IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-04236

CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS and BUTTON FAMILY PRACTICE P.C.,

Plaintiffs,

vs.

AUBREY C. SULLIVAN, Director of the Colorado Civil Rights Division, in her official capacity;
SERGIO RAUDEL CORDOVA, GETA ASFAW, MAYUKO FIEWEGER, DANIEL S. WARD, JADE ROSE KELLY, and ERIC ARTIS, as members of the Colorado Civil Rights Commission, in their official capacities;
PHIL WEISER, Colorado Attorney General, in his official capacity; and
GRETCHEN HAMMER, Executive Director of the Colorado Department of Health Care Policy and Financing, in her official capacity,

Defendants.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

For decades, Dr. Marcus Button and his staff at Button Family Practice have cared for the people of his community—no matter who they are. The same is true for Christian Medical & Dental Association's (CMDA) members. But they won't do what their Christian faith forbids—medically transition patients, harming their bodies in the name of their perceived identity. Consistent with their beliefs, these providers treat the body as a gift to embrace rather than a curse to escape.

Colorado law used to permit this choice. But recently, Colorado's Supreme Court read Colorado's Anti-Discrimination Act (CADA) to require healthcare professionals who provide mastectomies to treat cancer or who prescribe hormones to treat menopause to do the same to medically transition patients *of any age,* including minors. Providers who decline to do so commit discrimination under CADA, subjecting them to damages, Colorado Medicaid terminations, reeducation programs, and compelled performance of the objectionable procedures. This radical requirement violates the providers' religious beliefs, good science, and medical ethics.

It also violates the Constitution. As applied, CADA violates the medical providers' religious liberty and doesn't square with our Nation's long tradition protecting medical conscience rights. Colorado has no legitimate interest in forcing doctors to perform controversial and harmful procedures, particularly when patients can obtain these procedures elsewhere. Indeed, there is no good reason to force medical providers to experiment on their patients, much less on children, when many in the global medical community oppose these procedures as unproven and unsafe.

That should stop here. The medical providers are likely to win on the merits. They shouldn't have to choose between practicing medicine, protecting their patients, and practicing their faith. So they request an injunction to avoid that choice.

BACKGROUND

CMDA members and Button Family Practice are Christian medical providers who have invested their lives caring for people and want to continue that care without violating their faith. But Colorado won't let them. It says they must forgo care or provide controversial drugs and surgeries for gender transitions in violation of their religious beliefs. This suit seeks to enjoin that.

Medical providers. CMDA is a nonprofit membership organization founded in 1931 that today represents thousands of Christian healthcare professionals nationwide. V.C. ¶¶ 14, 23. CMDA sues on behalf of its Colorado members, including Dr. Button, three other family physicians, a physician assistant, and a nurse practitioner who is a certified midwife. V.C. ¶¶ 15, 52–113. CMDA members share CMDA's formal position on gender identity: God created people in his image—male and female—and people cannot choose or change their sex. V.C. ¶¶ 56–61. Their practices track these beliefs. A person's sex is a God-given gift, not something to be second-guessed or rejected by drugs and surgeries. *Id.*; V.C. Ex. 1.

The Practice is a for-profit primary-care clinic serving men, women, and children in Canon City, Colorado. V.C. ¶¶ 16–17. Dr. Button owns the Practice, sets its medical policies, and operates it according to his faith. V.C. ¶¶ 117–30; Button Decl. ¶¶ 16–43. The Practice does not offer medical services that contradict Dr. Button's beliefs. V.C. ¶¶ 131–38.

CMDA members and the Practice offer a wide range of medical care—like wellness exams, vaccines, preventative medicine, concussion assessments, and prenatal care—to everyone who walks through their doors, regardless of background or identity, including patients who identify as transgender. V.C. ¶¶ 62–114. They routinely prescribe hormones, too, for a wide range of conditions: estrogen for

women in menopause, testosterone for men with reduced levels, medications such as spironolactone and Lupron for heart failure and cancer, and more. V.C. ¶¶ 63–64, 69–70, 78–79, 83–84, 97, 104–05, 127–28.

But CMDA members and the Practice cannot prescribe these drugs or offer other procedures to "transition" a patient of any age—though they've been asked. V.C. ¶¶ 142–54. Patients have asked them to facilitate these procedures, either by performing them themselves or by referring them elsewhere. V.C. ¶¶ 72, 107–10, 382. Although the medical providers decline gender-transition procedures, those services remain available from other providers in the communities they serve. V.C. ¶¶ 161–70.

The Practice wants to be transparent by explaining its religious reasons for not participating in gender-transition procedures. V.C. ¶¶ 175, 179; V.C. Ex. 5. CMDA wants to send guidance to its members on this issue. V.C. ¶ 384; V.C. Ex. 3. And CMDA has members who want to link to CMDA's Position Statement so that people considering their practices can make an informed decision. V.C. ¶ 174. But none of them have taken these steps because of CADA. V.C. ¶¶ 409–10.

Medical procedures. The procedures that the medical providers oppose are the subject of "fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field." *United States v. Skrmetti*, 605 U.S. 495, 525 (2025); V.C. ¶¶ 180–230; Curlin Decl. ¶¶ 37–64, 101–24.

