No. 25A-1207

In the Supreme Court of the United States

DANCO LABORATORIES, L.L.C.,
Applicant,

v.

LOUISIANA, ET AL.,
Respondents.

Regarding Emergency Application to Vacate Stay Pending Appeal and Request for Administrative Stay

BRIEF OF AMICUS CURIAE NEBRASKA AND 22 OTHER STATES OPPOSING VACATUR OF THE STAY PENDING APPEAL

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INTRODUCTION AND STATEMENT OF INTEREST

States have always had a "legitimate interest[]" in protecting unborn life. *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 301 (2022). For nearly fifty years, however, they were stymied in how they could pursue that interest. That changed in 2022, when this Court "return[ed] the issue of abortion to the people's elected representatives." *Id.* at 232. After *Dobbs*, States can now enact and enforce laws that regulate or restrict the availability of abortion "based on their belief that abortion destroys an 'unborn human being.'" *Id.* at 256.

Amici States Nebraska, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming have adopted such laws[1]—including laws that regulate chemical abortion.[2] These laws

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[1] See Neb. Rev. Stat. §§ 71-6915(2), 28-3,106; Ala. Code § 26-23H-4; Ark. Code Ann. § 5-61-304; Fla. Stat. Ann. § 390.0111; Ga. Code Ann. § 16-12-141; Idaho Code Ann. §§ 18-608, 622; Ind. Code § 16-34-2-1; Iowa Code §§ 146C.2, 146E.2; Ky. Rev. Stat. § 311.772; Miss. Code Ann. §§ 41-41-34.1, 41-41-45; Mo. Rev. Stat. §§ 188.056–.058; Mont. Code Ann. § 50-20-109; N.D. Cent. Code Ann. § 12.1-19.1-02; Okla. Stat. tit. 63, § 1-731.4; S.C. Code Ann. § 44-41-630; S.D. Codified Laws § 22-17-5.1; Tenn. Code Ann. § 39-15-213; Tex. Health & Safety Code § 170A.002; Utah Code Ann. §§ 76-7a-201, 76-7-302; W. Va. Code § 16-2R-3; Wyo. Stat. Ann. §§ 35-6-401–404.

[2] Neb. Rev. Stat. § 28-335; Ala. Code § 26-23E-7; Ark. Code Ann. § 20-16-1504; Fla. Stat. Ann. § 456.47(2)(f); Ga. Code

represent the considered judgments of "the people and their elected representatives" after hard-fought democratic deliberation. *Dobbs*, 597 U.S. at 259.

Rather than respect these States' efforts to protect prenatal life, the federal government has often undermined them. Most notably, in the immediate wake of this Court's decision in *Dobbs*, President Biden avowed that chemical abortion drugs would remain "as widely accessible as possible."[3] His pledge emphasized efforts to both maintain and expand access to mifepristone, including via telehealth prescription, which in turn facilitates the shipment of chemical abortion drugs across state lines—from pro-abortion States into those where abortion is more tightly regulated.[4]

Following up on that presidential proclamation, in 2023 the Food and Drug Administration (FDA) promulgated a Risk Evaluation and Mitigation

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Ann. § 16-12-140; Idaho Code Ann. §§ 18-607, 617(2); Ind. Code §§ 16-18-2-1, 16-34-2-1(a)(1); Ky. Rev. Stat. §§ 311.7731–.7739; 2026 Miss. Laws, H.B. 1613 (Mar. 31, 2026); Mo. Rev. Stat. § 188.021(1); Mont. Code Ann. § 50-20-704; N.D. Cent. Code Ann. §§ 14-02.1-03.5; Okla. Stat. tit. 21, § 861; 2026 S.D. Sess. Laws, H.B. 1274 (Mar. 30, 2026); Tenn. Code Ann. § 63-6-1103; Tex. Health & Safety Code §§ 171.063, 171A.051; Utah Code Ann. § 76-7-332; W. Va. Code § 30-1-26(b)(9); Wyo. Stat. Ann. §§ 33-1-401–403, 35-6-301–302.

[3] See Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services (July 8, 2022), https://perma.cc/9VML-4YCA.

[4] *Ibid.* See also Executive Order 14076, *Protecting Access to Reproductive Healthcare Services*, 87 Fed. Reg. 42053 (July 8, 2022).

Strategy (REMS) to govern mifepristone that removed the long-standing requirement that mifepristone be dispensed in-person and allowed the drug to be prescribed via telehealth. Even though many States—like Nebraska—require a prescribing doctor to be physically present, the 2023 REMS permits doctors in California and New York (and any other pro-abortion jurisdiction) to prescribe mifepristone to out-of-state patients via telehealth. Thus, the 2023 REMS allows out-of-state doctors to prescribe mifepristone and arrange for its shipment to other jurisdictions without regard for the requirements of those States' laws and largely free from consequence.[5]

Seeking to protect its sovereign prerogatives and mitigate direct pocketbook harms, Louisiana brought an APA challenge to the 2023 REMS. A district court "agreed that Louisiana was likely to win its challenge … and was suffering irreparable harm from [the 2023 REMS]." App.2a. See also App.46a. Nevertheless, the district court "declined to stay" the 2023 REMS "based on its balancing of the equities and the public interest." App.2a. See also App.47a–

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[5] See Society of Family Planning, *#WeCount report, April 2022 to June 2025* (Dec. 9, 2025), https://perma.cc/Z765-EUXB (noting that telehealth abortions have "continued to increase" and that "[s]hield laws continue to facilitate abortion access"); Letter from 17 Attorneys General to the Senate Committee on Health, Education, Labor & Pensions (Jan. 13, 2026), https://perma.cc/RY5H-B53G (describing how shield-state residents are "mailing abortion drugs" to women in States where abortion is tightly regulated and usually illegal).

53a. Louisiana appealed to the Fifth Circuit, seeking a stay pending appeal. App.2a.

The Fifth Circuit granted Louisiana's request for a stay. *Ibid.* The court of appeals agreed with the district court that Louisiana was likely to succeed on the merits and was facing the prospect of irreparable harm. App.14a–15a. But it came to a different conclusion regarding the other stay factors. The court of appeals found that Louisiana's "sovereign interest in its laws protecting the unborn and the public's interest in not exposing women to unsafe medical procedures" outweighed Danco Laboratories' countervailing interests. App.16a–18a. That determination, in tandem with Louisiana's likelihood of success and the prospect of irreparable harm, led the Fifth Circuit to stay the 2023 REMS while proceedings below continue. App.18a.

Danco now asks this Court to vacate the stay of the 2023 REMS. Amici States urge the Court to leave it in place. Like Louisiana, the Amici States are suffering ongoing harms directly traceable to the proliferation of chemical abortion drugs made possible by the 2023 REMS.[6] These harms—both sovereign and pecuniary—are irreparable. App.14a–15a. Maintaining the stay will ameliorate these harms while still allowing FDA to conduct its ongoing review of mifepristone's overall safety and efficacy. App.17a. And, despite Danco's claim that the stay is "extremely disruptive" and will cause "confusion,"

[6] See also, *e.g.*, *Missouri* v. *FDA*, Case No. 4:25-cv-01580 (E.D. Mo.); *Florida* v. *FDA*, Case No. 7:25-cv-0126 (N.D. Tex.).

"upheaval" and "chaos," Application to Stay the Judgment and Request For An Immediate Administrative Stay ("Stay Appl.") 5, 31, the impact of the stay is relatively modest. As the Fifth Circuit explained, it only "pause[s] a method of prescribing mifepristone that began five years ago and was formally approved only three years ago." App.16a. Mifepristone can still be legally prescribed, sold, and distributed under the legal regime that prevailed prior to the 2023 REMS.[7]

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[7] Danco's claim of "chaos" and "upheaval" depends heavily on the notion that if Fifth Circuit's stay remains in place, the regulatory framework governing mifepristone will not "'simply snap back' to some previous version." Stay Appl. 5 (quoting the declaration of an FDA official in prior litigation). But that contention is overwrought for two reasons—one legal, one practical.

Legally, it is not uncommon, in the analogous situation where a court vacates an invalidly promulgated rule, for "vacatur [to] restore[] the status quo before the invalid rule took effect." *Env't Def.* v. *Leavitt*, 329 F. Supp. 2d 55, 64 (D.D.C. 2004). See also, *e.g.*, *Prometheus Radio Project* v. *FCC*, 652 F.3d 431, 454 n.25 (3d Cir. 2011) (collecting authority indicating that "vacating or rescinding invalidly promulgated regulations has the effect of reinstating prior regulation"). Thus, in most cases, "the effect of invalidating an agency rule is to reinstate the rule previously in force." *Paulsen* v. *Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005).

