

No. 23-235
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IN THE
Supreme Court of the United States

No. 23-235

U.S. FOOD & DRUG ADMINISTRATION, ET AL.,

—v.— *Petitioners,*

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,

Respondents.

(Caption continued on inside cover)

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF OF *AMICI CURIAE* NATIONAL COUNCIL
OF JEWISH WOMEN, RELIGIOUS COALITION FOR
REPRODUCTIVE CHOICE, INTERFAITH VOICES FOR
REPRODUCTIVE JUSTICE, CATHOLICS FOR CHOICE,
UNITARIAN UNIVERSALIST ASSOCIATION,
MUSLIMS FOR PROGRESSIVE VALUES, HINDUS FOR
HUMAN RIGHTS, AND 27 OTHER FAITH-BASED
ORGANIZATIONS, IN SUPPORT OF PETITIONERS**

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ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,

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INTEREST OF *AMICI CURIAE*¹

The *amici curiae* are a broad spectrum of faith-based organizations, including Protestant, Catholic, Jewish, Muslim, Hindu, and Sikh organizations, as well as interfaith groups. While *amici* adhere to divergent religious traditions, they all share a common belief: that every pregnant woman should be able to follow her own values, and the teachings of her own religious faith, in deciding whether to seek an abortion.

The Fifth Circuit's decision would make it difficult or impossible for many women to follow the teachings of their religious faith in choosing to access abortion care, by imposing restrictions concerning mifepristone that the U.S. Food and Drug Administration ("FDA") has deemed unnecessary.

Amici urge this Court to reverse the Fifth Circuit's decision staying the 2016 and 2021 FDA actions concerning mifepristone.

Amici include the following organizations:

- **Ameinu** is a national, multigenerational community of progressive Jews in North America.
- **Avodah** is a community of national Jewish leaders committed to social change and to promoting a vision of Jewish life rooted in justice

¹ 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.

by engaging the broader Jewish community in both local and national issues.

- **Bend the Arc: A Jewish Partnership for Justice** is a multiracial, multiethnic, intergenerational movement of Jews and allies across the country who seek to build an American future free from white supremacy, antisemitism, and racism.
- **Catholics for Choice** is a nonprofit organization that lifts up the voices of the majority of Catholics who believe in reproductive freedom.
- **Central Conference of American Rabbis** is a Reform rabbinic professional leadership organization that aims to strengthen the Jewish community by supporting the rabbis who lead the Reform movement.
- **DignityUSA** is a nonprofit organization that works for respect and justice for people of all sexual orientations, genders, and gender identities in the Catholic Church and the world through education, advocacy, and support.
- **Florida Interfaith Coalition for Reproductive Health and Justice** is a grassroots group of interfaith clergy, faith leaders, and lay people who support and protect the right to safe and legal abortion services and the broader range of reproductive health care services through education and advocacy.

- **Hadassah, The Women's Zionist Organization of America**, is an American Jewish volunteer women's organization that helps women find their voices to advance health equity, and fights hate and antisemitism in the United States.
- **Hindus for Human Rights** is a U.S.-based nonprofit advocacy group that supports pluralism, civil rights, and human rights in South Asia and North America, and provides a Hindu voice in opposition to caste, racism, and all forms of bigotry and oppression.
- **Interfaith Alliance** is a network of people of diverse faiths and beliefs working together to build a resilient democracy and fulfill America's promise of religious freedom and civil rights—not just for some, but for all.
- **Interfaith Voices for Reproductive Justice** is an education and advocacy organization that strives to create transformative theological narratives that center the moral authority of Black women and girls.
- **Jewish Alliance for Law and Social Action** is a nonprofit organization that seeks to put Jewish values into action by engaging the Jewish community and its allies in the pursuit of social, economic, environmental, and racial justice.
- **Jewish Council for Public Affairs** is a nonprofit organization that celebrates diversity;

rejects hate, bigotry and injustice; protects democracy; and fosters pursuit of these ideals.

