No. 26-30203

In the United States Court of Appeals for the Fifth Circuit

STATE OF LOUISIANA, BY AND THROUGH ITS ATTORNEY GENERAL, LIZ MURRILL; ROSALIE MARKEZICH,

Plaintiffs-Appellants / Cross-Appellees,

– v. –

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

Defendants-Appellees,

v.

GENBIOPRO, INC.,

Intervenor-Appellee / Cross-Appellant,

v.

DANCO LABORATORIES, L.L.C.,

Intervenor-Appellee / Cross-Appellant.

On appeal from the United States District Court
for the Western District of Louisiana
No. 25-cv-1491, Hon. David C. Joseph

BRIEF OF INFORMATION SOCIETY PROJECT AT YALE LAW SCHOOL AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES/CROSS-APPELLANTS

(Counsel listed on inside cover)

Yael H. Caplan
Counsel of Record
Genevieve E. Scott
Priscilla J. Smith
Eva Frankel*
Katharine Boasberg*
Sarah Z. Rosen*
YALE LAW SCHOOL
319 Sterling Place
Brooklyn, New York 11238
(301) 646-0701
yael.caplan@ylsclinics.org

Counsel for Amicus Curiae Information Society Project at Yale Law School

*These law students substantially assisted with the preparation of this filing

CERTIFICATE OF INTERESTED PERSONS

State of Louisiana et al. v. U.S. Food and Drug Administration, et al.,

No. 26-30203

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those listed in the briefs of the parties and other *amici*, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. No party to this filing has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

Amicus Curiae:

Information Society Project at Yale Law School

Counsel for Amicus Curiae:

Yael Caplan, Genevieve Scott, Priscilla Smith

Law Student Interns for Counsel for Amicus Curiae:

Eva Frankel, Katharine Boasberg, Sarah Z. Rosen

Respectfully Submitted,

/s/ Yael H. Caplan

Yael H. Caplan

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 5

I. Louisiana does not suffer a sovereign harm 5

A. Louisiana's allegation about the motives for the decision to lift the in-person dispensing requirement, even if true, would not establish injury in fact. 7

B. Louisiana's reliance on abstract public policy interests is insufficient to establish standing. 12

II. The removal of the in-person dispensing requirement does not cause Louisiana financial injury. 16

CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Cases

Arizona v. Biden,
40 F.4th 375 (6th Cir. 2022) 18

Crane v. Napolitano,
920 F. Supp. 2d 724 (N.D. Tex. 2013), *aff'd sub nom. Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) 20

Deep S. Ctr. for Env't Just. v. United States Env't Prot. Agency,
138 F.4th 310 (5th Cir. 2025) 20

Democratic Party of Wisconsin v. Vos,
966 F.3d 581 (7th Cir. 2020) 10

Diamond Alternative Energy, LLC v. EPA,
606 U.S. 100 (2025) 8, 9

Dobbs v. Jackson Women's Health Org.,
597 U.S. 215 (2022) 3, 5, 13

Duran v. City of Corpus Christi,
240 F. App'x 639 (5th Cir. 2007) 9, 10

Flast v. Cohen,
392 U.S. 83 (1968) 16

Food & Drug Admin. v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 2, 3, 5, 6, 8, 9, 10, 11, 13, 16, 18, 20, 23

Georgia v. Pa. R. Co.,
324 U.S. 439 (1945) 14

Harrison v. Jefferson Parish School Board,
78 F.4th 765 (5th Cir. 2023) 14

Henderson v. Stalder,
287 F.3d 374 (5th Cir. 2002) 23

Little v. KPMG LLP,
5575 F.3d 533 (5th Cir. 2009) 6

Louisiana by & through Landry v. Biden,
64 F.4th 674 (5th Cir. 2023) 17

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 13, 16

Murthy v. Missouri,
603 U.S. 43 (2024) 12

Pagan v. Calderon,
448 F.3d 16 (1st Cir. 2006) 9

Saginaw Cnty., Michigan v. STAT Emergency Med. Servs., Inc.,
946 F.3d 951 (6th Cir. 2020) 14

