

Nos. 26-1730 & 26-1801

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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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CHRISTIAN HEALTHCARE CENTERS, INC.,  
*Plaintiff-Appellant / Cross-Appellee,*

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan,  
*Defendant-Appellee / Cross-Appellant,*

JOHN E. JOHNSON, JR., in his official capacity as Executive Director of the Michigan Department of Civil Rights; LUKE R. LONDO, in his official capacity as member of the Michigan Civil Rights Commission; GLORIA E. LARA, in her official capacity as member of the Michigan Civil Rights Commission; RICHARD R. WHITE, III, in his official capacity as member of the Michigan Civil Rights Commission; PORTIA L. ROBERSON, in her official capacity as member of the Michigan Civil Rights Commission;

ZENNA FARAJ ELHASON, in her official capacity as member of the Michigan Civil Rights Commission; REGINA MARIE GASCO-BENTLEY, in her official capacity as member of the Michigan Civil Rights Commission; ROSANN L. BARKER, in her official capacity as member of the Michigan Civil Rights Commission; SKOT WELCH, in his official capacity as member of the Michigan Civil Rights Commission,

*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Western District of Michigan / Case No. 1:22-cv-00787

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**OPENING BRIEF OF APPELLANT**

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## **CORPORATE DISCLOSURE STATEMENT**

Under Fed. R. App. P. 26.1 and Sixth Circuit R. 26.1(a), Appellant Christian Healthcare Centers, Inc., states that it has no parent corporation, does not issue stock, is not a subsidiary or an affiliate of a publicly owned corporation, and there is no publicly owned corporation or its affiliate, not a party to this appeal, that has a financial interest in the outcome of this case.

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## STATEMENT IN SUPPORT OF ORAL ARGUMENT

The First Amendment guarantees religious organizations the right to govern themselves. And that right extends beyond ministers: a ministry’s decision to hire only coreligionists—those who share the ministry’s faith—is itself a religious judgment that the government may not second-guess. Federal law and most states respect that judgment. Michigan does not.

The Free Exercise Clause adds another safeguard. As the Supreme Court held in *Fulton* and *Tandon*, when a law lets officials grant exemptions case by case or to favor secular over religious interests, the law is not generally applicable, and the government may not refuse a religious exemption without a compelling reason. Otherwise, officials could treat secular reasons as worthy and religious ones as suspect. Michigan’s employment law works exactly that way.

Finally, Michigan concedes that the First Amendment at least likely protects some of the ministry’s speech and religious exercise. But it insists that no injunction is needed because its law exempts conduct that is otherwise “permitted by law.” If that were enough, any state could concede its law is unconstitutional as applied, cite a vague savings clause, and avoid relief—leaving speakers and religious groups to guess where the line falls. The Constitution demands more.

Oral argument is warranted to aid the Court in resolving these important First Amendment issues.

## STATEMENT OF JURISDICTION

Christian Healthcare Centers, Inc., sued Michigan officials 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 Elhasan, Regina Marie Gasco-Bentley, Rosann L. Barker, and Skot Welch (or their predecessors) in their official capacities as members of the Michigan Civil Rights Commission; and Dana Nessel, in her official capacity as Michigan Attorney General, in the United States District Court for the Western District of Michigan under 42 U.S.C. § 1983, alleging violations of Christian Healthcare's rights under the First and Fourteenth Amendments to the U.S. Constitution. The district court properly exercised federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1343.

On August 5, 2026, the district court denied Christian Healthcare's motion for summary judgment and granted Michigan's cross-motion for summary judgment. Christian Healthcare timely filed its notice of appeal on August 18, 2026, within the 30-day period established in 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A). The Attorney General timely cross-appealed on September 4, 2026. This Court has jurisdiction under 28 U.S.C. § 1291.

## STATEMENT OF ISSUES

Christian Healthcare Centers is a medical ministry whose staff minister to and pray with patients. Federal law and most states let religious employers hire only those who share their faith. But Michigan does not, except for those who qualify as “ministers.” The First Amendment does not let federal courts “dictate to religious institutions how to carry out their religious missions.” *Hall v. Baptist Mem’l Health Care Corp.*, 215 F.3d 618, 626 (6th Cir. 2000). This appeal asks whether the district court erred in holding that the First Amendment does not protect the ministry’s choice to hire fellow believers.

A law that lets officials weigh each applicant’s reasons for an exemption is not generally applicable. *Fulton v. City of Phila.*, 593 U.S. 522, 533–34 (2021). This appeal asks whether the district court erred in holding otherwise. It also asks whether the court further erred in concluding that the law does not violate the ministry’s right to expressive association. And it asks whether the court erred in rewriting one of the law’s clauses to save it.

Finally, Michigan concedes that the First Amendment likely protects some of the ministry’s practices. But it says no injunction is needed because ELCRA exempts conduct “permitted by law.” Were that enough, any state could escape any injunction with a vague five-word savings clause. This appeal also asks whether the district court erred in denying Christian Healthcare a permanent injunction on that basis.

## STATEMENT OF THE CASE

### **I. Christian Healthcare’s employees advance its distinctly Christian approach to healthcare.**

Christian Healthcare Centers is a faith-based, non-profit medical organization that “exists to serve the Body of Christ by providing direct medical services to its members.” Compl., R.1, PageID.2; Arts. of Incorpor., R.1-3, PageID.79. It accomplishes this mission by providing primary care and wellness services to the public. Woo Decl., R.5-3, PageID.189, 193. These services include physician visits, immunizations, physical exams, and medications. Membership Agreement, R.1-5, PageID.117; Woo Decl., R.145-5, PageID.3194.

Christian Healthcare operates through a membership model. Members pay a monthly fee to gain “open access” to its services. Woo Dep., R.139-2, PageID.2826. Membership fees are low, which allows Christian Healthcare to serve patients with lower incomes who would otherwise be unable to afford quality care. Compl., R.1, PageID.2; Membership Agreement, R.1-5, PageID.117. The ministry provides primary-care services without charge beyond the monthly rate. Blocher Dep., R.139-2, PageID.2786. For low-income households, it discounts—and sometimes nearly eliminates—monthly fees to follow the biblical mandate of caring for the needy. Compl., R.1, PageID.10.

Christian Healthcare’s religious character permeates all it does. Each morning, staff gather to pray for each other, their patients, and the ministry’s mission. Blocher Decl., R.5-2, PageID.181. The receptionist discusses with members the ministry’s “mission, values, and religious faith.” Blocher Decl., R.145-4, PageID.3188. In the waiting room, members peruse Bibles and other faith-oriented materials. Compl., R.1, PageID.14. Exam rooms display Bible verses on the walls to remind members that God is with them and to provide spiritual encouragement. *Id.* Here’s an example of such a verse in a pediatric exam room:



*Id.* (referencing virtual tour); *CHC Virtual Tour*, YouTube, at 2:09 (Jan. 4, 2021), [youtu.be/7ROrFRaOhe4](https://youtu.be/7ROrFRaOhe4).

Appointments are lengthy, allowing a medical assistant, nurse, nurse practitioner, physician assistant, or doctor to learn about patients and address their medical needs. Compl., R.1, PageID.14. Providers often pray with them, discuss health's spiritual dimensions, and talk about other "spiritual disciplines." *Id.* at PageID.15. These practices reflect the ministry's religious beliefs that prayer "bear[s] on the needs of patients," "[s]piritual health is an essential component of a person's total wellness," and "spiritual disciplines" promote well-being. Membership Agreement, R.1-5, PageID.119.

Christian Healthcare offers its services to anyone in the public. Blocher Dep., R.139-2, PageID.2784. Members do not need to affirm the ministry's religious views; the ministry welcomes everyone. Membership Agreement, R.1-5, PageID.116, 119. Christian Healthcare accepts and serves members no matter their sexual orientation, gender identity, or other protected trait. Woo Dep., R.139-2, PageID.2827; Woo Decl., R.54-3, PageID.1471–72; Woo Decl., R.145-5, PageID.3193–94.

Christian Healthcare is "an unapologetically Christian, Christ-centered and patient-focused" ministry that treats the Bible as its "final authority." Membership Agreement, R.1-5, PageID.116, 119. The ministry believes God created marriage to be "the union of one man and one woman" and sexual intimacy belongs exclusively within that union. *Id.* at PageID.116. It also believes God "wonderfully and immutably creates

each person as either male or female” and these “two distinct, complementary sexes together reflect the image and nature of God.” *Id.*

Because each person’s sex reflects God’s design, the ministry believes “human beings are not at liberty to alter their biological sex.” *Id.*; Blocher Dep., R.139-2, PageID.2784.

Christian Healthcare wants to be honest about its beliefs with members and prospective members. It previously posted its Membership Agreement on its website. Blocher Decl., R.5-2, PageID.183–84. The Agreement explains that Christian Healthcare provides services consistent with its “beliefs and values” and discloses its policy that it will not use pronouns inconsistent with a person’s sex, nor will it participate in gender transitions. Membership Agreement, R.1-5, PageID.112–20. Members must sign the Membership Agreement. *Id.*

Christian Healthcare’s providers decline requests to prescribe medications for gender transitions by explaining their religious beliefs. Woo Decl., R.145-5, PageID.3194; Woo Decl. ¶ 13, Case No. 26-1730. But they prescribe estrogen, testosterone, and Lupron—medications common for gender transitions—for other medically indicated reasons. Woo Decl., R.145-5, PageID.3194–95; Woo Decl., R.5-3, PageID.191.

Christian Healthcare sometimes receives requests to use pronouns inconsistent with their members’ sex. Compl., R.1, PageID.53–54; Woo Dep., R.139-2, PageID.2830; Woo Decl. ¶ 11, Case No. 26-1730. The ministry’s employees politely decline those requests, explaining the

ministry's religious beliefs described in the Membership Agreement. Blocher Dep., R.139-2, PageID.2799; Woo Dep., R.139-2, PageID.2830. Employees use only members' names or sex-reflective pronouns. Compl., R.1, PageID.52; Woo Dep., R.139-2, PageID.2830.

Christian Healthcare depends on its employees to promote its mission, share its faith with members and other employees, and ensure it operates according to its beliefs. Blocher Decl., R.54-2, PageID.1468–69. Staff meet each morning for prayer. Blocher Decl., R.5-2, PageID.181; Woo Dep., R.139-2, PageID.2824. They meet monthly and quarterly for a Bible-based devotional, worship, and extended corporate prayer to foster employees' spiritual growth. Blocher Decl., R.5-2, PageID.181. Employees communicate the ministry's beliefs to each other. Compl., R.1, PageID.18. And the ministry expects this of all employees—even its janitor. Blocher Decl., R.22-3, PageID.671. A “core part” of the ministry is that employees “know that when they interact with CHC staff, they are interacting with mature Christians who are ready to engage with them from a distinctly Christian worldview and perspective.” Blocher Decl., R.145-4, PageID.3185.

