



Bioethics Public Policy Report January 6, 2023

National

- The Biden administration is once again using the coercive power of the federal government to both [promote and expand](#) abortion. The US Food and Drug Administration (FDA) has finalized new Risk Evaluation and Mitigation Strategy (REMS) guidance for the chemical abortion pill mifepristone. In practice, the new guidance means a woman, through telemedicine, can obtain a prescription for the drug without ever being seen by a physician and then fill the prescription at a local retail pharmacy (Walgreen's and CVS have indicated they will stock the abortion-inducing drug). Critics contend that without an in-person visit, a physician cannot confirm that a woman is within the ten-week gestational limit for using mifepristone or whether she has an ectopic pregnancy. They also contend that mifepristone is associated with at least twenty-eight deaths, more than five hundred life-threatening complications (the chemical abortion complication rate is four times higher than that for surgical abortion), and that between 2002 and 2015 emergency room visits due to chemical abortion increased more than five hundred percent. Click [here](#) for more information.
- The Biden administration, again through the US Food and Drug Administration (FDA), is [changing](#) messaging on Plan B, now claiming that the drug (levonorgestrel) does not have any post-fertilization or abortifacient mechanism. Plan B, euphemistically known as the "morning after pill," is used by women after non-contraceptive sex to avoid pregnancy and it is routinely given by Catholic hospitals to victims of sexual assault. Prior to the announced change, the FDA label for Plan B included post-fertilization mechanisms of action, including altering the endometrium to render the uterus "inhospitable" to embryo implantation. John Brehany, NCBC Vice President of Institutional Relations, responded to the FDA's announcement by stating the organization "didn't look at any new evidence but considered evidence contained in an application from some consumer group in 2018 to alter the label." He added, "Could taking Plan B still allow conception or fertilization to take place? The short answer is yes." Click [here](#) for further information.
- The US Congress has passed, and Joe Biden has signed, a \$1.85 *trillion* omnibus spending bill to fund the federal government for the next fiscal year. In addition to the price tag itself, the bill contains numerous [earmarks](#) for dubious causes including \$1.2 million for lesbian, gay, bisexual, transgender, gender-queer, etc. "pride centers;" \$3 million for an American lesbian, gay, bisexual, transgender, gender-queer, etc. museum in New York City; and \$750,000 for the "Trans Latin Coalition" which provides "workforce development programs and supportive services for Transgender and Gender nonconforming and Intersex (TGI) immigrant women in Los Angeles." Click [here](#) for further information.