Schlesinger v. Reservists Comm. to Stop the War,
418 U.S. 208 (1974) 10

Sierra Club v. Morton,
405 U.S. 727 (1972) 5, 12

Texas v. United States,
787 F.3d 733 (5th Cir. 2015) 23

Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.,
454 U.S. 464 (1982) 13

Virginia ex rel. Cuccinelli v. Sebelius,
656 F.3d 253 (4th Cir. 2011) 13, 14

Washington v. U.S. Food & Drug Admin.,
108 F.4th 1163 (9th Cir. 2024) 6, 18, 20

Yetiv v. Hall,
132 F. App'x. 1 (5th Cir. 2005) 9

Statutes

La. Stat. Ann. § 40:1061.1(A)(1) 15

Other Authorities

Citizen Petition from Am. Coll. Obstetricians & Gynecologists, et al. (Jan. 31, 2025), https://perma.cc/N26U-EJY3 22

January 2026 Medicaid & CHIP Enrollment Data Highlights, Ctrs. for Medicare & Medicaid Servs. (last updated Mar. 27, 2026), https://perma.cc/DQM5-ERYL 23

Kelly Cleland, et al., *Significant Adverse Events and Outcomes After Medical Abortion*,
Am. J. Obstetrics & Gynecology 166 (2013). 20, 21

March of Dimes, *2025 March of Dimes Report Card for Louisiana* (2025), https://perma.cc/2VG9-29CD 22

Marisha Goldhamer, *'Flawed' Paper Overstates Health Risks of Abortion Pills: Experts*, AFP Fact Check (May 5, 2025), https://perma.cc/MX57-CD3F 19

Rachel K. Jones & Jamila Perritt, *The Misinformation Campaign Trying to Bring Down Abortion Pills*, Guttmacher Inst. (June 2025), https://perma.cc/JFY4-C3MW 19

Truven Health Analytics, *The Cost of Having a Baby in the United States* (Jan. 2013), https://perma.cc/87VN-6KW2 23

Ushma D. Upadhyay et al., *Abortion-related emergency department visits in the United States: An analysis of a national emergency department sample*, 16 BMC Medicine 1 (2018) 21

Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstet. & Gynecol. 175 (2015) 21

INTEREST OF AMICUS CURIAE[1]

Amicus is the Information Society Project ("ISP") at Yale Law School,[2] an intellectual center exploring the implications of new technologies for law and society. The ISP focuses on a wide range of issues, including the intersections between the regulation and dissemination of information, health policy, and privacy concerns. ISP initiatives include the Program for the Study of Reproductive Justice (PSRJ) and the Gender and Reproductive Justice Clinic. Many of the scholars associated with the ISP and PSRJ have special expertise in health law and standing jurisprudence. These scholars share an interest in maintaining the rule of law and appropriate constraints on Article III standing.

SUMMARY OF ARGUMENT

Louisiana lacks standing to challenge the 2023 mifepristone Risk Evaluation and Mitigation Strategy ("REMS") in federal court. Adopting

[1] All parties consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *Amicus Curiae* or its counsel, make a monetary contribution to the preparation or submission of this brief.

[2] The Information Society Project does not represent the institutional views of Yale Law School, if any.

Louisiana's arguments would lead to an unprecedented and unworkable expansion of standing principles. Article III requires plaintiffs to show a concrete, particularized injury-in-fact to "screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("*Alliance*"). Because the State has suffered no cognizable injury from the removal of the in-person dispensing requirement for mifepristone formalized as part of the 2023 REMS, Louisiana attempts to manufacture standing—and impose its policy preferences on the nation—by disguising its ideological objection to abortion as sovereign harm and financial injury. These arguments fail as a matter of fact and law. In short, the State's standing arguments are nothing more than a transparent scheme to stretch the boundaries of the doctrine and state sovereignty beyond precedent or reason to weaponize the federal courts and impose Louisiana's will on the country writ large. Accepting Louisiana's theory of standing would inundate the courts with uninjured litigants, unfettered by constitutional limits.

Louisiana first attempts to circumvent Article III's requirements by alleging an injury to its sovereignty where none exists. The removal of

the in-person dispensing requirement was not intended to, nor does it, prevent Louisiana from enforcing its abortion laws. The factual record clearly shows FDA announced its intention to eliminate the in-person dispensing requirement in 2021, months before *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). In fact, the U.S. Supreme Court acknowledged as much in *Alliance*. 602 U.S. at 376. Even assuming the decision to remove the in-person dispensing requirement was motivated by Louisiana's abortion ban, the FDA's alleged motive for removing the requirement is irrelevant to the injury analysis. Ultimately, the State's asserted sovereign harm is nothing more than a policy interest, which is not the kind of particularized and concrete injury-in-fact required for Article III standing. Although Louisiana is free to exercise its enforcement powers to advance this interest within its borders, it cannot enlist the federal courts to secure compliance based on a generalized grievance.

