IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

BELLA HEALTH AND WELLNESS, DENISE "DEDE" CHISM, ABBY SINNETT, and KATHLEEN SANDER, on behalf of themselves and their patients,

Plaintiffs,

CHELSEA M. MYNYK,

Plaintiff-Intervenor,

v.

PHIL WEISER, in his official capacity as Attorney General of Colorado; BERNARD JOSEPH FRANTA, LORI RAE HAMILTON, KARRIE TOMLIN, LENNY ROTHERMUND, HAYLEY HITCHCOCK, ALISSA M. SHELTON, PHYLLIS GRAHAM-DICKERSON, BRANDY VALDEZ MURPHY, DIANE REINHARD, NICHELE BRATTON, and AECIAN PENDLETON, in their official capacity as members of the Colorado State Board of Nursing,

Defendants.

Case No. 1:23-cv-939-DDD-SBP

PLAINTIFF-INTERVENOR'S MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

INTRODUCTION

Chelsea Mynyk is a Colorado nurse practitioner who is devoted to honoring the dignity of the women and children she serves. Consistent with her religious and pro-life beliefs, she provides abortion pill reversal: a safe and effective protocol that uses supplemental progesterone, a natural hormone, to counter the effects of the abortion drug mifepristone, a synthetic steroid that blocks progesterone receptors. Mrs. Mynyk has two patients who have given birth to healthy babies after availing themselves of abortion pill reversal ("APR") and a third that is due in April.

Yet Colorado bans this life-saving practice. That infringes on three of Mrs. Mynyk's constitutional rights. *First*, the ban prohibits her from freely exercising her religious obligation to help women who wish to save their babies after taking the abortion drug mifepristone. *Second*, it infringes on her right to free speech by preventing her from advertising her life-saving services. *Third*, the advertising restriction violates Mrs. Mynyk's due process rights because it is unconstitutionally vague. There is no genuine dispute of material fact, and Mrs. Mynyk moves for judgment as a matter of law on all her constitutional claims.

STATEMENT OF UNDISPUTED FACTS

I. Mrs. Mynyk is religiously obligated to provide APR.

1. Chelsea Mynyk is a Colorado-licensed advanced practice nurse and certified nurse midwife who is authorized to prescribe and administer medication under Colorado law. Intervenor's Verified Complaint ("Comp."), ECF No. 140 ¶¶ 30, 32; Nursing Board's Answer ("NB Ans."), ECF No. 153 ¶¶ 30, 32; Attorney General's Answer ("AG Ans."), ECF No. 150 ¶ 30.

2. She provides medical care to women and babies through her limited liability company, Castle Rock Women's Health. Comp. ¶ 39.

3. Her services include well-women's care, prenatal care up to 20 weeks gestation, STD/STI testing and treatment, fertility awareness education, progesterone therapy, school physical exams, childbirth preparation and classes, breastfeeding support, menopause preparation, hormone/fertility awareness, and APR. *Id.* ¶ 41.

4. She provides all her services for free or at low cost and her practice does not generate enough income to exceed expenses. *Id.* ¶ 40. She never charges for APR. Chelsea Mynyk Decl. ¶ 8 (Ex. 1).

5. As a Christian nurse, Mrs. Mynyk bases her medical practice on her religious beliefs as reflected in Psalm 139:14, "I will praise Thee for I am fearfully and wonderfully made." Comp. ¶¶ 44–45.

6. She believes that pregnancy and childbirth are beautiful and natural processes, and she is devoted to honoring the God-given dignity of the women and children she serves. *Id.* ¶ 53.

7. These beliefs require her to value life at every stage, speak God's truth and love to women, and support and encourage women through their individual journeys. *Id.* ¶ 46.

8. Consistent with her commitment to honor the God-given dignity of her patients and provide life-affirming health care, Mrs. Mynyk offers supplemental

progesterone to pregnant women experiencing threatened miscarriage, including women who have taken the abortion drug mifepristone but then wish to continue their pregnancies—a process known as abortion pill reversal. *Id.* ¶ 56–57; NB Ans. ¶ 57.

9. She considers it a religious obligation to provide treatment for pregnant mothers and to protect unborn life if the mother seeks to stop or reverse an abortion. Comp. ¶ 34.

