IN THE SUPREME COURT OF THE UNITED STATES

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No. 23-235

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

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.

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No. 23-236

DANCO LABORATORIES, L.L.C., PETITIONER

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.

_____

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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MOTION OF PETITIONERS FOR
DIVIDED ARGUMENT

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Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the federal petitioners, respectfully moves to divide the oral argument for petitioners in these consolidated cases. The Solicitor General requests that oral argument be divided as follows: 20 minutes for the federal petitioners, and 10 minutes for petitioner Danco Laboratories,

L.L.C. (Danco). Counsel for Danco has authorized us to state that they join in this motion.

These cases concern the regulation of mifepristone by the U.S. Food and Drug Administration (FDA). In 2000, FDA approved mifepristone for termination of early pregnancy based on the agency's expert judgment that the drug is safe and effective. In the years since mifepristone's approval, FDA has approved applications from mifepristone's sponsor, petitioner Danco, that sought to alter the drug's approved conditions of use.

Respondents are doctors and associations of doctors who oppose abortion on religious and moral grounds. They filed suit in the United States District Court for the Northern District of Texas challenging FDA's approval of mifepristone and other actions FDA took with respect to mifepristone in 2016 and 2021. The district court granted respondents' motion for preliminary relief, invoking 5 U.S.C. 705 to "stay" the effective date of all of FDA's challenged actions. Pet. App. 111a-195a.* This Court subsequently granted a stay of the district court's order. Id. at 245a.

The court of appeals affirmed the suspension of FDA's 2016 and 2021 actions. Pet. App. 1a-110a. Although respondents do not prescribe mifepristone and FDA's actions do not require them to do or refrain from doing anything, the court of appeals held that respondents have Article III standing to challenge FDA's decisions

* References to "Pet. App." are to the appendix to the petition for a writ of certiorari filed in No. 23-235.

with respect to mifepristone. Id. at 14a-42a. On the merits, the court of appeals held that respondents are likely to succeed on their claims that FDA's 2016 and 2021 actions were arbitrary and capricious. Id. at 51a-63a.

The federal petitioners and Danco filed separate petitions for writs of certiorari seeking review of the court of appeals' judgment. This Court granted certiorari and consolidated the cases for one hour of oral argument.

Dividing the argument time for petitioners would be of material assistance to this Court because the petitioners represent distinct interests. The federal petitioners have significant interests in the question whether respondents have Article III standing to challenge FDA's actions, as well as in the proper application of arbitrary-and-capricious review to FDA's scientific judgments and the appropriate relief, if any. Danco has a significant interest in these cases because it is mifepristone's sponsor, and therefore stands to be materially affected by a decision altering the regulatory landscape with respect to that product.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

FEBRUARY 2024