

United States Senate
WASHINGTON, DC 20510-2606

May 5, 2023

Tom Moriarty, General Counsel
CVS Health
One CVS Drive
Woonsocket, RI 02895

Dear Mr. Moriarty:

We understand that CVS is applying to become certified to dispense abortion drugs. While we are deeply disappointed in that decision, we appreciate your stated intent to comply with Federal and State laws. We write to express our support and agreement with 21 State Attorneys General, who have reminded you that Federal law in 18 U.S.C. 1461-1462 criminalizes nationwide using the mail, or interstate shipment by any express company or common carrier, to send or receive any drug that is “designed, adapted, or intended for producing abortion.” As you know, these laws are additionally enforceable through a private right of action under the Racketeer Influenced and Corrupt Organizations (RICO) Act. These Federal criminal laws restrict the distribution of abortion drugs both upstream from manufacturers to pharmacies and downstream from pharmacies to individual patients. We seek additional clarity from CVS regarding the specifics of where and how it intends to distribute abortion drugs, and how it will abide by both State abortion laws and the plain requirements of Federal law against the mailing or interstate shipment of abortion drugs anywhere in the United States.

As you are no doubt aware, the Biden administration’s Office of Legal Counsel (OLC) with the U.S. Department of Justice has encouraged the U.S. Postal Service to ignore the plain letter of Federal law, through a tortured reading of the law and associated case law, that invents out of whole cloth an exception in the statute for sending abortion drugs “where the sender lacks the intent that the recipient of the drugs will use them unlawfully.” As we previously relayed to the Attorney General, the OLC memo is *not* the law, and in fact runs directly counter to it. Numerous legal scholars have soundly rejected the OLC memo’s weak and convoluted reasoning, and we join the State Attorneys General in unequivocally rejecting it. As you may know, Congress in 1978 also considered and rejected amending the law to limit its scope to “illegal abortions” as OLC now seeks to achieve under the guise of an “interpretation.” We expect Federal courts, as several already have, to agree and fully vindicate the law’s enforceability against the mailing or interstate shipment of drugs for producing abortion, regardless of the abortion’s legality under State law or the Food and Drug Administration (FDA) policies to the contrary, according to the plain words that Congress wrote.

OLC is not authorized to give legal advice to private persons, let alone immunize private parties involved in the commission of Federal crimes. As the Supreme Court has noted before, “[t]he failure of the executive branch to enforce a law does not result in its modification or repeal” (*Dist. of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 113–14 (1953)). The OLC memo, therefore, does not protect CVS or any other individual or entity from being prosecuted within the five-year statute of limitations for the illegal mailing or interstate shipment of abortion drugs by a future Presidential administration that respects the rule of law and the sanctity of life, even for conduct that occurs today.

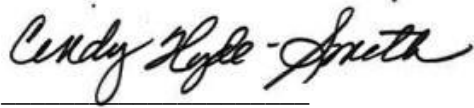
As United States Senators with the constitutional power of advice and consent, we will insist that the next President appoints an Attorney General and U.S. Attorneys who will enforce Federal law according to the words written by Congress, without political bias. This necessarily includes rescinding the OLC memo and prosecuting the criminal mailing and interstate shipment of abortion drugs and abortion-related paraphernalia under 18 U.S.C. 1461-1462 committed by the abortion industry and pharmaceutical companies to the full extent of the law.

We are also concerned that CVS's decision to dispense abortion drugs puts in jeopardy the conscience rights of pharmacists, pharmacy technicians, and other employees who object to participating in the killing of unborn children through abortion. We remind you that CVS has legal responsibilities under Federal law to protect its employees from being forced to violate their religious beliefs or moral convictions under the Church Amendments (42 U.S.C. § 300a-7(c)-(d)) and Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.), in addition to any applicable conscience protections under State law.