Reliable evidence doesn't support the procedures. V.C. ¶¶ 191–230; Curlin Decl. ¶¶ 50–59; Kaliebe Decl. ¶¶ 175–88. In 2024, for example, Dr. Hilary Cass's independent review for England's National Health Service surveyed the research on youth interventions and found it "an area of remarkably weak evidence." Hilary Cass, *Independent Review of Gender Identity Services for Children and Young*

People: Final Report 13 (2024) (Cass Report). Last year, the U.S. Department of Health and Human Services conducted its own umbrella review and likewise rated the quality of the evidence for subjecting minors to these procedures as "very low," noting substantial uncertainty about long-term outcomes. U.S. Dep't of Health & Hum. Servs., *Treatment for Gender Dysphoria: Review of Evidence and Best Practices* 24 (May 1, 2025), https://perma.cc/7B96-VTXG (HHS Report). The evidence for adults is no stronger. V.C. ¶¶ 199, 209–10; Kaliebe Decl. ¶¶ 107–23.

The risks, by contrast, are serious. Puberty blockers may impair fertility, sexual function, brain development, and bone density. V.C. ¶¶ 205–11; Kaliebe Decl. ¶¶ 223–40. Cross-sex hormones carry elevated risks of cardiovascular disease, stroke, and cancer for minors and adults. Kaliebe Decl. ¶¶ 223–40. Surgeries bring their own set of problems. *Id.* ¶¶ 114, 119, 181, 218, 224. And most children (~90%) who have gender dysphoria but are not pushed to transition regain comfort with their bodies by adulthood. *Id.* ¶¶ 67–74; V.C. ¶ 218.

So other countries and twenty-seven States have sharply restricted or entirely banned these procedures for minors. *See* Curlin Decl. ¶¶ 37–49; Kaliebe Decl. ¶¶ 145–49; *Skrmetti*, 605 U.S. at 525. The American Society of Plastic Surgeons similarly urges delaying gender surgery for young people, citing "insufficient evidence" of benefit. V.C. ¶ 216. CMDA members' and the Practice's views fall squarely within these opinions of the medical community.

CADA. CADA governs "place[s] of public accommodation"—a category that includes any health "clinic" or "establishment." C.R.S. § 24-34-600.3(1)(a)(V), (VII). CADA also prohibits any "person" from engaging in unlawful discriminatory practices, and Colorado has applied CADA to individual business owners. C.R.S. § 24-34-601(2)(a); V.C. ¶¶ 347–49. So CADA applies to the CMDA members and the

Practice. CADA regulates them through three clauses. Each clause is incorporated into Colorado Medicaid's Provider Participation Agreements. V.C. ¶¶ 354.

First, the Accommodation Clauses make it unlawful for any accommodation "directly or indirectly, to refuse, withhold from, or deny to an individual" the "full and equal enjoyment" of its services "because of disability … sex … [or] gender identity." C.R.S. §§ 24-34-601(2)(a), -802(1)(b). Colorado's interest in preventing gender-identity discrimination is the same under CADA as other Colorado laws that contain similar prohibitions. *Boe v. Child.'s Hosp. Colo.,* 2026 CO 32, ¶¶ 25–26. But CADA and other Colorado laws have many exemptions for disability, sex, and gender-identity discrimination. V.C. ¶¶ 431–66 (summarizing exemptions).

Recently, the Colorado Supreme Court and another Colorado court interpreted the Accommodation Clauses to require medical clinics to offer and provide cross-sex hormones and surgeries for gender transitions if they offer those services for other reasons. *Boe,* ¶ 54; V.C. Exs. 7–9 (state trial court decisions). Those courts have said that refusing to offer these procedures likely violates CADA by discriminating because of a patient's sex, gender identity, or disability. *Boe*, ¶¶ 50–60; V.C. Exs. 7–9. Going further, the plaintiffs in one of those cases have asked to hold a hospital in contempt of court for its providers' decision to decline these procedures. V.C. Ex. 10. Because CMDA members and the Practice offer and prescribe hormones for other medical conditions, Colorado treats their decision not to prescribe those drugs for gender transitions as unlawful discrimination.

Second, the Publication Clauses prohibit a person from publishing materials indicating that a person may be denied service at a public accommodation because of disability, sex, or gender identity. C.R.S. §§ 24-34-601(2)(a), -701(1)(a)-(b). So the Practice cannot post their policies explaining why they do not offer cross-sex

hormones for a gender transition. V.C. ¶¶ 402, 410. Nor can CMDA members post or link to CMDA's Policy Statement. V.C. ¶¶ 402, 409. That fear is reasonable: the *Boe* plaintiffs added a Publication Clause claim against the hospital claim after it published a statement about its gender transition policy. V.C. ¶ 288.

Third, the Unwelcome Clauses forbid any business from displaying a statement expressing that a person's "patronage or presence" is "unwelcome, objectionable, unacceptable, or undesirable," because of a protected trait. C.R.S. §§ 24-34-601(2)(a), 24-34-701(1)(a)-(c). These clauses have caused the Practice to refrain from posting its desired statements about its services, and CMDA members from posting or linking to the Policy Statement. V.C. ¶¶ 383, 392–94, 409–10. Someone reading these publications may feel "unwelcome" going to the provider that publishes them. V.C. ¶ 403. So they self-censor to avoid the risk. V.C. ¶¶ 409–10.

