UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Right to Life of Michigan and **Pregnancy Resource Center,**

Plaintiffs,

v.

Dana Nessel, in her official capacity as Attorney General of Michigan; **John E. Johnson, Jr.,** in his official capacity as Executive Director of the Michigan Department of Civil Rights; **Luke R. Londo, Gloria E. Lara, Richard R. White III, Portia L. Roberson, Zenna Faraj Elhason, Regina Marie Gasco, Rosann L. Barker,** and **Skot Welch,** in their official capacities as members of the Michigan Civil Rights Commission,

Defendants.

Case No. 1:26-cv-00390-RJJ-SJB

Hon. Robert J. Jonker
Magistrate Sally J. Berens

Plaintiffs' Combined Response to Attorney General Defendant's Motion to Dismiss and Reply in Support of Their Preliminary Injunction Motion

Oral Argument Requested

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Introduction

Right to Life and PRC are pro-life organizations. They want to hire employees and retain volunteers who share their values and who can promote their messages. The Attorney General has a different agenda. She wants to make Michigan "a safe haven" for "women to access abortion," and she litigates across the country to "increase access to abortion." ECF No. 1, PageID.60. These interests collide because of the Elliott-Larsen Civil Rights Act (ELCRA). The Attorney General can enforce ELCRA, and ELCRA prohibits Right to Life and PRC from hiring, speaking, and operating consistent with their beliefs.

In fact, the Attorney General does not disavow enforcing ELCRA against plaintiffs. Nor does she dispute that ELCRA is actively enforced, proscribes Right to Life's and PRC's employment practices, offers easy enforcement, and imposes harsh penalties. To be sure, the Attorney General tries to downplay her enforcement authority. But she's wrong. She can file complaints, enforce discovery orders, participate in hearings, enforce Commission orders, prosecute settlement violations, and defend the Commission's orders on appeal.

The rest of the Attorney General's arguments fare no better. Her enforcement authority undercuts any Eleventh Amendment immunity. And Right to Life and PRC deserve a preliminary injunction because ELCRA irreparably violates their constitutional rights. Here is an omission that says it all: the Attorney General never briefs the merits of the requested injunction. That silence screams surrender. This Court should deny the Attorney General's motion to dismiss and grant the requested injunction.

Standard of Review

The Attorney General's motion to dismiss appears to raise a Rule 12(b)(1) factual attack to jurisdiction. ECF No. 30, PageID.635 (citing Attorney General's statements outside the record); *Christian Healthcare Centers, Inc. v. Nessel* (*CHC*),

117 F.4th 826, 842 (6th Cir. 2024). But she never disputes any allegation in Right to Life's and PRC's complaint, so those must be taken as true. *Id.* For jurisdiction, Right to Life and PRC rely on their verified complaint and its exhibits, evidence attached to their preliminary-injunction motion, supplemental evidence previously filed, and evidence attached to this brief. This Court has "wide discretion" to consider this evidence to resolve the jurisdictional question. *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990) (collecting cases).

At this early stage, Right to Life's and PRC's burden to show standing "is relatively modest." *Bennett v. Spear*, 520 U.S. 154, 171 (1997). They need only pass "*Twombly*'s plausibility test." *Ass'n of Am. Physicians & Surgeons v. United States Food & Drug Admin.*, 13 F.4th 531, 543 (6th Cir. 2021) (citation modified). That test assumes a complaint's facts—alleged and incorporated—are "true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Right to Life and PRC meet that standard because they've mustered more than "enough fact[s] to raise a reasonable expectation" of jurisdiction. *Id.* at 556.

The Attorney General's opposition to Right to Life's and PRC's preliminary-injunction request mirrors her motion to dismiss—and fails for similar reasons. Right to Life and PRC have a "substantial likelihood of standing" to pursue their injunctive relief, *State of Tennessee v. Dep't of Educ.*, 104 F.4th 577, 595 (6th Cir. 2024), and meet the four injunction factors. To evaluate their request for an injunction, this Court may consider additional facts outside the complaint. *In re DeLorean Motor Co.*, 755 F.2d 1223, 1230 (6th Cir. 1985) (weighing testimony on preliminary injunction motion).

Argument

First, (I) Right to Life and PRC have standing to sue the Attorney General. She can file complaints, enforce orders, represent the Department's interests at

hearings, and defend the Commission on appeal. That authority erodes most of the Attorney General's jurisdictional contentions. Right to Life and PRC, thus, have standing to pursue their claims against the Attorney General under *Christian Healthcare Centers, Inc. v. Nessel* (*CHC*), 117 F.4th 826 (6th Cir. 2024). They suffer an injury-in-fact, which is caused in part by, and redressable against, the Attorney General.

Next, (II) because she has authority to enforce ELCRA, the Attorney General satisfies the *Ex Parte Young* exception to Eleventh Amendment immunity. So she is a proper defendant here.

Finally, (III) Right to Life and PRC deserve a preliminary injunction. Michigan never contests that Right to Life and PRC will likely win on the merits. The rest of the injunction factors easily fall into place from there, particularly because Right to Life and PRC are suffering the loss of First Amendment freedoms.

I. Right to Life and PRC have standing to sue the Attorney General.

Right to Life and PRC have standing to sue the Attorney General because they have shown (1) an injury-in-fact, (2) causation, and (3) redressability. *Susan B. Anthony List v. Driehaus* (*SBA List*), 573 U.S. 149, 157-158 (2014). Evaluating these elements in pre-enforcement First Amendment cases like this one, courts do not "closely scrutinize the plaintiff's complaint for standing." *Platt v. Bd. of Comm'rs on Grievances & Discipline of Ohio Sup. Ct.*, 769 F.3d 447, 451 (6th Cir. 2014). But Right to Life and PRC meet each element.

A. Right to Life and PRC face a credible threat of enforcement.

Right to Life and PRC suffer an injury-in-fact here. To establish that, Right to Life and PRC need only show a "substantial risk" of Michigan's law harming them. *SBA List*, 573 U.S. at 158. They make that showing because (1) they "engage in conduct … arguably affected with a constitutional interest"; (2) ELCRA

"arguably" proscribes their desired activities; and (3) they face "a credible threat" of enforcement. *SBA List*, 573 U.S. at 159 (citation modified).