10. Refusing to administer supplemental progesterone to a woman who is medically eligible for the procedure and who desires to continue her pregnancy would violate her deeply held religious beliefs. *Id.* ¶ 35.

11. In other words, Mrs. Mynyk is religiously obligated to offer APR so long as she has the means and ability to do so. *Id.* ¶ 106.

12. Mrs. Mynyk advertises her services through various media, including on her website and in brochures. Mynyk Decl. ¶ 26.

13. For instance, Castle Rock's website states that it "promotes the value of life at every stage" and "seeks to provide women of all ages and backgrounds with life-affirming, evidence-based care." Comp. & Answers ¶ 116.

14. The website advertises obstetrics care up to 20 weeks gestation, but Mrs. Mynyk does not provide abortions. Mynyk Decl. ¶ 28.

15. It also affirms Mrs. Mynyk's commitment to saving mothers and babies through APR. Comp. ¶ 117; Mynyk Decl. ¶ 28.

II. Mrs. Mynyk provides APR in a safe and effective manner.

16. Chemical abortion typically involves two drugs: mifepristone and misoprostol. Comp. & Answers ¶¶ 77–78

17. First, a pregnant woman takes mifepristone. Mifepristone blocks a natural hormone called progesterone, which provides essential nutrition to the baby. Comp. & NB Ans. ¶¶ 80–81.

18. Second, 24 to 48 hours later, the patient takes misoprostol, which induces uterine contractions "that mechanically expel the embryo from a woman's uterus, thereby completing the abortion process." Comp. & NB Ans. ¶¶ 84, 86; AG Ans. ¶ 86.

19. Some women change their minds about having an abortion after taking the first drug. Comp. ¶ 87; Def.'s Expert, Rebecca Cohen Depo. ("Cohen Depo.") 116–117, 122 (Ex. 7 to Bella Health's MSJ).

20. If a woman has taken mifepristone, but has not yet taken misoprostol, it is sometimes possible to reverse the effects of mifepristone if fetal death has not yet occurred. Plt.s' Expert, Monique Chireau Wubbenhorst Report 31–32 ("Wubbenhorst Report") (Ex. 6 to Bella Health's MSJ); Cohen Depo. 216–217.

21. Women seeking abortion pill reversal may call an APR hotline to be connected with a provider, like Mrs. Mynyk, trained to prescribe supplemental progesterone treatment. Mynyk Decl. ¶ 19.

22. After receiving a referral for a woman seeking APR, Mrs. Mynyk will call the woman and discuss her situation and, if she is interested in APR, will meet her at the clinic the same or next day. Comp. ¶ 108.

23. Mrs. Mynyk informs each patient that the use of supplemental progesterone to attempt to reverse the effects of mifepristone is an off-label use and that success is not guaranteed. *Id.* ¶ 109.

24. If the patient wants to proceed with APR, Mrs. Mynyk prescribes 400 mg progesterone in capsule form, by mouth, as follows: (1) immediately and again at bedtime the first day (at least 5 hours later); (2) two capsules in the morning and again at night on days 2 and 3; and then (3) two capsules at bedtime until the end of the first trimester. Mynyk Decl. ¶ 23.

25. Her practice is to provide bioidentical progesterone, so named because its chemical structure is identical to natural progesterone. Comp. ¶ 104; Wubbenhorst Report 5.

26. Supplemental progesterone works to reverse the effects of mifepristone by flooding the woman's body with supplemental progesterone to outcompete the mifepristone for the progesterone receptors. Wubbenhorst Report 14–22.

27. Progesterone therapy can save the life of the patient's unborn child. *Id.* at 32.

28. Mrs. Mynyk has treated four APR patients. Mynyk Decl. ¶ 24. Two of those patients have given birth to healthy babies and a third is due in April. *Id.* The remaining patient decided to discontinue treatment. *Id.*

29. Studies show APR is both safe and 65% effective. Wubbenhorst Report 14–22.

30. In addition to these facts, Mrs. Mynyk joins and incorporates ¶¶ 12–74 (including exhibits) of the Bella Health MSJ Statement of Undisputed Material Facts.

III. Colorado passes SB 23-190 banning APR.

31. On April 14, 2023, Governor Jared Polis signed into law Senate Bill 23-190, which has three parts. *See* S.B. 23-190, 74th Gen. Assemb., 1st Reg. Sess. (Colo. 2023), 2023 Colo. Legis. Serv. Ch. 70 (West) [hereinafter SB 23-190].