Lawsuit. Each day, the CMDA members and the Practice risk facing CADA's investigations, subpoenas, hearings, cease-and-desist orders, and civil penalties. V.C. ¶¶ 368–413. They also risk being terminated as Colorado Medicaid providers. V.C. ¶¶ 351–64. Colorado has never disavowed enforcing CADA here. V.C. ¶ 350. And the State has prosecuted over a thousand public-accommodation complaints in recent years. V.C. ¶ 336. Colorado even prosecuted cake artist Jack Phillips under CADA for declining to violate his faith by creating a custom expressive "cake with a blue exterior and pink interior to celebrate [and symbolize the requestor's] transition from male to female." *Masterpiece Cakeshop Inc. v. Elenis*, 445 F. Supp. 3d 1226, 1236 (D. Colo. 2019). This puts the medical providers to an impossible choice: betray their faith, forgo providing care, or face the State. They sued instead and now ask this Court to enjoin Colorado's coercion.

ARGUMENT

CMDA members and the Practice are entitled to a preliminary injunction because they (I) are likely to succeed on the merits and (II) can show irreparable harm and that the equities and public interest favor them. *See Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016) (listing factors). The first factor—"likelihood of success"—is "determinative" here "because of the seminal importance of the interests at stake." *Id.* (citation modified). But the medical providers meet the other factors too. They ask this Court to grant their requested injunction.

I. CMDA members and the Practice are likely to succeed on the merits.

CADA violates the medical providers' constitutional rights. The Accommodation Clauses force them to participate in medical procedures that violate their religious beliefs. This application is neither historically justified nor generally applicable. The Publication Clauses restrict their speech about their religiously motivated medical policies based on the speech's content and viewpoint. Colorado also violates equal protection by treating the providers worse than secular ones. None of this satisfies strict scrutiny—or even rational basis. And the Accommodation and Unwelcome Clauses are vague and overbroad.

A. The Accommodation Clauses violate the Free Exercise Clause.

CADA forces CMDA members and the Practice to participate in gender-transition procedures that violate their religious beliefs. This free exercise infringement triggers strict scrutiny for three reasons. *First*, it "substantially interfere[s]" with their religious exercise, including by compelling them to participate in an activity that violates their beliefs, contrary to history and tradition. *Mahmoud v. Taylor*, 606 U.S. 522, 550, 564–69 (2025). *Second*, CADA is not generally applicable because it treats "comparable secular activity" better "than religious exercise."

Tandon v. Newsom, 593 U.S. 61, 62 (2021). *Third*, CADA permits "individualized exemptions." *Fulton v. City of Philadelphia,* 593 U.S. 522, 533 (2021).

For these reasons, the lesser scrutiny applied in *Employment Division v. Smith*, 494 U.S. 872 (1990) does not control. *See Mahmoud*, 606 U.S. at 564–65. But if *Smith*'s lax standard applies to allow Colorado to compel these providers to violate their faith, *Smith* should be overruled. *See Fulton*, 593 U.S. at 564–614 (Alito, J., concurring) (explaining reasons to overrule *Smith*).

1. The clauses substantially interfere with religious exercise and conflict with history and tradition.

Applying the clauses to CMDA members and the Practice is inconsistent with First Amendment history and tradition. It "substantially interfer[es]" with the medical providers' beliefs by forcing them to participate in, perform, or facilitate controversial procedures, and the "special character" of that burden demands strict scrutiny. *Mahmoud*, 606 U.S. at 550, 564–69. It is "well understood" that an individual should "not be compelled to perform" an activity which violates his religious beliefs. *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 632 (2018) (discussing clerical objections to officiating same-sex marriage ceremony).

Start with the medical providers' practice. Forcing them to perform controversial procedures against their conscience is inconsistent with "deeply embedded" First Amendment principles. Lynn D. Wardle, *Protection of Health-Care Providers' Rights of Conscience in American Law: Present, Past, and Future*, 9 Ave Maria L. Rev. 1, 3 (2010). Courts review history to help define free-exercise protection. *E.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022). Near the founding, "the issue of exemptions did not arise often." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1466

(1990). But when "religious convictions" conflicted with legislation, governments typically allowed "religion-specific exemptions" because exemptions "were familiar and accepted means of accommodating these conflicts." *Id.* at 1472.

Take military conscription. At the founding, governments required able-bodied men of a certain age to serve in the militia. *District of Columbia v. Heller*, 554 U.S. 570, 595–96 (2008). This service was essential to our nation's defense. *Id.* at 597–98. Yet many objected to this service on religious grounds. McConnell, *supra*, at 1468. And to protect conscience, governments exempted them, *id.* at 1468—including from service in the Continental Army, which desperately needed soldiers, *Fulton*, 593 U.S. at 583 (Alito, J., concurring). Such protections persisted through the Antebellum and Reconstruction periods and continue today. Mark L. Rienzi, *The Constitutional Right Not to Kill*, 62 Emory L.J. 121, 130–36 (2012). Even against an interest like national security, our nation has refused to override the peaceable exercise of conscience. *Cf. Haig v. Agee*, 453 U.S. 280, 307 (1981).

Medical providers historically had no need for specific religious exceptions because the common law already protected them. At common law, physicians had "no obligation to engage in practice or to accept" a particular case. Samuel Williston, *Williston on Contracts* § 62:12 n.2 (4th ed. 2026) (collecting cases). This gave physicians broad discretion to decline any non-emergent service they didn't want to provide. *See Limbaugh v. Watson*, 12 Ohio Law Abs. 150, 151 (Ohio Ct. App. 1932) (declining to assist with home birth); *McNamara v. Emmons*, 97 P.2d 503, 507 (Cal. Dist. Ct. App. 1939) (confirming physician's discretion).