Moreover, Louisiana's attempt to manufacture standing by alleging financial harm fares no better. These alleged financial injuries are not cognizable and cannot be traced to the removal of the in-person dispensing requirement. In the face of widespread consensus that

mifepristone is safe and effective, Louisiana relies primarily on two anecdotes describing Medicaid spending on alleged medication abortion complications and attenuated and anecdotal investigatory costs. Standing based on such a speculative chain of causation is squarely foreclosed by *Alliance*. Holding otherwise would be unworkable. Because countless federal actions, from drug approvals to environmental regulations, may have downstream health effects, Louisiana's theory of Medicaid spending injury, if accepted, would be boundless. States would have standing to challenge virtually any federal policy they disagreed with by invoking any conceivable health risk that may or may not be attributable to the challenged policy that could increase Medicaid spending down the line. Louisiana's investigatory costs argument is equally unbounded– allowing states to claim standing whenever they opt to spend money in response to alleged downstream effects of federal policies they oppose.

The district court and stay panel accepted Louisiana's standing theories with little analysis of the relevant law or the disruption it would cause to standing doctrine and the federal courts. Each of Louisiana's arguments is an invitation to ignore precedent and the rule of law and

permit Louisiana to exert its policy beyond its borders, directly undermining the Supreme Court's decision "to return the issue of abortion to the people and their elected representatives." *Dobbs,* 597 U.S. at 292. This Court should reject such a radical request.

ARGUMENT

I. LOUISIANA DOES NOT SUFFER A SOVEREIGN HARM

Louisiana does not suffer a sovereign injury; the district court and stay panel erred in finding the REMS "causes 'federal interference with the enforcement of [Louisiana] law . . . .'" ROA.9141; *see also* ROA.9106.

Louisiana's sovereign injury arguments are a barefaced attempt to co-opt the federal courts to enforce the State's policy preferences on the nation. Adopting Louisiana's fringe sovereign standing arguments would lead to an unprecedented and unworkable expansion of standing doctrine. All fifty states would be newly authorized to bring suit based only on the perceived motivations of the federal government or abstract policy interests, the very interests the Supreme Court has *explicitly* rejected as the basis for Article III injury. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *Alliance,* 602 U.S. at 394.

First, as appellees establish, the REMS does not prevent Louisiana from regulating abortion or enforcing its existing abortion laws. *See* FDA Br. at 39, ECF No. 245-1; Danco Br. at 32, ECF No. 246-1; *see also Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1176 (9th Cir. 2024) (holding "nothing in the 2023 REMS impairs Idaho's sovereign authority to enact or enforce its own laws regulating chemical abortion"). Louisiana's sovereign injury argument also cannot clear Article III's causation requirement; any purported "injury" to Louisiana's law enforcement ability, if it existed, would be caused by independent actors, namely out-of-state providers, not the REMS. *See* Danco Br. at 36–38, ECF No. 246-1; GenBioPro Br. at 33, 35, ECF No. 247-1; *Washington*, 108 F.4th at 1177. Connecting Louisiana's purported sovereign injury to the removal of the in-person dispensing requirement requires an attenuated causal chain based "on speculation about the unfettered choices made by independent actors not before the courts" that the Supreme Court has expressly found inadequate for standing. *Alliance*, 602 U.S. at 383 (quoting *Clapper v. Amnesty International*, 568 U.S. 398, 415 n. 5 (2013)); *see also Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) ("A claim of injury generally is too conjectural or hypothetical to confer standing

when the injury's existence depends on the decisions of third parties not before the court."). The district court and stay panel accepted Louisiana's causation argument on its face without any analysis as to how it was distinguishable from the causation arguments rejected in *Alliance* and *Clapper*.

Second, because the REMS plainly does not impair Louisiana's ability to enforce its abortion laws within its borders, the State makes other legally irrelevant assertions to fabricate a sovereign injury. The State points to the FDA's purported "motives" in lifting the in-person dispensing requirement as proof of sovereign injury, and invokes its ideological preferences as a "pro-life" state to bolster its injury argument. Neither theory brings Louisiana any closer to satisfying Article III's requirements, and the district court and stay panel erred in accepting them.

A. Louisiana's allegation about the motives for the decision to lift the in-person dispensing requirement, even if true, would not establish injury in fact.