Christian Healthcare expects all employees to “act as ambassadors for the ministry,” discuss its Christian identity, and “provide spiritual and prayer support for members and their families.” Compl., R.1, PageID.18. Employees help members' “lives [be] transformed through the power of prayer, biblical counsel, and spiritual practices.”

Woo Decl., R.5-3, PageID.193–94. Medical Assistants “regularly discuss spiritual matters with patients, pray with them, and form a core part of the medical team looking after the patient’s spiritual and ... physical health.” Blocher Decl., R.145-4, PageID.3187. Member Services Receptionists communicate the ministry’s religious beliefs to prospective members. *Id.* at PageID.3188. And Physicians and Biblical Counselors address members’ spiritual needs. Compl. Exs. 8, 12, R.1-10, 1-14, PageID.130, 142.

To maintain its distinctly religious character, the ministry requires all employees to affirm the ministry’s beliefs by signing its Religious Statements—including its beliefs on identity and sexuality. Compl., R.1, PageID.16. Employees must reaffirm these commitments annually. *Id.* at PageID.17. Among these beliefs, employees agree to the Bible’s inerrancy, human sinfulness, salvation through Jesus Christ, and God’s design for sex as immutable and marriage as between one man and one woman. Blocher Decl., R.145-4, PageID.3185; Statement of Faith, R.1-6, PageID.122; Statement of Values, R.1-7, PageID.124; Affirmation on Marriage and Human Sexuality, R.1-8, PageID.126.

Christian Healthcare has ongoing employment needs. It recently opened and had to hire staff for its third location. Blocher Decl., R.54-2, PageID.1466. And it hires 3–5 Medical Assistants and 3–5 Member Services Receptionists annually. Blocher Decl. ¶ 33, Case No. 26-1730; Blocher Decl., R.145-4, PageID.3187–88.

Hiring employees who oppose Christian Healthcare’s beliefs would severely burden its religious expression and ability to accomplish its mission. Blocher Decl., R.145-4, PageID.3185–86. The ministry would “bear[] false witness” if it paid a non-believer to mouth a “‘Christian sounding prayer’ with one of its members.” *Id.* at PageID.3186. And it couldn’t adequately share its beliefs with members, prospective members, the public, and employees if forced to hire employees who did not share those beliefs. *Id.* at PageID.3185–86.

## **II. Michigan’s ELCRA expansion threatens the ministry’s religious character.**

In recent years, Christian Healthcare learned that Michigan interprets its state anti-discrimination law, the Elliott-Larsen Civil Rights Act, in a way that threatens the ministry’s religious practices. Blocher Dep., R.139-2, PageID.2800. Four years ago, the state supreme court held that ELCRA bans sexual-orientation discrimination. *Rouch World, LLC v. Dep’t of C.R.*, 987 N.W.2d 501, 519 (Mich. 2022). The legislature later amended ELCRA to codify that interpretation and add gender identity as a protected class.

Michigan actively enforces ELCRA. Stips., R.109, PageID.2093. Anyone can file a complaint—the Commission, the Department, local governments, private associations, and individuals. *Id.* at PageID.2092, 2094; MCL 37.2103(h) (defining “person”). A complainant need only see a discriminatory publication to file one—no service denial, business

visit, or job application required. *See* Stips., R.109, PageID.2092; Trevino Dep., R.139-2, PageID.2564–66, 2615. Complainants don’t even need to be members of a protected class. Trevino Dep., R.139-2, PageID.2564, 2590.

The Department investigates complaints. MCL 37.2602. It can issue interrogatories, interview witnesses, compel document production, and conduct site visits. Stips., R.109, PageID.2093; Trevino Dep., R.139-2, PageID.2751. If the Department issues a discrimination charge, there is a hearing before an administrative law judge who recommends findings. *Id.* The Commission reviews and determines whether ELCRA has been violated. *Id.* The Commission has no deadlines; cases can linger for months. Londo Dep., R.139-2, PageID.2704–05.

The Attorney General’s enforcement role is implicated throughout. Her office can file complaints as a “person,” represent the Department and Commission in court, and “enforce compliance with orders issued by the Department and the Commission by filing enforcement motions with any state court” with jurisdiction. MCL 37.2103(h); Stips., R.109, PageID.2095; Trevino Dep., R.139-2, PageID.2664.

Penalties include fines, damages, attorney fees, orders compelling service or hiring, and “cease-and-desist” orders. Stips., R.109, PageID.2094. The Commission can certify its findings to state licensing boards that can revoke licenses. Trevino Dep., R.139-2, PageID.2575.

ELCRA includes four clauses relevant to Christian Healthcare. Stips., R.109, PageID.2089–90.

**1. The Employment Clause** prohibits employers from discriminating against “an individual with respect to employment” because of sexual orientation, gender identity, or gender expression. MCL 37.2202(1)(a)–(b).

Unlike Title VII and anti-discrimination laws in most states, Michigan’s Employment Clause does not exempt religious employers. *Compare* 42 U.S.C. § 2000e-1(a), *and* 50-State Survey, R.5-8, PageID.335–37,<sup>1</sup> *with* MCL 37.2202(1). At most, a religious employer can ask for a BFOQ—one job at a time. MCL 37.2208; Stips., R.109, PageID.2095; *see* Spring Arbor Univ. BFOQ Op., R.139-5, PageID.3114 (approving religious hiring for teachers and administrators but not “support staff, clerical or maintenance personnel” not directly involved in teaching or policymaking). The Department has granted BFOQs for secular employers. BFOQ Chart, R.139-5, PageID.3104–07; BFOQ Rulings, R.139-5, PageID.3119–22.

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<sup>1</sup> The survey’s “Religious Exemption” column contains a few states with BFOQ-like provisions that are not true religious exemptions. But most provisions in that column *are* religious exemptions analogous to Title VII’s. *E.g.*, Ariz. Rev. Stat. Ann. § 41-1462; Colo. Rev. Stat. § 24-34-402(6); 775 Ill. Comp. Stat. 5/2-101(B)(2); Ind. Code Ann. § 22-9-1-3(h)(1)–(2); Ky. Rev. Stat. Ann. § 344.090(2); Ohio Rev. Code Ann. § 4112.02(O); R.I. Gen. Laws § 28-5-6(9)(ii); S.C. Code Ann. § 1-13-80(I)(5); Tenn. Code Ann. § 4-21-405.

**2. The Employment Publication Clause** restricts employers from publishing anything that “indicates a preference, limitation, specification, or discrimination, based on” sexual orientation and gender identity or expression, and from “elicit[ing] or attempt[ing] to elicit” that information. MCL 37.2206(1)–(2).

**3. The Accommodation Clause** prohibits public accommodations from denying “the full and equal enjoyment” of goods and services “because of” sexual orientation and gender identity or expression. MCL 37.2302(a).

**4. The Accommodation Publication Clause** prohibits publishing statements indicating that (i) “the full and equal enjoyment” of goods and services will be denied (Denial Clause) or (ii) someone’s patronage or presence is “objectionable, unwelcome, unacceptable, or undesirable” (Unwelcome Clause) based on sexual orientation and gender identity or expression. MCL 37.2302(b).

### **III. Michigan actively enforces ELCRA against religious employers and public accommodations while allowing case-by-case exemptions.**

Michigan enforces ELCRA against employers and public accommodations, narrowly interprets exemptions, and often ignores constitutional defenses. Employers may ask for individualized exemptions from the Employment Clause, which the Commission grants or denies based on each employer’s particular circumstances and reasons.

**Employers.** The Department typically completes its investigation even when employers assert First Amendment defenses. Trevino Dep., R.139-2, PageID.2750–51. The Department has investigated claims against religious schools that raised the ministerial exception. Material Facts, R.135, PageID.2347–49. It eventually concluded the exception applied, but only after conducting burdensome investigations, including interviewing a Diocesan priest. *Id.*

Employers may also seek position-specific exemptions from the Employment Clause. Employers may apply for a BFOQ if a discriminatory job qualification is “reasonably necessary to the normal operation of the business.” MCL 37.2208. The discriminatory bases that can qualify include “religion, national origin, age, height, weight [and] sex.” *Id.* And the Commission can grant BFOQs based on sexual orientation and gender identity, too. Londo Dep., R.139-2, PageID.2697–98.

The BFOQ application asks for each employer’s particular circumstances and reasons. Employers must describe “in detail the entity’s functions, operations and purposes,” identify the positions and employees affected, and explain “in detail why a bona fide occupational qualification is necessary.” BFOQ Form, R.109-1, PageID.2102–03. They must also “discuss any compelling reason(s)” for the exemption, explain alternatives explored, and file a legal brief. *Id.* at PageID.2101, 2103. The Commission can demand more records and witness testimony and deny noncompliant applications. Londo Dep., R.139-2,

PageID.2698. Commissioners also have discretion to refer an applicant to the Department for an investigation. Londo Dep., R.139-2, PageID.2699.

The Commission may grant a BFOQ “[u]pon sufficient showing” that information “was found compelling.” BFOQ Form, R.109-1, PageID.2101; Londo Dep., R.139-2, PageID.2699–2700. And the Commission determines whether a qualification is “essential to the normal operation of the business,” on a “case by case basis,” “depending on” the relevant facts, caselaw, “legal questions,” and ELCRA itself. Londo Dep., R.139-2, PageID.2699. In weighing whether an employer has reasonable alternatives, commissioners “consult their own perspectives.” *Id.* at PageID.2700.

The Commission’s rulings turn on each employer’s particulars and the commissioners’ own values and predilections. It has granted religion-based BFOQs to a youth ministry, a Christian university, and an Islamic school, but also limited BFOQs to only some of their positions. BFOQ Rulings, R.139-5, PageID.3105, 3110, 3116–18. In Spring Arbor University’s case, for example, the Commission limited the exemption to teachers and certain administrators. Spring Arbor Univ. BFOQ Op., R.139-5, PageID.3110–11, 3114. It has limited other BFOQs to “one employee per shift,” and to “one female Lactation Peer Counselor,” provided that position’s duties remained the same. BFOQ Rulings, R.139-5, PageID.3105, 3120. Earlier this year, the Commission

denied an age-based BFOQ request from a company that pairs seniors with senior caregivers after commissioners worried whether the company might serve as a “dating platform” and the potential for race discrimination, though race was not at issue. Mich. Dep’t of Civil Rights, *Michigan Civil Rights Commission meeting 1/26/2026*, YouTube, at 1:30:50–31:38, 1:35:38–36:48 (Jan. 30, 2026), [bit.ly/4kfj4Ie](https://bit.ly/4kfj4Ie).

On the other hand, the Commission has approved BFOQ requests from secular employers like public health departments, a spa, and a probate court based on interests including “privacy” for a substance abuse technician and “experience in breast feeding” for a lactation consultant. BFOQ Rulings, R.139-5, PageID.3105–06, 3119–22.