But *Roe v. Wade*, 410 U.S. 113 (1973), spurred conscience threats. So, that year, Congress passed the Church Amendment, 42 U.S.C. § 300a-7, "the first conscience clause law," Jon O. Shimabukuro, Cong. Rsch. Serv., *The History and Effect*

of Abortion Conscience Clause Laws 1 (Jan. 29, 2010), https://bit.ly/3JplRk7. Within five years, "virtually all of the states had enacted" similar legislation. *Id.* And as potential conflicts have expanded, so have conscience clauses. Today, all states permit health facilities, physicians, or other medical staff to decline at least some medical procedures (such as abortions, sterilizations, and physician-assisted suicide) that violate their beliefs. *See* Neihart Decl., Ex. A (survey).

Colorado is no exception to that tradition: it maintains conscience protections for other non-emergent, controversial procedures, including contraception, sterilization, and physician-assisted suicide. C.R.S. §§ 25-6-102(9), 25-48-118.

Like these laws, medical ethics also respects the right to conscience. For example, the American Medical Association and the Council on Ethical and Judicial Affairs acknowledge a provider's right to decline to participate in morally objectionable actions. Neihart Decl., Exs. B–C. Such protections for "contentious medical cases" are embedded in the ethics of the medical profession. Justin E. Butterfield & Stephanie N. Taub, *The Jurisprudence of the Body: Conscience Rights in the Use of the Sword, Scalpel, and Syringe*, 21 Tex. Rev. L. & Pol'y 409, 416 (2017).

Gender-transition procedures fit that label. They are controversial. V.C. ¶¶ 191–230; Curlin Decl. ¶¶ 37–64, 101–24. Most states ban "the provision of sex transition treatments to minors." *Skrmetti*, 605 U.S. at 504. These procedures are an "experimental practice" supported only by studies with "highly uncertain" reliability. *Id.* at 504–05 (citation modified). The Cass Report and the HHS Report found no good evidence to support these procedures. *Supra* pp. 3–4; Kaliebe Decl. ¶¶ 189–207. And governments in Finland, Sweden, Norway, and the United Kingdom restrict them for minors. Curlin Decl. ¶¶ 38–45. These procedures include risks of heart disease, breast cancer, uterine cancer, stroke, infertility, sterility,

decreased bone density, adverse cognitive impacts, and more. HHS Report 142–45; Kaliebe Decl. ¶¶ 223–40. Yet CADA compels them anyway, and for patients of any age.

The First Amendment forbids this. Our nation has always protected conscience from this kind of coerced participation. *See Heller*, 554 U.S. at 600–01 (considering founding-era practices to confirm scope of constitutional protections); Wardle, *supra*, at 3–13. Colorado's coercion tramples that tradition and imposes "substantial pressure" to participate in a procedure that CMDA members and the Practice consider a tool for harm. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–20 (1981) (objecting to "participat[ing] in the production of armaments"). Under the same logic, Colorado cannot compel participation in controversial and harmful procedures without satisfying strict scrutiny.

2. The clauses are not generally applicable.

The Accommodation Clauses lack general applicability here. Colorado forces the medical providers to perform gender-transition procedures against their religious beliefs but does not similarly punish comparable secular businesses for comparable conduct. That "difference in treatment" triggers at least strict scrutiny. *Masterpiece Cakeshop*, 584 U.S. at 636, 638.

A law is not generally applicable if it "treat[s] *any* comparable secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62. The comparability of "two activities" is "judged against" the asserted "government interest that justifies the regulation at issue." *Id.* If a law "fail[s] to prohibit nonreligious conduct that endangers these interests in a similar or greater degree," the law is not generally applicable. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). Colorado's interest is to "'prohibit discrimination based on

identified protected classes.'" *Boe*, ¶ 23 (citation modified; quoting C.R.S. § 24-34-300.7(1)). But it allows mass exceptions. Because these exemptions allow some to discriminate in their services, they undermine Colorado's asserted anti-discrimination interests to a greater degree than what CMDA members and the Practice do.

CADA exemptions. CADA itself exempts much discrimination against otherwise-protected classes. For public accommodations, it exempts (1) sex discrimination by single-sex public accommodations if relevant to their services, C.R.S. § 24-34-601(3);[1] (2) disability discrimination for transitory or minor impairments, *id.* § 24-34-301(7), (13), (20); (3) disability discrimination if an accommodation imposes an undue burden or is exempted by the ADA, *id.* § 24-34-602(4); (4) disability discrimination in part of a facility if that part, "when viewed in its entirety, is readily accessible to individuals with disabilities," 3 C.C.R. 708-1:60.5(B); (5) any discrimination by private clubs, C.R.S. § 24-34-301(16) (incorporating ADA Title III); and (6) any non-gender-identity discrimination by "standards of dress or grooming that serve a reasonable business or institutional purpose," 3 C.C.R. 708-1:81.8.

For employers, CADA exempts (1) any discrimination "based on a bona fide occupational qualification," C.R.S. § 24-34-402(1)(d); (2) discrimination based on employee dress codes, *id.* § 24-34-402(5); (3) sex discrimination for childcare, *id.* § 24-34-402(8); (4) disability discrimination if it affects job performance, *id.* § 24-34-402(1)(a)(II), (b)(II); (5) age discrimination if necessary for the operation of the business, *id.* § 24-34-402(4); (6) "pregnancy or the physical recovery from

[1] The Tenth Circuit previously said, based on the "record" before it, that the "bona fide relationship" exemption was not an individualized exemption. *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1188 (10th Cir. 2021), *rev'd on other grounds*, 600 U.S. 570 (2023). But the court, which did not consider *this* record, never considered whether it is a comparable exemption.

childbirth" discrimination if providing an accommodation imposes an undue hardship, *id.* § 24-34-402.3(1)(a)(I); and (7) accent discrimination if the accent "materially interferes with the ability to perform job duties," 3 C.C.R. 708-1:70.2(A).