Practically, the declaration on which Danco relies addressed a materially different stay in a materially different case. The stay there reached back over two decades and swept up a host of regulatory actions including not only the FDA's September 2000 "approval of mifepristone" but also "all subsequent challenged actions related to that approval." Declaration of Janet Woodcock ¶ 10, https://perma.cc/F4C2-AWNN. In such a scenario, involving what amounts to a wholesale uprooting of the regulatory landscape, "snapping back" to a previous regulatory universe may have been impractical. But here, where the stay is limited to a single action (the 2023 REMS) and FDA can easily

The practical effect of the stay, then, is the preservation of Louisiana's and the Amici States' sovereign prerogative to regulate abortion as their citizens see fit. To be sure, the stay will undermine efforts, emanating from pro-abortion jurisdictions, to flout the Amici States' duly enacted abortion regulations and restrictions. That is a feature, not a bug. As the Fifth Circuit explained, there is no legitimate interest in "continuing unlawful agency action." App.5a. And even FDA concedes that the 2023 REMS was likely unlawful. *Ibid*. See also App.17a, 45a–46a, 49a. Accordingly, the Fifth Circuit rightly issued a stay. This Court should reject Danco's request to vacate.

return to its longstanding (and effectively undisturbed) pre-stay regulatory framework, the concerns outlined in the declaration are inapposite. Cf. *Humane Soc. of U.S.* v. *Kempthorne*, 579 F. Supp. 2d 7, 21 (D.D.C. 2008) ("Little confusion or inefficiency will result from reinstating a regulatory regime that was in place from 1978 to 2007.").

REASONS FOR DENYING THE REQUEST FOR VACATUR

Amici States agree with Danco that this Court will likely review this case on the merits if the proceedings below result in the 2023 REMS being set aside. See Stay Appl. 32 ("the issues presented in this application warrant … review under [the Court's] traditional certiorari criteria"). But the Amici States vigorously dispute Danco's suggestion that if this Court were to review the merits it would "reverse the order below." *Id.* at 18. Danco's lead argument in favor of ultimate reversal is its claim that Louisiana lacks standing. *Id.* at 19

Not so. On the contrary, Louisiana has plausibly established two separate theories of standing. Either independently suffices to confer Article III standing.

I. Louisiana's Sovereign Interest in Enforcing Its Own Law Confers Standing.

To have standing, Louisiana must "be able to answer a basic question: 'What's it to you?'" *Bost* v. *Ill. State Bd. of Elecs.*, 607 U.S. ---, 146 S. Ct. 513, 519 (2026) (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)). Louisiana has "an obvious answer." *Ibid.* Through the democratic process, the people of Louisiana have enacted a limitation on chemical abortions: It is required that the "drug or chemical [inducing an abortion] shall be in the same room and in the

physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman." La. R.S. 40:1061.11.

The 2023 REMS directly undermines this validly enacted Louisiana statute. Indeed, the 2023 REMS permits out-of-state doctors to do something that law expressly forbids—remotely prescribe mifepristone. And, as Louisiana has learned, bringing out-of-state doctors who openly defy its law to justice is far from easy.[8]

This direct interference with Louisiana's ability to enforce its own law inflicts a sovereign injury that confers Article III standing. It is undisputed, in our system of federalism, that the residual sovereignty of the States includes "the power to create and enforce a legal code." *Tex. Office of Pub. Util. Counsel* v. *FCC*, 183 F.3d 393, 449 (5th Cir. 1999) (quoting *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U.S. 592, 601–02 (1982)). Indeed, "*paramount* among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law." *Cameron* v. *EMW Women's Surgical Ctr.*, 595 U.S. 267, 277 (2022) (emphasis added).[9]

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[8] Attempts to hold California doctors who have facilitated the shipment of abortion-inducing drugs to Louisiana residents have been unsuccessful. See*, e.g.*, Rachel Bluth, *Louisiana Wants a California Doctor Extradited to Face Abortion Charges. Newsome Isn't Having It.*, Politico (Jan. 14, 2026), https://perma.cc/3Y8M-Z4G5.

[9] The Biden-era FDA argued that the 2023 REMS preempted pro-life States' restrictions on abortion. That's not only wrong, *GenBioPro, Inc.* v. *Raynes*, 144 F.4th 258, 267 (4th Cir. 2025)

And there is nigh-universal agreement that a State's enforcement authority includes the power to "punish extraterritorial actions that have tangible impacts on the territory over which they are sovereign." Seth F. Kreimer, *Lines in the Sand: The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 975 (2002) (noting that "a shot fired across the border" from one State into another is a classic example where the latter's "exercise of … criminal authority" over extraterritorial conduct is permitted). Our federalist system demands "respect" for the place of States in exercising their "residuary and inviolable sovereignty." *Cameron*, 595 U.S. at 277 (internal quotation marks omitted). Thus, States "clearly ha[ve] a legitimate interest in the continued enforceability of [their] own statutes." *Maine* v. *Taylor*, 477 U.S. 131, 137 (1986).

The 2023 REMS undermines Louisiana's enforcement interests to a startling degree. Most obviously, the 2023 REMS effectively imposes a national scheme on an issue that (except, *perhaps*, by way of unambiguous federal *legislation*) is appropriately handled on a State-by-State basis. See *Dobbs*, 597 U.S. at 302. After all, the States possess "great latitude" to protect "the lives, limb, health, comfort, and quiet of all persons." *Metro. Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 756 (1985) (cleaned

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(holding that the Food and Drug Administration Amendments "fall[] well short of expressing a clear intention to displace the states' historic and sovereign right to protect the health and safety of their citizens"), but it also underscores why Louisiana has standing, see *Ohio ex rel. Celebrezze* v. *U.S. Dep't of Transp.*, 766 F.2d 228, 232–33 (6th Cir. 1985).

up). And "protect[ing] the people" within its borders is a "fundamental aspect of a State's sovereign power." *New York* v. *New Jersey*, 598 U.S. 218, 225 (2023). See *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 475 (1996).

Abortion is no exception. *Dobbs*, 597 U.S. at 302. This Court has unequivocally held that "the authority to regulate abortion must be returned to the people and their elected representatives." *Dobbs*, 597 U.S. at 292. Yet the 2023 REMS has displaced individual States' prerogatives on chemical abortion, effectively federalizing the subject. Setting aside the open question of whether a federalized abortion policy is even permissible under the Constitution,[10] there can be little doubt that *only Congress* could establish such a policy, and, even then, it would require federal legislators "speak clearly" given the vast political significance of the issue. *Util. Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 324 (2014). That significance provides a strong "'reason to hesitate'" before concluding that Congress "meant to confer [the] authority" to set national abortion policy to FDA. *West Virginia* v. *EPA*, 597 U.S. 697, 700 (2022) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

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[10] See generally Kevin J. Hickey & Whitney K. Novak, Congressional Research Service, LSB10787, Congressional Authority to Regulate Abortion (July 8, 2022). Scholarly debate on the question continues. See, *e.g.*, Jonathan Adler, *Could Congress Prohibit Abortion If Roe Overturned (Updated)*, The Volokh Conspiracy (June 2, 2022), https://perma.cc/R9LZ-HL64.

The 2023 REMS also materially interferes with horizontal federalism. The genius of our system of federalism is that it allows for differing views and approaches on important policy questions. See *Bond* v. *United States*, 564 U.S. 211, 221–22 (2011). What it does *not* allow is for a select few States—no matter how populous or economically and politically significant—to impose their policy preferences on all others. See *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 406–07 (2023) (Kavanaugh, J. concurring and dissenting in part) (one State's attempt to "unilaterally impose its moral and policy preferences … on the rest of the Nation … undermines federalism and the authority" of other States). California and New York have no license to establish abortion policy for the entire Nation.

Yet that's exactly what the 2023 REMS effectively allows. Doctors in those jurisdictions (and any others with pro-abortion policies) are empowered by the combination of their home States' lax regulation of abortion and the 2023 REMS's blessing of telehealth mifepristone prescription to flout the law in Louisiana and other similarly situated States.