The Commission can revoke an exemption if it “obtains other or different information.” Londo Dep., R.139-2, PageID.2699. When the Department proposed changes to the BFOQ rule, it explained that “a decision to let an employer do what otherwise would be illegal discrimination should be reviewed periodically, or even withdrawn if it is being abused.” Regulatory Impact Statement, R.26-4, PageID.837.

**Public Accommodations.** Michigan prosecutes public accommodations over their First Amendment objections. It pursued Rouch World Event Center after it declined to host a wedding that violated its religious beliefs. Case Files, R.139-5, PageID.3033–36. The Department dismissed the complaint four years later, only after the complainant lost interest. *Id.* at PageID.3036.

Michigan followed a similar approach against Uprooted Electrolysis. The complaint alleged the “medical facility” declined to provide hair-removal services for a male who identified as female. *Id.* at PageID.3060. Uprooted explained that participating in a gender transition violated its “religious beliefs” and asked the Department to drop the investigation because of those beliefs. *Id.* at PageID.3057–59. The Department declined, even as it explained to the complainant that the case “may go to the Supreme Court due to the religious aspects of the case.” *Id.* at PageID.3048. Five years later, the Department dismissed the complaint. *Id.* at PageID.3037.

Michigan also prosecuted a hair salon. That prosecution began because of the salon’s social media posts—no service denial was at issue. Trans., R.139-4, PageID.2945–48; Studio 8 Compl., R.139-4, PageID.2980–81. The salon argued that the First Amendment protected its expression. ALJ Order, R.139-4, PageID.3012. But the Department disclaimed “the authority to adjudicate constitutional challenges.” Studio 8 Brs., R.139-4, PageID.2991, 3005. The Department said those challenges had to be raised in the Michigan Court of Claims. *Id.* at PageID.3005. The ALJ agreed: “the Commission” has “no authority to hear or decide” a “constitutional claim.” ALJ Orders, R.139-4, PageID.3009, 3012.

Later, the Department said it *could* consider constitutional defenses. Trevino Dep., R.139-2, PageID.2671. But the Department argued it *couldn't* throughout those proceedings, the ALJ relied on that, and the Department never asked the ALJ to withdraw its ruling. *Id.* at PageID.2671–72.

**IV. Fearing enforcement, Christian Healthcare sues, and Michigan's litigation positions repeatedly “evolve,” leaving the ministry at enforcement officials' mercy.**

Fearing that Michigan's enforcement officials might investigate and prosecute it for alleged ELCRA discrimination, Christian Healthcare filed a preenforcement suit seeking declaratory and injunctive relief. Compl., R.1, PageID.2, 55–57, 70–71. Over years of litigation, Michigan's view of ELCRA's application to the ministry's employment, pronoun, and medical-care policies has repeatedly “evolved.” Defs.' Objs., R.169, PageID.3463. The resulting uncertainty continues to burden Christian Healthcare. Blocher Decl., R.145-4, PageID.3188–89.

At first, Michigan took no position on Christian Healthcare's policies. In its briefs, Michigan claimed it had not “definitively interpreted” ELCRA as to religious employers' hiring practices, pronoun usage, and participation in gender transitions. Defs.' Br. Opp. Prelim. Inj., R.18, PageID.510; *see also id.* at PageID.527; Defs.' Mot. to Dismiss Br., R.20, PageID.565, 580–81; Defs.' Recons. Opp., R.33, PageID.1022–23. In discovery, Michigan refused to answer questions about Christian

Healthcare's Biblical Counselor, Physician, and Medical Assistant positions and employment publications, pronoun policy, and medical care policy. First Interrogatories, R.74-1, PageID.1704–07, 1709; First RFAs, R.74-2, PageID.1717–20, 1724–25. Michigan objected that those questions called for a legal conclusion and cited ongoing discovery.

When the ministry moved to compel responses the first time, the Department and Commission repeated they had not “taken any position regarding whether” the ministry’s activities violate ELCRA. Defs.’ Opp. to Mot. to Compel, R.84, PageID.1780. Eventually, Michigan was ordered to respond. Order, R.89, PageID.1826. Afterward, the Commission’s and Department’s positions varied between witnesses and even from one discovery response to another. The Attorney General neither took a formal view nor joined the Commission and Department’s conclusions. Defs.’ Summ. J. Br., R.161, PageID.3351.

**A. Michigan shifts its views on employment policies.**

Two-and-a-half years after Christian Healthcare filed suit, the Commission and Department finally admitted its Physician and Biblical Counselor positions are exempt from ELCRA based on the complaint’s job descriptions. First Suppl. Interrogatories, R.139-3, PageID.2857; First Suppl. RFA Resps., R.139-3, PageID.2861–63. Even so, the Commission and Department’s counsel conceded their conclusions about the Physician position could change “if his job duties change and he no longer meets the exception.” Hr’g Tr., R.168, PageID.3418.

The Commission and Department treated the ministry's Medical Assistant and Member Services Receptionist positions differently.

For the Medical Assistant position, they consistently agreed that Christian Healthcare would violate the Employment and Employment Publication Clauses if it only hired people who agreed and complied with the ministry's religious beliefs. First Suppl. Interrogatories, R.139-3, PageID.2856; First Suppl. RFA Resps., R.139-3, PageID.2863; Stips., R.109, PageID.2095–98.

For the Member Services Receptionist position, they vacillated. The Department testified it would *not* qualify for a BFOQ or the ministerial exception. Trevino Dep., R.139-2, PageID.2647–48. But Commissioner Londo testified it *would* qualify for the exception. Londo Dep., R.139-2, PageID.2712–13. Despite that, Michigan then stipulated Christian Healthcare would violate the Employment and Employment Publication Clauses if it only hired people who agreed with and complied with its religious beliefs. Stips., R.109, PageID.2097–98.

After those stipulations, the Department changed course and testified the Receptionist is *not* subject to ELCRA. Trevino Dep., R.139-2, PageID.2740. And Michigan tried to strike its stipulation that it was. Br. in Supp. of Defs.' Mot. to Strike, R.150, PageID.3264–70. But given the late date (discovery had closed and summary-judgment briefing had begun), that request was denied. Order, R.159, PageID.3328; Hr'g Tr., R.168, PageID.3451–54.

More generally, Michigan admitted that Christian Healthcare’s requirement that employees subscribe to its religious beliefs on marriage and gender identity violates the Employment Clause “unless the position is subject to the ministerial exception.” Second Suppl. RFA Resps., R.102-7, PageID.1955; Stips., R.109, PageID.2095–96.

**B. Michigan changes its position on pronouns and medical-care policies.**

The Commission and Department also responded to discovery requests about the ministry’s pronoun and medical-care policies. Again, the Commission’s and Department’s positions vacillated.

On pronouns, the Commission and Department first assumed “the failure to use a person’s preferred pronoun” violated the Accommodation Clause but concluded the First Amendment prevented them from compelling the use of pronouns “[u]pon information and belief, based on current authority.” First Suppl. Interrogatories, R.139-3, PageID.2854–55; Second Suppl. Interrogatories, R.139-3, PageID.2873–74. But the Department’s witnesses later said the ministry “may” violate ELCRA simply by posting its policy explaining that it declines to use pronouns inconsistent with a member’s sex. Trevino Dep., R.139-2, PageID.2607–08, 2614–16; *see* Johnson Dep., R.139-2, PageID.2458, 2460–61. The Department’s director testified it has a compelling interest in requiring Christian Healthcare to use pronouns consistent with a person’s gender identity. Johnson Dep., R.139-2, PageID.2461–62.

On medical policies, the Commission and Department initially said the Accommodation Clause required the ministry to provide “gender-affirming care” as the “least restrictive means for preventing discrimination.” Defs.’ Resp. to Second Interrogatories, R.139-3, PageID.2849. Consistent with their position in *Uprooted Electrolysis*, they also claimed the clause was “neutral and generally applicable,” withstood “First Amendment scrutiny,” and passed “rational basis.” First Suppl. Interrogatories, R.139-3, PageID.2855.

Later, the Commission and Department invoked their “compelling interest” in requiring “gender-affirming care” on an equal basis with similar treatments. Second Suppl. Interrogatories, R.139-3, PageID.2875. And the Department’s director testified the ministry’s policy on not providing “hormonal interventions to treat gender dysphoria” violated ELCRA, and the Department had a “compelling interest” in forcing Christian Healthcare to provide those treatments. Johnson Dep., R.139-2, PageID.2465–67.

The Commission and Department also admitted the ministry would violate the Accommodation Publication Clause by posting its Membership Agreement “related to the refusal to provide gender-affirming care.” First Suppl. RFA Resps., R.139-3, PageID.2861.

One of the Department’s witnesses later softened that position by testifying that the ministry “may” violate ELCRA by following and publishing its medical-care policy. Trevino Dep., R.139-2, PageID.2611–

14. The Commission's vice-chair, after disclaiming that he was testifying for the Commission despite being offered as its 30(b)(6) representative, then went further. He testified the Commission had decided that summer "with counsel" that the medical-care policy was exempt. Londo Dep., R.139-2, PageID.2715–17.

The next day, the Commission and Department reversed their answers and admissions to deny that the ministry's medical-care policy violates ELCRA, at least "unless and until any authority is issued finding that declining to provide such medical care is not protected under the First Amendment." Second Suppl. RFA Resps., R.102-7, PageID.1956; *see* Third Suppl. Interrogatories, R.102-6, PageID.1950.

Because of Michigan's inconsistent positions, the ministry successfully moved to compel Michigan to provide definitive discovery responses and to re-depose Michigan's witnesses. Order, R.113, PageID.2150–52.

As a result, Michigan confirmed that the Accommodation Clause generally applies to the ministry's pronoun usage and the provision of medical care. Fourth Suppl. Interrogatories, R.139-3, PageID.2878–79. But based solely on the facts and exhibits in the complaint filed years earlier, the Commission and Department concluded the First Amendment prevented them from enforcing the Accommodation Clause against the ministry's pronoun and medical-care policies. *Id.*

That change was not adopted through any formal policy or at any Commission meeting. It did not rely on any facts not available the day Christian Healthcare filed its complaint. And witnesses for both entities could not identify any change in the law since their prior positions. Trevino Dep., R.139-2, PageID.2743, 2746–48, 2750–53; Londo Second Dep., R.139-2, PageID.2761–64, 2766–68, 2770–72.

The Department didn't even know who in its office contributed to the reversal. Trevino Dep., R.139-2, PageID.2747, 2752–53. In preparing for their second 30(b)(6) depositions, the Department's and Commission's representatives spoke only to litigation counsel. *Id.* at PageID.2741; Londo Second Dep., R.139-2, PageID.2759. And they relied solely on litigation counsel's advice to flip their stance. Trevino Dep., R.139-2, PageID.2747–48, 2750; Londo Second Dep., R.139-2, PageID.2768, 2772, 2777. "What changed was advice of counsel," and that was the "only thing." Londo Second Dep., R.139-2, PageID.2774.

