, all Medicare-funded

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[21] *Id*. at 280 (emphasis removed).
[22] Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 9121(b), 100 Stat. 82, 164 (1986).
[23] *Id*. § 9121(b), 100 Stat. at 166 (emphasis added).
[24] Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6211(c)(5)(B), 103 Stat. 2106, 2246 (emphasis added).
[25] *Id*. § 6211(h)(1)(A), 103 Stat. at 2248 (emphasis added)
[26] *Id*. (emphasis added).
[27] 410 U.S. 113.
[28] 597 U.S. 215.

> hospitals—that is, the vast majority of hospitals—*must* perform abortions on request when the "health" of a pregnant woman is in serious jeopardy.[29]

President Biden issued Executive Order 14,076 ("E.O. 14,076"), indicating "the Federal Government is taking action to protect healthcare service delivery and promote access to critical reproductive healthcare services, including abortion. It remains the policy of my Administration to support women's right to choose and to protect and defend reproductive rights."[30] In E.O. 14,076, President Biden contrived a variety of ways to protect abortion throughout federal regulations, including within EMTALA.[31] Specifically, E.O. 14,076 directed the Secretary of the U.S. Department of Health and Human Services ("HHS") to submit a report:

> identifying steps to ensure that all patients—including pregnant women and those experiencing pregnancy loss, such as miscarriages and ectopic pregnancies—receive the full protections for emergency medical care afforded under the law, including by considering updates to current guidance on obligations specific to emergency conditions and stabilizing care under the Emergency Medical Treatment and Labor Act, 42 U.S.C. 1395dd, and providing data from the Department of Health and Human Services concerning implementation of these efforts.[32]

CMS subsequently issued the EMTALA abortion mandate.

The EMTALA abortion mandate devised a duty to provide "stabilizing" abortions regardless of state laws that have more robust protections for human life.[33] Specifically, the guidance contends the physician's duty to provide stabilizing treatment under EMTALA requires the physician to perform an abortion if "abortion is the stabilizing treatment necessary to resolve that condition."[34] "Any state actions against a physician who provides an abortion in order to stabilize an emergency medical condition in a pregnant individual presenting to the hospital would be preempted by the federal EMTALA statute due to the direct conflict with the 'stabilized' provision of the statute."[35] The guidance highlighted HHS' enforcement

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[29] 603 U.S. 324, 346 (2024) (Alito, J., dissenting) (citations omitted) (emphasis in original); *see also* Carolyn McDonnell & Ryan Fuhrman, Moyle v. United States*: Does EMTALA Include an Abortion Mandate?*, https://aul.org/wp-content/uploads/2024/07/Moyle-v.-US-Decision-Analysis.pdf (analyzing the *Moyle* decision).

[30] Protecting Access to Reproductive Healthcare Services, Exec. Order No. 14,076, 87 Fed. Reg. 42,053, 42,053 (July 13, 2022), *revoked by* Enforcing the Hyde Amendment, Exec. Order No. 14,182, 90 Fed. Reg. 8,751, 8,751 (Jan. 31, 2025).

[31] *Id*. at 42,053–54.

[32] *Id*. at 42,054.

[33] Ctrs. for Medicare & Medicaid Servs., *supra* note 6.

[34] *Id*. at 1.

[35] *Id*. at 5–6.

mechanism for the EMTALA abortion mandate.[36] When CMS issued the guidance, HHS Secretary Xavier Becerra simultaneously sent a letter to health care providers to reinforce the guidance's abortion mandate.[37]

President Biden issued a subsequent executive order that highlighted the EMTALA abortion mandate as one of the "critical steps to address [*Dobbs*'] effects" which had "eliminat[ed] the right recognized in Roe."[38] Every state, including ones that prohibit abortion throughout pregnancy, permits the separation of the mother and her unborn child to save the mother's life.[39] Nevertheless, the Biden Administration conflated *elective* abortions with medically-indicated maternal-fetal separations.[40] In turn, this rhetoric enabled the Biden Administration to contrive an EMTALA abortion mandate to override state laws protecting mothers and unborn children from the harms of abortion. Even though President Trump has since revoked the underlying executive orders that directed CMS to contrive the abortion mandate within EMTALA,[41] CMS has not rescinded its guidance about the EMTALA abortion mandate.

B. The EMTALA Abortion Mandate is Based on a Flawed Reading of the Statute and Violates the Major Questions Doctrine.

The abortion mandate is inconsistent with a textualist reading of EMTALA and conflicts with the major question doctrine.

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[36] *Id*. at 5.