For housing providers, CADA exempts (1) any discrimination by certain owner-occupied property or single-family housing units, C.R.S. § 24-34-301(11), *id.* § 24-34-502(8); (2) any discrimination by dwellings first occupied thirty months before the enactment of the federal Fair Housing Amendments Act of 1988, *id.* § 24-34-502.2(2)(c); (3) familial status discrimination if the housing is "for older persons," *id.* § 24-34-502(7); and (4) income discrimination if the landlord owns three or fewer units, *id.* § 24-34-502(1.5)(a).

This non-exhaustive list shows 17 exemptions. That's a lot. It proves that CADA routinely exempts discrimination based on sex, disability, gender identity, and more. Those exemptions are comparable to the medical providers' activities because they undermine Colorado's asserted interest in ensuring "that every Coloradan is able to enjoy freedom from discrimination." C.R.S. § 24-34-300.7(1).

Take one example from the list. A public accommodation may adopt "standards of dress … that serve a reasonable business" purpose. 3 C.C.R. 708-1:81.8. Under that standard, an arena that requires all attendees to remove all head coverings for security screenings could exclude Sikhs who decline to remove their turban or Muslim women who refuse to take off their hijab. Yet the medical providers—who turn no one away—may not decline gender-transition procedures that conflict with their faith. Colorado brands that decision unlawful discrimination while blessing the arena's more sweeping exclusion. By exempting comparable secular activities, but not the medical providers' religiously motivated healthcare, the Accommodation Clause isn't generally applicable.

Other gender-identity exemptions. Beyond CADA, other Colorado laws prohibit discrimination based on gender identity to further the same anti-discrimination interests as CADA. *See Boe*, ¶ 26 (making this point). But Colorado's other laws have many exemptions, too. Those exemptions run the legislative gamut—from consumer credit to student graduations to juvenile penitentiaries. C.R.S. §§ 5-3-210, 22-1-142.5(4)(a), 19-2.5-1502.5(5)(g); V.C. ¶¶ 457–65. The Director also exempts some pronoun usage that intentionally "misgenders" a person if it doesn't satisfy a three-part harassment test—though that usage would otherwise be gender-identity discrimination. *Defending Educ. v. Sullivan*, No. 25-CV-01572-RMR-MDB, 2026 WL 884923, at *7 (D. Colo. Mar. 31, 2026). Because comparability turns on the "asserted government interest that justifies the regulation," *Tandon*, 593 U.S. at 62, and Colorado's interests in preventing gender-identity discrimination are the same across CADA and these other laws, these exemptions bolster the conclusion that the Accommodation Clauses lack general applicability.

Medical conscience exemptions. Medical conscience exemptions present another gap. Case in point: Colorado law requires "contraceptive procedures"—including "sterilization"—to be available regardless of sex, disability, and gender identity, but physicians may refuse based on a "conscientious objection." C.R.S. § 25-6-102(5), (9). Likewise, the Church Amendment prohibits Colorado institutions receiving federal funds from forcing providers to perform "any sterilization procedure or abortion" if doing so "would be contrary to his … moral convictions." 42 U.S.C. § 300a-7(b)(1). So a physician who offers dilation and curettage for a miscarriage could decline to provide that procedure for an abortion. But Colorado law does not have a similar exemption for the medical providers' religious objections to performing gender-transition procedures. While Colorado interprets their

objections as prohibited discrimination because such procedures are "inextricably intertwined with gender identity," *Boe*, ¶ 55, it protects objections to abortions even though that procedure is unique to women, *see Colo. Civ. Rts. Comm'n v. Travelers Ins. Co.*, 759 P.2d 1358, 1363 (Colo. 1988) (finding that because "pregnancy is a condition unique to women," employment distinctions on that basis "constitute[]" sex "discriminat[ion]"). That exempts comparable secular activities.

Colorado insists that procedures "inextricably intertwined" with a protected class is always based, "at least in part," on the customer's "status." *Boe*, ¶¶ 55, 59. But that standard is rife with constitutional problems. Suppose a doctor will perform an orchiectomy (removal of testes) but not an oophorectomy (removal of ovaries); treat testicular cancer but not ovarian cancer; or operate for a vasectomy but not a tubal ligation. Each denial is somehow intertwined with sex—the former apply to men, the latter to women. But Colorado does not consider this sex discrimination, and it's indeed common to specialize in one procedure or the other. That conclusion can be reached only by "calibrat[ing] the level of generality." *Masterpiece Cakeshop*, 584 U.S. at 562 (Gorsuch, J., concurring). Colorado uses a high "level of generality" to describe gender identity procedures—i.e., hormone therapy—and a specific "level of generality" to describe the prior examples—i.e., a specific procedure for a specific purpose. *Id.* "Only by adjusting the dials *just right*" can Colorado prohibit the medical providers while permitting the prior examples. *Id.*

Medical-based refusals. Colorado apparently allows medical-based judgment calls. Healthcare providers may decline gender-transition procedures for toddlers because of medical concerns or lack of legally effective consent. C.R.S. § 25-6-102(6) (no "sterilization" for "unmarried person[s] under eighteen years of age" without consent of "parent or guardian"); 10 C.C.R. 2505-10:8.735.4.A(5) (citing

consent requirements in C.R.S. § 13-22-103). Colorado Medicaid providers must decline these procedures if they are not "knowledgeable about gender diverse identities or expressions." 10 C.C.R. 2505-10:8.735.3. Yet allowing professionals to decline gender-transition procedures for these reasons—but not religious ones—"grants secular exemptions on more favorable terms than religious exemptions." *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1277 (10th Cir. 2024).