This state of affairs inflicts a concrete sovereign injury on Louisiana. By necessity, "[t]he sovereignty of each State … implie[s] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980). "The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others." *Brown* v. *Fletcher's Est.*, 210 U.S. 82, 89 (1908). After all, the

Founders experienced how unfettered State sovereignty could "cut[] off the lifeblood of the Nation" and accordingly "discarded the Articles of Confederation and adopted a new Constitution." *Pork Producers*, 598 U.S. at 404 (Kavanaugh, J., concurring and dissenting in part). Under that new Constitution, each State was afforded wide latitude to establish the policies that prevail *within* its borders, a paradigm that allows "innovation and experimentation in government," promotes "increase[d] opportunity for citizen involvement in democratic processes," and, ultimately, results in governments more attuned to the "diverse needs of a heterogenous society." *Gregory* v. *Ashcroft*, 501 U.S. 452, 458 (1991).

The Constitution repeatedly references the respect States owe to their sister States. For example, the Full Faith and Credit Clause imposes a "constitutional obligation to enforce the rights and duties validly created under the laws of other states." *Hughes* v. *Fetter*, 341 U.S. 609, 611 (1951); U.S. Const. art. IV, § 1. "That Clause prevents States from 'adopting any policy of hostility to the public Acts' of another State." *Pork Producers*, 598 U.S. at 409 (Kavanaugh, J., concurring and dissenting in part) (quoting *Carroll* v. *Lanza*, 349 U.S. 408, 413 (1955)). And the Privileges and Immunities Clause similarly bars "discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." *Toomer* v. *Witsell*, 334 U.S.

385, 296 (1948); U.S. Const. art. IV, § 2. As Justice Kavanaugh has recognized, "one State's efforts" to export its regulatory preferences into "other States … raise[s] significant questions under that Clause." *Pork Producers*, 598 U.S. at 409 (Kavanaugh, J., concurring and dissenting in part).

The 2023 REMS effectively permits New York and California doctors to export their regulatory preference regarding chemical abortions to States like Louisiana, directly and fatally undermining a policy choice unambiguously enshrined in the latter's statutes. Because the 2023 REMS permits telehealth prescribing of chemical abortifacients, a New York doctor can circumvent a Louisiana enactment which outlaws precisely that behavior. A California doctor who prescribes a chemical abortifacient, via a telehealth appointment, to a Louisiana resident *located in Louisiana at the time of the prescription* has, in practical effect, "fired a shot" across the virtual border between those two States. Cf. p. 9, *supra*. And, by way of the 2023 REMS, FDA has handed that out-of-state doctor the gun.

This interference with Louisiana's ability to vindicate its public policy choices *within its own territory* is a direct affront to its "sovereign interest." *Snapp & Son*, 458 U.S. at 601. And the 2023 REMS is a but-for cause of the resulting harm—which gives Louisiana all it needs to satisfy the standing inquiry. After all, litigants have standing when they can point to a "concrete, particularized, and actual or imminent" harm. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co.* v.

Geertson Seed Farms, 561 U.S. 139, 149 (2010)). And "courts have recognized that States suffer a cognizable injury for purposes of constitutional standing when they allege an intrusion on their ability to enforce their own legal code, whether by way of direct interference or interference analogous to substantial pressure to change state laws." *Tennessee* v. *U.S. Dep't of Educ.*, 615 F. Supp. 3d 807, 821 & n.7 (E.D. Tenn. 2022) (collecting cases). Indeed, "a State clearly has a legitimate interest in the continued enforceability of its own statutes." *Taylor*, 477 U.S. at 137. So "substantial" is a State's sovereign interest in "defend[ing] its laws" that this Court has admonished lower courts that it "should not be lightly cut off." *Cameron*, 595 U.S. at 277.

This is exactly the rationale the Fifth Circuit relied upon when it concluded Louisiana has standing. It began by recognizing that "Louisiana has a 'sovereign interest in the power to create and enforce a legal code.'" App.8a (quoting *Texas* v. *United States*, 809 F.3d 134, 153 (5th Cir. 2015)). It then recognized that the 2023 REMS "creates an effective way for an out-of-state prescriber to place the drug in the hands of Louisianans in defiance of Louisiana law." App.10a. This, the court concluded, represents a substantial federal interference with Louisiana's ability to enforce its own legal code and thus confers standing to challenge the federal action in question (the 2023 REMS). App.10a–11a.

Danco resists this conclusion, but its arguments fall short. It first argues that Louisiana is not the target of the 2023 REMS. See Stay Appl. 19

(describing Louisiana as an "unregulated party" because "[n]othing in FDA's 2023 REMS requires Louisiana … to "do anything or to refrain from doing anything") (quotation marks omitted). But that contention blinks reality. That the 2023 REMS does not, on its face, target Louisiana is irrelevant. Cf. *Mirabelli* v. *Bonta*, 146 S. Ct. 797, 803 (2026) (recognizing that the obvious "objects" of a policy have standing to challenge it). As the Fifth Circuit recognized, one purpose of the 2023 REMS is manifestly apparent: "[E]nsuring out-of-state medical providers could prescribe mifepristone to women in states that restrict abortion." App.10a. The Fifth Circuit was not required to naively ignore "commonsense inferences" when assessing both the fundamental purpose and unavoidable impact of the 2023 REMS. Cf. *First Choice Women's Res. Ctrs., Inc.* v. *Davenport*, 608 U.S. ---, 2026 WL 1153029, at *7 (2026); *Dep't of Com.* v. *New York*, 588 U.S. 752, 785 (2019). Nor should this Court.

Danco also claims that Louisiana has suffered no sovereign harm. See Stay Appl. 22–26. Indeed, Danco seems to reject the theory of sovereign harm outright. *Id.* at 24 ("Louisiana's standing theory must fail because it relies on an injury that is not cognizable."). By Danco's reckoning, the mere fact that "Louisiana's abortion laws unquestionably remain enforceable as a legal matter" means the 2023 REMS "does not undermine" Louisiana's sovereignty. *Id.* at 26.

But, again, neither the Fifth Circuit nor this Court is required to ignore practical reality. It is true that Louisiana remains free to regulate abortion

(chemical or otherwise) and to enforce those regulations against violators. But Danco's suggestion that Louisiana's only complaint is that it must "work harder and expend more resources" on enforcement fundamentally misses the mark. *Ibid.* Louisiana has *tried* to enforce its prohibition on the remote prescription of chemical abortifacients. See n.8, *supra.* Such efforts have been stymied wholesale by the recalcitrance—and sometimes more—of pro-abortion States. See n.5, *supra* (collecting authorities discussing the impact of "shield laws" which preclude enforcement of laws or regulations related to abortion against individuals in the shield-law jurisdiction who facilitate abortions elsewhere). And the central role the 2023 REMS plays in facilitating the efforts of out-of-state medical providers who flout Louisiana law cannot be gainsaid. "By ending the in-person dispensing requirement, FDA opened the door for mifepristone to be remotely prescribed to Louisiana women." App. 10a. Which means the 2023 REMS "facilitates nearly 1,000 illegal abortions in Louisiana per month." *Ibid.*

Of course, sovereign States are entitled to choose their own way on abortion policy. But that is not a one-way street. California and Louisiana have different ideas about how to properly regulate chemical abortion drugs like mifepristone. So too Nebraska and New York. But absent express Congressional action, the federal government does not get to pick a side. But that's what the 2023 REMS does. The 2023 REMS privileges the preferences of some States (those who favor greater access to

chemical abortifacients) to the detriment of those (like Louisiana and the Amici States) who think differently. Its effective nullification of Louisiana's policy preference is precisely the sort of sovereign harm that confers Article III standing.

II. Louisiana Has Also Established Pocketbook Harm.

The sovereign harm inflicted on Louisiana is sufficient to establish standing. So too are the economic injuries inflicted. "Pocketbook harm is a traditional Article III injury." *Bost*, 146 S. Ct. at 524 (Barrett, J., concurring in the judgment). See also, *e.g.*, *Biden* v. *Nebraska,* 600 U.S. 477, 489–90 (2023). And a plaintiff who "incurs costs to mitigate or avoid the substantial risk of a harm caused by a [law]," *Bost*, 146 S. Ct. at 524 (Barrett, J., concurring in the judgment) has suffered a pocketbook injury.