The Attorney General does not contest the first two elements. For good reason. The First and Fourteenth Amendments protect Right to Life's and PRC's activities. ECF No. 8, PageID.334-357. And the challenged portions of ELCRA arguably proscribe their activities. ECF No. 1, PageID.50-59; Combined Res. to MDRC and MCRC §I.A.1. That leaves the final element: whether Right to Life and PRC face a credible threat of enforcement. They do. The Sixth Circuit's *Christian Healthcare Centers* decision clears the path for Right to Life's and PRC's standing. That case dealt with the *same law* and the *same defendants*—including the Attorney General. Applying it here leads to the same result.

In *Christian Healthcare Centers*, the Sixth Circuit analyzed three factors to conclude that two religious ministries had standing to challenge ELCRA.

First, the court held that ELCRA had a robust "'history of past enforcement.'" *CHC*, 117 F.4th at 848 (quoting *McKay v. Federspiel*, 823 F.3d 682, 869 (6th Cir. 2016)). At that time, Michigan had processed thousands of ELCRA complaints. *Id.* Since then, that pattern has continued. In 2024, Michigan reviewed approximately "1,400 complaints of employment discrimination," "2,487 certified complaints," and "more than 370" sex-discrimination complaints. ECF No. 1, PageID.60. The Attorney General disputes that this activity is attributable to her. ECF No. 28, PageID.584. But *Christian Healthcare Centers* did not make that distinction when concluding that "Defendants" posed a credible threat of enforcement against the religious ministries. 117 F.4th at 847, 849–52, 854–55 (grouping "Defendants" together in the standing analysis).

Second, the court held that ELCRA contains an attribute that "'that makes enforcement easier or more likely, such as a provision allowing any member of the public to initiate an enforcement action.'" *CHC*, 117 F.4th at 850 (quoting *McKay*,

823 F.3d at 869). That easy enforcement mechanism hasn't changed. *See* Mich. Admin. Code R. 37.4(1). In fact, Michigan posts the complaint form online "to facilitate requests from any person claiming to be aggrieved." ECF No. 1, PageID.59; *see also Platt*, 769 F.3d at 452 (noting that decision to post complaint form on website supported standing).

Third, the court observed that Michigan had "'refus[ed] to disavow enforcement of the challenged statute.'" *CHC*, 117 F.4th at 850–51 (quoting *McKay*, 823 F.3d at 869). Likewise, the Attorney General has not disavowed enforcement here. Far from disavowing, the Attorney General has campaigned across the country to "increase access to abortion." ECF No. 1, PageID.60. And, in other litigation, the Attorney General has supported a cramped view of religious autonomy and expressive association—two of the constitutional theories Right to Life and PRC rely on. Br. for Amici Curiae Mass. et al. at 6, *Billard v. Charlotte Catholic High Sch.*, No. 22-1440 (4th Cir. Nov. 30, 2022) (rejecting expressive association rights in the employment context as a "weaponiz[ation] of the First Amendment"), https://perma.cc/M2EB-LUKT; Defs.' Br. Supp. Cross-Mot. Summ. J. & Opp'n Pl.'s Mot. Summ. J., *CHC v. Nessel,* No. 1:22-cv-00787 (W.D. Mich. Jan. 13, 2026), ECF No. 161, PageID.3351 (expressing "concerns" about the application of the "ministerial exception" to "licensed professionals bound by a standard of care"). The Attorney General's hardline stances elsewhere informs the analysis here. *CHC*, 117 F.4th at 845 (noting "amicus brief" relevant to the "litigating position" of the "Attorney General"); *See also Isaacson v. Mayes*, 84 F.4th 1089, 1100–01 (9th Cir. 2023) (surveying statements made in other litigation to find a credible threat of enforcement by county attorney). And her "decline[] to disavow enforcement" bolsters Right to Life's and PRC's standing. *Chiles v. Salazar*, 146 S. Ct. 1010, 1019 n.* (2026).

These are more than "litigation activities." ECF No. 28, PageID.584. These statements and positions evince a willingness to enforce the law, or even "hostility." *Buck v. Gordon*, 429 F. Supp. 3d 447, 467 (W.D. Mich. 2019) (finding standing after surveying Attorney General Nessel's past "statements"). Here, the Attorney General makes plain her commitment to "defend Michigan as a safe haven for" abortion and backs it up with litigation. VC¶¶ 426–27, ECF No. 1, PageID.60. And because she still doesn't disavow enforcing ELCRA against Right to Life and PRC, there is no reason to "assume" she won't do it. *Virginia v. Am. Booksellers Ass'n,* 484 U.S. 383, 393 (1988).

Even so, the Attorney General says that she does not plan to coerce physicians to perform abortions against their religious beliefs. ECF No. 28, PageID.585. That's irrelevant. State law protects a physician's decision not to provide an abortion. MCL 333.20182. So the Attorney General is just agreeing to follow state law. Right to Life's and PRC's activities are distinct: they want to ensure that all their employees—not just physicians—share their pro-life values and live in accordance with them. That violates ELCRA, and the Attorney General has disclaimed any constitutional right that would protect Right to Life or PRC. What's more, Right to Life and PRC are not requesting an exemption from "performing an abortion … on [their] premises." MCL 333.20181. So the Attorney General's nod to conscience exemption statutes—that do not apply to ELCRA or these facts—is misplaced.

Since *Christian Healthcare Centers*, the Sixth Circuit has also considered the severity of a law's penalties as evidence of a credible threat of enforcement. *Cath. Charities of Jackson, Lenawee, & Hillsdale Ctys. v. Whitmer*, 162 F.4th 686, 691 (6th Cir. 2025) (noting fines and loss of licenses as potential penalties in standing analysis). ELCRA's penalties are severe too. ECF No. 1, PageID.60.