The Commission and Department later tried to withdraw their admission that Christian Healthcare would violate the Accommodation Publication Clause by posting its medical-care policy. Br. in Supp. of Defs.' Mot. to Strike, R.150, PageID.3270–73. They said their "position regarding gender-affirming care [had] evolved during" discovery. Defs.' Objs., R.169, PageID.3463. So their admission should "comport with [that] change of position." *Id.* at PageID.3462. But again, given the late date, the request was denied. Order, R.174, PageID.3604–05.

**C. Michigan’s current positions do not bind anyone.**

Michigan’s latest positions do not bind enforcement officials going forward.

The Commission’s witness testified that the Commission is “entitled to change [its] mind” on ELCRA’s application. Londo Dep., R.139-2, PageID.2721. The Commission did not act through any formal mechanism. But a formal declaratory ruling or interpretive statement wouldn’t bind future commissions anyway: they’re “certainly free to make a different decision, come to a different conclusion.” Londo Second Dep., R.139-2, PageID.2762. Nothing would prevent “a new group of commissioners from just saying we read this body of law differently.” *Id.*

Michigan’s counsel also has insisted that a “single Commissioner cannot bind the Commission.” Defs.’ Partial Objs., R.115, PageID.2239. And the individual defendants’ legal opinions “would not be official positions of either the Department or the Commission,” because they come “without the crucible of formal hearings or the give-and-take of deliberations.” Defs.’ Opp. to Mot. to Compel, R.84, PageID.1784. Moreover, Michigan’s current litigation positions apparently have never been published. Trevino Dep., R.139-2, PageID.2752; Londo Second Dep., R.139-2, PageID.2771.

For its part, the Department said it just follows the Commission’s “guidance and directive.” Trevino Dep., R.139-2, PageID.2743. So if commissioners later decide *no* exemption applies to pronouns, the Department would start enforcing. *Id.* at PageID.2751.

Meanwhile, the Attorney General has not joined the other defendants’ interpretation of ELCRA. She expressed “concerns” about their concessions about the “breadth of the ministerial exception.” Defs.’ Summ. J. Br., R.161, PageID.3351. And she took “no position ... on the constitutional questions.” *Id.*

**V. The district court enters summary judgment against Christian Healthcare—despite finding some of its policies likely protected by the First Amendment.**

Several years ago, this Court held Christian Healthcare has standing. *Christian Healthcare Ctrs., Inc. v. Nessel*, 117 F.4th 826 (6th Cir. 2024). The Court held the language in the Accommodation Clause’s “permitted by law” exception and the Employment Clause’s “guaranteed by law” exception “is not so clear that it renders the laws obviously inapplicable to Plaintiffs’ conduct.” *Id.* at 847. And it held that the Attorney General, the Commission, and the Department posed a credible enforcement threat. *Id.* at 848–55.

On remand, the parties cross-moved for summary judgment. Christian Healthcare argued that the First Amendment protects its right to only hire employees—even for non-ministerial positions—who

share its religious beliefs. Pl.’s Summ. J. Br., R.146, PageID.3217–21, 3227–31. The ministry urged the district court to enter declaratory and injunctive relief to protect its rights to hire ministerial employees and follow and publish its pronoun and medical-care policies because Michigan’s shifting positions did not negate the ministry’s risk of liability. *Id.* at PageID.3214–17; Pl.’s Combined Reply, R.171, PageID.3498, 3503–13, 3515.

Michigan cross-moved for summary judgment based largely on its recently adopted litigation positions. The Commission and Department said they had concluded “reluctantly” that the First Amendment “likely permits” the ministry’s pronoun and medical-care policies “under the specific facts of this case.” Defs.’ Summ. J. Br., R.161, PageID.3342; *accord id.* at PageID.3371–72. They called these “difficult issues of first impression,” described the law as “unsettled,” and conceded that “reasonable minds may differ.” *Id.* at PageID.3371, 3380–81. Even then, they repeatedly said only that the ministry is “likely” protected and that its policies “appear[] to be ‘permitted by law.’” *Id.* at PageID.3377, 3380–81.<sup>2</sup> And they stressed this conclusion “weighs heavily” on them, “is narrow,” and reaches only this ministry “under the particular facts of this case.” *Id.* at PageID.3342, 3372, 3382.

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<sup>2</sup> Michigan dropped those qualifiers in at least a few places in its briefs, but without any explanation.

Michigan also said the court “may reach a different conclusion,” especially given “the distinguishable nature of the available cases.” *Id.* at PageID.3342, 3380 n.4. In Michigan’s view, “regardless of how the Court resolves the underlying First Amendment issues,” the ministry loses: If its “policies are protected by the First Amendment, they fall within the ‘permitted by law’ exception and the statute stands.” *Id.* at PageID.3342. “If they are not protected, the statute applies, and [the ministry] has no constitutional claim.” *Id.*

Largely adopting Michigan’s arguments, the district court denied Christian Healthcare’s motion, granted Michigan’s motion, and entered judgment for all defendants. Op., R.188, PageID.3694–95.

First, the court rejected the ministry’s employment claims because it thought no “binding authority” supported the co-religionist doctrine as applied to non-ministerial employees. *Id.* at PageID.3668. The court rejected the ministry’s expressive-association claim for the same reason. *Id.* at PageID.3672–73. Finally, the court found the Employment Clause generally applicable—even though Michigan’s witnesses agreed BFOQ exemptions are decided “case by case.” *Id.* at PageID.3680–81, 3684. The court acknowledged the Commission “retains discretion to decide” whether a BFOQ application contains enough “information to support the exemption” but thought the “structured process” and availability of judicial review sufficiently cabined that discretion. *Id.* at PageID.3680, 3683.

Second, on ministerial hiring, the court recited Michigan’s admissions that two positions—the Biblical Counselor and the Physician—qualify for the ministerial exception. *Id.* at PageID.3664–65 & n.6. It said nothing about any other ministerial positions. *See* Pl.’s Combined Reply, R.171, PageID.3515. Ultimately, the court concluded that “ELCRA, via the First Amendment, provides that CHC can hire whomever it chooses for its Biblical Counsel[or] and Physician positions”—and still ruled against the ministry. *Op.*, R.188, PageID.3694.

Third, the court followed the same path on the ministry’s pronoun and medical-care policies. It read ELCRA’s “permitted by law” language as “carving out space” for conduct that “may otherwise constitute prohibited discrimination when separately authorized by the First Amendment.” *Id.* at PageID.3686. It parroted Michigan’s view that the pronoun policy is “likely protected speech” and “the government likely cannot compel” gender-transition services. *Id.* at PageID.3684–85. And it found that Michigan’s pronoun position “has a sound basis” and there is “sound reason for [it] to conclude” that the ministry’s medical-care policy falls within its religious autonomy. *Id.* at PageID.3687–88. Even so, the court ruled *against* the ministry after concluding that the ministry’s pronoun and medical-care policies are “permitted by law” under ELCRA, “via the First Amendment.” *Id.* at PageID.3690.

The court also agreed that Michigan’s present positions should “*not* be read as a template for future disputes.” *Id.* at PageID.3689. But that made no difference.

The court disposed of the remaining claims briefly. Because the pronoun and medical-care policies are “permitted by law,” publishing them “does not violate” the publication clauses. *Id.* at PageID.3690. And it rejected the facial challenge to the Unwelcome Clause because the clause was sufficiently clear and “readily susceptible” to a narrowing construction. *Id.* at PageID.3690–94.

Finally, the court rejected the Attorney General’s dismissal, concluding she’s “a proper defendant.” *Id.* at PageID.3660 n.5. That conclusion rested on her “specific authority to enforce” ELCRA, including her stipulated authority “to enforce compliance with orders issued by the Department and the Commission by filing enforcement motions” in state court. *Id.* Yet the court still entered judgment for her, too. *Id.*; J., R.189, PageID.3696.

Christian Healthcare timely appealed. Notice of Appeal, R.190, PageID.3698.

**VI. While this appeal proceeds, Michigan’s ELCRA interpretation and enforcement plans continue to burden the ministry’s hiring practices and chill its speech.**

On remand after the first appeal, Michigan stipulated to a preliminary injunction that barred it from investigating or taking “any other enforcement action against” the ministry under ELCRA based on sexual orientation or gender identity until final judgment. Stip. Prelim. Inj., R.65, PageID.1683–84. With that protection, the ministry posted its Statement of Faith, full job descriptions, and Membership Agreement. Blocher Decl., R.145-4, PageID.3186–87. But it has since removed them because the injunction is now dissolved, and the Commission and Department refused to stay enforcement on appeal. *Id.* at PageID.3189–91; Blocher Decl. ¶¶ 29–32, Case No. 26-1730.

That puts Christian Healthcare in a difficult position while this appeal proceeds. The ministry hires several Medical Assistants and Member Services Receptionists every year. Blocher Decl. ¶ 33, Case No. 26-1730. But Michigan says the Employment Clause bars its religious requirements for these positions, and the Employment Publication Clause bars the ministry from posting its job description for these positions and other non-ministerial ones. Stips., R.109, PageID.2095–98; Op., R.188, PageID.3664–65. If Christian Healthcare insists on hiring only employees who share its religious beliefs for non-ministerial roles, it risks a burdensome investigation, crippling fines, and referral to licensing authorities. Stips., R.109, PageID.2093–94.

Michigan also stipulated the Employment Publication Clause bars the ministry from posting its Statement of Faith for non-ministerial positions or its Medical Assistant and Receptionist descriptions. *Stips.*, R.109, PageID.2096–98. So the ministry has pulled those documents and deleted from another posting the requirement that staff affirm its beliefs “without mental reservation.” Blocher Decl. ¶¶ 29–32, Case No. 26-1730.

The ministry has also removed its Membership Agreement. *Id.* at ¶ 38. Though Michigan concedes that the agreement’s pronoun and medical-care policies are protected, it admitted that posting the medical-care policy violates ELCRA—an admission the district court did not let it withdraw. First Suppl. RFA Resps., R.139-3, PageID.2861; Order, R.174, PageID.3603–05. And Michigan can always change its mind about these policies. Londo Second Dep., R.139-2, PageID.2762. That exposes Christian Healthcare to future complaints for only using sex-reflective pronouns and for declining to participate in gender transitions. *See Woo Decl.* ¶¶ 8–12, Case No. 26-1730. So the ministry remains “at the mercy of Michigan’s shifting litigation-oriented positions,” knowing that any complaint could trigger “a costly and burdensome investigative process that could lead to its closure.” Blocher Decl. ¶ 51, Case No. 26-1730.

## STANDARD OF REVIEW

This Court reviews a “district court’s summary judgment decision ... de novo.” *Welty v. Dunaway*, \_\_ F.4th \_\_, 2026 WL 2874671, at \*4 (6th Cir. Sept. 24, 2026). “Summary judgment is appropriate only when ‘the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Id.* (quoting Fed. R. Civ. P. 56(a)). And “courts must view the record evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of the nonmoving party.” *Id.*

The Court “review[s] a district court’s decision to grant or deny permanent injunctive relief, as well as its fashioning of such relief when granted, for an abuse of discretion.” *Id.* at \*5. A court abuses its discretion “when it improperly applies the law.” *Id.* (citation modified).