At this preliminary stage, Louisiana's factual allegations must be accepted as true. And as pled, Louisiana has (and will continue to) suffer economic injury that flows from the 2023 REMS. Without the federal government's imprimatur, Louisiana's emergency rooms would only rarely be confronted with mifepristone complications arising from patient self-administration gone awry—because access to mifepristone would be subject to in-person physician oversight and administration. But so long as the 2023 REMS governs, telehealth-prescribed mifepristone has (and will continue) to flow regularly into Louisiana. Indeed, there can be little doubt that one of the 2023 REMS primary purposes was to empower *out-of-state*

doctors to remotely prescribe mifepristone to Louisiana residents *while they are in Louisiana* without regard for *Louisiana* law. See pp. 14–15, *supra*. And when a Louisiana recipient of such a prescription suffers a complication in Louisiana, the Louisiana medical system must treat it. Furthermore, when that Louisiana patient is enrolled in Medicaid (as many thousands of Louisianans are) Louisiana must pay (at least in part) for the ensuing treatment.

It's "statistically certain" that expenditures of this sort will happen. *All. for Hippocratic Medicine* v. *FDA*, 2023 WL 2913725, at *10 (5th Cir. Apr. 12, 2023). Which is exactly why the Fifth Circuit concluded Louisiana had suffered the sort of "financial injury" sufficient to establish standing. App.11a ("A State's 'expenditures in providing emergency medical services' constitute an injury for standing purposes.") (quoting *Texas* v. *United States*, 50 F.4th 498, 518 (5th Cir. 2022)). As the court of appeals noted, Louisiana specifically identified thousands of dollars in Medicaid costs arising from "complications caused by out-of-state mifepristone." App.11a. And "[s]uch costs will almost certainly continue because nearly 1,000 women monthly—many of whom are on Medicaid—have mifepristone-induced abortions in Louisiana." *Ibid*.

Danco's rejoinder attempts to cast these straight-from-the-treasury state Medicaid outlays as attenuated, indirect costs. *See* Stay Appl. 19–20. Danco highlights the Ninth Circuit's decision in *Washington* v. *FDA*, 108 F.4th 1163 (9th Cir. 2024), claiming that the Ninth Circuit held "as a matter of law" that "the expenditure of Medicaid dollars … is insufficient to … establish

Article III standing." Stay Appl. 20. Of course, that legal conclusion—to the extent it was one—does not bind this Court. But, beyond that, the persuasive value of *Washington* is limited for two reasons.

First, the Ninth Circuit cited this Court's decision in *United States* v. *Texas* for the proposition that "an alleged uptick in Medicaid costs is exactly the kind of 'indirect effect[] on ... state spending'" that has been "rejected as a basis for standing." *Washington*, 108 F.4th at 1176 (citing *United States* v. *Texas,* 599 U.S. 670, 680 n.3 (2023)). But that broad characterization overreads both *what Texas* held and *why*.

Start with the what. It is simply not accurate to say that *Texas* established a broadly applicable rule that increased government outlays can never establish a State's Article III standing. See *Air All. Houston* v. *EPA*, 906 F.3d 1049, 1059–60 (D.C. Cir. 2018) ("Monetary expenditures to mitigate and recover from harms that could have been prevented absent [agency action] are precisely the kind of 'pocketbook' injury … incurred by … [a] state … sufficient to support standing."). Cf. *Biden*, 600 U.S. at 490–91. The holding of *Texas* was much more circumspect: "The States lack Article III standing because this Court's precedents and the 'historical experience' preclude the States' 'attempt to litigate *this dispute* at this time and *in this form*.'" 599 U.S. at 686 (quoting *Raines* v. *Byrd*, 521 U.S. 811, 829, (1997)) (emphasis added).

Texas's narrow nature is confirmed by an examination of the why. In *Texas*, the plaintiff States alleged that the federal government had been

insufficiently zealous in enforcing immigration law. 599 U.S. at 674. That lack of zeal, they alleged, caused there to be more illegal aliens at-large in their territories, which in turn "impose[d] costs on the States." *Ibid.* To ameliorate those costs, the States sought an order from the judiciary that would compel the federal government to "arrest *more* criminal noncitizens." *Ibid.* (emphasis in original).

This Court described that request as "extraordinarily unusual." *Id.* at 686. And it was the *nature of the request*—not the fact that the harm the States sought to ameliorate was increased expenditures—that was the lynchpin of the determination that the States lacked standing. As the Court succinctly explained, the plaintiff States had not identified "any precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies so that the Executive Branch makes more arrests or initiates more prosecutions." *Id.* at 677. And for good reason: Judicial review of the Executive's policy prioritizations of arrests would "run up against" constitutional limits and raise separation of powers concerns. *Id.* at 678. Additionally, "courts generally lack meaningful standards for assessing the propriety of enforcement choices" regarding which classes of arrest to prioritize. *Id.* at 679.

Thus, the key takeaway from *Texas* is not that the injuries alleged—the increased cost of incarcerations and additional outlays for social services incurred by States—were somehow insufficient *as injuries* to confer a State Article III standing. Instead, the through-line of *Texas* is that the injuries inflicted on the plaintiff States

in *that particular case* were not "redressable by a court order." *Id.* at 676. See also *id.* at 678 ("In short, this Court's precedents and longstanding historical practice establish that the States' suit here is not the kind redressable by a federal court.").[11] As this Court took pains to elaborate, *Texas* implicated "only one discrete aspect of the executive power" and answered only the "narrow" question of whether "the Federal Judiciary may in effect order the Executive Branch to take enforcement actions against violators of federal law." *Id.* at 684. Answering that question in the negative has little to no bearing in other contexts. After all, "the Federal Judiciary … routinely … decides justiciable cases involving statutory requirements or prohibitions on the Executive." *Ibid.*

Second, *Washington* relies on—but overreads—*FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). See 108 F.4th at 1175. *Hippocratic Medicine* played a starring role in the Ninth Circuit's decision, but as Fifth Circuit recognized below, despite the similar subject matter, *Hippocratic Medicine* "is distinguishable." App.12a. The key differences are the identity of the plaintiffs and nature of their asserted injuries. In *Hippocratic Medicine*, the plaintiffs were "doctors and medical associations" who did "not prescribe or use mifepristone," not States. *Hippocratic Med.*, 602 U.S. at 385. Recognizing that their moral objection to the prescription and use of mifepristone by

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[11] See also *id.* at 686 (Gorsuch, J., concurring in the judgment) ("The problem here is redressability."); *id.* at 704 (Barrett, J., concurring in the judgment) ("The States failed to show that the District Court could order effective relief.").

others was insufficient to establish standing, those private plaintiffs alleged various "downstream" injuries. *Id.* at 386. Most pertinent for present purposes, the doctors claimed that regulatory action making it "easier for doctors to prescribe and pregnant women to obtain mifepristone" would inevitably increase the number of mifepristone-related complications, which in turn would "divert[] resources and time from other patients" and that diversion would "increase[] [the] risk" those doctors would face malpractice liability, which itself would "increase[] [their] insurance costs." *Id.* at 372, 390.

This Court found that daisy chain of allegations insufficient to confer standing. "The causal link between FDA's regulatory action[] and [the doctors'] alleged injuries" was "too speculative" and "too attenuated." *Id.* at 391. Indeed, the plaintiff doctors had failed to provide *any* evidence that mifepristone use had ever caused them to be sued or resulted in higher insurance costs. *Ibid.*

The contrast with this case is stark. Louisiana has offered discrete and specific examples of Medicaid expenditures directly attributable to "out-of-state mifepristone." App.12a. See also App.30a. As the Fifth Circuit explained, unlike the doctors in *Hippocratic Medicine*, whose alleged pecuniary injuries were second- or third-order downstream ripples, Louisiana's are not attenuated. So long as the 2023 REMS is operative, Louisiana's Medicaid expenditures *will* predictably increase. See App.11a (recognizing that between 2.9 and 4.6 percent of women prescribed mifepristone require emergency care and highlighting FDA's concession that "emergency room care is

statistically certain in hundreds of thousands of cases") (quoting *Hippocratic Med.*, 2023 WL 2913725, at *10). And the converse is equally true—if the 2023 REMS is set aside, Louisiana's Medicaid outlays *will necessarily decrease* because *less* mifepristone will flow into Louisiana from out-of-state. See *id.* at 10 (recognizing that "a decision in Louisiana's favor would redress [the State's] injur[ies] because mifepristone could no longer be remotely prescribed to Louisianans").