32. Section 1 declares that it is a deceptive trade practice to "advertis[e] for or provid[e] or offer[] to provide or make available medication abortion reversal." SB 23-190 § 1(3)(b).

33. Section 2 prohibits "disseminat[ing] to the public any advertisement that indicates that the person provides abortions or emergency contraceptives, or referrals for abortions or emergency contraceptives, when the person knows or reasonably should have known … that the person does not provide those specific services." Colo. Rev. Stat. § 6-1-734(2).

34. Section 3 prohibits "prescrib[ing], administer[ing], or attempt[ing] medication abortion reversal … unless the Colorado Medical Board … , the State Board of pharmacy … , and the State Board of Nursing … each have in effect rules finding that it is a generally accepted standard of practice." SB 23-190 § 12-30-120(2)(a). All three boards have since adopted rules enforcing SB 23-190.

35. The Colorado State Board of Nursing's rule provides that "[t]he Board will not treat medication abortion reversal provision, prescription, administration or attempt at any of the preceding conduct with respect to medication abortion reversal as a *per se* act subjecting a licensee to discipline," but "will investigate all complaints related to medication abortion reversal in the same manner that it investigates other alleged deviations from generally accepted standards of nursing practice." 3 Colo. Code Regs. § 716-1:1.35.

36. Because none of the three boards adopted a rule stating that APR is a generally accepted standard of practice, SB 23-190 prohibits Mrs. Mynyk and other medical professionals from prescribing progesterone to reverse the effects of the first abortion pill.

37. In addition to these facts, Mrs. Mynyk joins and incorporates ¶¶ 88–127, 141–48 (including exhibits) of the Bella Health MSJ Statement of Undisputed Material Facts.

IV. Bella Health files suit and Mrs. Mynyk receives a complaint from the Colorado Board of Nursing.

38. The Bella Health Plaintiffs filed suit challenging SB 23-190. ECF No. 1, Bella Health Comp.

39. This Court entered a temporary restraining order and later a preliminary injunction prohibiting enforcement of SB 23-190 against the Bella Health Plaintiffs. ECF No. 8, TRO; ECF No. 113, Prelim. Inj.

40. Then, Mrs. Mynyk received a notice of a Nursing Board complaint. Comp. & NB Ans. ¶ 50. The anonymous complainant alleged that she knew a patient receiving obstetrics care at Castle Rock Women's Health in early January and that Mrs. Mynyk is providing the patient with "abortion reversal medication." *Id.* ¶ 51.

41. As a result, Mrs. Mynyk intervened in Bella Health's lawsuit, ECF No. 139, and this Court extended the preliminary injunction to cover her, ECF No. 147. Mrs. Mynyk thus continues to provide abortion pill reversal care.

LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine issue as to any material fact and … the movant is entitled to judgment as a matter of law." *Bradshaw v. Am. Airlines, Inc.*, 123 F.4th 1168, 1172–73 (10th Cir. 2024).

ARGUMENT [1]

I. Mrs. Mynyk is entitled to summary judgment on her free exercise claims because SB 23-190 is not neutral and generally applicable.

The First Amendment's Free Exercise Clause "protect[s] the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (cleaned up). To prove a free exercise violation, Mrs. Mynyk must "show[] that a government entity has burdened h[er] sincere religious practice pursuant to a policy that is not neutral or generally applicable." *Id.* at 525 (cleaned up). Once Mrs. Mynyk has made that showing, the burden of proof shifts to the State, which must "satisfy strict scrutiny by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.* (cleaned up). The law "must be the least restrictive means" of achieving that interest. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Here, no genuine dispute of material fact exists as to whether SB 23-190 burdens Mrs. Mynyk's sincere religious practice of providing APR. Because SB 23-190 is not neutral and generally applicable and does not satisfy strict scrutiny, Mrs. Mynyk is entitled to judgment as a matter of law on her free exercise claim.

A. SB 23-190 burdens Mrs. Mynyk's sincere religious practice.

"[T]he first questions in any free exercise claim are whether the plaintiff's beliefs are religious in nature, and whether those beliefs are sincerely held." *Kay v.*

[1] In addition to these arguments, Mrs. Mynyk joins and incorporates Part IA, B, C, E, and F of the Bella Health's MSJ (including exhibits).

Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007) (cleaned up). A plaintiff need not show that the specific religious practice in question is "doctrinally required" by her religion, only that her belief is "genuine and sincere." *Id.* at 1220 (cleaned up). These beliefs are burdened "if the challenged action is coercive or compulsory in nature." *Janny v. Gamez*, 8 F.4th 883, 911 (10th Cir. 2021) (cleaned up). This includes "indirect coercion or penalties … not just outright prohibitions." *Id.* at 918 (cleaned up).

Mrs. Mynyk is a devout Christian. Comp. ¶ 44. "She believes that all human life is sacred from conception to natural death," and "she opposes induced abortion as the intentional killing of human life." *Id.* For this reason, she "considers it a religious obligation to provide treatment for pregnant mothers and to protect unborn life if the mother seeks to stop or reverse a [chemical] abortion." *Id.* ¶ 34. To further these beliefs, Mrs. Mynyk has and will continue to provide APR. *Id.* ¶ 36. There is no evidence disputing the sincerity of these beliefs. And as this Court remarked at the preliminary injunction stage, "it is not up to the State or the Court to second-guess the sincerity of [Mrs. Mynyk's] religious motivations or to suggest alternative means of satisfying [her] religious calling." ECF No. 113 at 32.

SB 23-190 prohibits Mrs. Mynyk from abiding by her religious beliefs requiring prescribing supplemental progesterone to attempt to reverse the effects of the abortion drug upon request. Specifically, SB 23-190 and the pending anonymous complaint asking the Nursing Board to enforce it threaten Mrs. Mynyk with professional discipline, including loss of license. Comp. & Answers ¶ 124. That threat burdens Mrs. Mynyk's religious beliefs. *See Trinity Lutheran Church of*

Columbia, Inc. v. Comer, 582 U.S. 449, 463 (2017) ("It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." (cleaned up)). SB 23-190 burdens Mrs. Mynyk's religious practice.

B. SB 23-190 is not neutral and generally applicable because it bans progesterone only for APR and targets religious practitioners.

Laws burdening free exercise must be "neutral and generally applicable" to avoid strict scrutiny. *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1272 (10th Cir. 2024). A state law is not neutral "when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Id.* (cleaned up). "Factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 639 (2018) (cleaned up). And a law "is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Does 1-11*, 100 F.4th at 1272 (cleaned up). Nor is a law generally applicable if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Harmon v. City of Norman, Okla.*, 61 F.4th 779, 794 (10th Cir. 2023) (cleaned up); *see also Tandon v. Newsom*, 593 U.S. 61, 62 (2021) ("[G]overnment regulations are not neutral and generally applicable … whenever they treat *any*

comparable secular activity more favorably than religious exercise."). As this Court held in its preliminary injunction order, the APR Ban is not neutral and generally applicable for three reasons. ECF No. 113 at 32.

1. First, the APR Ban "treats comparable secular activity more favorably than [Mrs. Mynyk's] religious activity." *Id.* It is uncontested that progesterone has been used to support female fertility in various ways for more than fifty years. Wubbenhorst Report 5–6; Cohen Depo. 44–49, 53. For example, progesterone is commonly prescribed to sustain and ensure healthy pregnancies in women with a history of recurrent miscarriages, prevention of preterm birth, support of endometrial function during in vitro fertilization, treatment of absent menstrual periods, treatment of excessive blood loss during menstruation, treatment of premenstrual syndrome, and prevention of irregular thickening of the endometrium during menopause. *Id.* Although progesterone received FDA approval in 1998, all but two of these uses—treatment of endometrial hyperplasia and secondary amenorrhea—are considered off-label. *Id.* Progesterone use during pregnancy is considered extremely safe by obstetricians. Wubbenhorst Report 9–10.

Yet SB 23-190 prohibits only a single use of progesterone—to counter the effects of mifepristone. The State has produced no evidence that progesterone is more dangerous or less effective in that context. Because SB 23-190 does not prohibit comparable secular practices, it is not generally applicable.