- **Jewish Democratic Council of America** is a nonprofit organization dedicated to establishing a just and equitable society, safe and secure Jewish communities, and strong and vibrant democracies in the United States, Israel, and around the world.
- **Jewish Orthodox Feminist Alliance** is an Open Orthodox Jewish organization that advocates for expanding women's rights and opportunities within the framework of traditional Jewish law (*halakha*), to build a vibrant and equitable Orthodox community.
- **Jewish Women International** champions women and girls by working to prevent domestic violence and sexual abuse, build pathways to economic security, and strengthen access to leadership positions for women.
- **Keshet** is a national grassroots organization that works for the full equality of all LGBTQ+ Jews and families in Jewish life.
- **Men of Reform Judaism** is a nonprofit organization dedicated to providing support and community for men who have affirmed their faithful attachment to Reform Judaism.
- **Muslims for Progressive Values** is a national organization that advocates for women and

LGBTQIA+ rights, for the separation of church and state, and for freedom of conscience.

- **National Council of Jewish Women** is a grassroots organization of volunteers that advocates and strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms.
- **Rabbinical Assembly** is a religious nonprofit of Conservative rabbis that is active in interfaith activities and in promoting and supporting projects of *tzedakah* (charity), *gemilut hesed* (kindness and consideration), and social justice.
- **Reconstructionist Rabbinical Association** is a professional association of Reconstructionist rabbis that establishes rituals, liturgy, and policies around moments of the Jewish lifecycle.
- **Religious Coalition for Reproductive Choice** is an interfaith organization founded by clergy and lay leaders from mainline denominations and faith traditions. The organization promotes religious liberty and upholds the human and constitutional rights of all people to exercise their conscience to make their own reproductive health decisions without shame or stigma.
- **SACReD—Spiritual Alliance of Communities for Reproductive Dignity** is an alliance of organizers, religious leaders, academics, and congregations working together

to advance the cause of reproductive justice through congregational designation and community building programs.

- **Sadhana: Coalition of Progressive Hindus** is a volunteer-run nonprofit that mobilizes Hindus to stand up for social justice causes including environmental justice, racial and economic justice, gender equity, immigrant rights, and anti-casteism, and brings a Hindu voice to the interfaith justice movement.
- **The Shalom Center** is a project of the Reconstructionist Rabbinical College that works to equip activists and spiritual leaders with skills needed to lead in shaping a transformed and transformative Judaism that can help create a world of peace, justice, healing for Earth, and respect for the interconnectedness of all life.
- **The Sikh Coalition** is the largest community-based organization working to protect Sikh civil rights across the United States. It works towards a world where Sikhs and other religious minorities may freely practice their faith without bias and discrimination, to defend civil rights and liberties for all people, and educate the broader community about Sikhism.
- **T'ruah, The Rabbinic Call for Human Rights**, is a multi-denominational network of rabbis and Jewish communities that seeks to protect human rights by bringing to life the

Torah's ideals of human dignity, equality, and justice.

- **Union for Reform Judaism** is a national organization that aims to motivate and mobilize people from diverse backgrounds to deepen their engagement in Jewish life.
- **Unitarian Universalist Association** is a religious association of Unitarian Universalist congregations that are diverse in faith, ethnicity, history and spirituality, but aligned in the desire to make a difference for the good.
- **Women of Reform Judaism** is a network of Jewish women that seeks to empower women and communities through the bonds of sisterhood, spirituality, and social justice.
- **Women's Alliance for Theology, Ethics, and Ritual (WATER)** is an international community of justice-seeking people who promote the use of feminist values to make religious and social change.
- **Women's Rabbinic Network** is a nonprofit organization of Reform female, nonbinary, genderfluid rabbis, supporting and advocating for their members and the values to positively impact women in the Jewish community.
- **Zioness Movement** is a multiracial coalition of Jewish activists and allies that fights for the advancement of social, racial, economic and

gender equity in America and for the inclusion of Zionists in social justice spaces.

SUMMARY OF ARGUMENT

This case was brought by doctors and organizations of doctors whose beliefs lead them to oppose abortion. However, many religions—including those represented by *amici*—view the decision to have an abortion as something for the pregnant woman to decide, based on her own moral values and religious faith.

The Fifth Circuit’s decision would make it difficult or impossible for many women to access abortion care consistent with their moral values and the teachings of their religious faith, by restricting patient access to a safe medication that is used in most abortions in the United States today. Moreover, the burden of these restrictions would fall most heavily on vulnerable women from marginalized communities—people that many religions view as particularly deserving of protection.