To start, Louisiana's claim, accepted by the district court and stay panel, that the 2023 REMS was adopted in response to *Dobbs* is incorrect. As the Supreme Court recognized in *Alliance*, the FDA announced its

decision to lift the in-person dispensing requirement in 2021, well before *Dobbs*, in part because of findings from providing medical care during the COVID-19 pandemic, and then formalized that decision as part of the 2023 REMS modification. *See Alliance*, 602 U.S. at 376 ("In 2021 . . . [r]elying on experience gained during the COVID–19 pandemic about pregnant women using mifepristone without an in-person visit to a healthcare provider, FDA announced that it would no longer enforce the initial in-person visit requirement."); GenBioPro Br. at 21, ECF No. 247-1 ("The process leading to the 2023 REMS modification started in connection with litigation filed in 2017 . . . . The in-person dispensing requirement was first lifted by court order in 2020 and then voluntarily suspended by FDA in April 2021—more than a year before *Dobbs*, when abortion remained protected nationwide, including in Louisiana.").

In any case, the district court and stay panel offered no reasoning why the alleged purpose of the REMS demonstrates injury to Louisiana, suggesting an intent to cause injury is itself sufficient to demonstrate injury.[3] This is simply wrong.

[3] To the extent the stay panel's reference to "motive" is meant to credit Louisiana's theories that it is either the object of the regulation or suffers predictable third-party harms under *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100 (2025), that argument fails for two reasons. First, as discussed above, there is no evidence that

This Court has repeatedly rejected attempts to establish injury based on a defendant's alleged injurious intentions. For example, in *Duran v. City of Corpus Christi*, the Fifth Circuit held that an independent contractor lacked standing to bring a First Amendment retaliation claim against a city for failing to award a contract to the company with which he was affiliated. 240 F. App'x 639, 642–43 (5th Cir. 2007). The Court found that the plaintiff did not suffer a concrete injury from the loss of contract and reasoned that his allegation that the city's contract decision was motivated by political animus towards him was irrelevant because "the standing inquiry turns on the plaintiff's injury, not the defendant's motive." *Id.* at 642 (quoting *Pagan v. Calderon,* 448 F.3d 16 (1st Cir. 2006)); *see also Yetiv v. Hall*, 132 F. App'x. 1, 3 (5th Cir. 2005) (holding that even if the allegedly unconstitutional property search were "motivated by a desire on the part of defendants to retaliate against

---

Louisiana's alleged injuries were the intended or likely consequence of the removal of the in-person dispensing requirement. Second, *Diamond* involved regulations with more direct and evident consequences for nonregulated parties, such as suppliers to regulated businesses. 606 U.S. at 116. *Diamond* does not support the establishment of standing for an unregulated party based on post hoc speculation that a policy eliminating an unnecessary in-person dispensing requirement for a drug was motivated by an intent to interfere with a state's sovereign authority. Louisiana "do[es] not allege the kinds of injuries … that unregulated parties sometimes can assert to demonstrate causation." *Alliance*, 602 U.S. at 385.

[the plaintiff lienholder] . . . , the complaint does not allege an injury-in-fact that is concrete, particularized, and imminent."). The Supreme Court and other federal courts have similarly held motive is irrelevant to a determination of "injury" sufficient to establish standing. *See Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 226 (1974) ("motivation is not a substitute for the actual injury needed by the courts and adversaries to focus litigation efforts and judicial decision making."); *Democratic Party of Wisconsin v. Vos*, 966 F.3d 581, 586 (7th Cir. 2020) (holding that Democratic Party plaintiffs lacked injury-in-fact to challenge laws stripping power from the incoming Democratic governor and attorney general, notwithstanding evidence of enacting Republican legislators' "partisan intentions"). No matter the federal government's alleged motivations for the REMS, Louisiana still must prove that it "has suffered or likely will suffer an injury in fact." *Alliance*, 602 U.S. at 382.

The same principle applies with force here. Louisiana's unsupported claim that the 2023 REMS was motivated by a desire to interfere with Louisiana's sovereignty does not prove that the alleged interference occurred, let alone that the interference is a "direct, nonderivative" harm, traceable to the REMS. *Duran*, 240 F. App'x at 643

(quotation omitted). To the extent that the district court and stay panel considered motive, they failed to address how Louisiana's arguments were distinguishable from the aforementioned cases.