2. Second, SB 23-190 and its implementing regulations "contain[] mechanisms for exemptions that undercut the State's expressed interests." ECF No. 113 at 32. "[A]system of individualized exemptions … is one in which case-by-case

inquiries are routinely made." *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1297 (10th Cir. 2004). The Nursing Board's rule implementing SB 23-190 states that "[t]he Board will not treat medication abortion reversal … as a *per se* act subjecting a licensee to discipline," but will investigate complaints "on a case-by-case basis." 3 Colo. Code Regs. § 716-1:1.35. This is precisely the type of "subjective test" that the Free Exercise Clause prohibits. *Axson-Flynn*, 356 F.3d at 1297.

3. Third, SB 23-190's "object and effect is to burden religious conduct in a way that is not neutral." ECF No. 113 at 32. Here, the legislative record shows that "the legislature knew that the burden of [SB 23-190] would primarily fall on religious adherents." *Id.* at 1215. Section 1 of SB 23-190 declares that "[a]nti-abortion centers are the ground-level presence of a well-coordinated anti-choice movement" and that "[s]ome anti-abortion centers go so far as to advertise medication abortion reversal." SB 23-190 § 1(d), (f).

In the debates surrounding the passage of SB 23-190, Senator Janice Marchman, one of the bill's sponsors, explained that the bill's reference to "anti-abortion centers" referred to "faith-based organizations" that offer alternatives to abortion. Comp. & Answers ¶¶ 144–145. She also lamented that "Colorado has more than 50 religious-based" organizations "that encourage women to keep their babies or link them with adoption agencies." *Id.* In the House, Representative Karen McCormick accused "religiously affiliated" organizations of offering information that is "riddled with … guilt-inducing anti-abortion … messages." *Id.* ¶ 151. And Representative Stephanie Vigil complained that "explicitly religious" organizations are "deeply integrated" in "a massive, well-funded, and very intentional movement"

known as the "anti-choice movement." *Id.* ¶ 152. Because the legislative record makes abundantly clear that the Legislature knew SB 23-190 would mainly burden religious adherents, the law is not neutral.

C. SB 23-190 fails strict scrutiny.

Because Mrs. Mynyk has shown that SB 23-190 "burden[s] [her] sincere religious practice pursuant to a policy that is not neutral or generally applicable," SB 23-190 violates the First Amendment "unless the government can satisfy strict scrutiny by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Does 1-11*, 100 F.4th at 1268. At the preliminary injunction stage, "the State has not carried its burden to show that it has narrowly tailored its restrictions to an interest sufficiently compelling to justify an infringement on Plaintiffs' Free Exercise rights." ECF No. 113 at 40.

Section 1 of SB 23-190 states that its purpose is to "stop deceptive trade practices and unprofessional conduct with respect to the provision of abortion services and medication abortion reversal." SB 23-190 § 1(2). But, as explained above, APR works and even the State's expert admits that APR is "biologically plausible," and "[t]the evidence we have is not good enough to say that it doesn't" work. Cohen Depo. at 142, 192.

And the State has not met its burden of "identify[ing] an actual problem in need of solving." *Brown v. Ent Merchs. Ass'n*, 564 U.S. 786, 799 (2011). The Nursing and Medical Boards admit there were no APR complaints before SB 23-190. Bd. Def.

Resp. to Sec. Set of Disc. 14 (Ex. 33 to Bella Health's MSJ). And before and after this Court entered an injunction, the Attorney General has not investigated or taken enforcement action against an APR provider. AG's Resp. to Plain. 4th Disc. Requests, 3 (Ex. 37 to Bella Health's MSJ).

Moreover, SB 23-190 is not a narrowly tailored, least restrictive means to achieve this interest. For example, instead of a ban, Colorado could have enacted an informed consent law to ensure women have all the facts about the risks and benefits of APR.

Finally, "[a]n interest is not drawn in narrow terms if it is overbroad or underinclusive in substantial respects." *Does 1-11*, 100 F.4th at 1273 (cleaned up). SB 23-190 does nothing to "stop deceptive trade practices and unprofessional conduct with respect to the provision of *abortion services*." SB 23-190 § 1(2) (emphasis added). Nor does it regulate any of the other uses of supplemental progesterone outside abortion pill reversal. These omissions demonstrate "the disconnect between its stated purpose and its actual scope." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 775 (2018). Because SB 23-190 is not narrowly tailored to achieve a compelling state interest, it violates the Free Exercise Clause.