In these four ways, CADA is not generally applicable.

3. The clauses authorize individualized exemptions.

The Accommodation Clauses also lack general applicability because they use "a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533.

For example, the clauses also allow public accommodations to categorically exclude an entire sex if the restriction bears a "bona fide relationship" to the services it offers. C.R.S. § 24-34-601(3). But the clauses do not define "bona fide relationship" or provide any standards, guidance, or criteria explaining the exception. To be sure, the Tenth Circuit once held that this exemption was not an individualized exception on the "record before [it]" because "the parties d[id] not define that term in their briefing." *303 Creative LLC*, 6 F.4th at 1188. But the parties didn't cite—and the court never considered—Colorado's implementing regulations. Those regulations invent a "[g]ender-segregated facilities" carveout, which allows public accommodations to separate "restrooms, locker rooms, dressing rooms, and dormitories" by sex, but not "gender identity." 3 C.C.R. 708-1:81.9(B). This exemption leads to another exemption. When the facility allows "undressing in the presence of others," it must make "reasonable accommodations to allow access consistent with an individual's gender identity." *Id.* at 708-1:81.9(C).

The upshot is that "gendered bathrooms are only partially open to the public"—i.e., they deny equal access. *People v. Fresquez*, No. 21CA1496, 2024 WL 3874803, at *2 (Colo. App. Feb. 8, 2024). Even under *303 Creative LLC*, Colorado must justify this "*application* of the 'bona fide relationship' exemption" to allow gender-segregated facilities, but not the medical providers' "religious reasons" for declining gender-transition procedures. 6 F.4th at 1188.

Public accommodations may also refuse to accommodate individuals with disabilities because of "additional expense[s]." 3 C.C.R. 708-1:60.6(C)(2)(a). Colorado can "consider" many "factors" to determine if "an accommodation is reasonable." *Id.* Similarly, Colorado's regulations permit a "covered entity"—including public accommodations, 3 C.C.R. 708-1:10.2(G)—to refuse to accommodate a customer's religious practice if it would result in "undue hardship." 3 C.C.R. 708-1:50.1(A). And covered entities may "prescribe standards of dress or grooming that serve a reasonable business or institutional purpose," even if they discriminate against customers based on their race, national origin, or ancestry. 3 C.C.R. 708-1:81.8.

These features empower Colorado to make individual exemptions by deciding what constitutes a "bona fide relationship," "additional expense," "undue hardship," or "reasonable business purposes." Any one fails *Fulton*. The Supreme Court there relied on *Sherbert v. Verner*, 374 U.S. 398 (1963), which concerned a work requirement for public benefits that applied only if a citizen failed to accept work without "good cause." *Fulton*, 593 U.S. at 533–34. The state determined that a religious objection to working on Saturday was not good cause—implicating the plaintiff's free-exercise rights. *Sherbert*, 374 U.S. at 403. The law was not generally applicable "because the 'good cause' standard permitted the government to grant exemptions based on the circumstances underlying each application." *Fulton*, 593

U.S. at 534. So too here. The "bona fide relationship," "additional expense," "undue hardship," and "reasonable business purposes" standards empower Colorado to grant exemptions based on the facts of each case. That "formal mechanism for granting exceptions" activates strict scrutiny here. *Id.* at 535–37.

B. The Accommodation Clauses violate the Equal Protection Clause.

Colorado's unequal treatment also violates the Equal Protection Clause. *See Ashaheed v. Currington*, 7 F.4th 1236, 1249 n.11 (10th Cir. 2021) (free exercise and equal protection claims often overlap); *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1257 (10th Cir. 2008) (similar). The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *Ashaheed*, 7 F.4th at 1249 (citation modified). When the government discriminates based on "a suspect classification or a deprivation of a fundamental right such as free exercise of religion, strict scrutiny applies." *Id.* at 1250. Colorado's many exemptions allow other physicians to engage in discrimination, but Colorado refuses to protect CMDA members and the Practice. Because Colorado treats these medical providers worse than similarly situated practitioners and deprives them of a fundamental right, strict scrutiny applies. *Id.* at 1251 ("similarly situated" entities must only be "alike in 'all relevant respects'—not all respects").

C. The Publication and Unwelcome Clauses restrict the medical providers' protected speech on a matter of public importance.

The Publication and Unwelcome Clauses restrict the medical providers' speech about their constitutionally protected activities based on its content and viewpoint. Viewpoint discrimination is "nearly always" unconstitutional, *Chiles v. Salazar*, 146 S. Ct. 1010, 1021 (2026), and typically "end[s] the matter," *Iancu v.*

Brunetti, 588 U.S. 388, 399 (2019). At a minimum, these clauses trigger strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–65 (2015).

The clauses impose content-based burdens on speech by singling out speech because of its "subject matter" and "the topic discussed or the idea or message expressed." *Id.* at 163. They only regulate the providers' speech on topics like sex and gender identity. C.R.S. § 24-34-601(2)(a), -701(1)(a)-(b). They impose no burdens on speech about other subjects. That "draws distinctions based on the message a speaker conveys." *Reed*, 576 U.S. at 163.