[37] Letter from Xavier Becerra, Sec'y, U.S. Dep't Health & Hum. Servs. to Health Care Providers (July 11, 2022), https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf.

[38] Securing Access to Reproductive and Other Healthcare Services, Exec. Order No. 14,079, 87 Fed. Reg. 49,505, 49,505 (Aug. 11, 2022), *revoked by* Enforcing the Hyde Amendment, Exec. Order No. 14,182, 90 Fed. Reg. at 8,751.

[39] Mary E. Harned & Ingrid Skop, *Pro-Life Laws Protect Mom and Baby: Pregnant Women's Lives are Protected in All States*, Charlotte Lozier Inst. (Sept. 11, 2023), https://lozierinstitute.org/pro-life-laws-protect-mom-and-baby-pregnant-womens-lives-are-protected-in-all-states/.

[40] *But see* Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10 (2022). A medically-indicated maternal-fetal separation is "[d]one to prevent the mother's death or immediate, irreversible bodily harm, which cannot be mitigated in any other way. Examples include treatment of ectopic pregnancy, previable delivery for early pre-eclampsia with severe features, or previable delivery for other life-threatening conditions in pregnancy." *Glossary of Medical Terms for Life-Affirming Medical Professionals*, Am. Ass'n of Pro-Life Obstetricians & Gynecologists 1, 2 (June 2023), https://aaplog.org/wp-content/uploads/2023/06/Glossary-of-Medical-Terms_20230615_7.pdf. In a miscarriage, an unborn child has already passed away. Accordingly, by definition, miscarriage management is not the equivalent of an elective abortion, which intentionally causes feticide. *See id*. at 1–2.

[41] Enforcing the Hyde Amendment, Exec. Order No. 14,182, 90 Fed. Reg. at 8,751.

i. EMTALA Protects the "Unborn Child" in Four Separate Provisions and Says Nothing About Abortion.

In its current form, EMTALA requires hospitals with an emergency department to determine whether an individual who requests service has an emergency medical condition.[42] An emergency medical condition is defined as:

> a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman *or her unborn child*) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.[43]

For women having contractions, an "emergency medical condition" includes circumstances such "(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or (ii) that transfer may pose a threat to the health or safety of the woman *or the unborn child*."[44]

Consistent with its legislative and statutory history, EMTALA explicitly protects an "unborn child" at four separate points in the current statute.[45]

- In transferring a woman in labor, medical professionals must certify that "the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks . . . to the *unborn child* from effecting the transfer."[46]
- EMTALA defines "appropriate transfer" as "a transfer . . . in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to . . . the health of the *unborn child*."[47]

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[42] 42 U.S.C. § 1395dd(a).
[43] *Id.* § 1395dd(e)(1)(A) (emphasis added).
[44] *Id.* § 1395dd(e)(1)(B) (emphasis added).
[45] *Id.* § 1395dd. In this regard, EMTALA also is consistent with modern medicine, which considers the unborn child as a second patient. *Written Testimony of Monique C. Wubbenhorst, M.D., M.P.H., F.A.C.O.G., F.A.H.A, in Examining the Harm to Patients from Abortion Restrictions and the Threat of a National Abortion Ban: Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. 1, 3–4 (2022).
[46] 42 U.S.C. § 1395dd(c)(1)(A)(ii) (emphasis added).
[47] *Id.* § 1395dd(c)(2)(A) (emphasis added).

- Under the statute, an "emergency medical condition" considers "with respect to a pregnant woman, the health of the woman or her *unborn child*."[48]
- Regarding pregnant women having contractions, an "emergency medical condition" includes a situation in which "transfer [of the patients] may pose a threat to the health or safety of the woman or the *unborn child*."[49]

EMTALA does not mandate "stabilizing" abortions. EMTALA requires "[n]ecessary stabilizing treatment for emergency medical conditions and labor."[50] "At no point in its elaboration of the screening, stabilization, and transfer requirements does EMTALA mention abortion. Just the opposite is true: EMTALA requires the hospital at every stage to protect an 'unborn child' from harm."[51] As the Fifth Circuit noted in *Texas v. Becerra*, "[a] plain reading shows that Congress did not explicitly address whether physicians must provide abortions when they believe it is the necessary 'stabilizing treatment' to assure that 'no material deterioration of the condition is likely to result' of an individual's emergency medical condition."[52] Accordingly, the Fifth Circuit notably affirmed a permanent injunction against the EMTALA abortion mandate because "the Guidance goes beyond EMTALA by mandating abortion."[53]

The appropriate canon to apply here is *expressio unius*. Under "the interpretive canon, *expressio unius est exclusio alterius*, 'expressing one item of [an] associated group or series excludes another left unmentioned.'"[54] The Supreme Court has held, "[t]he *expressio unius* canon applies only when 'circumstances support[ ] a sensible inference that the term left out must have been meant to be excluded.'"[55] There are two prominent reasons why the *expressio unius* canon applies to this case.