II. Mrs. Mynyk is entitled to summary judgment on her free speech claims because SB 23-190 targets pro-life speech.

The First Amendment's Free Speech Clause "protect[s] the freedom to think as you will and to speak as you think." *303 Creative LLC v. Elenis*, 600 U.S. 570, 584 (2023). "Our constitutional tradition stands against the idea that we need

Oceania's Ministry of Truth." *United States v. Alvarez*, 567 U.S. 709, 723 (2012). And as "[t]he Supreme Court has repeatedly recognized," the First Amendment not only protects the rights of speakers, but also the rights of listeners "to receive information." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1118 (10th Cir. 2012). SB 23-190's Advertising Prohibition infringes both Mrs. Mynyk's free speech rights and the rights of her patients to receive information about abortion pill reversal.

A. SB 23-190 is content- and viewpoint-based.

The State "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (cleaned up). A content-based law "targets speech based on its communicative content" by "restricting discussion of a subject matter or topic." *Vidal v. Elster*, 602 U.S. 286, 292–93 (2024) (cleaned up). Viewpoint discrimination is an "egregious form of content discrimination" in which a regulation "targets not subject matter, but particular views taken by speakers on a subject." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). SB 23-190's advertising prohibition is both content- and viewpoint-based.

Section 1 declares that speech about a particular topic—medication abortion reversal—is deceptive. SB 23-190 § 1(3)(b). Because the section "draws distinctions based on the message a speaker conveys" and "cannot be justified without reference to the content of the regulated speech," *Reed*, 576 U.S. at 163–64, it is a content-based regulation of speech.

Furthermore, SB 23-190 is viewpoint-based because it was enacted out of disagreement with the message of what legislators viewed as "anti-abortion centers." Section 1 defines "[a]nti-abortion centers" as entities that "aim to prevent abortions by persuading people that adoption or parenting is a better option." SB 23-190 § 1(1)(c). It then accuses "anti-abortion centers" of using "deceptive advertising tactics," and it mischaracterizes "medication abortion reversal" as "a dangerous and deceptive practice that is not supported by science or clinical standards." *Id.* § 1(1)(e)–(f).

During the legislative debates, Senator Marchman described "anti-abortion centers" as "fake clinics" that "pose as [] comprehensive reproductive healthcare clinic[s]." Comp. & Answers ¶¶ 146, 156. And Representative Elizabeth Epps accused "anti-abortion centers" of employing "rhetoric" telling women that "you are less or incomplete or broken because of the status of your uterus." *Id.* ¶ 149. This legislative history shows that SB 23-190 targeted pregnancy centers *because* of their "anti-abortion" viewpoint. Thus, SB 23-190's advertising prohibition is content- and viewpoint-based and subject to strict scrutiny, *Reed*, 576 U.S. at 171, which it fails.

B. SB 23-190 fails strict scrutiny.

Content- and viewpoint-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 579 U.S. at 163. SB 23-190 also fails this level of review.

While the State may have an interest in prohibiting deceptive or misleading speech about the provision of abortion services and medication abortion reversal, it has no interest in prohibiting Mrs. Mynyk's truthful speech advertising APR, much less a compelling one. Its expert conceded it is "biologically plausible," and "[t]the evidence we have is not good enough to say that it doesn't" work. Cohen Depo. at 142, 192.

Nor is SB 23-190 narrowly tailored to achieve this interest. Colorado could have enacted an informed consent law to ensure that women seeking APR are adequately informed of its risks and benefits. *See NIFLA*, 585 U.S. at 769–70. Instead, it chose to prevent Mrs. Mynyk and other APR providers from advertising or offering the service at all. Because SB 23-190's Advertising Prohibitions are not narrowly tailored to achieve a compelling government interest, they violate the Free Speech Clause of the First Amendment under strict scrutiny. Mrs. Mynyk is entitled to summary judgment on her free speech claim.

III. Mrs. Mynyk is entitled to summary judgment on her vagueness claim.

The Due Process Clause requires "that statutes must give people of common intelligence fair notice of what the law demands of them." *United States v. Lesh*, 107 F.4th 1239, 1246 (10th Cir. 2024) (cleaned up). To prevail on her vagueness claim, Mrs. Mynyk must show (1) that the statute "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits," or (2) that the statute "authorizes or even encourages arbitrary and discriminatory enforcement." *Lesh*, 107 F.4th at 1247 (cleaned up). This "general test of vagueness

applies with particular force in review of laws dealing with speech." *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1233 (10th Cir. 2023) (cleaned up).