## SUMMARY OF THE ARGUMENT

Michigan's Employment Clause violates the First Amendment three ways. First, church autonomy protects a ministry's sincere requirement that every employee—not just ministers—share its faith. That is a religious judgment beyond the State's reach. Second, because the Commission weighs each employer's reasons for an exemption through its BFOQ process—and grants secular exemptions for comparable conduct—the Employment Clause is not generally applicable and triggers strict scrutiny that Michigan cannot satisfy. Third, forcing the ministry to employ those who reject its faith burdens its expressive association. Its employees convey its faith to patients, and those who reject that faith cannot do so authentically.

The district court saved the Unwelcome Clause by rewriting it to mean something the Denial Clause already means. But federal courts may not rewrite state statutes to save them. As written, its subjective terms are unconstitutionally vague and overbroad.

Finally, Michigan's late, nonbinding concessions cannot defeat a permanent injunction. Nor can ELCRA's "permitted by law" exception, which leaves religious organizations like Christian Healthcare guessing as to whether their speech and religious exercise are protected. The Constitution demands more. This Court should reverse.

## ARGUMENT

### **I. The First Amendment protects Christian Healthcare’s right to hire and retain employees who share its beliefs.**

#### **A. The Free Exercise Clause’s church-autonomy doctrine protects the ministry’s autonomy to set religious expectations for *all* its employees.**

The First Amendment protects the right of religious organizations “to decide matters of faith and doctrine,” and it assures “independence” in “matters of church government.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (citation modified). This autonomy includes the freedom to require members to “conform[]” to the “standard of morals required of them.” *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 714 (1976) (citation modified). And it shields religious organizations from “secular control or manipulation” and “state interference.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

The right to hire religious leaders is one “component” of this autonomy, known as the ministerial exception. *Our Lady*, 591 U.S. at 746. That exception is narrow in scope—it applies only to specific types of positions—but broad when it applies. A religious entity can hire, fire, or discipline its ministers *for any reason*; it need not be able to cite “a religious reason.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194 (2012).

That hands-off approach makes sense. Selecting religious leaders and teachers “lies so close to the heart of the church” that the decision will always have religious significance. *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 810 (9th Cir. 2024). That is why the Supreme Court said the decision about “who will minister to the faithful” is “strictly ecclesiastical.” *Hosanna-Tabor*, 565 U.S. at 195 (quoting *Kedroff*, 344 U.S. at 119). The selection of ministers simply cannot be separated from “matters of faith and doctrine.” *Our Lady*, 591 U.S. at 747 (citation modified).

That broad protection for religious leaders and teachers makes sense. Its “primary purpose is to prevent judges and juries from second-guessing the church’s ‘choice as to who will perform particular spiritual functions.’” Douglas Laycock, *A Syllabus of Errors*, 105 Mich. L. Rev. 1169, 1181 (2007) (quoting *Petruska v. Gannon Univ.*, 462 F.3d 294, 304 (3d Cir. 2006)). If a church or other religious organization dismisses a minister for discriminatory reasons, “that is unfortunate.” *Id.* at 1181–82. But it would be “worse if a judge erroneously found discrimination where the [minister] had really been dismissed because his performance was unsatisfactory, or if the judge imposed an unwanted spiritual leader on a church—no matter why that leader had lost the confidence of his flock.” *Id.* at 1182. So the ministerial exception balances those “competing interests” decidedly in the religious organization’s favor. *Id.*

The Free Exercise Clause, though, is broader than the ministerial exception, as is the right of religious organizations to have autonomy over their internal affairs. Church autonomy is a “broad principle.” *Our Lady*, 591 U.S. at 747. And it “is not so narrowly confined” to the ministerial exception, *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., respecting the denial of certiorari). Church autonomy protects a religious organization’s broader ability to require that *all* its members and employees meet the “standard of morals required of them.” *Milivojevich*, 426 U.S. at 714 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872)).

Stated differently, the ministerial exception provides complete protection against *any* “examination” of a religious organization’s “reasons for determining the fitness and qualifications of its ministers.” *Middleton v. United Church of Christ Bd.*, No. 20-4141, 2021 WL 5447040, at \*3 (6th Cir. Nov. 22, 2021). And that’s because those “determination[s] [are] *necessarily* informed by religious belief.” *Id.* (emphasis added). But a religious organization’s insistence that all its employees share its religious beliefs is equally “informed by religious belief.” *Id.* So the First Amendment forbids state inquiry into those employment decisions, too.

Sometimes called the “coreligionist doctrine,” this protection is broader in scope—it applies to *all* types of positions—but narrower in application. Unlike the ministerial exception, the coreligionist doctrine

only protects a religious organization’s employment decisions when the organization bases them on a sincere “religious reason.” *Hosanna-Tabor*, 565 U.S. at 194. “Because who a religious organization hires may go to the very character of its religious mission, the church autonomy doctrine protects the decision to hire co-religionists for non-ministerial roles if that decision is based on the organization’s sincerely held religious beliefs.” *Union Gospel Mission of Yakima Wash. v. Brown*, 162 F.4th 1190, 1197 (9th Cir.), *reh’g en banc granted, opinion vacated*, 181 F.4th 1331 (9th Cir. 2026).

If the reason given is not religious or the religious reason is insincere, the doctrine does not apply. “Unlike with the broader protection of the ministerial exception, a religious organization cannot discriminate on other grounds, and the religious motivation cannot be a pretext for non-religious discrimination.” *Yakima*, 162 F.4th at 1205 (citation modified).

That limitation makes sense. The “hiring of non-ministerial positions is not *necessarily* a religious matter.” *Id.* So the “church autonomy doctrine only protects religious institutions’ non-ministerial hiring policy on a showing that the employment decision [is] ‘rooted in religious belief’ that [is] ‘sincerely held.’” *Id.* (quoting *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994)).

Christian Healthcare has made that showing here, and Michigan has not argued otherwise. First, the ministry’s hiring policy is rooted in its faith. “It is vital to CHC’s mission and religious beliefs that all of its employees subscribe to the ministry’s religious beliefs.” Blocher Decl., R.145-4, PageID.3186. It relies on every employee—even its janitor—to share its faith with members and coworkers. Blocher Decl., R.54-2, PageID.1468–69; Blocher Decl., R.22-3, PageID.671. Medical Assistants pray with patients and discuss spiritual matters; Receptionists explain the ministry’s beliefs to prospective members. Blocher Decl., R.145-4, PageID.3187–88. Michigan thinks the ministry could hire an applicant who is “not interested in praying at all” or disagrees with the ministry’s “Christian message,” as “long as [the employee] can appropriately convey” it. Trevino Dep., R.139-2, PageID.2639, 2649–51. But paying “a non-believer to mouth a ‘Christian sounding prayer’” would make the ministry “bear[] false witness.” Blocher Decl., R.145-4, PageID.3186.

Second, that belief is sincere, not a pretext. Christian Healthcare serves members regardless of sexual orientation, gender identity, or any other trait. Woo Dep., R.139-2, PageID.2827; Woo Decl., R.145-5, PageID.3193–94. And it holds every employee to the same standard: each one signs the ministry’s Religious Statements and reaffirms them every year. Compl., R.1, PageID.16–17. So the requirement turns not on who applicants are, but on whether they share Christian Healthcare’s beliefs and whether their conduct is consistent with those beliefs.

The district court rejected Christian Healthcare’s invocation of the coreligionist doctrine on the theory that the ministry had “not provided any binding authority to support its proposed application” of that doctrine. Op., R.188, PageID.3668. But the First Amendment is binding, even if a “since vacated” Ninth Circuit opinion is not. *Id.* at PageID.3669 n.8.

More importantly, a broad church-autonomy doctrine has deep roots in our nation’s history and tradition. For example, as President, Thomas Jefferson penned a letter to a group of “Ursuline Nuns who ran an *orphanage and Catholic school* in New Orleans.” Br. of Professors Stephanie Barclay and Richard W. Garnett as Amici Curiae in Supp. of Pet’r, *Youth 71 Five Ministries v. Williams*, No. 25-776, 2026 WL 499909, at \*11 (U.S. Feb. 17, 2026) (emphasis added). He assured them that the Louisiana Purchase would not undermine their “broad right of self-governance and religious liberty.” *Id.* And “the principles of the constitution” would allow their “institution ... to govern itself according to [its] own voluntary rules, without interference from the civil authority.” *Id.* (citation modified).

“Given this understanding of the Religion Clauses—and the absence of government employment regulation generally—it was some time before questions about government interference” with religious organizations’ employment decisions came before the Supreme Court. *Hosanna-Tabor*, 565 U.S. at 185. When they did, the Court upheld their

right to decide “questions of discipline, or of faith, or ecclesiastical rule, custom, or law” for themselves. *Watson*, 80 U.S. at 727. As the Supreme Court later put it, *Watson* “radiates ... a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff*, 344 U.S. at 116.

The coreligionist doctrine fits neatly within the “historical limits” of the broader church-autonomy doctrine. Lael Daniel Weinberger, *Church Autonomy, Religious Leaders, and Non-Minister Employees* 16, U. Chi. L. Rev. Online (forthcoming), Geo. Mason L. & Econ. Rsrch. Paper 26-19 (Oct. 19, 2026), [ssrn.com/abstract=7639018](https://ssrn.com/abstract=7639018). Especially in cases like this one that have the “twin safeguards of ex ante disclosure and consent in place.” *Id.* Christian Healthcare informs prospective employees about its religious expectations before they agree to work for the ministry. Stips., R.109, PageID.2098; Employment Application, R.1-17, PageID.151; Blocher Dep., R.139-2, PageID.2816; Blocher Decl., R.145-4, PageID.3186–87. So anyone who accepts employment “unite[s] themselves” to the ministry “with an implied consent to this government,” and they are thus “bound to submit to it.” *Watson*, 80 U.S. at 729.

What's more, this Court has correctly observed that "the First Amendment does not permit federal courts to dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices." *Hall*, 215 F.3d at 626.

The district court brushed *Hall* aside as a case that "addressed only whether a terminated employee stated a prima facie case of religious discrimination under Title VII." Op., R.188, PageID.3669–70. But *Hall* did not cite the First Amendment in throwaway dicta. Instead, the Court rejected the terminated employee's argument there that she was similarly situated to another employee whom the Baptist college defendant had failed to terminate despite that employee having violated "the Southern Baptist Convention's prohibition against the ordination of women." *Hall*, 215 F.3d at 626. In conducting its Title VII analysis, this Court refused to second-guess the college for making that employment decision—not because Title VII forbade it, but because "*the First Amendment* does not permit federal courts to dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices." *Id.* (emphasis added).