In short, under *Christian Healthcare Centers*, buttressed by *Catholic Charities*, the Attorney General puts Right to Life and PRC at a "substantial risk" of harm. *SBA List*, 573 U.S. at 158 (citation modified). Because of that objectively reasonable risk, Right to Life and PRC are chilling their speech. *See* ECF No. 1, PageID.54-56; ECF No. 7-2, PageID.283; ECF No. 7-4, PageID.303-304. So they also satisfy "the first and most important factor" to identify "a credible threat of enforcement." *Fischer v. Thomas*, 52 F.4th 303, 307 (6th Cir. 2022).

The Attorney General offers a single response to *Christian Healthcare Centers*. She says that the case did not "discuss the specific credible threat of enforcement the plaintiffs faced from the Attorney General." ECF No. 28, PageID.586. Not so.

The Sixth Circuit held that two religious ministries had standing to challenge ELCRA because they faced a credible threat of enforcement from "Defendants," including the Attorney General. *CHC*, 117 F.4th at 847, 849–52, 854–55 (mentioning "Defendants"). The court contrasted the ministries' risk of enforcement under ELCRA with their enforcement risk under another statute, the Equal Accommodations Act (EAA). For the EAA, unlike ELCRA, "the Attorney General" had "disavowed ever threatening anyone with a criminal action" and "publicly opined that the EAA" was not applicable to one of the ministries. *Id.* at 851. And unlike ELCRA, the EAA "contains no citizen-complaint provision raising the likelihood of enforcement." *Id.* For those reasons, the Sixth Circuit dismissed the ministries' "EAA claims" against the Attorney General. *Id.* That conclusion contrasts with the court's decision to find standing for the two ministries to challenge ELCRA as against all named Defendants. *See CHC*, 117 F.4th at 847, 849–52, 854–55. The implication is that the Attorney General threatened the ministries with injuries under ELCRA, but not the EAA. So *Christian Healthcare*

Centers did discuss the Attorney General's risk of harming the ministries. It held that she posed an enforcement risk to the ministries.

In fact, in *Christian Healthcare Centers*, the Attorney General argued that there was no credible threat of enforcement because she "has no Statutory authority to enforce the ELCRA." Br. for Defs.-Appellees, *CHC v. Nessel*, 117 F.4th 826 (6th Cir. 2024) (No. 23-1769), 2023 WL 8644426, at *26; *Id.* at *32 ("Again, the Attorney General does not enforce the ELCRA"). In other words, the Attorney General makes the same argument to this Court that she raised before the Sixth Circuit. The Sixth Circuit necessarily rejected that argument by holding that the ministries had standing against all Defendants. *CHC,* 117 F.4th at 857; *see also Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 304 (6th Cir. 2019) (courts must "sua sponte" ensure "Article III" jurisdiction "to adjudicate the dispute"). This Court should too.

B. ELCRA causes Right to Life's and PRC's injury, and their claims are redressable.

Right to Life's and PRC's injuries are caused by ELCRA and their requested relief redresses those injuries. Causation and redressability "are often flip sides of the same coin." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (citation modified). "If a defendant's action causes an injury, enjoining the action" will "typically redress that injury." *Id at 381.* The Attorney General disputes causation and redressability. She claims that she cannot cause a redressable injury because she does not enforce ELCRA. *See* ECF No. 28, PageID.582-584 (noting the Department's and Commission's enforcement authority); *id.* at 586–90 (same). She's wrong.

As developed below, the Attorney General can enforce ELCRA in at least six ways. *Infra* §II.B. *First,* she can file complaints as an aggrieved "person." MDCR Rule 37.2(p) (defining "person" to include "this state … or an agency of this state"); Director Trevino 30(b)(6) Dep. Tr., Decl. of A. Jones, Ex. A at 5. *Second*, she can

enforce discovery orders. Michigan Department of Civil Rights Policy and Procedures Manual ("Department's Manual"), Decl. of A. Jones, Ex. C at 4–6. *Third*, she can represent the Department at hearings. Commissioner Londo 30(b)(6) Dep. Tr., Decl. of A. Jones, Ex. B at 5–6 (referring to Rule 12 Hearings); VC Ex. 19 ¶ 48, ECF No. 1-21, PageID.190; MCL 37.2602(b). *Fourth*, she enforces the Commission's final orders in court. MCL 37.2602(b); VC Ex. 19 ¶49, ECF No. 1-21, PageID.190. *Fifth*, she enforces settlement agreements. Decl. of A. Jones, Ex. C at 2. *Sixth*, she defends the Commission's final orders on appeal. MCL 37.2606 (1).

That enforcement authority contributes to Right to Life's and PRC's injuries. ECF No. 1, PageID.56-60. And this Court could redress their injuries by enjoining the Attorney General from enforcing ELCRA against them in these ways.

For example, in *Universal Life Church Monastery Storehouse v. Nabors*, the Sixth Circuit held that a plaintiff satisfied "causation and redressability" against a district attorney because the attorney could injure the plaintiff "by filing the charges" of prosecution. 35 F.4th 1021, 1034 (6th Cir. 2022). Michigan's Attorney General can likewise file complaints with the Department. MDCR Rule 37.2(p); Decl. of A. Jones, Ex. A at 5. That would "cause" an injury to Right to Life and PRC, and this Court could "redress" that injury "by enjoining" the Attorney General "from doing so." *Nabors*, 35 F.4th at 1034.

Other courts have reached similar conclusions. They have held that an injury is caused by and redressable against an Attorney General if the Attorney General can "institute a civil complaint," *281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011), or has other even "'limited' enforcement authority,'" *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1175 (10th Cir. 2021) (same), *rev'd on other grounds*, 600 U.S. 570 (2023).

