



August 7, 2026

The Honorable Todd Blanche
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear General Blanche,

We applaud your commitment, expressed to the Senate Judiciary Committee at your confirmation hearing, to carefully evaluate whether the Office of Legal Counsel's opinion interpreting the Comstock Act "reflects the actual statutory text that Congress enacted." We hope your review begins soon and are confident you will conclude that the Comstock Act the OLC opinion describes is not the one Congress enacted.

As you know, interpreting an act of Congress requires "adhering to Congress's intended meaning."¹ To that end, courts start with the text, "giving the words used their ordinary meaning."² Absent any "textual qualification, [courts] presume the operative language means what it appears to mean."³ And "where...the words of the statute are unambiguous," the "judicial inquiry is complete"⁴ and a court "may not resort to extrinsic evidence to interpret them."⁵

We believe that this well-established approach compels the conclusion that Congress meant what it enacted in the Comstock Act, now codified at 18 U.S.C. §1461, that no person may knowingly use the mail to send, and the U.S. Postal Service may not deliver, any "article or thing designed, adapted, or intended for producing abortion." Instead, in its opinion dated December 23, 2022, the OLC effectively created a statute that Congress did not pass but would be essentially unenforceable so that it would pose no obstacle to the Biden administration's goal of greater abortion access.

The OLC's version of the Comstock Act allows sending or receiving abortion drugs through the mail when "the sender lacks the intent that the recipient of the drugs will use them unlawfully."⁶

¹ Valerie c. Brannon, Cong. Rsch. Svc., R45153, Statutory Interpretation: Theories, Tools, and Trends 2 (2022).

² Lawson v. FMR LLC, 571 U.S. 429, 440 (2014), quoting *Moskal v. United States*, 498 U.S. 103, 108 (1990).

³ *Id.* at 441.

⁴ *Desert Place, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (internal citations omitted). See also *Babb v. Wilkie*, 140 S.Ct. 1168, 1177 (2020); *Lawson v. FMR LLC*, 571 U.S. 429, 440 (2014), quoting *Moskal*; *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (emphasis added), quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981).

⁵ *Coast Fed. Bank, FSB v. United States*, 323 F.3d 1035, 1040 (Fed. Cir. 2003) (en banc). See also *Steimel v. Wernert*, 823 F.3d 902, 912 (7th Cir. 2016).

⁶ Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions, 46 Op. O.L.C. ____ (Dec. 23, 2022).

Not only does this language appear nowhere in the Comstock Act but, as a practical matter, a sender's subjective intent and a recipient's intended use are unknowable, making the Comstock Act a dead letter.

The plain text of the Comstock Act that Congress actually passed focuses instead on "article[s] or thing[s]" and whether they can be used for abortion. The OLC opinion's title actually confirms this: "Application of the Comstock Act to the Mailing of Prescription *Drugs That Can Be Used for Abortions*." That is the sole focus of both the Comstock Act's text and the purposes behind it.

Again, we thank you for pledging to evaluate whether the OLC opinion is consistent with the statute Congress actually passed and look forward to the result of your review.

Respectfully,

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