Federal Courts

- The Sixth Circuit Court of Appeals (Cincinnati) has [ruled](#) that a “buffer zone” around EMW Women’s Surgical Center, the only abortion facility in Kentucky, is unconstitutional. The buffer zone had been established by the city of Louisville and it prevented anyone who was not entering or exiting the abortion facility from coming within ten feet of the entrance. The ordinance establishing the zone was challenged, and ultimately defeated, by the Sisters for Life.
- The Ohio 1st District Court of Appeals has [dismissed](#) a request from state Attorney General Dave Yost to consider reversing Hamilton County Common Pleas Judge Christian Jenkins’ temporary blocking of the state’s heartbeat law. Abortion up to twenty-two weeks will remain in Ohio at least until the Hamilton County court determines whether the heartbeat bill is constitutional. The Ohio General Assembly passed the bill in 2019, but a federal judge blocked it from taking effect. Following the US Supreme Court’s *Dobbs* decision in June 2022, the bill took effect temporarily but was blocked by Judge Jenkins on October 9th. The Attorney General’s office said it would appeal to the Ohio Supreme Court.
- On December 30th, the Eleventh Circuit Court of Appeals (Atlanta, GA) [ruled](#) that that a public school system in Florida did not violate the Equal protection Clause of Title IX by separating student bathrooms by sex. The vote was 7–4. The case was brought by a girl who self-identifies as a boy and wanted to use the boy’s bathroom. In brief, the decision determined that the bathroom policy “advances the important governmental objective of protecting students’ privacy in school bathrooms and does so in a manner substantially related to that objective.” It also found that with regard to educational programs, the word “sex” means biological “male” or “female.” [Christiana Kiefer](#), senior counsel at Alliance Defending Freedom which represented medical professionals who supported the school district’s policy, stated: “We’re pleased the 11th Circuit has affirmed that sex is a distinct biological class that merits protection under the law, a reality that female athletes and so many others across the country have been fighting to protect. And if gender identity advocates had had their way, St. Johns’ [county] schools would have been forced to violate students’ privacy and cooperate with high-risk, unproven medical treatments. ... The 11th Circuit has rightly allowed St. Johns’ schools to prioritize the well-being of its students over gender ideology.” For additional information, click [here](#). The circuit court’s decision, along with dissenting opinions, is available [here](#).
- Judge Joseph Goodwin of the US District Court for the Southern District of West Virginia has [upheld](#) the state’s Save Women’s Sports Act which allows organizations to maintain separate sports for males and females. Christiana Kiefer, Senior Counsel with Alliance Defending Freedom, stated: “Today’s decision is a win for reality. The truth matters, and it is crucial that our laws and policies recognize that the physical differences between men and women matter, especially in a context like sports. Female athletes deserve to compete on a level playing field ... The court was right to affirm that West Virginia’s law is not only constitutional, but consistent with Title IX.” Judge Goodwin’s decision is [available](#) here.
- The Second Circuit Court of Appeals (New York City) has [ruled](#) against four female track and field athletes who had sued the Connecticut Interscholastic Athletic Conference over it allowing males to compete in female sports. The girls claimed, in part, that they had fewer opportunities to win races and thus earn scholarships as they

were forced to compete against boys who held unfair physical advantages over them. The appeals court held the girls did not have standing because they failed to demonstrate injury and failed to show how their request would redress the alleged injuries. Plaintiffs are weighing an appeal to the US Supreme Court. Click [here](#) for further information.

- US District Judge Mark Mastroianni, an Obama appointee, has [dismissed](#) a lawsuit against school officials at Paul R. Baird Middle School in Ludlow, Massachusetts, filed by two separate parents for not being informed that their children were intending so-called gender transition. The judge stated that state law in Massachusetts “recognizes gender identity as a personal characteristic deserving of protection from discrimination” and that state laws and regulations do not “provide exceptions to permit parents to override a school’s decision to support students who identify as transgender or gender nonconforming.” However, he also criticized school officials saying that “it is disconcerting that school administrators or a school committee adopted and implemented a policy requiring school staff to actively hide information from parents about something of importance regarding their child.”
- US District Judge Matthew Kacsmayk (Northern District of Texas) has [ruled](#) against a confidentiality clause of Title X that allows minors to access birth control without parental consent. Kacsmayk ruled that the confidentiality requirement violates the rights of parents, the Due Process Clause of the 14th Amendment, and Texas state code. He added that the clause does not allow parents to have the “fundamental right to control and direct the upbringing of [their] minor children” and that government didn’t have a compelling reason to violate parents’ rights. Click [here](#) for more information.
- In a 2–1 decision, a panel of the Fifth Circuit Court of Appeals (New Orleans) has [ruled](#) that the Biden administration cannot impose its COVID vaccine mandate on federal contractors. The ruling states, in part, “The President’s use of procurement regulations to reach through an employing contractor to force obligations on individual employees is truly unprecedented. As such, Executive Order 14042 is unlawful, and the Plaintiff States have consequently demonstrated a strong likelihood of success on the merits.” The Fifth Circuit decision affirmed a December 2021 district court decision that also blocked the mandate. Indiana, Louisiana, and Mississippi had filed the case. The appeals court decision is available [here](#).