The Attorney General relies on *Nabors* to dispute redressability. ECF No. 28, PageID.586. She says the Tennessee Attorney General in *Nabors* "had no authority

to enforce the challenged statute." *Id.* But that case is different. Unlike Michigan's Attorney General, Tennessee's Attorney General in *Nabors* had no "power to initiate" prosecutions. 35 F.4th at 1032. Because Tennessee's Attorney General was not involved in prosecutions, there was nothing "a federal court could coerce *the Attorney General* to refrain from undertaking." *Id.* By contrast, *Nabors* easily found that the plaintiffs met causation and redressability when they pointed to officials with some enforcement authority. *Id.* at 1034–37. That describes the Attorney General's relationship with ELCRA. For that reason, the Attorney General's other cited cases from the Fourth, Fifth, and Eleventh Circuits are distinguishable. Those cases held a plaintiff could not prove causation against enforcement officials who *possessed no enforcement power*. ECF No. 28, PageID.588. But the Attorney General can enforce ELCRA.

As a final retort, the Attorney General counters that Right to Life's and PRC's injuries are "not redressable by relief against" her because "private parties" and the Department and the Commission "could still sue Plaintiffs under the statute." ECF No. 28, PageID.589. Of course, Right to Life and PRC have separately asked for this Court to enjoin the Department and Commission. ECF No. 1, PageID.77-78. As to the prospect of private party complaints, Right to Life and PRC "need not show that a favorable decision will relieve [their] *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). Relief to "some extent" is enough. *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 903 (10th Cir. 2012); *see also Seattle Pac. Univ. v. Ferguson,* 104 F.4th 50, 62 (9th Cir. 2024) ("That private actors could also seek to enforce the [state law] does not defeat the court's ability to redress harms specific to the Attorney General."); *Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 716 (6th Cir. 2015) (holding that "partial redress" satisfied "the standing requirement" even though "setting aside" report did not remove information "available from a variety of sources"); *Mobil Oil Corp. v. Att'y Gen. of Com. of Va.*, 940 F.2d 73, 76 (4th

Cir. 1991) (holding that the possibility of a dispute between the company and private parties "does not bear on whether [the company] has a dispute with the Attorney General").

The Supreme Court also addressed this private-party issue in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021). There, the statute was primarily "enforced through private civil actions." *Id.* at 46. But the law also allowed for "collateral enforcement" by "licensing-official defendants" charged with enforcing abortion regulations generally. *Id.* at 47, n.4; *see id.* at 46 n.3 (allowing action to "proceed against [licensing defendant] solely based on her authority to supervise licensing of abortion facilities"). Because the plaintiffs identified state law that "impose[d] a duty on the licensing-official defendants to bring disciplinary actions against them," that was "enough" at the "motion to dismiss stage." *Id.* at 47–48. So private actions do not bar suit against enforcement officials.

Right to Life's and PRC's requested injunction would stop the Attorney General from threatening Right to Life and PRC in at least six ways. That satisfies redressability.

II. The Attorney General is a proper defendant under *Ex Parte Young*.

The Attorney General is a proper defendant here under *Ex Parte Young* because she is linked to ELCRA enforcement. Because that exception applies, she doesn't have Eleventh Amendment immunity from suit here. To conclude otherwise, the Attorney General attempts to (A) raise the *Ex Parte Young* bar, (B) minimizes her enforcement authority to no avail, and (C) leans on caselaw that either supports the exemption here or is distinguishable.

A. *Ex Parte Young* only requires "some connection" to enforcement, which is a low bar to clear.

The Sixth Circuit's decision in *Christian Healthcare Centers* shows that the Attorney General is not immune from suit here. True, *Christian Healthcare Centers* did not expressly address the Eleventh Amendment. But sovereign immunity "is a true jurisdictional bar" that "must be decided before the merits." *Doe v. DeWine,* 910 F.3d 842, 848 (6th Cir. 2018) (citation omitted); *see Angel v. Kentucky*, 314 F.3d 262, 265 (6th Cir. 2002) ("We must therefore address the jurisdictional question that clearly exists, even though it was not addressed by the court below."). And that bar did not prevent the Sixth Circuit from concluding that religious ministries had standing to enjoin the Attorney General from enforcing ELCRA.

What's more, *Christian Healthcare Centers* held that the Attorney General threatened the ministries with injuries. *Supra* §I.A. That conclusion informs the Eleventh Amendment analysis. After all, "[i]t would be a perverse reading of *Young* to say that, although [a plaintiff] might have an Article III injury before the Attorney General" commences prosecution, "the Eleventh Amendment would nonetheless simultaneously bar [a court] from enjoining the Attorney General's initiating a prosecution." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015). "Rather, at the point that a threatened injury becomes sufficiently imminent and particularized to confer Article III standing, that threat of enforcement also becomes sufficient to satisfy this element of *Ex Parte Young*." *Id.* In other words, by concluding that the ministries had standing, *Christian Healthcare Centers* strongly suggests that the defendants there—including the Attorney General—were subject to an *Ex Parte Young* exemption from immunity.

The Attorney General's chief counterargument is that she does not "directly enforce" ELCRA. ECF No. 28, PageID.577. But that's not the standard—the actual standard is much lower. The Attorney General only needs "some connection" with

ELCRA's "enforcement" for the *Ex Parte Young* exception to kick in. 209 U.S. 123, 157–58 (1908). Under that standard, direct enforcement authority is not required. *See Nabors*, 35 F.4th at 1040–41 ("defendants do not even need 'direct criminal enforcement authority' for plaintiffs to make use of the immunity exception") (quoting *DeWine*, 910 F.3d at 848).

In the Sixth Circuit, it's enough to show that the Attorney General can "take legal or administrative actions against the plaintiff's interests." *Nabors*, 35 F.4th at 1041. Those administrative actions can include "instructing other state actors on how to administer … [the] statute," *Russell*, 784 F.3d at 1048. Those actions can also include even administering a database. *DeWine*, 910 F.3d at 849 ("operat[ing] the state-wide sex-offender database" was an "action[] against [Doe's] interests").