This makes *Washington's* overreading of *Hippocratic Medicine* readily apparent. Yes, the "causal chain between FDA's regulation of mifepristone" and the harms alleged by the private plaintiffs in *Hippocratic Medicine* was "highly attenuated." *Washington* 108 F.4th at 1175. But that logic does not easily extend to the very different harms alleged by Louisiana. The doctors in *Hippocratic Medicine might* be overworked, which *might* get them sued, which *might* cause the cost of their malpractice insurance to increase. By contrast, Louisiana *has* expended tens of thousands of dollars on patients who suffered complications related to out-of-state mifepristone, App.11a, and it faces the "statistical certainty" of expending many thousands (and over a sufficient timeframe, likely *millions*) more given the nearly 1,000 mifepristone-induced abortions currently occurring in Louisiana on a monthly basis, *see* p. 18, *supra*. Nothing about those costs—the already incurred and the statistically certain to occur again—is speculative or attenuated.

* * *

The Amici States, like Louisiana, have enacted laws reflecting their belief that chemical abortions should be (at most) extremely rare (if not entirely illegal). The 2023 REMS allows States with different preferences to export those policies far beyond their borders. In so doing, the 2023 REMS facilitates a coordinated effort to flout and subvert the Amici States' laws, striking at the very heart of their sovereignty. The 2023 REMS also inflicts discrete, predictable, and undeniably direct economic costs on Louisiana and the Amici States.

Either basis—sovereign harm or pocketbook injury—is sufficient to confer Article III standing. Louisiana has shown both. Because it is not an "unaffected bystander[]" to the 2023 REMS, Article III does not "lock" Louisiana "out of court." *Diamond Alternative Energy, LLC* v. *EPA*, 606 U.S. 100, 125 (2025). And because Louisiana has standing, this Court will eventually reach the merits of this case and rule in Louisiana's favor. Accordingly, Danco's request to vacate the stay pending appeal should be denied.

CONCLUSION

For the foregoing reasons, the request to vacate the Fifth Circuit's stay of the 2023 REMS should be denied.

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No. 25A-1208

In the Supreme Court of the United States

GENBIOPRO, INC.,

Applicant,

v.

LOUISIANA, ET AL.,

Respondents.

Regarding Emergency Application to Vacate Stay Pending Appeal and Request for Administrative Stay

BRIEF OF AMICUS CURIAE NEBRASKA AND 22 OTHER STATES OPPOSING VACATUR OF THE STAY PENDING APPEAL

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INTRODUCTION AND STATEMENT OF INTEREST

States have always had a "legitimate interest[]" in protecting unborn life. *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 301 (2022). For nearly fifty years, however, they were stymied in how they could pursue that interest. That changed in 2022, when this Court "return[ed] the issue of abortion to the people's elected representatives." *Id.* at 232. After *Dobbs*, States can now enact and enforce laws that regulate or restrict the availability of abortion "based on their belief that abortion destroys an 'unborn human being.'" *Id.* at 256.

Amici States Nebraska, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming have adopted such laws[1]—including laws that regulate chemical abortion.[2] These laws

[1] See Neb. Rev. Stat. §§ 71-6915(2), 28-3,106; Ala. Code § 26-23H-4; Ark. Code Ann. § 5-61-304; Fla. Stat. Ann. § 390.0111; Ga. Code Ann. § 16-12-141; Idaho Code Ann. §§ 18-608, 622; Ind. Code § 16-34-2-1; Iowa Code §§ 146C.2, 146E.2; Ky. Rev. Stat. § 311.772; Miss. Code Ann. §§ 41-41-34.1, 41-41-45; Mo. Rev. Stat. §§ 188.056–.058; Mont. Code Ann. § 50-20-109; N.D. Cent. Code Ann. § 12.1-19.1-02; Okla. Stat. tit. 63, § 1-731.4; S.C. Code Ann. § 44-41-630; S.D. Codified Laws § 22-17-5.1; Tenn. Code Ann. § 39-15-213; Tex. Health & Safety Code § 170A.002; Utah Code Ann. §§ 76-7a-201, 76-7-302; W. Va. Code § 16-2R-3; Wyo. Stat. Ann. §§ 35-6-401–404.

[2] Neb. Rev. Stat. § 28-335; Ala. Code § 26-23E-7; Ark. Code Ann. § 20-16-1504; Fla. Stat. Ann. § 456.47(2)(f); Ga. Code

represent the considered judgments of "the people and their elected representatives" after hard-fought democratic deliberation. *Dobbs*, 597 U.S. at 259.

Rather than respect these States' efforts to protect prenatal life, the federal government has often undermined them. Most notably, in the immediate wake of this Court's decision in *Dobbs*, President Biden avowed that chemical abortion drugs would remain "as widely accessible as possible."[3] His pledge emphasized efforts to both maintain and expand access to mifepristone, including via telehealth prescription, which in turn facilitates the shipment of chemical abortion drugs across state lines—from pro-abortion States into those where abortion is more tightly regulated.[4]

Following up on that presidential proclamation, in 2023 the Food and Drug Administration (FDA) promulgated a Risk Evaluation and Mitigation

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Ann. § 16-12-140; Idaho Code Ann. §§ 18-607, 617(2); Ind. Code §§ 16-18-2-1, 16-34-2-1(a)(1); Ky. Rev. Stat. §§ 311.7731–.7739; 2026 Miss. Laws, H.B. 1613 (Mar. 31, 2026); Mo. Rev. Stat. § 188.021(1); Mont. Code Ann. § 50-20-704; N.D. Cent. Code Ann. §§ 14-02.1-03.5; Okla. Stat. tit. 21, § 861; 2026 S.D. Sess. Laws, H.B. 1274 (Mar. 30, 2026); Tenn. Code Ann. § 63-6-1103; Tex. Health & Safety Code §§ 171.063, 171A.051; Utah Code Ann. § 76-7-332; W. Va. Code § 30-1-26(b)(9); Wyo. Stat. Ann. §§ 33-1-401–403, 35-6-301–302.

[3] See Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services (July 8, 2022), https://perma.cc/9VML-4YCA.

[4] *Ibid.* See also Executive Order 14076, *Protecting Access to Reproductive Healthcare Services*, 87 Fed. Reg. 42053 (July 8, 2022).

Strategy (REMS) to govern mifepristone that removed the long-standing requirement that mifepristone be dispensed in-person and allowed the drug to be prescribed via telehealth. Even though many States—like Nebraska—require a prescribing doctor to be physically present, the 2023 REMS permits doctors in California and New York (and any other pro-abortion jurisdiction) to prescribe mifepristone to out-of-state patients via telehealth. Thus, the 2023 REMS allows out-of-state doctors to prescribe mifepristone and arrange for its shipment to other jurisdictions without regard for the requirements of those States' laws and largely free from consequence.[5]

Seeking to protect its sovereign prerogatives and mitigate direct pocketbook harms, Louisiana brought an APA challenge to the 2023 REMS. A district court "agreed that Louisiana was likely to win its challenge … and was suffering irreparable harm from [the 2023 REMS]." App.2a. See also App.46a. Nevertheless, the district court "declined to stay" the 2023 REMS "based on its balancing of the equities and the public interest." App.2a. See also App.47a–

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[5] See Society of Family Planning, *#WeCount report, April 2022 to June 2025* (Dec. 9, 2025), https://perma.cc/Z765-EUXB (noting that telehealth abortions have "continued to increase" and that "[s]hield laws continue to facilitate abortion access"); Letter from 17 Attorneys General to the Senate Committee on Health, Education, Labor and Pensions (Jan. 13, 2026), https://perma.cc/RY5H-B53G (describing how shield-state residents are "mailing abortion drugs" to women in States where abortion is tightly regulated and usually illegal).

53a. Louisiana appealed to the Fifth Circuit, seeking a stay pending appeal. App.2a.

The Fifth Circuit granted Louisiana's request for a stay. *Ibid*. The court of appeals agreed with the district court that Louisiana was likely to succeed on the merits and was facing the prospect of irreparable harm. App.14a–15a. But it came to a different conclusion regarding the other stay factors. The court of appeals found that Louisiana's "sovereign interest in its laws protecting the unborn and the public's interest in not exposing women to unsafe medical procedures" outweighed GenBioPro's countervailing interests. App.16a–18a. That determination, in tandem with Louisiana's likelihood of success and the prospect of irreparable harm, led the Fifth Circuit to stay the 2023 REMS while proceedings below continue. App.18a.