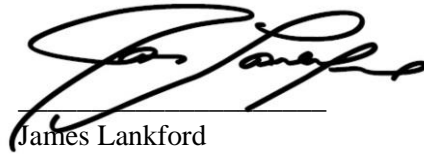
Chemical abortion drugs present risk of significant harm to women, girls, and their unborn babies. We are committed to holding CVS and other pharmaceutical companies, and the abortion industry, accountable to Federal and State law, including 18 U.S.C. 1461-1462. We ask that CVS clarify its stated commitment to comply with Federal and State law by responding in writing to the following questions regarding its plans to dispense abortion drugs upon becoming certified:

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

Sincerely,



Cindy Hyde-Smith
United States Senator



James Lankford
United States Senator



Steve Daines
United States Senator



Mike Braun
United States Senator



Marco Rubio
United States Senator



Roger Marshall, MD.
United States Senator



James E. Risch
United States Senator



Mike Crapo
United States Senator



Marsha Blackburn
United States Senator

United States Senate
WASHINGTON, DC 20510-2606

May 5, 2023

Danielle C. Gray
Executive Vice President
Global Chief Legal Officer
Walgreens Boots Alliance, Inc.
108 Wilmot Road
Deerfield, Illinois 60015

Dear Ms. Gray:

We understand that Walgreens is applying to become certified to dispense abortion drugs. While we are deeply disappointed in that decision, we appreciate Walgreens's stated intent to comply with Federal and State laws and its stated commitment not to distribute abortion drugs in at least 21 States. We write to express our support and agreement with 21 State Attorneys General, who have reminded you that Federal law in 18 U.S.C. 1461-1462 criminalizes nationwide using the mail, or interstate shipment by any express company or common carrier, to send or receive any drug that is "designed, adapted, or intended for producing abortion." As you know, these laws are additionally enforceable through a private right of action under the Racketeer Influenced and Corrupt Organizations (RICO) Act. These Federal criminal laws restrict the distribution of abortion drugs both upstream from manufacturers to pharmacies and downstream from pharmacies to individual patients. We seek additional clarity from Walgreens regarding the specifics of where and how it intends to distribute abortion drugs, and how it will abide by both State abortion laws and the plain requirements of Federal law against the mailing or interstate shipment of abortion drugs anywhere in the United States.

As you are no doubt aware, the Biden administration's Office of Legal Counsel (OLC) with the U.S. Department of Justice has encouraged the U.S. Postal Service to ignore the plain letter of Federal law, through a tortured reading of the law and associated case law, that invents out of whole cloth an exception in the statute for sending abortion drugs "where the sender lacks the intent that the recipient of the drugs will use them unlawfully." As we previously relayed to the Attorney General, the OLC memo is *not* the law, and in fact runs directly counter to it. Numerous legal scholars have soundly rejected the OLC memo's weak and convoluted reasoning, and we join the State Attorneys General in unequivocally rejecting it. As you may know, Congress in 1978 also considered and rejected amending the law to limit its scope to "illegal abortions" as OLC now seeks to achieve under the guise of an "interpretation." We expect Federal courts, as several already have, to agree and fully vindicate the law's enforceability against the mailing or interstate shipment of drugs for producing abortion, regardless of the abortion's legality under State law or the Food and Drug Administration (FDA) policies to the contrary, according to the plain words that Congress wrote.

OLC is not authorized to give legal advice to private persons, let alone immunize private parties involved in the commission of Federal crimes. As the Supreme Court has noted before, "[t]he failure of the executive branch to enforce a law does not result in its modification or repeal" (*Dist. of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 113-14 (1953)). The OLC memo, therefore, does not protect Walgreens or any other individual or entity from being prosecuted within the five-year statute of limitations for the

illegal mailing or interstate shipment of abortion drugs by a future Presidential administration that respects the rule of law and the sanctity of life, even for conduct that occurs today.