Other circuits have likewise recognized that the *Ex Parte Young* exemption is a "low bar." *Matsumoto v. Labrador*, 122 F.4th 787, 803 (9th Cir. 2024); *see also Jackson v. Wright*, 82 F.4th 362, 367 (5th Cir. 2023) ("All that is required is a mere scintilla of enforcement by the relevant state official with respect to the challenged law." (citation modified)); *Frank v. Lee*, 84 F.4th 1119, 1132–33 (10th Cir. 2023) (requiring only some "statutory duties" connected to enforcement); *City of S. Miami v. Governor*, 65 F.4th 631, 644 (11th Cir. 2023) (finding that "sufficient contact with the state officers that implemented the law" could satisfy); *281 Care Comm*, 638 F.3d at 632 (holding that the "connection does not need to be primary authority to enforce the challenged law").

Right to Life and PRC clear this low bar comfortably because the Attorney General enforces ELCRA.

B. ELCRA specifically assigns enforcement authority to the Attorney General in at least six ways.

ELCRA's enforcement scheme is a multi-step process that incorporates the Attorney General at virtually every juncture. She has authority to (1) initiate

enforcement actions by filing complaints; (2) enforce the Department's and Commission's orders; (3) represent the Department in "trial-like" proceedings; (4) enforce the Commission's orders; (5) enforce the Department's settlement agreements; and (6) and defend the Commission's orders on appeal.

Step 1. The Attorney General can initiate enforcement. ELCRA's wheels begin turning once someone files a complaint. *See* ECF No. 1, PageID.59-60 (describing enforcement process). The Attorney General can file complaints directly with the Department as an aggrieved "person"—defined to include any "agency of this state," MDCR Rule 37.2(p), and "public official[s]." Decl. of A. Jones, Ex. A at 5. The Attorney General doesn't mention her authority to file complaints with the Department, but it's a key enforcement factor. For example, in *281 Care Comm. v. Arneson*, Minnesota's "attorney general [was] authorized—along with any other individual or organization—to" file an administrative complaint. 638 F.3d 621, 631 (8th Cir. 2011). Minnesota's attorney general also had "broad discretion to commence civil actions." *Id.* at 632. The same is true of Michigan's Attorney General here—even separate from her authority to file complaints with the Department. VC ¶¶ 9-11, ECF No. 1, PageID.5; MCL 14.29 ("It shall be the duty of the attorney general … to prosecute and defend all suits relating to matters connected with their departments."); MCL 14.101 (authorizing the Attorney General to intervene in "any action" in "any court" to protect the "interests of the state"). And the Minnesota law "allow[ed] any person, entity, or agency to file a civil complaint," *281 Care Committee*, 638 F.3d at 632, just like ELCRA, MDCR Rule 37.2(p). Those reasons—along with two others present here (Minnesota's Attorney General's "ability" to "become involved" with prosecution and responsibility to defend decisions "challenged in civil court")—were a "strong enough" connection to satisfy *281 Care Committee*, 638 F.3d at 632.

Step 2. The Attorney General can enforce discovery orders. After a complaint is filed, but before a charge is issued, the Department investigates through "interrogatories, ordering the submission of [documents] … requiring the attendance of witnesses, and compelling, through court authorization, compliance with its orders." VC Ex. 19 ¶ 31, ECF No. 1-21, PageID.188; MCL 37.2602(d). As the Attorney General admits, "ELCRA carefully assigns … order-enforcement" to her office. ECF No. 28, PageID.579-578. So the Department compels compliance by tapping the Attorney General in. ECF No. 28, PageID.573.

The Michigan Department of Civil Rights Policy and Procedures Manual describes this process. There, the express "Policy" applying MCL 37.2602(d) authorizes "the Attorney General to enforce an order … when the respondent has failed to provide requested records or information." Department's Manual, Decl. of A. Jones, Ex. C at 4. Procedurally, the civil-rights investigator must "forward" the "file" to "the Attorney General's office for enforcement" while warning the unresponsive party "that the Office of the Attorney General will request costs and attorney's fees for having to expend the money and time to enforce the Department Order." *Id.* at 5. After the file is forwarded "to the Attorney General's office, [the Civil Rights Investigator] refers any calls from the respondent to" the Attorney General, signaling that the Attorney General is from then on solely responsible. *Id*.

The Attorney General admits this enforcement authority. ECF No. 28, PageID.573 ("When the [Department] seeks 'court authorization' to compel compliance under subsection (d), the Attorney General appears as the [Department's] legal representative."). So her claim that she only enforces "orders … after [the Department or Commission has] already determined that the ELCRA has been violated" is wrong. ECF No. 28, PageID.577-578. During the investigation phase—before any charges—the Attorney General has authority to do some heavy lifting.

Still, the Attorney General tries to minimize her enforcement power by seizing on the fact that she does not originate the orders; the Department and the Commission do. ECF No. 28, PageID.574. But that's irrelevant. By enforcing the discovery orders, the Attorney General "partners" with the Commission and so is "actively involved with administering" ECLRA. *Russell,* 784 F.3d at 1048 (The election board "administer[ed] the election laws" because it "partnered with the Attorney General in responding to complaints of improper election activity" even though the board lacked direct prosecutorial authority.); *DeWine*, 910 F.3d at 849 (even "administering" a database was sufficient enforcement authority).

Step 3. The Attorney General can represent the Department in "trial-like" hearings. After the Attorney General-backed investigation, the Department can "issue a charge of discrimination … [that] may be submitted to a formal hearing" under MDCR Rule 37.12. VC Ex. 19 ¶ 35, ECF No. 1-21, PageID.188. These "Rule 12 Hearings" are "trial-like" proceedings "where a hearing officer considers evidence and live testimony." *Id.* ¶ 36. Throughout this adversarial process, the Attorney General "represents the [D]epartment" and "advocate[s] on behalf of the complainant." Decl. of A. Jones, Ex. B at 5–6 (referring to Rule 12 Hearings); VC Ex. 19 ¶ 48, ECF No. 1-21, PageID.190 (stipulating the Attorney General's representation "before any court"). By statute, "the attorney general shall appear for and represent the department or the commission in a court having jurisdiction of a matter under this act." MCL 37.2602(b).