First, considering the statute as a whole, EMTALA does not direct what type of stabilizing treatment medical professionals provide to patients. The Medicare Act, which includes EMTALA, directs that "[n]othing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are

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[48] *Id*. § 1395dd(e)(1)(A)(i) (emphasis added).
[49] *Id*. § 1395dd(e)(1)(B)(ii) (emphasis added).
[50] 42 U.S.C. § 1395dd(b).
[51] *Moyle*, 603 U.S. at 349 (Alito, J., dissenting).
[52] 89 F.4th 529, 542 (5th Cir. 2024) (citing 42 U.S.C. § 1395dd(b)(1), (e)(3)(A)).
[53] *Id*. at 545–46. The Fifth Circuit also held CMS failed to conduct notice-and-comment under the Medicare Act. *Id*. at 546.
[54] *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) (citing *United States v. Vonn*, 535 U.S. 55, 65 (2002)) (alteration in original).
[55] *Nat'l Lab. Rels. Bd. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) (citing *Echazabal*, 536 U.S. at 81) (second alteration in original).

provided."[56] "Section 1395 underscores the 'congressional policy against the involvement of federal personnel in medical treatment decisions.'"[57] This provision supports the application of *expressio unius*, since Congress did not authorize federal officers to mandate stabilizing treatments that are unenumerated in EMTALA.

Second, the EMTALA abortion mandate transforms the nature of EMTALA's narrow right to access stabilizing treatment in emergency rooms. EMTALA established "a right unique in the American health care system: a right to medical care without regard to ability to pay."[58] Congress, however, carefully delineated that this "right [to access healthcare] is limited to stabilizing emergency care in hospital emergency rooms."[59] From this limited right, the CMS is extrapolating a right to access "stabilizing" abortions.[60] Inferring an abortion right contradicts Congress' intent to narrowly construe EMTALA's right to healthcare access and would have wide-reaching political and social consequences. Thus, the application of the *expressio unius* canon is appropriate because Congress carefully delineated the healthcare right.

The application of the *expressio unius* canon forecloses reading an abortion mandate within EMTALA. In EMTALA, the "associated group" is "stabilizing treatment."[61] As the Fifth Circuit noted, "EMTALA does not specify stabilizing treatments in general, except one: delivery of the unborn child and the placenta."[62] Accordingly, "[t]he inclusion of one stabilizing treatment indicates the others are not mandated," such as "stabilizing" abortions.[63] Thus, under *expressio unius*, EMTALA does not authorize an abortion mandate.

EMTALA's text and context do not support an abortion mandate. The CMS guidance is thus inconsistent with the statute.

ii. The EMTALA Abortion Mandate Violates the Major Questions Doctrine.

In *Dobbs*, the Supreme Court held there is no federal constitutional right to abortion and returned the abortion issue to the democratic process.[64] Under the major questions doctrine, more concisely, CMS must have explicit authority from Congress to regulate abortion because *Dobbs* restored the legislatures' full authority

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[56] 42 U.S.C. § 1395.
[57] *Texas*, 89 F.4th at 542 (citations omitted).
[58] Dame, *supra* note 14, at 4.
[59] *Id.*
[60] *Cf. Dobbs*, 597 U.S. at 235 ("[*Roe*] held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned.").
[61] *See* 42 U.S.C. § 1395dd(b)(1), (e)(3)(a).
[62] *Texas*, 89 F.4th at 542 (citing 42 U.S.C. § 1395dd(e)(3)(A)).
[63] *Id.*
[64] 597 U.S. at 231–32.

to create abortion policy. The doctrine "refers to an identifiable body of law that has developed over a series of significant cases all addressing a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted."[65] As the Supreme Court recognized, "there are 'extraordinary cases' that call for a different approach—cases in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."[66]

To illustrate, in *Biden v. Nebraska*, the Supreme Court rejected the "Government's reading of the HEROES Act, [under which] the Secretary [of Education] would enjoy virtually unlimited power to rewrite the Education Act," including the cancellation of $430 billion in student loans.[67] Likewise, CMS cannot rewrite EMTALA to manufacture an abortion mandate. And just as the Court "f[oun]d it 'highly unlikely that Congress would leave' to 'agency discretion' the decision of how much coal-based generation there should be over the coming decades" in *West Virginia v. Environmental Protection Agency*,[68] it is equally unlikely that EMTALA authorizes CMS to set a national abortion policy.