GenBioPro now asks this Court to vacate the stay of the 2023 REMS. Amici States urge the Court to leave it in place. Like Louisiana, the Amici States are suffering ongoing harms directly traceable to the proliferation of chemical abortion drugs made possible by the 2023 REMS.[6] These harms—both sovereign and pecuniary—are irreparable. App.14a–15a. Maintaining the stay will ameliorate these harms while still allowing FDA to conduct its ongoing review of mifepristone's overall safety and efficacy. App.17a. And, despite GenBioPro's overwrought contentions that the stay has "unleashed regulatory

[6] See also, *e.g.*, *Missouri* v. *FDA*, Case No. 4:25-cv-01580 (E.D. Mo.); *Florida* v. *FDA*, Case No. 7:25-cv-0126 (N.D. Tex.).

chaos" and will "abruptly cutting off access for patients nationwide," Emergency Application to Vacate Stay Pending Appeal and For An Administrative Stay ("Emgy. Appl.") 3, the impact of the stay is more modest. As the Fifth Circuit explained, the stay only "pause[s] a method of prescribing mifepristone that began five years ago and was formally approved only three years ago." App.16a. Mifepristone can still be legally prescribed, sold, and distributed under the legal regime that prevailed prior to the 2023 REMS.

The practical effect of the stay, then, is the preservation of Louisiana's and the Amici States' sovereign prerogative to regulate abortion as their citizens see fit. To be sure, the stay will undermine efforts, emanating from pro-abortion jurisdictions, to flout the Amici States' duly enacted abortion regulations and restrictions. That is a feature, not a bug. As the Fifth Circuit explained, there is no legitimate interest in "continuing unlawful agency action." App.5a. And even FDA concedes that the 2023 REMS was likely unlawful. *Ibid*. See also App.17a, 45a–46a, 49a. Accordingly, the Fifth Circuit rightly issued a stay. This Court should reject GenBioPro's request to vacate.

REASONS FOR DENYING THE REQUEST FOR VACATUR

Amici States agree with GenBioPro that this Court will likely review this case on the merits if the proceedings below result in the 2023 REMS being set aside. See Emgy. Appl. 14 ("this case readily satisfies the reasonable-probability-of-review standard"). But the Amici States vigorously dispute GenBioPro's follow-on contention that if this Court were to review the merits "it would likely reverse." *Id.* at 16. GenBioPro's lead argument in favor of ultimate reversal is its claim that "Louisiana Lacks Article III Standing." *Ibid.*

Not so. On the contrary, Louisiana has plausibly established two separate theories of standing. Either independently suffices to confer Article III standing.

I. Louisiana's Sovereign Interest in Enforcing Its Own Law Confers Standing.

To have standing, Louisiana must "be able to answer a basic question: 'What's it to you?'" *Bost* v. *Ill. State Bd. of Elecs.*, 607 U.S. ---, 146 S. Ct. 513, 519 (2026) (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)). Louisiana has "an obvious answer." *Ibid.* Through the democratic process, the people of Louisiana have enacted a limitation on chemical abortions: It is required that the "drug or chemical [inducing an abortion] shall be in the same room and in the

physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman." La. R.S. 40:1061.11.

The 2023 REMS directly undermines this validly enacted Louisiana statute. Indeed, the 2023 REMS permits out-of-state doctors to do something that law expressly forbids—remotely prescribe mifepristone. And, as Louisiana has learned, bringing out-of-state doctors who openly defy its law to justice is far from easy.[7]

This direct interference with Louisiana's ability to enforce its own law inflicts a sovereign injury that confers Article III standing. It is undisputed, in our system of federalism, that the residual sovereignty of the States includes "the power to create and enforce a legal code." *Tex. Office of Pub. Util. Counsel* v. *FCC*, 183 F.3d 393, 449 (5th Cir. 1999) (quoting *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U.S. 592, 601–02 (1982)). Indeed, "*paramount* among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law." *Cameron* v. *EMW Women's Surgical Ctr.*, 595 U.S. 267, 277 (2022) (emphasis added).[8]

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[7] Attempts to hold California doctors who have facilitated the shipment of abortion-inducing drugs to Louisiana residents have been unsuccessful. See, *e.g.*, Rachel Bluth, *Louisiana Wants a California Doctor Extradited to Face Abortion Charges. Newsome Isn't Having It.*, Politico (Jan. 14, 2026), https://perma.cc/3Y8M-Z4G5.

[8] The Biden-era FDA argued that the 2023 REMS preempted pro-life States' restrictions on abortion. That's not only wrong, *GenBioPro, Inc.* v. *Raynes*, 144 F.4th 258, 267 (4th Cir. 2025)

And there is nigh-universal agreement that a State's enforcement authority includes the power to "punish extraterritorial actions that have tangible impacts on the territory over which they are sovereign." Seth F. Kreimer, *Lines in the Sand: The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 975 (2002) (noting that "a shot fired across the border" from one State into another is a classic example where the latter's "exercise of … criminal authority" over extraterritorial conduct is permitted). Our federalist system demands "respect" for the place of States in exercising their "residuary and inviolable sovereignty." *Cameron*, 595 U.S. at 277 (internal quotation marks omitted). Thus, States "clearly ha[ve] a legitimate interest in the continued enforceability of [their] own statutes." *Maine* v. *Taylor*, 477 U.S. 131, 137 (1986).

The 2023 REMS undermines Louisiana's enforcement interests to a startling degree. Most obviously, the 2023 REMS effectively imposes a national scheme on an issue that (except, *perhaps*, by way of unambiguous federal *legislation*) is appropriately handled on a State-by-State basis. See *Dobbs*, 597 U.S. at 302. After all, the States possess "great latitude" to protect "the lives, limb, health, comfort, and quiet of all persons." *Metro. Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 756 (1985) (cleaned

(holding that the Food and Drug Administration Amendments "fall[ ] well short of expressing a clear intention to displace the states' historic and sovereign right to protect the health and safety of their citizens"), but it also underscores why Louisiana has standing, see *Ohio ex rel. Celebrezze* v. *U.S. Dep't of Transp.*, 766 F.2d 228, 232–33 (6th Cir. 1985).

up). And "protect[ing] the people" within its borders is a "fundamental aspect of a State's sovereign power." *New York* v. *New Jersey*, 598 U.S. 218, 225 (2023). See *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 475 (1996).

Abortion is no exception. *Dobbs*, 597 U.S. at 302. This Court has unequivocally held that "the authority to regulate abortion must be returned to the people and their elected representatives." *Dobbs*, 597 U.S. at 292. Yet the 2023 REMS has displaced individual States' prerogatives on chemical abortion, effectively federalizing the subject. Setting aside the open question of whether a federalized abortion policy is even permissible under the Constitution,[9] there can be little doubt that *only Congress* could establish such a policy, and, even then, it would require federal legislators "speak clearly" given the vast political significance of the issue. *Util. Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 324 (2014). That significance provides a strong "'reason to hesitate'" before concluding that Congress "meant to confer [the] authority" to set national abortion policy to FDA. *West Virginia* v. *EPA*, 597 U.S. 697, 700 (2022) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

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[9] See generally Kevin J. Hickey & Whitney K. Novak, Congressional Research Service, LSB10787, Congressional Authority to Regulate Abortion (July 8, 2022). Scholarly debate on the question continues. See, *e.g.*, Jonathan Adler, *Could Congress Prohibit Abortion If Roe Overturned (Updated)*, The Volokh Conspiracy (June 2, 2022), https://perma.cc/R9LZ-HL64.

The 2023 REMS also materially interferes with horizontal federalism. The genius of our system of federalism is that it allows for differing views and approaches on important policy questions. See *Bond* v. *United States*, 564 U.S. 211, 221–22 (2011). What it does *not* allow is for a select few States—no matter how populous or economically and politically significant—to impose their policy preferences on all others. See *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 406–07 (2023) (Kavanaugh, J. concurring and dissenting in part) (one State's attempt to "unilaterally impose its moral and policy preferences … on the rest of the Nation … undermines federalism and the authority" of other States). California and New York have no license to establish abortion policy for the entire Nation.

Yet that's exactly what the 2023 REMS effectively allows. Doctors in those jurisdictions (and any others with pro-abortion policies) are empowered by the combination of their home States' lax regulation of abortion and the 2023 REMS's blessing of telehealth mifepristone prescription to flout the law in Louisiana and other similarly situated States.

This state of affairs inflicts a concrete sovereign injury on Louisiana. By necessity, "[t]he sovereignty of each State … implie[s] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980). "The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others." *Brown* v. *Fletcher's Est.*, 210 U.S. 82, 89 (1908). After all, the

Founders experienced how unfettered State sovereignty could "cut[] off the lifeblood of the Nation" and accordingly "discarded the Articles of Confederation and adopted a new Constitution." *Pork Producers*, 598 U.S. at 404 (Kavanaugh, J., concurring and dissenting in part). Under that new Constitution, each State was afforded wide latitude to establish the policies that prevail *within* its borders, a paradigm that allows "innovation and experimentation in government," promotes "increase[d] opportunity for citizen involvement in democratic processes," and, ultimately, results in governments more attuned to the "diverse needs of a heterogenous society." *Gregory* v. *Ashcroft*, 501 U.S. 452, 458 (1991).

