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Law of the Land

The Department of Justice should enforce the Comstock Act to protect women and unborn children from mail-order abortion pills.



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KEY POINTS:

- The Comstock Act has made mailing abortion pills a federal crime since 1873. It remains the **law of the land**.
- A Biden-era memo **prevents enforcement of the federal ban** on mailing abortion pills. The Trump Administration still has not repealed it.
- Blue state “shield laws” let abortion-drug distributors ship mifepristone into pro-life states, roughly **15,000 pills per month**, with no in-person exam or verification of who takes them or whether they take them willingly.
- Attorney General Blanche has promised to review the Biden-era memo. Now, **he must enforce the law**.

Introduction

In the American tradition of defending women and children, the Comstock Act has been the law of the land for over 150 years, protecting pregnant women, pregnant girls,¹ and their unborn babies from mail-order abortion drugs. Congress has consistently supported the law, even when given ample opportunity to amend it.

ABORTION DRUGS ARE PAINFUL AND DANGEROUS FOR MOTHERS, DEADLY TO BABIES, AND LUCRATIVE FOR SUPPLIERS.



Abortion drugs are painful and dangerous for mothers, deadly to babies, and lucrative for suppliers. Risks to mothers include infection, bleeding, or even death.² Danco, the primary distributor of mifepristone, as well as other abortion businesses and far-left activists, have lobbied for safety protections to be stripped away in the name of “increasing access.” Abusive men³ and others for whom babies are often inconvenient may also oppose the Comstock Act as a barrier to obtaining abortion drugs. But by no means are these mail-order abortions “easy” for women and girls—they can be more painful and longer-lasting than surgical abortions.⁴

After *Dobbs v. Jackson* overturned *Roe v. Wade*, the Biden administration—following former Health and Human Services Secretary Xavier Becerra’s pledge to “use every lever we have to protect access to abortion care”—deliberately suppressed the Comstock Act’s enforcement.⁵

As a result, at least one in four abortions in the United States is now provided without an in-person clinical evaluation,⁶ which normally includes an ultrasound and screening for ectopic pregnancy and its risk factors (such as prior tubal surgery or an IUD in place), as well as for coercion or deception by abusive partners.

Mail-order abortion drugs were directly responsible for the deaths of more than 300,000 unborn babies in 2025 alone.⁷ Not only is this unsafe for mothers and deadly for unborn children, but it’s also manifestly illegal under existing federal statute.

There is no acceptable rationale to continue this unlawful status quo.

The Department of Justice under President Trump must reinstate these critical protections for women and children. Comstock is still the law of the land; the Trump administration can and should actively enforce it.

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Comstock Law History

In 1873, Anthony Comstock worked with Congress to pass legislation, signed by President Ulysses S. Grant, to prevent the use of the United States Post Office Department (today the U.S. Postal Service, or USPS) to send abortifacients, contraceptives, and obscene materials. The statute remains extraordinarily clear: *sending abortion drugs through the mail is illegal today*. Current statute makes it a crime to mail “[e]very article or thing designed, adapted, or intended for producing abortion.”⁸

“**The Comstock Act’s provisions continue to be used in prosecutions today.**”

Some have argued that the law is merely a Victorian relic, the legacy of moral panic, and rarely enforced.⁹ But history doesn’t support that interpretation. Anthony Comstock was appointed as a special agent of the Post Office Department to make sure violations were prosecuted. In the 1870s alone, he was responsible for almost 100 arrests under the Comstock Act, over half of which were abortion related.¹⁰

Throughout the next century, Congress continued to affirm the intent of the law while amending it ten times.¹¹ In 1897, Congress extended the law to express companies and common carriers. In 1909, it codified both the 1873 mailing law and the 1897 carrier law into the Criminal Code. Twice more, Congress broadened the scope of the statute in 1955 and 1958.¹² In 1971, Congress again amended the law to repeal the contraception-specific provisions but did not touch the prohibition on mailing abortion drugs.