As United States Senators with the constitutional power of advice and consent, we will insist that the next President appoints an Attorney General and U.S. Attorneys who will enforce Federal law according to the words written by Congress, without political bias. This necessarily includes rescinding the OLC memo and prosecuting the criminal mailing and interstate shipment of abortion drugs and abortion-related paraphernalia under 18 U.S.C. 1461-1462 committed by the abortion industry and pharmaceutical companies to the full extent of the law.

We also urge you to reject the illegal attempts by the State of California to bully Walgreens, including by terminating contracts, into illegally distributing abortion drugs in violation of Federal and State law. As a recipient of Federal funds, the State of California is also violating the Weldon Amendment (Sec. 506(d) of Div. H, Pub. L. 117-328) and Coats-Snowe Amendment (42 U.S.C. 238n) by subjecting Walgreens, a health care provider, to discrimination on the basis that it does not provide abortions in certain cases. No religious or moral reason is required to be protected from discrimination under the Weldon or Coats-Snowe Amendments for refusing to participate in abortion either in some or all circumstances. We encourage you to file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights against the State of California for its illegal bullying tactics.

Finally, we are concerned that Walgreens's decision to dispense abortion drugs puts in jeopardy the conscience rights of pharmacists, pharmacy technicians, and other employees who object to participating in the killing of unborn children through abortion. We remind you that Walgreens has legal responsibilities under Federal law to protect its employees from being forced to violate their religious beliefs or moral convictions under the Church Amendments (42 U.S.C. § 300a-7(c)-(d)) and Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.), in addition to any applicable conscience protections under State law.

Chemical abortion drugs present risk of significant harm to women, girls, and their unborn babies. We are committed to holding Walgreens and other pharmaceutical companies, and the abortion industry, accountable to Federal and State law, including 18 U.S.C. 1461-1462. We ask that Walgreens clarify its stated commitment to follow Federal and State law by responding in writing to the following questions regarding its plans to dispense abortion drugs upon becoming certified:

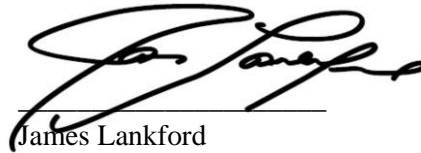
1. Will Walgreens use the U.S. Postal Service for the mailing of, or use any express company or common carrier like FedEx or UPS for the interstate shipment of, mifepristone and misoprostol for abortions directly to patients? Does Walgreens acknowledge that doing so would violate 18 U.S.C. 1461-1462? If Walgreens does plan to commit such acts, in which States does Walgreens intend to do so?
2. How will Walgreens operate the supply chain of abortion drugs to stock its pharmacies? Will Walgreens use the U.S. Postal Service for the mailing of, or use any express company or common carrier like FedEx or UPS for the interstate shipment of, mifepristone and misoprostol for abortions from the drug manufacturer to Walgreens pharmacies? Does Walgreens acknowledge that doing so would violate 18 U.S.C. 1461-1462? If Walgreens does plan to commit such acts, in which States does Walgreens intend to do so?
3. In which States does Walgreens intend to sell abortion drugs? And in which States will it not? In States where Walgreens intends to sell abortion drugs, does it intend to distribute abortion drugs through all of their stores in such States, or only some of them?

4. What processes and procedures will Walgreens put in place to ensure its dispensing of abortion drugs in States that limit or prohibit abortion comply with all applicable State laws, including any applicable gestational limits, parental involvement laws, informed consent laws, or any other applicable legal requirements?
5. How will Walgreens ensure that any abortion drugs dispensed from its stores do not fall into the hands of abusers?
6. What policies or procedures does Walgreens have in place, or plan to put in place, to protect pharmacists, pharmacy technicians, and other employees from being forced to participate in abortion against their religious beliefs or moral convictions? Does Walgreens acknowledge and intend to comply with its obligations to protect such individuals under the Church Amendments, Title VII of the Civil Rights Act, as well as under any applicable State laws?