For these reasons, and the reasons set forth in the briefs of the FDA and Danco Laboratories, L.L.C. (“Danco”), *amici* urge the Court to reverse the Fifth Circuit’s decision staying the FDA’s 2016 and 2021 actions concerning mifepristone.

ARGUMENT**THIS COURT SHOULD REVERSE THE FIFTH
CIRCUIT’S DECISION STAYING THE FDA’S
2016 AND 2021 ACTIONS CONCERNING
MIFEPRISTONE.****I. MANY RELIGIOUS TRADITIONS VIEW ABORTION
AS MORALLY ACCEPTABLE.**

Many religious faiths and denominations view the decision to have an abortion as a choice that is morally and religiously acceptable—a choice that every pregnant woman should be able to make for herself, guided by her own beliefs and religious faith.

While some religious traditions posit that human life begins at the moment of conception, many other faiths and denominations do not strictly adhere to that view.² Many religious traditions view the

² See, e.g., PRESBYTERIAN CHURCH (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/> (last visited Jan. 26, 2024); UNITED CHURCH OF CHRIST, *Statement on Reproductive Health and Justice* (noting the “many religious and theological perspectives on when life and personhood begin”), https://d3n8a8pro7vhm.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872 (last visited Jan. 26, 2024); EVANGELICAL LUTHERAN CHURCH IN AM., *A Social Statement on: Abortion*, at 6–7 (1991) (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>; 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 TRIB. (June 1, 2019, 11:01

decision to have an abortion as morally and religiously acceptable.

Many Protestant denominations teach that the decision to seek an abortion can be completely consistent with Christian ethics. For example:

- The Presbyterian Church (U.S.A.) teaches that “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy.”³ The Presbyterian Church (U.S.A.) affirms that “[t]he considered decision of a woman to terminate a pregnancy can be . .

AM, updated June 2, 2019, 7:27 PM) (noting that the Church of Jesus Christ of Latter-day Saints has never taken an official position on when a fetus acquires personhood), <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; Elissa Strauss, *When Does Life Begin? It's Not So Simple.*, SLATE (Apr. 4, 2017, 5:55 AM) (explaining that, in the Jewish tradition, the creation of a human life is generally viewed as something that happens gradually over time and that the Muslim tradition does not have a “universally agreed-upon moment when the fetus becomes a person”), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html>; VATICAN SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Procured Abortion*, at n.19 (Nov. 18, 1974) (acknowledging the 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-abortio_en.html.

³ 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.

. morally acceptable,” and “should not be restricted by law.”⁴

- The United Church of Christ teaches 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.”⁵
- The Episcopal Church of America views the decision to terminate a pregnancy as a personal decision “properly belong[ing] to the couple, in consultation with their physician and the Church.”⁶ It recognizes abortion as a “moral option” in certain circumstances.⁷ It has expressed a “deep conviction” that the law must not “abridge[] the right of a woman” to decide to terminate a pregnancy or limit her access “to safe means of acting on her decision.”⁸

⁴ PRESBYTERIAN CHURCH (U.S.A.), *supra* note 2 (citation omitted).

⁵ UNITED CHURCH OF CHRIST, *General Synod Statements and Resolutions Regarding Freedom of Choice, Thirteenth General Synod*, 81-GS-60 (1981), https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/2038/GS-Resolutions-Freedom-of-Choice.pdf?1418425637.

⁶ 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).

⁷ *Id.*

⁸ *Id.*; see also EPISCOPAL CHURCH, *Standing Commission on Human Affairs and Health*, Resolution #A087 (1988) (any legislation surrounding abortion “must take special care to see that individual conscience is respected”), https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf.