To hold that the supposed motivations of a defendant are sufficient to establish, or are even evidence of, an injury would undermine the core principles of Article III standing doctrine, requiring injuries be "concrete," "real," and "particularized." *Alliance*, 602 U.S. at 381. As the Supreme Court explained in *Alliance*, "Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe that the government is acting contrary to the Constitution or other federal law." *Id.* at 382. It likewise does not license all fifty states to come to the federal courts whenever they disagree with federal policy. A belief that the federal government intended to interfere with Louisiana's abortion ban, which is unsupported by contemporaneous evidence, cannot establish Article III standing. If it could, the federal courts would become "town square[s]" for the endless airing of grievances between states and the federal government. *Id*.

B. Louisiana's reliance on abstract public policy interests is insufficient to establish standing.

Similarly, despite the State's claim to the contrary, any alleged incongruence between the 2023 REMS and abstract state policy preferences cannot constitute a sovereign injury. The Supreme Court has repeatedly rejected attempts like this one to establish standing based on generalized interests, including when states assert such interests as sovereign injuries. For example, in *Murthy v. Missouri*, the Court held that the state plaintiffs did not have standing to challenge the federal government's role in social media content moderation. 603 U.S. 43, 76 (2024). The Court rejected the states' claim that the government interfered with its "sovereign interest in hearing from their citizens on social media[,]" explaining that "[t]he States ha[d] not identified any specific speakers or topics that they have been unable to hear or follow." *Id*. at 75. Like the states in *Murthy*, Louisiana has asserted what amounts to only a generalized "interest" in fetal personhood. *See Sierra Club,* 405 U.S. at 739 ("a mere 'interest in a problem,' no matter how longstanding the interest . . . is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA."). Further, any alleged tension that arises between the State's

interest in fetal personhood and the occurrence of abortions in the State is not traceable to the removal of the in-person dispensing requirement.

Louisiana confuses a potential lack of alignment between the FDA's decision and its "legitimate interest," a basis on which it can enact laws, *Dobbs*, 597 U.S. at 301, with evidence of "injury in fact," a requirement for establishing Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Although Louisiana may rely on its alleged interest in preservation of prenatal life to enact laws *within its borders*, that interest cannot substitute for a concrete injury-in-fact which must be "real and not abstract." *Alliance*, 602 U.S. at 381. A party "may not establish standing simply based on the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct." *Id.* at 394 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982)).

Even when a State codifies its abstract policy preferences into law, that enactment alone cannot confer standing in federal court. In *Virginia ex rel. Cuccinelli v. Sebelius*, the Fourth Circuit held Virginia did not have sovereign standing to sue based on an unenforceable statute announcing its opposition to the Affordable Care Act. 656 F.3d 253, 271 (4th Cir.

2011). As the court explained, a "state may not litigate in federal court to protect its residents 'from the operation of [a] federal statute[]', nor can it escape this bar merely by codifying its objection to the federal statute in question." *Id.* (quoting *Georgia v. Pa. R. Co.*, 324 U.S. 439, 447 (1945)).

Indeed, this Court has dismissed Louisiana's prior attempts to generate sovereign standing based on a generalized interest in compliance with state law. In *Harrison v. Jefferson Parish School Board,* the Fifth Circuit rejected Louisiana's attempt to intervene in a suit against a school board's disciplinary practices based on its asserted interest in ensuring law compliance. 78 F.4th 765, 770 (5th Cir. 2023). The Fifth Circuit reasoned that "for a sovereign interest to serve as a cognizable injury for federal standing, 'the acts of the defendant . . . must invade the [state's] sovereign right, resulting in some *tangible interference with its authority to regulate or to enforce its laws*.'" *Id.* at 770 (quoting *Saginaw Cnty., Michigan v. STAT Emergency Med. Servs., Inc.*, 946 F.3d 951, 957 (6th Cir. 2020)) (emphasis added). Here, as in *Harrison,* there is no "tangible interference" with Louisiana's sovereign regulatory or enforcement authority. The removal of the in-person dispensing requirement does not interfere with Louisiana's ability to

pass laws about abortion or to enforce them within its borders. Any difficulties Louisiana now faces in enforcing its abortion laws are traceable to the actions of third parties, not the removal of the in-person dispensing requirement.

Thus, Louisiana's claim that the modification of the REMS to lift the in-person dispensing requirement interferes with the State's general "public policy . . . that every unborn child is a human being from the moment of conception," is irrelevant. Pl.-Appellant Opening Br. at 66, ECF No. 147 (quoting Stay Panel Order at 14, ECF 119-1 (citing La. Stat. Ann. § 40:1061.1(A)(1) (2022))).