Sincerely,



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Roger Marshall, MD.
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James E. Risch
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Marsha Blackburn

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United States Senate
WASHINGTON, DC 20510-2606

May 5, 2023

Paul Gilbert
General Counsel
Rite Aid
200 Newberry Commons
Etters, PA 17319

Dear Mr. Gilbert:

We write in response to Rite Aid’s announcement that it will become certified to dispense abortion drugs and plans do so in-person in certain stores and by mail. We wish to express our deep disappointment with this decision and to point out that your plans to mail abortion drugs contradict your stated commitment to comply with Federal and State laws. We support and agree with 19 State Attorneys General, who have reminded you that Federal law in 18 U.S.C. 1461-1462 criminalizes nationwide using the mail, or interstate shipment by any express company or common carrier, to send or receive any drug that is “designed, adapted, or intended for producing abortion.” As you know, these laws are additionally enforceable through a private right of action under the Racketeer Influenced and Corrupt Organizations (RICO) Act. These Federal criminal laws restrict the distribution of abortion drugs both upstream from manufacturers to pharmacies and downstream from pharmacies to individual patients. We seek additional clarity from Rite Aid regarding the specifics of where and how it intends to distribute abortion drugs, and how it will abide by both State abortion laws and the plain requirements of Federal law against the mailing or interstate shipment of abortion drugs anywhere in the United States.

As you are no doubt aware, the Biden administration’s Office of Legal Counsel (OLC) with the U.S. Department of Justice has encouraged the U.S. Postal Service to ignore the plain letter of Federal law, through a tortured reading of the law and associated case law, that invents out of whole cloth an exception in the statute for sending abortion drugs “where the sender lacks the intent that the recipient of the drugs will use them unlawfully.” As we previously relayed to the Attorney General, the OLC memo is *not* the law, and in fact runs directly counter to it. Numerous legal scholars have soundly rejected the OLC memo’s weak and convoluted reasoning, and we join the State Attorneys General in unequivocally rejecting it. As you may know, Congress in 1978 also considered and rejected amending the law to limit its scope to “illegal abortions” as OLC now seeks to achieve under the guise of an “interpretation.” We expect Federal courts, as several already have, to agree and fully vindicate the law’s enforceability against the mailing or interstate shipment of drugs for producing abortion, regardless of the abortion’s legality under State law or the Food and Drug Administration (FDA) policies to the contrary, according to the plain words that Congress wrote.

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illegal mailing or interstate shipment of abortion drugs by a future Presidential administration that respects the rule of law and the sanctity of life, even for conduct that occurs today.


As United States Senators with the constitutional power of advice and consent, we will insist that the next President appoints an Attorney General and U.S. Attorneys who will enforce Federal law according to the words written by Congress, without political bias. This necessarily includes rescinding the OLC memo and prosecuting the criminal mailing and interstate shipment of abortion drugs and abortion-related paraphernalia under 18 U.S.C. 1461-1462 committed by the abortion industry and pharmaceutical companies to the full extent of the law.

Finally, we are concerned that Rite Aid's decision to dispense abortion drugs puts in jeopardy the conscience rights of pharmacists, pharmacy technicians, and other employees who object to participating in the killing of unborn children through abortion. We remind you that Rite Aid has legal responsibilities under Federal law to protect its employees from being forced to violate their religious beliefs or moral convictions under the Church Amendments (42 U.S.C. § 300a-7(c)-(d)) and Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.), in addition to any applicable conscience protections under State law.

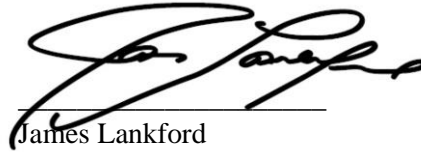
Chemical abortion drugs present risk of significant harm to women, girls, and their unborn babies. We are committed to holding Rite Aid and other pharmaceutical companies, and the abortion industry, accountable to Federal and State law, including 18 U.S.C. 1461-1462. We ask that Rite Aid clarify its stated commitment to comply with Federal and State law by responding in writing to the following questions regarding its plans to dispense abortion drugs upon becoming certified:

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

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