The Department's Manual supports this authority. It describes Rule 12 Hearings and notes that the Attorney General "[p]articipates in the preparation and litigation of the case." Decl. of A. Jones, Ex. C at 3. So the Attorney General's involvement is not "merely representative or derivative." ECF No. 28, PageID.577. No. She is an active participant in both the "preparation" and "litigation" of a charge. Decl. of A. Jones, Ex. C at 3.

The court in *Masterpiece Cakeshop Inc. v. Elenis*, ruled on an almost identical situation. 445 F. Supp. 3d 1226 (D. Colo. 2019). There, Colorado's Attorney General represented the state civil-rights commission as its "attorney" in similar hearings under Colorado's ELCRA equivalent. *Id.* at 1253. The Colorado law stated, "[t]he case in support of the complaint shall be presented at the hearing by one of the commission's attorneys or agents." C.R.S. § 24-34-306(8). Colorado's Attorney General's office was that attorney. *Id.* So she had a "duty to enforce" the law. *Id.* Same here. Michigan's rule states "[t]he case in support of the charge must be presented at the hearing by the department's counsel." MDCR Rule 37.12(6). Like *Masterpiece*, Michigan's Attorney General is or can be the Department's attorney. Decl. of A. Jones, Ex. C at 3; Decl. of A. Jones, Ex. B at 5–6; MCL 37.2602(d). What's more, the Attorney General's representation is not limited to Rule 12 Hearings; she represents the Department in order enforcement proceedings (Steps 2, 4, and 5) and the Commission on appeal (Step 5). ECF No. 28, PageID.564, 573 (admitting the same).

Step 4. The Attorney General enforces the Commission's final orders. After the Attorney General "advocate[s] on behalf of the complainant," Decl. of A. Jones, Ex. B at 5–6, the hearing officer issues a "written report that recommends findings of facts, conclusions of law, and penalties." VC Ex. 19 ¶ 37, ECF No. 1-21, PageID.188. After receiving the report, the Commission may issue penalties, including cease-and-desist orders; hiring, reinstatement, or upgrading of employees; admission of a person to a public accommodation; and compliance reports. VC Ex. 19 ¶¶ 41-44, ECF No. 1-21, PageID.189.

Should a respondent fail to comply with an order, ELCRA deputizes the Attorney General to enforce the order. MCL 37.2602(b); VC Ex. 19 ¶ 49, ECF No. 1-21, PageID.190. This is undisputed. The Attorney General agrees that "ELCRA carefully assigns … order-enforcement" to her office. ECF No. 28, PageID.579-578.

Because the Attorney General enforces the final orders, ELCRA requires the Commission to "furnish a copy of the order" to the Attorney General. MCL 37.2604; MCL 37.2605(a).

Whether the Attorney General exercises this authority "when so directed" is irrelevant. *Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 428 F.3d 1139, 1145 (8th Cir. 2005) (holding that Missouri's Attorney General was not entitled to immunity because he could "aid prosecutors when so directed by the Governor" and could "sign indictments 'when so directed by the trial court'"). The Attorney General's "statutory authority" to enforce non-compliance with ELCRA orders "creates a sufficient connection with" its "enforcement." *Id.*

Step 5. The Attorney General enforces the Department's settlement agreements. Some complaints avoid the Rule 12 Hearing process and are instead resolved through conciliation, a "mediation-like proceeding that can result in … additional investigation, including discovery." ECF No. 26, PageID.475; MDCR 37.5. If a settlement is reached through conciliation, the Attorney General compels compliance with the Department's settlement agreements on behalf of either the respondent or the claimant. Decl. of A. Jones, Ex. C at 2 (requiring the civil rights manager to "submit the report to the Attorney General's Office for enforcement").

Step 6: The Attorney General defends the Commission's final orders on appeal. After the Commission issues a final order, parties may appeal to the circuit court. VC Ex. 19 ¶ 45, ECF No. 1-21, PageID.190. At this stage, the baton completely passes to the Attorney General, who is tasked with prosecuting the case on de novo review. *Id.* ¶ 48; MCL 37.2606(1). So she must again provide the same legal advocacy in the "preparation and litigation of the case" that she presents at a Rule 12 hearing. Decl. of A. Jones, Ex. C at 3. *See 281 Care Comm.*, 638 F.3d at 632 (finding enforcement authority because the "attorney general is responsible for

defending the decisions of the [Office of Administrative Hearings] … if they are challenged in civil court").

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The Attorney General plays a role throughout ELCRA's enforcement scheme. Any of these roles creates at least "some connection" to enforcing ELCRA. So the *Ex Parte Young* exception applies, and she lacks Eleventh Amendment immunity here.

C. The Attorney General leans on cases that either prove that *Ex Parte Young* applies or are distinguishable.

Despite her prosecutorial authority, the Attorney General still claims immunity, but she relies on cases that support plaintiffs or are irrelevant.

Start with *Russell v. Lundergan-Grimes,* 784 F.3d 1037 (6th Cir. 2015); see ECF No. 28, PageID.577 (citing this case). There, the court held that the *Ex Parte Young* exception applied to the Kentucky Attorney General and the Kentucky State Board of Elections (Board). *Id.* at 1045, 1049. Kentucky's law banned "electioneering" within 300 feet of a polling place. *Id.* at 1043. By the time the case reached the Sixth Circuit, the only remaining defendants were "statewide officials": Kentucky's Attorney General and the Board.

Kentucky's Attorney General could investigate and prosecute violations of election law. *Id.* at 1047. But, under Kentucky's statute, the Board could only "adopt… regulations" and "train local personnel on how to implement" the law. *Id.* at 1048. But the "local personnel" were dismissed from the case after disavowing enforcement; so it wasn't clear what "specific action[]" the Board could take "directly" against the plaintiff. *Id.* at 1048. That was no obstacle: "A citizen … need not prophesy precisely what actions statewide officials … will take against him." *Id.* Instead, some "role in effectuating" the law is enough. *Id.* If the Board's authority to "train" local officials who disavowed enforcement satisfied *Ex Parte Young*, how

much more so the Attorney General's authority to "represent" the Department and Commission who have not disavowed enforcement? *See supra* §II.B.