When the Supreme Court’s now-overturned *Roe v. Wade* decision invented a constitutional right to abortion in 1973, it rendered the Comstock Act’s abortion provisions unenforceable. But in subsequent amendments, Congress still declined to repeal the law to align with *Roe*. In fact, when Congress amended these provisions in 1994 and 1996, it left the abortion prohibitions intact, and in 1996 it expanded them to cover use of an “interactive computer service.” Proving that it’s not a dead law, some members of Congress are still filing bills attempting to repeal the abortion provisions.¹³

The Comstock Act’s provisions continue to be used in prosecutions today. DOJ used them as recently as 2021 to convict a man who used the internet to distribute obscene material depicting the sexual abuse of children.¹⁴



How the Safeguards Were Stripped

The landscape radically changed in 2000 when the Food and Drug Administration (FDA) approved the first abortion pill, mifepristone (originally known as RU-486 and marketed as Mifeprex), used in combination with misoprostol.

At the time, the FDA imposed distribution restrictions on these drugs, later formalized as a Risk Evaluation and Mitigation Strategy, or REMS: the drugs could only be used up to seven weeks (49 days) gestation, required three in-person clinical visits, and required a physician who could accurately date the pregnancy, diagnose ectopic pregnancy and other risks, and ensure access to emergency care if needed.¹⁵ The prescriber was required to review the risks with the patient, and both would have to sign a Patient Agreement Form assenting that the patient understood the risks. Finally, mifepristone could only be dispensed by clinics, medical offices, and hospitals.

In 2016, at Danco's request, the FDA extended the eligible gestational limit from seven weeks to ten weeks (70 days).¹⁶ The new rules also reduced the required in-person clinic visits from three to one and allowed nurse practitioners, certified nurse-midwives, and physician assistants to prescribe and administer mifepristone.

Critically, the FDA also removed the requirement to report serious adverse events to the manufacturer, except for death—and the FDA relied in part on this reduced adverse event data when it reviewed the REMS in 2021.¹⁷ Under the pretext of COVID-19, in 2021, the Biden administration stopped enforcing the in-person dispensing requirement, allowing the drugs to be mailed without an in-person doctor's visit.¹⁸

The FDA made this change permanent with a REMS modification in January 2023.¹⁹ Abortion drugs could now be mailed across the United States without any in-person relationship to medical professionals.

This action was taken despite clear evidence that the drugs are dangerous in themselves, especially in the absence of proper medical oversight. A Restoration of America Foundation review of medical insurance claims from 2017 through 2023 found that 10.9 percent of drug-induced abortions were followed by at least one serious adverse health event—about 22 times the rate stated on the FDA-approved drug label.²⁰ The rate was slightly higher as the drugs were used more broadly in 2023, reaching 11.2 percent.²¹

This dangerous existing framework should have been reversed in 2022, when *Dobbs v. Jackson* overturned *Roe v. Wade's* so-called “right to abortion.” The DOJ should have reverted to enforcing the Comstock Act.

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Instead, abortion providers continue to use the internet to distribute abortion drugs across state lines.²² This has been enabled in large part by a Biden-era DOJ Office of Legal Counsel (OLC) memorandum that deliberately gutted enforcement of the Comstock Act.

This memo does not argue that the Comstock Act's abortion provisions are obsolete. Instead, Biden's OLC wrongly argues that courts, Congress, and USPS have "settled upon an understanding" of the Comstock Act "that is narrower than a literal reading might suggest" and that it only prohibits sending abortion drugs when the sender intends for the individual to use them illegally,²³ even when the drugs are mailed into states that prohibit abortion.²⁴ The Biden OLC memorandum points out precedents, primarily the *Bours v. United States* (1915) case. It mentions other precedents regarding intent—but those cases are irrelevant because they involve the sections of the law relating to contraception, which Congress directly repealed in 1971.

However, the *Bours* case does not undermine Comstock either. It does not build in an exception based on the sender's intention. That defense was directly rejected in *United States v. Bott* (1873).²⁵ In fact, in the *Bours* case, the Seventh Circuit opinion also does not allow state abortion laws to be prioritized over Comstock. The opinion actually reached the opposite conclusion: "[i]n applying the national statute to an alleged offensive use of the mails at a named place, it is immaterial what the local statutory definition of abortion is, what acts of abortion are included, or what excluded."²⁶ The Seventh Circuit did recognize one exception: an abortion performed to save the life of the mother.²⁷

As explained in letters from state attorneys general and members of Congress, the Biden OLC memo is legally untenable.^{28 29} It is not supported by the plain text of the statute or by the only abortion-specific precedent it cites. The Trump administration must withdraw the Biden memo and replace it with one that is faithful to the statutory text.