The Constitution repeatedly references the respect States owe to their sister States. For example, the Full Faith and Credit Clause imposes a "constitutional obligation to enforce the rights and duties validly created under the laws of other states." *Hughes* v. *Fetter*, 341 U.S. 609, 611 (1951); U.S. Const. art. IV, § 1. "That Clause prevents States from 'adopting any policy of hostility to the public Acts' of another State." *Pork Producers*, 598 U.S. at 409 (Kavanaugh, J., concurring and dissenting in part) (quoting *Carroll* v. *Lanza*, 349 U.S. 408, 413 (1955)). And the Privileges and Immunities Clause similarly bars "discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." *Toomer* v. *Witsell*, 334 U.S.

385, 296 (1948); U.S. Const. art. IV, § 2. As Justice Kavanaugh has recognized, "one State's efforts" to export its regulatory preferences into "other States … raise[s] significant questions under that Clause." *Pork Producers*, 598 U.S. at 409 (Kavanaugh, J., concurring and dissenting in part).

The 2023 REMS effectively permits New York and California doctors to export their regulatory preference regarding chemical abortions to States like Louisiana, directly and fatally undermining a policy choice unambiguously enshrined in the latter's statutes. Because the 2023 REMS permits telehealth prescribing of chemical abortifacients, a New York doctor can circumvent a Louisiana enactment which outlaws precisely that behavior. A California doctor who prescribes a chemical abortifacient, via a telehealth appointment, to a Louisiana resident *located in Louisiana at the time of the prescription* has, in practical effect, "fired a shot" across the virtual border between those two States. Cf. p. 8, *supra*. And, by way of the 2023 REMS, FDA has handed that out-of-state doctor the gun.

This interference with Louisiana's ability to vindicate its public policy choices *within its own territory* is a direct affront to its "sovereign interest." *Snapp & Son*, 458 U.S. at 601. And the 2023 REMS is a but-for cause of the resulting harm—which gives Louisiana all it needs to satisfy the standing inquiry. After all, litigants have standing when they can point to a "concrete, particularized, and actual or imminent" harm. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co.* v.

Geertson Seed Farms, 561 U.S. 139, 149 (2010)). And "courts have recognized that States suffer a cognizable injury for purposes of constitutional standing when they allege an intrusion on their ability to enforce their own legal code, whether by way of direct interference or interference analogous to substantial pressure to change state laws." *Tennessee* v. *U.S. Dep't of Educ.*, 615 F. Supp. 3d 807, 821 & n.7 (E.D. Tenn. 2022) (collecting cases). Indeed, "a State clearly has a legitimate interest in the continued enforceability of its own statutes." *Taylor*, 477 U.S. at 137. So "substantial" is a State's sovereign interest in "defend[ing] its laws" that this Court has admonished lower courts that it "should not be lightly cut off." *Cameron*, 595 U.S. at 277.

This is exactly the rationale the Fifth Circuit relied upon when it concluded Louisiana has standing. It began by recognizing that "Louisiana has a 'sovereign interest in the power to create and enforce a legal code.'" App.8a (quoting *Texas* v. *United States*, 809 F.3d 134, 153 (5th Cir. 2015)). It then recognized that the 2023 REMS "creates an effective way for an out-of-state prescriber to place the drug in the hands of Louisianans in defiance of Louisiana law." App.10a. This, the court concluded, represents a substantial federal interference with Louisiana's ability to enforce its own legal code and thus confers to standing to challenge the federal action in question (the 2023 REMS). App.10a–11a.

GenBioPro resists this conclusion, but its arguments fall short. It first argues that Louisiana is not the "object of the federal regulation"—the 2023

REMS—the State challenges. Emgy. Appl. 17. That contention blinks reality. It is irrelevant that the 2023 REMS does not, on its face, target Louisiana. Cf. *Mirabelli* v. *Bonta*, 146 S. Ct. 797, 803 (2026) (recognizing that the obvious "objects" of a policy have standing to challenge it). As the Fifth Circuit recognized, the purpose of the 2023 REMS is manifestly apparent: "[E]nsuring out-of-state medical providers could prescribe mifepristone to women in states that restrict abortion" is "a goal of the regulation." App.10a. The Fifth Circuit was not required to naively ignore "commonsense inferences" when assessing both the fundamental purpose and unavoidable impact of the 2023 REMS. Cf. *First Choice Women's Res. Ctrs., Inc.* v. *Davenport*, 608 U.S. ---, 2026 WL 1153029, at *7 (2026); *Dep't of Com.* v. *New York*, 588 U.S. 752, 785 (2019). Nor should this Court.

GenBioPro also claims that Louisiana has suffered no sovereign harm. According to GenBioPro, the 2023 REMS does little more than "burden[] ... Louisiana's enforcement efforts" and thus imposes only an "attenuated downstream effect" that is insufficient to confer standing. Emgy. Appl. 23. But, again, neither the Fifth Circuit nor this Court is required to ignore practical reality. It is true, as GenBioPro posits, that "Louisiana remains free to prohibit [or regulate] abortion and to enforce its laws against those who violate them." *Ibid.* But what GenBioPro euphemistically refers to as a "practical difficulty" drastically understates the case. Louisiana has *tried* to enforce its prohibition on the

remote prescription of chemical abortifacients. See n.7, *supra*. Such efforts have been stymied by this recalcitrance—and sometimes more—of pro-abortion States. See n.5, *supra* (collecting authorities discussing the impact of "shield laws" which preclude enforcement of laws or regulations related to abortion against individuals in the shield-law jurisdiction who facilitate abortions elsewhere).

Of course, sovereign States are entitled to choose their own way on abortion policy. But that is not a one-way street. California and Louisiana have different ideas about how to properly regulate chemical abortion drugs like mifepristone. So too Nebraska and New York. The 2023 REMS privileges the preferences of some States (those who favor greater access to chemical abortifacients) to the detriment of others (like Louisiana and the Amici States) who think differently. That is precisely the sort of sovereign harm that conveys Article III standing to a State.

II. Louisiana Has Also Established Pocketbook Harm.

The sovereign harm inflicted on Louisiana is sufficient to establish standing. So too are the economic injuries inflicted. "Pocketbook harm is a traditional Article III injury." *Bost*, 146 S. Ct. at 524 (Barrett, J., concurring in the judgment). See also, *e.g.*, *Biden* v. *Nebraska,* 600 U.S. 477, 489–90 (2023). And a plaintiff who "incurs costs to mitigate or avoid the substantial risk of a harm caused by a [law]," *Bost*, 146 S. Ct. at 524

(Barrett, J., concurring in the judgment) has suffered a pocketbook injury.

At this preliminary stage, Louisiana's factual allegations must be accepted as true. And as pled, Louisiana has (and will continue to) suffer economic injury that flows from the 2023 REMS. Without the federal government's imprimatur, Louisiana's emergency rooms would only rarely be confronted with mifepristone complications arising from patient self-administration gone awry—because access to mifepristone would be subject to in-person physician oversight and administration. But so long as 2023 REMS governs, telehealth-prescribed mifepristone has (and will continue) to flow regularly into Louisiana. Indeed, facilitating that flow is an undeniable purpose of the 2023 REMS: Empowering out-of-state doctors to remotely prescribe mifepristone to Louisiana residents *while they are in Louisiana* and without regard for *Louisiana* law. See pp. 13–14, *supra*. And when a Louisiana recipient of such a prescription suffers a complication in Louisiana, the Louisiana medical system must treat it. Furthermore, when that Louisiana patient is enrolled in Medicaid (as many thousands of Louisianans are) Louisiana must pay (at least in part) for the ensuing treatment.