That constitutional principle foreclosed the terminated employee's Title VII argument. And applying the same constitutional principle here forecloses Michigan's argument and the district court's conclusion that the Employment Clause does not violate the First Amendment when it "interferes with [Christian Healthcare's] faith-based employment

policies and decisions by restricting its ability to hire employees who share its religious beliefs.” Op., R.188, PageID.3670. It does. And Christian Healthcare is entitled to a permanent injunction protecting its right to hire coreligionists.

**B. The Employment Clause triggers strict scrutiny because the BFOQ process makes it not generally applicable.**

The Employment Clause burdens religious exercise and is not generally applicable because it (1) authorizes individualized exemptions, and (2) treats comparable secular employers better than Christian Healthcare. So the clause (3) triggers and fails strict scrutiny.

**1. Individualized exemptions.** Michigan employers who want to hire based on a protected trait can ask for an exemption, and the Commission decides each request on a case-by-case basis—one employer, one position, one application at a time. As the Department put it previously, a BFOQ exemption “let[s] an employer do what otherwise would be illegal discrimination.” Regulatory Impact Statement, R.26-4, PageID.837. As ELCRA expressly states, the Commission “may” exempt an employer “[u]pon sufficient showing” that a protected trait is “a bona fide occupational qualification reasonably necessary to the normal operation of the business.” MCL 37.2208. This includes BFOQs based on sexual orientation and gender identity. Londo Dep., R.139-2, PageID.2697–98. Because such a standard turns on “the circumstances

underlying each application,” it creates “a mechanism for individualized exemptions” that undermines the law’s general applicability and triggers strict scrutiny. *Fulton*, 593 U.S. at 533–34 (citation modified).

The district court declined to apply strict scrutiny, but it did not deny that discretion exists. The district court acknowledged that the Commission “retains discretion to decide whether an application ... contains sufficient (or insufficient) information to support the exemption under the statute.” Op., R.188, PageID.3680. Yet it held the Employment Clause generally applicable because the Commission cannot reject an application “for any reason.” *Id.* at PageID.3680, 3684. In the court’s view, the 13-question application form, judicial review, and the “context-specific” nature of the inquiry kept the Commission in check. *Id.* at PageID.3679–83. But *Fulton* does not require unbridled discretion; it requires only a mechanism that lets officials weigh the reasons behind each request, as here.

The en banc Ninth Circuit said so explicitly in *Fellowship of Christian Athletes v. San Jose Unified School District (FCA)*, 82 F.4th 664 (9th Cir. 2023) (en banc). That court rejected the argument that “*Fulton* was only concerned with ‘unfettered’ discretion” as “overly narrow.” *Id.* at 687–88. Properly read, *Fulton* teaches that “the mere existence of a discretionary mechanism to grant exemptions can be sufficient to render a policy not generally applicable, regardless of the actual exercise.” *Id.* at 688.

This Court applied the same rule in *Dahl v. Board of Trustees of Western Michigan University*, 15 F.4th 728 (6th Cir. 2021) (per curiam). There, a public university required student-athletes to get vaccinated against COVID-19 but announced that “[m]edical or religious exemptions and accommodations will be considered on an individual basis.” *Id.* at 730. The Court held the policy was not generally applicable and triggered strict scrutiny. *Id.* at 733–34. The university considered exemptions “on an individual basis” and “retain[ed] discretion to extend exemptions in whole or in part.” *Id.* at 733. That “‘invite[d]’ the government to decide which reasons for not complying with the policy are worthy of solicitude.” *Id.* at 733–34 (quoting *Fulton*). The Court did not ask whether the university’s discretion was unbridled. It did not ask whether the university had a form, a review process, or reasons for its decisions. It looked at “the terms of the policy itself” and found a mechanism for individualized exemptions. *Id.* at 733.

Same here. The Commission, like the university, reviews exemption requests one at a time and decides whether each applicant has justified an exception. And like the university, it “retains discretion” over the outcome—as the district court recognized. Op., R.188, PageID.3680. The law does not define “sufficient showing.” Nor does it explain what makes a protected trait “reasonably necessary” to an employer’s “normal operation.” The Commission fills in those gaps “[o]n a case by case basis.” Londo Dep., R.139-2, PageID.2699. Its formal

rules only govern the *process*—who reviews a request, what records an applicant must produce, and when an exemption can be revoked—not how the Commission must weigh a request. *Id.* at PageID.2697–99; Mich. Admin. Code R 37.25. And in deciding whether an employer has reasonable alternatives, commissioners “consult their own perspectives.” Londo Dep., R.139-2, PageID.2700.

Asking whether a trait is “reasonably necessary” to an employer’s “normal operation” is an inherently discretionary call—one that “invites the government to consider the particular reasons for a person’s conduct” and “decide which reasons for not complying with [the law] are worthy of solicitude.” *Fulton*, 593 U.S. at 533, 537 (citation modified); *see also Everson v. Mich. Dep’t of Corr.*, 391 F.3d 737, 760–61 (6th Cir. 2004) (recognizing “the case-by-case nature of the BFOQ analysis”). A 13-question form does not change that. It tells employers what to submit, not how the Commission must weigh the submission.

It also doesn’t matter whether Christian Healthcare has applied for a BFOQ or how long it has been since Michigan granted one. A “formal mechanism for granting exceptions” renders a law “not generally applicable, regardless whether any exceptions have been given.” *Fulton*, 593 U.S. at 537; *accord Dahl*, 15 F.4th at 733–34 (rejecting the university’s reliance on how it “executed the policy”).

The mechanism also offers feeble protection. Christian Healthcare hires according to its faith for *all* positions, but Michigan interprets the BFOQ provision to cover *only* ministerial employees. *See* Defs.’ Summ. J. Br., R.161, PageID.3358–59; Spring Arbor Univ. BFOQ Op., R.139-5, PageID.3114 (excluding “support staff, clerical or maintenance personnel”); BFOQ Rulings, R.139-5, PageID.3115 (noting that an Islamic school’s exemption would not reach its “janitorial staff” or “office personnel”).

The Commission can also revoke a BFOQ later. Londo Dep., R.139-2, PageID.2699. And by rule, a BFOQ expires after five years. Mich. Admin. Code R 37.25(4). So a BFOQ does not offer the lasting protection Christian Healthcare needs and the First Amendment demands. And the process itself penalizes religious employers simply for exercising their right to hire coreligionists. Indeed, Christian Healthcare would need to hire a lawyer to prepare legal briefs seeking BFOQ protection for every new and existing employee. Blocher Decl., R.22-3, PageID.668–71. The BFOQ mechanism destroys general applicability.

**2. Comparability.** The BFOQ process also leads Michigan to treat “comparable secular” employers “more favorably” than Christian Healthcare. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). Comparability looks at the harm to the government’s asserted interests. *Id.* A law that treats religious activities less favorably than

“nonreligious conduct that endangers [the government’s] interests in a similar” way is not generally applicable. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993).

Michigan claims an interest generally in protecting against “unlawful discrimination based on protected bases just in general,” Trevino Dep., R.139-2, PageID.2621; Londo Dep., R.139-2, PageID.2702–03, and specifically “in the elimination of workplace discrimination,” Suppl. Interrogatories, R.139-3, PageID.2856. Yet it justified a female-sex BFOQ over concerns of “privacy” and “experience in breast feeding,” BFOQ Rulings, R.139-5, PageID.3119–20, 3122, and a sex-based BFOQ “for privacy reasons,” *id.* at PageID.3121–22. By granting these exemptions, the Commission authorized “what otherwise would be illegal discrimination.” Regulatory Impact Statement, R.26-4, PageID.837; Londo Dep., R.139-2, PageID.2705. So the exemptions undermine Michigan’s interests.

By exempting these discriminatory activities—but not Christian Healthcare’s freedom to hire non-ministerial employees consistent with its beliefs, Stips., R.109, PageID.2095–98, Suppl. Interrogatories, R.139-3, PageID.2862—Michigan treats the ministry’s employment policies “less favorably than it does comparable secular” employment policies. *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep’t*, 984 F.3d 477, 480 (6th Cir. 2020) (citation modified). Michigan cannot prioritize secular interests over Christian Healthcare’s religious reasons for

requiring its employees to share its faith. That “selective enforcement favoring comparable secular activities” means the Employment Clause lacks general application. *FCA*, 82 F.4th at 689; *accord Does v. Catholic Relief Servs.*, \_\_ F.4th \_\_, 2026 WL 3091963, at \*66 (4th Cir. Oct. 16, 2026) (Quattlebaum, J., dissenting) (explaining how BFOQs “favor secular interests over religious ones,” triggering strict scrutiny).

And it does not matter that Michigan sometimes exempts other religious organizations. That “is no answer” because a law triggers strict scrutiny “whenever” it treats “*any* comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62.

**3. Strict Scrutiny.** That leaves Michigan to overcome strict scrutiny, which it cannot. The question “is not whether the [State] has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception” to Christian Healthcare. *Fulton*, 593 U.S. at 541. Michigan has never tried to make that showing. Nor can it. Michigan’s “creation of a system of exceptions ... undermines [its] contention that its non-discrimination policies can brook no departures.” *Id.* at 542. Having built that system for granting exemptions, Michigan “must explain why it chose not to grant” one to a Christian medical ministry that asks only to staff itself with employees who share its faith. *Dahl*, 15 F.4th at 736.

The Employment Clause also is not narrowly tailored to furthering Michigan’s interest in preventing discrimination. Title VII pursues the same interest yet exempts religious employers “with respect to the employment of individuals of a particular religion.” 42 U.S.C. § 2000e-1(a). And most states do the same. *See supra* p. 12 n.1. When so many jurisdictions “achieve [their] interests in a manner that does not burden religion,” *Fulton*, 593 U.S. at 541, Michigan “must, at a minimum, offer persuasive reasons why it believes that it must take a different course,” *Holt v. Hobbs*, 574 U.S. 352, 369 (2015). It has not and cannot.

**C. The Free Speech Clause protects the right of employers with a distinctly expressive mission to hire employees who will further that message.**

The Employment Clause also violates Christian Healthcare’s First Amendment “right to associate with others in pursuit of... religious ... ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). By prohibiting coreligionist hiring, Michigan strikes at the heart of the ministry’s mission and message. Courts apply a three-part test to decide whether the expressive association right applies. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 653, 656 (2000). Christian Healthcare passes each.

*First*, Christian Healthcare “engage[s]” in “expression.” *Id.* at 648. Not every employer is an expressive association. But “[r]eligious groups are the archetype of associations formed for expressive purposes,” *Hosanna-Tabor*, 565 U.S. at 200–01 (Alito, J., concurring), and

Christian Healthcare fits that mold. It shares its faith through prayer with members, conversations about spiritual health, Scripture displayed in its offices, and its employees' example. Compl., R.1, PageID.14–15, 18; Blocher Decl., R.145-4, PageID.3185–88. Sharing its faith is “part and parcel” of its “religious mission.” Compl., R.1, PageID.15. So Christian Healthcare is a “religious association[]” that “express[es] and disseminat[es]” “religious doctrine.” *Hutchinson v. Thomas*, 789 F.2d 392, 394 (6th Cir. 1986) (citation omitted).