Abortion is a heated political topic. As *Dobbs* notes, there has not been "a national settlement of the abortion issue," but, rather, abortion has been a contentious issue over the past half-century after "*Roe* and *Casey* [] enflamed debate and deepened division."[69] Congress has not delegated authority to CMS to settle the abortion debate. Nonetheless, CMS has tried to institute a national abortion policy that, under the guise of medical care, requires emergency rooms to perform elective abortions irrespective of state pro-life laws. EMTALA's text and legislative history, discussed above, do not support such an abortion mandate that affects the entire nation. Thus, the EMTALA abortion mandate violates the major questions doctrine.

In sum, the Administration should rescind the EMTALA abortion mandate. EMTALA protects women in active labor and their unborn children. It says nothing about abortion. Accordingly, the abortion mandate is inconsistent with the statutory text and contravenes the major questions doctrine.

II. The Administration Should Rescind the OLC Memorandum Opinion Construing the Comstock Act.

In 2022, the Office of Legal Counsel ("OLC") issued a memorandum opinion about the mail-order abortion rules within the Comstock Act. This memorandum

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[65] *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 724 (2022).
[66] *Id*. at 721 (citation omitted) (alteration in original).
[67] 600 U.S. 477, 502–04 (2023).
[68] 597 U.S. at 729 (citation omitted).
[69] 597 U.S. at 231–32.

opinion essentially neutralized the mail-order abortion rules, but the analysis contradicted the text, inverted the Supremacy Clause, and misread the caselaw. The Administration should rescind the OLC memorandum opinion.

A. Congress Has Reaffirmed the Comstock Act as Part of Its Longstanding Pro-life Policy, but the OLC Memorandum Essentially Nullified the Mail-Order Abortion Rules.

The Comstock Act's mail-order abortion rules are part of the United States' robust legal history and tradition of protecting mothers and unborn children from abortion.[70] The OLC memorandum opinion essentially rewrites the Comstock Act to curtail the mail-order abortion rules.

i. The Mail-Order Abortion Rules Are Part of the United States' Legal History and Tradition of Protecting Mothers and Unborn Children from Abortion Violence.

The Comstock Act is a pair of statutes, 18 U.S.C. §§ 1461–1462. Within these statutes are provisions that restrict mailing abortifacient matter. 18 U.S.C. § 1461 applies to the United States Postal Service. The statute recognizes that:

> Every article or thing designed, adapted, or intended for producing abortion . . . ; and Every 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 . . . Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Although Congress initially passed the precursor to Section 1461 in 1873, Congress has since amended the law *ten times*.[71] Congress last amended and affirmed the mail-order abortion rules in Section 1461 in 1994.[72] Congress passed Section 1461

[70] On behalf of AUL, the author of this comment has separately researched and published articles that examine the statutory text and history of mail-order abortion rules at length. Carolyn McDonnell, *Understanding the Mail-order Abortion Rules Within the Federal "Comstock Act"*, Ams. United for Life (Aug. 27, 2024), https://aul.org/wp-content/uploads/2024/08/Federal-mail-order-abortion-rules-report.pdf; Carolyn McDonnell, *The Comstock Act: Why Federal Mail-Order Abortion Rules Are the Next Abortion Battleground*, Federalist Soc'y (Sept. 25, 2024), https://fedsoc.org/commentary/fedsoc-blog/the-comstock-act-why-federal-mail-order-abortion-rules-are-the-next-abortion-battleground; Carolyn McDonnell, *Mail-Order Abortion Rules: Text, Context, and History of the Comstock Act's Restrictions on Mailing Abortifacient Matter*, 23 Ave Maria L. Rev. (forthcoming 2025).

[71] McDonnell, *Understanding the Mail-order Abortion Rules*, *supra* note 70, at 21–26 & nn.144–77.

[72] *Id*. at 26 & n.177.

pursuant to its Postal Clause power.[73] The Supreme Court held Section 1461 is constitutional in the context of obscenity in *Roth v. United States*.[74]

18 U.S.C. § 1462 applies to the shipment of abortifacient matter through a common carrier or interactive computer service. The statute directs:

> Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or interactive computer service . . . for carriage in interstate or foreign commerce . . . any drug, medicine, article, or thing designed, adapted, or intended for producing abortion . . . ; or Whoever knowingly takes or receives, from such express company or other common carrier or interactive computer service . . . any matter or thing the carriage or importation of which is herein made unlawful.