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Next Steps

While the plain text of the Comstock Act means that mailing abortion drugs is illegal, DOJ continues to postpone enforcement. The enforcement regime—or lack thereof—started under President Biden and has continued under President Trump. During then-Acting Attorney General Todd Blanche’s confirmation hearing, he responded to questioning from Sen. Ted Cruz (R-TX) and committed to reviewing the Biden OLC opinion on Comstock.³⁰

**THE LAW IS CLEAR: IT IS ILLEGAL
TO MAIL MIFEPRISTONE AND
MISOPROSTOL FOR THE PURPOSE
OF INDUCING AN ABORTION.**



The law is clear: it is illegal to mail mifepristone and misoprostol for the purpose of inducing an abortion. As Justice Clarence Thomas recently reiterated in his dissent to a stay of a Fifth Circuit decision that would have reinstated in-person dispensing, pending an appeal, “it is a criminal offense to ship mifepristone for use in abortions.”³¹ DOJ should investigate the mailing of these drugs as felonies.

DOJ should also move upstream. Since *Dobbs*, states have courageously taken the lead to protect mothers and babies. Thirteen states currently enforce near-total abortion bans.³² In the first half of 2023, between one-fifth and one-fourth of women in states with bans who would have sought abortions carried their pregnancies to term instead.³³

But protections in these states are being deliberately undermined. Because the Comstock Act was amended in 1996 to ban the use of an “interactive computer service” (the internet) for the interstate carriage of covered materials, DOJ should take action against the prescribers and pill mills running and participating in these mail-order abortion schemes.³⁴

Mail-order abortion has become a deliberate means of circumventing abortion laws in pro-life states. Democrat-led states have deliberately passed state abortion “shield laws” designed to block states with abortion bans from enforcing those laws against providers who remain physically in states where abortion is legal.³⁵ By June 2025, nearly 15,000 abortions each month were provided under these shield laws.³⁶

By the end of 2024, about 15 percent of all U.S. abortions were medication abortions mailed by abortionists operating under shield laws to women and girls in states with pro-life protections.³⁷ In his dissent to a stay pending Fifth Circuit appeal, Justice Samuel Alito called these efforts “the perpetration of a scheme to undermine our decision in *Dobbs*.”³⁸

“**Mail-order abortion has become a deliberate means of circumventing abortion laws in pro-life states.**”

Blue state shield laws and the Biden-era OLC memo also perpetuate an emerging form of reproductive violence in which male partners obtain abortion drugs remotely and force pregnant women to ingest them without their knowledge or consent, killing their unborn children.³⁹ DOJ should be prosecuting these abusive men as well as the abortionists who provide them with these poisonous pills. Abortion drugs can be and are being distributed to any person, unsupervised, even without a pregnancy test or photo identification.⁴⁰

Beyond DOJ, there may be other avenues to enforce the Comstock Act. As 20 state attorneys general asserted in a 2023 letter, section 1461 can be enforced through civil litigation by state attorneys general and private parties under 18 U.S.C. § 1964(c).⁴¹

Conclusion

Comstock is the law of the land, and it should be enforced. For more than 150 years, the Comstock Act has been duly enacted law. When Congress amended the law, it repeatedly affirmed it, even when *Roe* prevented enforcement. The Comstock Act as written means that providing mail-order abortion drugs is a *federal crime*.

The Trump administration should reverse the mail-order abortion scheme currently in effect by retracting the Biden-era memo. Enforcing the law would neutralize the use of blue state shield laws to nullify pro-life state laws. It would hold accountable predatory abortionists who use mail and the internet to send abortifacients. Most importantly, it would protect the health of women and save the lives of hundreds of thousands of unborn babies.

The Comstock Act as written means that providing mail-order abortion drugs is a *federal crime*.