*Second*, forcing Christian Healthcare to accept employees who reject its beliefs about marriage and sexuality would “significantly burden” its ability to express its religious message. *Dale*, 530 U.S. at 653. Those employees could not authentically communicate the ministry’s beliefs. And their “presence” would “force” the ministry “to send a message, both to [its members] and the world, that [its religion] accepts homosexual conduct” and accepts identifying as the opposite sex as morally permissible. *Id.* Indeed, “[n]o clearer example” of “intrusion” into a religious group’s associational rights exists than pressuring it to accept insiders who do not share its faith, because they “would cause the group as it currently identifies itself to cease to exist.” *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 861, 863 (7th Cir. 2006).

*Third*, forcing Christian Healthcare to associate with those who reject its faith cannot survive strict scrutiny. *Dale*, 530 U.S. at 656–57; *see supra* pp. 49–50. So Michigan cannot enforce the Employment Clause against Christian Healthcare’s faith-based employment policies.

Michigan does not dispute that Christian Healthcare “engage[s] in some form of expression.” *Dale*, 530 U.S. at 648. Michigan argues instead that hiring “a non-Christian medical assistant or receptionist” would not burden the ministry’s ability “to provide healthcare services consistent with its religious mission.” Defs.’ Summ. J. Br., R.161, PageID.3370. That argument fails to “give deference to” the ministry’s “view of what would impair its expression.” *Dale*, 530 U.S. at 653. State officials don’t get to decide whether religious institutions need shared faith to advance their mission. And from the start, Christian Healthcare has made clear that its religious mission depends on employees who share its religious beliefs. Compl., R.1, PageID.2, 45.

The district court recognized that much. It did not deny that forcing Christian Healthcare to staff its ministry with people who do not share its beliefs would impair its expression. Instead, it rejected the claim because Christian Healthcare supposedly “ha[d] not supplied any authority applying the freedom to associate... within the context of an employment relationship.” Op., R.188, PageID.3672. But Christian Healthcare’s summary-judgment briefing cited several federal cases holding that expressive association protects employers with a distinctly

expressive mission. *See* Pl.’s Combined Reply, R.171, PageID.3525 (citing cases). Indeed, repeating the district court’s error would create a split with the Second and Ninth Circuits. *See Slattery v. Hochul*, 61 F.4th 278, 288 (2d Cir. 2023) (“The right to expressive association allows Evergreen to determine that its message will be effectively conveyed only by employees who sincerely share its views.”); *Youth 71Five Ministries v. Williams*, 160 F.4th 964, 985 (9th Cir. 2025) (applying expressive association to a nondiscrimination rule that would force a religious ministry to hire “individuals who reject its Statement of Faith”).<sup>3</sup>

Nor does Christian Healthcare’s claim stretch beyond what Supreme Court precedent “currently permits.” Op., R.188, PageID.3673. The claim rests on—and passes—*Dale*’s three-part test. And the Supreme Court has explained that “the activities of” an expressive association’s “staff” are “modes of expression and association” that the First Amendment protects. *NAACP v. Button*, 371 U.S. 415, 428–29 (1963).

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<sup>3</sup> Multiple federal district courts have also applied the right in the employment context. *E.g.*, *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1184–85 (D. Colo. 2023) (forcing Christian school to “hire those who disagree with its religious expression and evangelistic mission” violates expressive association); *Our Lady’s Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 821–22 (E.D. Mo. 2018) (“[T]he forced inclusion of teachers or other staff who do not adhere to [the schools’ religious values] would significantly affect [their] ability to advocate their viewpoints, through its teachers and staff, to their students.”).

*Hishon v. King & Spalding*, 467 U.S. 69 (1984), does not hold otherwise. The Court there did not hold that employers have no right to expressive association. *Contra* Defs.’ Summ. J. Br., R.161, PageID.3369; *see* Op., R.188, PageID.3673 (citing *Hishon*). It held only that a for-profit law firm had not shown that making a woman a partner would “inhibit[]” expression of its “ideas and beliefs.” *Hishon*, 467 U.S. at 78. In other words, the Court applied the same test later outlined in *Dale*—and the law firm flunked it. The Court would not have applied that test if expressive association did not reach the employment context at all.

Christian Healthcare is no for-profit law firm. It’s a non-profit healthcare ministry whose employees express its faith every day. Forcing it to hire those who reject its faith would alter the message it exists to share. The First Amendment forbids Michigan from imposing that burden.

## **II. The Unwelcome Clause is unconstitutionally vague and overbroad.**

The district court also erred in concluding that the Unwelcome Clause is sufficiently clear and “readily susceptible” to a “narrowing construction” to survive Christian Healthcare’s void-for-vagueness and overbreadth facial challenges. Op., R.188, PageID.3692–94. Courts may not “rewrite” challenged statutory provisions “to cure their substantial infirmities.” *United Food & Com. Workers Union v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 362 (6th Cir. 1998). And that command is

stronger here, given the “federalism concerns that arise whenever [a federal court] deals with state statutes.” *Eubanks v. Wilkinson*, 937 F.2d 1118, 1125 (6th Cir. 1991).

Moreover, as Michigan’s courts have explained, “courts *must* interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *Esurance Prop. & Cas. Ins. Co. v. Mich. Assigned Claims Plan*, 968 N.W.2d 482, 488 (Mich. 2021) (citation modified) (emphasis added).

The district court broke both cardinal commands here. It rewrote the second half of Section 302(b), which prohibits publishing anything indicating “that an individual’s patronage of or presence ... is objectionable, unwelcome, unacceptable, or undesirable because of ... sexual orientation, gender identity or expression,” among other traits, MCL 37.2302(b), to mean that a public accommodation “may not publish statements indicating that patrons will be denied service or treated unequally because of a protected characteristic,” Op., R.188, PageID.3692.

But that’s exactly what the first part of the same provision, the Denial Clause, already prohibits. That provision, which is separated from the Unwelcome Clause by an “or,” prohibits publishing anything indicating that the “full and equal enjoyment” of goods or “services” will be “denied” based on a protected characteristic. MCL 37.2302(b). So the

district court's rewriting of the Unwelcome Clause wrote it right out of the statute to reject Christian Healthcare's vagueness challenge. Op., R.188, PageID.3692. And the court relied on the same rewriting two pages later to reject Christian Healthcare's overbreadth challenge. *Id.* at PageID.3694 (referencing "the reasons previously stated" to uphold the provision based on that "narrowing construction").

Without that rewriting, the Unwelcome Clause is unconstitutional on both grounds.

Its "near-synonyms," Op., R.188, PageID.3692, are "not susceptible to objective definition," as "illustrated" by the Commission's witness being "unable to define" them, *United Food*, 163 F.3d at 360. *See* Londo Dep., R.139-2, PageID.2704 (conceding he did not think the Commission has any policy or rules defining the terms and he could not define them).

And the same list of terms—with its focus on the subjective reaction of the person made to feel unwelcome—"unyieldingly sweeps in substantial swaths of protected conduct and speech." *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1213–14 (10th Cir. 2021) (Tymkovich, J., dissenting) (explaining why the same "subjective" terms in Colorado's anti-discrimination law make the provision "both overbroad and vague"). As a result, the district court erred by refusing to enter a permanent injunction against the Unwelcome Clause. And this Court should reverse.

### **III. Christian Healthcare also needs a permanent injunction to prevent enforcement based on its ministerial employment decisions and its pronoun and medical-care policies.**

“Where a plaintiff establishes a constitutional violation ..., the plaintiff will be entitled to permanent injunctive relief upon a showing of: (1) a continuing irreparable injury if the court fails to issue the injunction, and (2) the lack of an adequate remedy at law.” *Warren v. City of Athens*, 411 F.3d 697, 711 (6th Cir. 2005). Here, the Commission, Department, Christian Healthcare, and district court all seem to agree that the First Amendment protects Christian Healthcare’s ministerial hiring decisions and its pronoun and medical-care policies. Despite that, the district court still granted Michigan’s motion for summary judgment. That was error.

When this case started, the Commission and the Department refused to say whether they thought Christian Healthcare’s pronoun and medical-care policies violated ELCRA. Defs.’ Br. Opp. Prelim. Inj., R.18, PageID.510. Once ordered to answer, they were all over the map. On pronouns, they swung from saying the policy is protected “based on current authority,” to claiming a “compelling interest” in overriding it, to “no, I don’t think so. Well—it may be. It may be.” First Suppl. Interrogatories, R.139-3, PageID.2854–55; Johnson Dep., R.139-2, PageID.2461–62; Trevino Dep., R.139-2, PageID.2606–07. On medical care, they went from calling mandated “gender-affirming care” the “least restrictive means for preventing discrimination,” to saying only

that the policy “may” violate ELCRA, to declaring it exempt “unless and until any authority is issued” holding otherwise. Defs.’ Resp. to Second Interrogatories, R.139-3, PageID.2849; Trevino Dep., R.139-2, PageID.2611–12; Third Suppl. Interrogatories, R.102-6, PageID.1950.

On whether the Receptionist qualifies as a “minister,” the Department said no; the Commission said yes; both stipulated no; the Department then called it a “close call” that “could have gone either way”; both called their stipulation “erroneous”; and after they lost their bid to withdraw it, both defended the stipulated position as “supported by the record.” Trevino Dep., R.139-2, PageID.2647–48; Londo Dep., R.139-2, PageID.2712–13; Stips., R.109, PageID.2098; Trevino Dep., R.139-2, PageID.2740; Br. in Supp. of Defs.’ Mot. to Strike, R.150, PageID.3264; Defs.’ Summ. J. Br., R.161, PageID.3362 n.1. Meanwhile, the Attorney General has “concerns” about even the concessions they did make. *Id.* at PageID.3351.

The Commission and Department finally—in their *fourth* supplemental responses—landed on the position that the First Amendment bars enforcement against Christian Healthcare’s pronoun and medical-care policies. Fourth Suppl. Interrogatories, R.139-3, PageID.2878–79; Trevino Dep., R.139-2, PageID.2751; Londo Second Dep., R.139-2, PageID.2770. The Commission admitted that the only thing that changed was “advice of counsel.” Londo Second Dep., R.139-2, PageID.2774; *accord id.* at PageID.2768, 2777; Trevino Dep., R.139-2,

PageID.2750. And at summary judgment, they said they'd concluded "reluctantly" that the First Amendment "likely" protects both policies "under the specific facts of this case," that this "narrow" conclusion "weighs heavily" on them, these are "difficult issues of first impression" on which "reasonable minds may differ," "none" of the cases "are directly on point," the law "is unsettled," and the district court "may reach a different conclusion." Defs.' Summ. J. Br., R.161, PageID.3342, 3371–72, 3378, 3380–82.