Adopting Louisiana's theories of standing would open the floodgates to unprecedented claims premised on disagreements between state policy preferences and federal law. States and the federal government frequently disagree, be it about the regulation of firearms, pandemic response, or environmental policy. But such disagreement does not mean a state automatically has standing. Absent a showing of injury, a state does not acquire standing simply because the federal government promulgates regulations about firearm distribution it disfavors or issues guidance about vaccinations it disagrees with. Article III limits the

jurisdiction of federal courts to cases and controversies to avoid judicial entanglement in policy disputes, leaving the vindication of public interests to elected representatives, not the judiciary. *Lujan*, 504 U.S. at 576. Adopting Louisiana's standing theories would transform the federal judiciary into a "forum" for the vindication of a state's "generalized grievances about the conduct of government." *Flast v. Cohen,* 392 U.S. 83, 106 (1968).

II. THE REMOVAL OF THE IN-PERSON DISPENSING REQUIREMENT DOES NOT CAUSE LOUISIANA FINANCIAL INJURY.

Louisiana claims financial injury resulting from an alleged increase in Medicaid expenditures related to the removal of the in-person dispensing requirement as well as law enforcement investigatory costs. But these claimed financial injuries are too attenuated and speculative to be traceable to the challenged decision. As the Supreme Court has already recognized with respect to the physician plaintiffs in *Alliance*, "[t]he causal link between FDA's regulatory actions and those alleged injuries is too speculative or otherwise too attenuated to establish standing." 602 U.S. at 390 (rejecting claim that relaxed mifepristone regulations would injure doctors by requiring them to "divert[] resources

and time from other patients to treat . . . mifepristone complications; increasing risk of liability suits . . . and potentially increasing insurance costs" as "too speculative"). It is fundamental to standing doctrine that a plaintiff cannot establish causation when relying upon "a highly attenuated chain of possibilities . . . ." *Louisiana by & through Landry v. Biden*, 64 F.4th 674, 682 (5th Cir. 2023) (quoting *Clapper,* 568 U.S. at 410). The district court and stay panel failed to interrogate how the removal of the in-person dispensing requirement caused the increased costs Louisiana claims or how the causal chain leading to that result was distinguishable from the proposed chain to resource injuries the Supreme Court rejected in *Alliance*. Ultimately, the State's theory of increased spending is not "certainly impending" but rather a highly speculative "chain of possibilities" based on unreliable data. *Clapper*, 568 U.S. at 410. Not only are there too many links in Louisiana's causal chain, but the links are individually broken.

Louisiana's theory of investigatory cost injury fails as a matter of causation for the identical reasons outlined above regarding Louisiana's sovereign injury argument: any purported costs incurred investigating or enforcing Louisiana's laws are the result of the actions of independent

actors, not the removal of the in-person dispensing requirement. And a state "that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Alliance*, 602 U.S. at 394. As the Ninth Circuit recently explained in rejecting Idaho's standing to challenge to the removal of the in-person dispensing argument, "a theory of state standing 'in which all peripheral costs imposed on the States by actions of the [executive branch]' constitute cognizable injuries would 'make a mockery' of Article III." *Washington*, 108 F.4th at 1175 (*quoting Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022).

Moreover, in addition to failing to show the removal of the in-person dispensing requirement *caused* its alleged financial injuries, Louisiana's concern about potential financial harm is itself too speculative. As an initial matter, the State's claims that mifepristone-related complications will cost hundreds of thousands of dollars in Medicaid spending lack

empirical support.[4] Mifepristone is a safe and effective drug.[5] Louisiana, the district court, and the stay panel's reliance on two cherry-picked anecdotes to demonstrate alleged costs related to the medication is unpersuasive and insufficient to establish standing.[6] The State's

[4] While not directly raised in the district court or stay panel's orders, it is worth noting that Louisiana's allegation made throughout this litigation that the rate of mifepristone-related complications is higher than previously reported is based on a single report from the Ethics and Public Policy Center (EPPC) that has been thoroughly debunked by numerous scientific authorities. *See* ROA.6729 (Brief of American College of Obstetricians & Gynecologists, et al. as *Amici Curiae* in Support of Intervenors' Mot. to Dismiss). The EPPC report is not based in any scientific methodology, not peer reviewed, not published in a scientific journal, and not supported by any medical research on medication abortion. *See id.*; Marisha Goldhamer, *'Flawed' Paper Overstates Health Risks of Abortion Pills: Experts*, AFP Fact Check (May 5, 2025), https://perma.cc/MX57-CD3F. The report overstates the risks of medication abortion by relying on broad and undisclosed diagnosis codes. Goldhamer, *supra*. The report does not meet "the criteria of rigorous science" and contains many "methodological flaws." Rachel K. Jones & Jamila Perritt, *The Misinformation Campaign Trying to Bring Down Abortion Pills*, Guttmacher Inst. (June 2025), https://perma.cc/JFY4-C3MW.