State by State

- On January 5th, the [South Carolina](#) Supreme Court narrowly ruled that the state’s 2021 Fetal Heartbeat and Protection from Abortion Act (heartbeat bill) violated the state constitution. The decision was 3-2 and each of the five justices wrote his or her own concurring or dissenting opinion. In the majority opinion, Justice Kaye Hearn [stated](#): “The State unquestionably has the authority to limit the right of privacy that protects women from state interference with her decision, but any such limitation must be reasonable and it must be meaningful in that the time frames imposed must afford a woman sufficient time to determine she is pregnant and to take reasonable steps to terminate that pregnancy ... Six weeks is, quite simply, not a reasonable period of time for these two things to occur, and therefore the Act violates our state Constitution’s prohibition against unreasonable invasions of privacy.” The law was challenged by a local Planned Parenthood affiliate as well as two abortionists who argued that the

heartbeat law violated Article I, Section 10 of the state constitution which maintains: “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated.”

- The [Massachusetts](#) Supreme Judicial Court has ruled (4–2) in the case of *Klingler v. Healy* that there is no legal right to physician-assisted suicide in the state constitution. Writing for the court, Justice Frank Gaziano stated “[G]iven our long-standing opposition to suicide in all its forms, and the absence of modern precedent supporting an affirmative right to medical intervention that causes death, we cannot conclude that physician-assisted suicide ranks among those fundamental rights protected by the Massachusetts Declaration of Rights.” In fact, no court in the US has ever found assisted suicide to be a fundamental right. Gaziano added that the legality of assisted suicide is “best left to the democratic process, where ... resolution can be informed by robust public debate and thoughtful research by experts in the field.” Supporters intend to continue trying to legalize the practice through the legislative process. They have tried and failed at least nine times in Massachusetts. Click [here](#) for more information. The court’s ruling is available [here](#).
- [New York](#) has joined Washington, Colorado, California, Oregon, and Vermont in legalizing the composting of human remains. Governor Kathy Hochul (D) signed legislation adding “natural organic reduction” to entombment and cremation as acceptable burial methods. The law defines the composting practice as the “contained, accelerated conversion of human remains to soil” in a “structure, room, or other space” in which decomposition can occur. The [New York Catholic Conference](#) responded, in part, by stating: “The process of composting is associated with the sustainable disposition of organic household or agricultural waste to be repurposed as fertilizer for gardens or crops. But human bodies are not household waste; they are vessels of the soul. Therefore, the Bishops of New York State do not believe the process meets the standard of reverent treatment of earthly remains.”

International

- Health authorities in [Sweden](#) are no longer following “guidance” from the World Professional Association for Transgender Health (WPATH) with regard to the so-called “transitioning” of minors. Sweden’s guidelines had been based on WPATH’s Standards of Care #7, but concerns were immediately raised following the publication of Standards of Care #8 which, among other things, removed all lower age limits for “transitioning” and added “eunuch” as an innate gender identity, even for children. Sweden states that its “gender clinics” will no longer attempt to perform experimental sex changes on children under eighteen years of age, but instead will offer “psychological support to help youth live with the healthy body they were born with.”
- [Ireland](#) legalized abortion in 2018. Today, ninety-five percent of the preborn children diagnosed with Down syndrome at Dublin’s Rotunda Hospital are aborted.

Latest “Bioethics on Air” Podcast

- Episode 105: [Preserving Catholic Identity and Ethics in Employee Health Plans](#). Robert Smedley, President of the Matthias Group, joins Joe Zalot to discuss how Catholic employers can maintain Catholic identity and mission in their employee health benefits plans, focusing specifically on pharmaceuticals.

Sharing the News: If you have public policy news that you would like to share with the NCBC, or if you have colleagues who would like to receive the Bioethics Public Policy Report, please contact Joe Zalot at 215-871-2014 or jzalot@ncbcenter.org. Previous editions of this report are available through the [Public Policy](#) page of the NCBC website.

Sharing the Resources: If you enjoy receiving the Bioethics Public Policy Report and would like to support its continued publication, please consider making a [donation](#) to the NCBC.

The National Catholic Bioethics Center webpage, available at <http://www.ncbcenter.org/>, is a significant resource for bioethics information. NCBC bioethicists are also on-call for consultation twenty-four hours a day, seven days per week, at 215-877-2660.