- The Unitarian Universalist Association views “the personal right to choose in regard to . . . abortion” as an important aspect of the “right of individual conscience.”⁹
- The Evangelical Lutheran Church in America affirms that “there can be sound reasons for ending a pregnancy,” and that obtaining an abortion may be a “morally responsible” choice.¹⁰ The Lutheran Church in America opposes “laws that deny access to safe and affordable services for morally justifiable abortions.”¹¹
- The Disciples of Christ teaches that the decision to continue or terminate a pregnancy should rest with “the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”¹²

While the official stance of the Catholic Church treats abortion as impermissible,¹³ the majority of

⁹ UNITARIAN UNIVERSALIST ASS'N, *General Resolution on the Right to Choose* (July 1, 1987), <https://www.uua.org/action/statements/right-choose>.

¹⁰ EVANGELICAL LUTHERAN CHURCH IN AM., *supra* note 2.

¹¹ *Id.* at 9–10.

¹² 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) 8954 (1989) and 7524 (1975)).

¹³ VATICAN CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on Respect for Human Life in its Origin and on the*

American Catholics believe that abortion can be a morally acceptable choice,¹⁴ and that abortion should be legal in all or most cases.¹⁵ Catholic women in this country have abortions at approximately the same rate as women of other (or no) faith traditions.¹⁶

Traditional Jewish teachings view abortion as permissible and even *required* when necessary to safeguard the health and well-being of the pregnant woman, at any stage of pregnancy.¹⁷ Conservative,

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.

¹⁴ 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>.

¹⁵ 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.prr.org/research/abortion-attitudes-in-a-post-roe-world-findings-from-the-50-state-2022-american-values-atlas/>.

¹⁶ 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.

¹⁷ See Strauss, *supra* note 2; 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; Mishnah Ohalot 7:6, https://www.sefaria.org/Mishnah_Ohalot.7.6?lang=bi (last visited Jan. 26, 2024); Rashi on Sanhedrin 72b:14, <https://www.sefaria.org/sheets/234926.14?lang=bi> (last visited Jan. 26, 2024).

Reform, and Reconstructionist 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.”¹⁸ Hundreds of Jewish leaders have reaffirmed the importance of ensuring women’s access to reproductive healthcare, including abortion, as an essential matter of religious freedom.¹⁹

The Church of Jesus Christ of Latter-day Saints likewise “defers to [the] moral agency” of the pregnant woman in making this decision.²⁰

Many schools of Islamic thought permit abortion where pregnancy would endanger the life and health of the expectant mother or if there is a serious congenital anomaly, at any point up to 120 days from conception, or approximately 19–20 weeks gestation.²¹

¹⁸ 144 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)).

¹⁹ See, e.g., Letter of Jewish Clergy Leaders to the Senate Committee on the Judiciary (June 16, 2021), https://www.ncjw.org/wp-content/uploads/2021/07/06-16-2021_Jewish-Clergy-Leaders-WHPA-Letter-FINAL-1.pdf.

²⁰ Fletcher Stack, *supra* note 2 (citing the work of Courtney Campbell, a Mormon professor of religion and culture at Oregon State University); 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.

²¹ Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. FAM. CMTY. MED.

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.”²²

While there are various views within Hinduism, many Hindus believe that “each case [of abortion] requires unique consideration” and that the “final decision will be based on a long series of choices made by the woman on her lifestyle, morals, and values.”²³ The majority of Hindus in the United States believe that abortion should be legal.²⁴

* * *

We understand that some physicians object to participating in abortions. But, federal laws already provide protections to individuals that refuse, based on religious or moral beliefs, to participate in abortions. These laws include the Weldon Amendment, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. B, § 507(d)(1), 136 Stat. 4459, 4908 (2022); the Coats-Snowe Amendment, 42 U.S.C. § 238n(a)(1), (a)(2); the Church Amendments, 42

²⁵, 29–32 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439741/>; see also Strauss, *supra* note 2.

²² *A Shin Buddhist Stance on Abortion*, 6 BUDDHIST PEACE FELLOWSHIP NEWSL. 3, 6 (July 1984), <https://www.lib.uidaho.edu/digital/objects/bpf/turningwheel-summer1984.pdf>.

²³ *Hindus in America Speak Out On Abortion Issues*, HINDUISM TODAY (Sept. 1, 1985), <https://www.hinduismtoday.com/magazine/september-1985/1985-09-hindus-in-america-speak-out-on-abortion-issues/>.

²⁴ PEW RSCH. CTR., *2014 Religious Landscape Study*, <https://www.pewresearch.org/religion/religious-landscape-study/views-about-abortion/>.