Congress initially passed the precursor to Section 1462 in 1897 but has since amended the law nine times.[75] Congress last amended and affirmed the mail-order abortion rules in Section 1462 in 1996, when it expanded the rule to apply to interactive computer services.[76] Congress passed Section 1462 pursuant to its Commerce Clause[77] power over "the instrumentalities of interstate commerce, or persons or things in interstate commerce."[78] Here, Congress is regulating instrumentalities—express companies, common carriers, and interactive computer services—as well as restricting things—*i.e.*, abortifacient matter—in interstate commerce. The Supreme Court upheld the constitutionality of Section 1462 in the context of obscenity in *United States v. Orito*.[79]

Federal policy is overwhelmingly pro-life. There is no federal statute that protects abortion. Rather, federal law protects the conscientious objections of medical professionals who do not want to perform abortions,[80] restricts the public funding for

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[73] *See* U.S. Const. art I, § 8, cl. 7.
[74] "[T]he federal obscenity statute punishing the use of the mails for obscene material is a proper exercise of the postal power delegated to Congress by Art. I, § 8, cl. 7." 354 U.S. 476, 493 (1957). In a case issued after *Miller v. California*, 413 U.S. 15 (1973), the Supreme Court affirmed "that 18 U.S.C. § 1461, 'applied according to the proper standard for judging obscenity, do[es] not offend constitutional safeguards against convictions based upon protected material, or fail to give men in acting adequate notice of what is prohibited.'" *Hamling v. United States*, 418 U.S. 87, 99 (1974) (citing *Roth*, 354 U.S. at 492) (alteration in original).
[75] McDonnell, *Understanding the Mail-order Abortion Rules*, *supra* note 70, at 26–30 & nn. 178–203.
[76] *Id*. at 30 & nn.197–200.
[77] U.S. Const. art. I, § 8, cl. 3.
[78] *United States v. Lopez*, 514 U.S. 549, 558 (1995) (citations omitted).
[79] 413 U.S. 139, 143–44 (1973).
[80] *E.g.*, 42 U.S.C. §§ 238n, 300a-7.

abortion,[81] safeguards infants born alive after a botched abortion,[82] and proscribes gruesome partial-birth abortions.[83] Accordingly, the Comstock Act's mail-order abortion rules are part of federal policy's pro-life stance.

ii. The OLC Memorandum Opinion Rewrote the Comstock Act to Nullify the Mail-Order Abortion Rules.

When the Supreme Court issued the *Dobbs* decision, it overruled *Roe v. Wade*. In turn, the Comstock Act's mail-order abortion rules once again became enforceable because they no longer conflicted with *Roe*'s purported abortion right. However, the Biden Administration then sought to limit the impact of the *Dobbs* decision through various pro-abortion measures.

In December 2022, the OLC issued a memorandum opinion "conclud[ing] that section 1461 does not prohibit the mailing, or the delivery or receipt by mail, of mifepristone or misoprostol where the sender lacks the intent that the recipient of the drugs will use them unlawfully."[84] The OLC memorandum argued that (1) 18 U.S.C. § 1461 only applies to "unlawful abortions";[85] (2) under the prior construction canon, Congress has adopted the view that 18 U.S.C. § 1461 only applies to unlawful abortions;[86] and (3) "USPS has accepted the settled judicial construction of the Comstock Act—and reported as much to Congress."[87] The OLC memo then lists "many circumstances in which a sender of these drugs typically will lack an intent that they be used unlawfully," which essentially nullified the law.[88] Although the OLC memorandum does not address 18 U.S.C. § 1462 specifically, it noted its analysis extends to that law as well.[89] The memorandum opinion severely diminishes the reach of the mail-order abortion rules. However, as discussed below, the memorandum opinion is based upon erroneous reasoning and the Administration should rescind it.

B. The Comstock Act Memorandum Opinion Is Based on a Flawed Reading of the Statute and Caselaw.

The OLC memorandum opinion contradicts the text and does not properly apply the caselaw in its interpretation of the mail-order abortion rules.

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[81] *E.g.*, Hyde Amendment, Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, tit. V, §§ 506–507(c) 138 Stat. 460, 703.
[82] 1 U.S.C. § 8.
[83] 18 U.S.C. § 1531.
[84] Application of the Comstock Act, *supra* note 8, slip op. at 1–2.
[85] *Id.* at 5–11.
[86] *Id.* at 11–15.
[87] *Id.* at 15–16.
[88] *Id.* at 17–21.
[89] *Id.* at 2 n.3.

i. The OLC Memorandum Opinion Contradicts the Text of the Comstock Act.