Meanwhile, the Attorney General enforces ELCRA, too. Op., R.188, PageID.3660 n.5; Stips., R.109, PageID.2095. The Attorney General also advises the Commission through "legal opinion[s]." Londo Dep., R.139-2, PageID.2692. But the Attorney General never joined the Commission or the Department on pronouns and procedures. Defs.' Summ. J. Br., R.161, PageID.3351. To the contrary, the Attorney General reminded healthcare providers that she challenged restrictions to "access ... gender affirming care" and warned them that "efforts to withhold or deny healthcare services because an individual is transgender would be discriminatory." Letter, R.139-3, PageID.2926.

"The sole function of an action for injunction is to forestall future violations." *United States v. Or. State Med. Soc'y*, 343 U.S. 326, 333 (1952). "All it takes to make the cause of action for relief by injunction is a real threat of future violation or a contemporary violation of a nature likely to continue or recur." *Id.* And it is the "duty of the courts to

beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption.” *Id.*

Christian Healthcare has made its necessary showing here. Pl.’s Summ. J. Br., R.146, PageID.3217–26, 3234–38; Pl.’s Combined Reply, R.171, PageID.3514–15, 3528–31. And Michigan has answered with irreconcilable mid-litigation protestations while conceding that none of its positions are binding on itself going forward, much less binding on Michigan state courts where their enforcement actions against entities like Christian Healthcare will inevitably lead. Londo Dep., R.139-2, PageID.2721; Trevino Dep., R.139-2, PageID.2751–52; Londo Second Dep., R.139-2, PageID.2762.

For its part, the district court relied on Michigan’s concessions that the First Amendment protects Christian Healthcare’s employment policies for ministerial positions, its pronoun and medical-care policies, and its publication of those policies—combined with the Accommodation Clause’s “permitted by law” exception in Section 302(a)—to mean that ELCRA doesn’t prohibit constitutionally protected speech or conduct because “ELCRA, via the First Amendment,” and the “permitted by law” exception allow them, so “declaratory and injunctive relief... is not warranted.” Op., R.188, PageID.3684–90, 3694.

That can't be right. Otherwise, states could add a "permitted by law" exception to every law they pass and buy a get-out-of-injunction-free card. The "anomalous result" that would follow would allow them to do as Michigan has done here: argue that ELCRA is "constitutional and enforceable and yet," when someone challenges it on constitutional grounds, "again come into court saying" that it "does not apply to that proposed speech" or conduct. *ACLU v. Fla. Bar*, 999 F.2d 1486, 1495 (11th Cir. 1993). "This process itself... is enough to chill speech" and religious exercise. *Id.*

Indeed, Michigan's "interpretation would simply lead [courts] into an intellectual cul-de-sac." *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018). If a permitted-by-law exception precludes injunctive relief, "judicial review is a meaningless exercise, precluding resolution of the critical legal issues." *Id.* Meanwhile, the ordinary plaintiff will be left without any options other than to chill his constitutionally protected speech or conduct. After all, "knowledge of what may be constitutionally protected is not readily available to the usual [plaintiff]." *Bernard v. Gulf Oil Co.*, 619 F.2d 459, 470–71 (5th Cir. 1980). "In a real sense, ... silence is the only alternative." *Id.*

The result might be different if the district court had interpreted any of the relevant *substantive* provisions that do not simply incorporate federal constitutional law to "not reach [Christian Healthcare's] conduct." *Christian Healthcare*, 117 F.4th at 860 (Murphy, J.,

concurring). But it did not. The court concluded that Christian Health-care’s claims “fail not because [its] constitutional theories *lack* merit,” *id.* (emphasis added), but because its constitutional claims *have* merit.

In a “context as fraught with litigation as the First Amendment,” a “standard... akin to providing that it exempts all constitutionally protected activities” cannot be enough. *Hunt v. City of L.A.*, 601 F. Supp. 2d 1158, 1171 (C.D. Cal. 2009), *aff’d on that ground*, 638 F.3d 703 (9th Cir. 2011). Where crippling fines “are threatened and expression is involved, the Constitution demands more.” *Id.* at 1171–72.

## CONCLUSION

This Court should reverse the decision below granting Michigan's motion for summary judgment and denying Christian Healthcare's motion for summary judgment and remand for the court to issue Christian Healthcare's requested relief.

Dated: October 23, 2026

Respectfully submitted,

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**FRAP 32(g)**  
**CERTIFICATE OF COMPLIANCE**

This brief complies with the word limit of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,636 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: October 23, 2026

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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2026, I electronically filed the foregoing opening brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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**ADDENDUM**  
**DESIGNATION OF RELEVANT**  
**DISTRICT COURT DOCUMENTS**

Under Sixth Circuit Rules 28(b)(1)(A)(i) and 30(g), Appellant Christian Healthcare Centers, Inc. designates the following district court documents as relevant:

| <b>Record Entry</b> | <b>Description</b>                                                 | <b>Page ID # Range</b> |
|---------------------|--------------------------------------------------------------------|------------------------|
| 1                   | Verified Complaint                                                 | 1-73                   |
| 1-3                 | Exhibit 1 to Complaint – Articles of Incorporation                 | 77-86                  |
| 1-5                 | Exhibit 3 to Complaint – Membership Agreement                      | 111-120                |
| 1-6                 | Exhibit 4 to Complaint – Statement of Faith                        | 121-122                |
| 1-7                 | Exhibit 5 to Complaint – Statement of Values                       | 123-124                |
| 1-8                 | Exhibit 6 to Complaint – Marriage and Human Sexuality Affirmation  | 125-126                |
| 1-10                | Exhibit 8 to Complaint – Position Description: Physician           | 129-131                |
| 1-14                | Exhibit 12 to Complaint – Position Description: Biblical Counselor | 141-143                |
| 1-17                | Exhibit 15 to Complaint – Employment Application                   | 150-153                |

|      |                                                                                                                                                                  |           |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 5-2  | Declaration of Mark Blocher in Support of Plaintiff's Preliminary Injunction Motion                                                                              | 180-187   |
| 5-3  | Declaration of Jeffrey Woo, M.D. in Support of Plaintiff's Preliminary Injunction Motion                                                                         | 188-195   |
| 5-8  | Appendix Part 4 in Support of Plaintiff's Preliminary Injunction Motion                                                                                          | 313-343   |
| 18   | Defendants' Brief in Opposition to Plaintiff's Motion for Preliminary Injunction                                                                                 | 487-529   |
| 20   | Defendants' Brief in Support of Motion to Dismiss                                                                                                                | 542-585   |
| 33   | Defendants' Response in Opposition to Plaintiff's Motion for Reconsideration                                                                                     | 1010-1027 |
| 22-3 | Mark Blocher's Declaration in Support of Plaintiff's Appendix to Opposition to Motion to Dismiss and Reply Brief in Support of its Preliminary Injunction Motion | 667-673   |
| 26-4 | Exhibit B to Notice of Supplemental Authority – Regulatory Impact Statement                                                                                      | 831-845   |
| 54-2 | Mark Blocher's Supplemental Declaration in Support of Plaintiff's Renewed Preliminary Injunction Motion                                                          | 1465-1470 |

|       |                                                                                                                                   |           |
|-------|-----------------------------------------------------------------------------------------------------------------------------------|-----------|
| 54-3  | Supplemental Declaration of Jeffery Woo, M.D. in Support of Plaintiff's Renewed Preliminary Injunction Motion                     | 1471-1473 |
| 65    | Stipulated Order for Preliminary Injunction                                                                                       | 1683-1685 |
| 74-1  | Exhibit A to Plaintiff's Motion to Compel – Defendants' Responses to First Set of Interrogatories                                 | 1702-1710 |
| 74-2  | Exhibit B to Plaintiff's Motion to Compel – Defendants' Responses to Request for Admission                                        | 1711-1726 |
| 84    | Defendants' Response in Opposition to Plaintiff's Motion to Compel Complete Answers to Interrogatories and Requests for Admission | 1773-1786 |
| 89    | Order                                                                                                                             | 1826      |
| 102-6 | Exhibit 4 to Plaintiff's Second Motion to Compel – Third Supplemental Responses to First Set of Interrogatories                   | 1948-1952 |
| 102-7 | Exhibit 5 to Plaintiff's Second Motion to Compel – Second Supplemental Responses to Requests for Admission                        | 1953-1957 |
| 109   | Joint Stipulations                                                                                                                | 2088-2099 |

|       |                                                                                                           |           |
|-------|-----------------------------------------------------------------------------------------------------------|-----------|
| 109-1 | Exhibit A to Joint Stipulations<br>– BFOQ Exemption Application                                           | 2100-2103 |
| 113   | Order                                                                                                     | 2150-2152 |
| 115   | Defendants Partial Objections<br>to Magistrate Judge’s Order on<br>Plaintiff’s Second Motion to<br>Compel | 2223-2243 |
| 135   | Joint Statement of Material<br>Facts                                                                      | 2346-2352 |
| 139-2 | Appendix to Plaintiff’s Brief in<br>Support of Summary Judgment<br>Motion                                 | 2375-2837 |
| 139-3 | Appendix Part 1 in Support of<br>Plaintiff’s Summary Judgment<br>Motion                                   | 2838-2938 |
| 139-4 | Appendix Part 2 in Support of<br>Plaintiff’s Summary Judgment<br>Motion                                   | 2939-3027 |
| 139-5 | Appendix Part 3 in Support of<br>Plaintiff’s Summary Judgment<br>Motion                                   | 3028-3124 |
| 145-4 | Mark Blocher’s Declaration in<br>Support of Plaintiff’s Motion for<br>Summary Judgment                    | 3184-3192 |
| 145-5 | Declaration of Jeffery Woo,<br>M.D. in Support of Plaintiff’s<br>Motion for Summary Judgment              | 3193-3196 |
| 146   | Plaintiff’s Brief in Support of its<br>Summary Judgment Motion                                            | 3197-3247 |

|     |                                                                                                                                      |           |
|-----|--------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 150 | Brief in Support of State Defendants' Motion to Strike Certain Stipulated Facts                                                      | 3259-3274 |
| 159 | Order                                                                                                                                | 3328      |
| 161 | Defendants' Brief in Support of their Cross Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment | 3331-3389 |
| 168 | Transcript of Motion to Strike Hearing                                                                                               | 3413-3456 |
| 169 | Defendants' Objections to Magistrate Judge's Order on Motion to Withdraw or Amend Their Response to Request for Admission No. 20     | 3457-3467 |
| 171 | Plaintiffs' Combined Reply in Support of its Summary Judgment Motion and Response to Defendants' Cross-Motion for Summary Judgment   | 3490-3538 |
| 174 | Memorandum Opinion and Order                                                                                                         | 3595-3605 |
| 188 | Opinion and Order                                                                                                                    | 3651-3695 |
| 189 | Judgment                                                                                                                             | 3696      |
| 190 | Notice of Appeal                                                                                                                     | 3697-3699 |