[5] There is no shortage of evidence that mifepristone is a safe and effective drug that has been continuously tested and approved by medical authorities. *See generally* ROA.6713–46 (Brief of American College of Obstetricians & Gynecologists, et al. as *Amici Curiae* in Support of Intervenors' Mot. to Dismiss); Brief of *Amicus Curiae* Physicians for Reproductive Health in Support of Applicants for Stay, *Danco Labs., LLC v. Louisiana*, No. 25A1207 (U.S. May 5, 2026); Brief for States of New York et al. as *Amici Curiae* in Support of Applicants for Stay, *Danco Labs., LLC v. Louisiana*, No. 25A1207 (U.S. May 4, 2026).

[6] The stay panel also misleadingly quoted a clause from a sentence from a 2021 FDA decision rejecting a citizen petition asking it to reinstate restrictions on mifepristone dispensing. ROA.9142. Importantly, the FDA decision letter states only that "there *may* be more frequent ED/urgent care visits related to the use of mifepristone when dispensed by mail" and the omitted second half of the sentence goes on to conclude that "there are no apparent increases in other significant adverse events related to mifepristone use." ROA.381 (emphasis added).

anecdotes are not representative of the extremely limited complications associated with mifepristone or their associated costs. *See Crane v. Napolitano*, 920 F. Supp. 2d 724, 744 (N.D. Tex. 2013), *aff'd sub nom. Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) (finding historical anecdotal evidence in report was insufficient to demonstrate alleged fiscal injury). And the assertion that future complications are likely to occur is the exact kind of probabilistic analysis the Supreme Court rejected in *Alliance* as an "unprecedented", "limitless", and "loose approach to causation." *Alliance*, 602 U.S. at 391–92; *see also Washington*, 108 F.4th at 1176 (rejecting identical financial injury argument about Medicaid costs because any "marginal increase in the rate at which pregnant women require additional medical care is too attenuated to establish the requisite causal connection."). Louisiana's standing theory "stretches attenuation and speculation far beyond their breaking points." *Deep S. Ctr. for Env't Just. v. United States Env't Prot. Agency*, 138 F.4th 310, 324 (5th Cir. 2025).

A 2013 study analyzing data from 233,805 medication abortions revealed that "significant adverse effects" occurred in just 0.65% of cases. Kelly Cleland, et al., *Significant Adverse Events and Outcomes After*

Medical Abortion, Am. J. Obstetrics & Gynecology 166, 168 (2013). The most common "significant adverse effect"—occurring in 0.5% of cases—was "ongoing intrauterine pregnancy." *Id.* Of the remaining 0.16% of medication abortion patients who experienced adverse events, the most common significant adverse effects included emergency room treatment and blood transfusion. *Id.* The majority of emergency room visits for abortion care require observation only. Ushma D. Upadhyay et al., *Abortion-related emergency department visits in the United States: An analysis of a national emergency department sample*, 16 BMC Medicine 1, 8 (2018); *see also* Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstet. & Gynecol. 175, 181 (2015) (finding in study of 11,000 medication abortions that adverse events requiring hospitalization occurred in only 0.31% of cases).

Additionally, although the mifepristone label warns of rare adverse events, many of those risks are not proven to be caused by mifepristone specifically, but are associated with other pregnancy outcomes as well. For example, the American College of Obstetricians and Gynecologists, and the FDA itself, explain that an extremely rare (0.1% chance) risk of

infection or bleeding "arise[s] whenever the pregnant uterus is evacuated, whether by 'miscarriage, surgical abortion, medical abortion, or childbirth.'" Citizen Petition from Am. Coll. Obstetricians & Gynecologists, et al. 3 (Jan. 31, 2025) (quoting Mifepristone 2023 Labeling and Medication Guide at 16), https://perma.cc/N26U-EJY3. Put differently, many of the adverse events Louisiana points to are inherent to pregnancy itself, not to any particular method of termination. That these events can occur regardless of how a pregnancy ends further demonstrates that the alleged Medicaid costs are too attenuated to be attributed to the removal of the in-person dispensing requirement.