References

1. Dana M. Johnson et al., "Adolescent and Young Adult Requests for Medication Abortion Through Online Telemedicine," JAMA Health Forum 7, no. 2 (2026): e256808, <https://doi.org/10.1001/jamahealthforum.2025.6808>.
2. Foundation for the Restoration of America, "New Research Reveals Undisclosed Dangers of Chemical Abortion," April 25, 2025, https://www.roafoundation.org/wp-content/uploads/2025/04/FFROA-Chemical-Abortion_Report.pdf.
3. Madeleine Kearns, "When Abortion Pills Become the Weapons of Abusers," Free Press, September 9, 2026, <https://www.thefp.com/p/when-abortion-pills-become-the-weapons>.
4. Venla Kemppainen et al., "Pain During Medical Abortion in Early Pregnancy in Teenage and Adult Women," Acta Obstetrica et Gynecologica Scandinavica 99, no. 12 (2020): 1603–10, <https://doi.org/10.1111/aogs.13920>.
5. Xavier Becerra, "HHS Secretary Becerra's Statement on Supreme Court Ruling in Dobbs v. Jackson Women's Health Organization," U.S. Department of Health and Human Services, June 24, 2022, <https://www.hhs.gov/about/news/2022/06/24/hhs-secretary-becerras-statement-on-supreme-court-ruling-in-dobbs-v-jackson-women-health-organization.html>.
6. Society of Family Planning, "#WeCount Report: April 2022 to December 2025," Society of Family Planning, June 10, 2026, <https://societyfp.org/research/wecount/wecount-december-2025-data/>.
7. Society of Family Planning, "#WeCount Report."
8. 18 U.S.C. § 1461 (2024), <https://www.govinfo.gov/content/pkg/USCODE-2024-title18/pdf/USCODE-2024-title18-partI-chap71-sec1461.pdf>.
9. Joanna L. Grossman and Lawrence M. Friedman, "The Ghost of Anthony Comstock and the Abortion Wars," Verdict, March 8, 2023, <https://verdict.justia.com/2023/03/08/the-ghost-of-anthony-comstock-and-the-abortion-wars>.
10. Grossman and Friedman, "Ghost of Anthony Comstock."
11. Carolyn McDonnell, "Mail-Order Abortion Rules: Text, Context, and History of the Comstock Act's Restrictions on Mailing Abortifacient Matter," Ave Maria Law Review 23 (Spring 2025): 101–44, https://www.avemarialaw.edu/wp-content/uploads/2025/07/McDonnell_Final.pdf.
12. Act of June 28, 1955, Pub. L. No. 84-95, §§ 1–2, 69 Stat. 183; Act of August 28, 1958, Pub. L. No. 85-796, § 1, 72 Stat. 962.
13. Stop Comstock Act, S. 951, 119th Cong. (2025), introduced March 11, 2025, <https://www.congress.gov/bill/119th-congress/senate-bill/951>.
14. U.S. Department of Justice, Office of Public Affairs, "Texas Man Sentenced to 40 Years in Prison for Running Child Obscenity Website," June 22, 2021, <https://www.justice.gov/archives/opa/pr/texas-man-sentenced-40-years-prison-running-child-obscenity-website>.
15. U.S. Food and Drug Administration, "Mifeprex (Mifepristone) Tablets, 200 mg," prescribing information, approved September 28, 2000, https://www.accessdata.fda.gov/drugsatfda_docs/label/2000/206871bl.htm.
16. Michael F. Greene and Jeffrey M. Drazen, "A New Label for Mifepristone," New England Journal of Medicine 374, no. 23 (2016): 2281–82, <https://doi.org/10.1056/NEJMe1604462>.
17. Christina Cirucci, Kathi Aultman, and Donna Harrison, "Mifepristone Adverse Events Identified by Planned Parenthood in 2009 and 2010 Compared to Those in the FDA Adverse Event Reporting System and Those Obtained Through the Freedom of Information Act," Health Services Research and Managerial Epidemiology 8 (2021), <https://doi.org/10.1177/23333928211068919>.
18. Janet Woodcock, Acting Commissioner of Food and Drugs, to Maureen G. Phipps, American College of Obstetricians and Gynecologists, and William Grobman, Society for Maternal-Fetal Medicine, April 12, 2021, <https://nationalabortionfederation.org/wp-content/uploads/FDA-Acting-Commissioner-Letter-to-ACOG-April-12-2021.pdf>.
19. U.S. Food and Drug Administration, Mifepristone REMS Program, REMS document, January 3, 2023, https://www.accessdata.fda.gov/drugsatfda_docs/remis/Mifepristone_2023_01_03_REMS_Document.pdf.
20. Foundation for the Restoration of America, "Undisclosed Dangers."
21. Foundation for the Restoration of America, "Undisclosed Dangers."
22. Charlotte Lozier Institute, "New CLI Report: Online Abortion Drug Sellers Violating U.S. Law and FDA Safety Limits," May 26, 2026, <https://lozierinstitute.org/new-cli-report-online-abortion-drug-sellers-violating-u-s-law-and-fda-safety-limits/>.
23. Christopher H. Schroeder to Thomas J. Marshall, General Counsel, United States Postal Service, memorandum, "Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions," Office of Legal Counsel, U.S. Department of Justice, December 23, 2022, <https://www.justice.gov/olc/opinion/file/1560596/dl?inline>.
24. James Lankford et al., letter to Merrick B. Garland, Attorney General, January 25, 2023, <https://www.documentcloud.org/documents/24834197-20230123-letter-on-comstock-to-doj/>.
25. United States v. Bott, 24 F. Cas. 1204, at 1204–05 (C.C.S.D.N.Y. 1873) (No. 14,626).
26. Bours v. United States, 229 F. 960, at 964 (7th Cir. 1915).
27. Bours, 229 F. at 964.
28. Andrew Bailey et al., letter to Danielle Gray, Executive Vice President, Walgreens Boots Alliance, Inc., February 1, 2023, <https://ago.mo.gov/wp-content/uploads/attachments/2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf>.
29. Lankford et al. to Garland, January 25, 2023.
30. Kaelan Deese, "Anti-Abortion Groups Applaud Blanche Review of Biden DOJ Policy on Mailing Abortion Drugs," Washington Examiner, August 7, 2026, <https://www.washingtonexaminer.com/news/justice/4678389/anti-abortion-groups-applaud-review-mailing-abortion-drugs/>.
31. Danco Laboratories, LLC v. Louisiana, No. 25A1207, 608 U.S. ____ (May 14, 2026) (Thomas, J., dissenting), https://www.supremecourt.gov/opinions/25pdf/25a1207_21p3.pdf.
32. Guttmacher Institute, "State Bans on Abortion Throughout Pregnancy," State Laws and Policies, as of September 2, 2026, <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans>.
33. Margot Sanger-Katz and Claire Cain Miller, "How Many Abortions Did the Post-Roe Bans Prevent?," New York Times, November 22, 2023, <https://www.nytimes.com/2023/11/22/upshot/abortion-births-bans-states.html>.