U.S.C. § 300a-7(c)(2); and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* And while the doctors and organizations of doctors who brought this case are entitled to their own beliefs on abortion, their beliefs do not justify limiting the medical care and options of the many millions of American women whose religious faith teaches that abortion is religiously and morally acceptable.

II. WOMEN’S ABILITY TO ACCESS ABORTION CONSISTENT WITH THE TEACHINGS OF THEIR FAITH WOULD BE IMPAIRED IF ACCESS TO MEDICATION ABORTION WERE RESTRICTED.

The restrictions imposed by the Fifth Circuit’s decision—including requiring in-person dispensing of mifepristone and that only physicians can be certified prescribers—would make it difficult or impossible for many women to obtain the medication that is used in most abortions in the United States today. As a result, these restrictions would make it difficult or impossible for many women to follow the guidance of their religious faith in choosing to have an abortion. Studies show that requiring patients to travel to a clinic or doctor’s office would prevent many patients from obtaining medical reproductive health care at all.²⁵ This is particularly true for women who live far from an abortion provider; women who lack child care; women who cannot take time off from work; women with disabilities that make traveling difficult; and women who may need to conceal appointments to avoid the risk of violence from a spouse or partner.

²⁵ Jason M. Lindo, 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>.

In short, the restrictions imposed by the Fifth Circuit’s decision would effectively make mifepristone unavailable to women in these circumstances, making it difficult or impossible for many women to follow their conscience and religious faith to access abortion. This Court should not interfere with women’s ability to follow the teachings of their faith and their own religious beliefs concerning abortion.

Faith-based groups have expressed concern about the Fifth Circuit’s decision.

For example, Catholics for Choice has described the Fifth Circuit’s decision as a “**betrayal of our fundamental values, particularly [the] respect for human dignity and affirmation that healthcare is a human right.**”²⁶ It has explained that if the Fifth Circuit’s decision is affirmed, many women suffering miscarriages “will be unable to properly treat their medical needs” and “early-stage abortion will be much more difficult to obtain[.]”²⁷ Catholics for Choice has “call[ed] on the justices of [this] Court, especially those who so proudly proclaim their Catholic faith, to listen to the science, overrule the Fifth Circuit’s unjust decision, and preserve full access to this safe, widely used, and effective drug that

²⁶ 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/> (emphasis in original) (internal quotation marks omitted).

²⁷ See *id.* (internal quotation marks omitted).

plays such a consequential role in so many Americans’ lives.”²⁸

The National Council of Jewish Women has stated that the Fifth Circuit’s decision would curtail religious freedom for people of the Jewish faith: “[R]estricting access to mifepristone, the most common drug used for abortions and miscarriages, impede[s] our religious freedom as Jews to follow our tradition, which prioritizes the life and well-being of the pregnant person.”²⁹

Similarly, a statement by the Unitarian Universalist Association warns that upholding the Fifth Circuit’s decision would restrict the nationwide availability of mifepristone, including by striking down “the FDA rules enabling people to . . . receive [mifepristone] by mail.”³⁰

Likewise, Muslims for Progressive Values has expressed concern that the Fifth Circuit’s decision restricts the ability of pregnant women “to decide for themselves whether to continue a pregnancy or not.”³¹

²⁸ *Id.* (internal quotation marks omitted).

²⁹ NAT’L COUNCIL OF JEWISH WOMEN, *Jewish communal pledge for medication abortion access*, <https://www.ncjw.org/act/action/mife-pledge/> (last visited Jan. 26, 2024).

³⁰ See Jeff Milchen, *A Guide to Supreme Court Cases Concerning Unitarian Universalist Justice Priorities*, UUWORLD (Nov. 8, 2023), https://www.uuworld.org/articles/watching-these-supreme-court-cases?_gl=1*1rzrc99*_ga*NDgzNjU2ODAuMTcwMzYwNjYyMg.*_ga_CN7F7RET4F*MTcwMzYwNjYyMS4xLjEuMTcwMzYwNjY5NC4wLjAuMA.

³¹ See MUSLIMS FOR PROGRESSIVE VALUES, *MPV’s Advocacy*, <https://www.mpvusa.org/advocacy-efforts> (last visited Jan. 26, 2024).