Although the OLC memorandum opinion contends the mail-order abortion rules only apply to "unlawful abortions," there is a blatant problem with this reasoning. The statute does not use the phrase "unlawful", let alone "unlawful abortion." 18 U.S.C. § 1461 applies to "[e]very article or thing designed, adapted, or intended for producing abortion." Consequently, the OLC memorandum rewrites the plain language of the statute by inserting "unlawful" into the text.

The insertion of "unlawful" changes the intent element within the statute, which leads to absurd results and conflicts with federalism by inverting the Supremacy Clause. Fundamentally, the OLC memorandum is arguing that the intent element under 18 U.S.C. § 1461 depends upon each state's criminal law. Or as the OLC memorandum put it, 18 U.S.C. § 1461 does not apply if "the sender lacks the intent that the recipient of the drugs will use them unlawfully." This reasoning permits a state to determine—under its state abortion code—whether a federal statute—*i.e.*, 18 U.S.C. § 1461—applies to certain mailed matter within its jurisdiction. Yet, under the Supremacy Clause, states do not have the power to nullify a federal law that Congress properly exercised under its Postal Clause authority.[90] As such, the OLC memorandum is rewriting the mail-order abortion rules to curtail the statute's application.

ii. The OLC Memorandum Reads the Caselaw Out of Context of the Legal Definition of Abortion.

The OLC memorandum draws the phrase "unlawful" from caselaw but decontextualizes it from the legal history and tradition of abortion criminalization.[91] For example, the OLC memorandum cites the Second Circuit's opinion in *United States v. One Package*, which noted, "[t]he word 'unlawful' would make this clear as to 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."[92] Yet when Congress recodified 18 U.S.C. §§ 1461–62 in 1948, states universally prohibited abortion.

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[90] *See* U.S. Const. art. VI, cl. 2.

[91] *See* Application of the Comstock Act, *supra* note 8, slip op. at 5–11.

[92] *E.g.*, 86 F.2d 737, 739 (2d Cir. 1936); *accord Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103, 108 (2d Cir. 1930) ("It would seem reasonable to give the word 'adapted' a more limited meaning . . . 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."); *United States v. Nicholas*, 97 F.2d 510, 512 (2d Cir. 1938) ("We have twice decided that contraconceptive articles may have lawful uses and that statutes prohibiting them should be read as forbidding them only when unlawfully employed.").

A "lawful purpose" referred to medical interventions to save the mother's life or other limited exceptions to abortion criminalization.[93] As Professor Joseph Dellapenna writes, historically, "nearly all statutes containing therapeutic exceptions generally applied them only to protect the life of the mother—nothing less would justify killing the child," and only six states plus the District of Columbia "authorized abortions to protect the mother's health or according to some lesser standard."[94] The OLC memorandum is ignoring this legal history and tradition. In context, and under the legal history and tradition of abortion, an "unlawful abortion" referred to universal state criminalization of abortion, which only had "legal justification" in narrow circumstances, such as medical procedures to save the mother's life.

In sum, the Comstock Act's mail-order abortion rules are part of the United States' legal history and tradition of restricting elective abortion. The OLC memorandum essentially nullifies the mail-order abortion rules, but its analysis contradicts the text and misreads the caselaw. Accordingly, the Administration should rescind the memorandum opinion.

III. The Administration Should Partially Rescind the Pregnant Workers Fairness Act Final Rule.

Congress passed the Pregnant Workers Fairness Act (PWFA) to provide reasonable workplace accommodations for pregnancy and childbirth. The Act had broad bipartisan support, even from pro-life Members of Congress. Yet under the Biden Administration, the Equal Employment Opportunity Commission (EEOC) devised protections for abortion within the final rule.[95] These abortion protections contradict the plain language of the statute and violate the major questions doctrine.[96] The Administration should rescind the PWFA final rule insofar as it contrives abortion protections.

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[93] *E.g.*, *State v. Moore*, 25 Iowa 128, 131 (1868) (affirming a jury instruction that "[t]o attempt to produce a miscarriage, except when in proper professional judgment it is necessary to preserve the life of the woman, is an unlawful act"); *Gleitman v. Cosgrove*, 227 A.2d 689, 694 (N.J. 1967) ("[t]he only justification so far held lawful by our courts is preservation of the mother's life"); *see also* Joseph W. Dellapenna, *Dispelling the Myths of Abortion History* 255 (rev. ed. 2023) (discussing how "unlawful" under England's abortion law indicated abortions "performed by someone other than a physician, or, if by a physician, without a good faith belief that the abortion was necessary to preserve the mother's life or health.").