It's "statistically certain" that expenditures of this sort will happen. *All. for Hippocratic Med.* v. *FDA*, 2023 WL 2913725, at *10 (5th Cir. Apr. 12, 2023). Which is exactly why the Fifth Circuit concluded Louisiana had suffered the sort of "financial injury" sufficient to establish standing. App.11a ("A State's 'expenditures in providing emergency medical services' constitute an

injury for standing purposes.") (quoting *Texas* v. *United States*, 50 F.4th 498, 518 (5th Cir. 2022)). As the court of appeals noted, Louisiana specifically identified thousands of dollars in Medicaid costs arising from "complications caused by out-of-state mifepristone." App.11a. And "[s]uch costs will almost certainly continue because nearly 1,000 women monthly—many of whom are on Medicaid—have mifepristone-induced abortions in Louisiana." *Ibid.*

GenBioPro's rejoinder attempts to cast these straight-from-the-treasury state Medicaid outlays as "attenuated," indirect costs. Emgy. Appl. 19–22. That characterization leans heavily on *United States* v. *Texas*, 599 U.S. 670 (2023). But *Texas* doesn't get GenBioPro where it wants to go, for two reasons.

First, GenBioPro veers off track with its suggestion that *Texas* stands for a generalized rule that "indirect effects on state revenue or state spending" is never sufficient to establish standing. See Emgy. Appl. 20. This overreading cannot be squared with what *Texas* actually held. There, the plaintiff States complained that the federal government was insufficiently zealous in enforcing immigration law. 599 U.S. at 674. In short, the States wanted the judiciary to compel the federal government to "arrest *more* criminal noncitizens." *Ibid.* (emphasis in original).

This Court described such a request as "extraordinarily unusual." *Id.* at 686. And it was the *nature of the request*—not the directness or indirectness of costs imposed—that was the lynchpin of the determination that the States lacked standing. As the

Court succinctly explained, the plaintiff States had not identified "any precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies so that the Executive Branch makes more arrests or initiates more prosecutions." *Id.* at 677. And for good reason: Judicial review of the Executive's policy prioritizations of arrests would "run up against" constitutional limits and raise separation of powers concerns. *Id.* at 678. This Court also emphasized that "courts generally lack meaningful standards for assessing the propriety of enforcement choices" regarding which classes of arrest to prioritize. *Id.* at 679.

Thus, the key takeaway from *Texas* is not that the injuries alleged—the increased cost of incarcerations and additional outlays for social services incurred by States—were somehow insufficient *as injuries* to confer a State Article III standing. Instead, the through-line of *Texas* is that the injuries inflicted on the plaintiff States in *that particular case* were not "redressable by a court order." *Id.* at 676. See also *id.* at 678 ("In short, this Court's precedents and longstanding historical practice establish that the States' suit here is not the kind redressable by a federal court.").[10] Indeed, as this Court took pains to elaborate, *Texas* implicated "only one discrete aspect of the executive power" and answered only the "narrow" question of whether "the Federal Judiciary may in effect order the Executive Branch to take enforcement actions against violators of federal

[10] See also *id.* at 686 (Gorsuch, J., concurring in the judgment) ("The problem here is redressability."); *id.* at 704 (Barrett, J., concurring in the judgment) ("The States failed to show that the District Court could order effective relief.").

law." *Id*. at 684. Answering that question in the negative has little to no bearing in other contexts. After all, "the Federal Judiciary … routinely … decides justiciable cases involving statutory requirements or prohibitions on the Executive." *Ibid*.

But even if a strained reading of *Texas* could produce some sort of attenuation test for evaluating if a cost incurred was sufficient to convey standing to a State, Louisiana would pass it. And that is the *second* reason GenBioPro's reliance on *Texas* is misplaced: The costs incurred here are *not* indirect.

GenBioPro's attenuation test depends heavily on *Texas*'s footnote three. There, this Court recognized the uncontroversial proposition that "in our system of dual federal and state sovereignty, federal policies frequently generate indirect effects on state revenues or state spending." *Id*. at 680 n.3. Footnote three then goes on to say that "when a State asserts … that a federal law has produced only those kinds of indirect effects, the State's claim for standing can become more attenuated." *Ibid*. It is from this snippet—and nothing else—that GenBioPro's proffered "direct versus indirect" conception of *Texas* flows. See Emgy. Appl. 20.

The problem for GenBioPro is that even under its own framework, the costs incurred by Louisiana cannot be meaningfully characterized as "indirect." In *Texas*, the plaintiff States highlighted costs such as the "millions of dollars" their public-school systems would incur providing "public education to alien children," many of whom only spoke English as a second language. *Texas* v. *United States*, 606 F. Supp. 3d 437, 464 (S.D.

Tex. 2022). See also *Texas*, 599 U.S. at 674 (referencing the cost associated with "supply[ing] social services such as … education to noncitizens who should be (but are not being) arrested by the Federal Government"). While the federal policy in question was undoubtedly a but-for cause of the increase in state expenditures, the attenuation between cause and effect is obvious. Changes in federal zeal for immigration enforcement (in either direction) will undoubtedly have *some* impact on State education outlays. But that impact is also undeniably downstream; it is, at most, a second-order ripple. States rarely (if ever) try to balance their education budget by lobbying Congress to ramp up immigration enforcement.

The same cannot be said of the relationship between the 2023 REMS and Louisiana's Medicaid expenditures. The relationship between the two is first-order—so long as the 2023 REMS is operative, Louisiana's Medicaid expenditures *will predictably increase*. See App.11a (recognizing that between 2.9 and 4.6 percent of women prescribed mifepristone require emergency care and highlighting FDA's concession that "emergency room care is statistically certain in hundreds of thousands of cases") (quoting *Hippocratic Med.*, 2023 WL 2913725, at *10). And the converse is equally true—if the 2023 REMS is set aside, Louisiana's Medicaid outlays *will necessarily decrease* because *less* mifepristone will flow into Louisiana from out-of-state. See *id.* at 10 (recognizing that "a decision in Louisiana's favor would redress [the State's] injur[ies] because mifepristone could no longer be remotely prescribed to Louisianans").

Simply put, there is no attenuation. Louisiana has identified a harm that cannot be characterized as anything other than direct. Which means, even under GenBioPro's tortured understanding of *Texas*, Louisiana's pocketbook injury passes muster.

GenBioPro's last refuge is this Court's decision in *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). But, as the court of appeals recognized, "that case is distinguishable." App.12a. The key differences are the identity of the plaintiffs and nature of their asserted injuries. There, the plaintiffs were "doctors and medical associations" who did "not prescribe or use mifepristone." *Hippocratic Med.*, 602 U.S. at 385. Recognizing that their moral objection to the prescription and use of mifepristone by others was insufficient to establish standing, those plaintiffs alleged various "downstream" injuries. *Id.* at 386. Most pertinent for present purposes, those doctors claimed that FDA regulatory action making it "easier for doctors to prescribe and pregnant women to obtain mifepristone" would inevitably increase the number of mifepristone-related complications, which in turn would "divert[] resources and time from other patients" and that diversion would "increase[] [the] risk" those doctors would face malpractice liability, which itself would "increase[] [their] insurance costs." *Id.* at 372, 390.

This Court deemed this daisy chain of allegations insufficient to confer standing. "The causal link between FDA's regulatory action[] and [the doctor's] alleged injuries" was "too speculative" and "too attenuated." *Id.* at 391. Indeed, the plaintiff doctors had failed to provide

any evidence that mifepristone use had caused them to be sued or resulted in higher insurance costs. *Ibid.*

The contrast with this case is stark. Louisiana has offered discrete and specific examples of Medicaid expenditures directly attributable to "out-of-state mifepristone." App.12a. See also App.30a. Nothing about such costs—the already incurred and the statistically certain to occur again—is speculative or attenuated. Thus, *Hippocratic Medicine* does not control.

* * *

The Amici States, like Louisiana, have enacted laws reflecting their belief that chemical abortions should (at most) be extremely rare (if not entirely illegal). The 2023 REMS allows States with different preferences to export those policies far beyond their borders. In so doing, the 2023 REMS facilitates a coordinated effort to flout and subvert the Amici States' laws, striking at the very heart of their sovereignty. The 2023 REMS also inflicts discrete, predictable, and undeniably direct economic costs on Louisiana and the Amici States.

Either basis—sovereign harm or pocketbook injury—is sufficient to confer Article III standing. Louisiana has shown both. Because it is not an "unaffected bystander[]" to the 2023 REMS, Article III does not "lock" Louisiana "out of court." *Diamond Alternative Energy, LLC* v. *EPA*, 606 U.S. 100, 125 (2025). And because Louisiana has standing, this Court will eventually reach the merits of this case and rule in Louisiana's favor. Accordingly, GenBioPro's request to vacate the stay pending appeal should be denied.

CONCLUSION

For the foregoing reasons, the request to vacate the Fifth Circuit's stay of the 2023 REMS should be denied.

Respectfully submitted,

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