34. Telecommunications Act of 1996, Pub. L. No. 104-104, § 507(a), 110 Stat. 56, 137 (1996) (codified as amended at 18 U.S.C. § 1462 (2024)); Charlotte Lozier Institute, “Online Abortion Drug Sellers.”
35. Office of the New York Attorney General, “Attorney General James Defends New York’s Shield Law Against Texas Attack,” September 8, 2025, <https://ag.ny.gov/press-release/2025/attorney-general-james-defends-new-yorks-shield-law-against-texas-attack>.
36. Society of Family Planning, “#WeCount Report, April 2022 to June 2025,” December 9, 2025, <https://societyfp.org/research/wecount/wecount-june-2025-data/>.
37. Laurie Sobel, Ivette Gomez, and Alina Salganicoff, “The Intersection of State and Federal Policies on Access to Medication Abortion via Telehealth After Dobbs,” KFF, July 24, 2025, updated May 15, 2026, <https://www.kff.org/womens-health-policy/the-intersection-of-state-and-federal-policies-on-access-to-medication-abortion-via-telehealth-after-dobbs/>.
38. Danco Laboratories, 608 U.S. ____ (2026) (Alito, J., dissenting).
39. Kearns, “Weapons of Abusers.”
40. Charlotte Lozier Institute, “Online Abortion Drug Sellers.”
41. Bailey et al. to Gray, February 1, 2023.



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