[94] Dellapenna, *supra* note 93, at 320.

[95] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. at 29,183. AUL filed a comment in limited opposition to the proposed rule insofar as it protected abortion. Ams. United for Life, Comment Letter on Regulations to Implement the Pregnant Workers Fairness Act (Oct. 10, 2023), https://www.regulations.gov/comment/EEOC-2023-0004-98293.

[96] A district court also has issued a permanent injunction against enforcement of the PWFA against the State of Texas because the statute violates the Quorum Clause. *Texas v. Garland*, 719 F. Supp. 3d 521 (N.D. Tex. 2024), *argued*, *Texas v. Bondi*, No. 24-10386 (5th Cir. Feb. 25, 2025).

A. Congress Passed the PWFA with Bipartisan Support to Address Pregnancy Discrimination in the Workplace, but the EEOC Has Contrived Abortion Protections in the Final Rule.

Congress passed the PWFA with strong bipartisan support. The statute ensures common-sense workplace accommodations related to pregnancy and childbirth. However, the EEOC forged protections for abortion within the PWFA final rule.

i. Congress Passed the PWFA with Broad Bipartisan Support, Including from Pro-Life Members of Congress.

Congress passed the PWFA with broad bipartisan support to address pregnancy- and childbirth-related accommodations in the workplace.[97] This support included the votes of many pro-life Members, who publicly advocated to reduce the harms of abortion violence.[98]

Senator Thom Tillis expressed concern that the bill would cover abortions, affirming that "I and a number of other people do not believe that abortion is healthcare. I believe it is a brutal procedure that destroys an innocent child. The Federal Government should not be promoting abortion, let alone mandating that pro-life employers and employers in States that protect life facilitate abortion-on-demand."[99] In response, Senator Bill Cassidy stated, "I regret that my colleague has objected to this bill, but I reject the characterization that this would do anything to promote abortion."[100] Likewise, Senator Bob Casey stated that "under the Pregnant Workers Fairness Act, the Equal Opportunity Employment Commission, the EEOC, could not—could not—issue any regulation that requires abortion leave, nor does the act permit the EEOC to require employers to provide abortions in violation of State law."[101]

Senator Steve Daines separately indicated in the Congressional Record that:

> the purpose of the Pregnant Workers Fairness Act is to help pregnant mothers in the workplace receive accommodations so that they can maintain a healthy pregnancy and childbirth. Therefore, I want to make clear for the record that the terms "pregnancy" and "related medical

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[97] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. at 29,109.
[98] *See*, *e.g.*, Brief Amici Curiae of 228 Members of Congress in Support of Petitioners, *Dobbs*, 597 U.S. 215 (No. 19-1392).
[99] 168 Cong. Rec. S7,049 (daily ed. Dec. 8, 2022).
[100] *Id*. at S7,050.
[101] *Id*.

> conditions," for which accommodations to their known limitations are required under the legislation, do not include abortion.[102]

Senator Daines further stated that "[t]his legislation should not be misconstrued by the EEOC or Federal courts to impose abortion-related mandates on employers, or otherwise to promote abortions, contrary to the intent of Congress."[103] The text does not discuss abortion, and the legislative history confirms the PWFA does not cover abortions. Nevertheless, the PWFA final rule, as promulgated by the Biden Administration, protects elective abortion.

ii. The PWFA Final Rule Devises Protections for Abortion.

Under the PWFA, "a covered entity . . . [must] make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity."[104] A "known limitation," is a:

> physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)[105]

The PWFA final rule defines "known limitation" in a similar manner and likewise requires employers to provide pregnancy- and childbirth-related accommodations.[106]

The statute does not define "related medical conditions." However, it also says nothing about abortion. Regardless, in the PWFA final rule, the EEOC defined "[r]elated medical conditions" as "medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be, 'related medical conditions': termination of pregnancy, including via . . . abortion."[107] As such, the final rule contrives abortion protections within the PWFA's nondiscrimination provisions.

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[102] 168 Cong. Rec. S10,081 (daily ed. Dec. 22, 2022).
[103] *Id.*
[104] 42 U.S.C. § 2000gg-1(1).
[105] *Id.* § 2000gg(4).
[106] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. at 29,183.
[107] *Id.*

B. The PWFA Final Rule is Based on a Flawed Reading of the Statute and Violates the Major Questions Doctrine.

The PWFA's plain language does not support abortion protections. By creating a national workplace abortion policy without clear authorization from Congress, the PWFA final rule subverts the major questions doctrine.

i. The PWFA Final Rule Is Inconsistent with a Plain Reading of the Statute.