Louisiana's concern about the costs of exceedingly rare medication abortion complications is curious given the more common costs that result from pregnancy and pregnancy complications in the State. Louisiana suffers from some of the highest maternal mortality rates in the nation. March of Dimes, *2025 March of Dimes Report Card for Louisiana* (2025), https://perma.cc/2VG9-29CD. As Louisiana seeks to impose its policy preferences outside its own borders, it fails to account for the economic and social costs of forced pregnancy borne by the State, not to mention its own citizens in a state where pregnancy can be perilous

and costly.[7] This selective focus underscores the speculative nature of Louisiana's claimed financial injuries.

Adopting Louisiana's theory of financial injury would result in the very "unprecedented and limitless approach" to standing the Supreme Court rebuked in *Alliance*. 602 U.S. at 391. More than sixty-eight million people are enrolled in Medicaid nationwide. *January 2026 Medicaid & CHIP Enrollment Data Highlights*, Ctrs. for Medicare & Medicaid Servs. (last updated Mar. 27, 2026), https://perma.cc/DQM5-ERYL. And "[v]irtually all drugs come with complications, risks, and side effects." *Alliance,* 602 U.S. at 392 (2024). If Louisiana's theory of financial harm is not cabined, states would have standing to challenge not only every drug approval but also any regulation they oppose simply by alleging a

[7] Notably, Louisiana also cannot establish financial injury if the costs it identifies are offset by the same transaction or occurrence. *Henderson v. Stalder*, 287 F.3d 374, 379–381 (5th Cir. 2002). Considering cost offsetting as part of the standing analysis is "appropriate" where, as here, "the costs and benefits are of the same type and arise from the same transaction." *Texas v. United States*, 787 F.3d 733, 750 (5th Cir. 2015). Louisiana Medicaid covers most costs associated with miscarriage, pregnancy, birth, postpartum visits, and postnatal care, which cost Medicaid thousands of dollars. *See* Truven Health Analytics, *The Cost of Having a Baby in the United States* 6 (Jan. 2013), https://perma.cc/87VN-6KW2 ("Medicaid payments for all maternal and newborn care involving vaginal and cesarean childbirths were $9,131 and $13,590, respectively"). The same individuals Louisiana claims may need complication care will require pregnancy-related care if their pregnancy does not end in abortion — the cost of which far exceeds any speculative expenditures associated with medication abortion complications.

potential downstream health consequence that might require treatment for one of the sixty-eight million people who receive care using Medicaid. And if Louisiana's enforcement costs theory were adopted, States could go even further, claiming standing whenever they elected to incur costs in response to federal policy they opposed, no matter how attenuated the costs were from the policy at issue.

In short, Louisiana has failed to establish Article III standing. It has not demonstrated any legally cognizable injury, and certainly not one that is traceable to the removal of the in-person dispensing requirement. Louisiana's ideological opposition to reproductive freedom does not render its alleged injury cognizable and cannot serve as a basis to eliminate access to medical care for patients across the country. By accepting Louisiana's extraordinary standing theories, the district court and stay panel departed from binding doctrine and effectively permitted Louisiana to eliminate access to care far beyond its borders despite the known safety of medication abortion and the conflicting policy preferences of other sovereign states.

CONCLUSION

This Court should affirm the District Court's denial of preliminary relief to Plaintiffs and reverse the District Court's denial of the intervenor Defendants Danco and GenBioPro's motions to dismiss, and remand with instructions to dismiss Plaintiffs' complaint.

Dated: July 22, 2026

Respectfully submitted,

/s/ Yael H. Caplan

Yael H. Caplan
Counsel of Record
Genevieve E. Scott
Priscilla J. Smith
YALE LAW SCHOOL
319 Sterling Place
Brooklyn, New York 11238
(347) 262-5177
priscilla.smith@yale.edu

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed R. App. P. 32(a)(7)(B) because it contains 5,074 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook font size 14.

Respectfully Submitted,

/s/ Yael H. Caplan

Yael H. Caplan

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on July 22, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all parties or their counsel of record have been served via the appellate CM/ECF system.

Respectfully Submitted,

/s/ Yael H. Caplan

Yael H. Caplan

Counsel for Amicus Curiae