The clauses also regulate speech based on viewpoint by suppressing a "particular view" on sex and gender identity that the State disfavors. *Chiles*, 146 S. Ct. at 1028; *303 Creative LLC v. Elenis*, 600 U.S. 570, 588 (2023) (noting similar purpose of CADA). Medical professionals can post statements supporting gender transitions and offering proce-dures related to them. But providers cannot publish statements objecting to gender transitions or explaining why they do not offer them. By allowing speech aligned only with the view that identity trumps sex, the clauses isolate "a subset of mes-sages" for disapproval. *Iancu*, 588 U.S. at 393. That is "viewpoint discrimination." *Chiles*, 146 S. Ct. at 1024.

The Unwelcome Clauses have more problems. They ban statements indicating that a person's "patronage or presence" is "unwelcome, objectionable, unacceptable, or undesirable" or "not acceptable, desired, or solicited" because of a protected status. C.R.S. § 24-34-601(2)(a), -701(1)(c). This allows "positive statements" about sex, disability, or gender identity, but not statements that some may view as "derogatory," "offensive," or contrary to "society's sense of decency or propriety." *Iancu*, 588 U.S. at 393–94 (citation modified). All this turns on viewpoint.

D. CADA fails strict scrutiny as applied.

As applied, CADA burdens the medical providers' rights to exercise their religious beliefs and speak freely. That triggers at least strict scrutiny. So Colorado must prove that CADA's application here serves a compelling interest and is "narrowly tailored to achieve those interests." *Fulton*, 593 U.S. at 541. It cannot.

1. CADA advances no compelling interest as applied.

A compelling interest must be "of the highest order." *Fulton*, 593 U.S. at 541. It must be "precise, not broadly formulated." *Id.* (citation modified). And it must solve "an actual problem." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822–24 (2000). CADA's application does none of this.

Colorado has identified a non-discrimination interest. *Boe*, ¶ 23. But the medical providers' religious exercise does not trigger that interest. They serve all people, but they cannot perform all procedures for all purposes. V.C. ¶¶ 53, 130. Outside of Colorado, refusing drugs or surgeries for a gender transition is not unlawful discrimination; it's a reasoned procedure-based distinction. *See Skrmetti*, 605 U.S. at 511–23; *Lange v. Houston Cnty.*, 152 F.4th 1245, 1251–55 (11th Cir. 2025) (excluding gender transition procedures from employer-provided health insurance was not discriminatory). Colorado already recognizes this distinction—sometimes. After all, physicians can decline to participate in abortions even if it might be sex discrimination. C.R.S. § 25-6-102(9). Given this, Colorado has no legitimate interest in coercing controversial, harmful procedures that medical providers deem contrary to their religious and medical judgments.

Nor is access a problem CADA solves here. Patients can obtain gender transition procedures from other medical providers. V.C. ¶¶ 161–70. And Colorado can claim no compelling interest in foisting the contested care here: the Cass Review

(at 13) found evidence for it "remarkably weak," the HHS Report (at 24) rated it "very low," and even the American Society of Plastic Surgeons—representing roughly ninety percent of plastic surgeons—urges delay. V.C. ¶ 216; Curlin Decl. ¶¶ 50–59; Kaliebe Decl. ¶¶ 145–49, 175–208. Colorado has no rational basis—much less a compelling interest—in forcing medical providers to offer these controversial, unproven, and risky procedures to anyone, much less young children.

The Colorado Supreme Court never placed an age restriction on these services. That leads to absurd results. "Hormone therapy is often used to treat micropenis in neonates," and "early intervention" helps "to mitigate potential negative impacts on adult sensual life." Mohammed Al-Beltagi, *Microphallus early management in infancy saves adulthood sensual life: A comprehensive review*, 13 World J. Clinical Pediatrics, no. 2 (2024), https://tinyurl.com/mcjcw9s8. So according to Colorado, if a medical provider offers testosterone therapy to treat micropenis in neonatal boys, she must also offer it to facilitate a gender transition for neonatal girls. *See Boe*, ¶ 55. That makes little sense. It certainly isn't reasonably related to any valid goal.

Next, CADA's gaps render it underinclusive as to Colorado's asserted interest. *See Lukumi*, 508 U.S. at 547 (religious exercise restriction "is not compelling" when it fails to prevent similar harms). CADA permits at least 17 exemptions for discrimination. § I.A.2. Other laws allow exemptions for gender-identity discrimination, *id.*, even though "the General Assembly has repeatedly declared that gender identity is a protected class," *Boe*, ¶ 26. And while CADA forbids declining to perform gender-transition procedures because such procedures are "inextricably intertwined" with sex, disability, and gender identity, it allows refusals to perform abortions despite those procedures being similarly tied to women. § I.A.2. These

gaps undermine Colorado's asserted interests. They show that CADA advances no compelling interest here. *Lukumi*, 508 U.S. at 547 (explaining government's interests are "not compelling" when the law fails to "restrict other conduct producing substantial harm … of the same sort"); *Tandon*, 593 U.S. at 63–65 (similar).

And because the medical providers have a constitutional right to refuse to provide gender-transition procedures, they have a right to publish that choice. *See 303 Creative LLC*, 600 U.S. at 595 n.3 (explaining this point). Colorado cannot silence that speech. In fact, Colorado requires certain entities to disclose whether they offer "LGBT health-care services." C.R.S. § 25-58-104(1)(a). CADA also allows many to post discriminatory statements if they are based on "a bona fide occupational qualification." *Id.* § 24-34-402(1)(d). This exemption shows that Colorado's non-discrimination interest is "wildly underinclusive," which is "enough to defeat" the application. *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 802 (2011).