Likewise, the Board in *Russell* still "administer[ed]" the law by "routinely partner[ing]with the Attorney General in responding to [civil] complaints of improper election activity." *Id.* at 1048. So again, direct prosecutorial authority isn't required—"partnering" with "other state actors" is enough. *Id.*

Here, the Michigan Attorney General does more than merely "partner" with the Commission and Department; she represents them, enforces their orders, compels compliance with their settlement agreements, and defends them on appeal. *See supra* §II.B. Like the Board in *Russell*, the Attorney General "actively administers" ELCRA by "partnering" with the Commission and the Department in "furtherance of [ELCRA's] execution." *Id.* at 1048. That clears the low bar of *Ex Parte Young*.

Doe v. DeWine, 910 F.3d 842 (6th Cir. 2018) confirms the same. There, the plaintiff, a woman convicted of a sexual crime, challenged Ohio's sex-offender registry statute. She sued the "state officials tasked with publishing" information from the registry's database, including the Ohio Attorney General and the Superintendent of the Ohio Bureau of Criminal Investigation. *Id.* at 849. She did not "register" with either of these officials, the officials could not bring charges against her if she failed to register, and they had "no power to hold a reclassification hearing for Doe or force a court to hold one." *Id.* at 848, 850. Indeed, the only "action" the defendants could take against the plaintiff's "interests" was simply to "disseminate allegedly false information." *Id.* at 849. But that was enough. Here, the Attorney General can do a lot more to cripple Right to Life's and PRC's interests. She can initiate complaints, is the sole "order enforcement" officer behind ELCRA's admittedly severe penalties, and is otherwise involved in enforcing ELCRA. ECF No. 28, PageID.579-580; *supra* §II.B.

Next, the Attorney General cites four distinguishable cases that reiterate the same point: general enforcement authority alone does not trigger the *Ex Parte Young* exception.

First, there is *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412 (6th Cir. 1996). But there, the "plaintiffs [did] not seek to *enjoin* the enforcement of an allegedly unconstitutional statute," and "in effect pray that the federal courts *permit* a broader enforcement of certain statutes." *Id.* at 1416. In contrast, Right to Life and PRC seek to enjoin ELCRA's enforcement—a classic *Ex Parte Young* application. Next, "Ohio law delegates the enforcement of the challenged statutes to local prosecutors, not the Attorney General." *Id.* That's different from this case, where the Attorney General has six paths to enforcement.

Second, Michigan relies on *Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732 (10th Cir. 2024). But "a private right of action" was the "only" enforcement mechanism in the statute at issue. *Id.* at 739. And the plaintiff's theory was based on "the Attorney General's blanket authority over state law … [and] his general legal duties." *Id.* at 738, 740. Neither is true here—Michigan enforces ELCRA. And ELCRA and its regulations outline the Attorney General's enforcement authority.

Third, Michigan cites *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021 (6th Cir. 2022). But *Nabors* addressed the plaintiffs' standing to sue the Tennessee Attorney General, not the Attorney General's immunity. *Id.* at 1032–33. What's more, the Tennessee Attorney General could not "initiate criminal prosecutions" under the challenged law and could "never step[] in" to enforce the law. *Id.* at 1032.

Finally, in *Doyle v. Hogan*, the attorney general was authorized to issue legal opinions under the state constitution but otherwise had no enforcement over the act. 1 F.4th 249, 256 (4th Cir. 2021). Upon request, the attorney general in *Doyle* "may" "present [a] case on behalf of the Board," but he "is never required to do so."

Id. at 256 ("'[M]ay' is a wonderfully permissive word") (citation omitted). Not so in Michigan. *Compare* Md. Code Regs. 10.58.04.05(C)(1) ("The Board may request the Office of the Attorney General to participate in any hearing to present the case on behalf of the Board.") *with* MCL 37.2602(b) ("The attorney general shall appear for and represent the department or the commission in a court having jurisdiction of a matter under this act.").

At most, these latter four cases suggest that plaintiffs may not bring suit against an official based on the official's general authority to enforce the law. But Right to Life and PRC do not rely only on that general authority. They rely on at least six unique and specific ways that the Attorney General can enforce ELCRA. *See* VC ¶¶ 10-11, ECF No. 1, PageID.5 (referencing the Attorney General's "power to enforce ELCRA settlements, enforce orders to produce documents, participate in ELCRA hearings" and "represents the Department and Commission in any lawsuit filed under ELCRA"). That makes the cases cited by the Michigan Attorney General irrelevant here.

III. Right to Life and PRC meet the preliminary injunction factors.

Right to Life and PRC are also entitled to their requested injunction. They (1) are likely to succeed on the merits; (2) suffer irreparable harm absent an injunction; (3) show the equities favor them; and (4) advance the public's interest with an injunction. *See Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 740-41 (6th Cir. 2025) (listing factors). In cases like this one, the third and fourth factors typically merge. *Id.* at 761 (addressing those factors together). Right to Life and PRC meet each factor.

A. Right to Life and PRC are likely to succeed on the merits, a point the Attorney General never contests.

Right to Life and PRC are likely to win on the merits. *See* ECF No. 8, PageID.334-358. The Attorney General makes "*no* argument on the substance of *any* of" Right to Life's and PRC's constitutional claims. *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1183 (D. Colo. 2023). Without a response, the Attorney General has "effectively stipulated to" Right to Life's and PRC's "characterization of the law for purposes of the preliminary injunction motion." *Id.* So Right to Life and PRC have shown a likelihood of success based on their affirmative case *and* the Attorney General's non-response.

B. Right to Life and PRC suffer irreparable harm.

Right to Life's and PRC's requested injunction prevents their ongoing "loss of First Amendment freedoms." *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025). This loss "unquestionably constitutes irreparable injury." *Id.* The irreparable-harm arguments in Plaintiffs' Combined Response to MDCR and MCRC are incorporated herein. *See* Combined Resp. to MDRC and MCRC §III.B. To summarize: Right to Life and PRC are suffering an irreparable harm because they are presently "self-censoring" their speech in response to a "credible fear" of ELCRA's enforcement. *Id.* §III.B. The Attorney General raises four additional points. All of them fall short.