The PWFA final rule's protections for elective abortion are inconsistent with the statute. The statute prevents workplace discrimination "related to the pregnancy, childbirth, or related medical conditions of a qualified employee."[108] The final rule contends that abortion may be a "related medical condition." Yet this reasoning contradicts the plain language of the statute.

An *elective* abortion is not a "related medical condition." According to the American Association of Pro-life Obstetricians and Gynecologists ("AAPLOG"), "elective abortion is defined as those drugs or procedures used with the primary intent to end the life of the human being in the womb."[109] It is not medically required. AAPLOG explains, "'[e]lective' . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two to protect the life of one or the other (or both)."[110] This means that "by definition, there is no medical indication for elective induced abortion, since it cures no medical disease. In fact, there is no medical indication for elective induced abortion. Pregnancy is not a disease, and the killing of human beings in utero is not medical care."[111] In other words, medical professionals perform elective abortions for *non-medical* reasons.

Elective abortion is an *intervention*, not a medical *condition*. Pregnancy is the woman's medical condition.[112] A condition is distinguishable from an intervention. An intervention is "the act or fact or a means of interfering with the outcome or course esp. of a condition or process (as to prevent harm or improve functioning)."[113] Elective abortion involves an "artificial separation method[]" that interferes with a woman's pregnancy.[114] Medical professionals can use surgical interventions, such as through

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[108] 42 U.S.C. § 2000gg-1(1).
[109] *AAPLOG Statement: Clarification of Abortion Restrictions*, Am. Ass'n of Pro-Life Obstetricians & Gynecologists (July 14, 2022), https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/.
[110] Rsch. Comm., *Concluding Pregnancy Ethically*, *supra* note 40, at 5.
[111] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 7 (2017).
[112] *Pregnancy*, Merriam-Webster's Medical Dictionary (2016) ("the condition of being pregnant").
[113] *Intervention*, Merriam-Webster's Medical Dictionary (2016).
[114] Rsch. Comm., *Concluding Pregnancy Ethically*, *supra* note 40, at 5.

dilation & evacuation ("D&E", also known as dismemberment abortions),[115] or chemical intervention, such as through the mifepristone drug regimen,[116] to end the pregnancy for non-medical reasons. Regardless of the method, an elective abortion acts as an intervention to end the medical condition (*i.e.*, pregnancy). Accordingly, the PWFA final rule has contradicted the plain language of "related medical condition" by including elective abortion, an intervention performed for non-medical reasons.

ii. The PWFA Final Rule Contravenes the Major Questions Doctrine.

Abortion is a contentious issue of national sociopolitical significance.[117] Under the major questions doctrine, there is "reason to hesitate before concluding that Congress meant to confer [broad] authority" upon an administrative agency to impose widespread policies relating to issues of great "economic and political significance."[118] The PWFA final rule tries to institute a national abortion policy by protecting abortion under the guise of "related medical conditions" even though the PWFA does not mention abortion. Since the abortion issue has returned to the democratic process following the *Dobbs* decision, Congress holds the federal power to legislate on the abortion issue. The EEOC must show that Congress has delegated that authority to the agency, but it cannot. Accordingly, the PWFA final rule has violated the major questions doctrine by contriving protections for abortion without the requisite authority from Congress to do so.

In sum, Congress passed the PWFA to address workplace discrimination related to pregnancy and childbirth. The statute does not cover abortion. The PWFA final rule creates abortion protections which contradict the plain language of the statute and major questions doctrine. The Administration should rescind the PWFA final rule insofar as it protects abortion.

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[115] Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *State Restrictions on Abortion: Evidence-Based Guidance for Policymakers*, Comm. Op. No. 10, at 4–5 (2022).
[116] *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. Food & Drug Admin. (Feb. 11, 2025), https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation.
[117] *Dobbs*, 597 U.S. at 231–32.
[118] *West Virginia*, 597 U.S. at 721 (cleaned up).

IV. Conclusion.

For the foregoing reasons, the Administration should fully rescind the EMTALA abortion mandate guidance and OLC memorandum opinion, and rescind the PWFA final rule insofar as it relates to abortion.

Sincerely,

Carolyn McDonnell, Esq.
Litigation Counsel
AMERICANS UNITED FOR LIFE