2. CADA lacks narrow tailoring as applied.

CADA also fails the "exceptionally demanding" narrow-tailoring prong. *Holt v. Hobbs*, 574 U.S. 352, 364 (2015). Colorado must prove that coercing the medical providers is "the least restrictive means among available, effective alternatives." *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). The State must show that it "consider[ed]" alternatives and that those alternatives "fail" to advance its interests. *McCullen v. Coakley*, 573 U.S. 464, 494–95 (2014). But less coercive options exist, and Colorado never considered them.

Colorado could stop treating gender-transition procedures as inextricably intertwined with sex, disability, and gender identity. Federal law rejects this tie. *See Skrmetti*, 605 U.S. at 511–23. And Colorado law rejects a similar tie for abortions and other procedures unique to women. § I.A.2.

Colorado could also exempt religious medical providers from performing controversial procedures that violate their conscience. The State allows this protection for other procedures. V.C. ¶¶ 187–88 (collecting examples). And the federal government and other states likewise offer conscience exemptions. *See* 42 U.S.C. § 300a-7; Neihart Decl. Ex. A (50-state survey).

Or Colorado could allow the medical providers to disclose their decisions not to provide gender-transition procedures and rely on its directory of providers who offer "LGBTQ health-care services" to spread the word about covering any gaps in service. C.R.S. § 25-58-104. Or Colorado could provide the procedures itself through state-operated providers. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014) (suggesting that government pay for medical services to which employers object on religious grounds). Less intrusive options abound. So applying CADA to compel these procedures violates the First Amendment.

E. The Accommodation Clauses violate due process.

The Accommodation Clauses violate due process because they are vague. A vague law fails to give "regulated parties" notice of "what is required of them" or authorizes permit enforcement officials to act "in an arbitrary or discriminatory way." *United States v. Lesh*, 107 F.4th 1239, 1247 (10th Cir. 2024) (holding "work activity" vague). These clauses do both.

The Accommodation Clauses forbid discrimination "because of" disability, sex, or gender identity. But CADA never defines protected traits to include medical procedures. This silence empowers Colorado officials to enforce CADA in an arbitrary way, "contingent on [] ambiguous criteria." *Id.* at 1249. Colorado also protects providers who decline to perform abortions—a procedure tied to women—but punishes denials of gender-transition procedures. There is no principled reason for that

distinction. That shows the clauses are "vague as applied to" the medical providers because they "fail[] to provide sufficient notice" that their conduct is illegal. *Id.*

Colorado might respond that CADA only compels gender-transition procedures for those above a certain age or procedures considered "medically necessary." *Boe*, ¶ 2. But CADA itself does not contain any age limit or define medical necessity. The Colorado Supreme Court has said medical necessity is a "term of art grounded in established standards used by medical experts." *Boe*, ¶ 49. But which "experts"? These standards vary and are the subject of ongoing debate. Curlin Decl. ¶¶ 73–84, 101–24; Kaliebe Decl. ¶¶ 255–311; V.C. ¶¶ 191–230. Some regard the WPATH "standards of care" as authoritative, while others—such as the Cass Review and the HHS Report—regard them as lacking rigor. V.C. ¶¶ 194, 309; HHS Report at 172; Kaliebe Decl. ¶¶ 255–311. The instability runs deeper still. WPATH's own standards have shifted. Its SOC-8 eliminated the fixed minimum age for hormone therapy that SOC-7 had set and pegged "medical necessity" to an insurer's definition rather than experts' judgment. V.C. ¶¶ 294–309. Indeed, SOC-8's framing of "medical necessity" "remove[d] key safeguarding criteria" and "compel[led] insurance coverage." HHS Report at 171–72. WPATH recently said SOC-8 are merely recommendations. V.C. ¶ 309. The medical providers must guess at a standard that WPATH's own authors keep moving.

This uncertainty transforms ordinary scientific debates into something that could trigger liability if a doctor doesn't correctly guess the State's position. It causes Colorado to outsource liability determinations to medical experts, "private persons whose interests may be and often are adverse to the interests of others in the same business." *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936). Worse, the only case *Boe* cites relied on WPATH's standards of care. *Boe*, ¶ 49 (citing *Edmo v.*

Corizon, Inc., 935 F.3d 757, 803 (9th Cir. 2019) (relying on WPATH)). By pinning liability to shifting standards, Colorado can "change[] course" or alter "its interpretation" based on private parties' views. *F.C.C. v. Fox Tele. Stations, Inc.*, 567 U.S. 239, 254 (2012) (holding that a change in positions failed to give fair notice). So the Accommodations Clauses are vague.

II. The medical providers satisfy the other preliminary-injunction factors.

The remaining preliminary-injunction factors are straightforward. The "loss of First Amendment freedoms … unquestionably constitutes irreparable injury." *Mahmoud*, 606 U.S. at 569 (citation modified). Next, where, as here, an act "is likely unconstitutional," the state's interests "do not outweigh" a plaintiff's interest "in having his constitutional rights protected." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). And "it is always in the public interest to prevent the violation of a party's constitutional rights." *Verlo*, 820 F.3d at 1127. So Colorado has no legitimate or even rational reason to force these medical providers to violate their religious beliefs and censor their speech.

CONCLUSION

Colorado may pursue equality in the marketplace, but not by conscripting doctors to perform procedures that violate their faith and silencing speech about that choice. The Constitution does not bend that far. This Court should enter a preliminary injunction that stops Colorado's overreach while the lawsuit proceeds.

Respectfully submitted this 9th day of September, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 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.

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