First, the Attorney General says she "has taken no enforcement actions against Plaintiffs" and lacks "the authority to do so in the future." ECF No. 28, PageID.590. But it's the threat of enforcement—not actual enforcement—that causes Right to Life and PRC to chill their speech. *Virginia*, 484 U.S. at 393 (noting "self-censorship" "can be realized even without an actual prosecution"). And the Attorney General can enforce ELCRA, as explained above. *See supra* §II.B.

Second, the Attorney General suggests that enforcement would require "a speculative chain of events." ECF No. 28, PageID.591. Not so. Right to Life and PRC

are currently self-censoring by declining to publish amendments to their job descriptions, emails, and other employment materials. ECF No. 1, PageID.50-56. They would post those materials but for the threat of enforcement. ECF No. 1, PageID.56. And if they publicize those materials—which is entirely in their control—"it is plausible that a complaint will be filed regarding the publicized speech or conduct." *CHC*, 117 F.4th at 852; *see also 303 Creative LLC*, 6 F.4th at 1173 (rejecting Colorado's "'highly attenuated chain of possibilities'" argument). There is no speculation there. The Attorney General's reliance on *D.T. v. Sumner County Schools*, 942 F.3d 324 (6th Cir. 2019) doesn't persuade otherwise. *See* Combined Resp. to MDRC and MCRC §III.B. (distinguishing *D.T.*).

Third, the Attorney General claims that Right to Life and PRC have an adequate remedy because they could: (1) apply for a BFOQ exemption or (2) raise their constitutional defenses during "any enforcement proceeding." ECF No. 28, PageID.591-592. Right to Life and PRC are currently suffering an ongoing "loss of First Amendment freedoms" that "unquestionably constitutes irreparable injury." *Mahmoud*, 606 U.S at 569. Requiring them to wait upwards of six months to apply for a BFOQ exemption doesn't fix that. *Id.*; ECF No. 26-2, PageID.520. Plus, the process would be unduly burdensome, and ultimately futile. *See* Combined Resp. to MDRC and MCRC §II.A. That's not an adequate remedy. And the Attorney General admits this by suggesting that Right to Life and PRC should simply wait for an "enforcement proceeding" before asserting their constitutional defenses. ECF No. 28, PageID.592. That reasoning defeats the whole purpose of a pre-enforcement action. *SBA List*, 573 U.S. at 158 (a plaintiff need not wait for an "enforcement action" to challenge the law).

Finally, the Attorney General claims that the "absence of enforcement suggests the threat is speculative." ECF No. 28, PageID.592. For starters, Right to Life and PRC have been chilling their speech to avoid prosecution. *Cf. CHC*, 117

F.4th at 852 (assuming complaint once published). And this rinse-and-repeat argument recycles the first *McKay* factor, enforcement history, which Right to Life and PRC meet. *See* Combined Resp. to MDRC and MCRC §I.A.2.

C. The balance of the equities favors an injunction.

Right to Life's and PRC's requested injunction "is both equitable and in the public interest." *Mahmoud*, 606 U.S. at 569. The Sixth Circuit's "cases make clear that protecting constitutional rights serves the public interest." *Defending Educ.*, 158 F.4th at 761 (collecting cases). The Attorney General does not contest the merits of Right to Life's and PRC's constitutional claims, so there is no dispute here that an injunction preserves their constitutional right. That conclusion favors an injunction because "[p]reventing constitutional violations is always in the public interest." *Buck v. Gordon*, 429 F. Supp. 3d 447, 466 (W.D. Mich. 2019).

And because the Attorney General has no legitimate interest in enforcing the laws in unconstitutional ways, the balance of the equities favors Right to Life and PRC. Underscoring that balance, this Court can tailor the injunction to cover Right to Life's and PRC's constitutionally protected activities while still permitting the Attorney General to enforce the challenged clauses against unprotected conduct by other employers and public accommodations. *See Defending Educ.*, 158 F.4th at 761 (noting this approach seeks the "best balance").

Conclusion

The Attorney General can enforce ECRLA, and this enforcement irreparably harms Right to Life and PRC. While the Attorney General may enforce its pro-abortion agenda in other ways, it may not sacrifice the constitutional rights of pro-life groups along the way. This Court should therefore deny the Attorney General's motion to dismiss and grant the requested preliminary-injunction motion.

Respectfully submitted this 24th day of April 2026.

By: s/ Arie M. Jones

Arie M. Jones
Virginia Bar No. 98248
Alliance Defending Freedom
44180 Riverside Pkwy.
Lansdowne, Virginia 20176
(571) 707-4655
(571) 707-4790 Fax
arjones@ADFlegal.org

John J. Bursch
Michigan Bar No. P57679
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690
(202) 347-3622 Fax
jbursch@ADFlegal.org

Suzanne E. Beecher
California Bar No. 329586
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, D.C. 20001
(202) 393–8690
sbeecher@adflegal.org

Henry W. Frampton, IV
South Carolina Bar No. 75314
Bryan D. Neihart
Arizona Bar No. 035937
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260
(480) 444-0020
(480) 444-0028 Fax
hframpton@ADFlegal.org
bneihart@ADFlegal.org

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that on the 24th day of April, 2026, I electronically filed the foregoing document with the Clerk of Court using the ECF system. The foregoing document will be served via private process server with the Summons and Complaint to all defendants.

s/ Arie M. Jones
Arie M. Jones
Alliance Defending Freedom
44180 Riverside Pkwy.
Lansdowne, Virginia 20176

Attorney for Plaintiffs

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s/ Arie M. Jones
Arie M. Jones
Alliance Defending Freedom
44180 Riverside Pkwy.
Lansdowne, Virginia 20176

Attorney for Plaintiffs