As these statements make clear, the Fifth Circuit’s decision would severely limit and make it impossible for many women to follow their conscience and the teachings of their religious faith in deciding whether to have an abortion. This Court should reverse the Fifth Circuit’s decision staying the FDA’s 2016 and 2021 actions concerning mifepristone.

III. RESTRICTING ACCESS TO MIFEPRISTONE WOULD DISPROPORTIONATELY HARM WOMEN FROM MARGINALIZED GROUPS.

The harmful consequences of the Fifth Circuit’s decision would fall disproportionately on low-income and marginalized populations.

Women with incomes below the poverty line have an unintended pregnancy rate more than five times higher—and an abortion rate six times higher—than those of women with higher incomes.³² Furthermore, people of color account for the majority of abortion patients in the United States.³³ The

³² Elizabeth B. Harned & Liza Fuentes, *Abortion Out of Reach: The Exacerbation of Wealth Disparities After Dobbs v. Jackson Women’s Health Organization*, A.B.A. (Jan. 6, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/abortion-out-of-reach/.

³³ 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>.

women most severely affected by restrictions on access to medication abortion would be women in these marginalized groups.³⁴

As Catholics for Choice has observed, the Fifth Circuit’s decision would disproportionately impact “those who already suffer so much injustice—especially Black, Brown, and Indigenous people, LGBTQIA+ people, immigrants, and people working to make ends meet” because they “will be forced to continue their pregnancies against their wills.”³⁵

Numerous faith traditions teach that people of faith have a moral obligation to protect and advocate on behalf of people who are poor or from marginalized communities.

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.”³⁶

³⁴ See Sara 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 SERVS. RSCH. 1139 (2021), <https://doi.org/10.1186/s12913-021-07165-x>.

³⁵ CATHOLICS FOR CHOICE, *supra* note 26.

³⁶ UNITED CHURCH OF CHRIST, *supra* note 2; see also CONN. CONFERENCE OF THE UNITED CHURCH OF CHRIST, *Resolution: Freedom of Choice Concerning Abortion* (1971) (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”), <https://www.sneucc.org/files/>

Likewise, 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."³⁷ Consistent with these teachings, the Unitarian Universalist Association seeks to ensure "control of personal reproductive decisions" for people of "all genders, sexual orientations, abilities, gender identities, ages, classes, and cultural and racial identities," and "especially the most vulnerable and marginalized."³⁸ It 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."³⁹

In addition, many Catholics believe that protecting the right of poor and vulnerable women to choose whether to end their pregnancies is a natural

tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971_freedom_of_choice.pdf.

³⁷ UNITARIAN UNIVERSALIST ASS'N, *Statement of Conscience on Reproductive Justice* (July 1, 2015), <https://www.uua.org/action/statements/reproductive-justice>.

³⁸ *Id.*

³⁹ UNITARIAN UNIVERSALIST ASS'N, *supra* note 9.

and necessary outgrowth of core principles of Catholic social justice.⁴⁰

Similarly, many Jews expressly link the Jewish teaching of *tzedek tzedek tirdof*—justice, justice, you should pursue—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.⁴¹

The Fifth Circuit’s decision would place a disproportionately heavy burden on women from marginalized communities by limiting their access to abortion. That disproportionately heavy burden is an additional reason why this Court should reverse the Fifth Circuit’s decision staying the FDA’s 2016 and 2021 actions concerning mifepristone.

⁴⁰ See CATHOLICS FOR CHOICE, *Social Justice*, <https://www.catholicsforchoice.org/issues/social-justice/> (last visited Jan. 26, 2024); CATHOLICS FOR CHOICE, *Reproductive Equity*, <https://www.catholicsforchoice.org/issues/reproductive-choice/> (last visited Jan. 26, 2024); 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>.

⁴¹ NAT’L COUNCIL OF JEWISH WOMEN, *supra* note 17, at 13.

CONCLUSION

For the reasons set forth above, and in the FDA's and Danco's briefs, this Court should reverse the Fifth Circuit's decision staying the FDA's 2016 and 2021 actions concerning mifepristone.

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Respectfully submitted,

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