Section 2 of SB 23-190 prohibits as a "deceptive trade practice" "any advertisement that indicates that the person provides abortions or emergency contraceptives, or referrals for abortions or emergency contraceptives, when the person knows or reasonably should have known[] … that the person does not provide those specific services." Colo. Rev. Stat. § 6-1-734(2). A person of ordinary intelligence does not know whether a medical practice's advertising of obstetrics care up to 20 weeks gestation "indicates" that the practice "provides abortions or emergency contraceptives, or referrals for abortions or emergency contraceptives" or whether pro-life descriptors like "life-affirming" negate any such potential indication.

Nor does Section 2 offer any standards or guidelines for those authorized to enforce the Colorado Consumer Protection Act as to what sort of advertisement "indicates" that a person "provides abortions or emergency contraceptives, or referrals for abortions or emergency contraceptives." The vagueness is compounded by Section 1(g) which declares that medical professionals "cannot, without misleading them, tell their patients that it may be possible to reverse a medication abortion." (citation omitted). Thus, Section 2 is unconstitutionally vague because it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and it encourages arbitrary and discriminatory enforcement.

CONCLUSION

The First Amendment protects Mrs. Mynyk's rights to provide medical care to women who have taken the abortion drug mifepristone in accordance with her religious beliefs. It also protects her right to advertise this life-saving care to Colorado women. And the Fourteenth Amendment's Due Process Clause prohibits the State from imposing vague restrictions on her speech. Colorado can produce no evidence contradicting the sincerity of Mrs. Mynyk's religious pro-life beliefs or justifying the burdens the challenged law imposes on those beliefs and her speech. Because there is no genuine issue of material fact, Mrs. Mynyk is entitled to judgment as a matter of law on all claims and a permanent injunction.

RESPECTFULLY SUBMITTED THIS 31st day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on January 31st, 2025, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ Kevin H. Theriot
Kevin H. Theriot

CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief complies with LR 56.1(c). The foregoing brief contains 4,705 words.

s/ Kevin H. Theriot
Kevin H. Theriot

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

BELLA HEALTH AND WELLNESS, DENISE "DEDE" CHISM, ABBY SINNETT, and KATHLEEN SANDER, on behalf of themselves and their patients,

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Defendants.

Case No. 1:23-cv-939-DDD-SBP

Declaration of Chelsea Mynyk

Declaration of Chelsea Mynyk

I, Chelsea Mynyk, APN-CNM, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I am a plaintiff in this lawsuit. I am at least 18 years of age and competent to testify. I have personal and professional knowledge of the statements contained in this declaration.

Background

2. I hold a Bachelor of Science in Nursing from Regis University, a Master's in Nursing from Pensacola Christian College, and a post-Master's certificate in certified Nurse Midwifery from the University of Colorado.

3. I am licensed as an advanced practice nurse under Colo. Rev. Stat. section 12-255-111 and a certified nurse midwife under Colo. Rev. Stat. section 12-255-111.5.

4. I am authorized to prescribe and administer medication such as progesterone under Col. Rev. Stat. section 12-255-112.

5. I currently provide medical care to women and babies through my limited liability company, Castle Rock Women's Health ("CRWH").

6. My services include well-woman's care, prenatal care up to 20 weeks gestation (including abortion pill reversal), STD/STI testing and treatment, fertility awareness education, hormone therapy, school physical exams, childbirth preparation classes, breastfeeding support, menopause preparation, and hormone/fertility awareness.

7. My general practice is to consider progesterone therapy where a pregnant woman has any of the following risk factors: prior miscarriage, bleeding in the first trimester, prior pregnancy with preterm labor or delivery, infertility, history of low luteal progesterone, and medications that block progesterone (e.g., mifepristone). If a woman presents with one or more of these risk factors, I usually offer progesterone therapy to reduce the risk of miscarriage and preterm birth.

8. All of these services are provided for free or at low cost. The only time I charge a patient is if insurance may reimburse it. I never charge for abortion pill reversal. CRWH's income has not exceeded expenses since it began operations.

9. I provide these services under my professional licenses in a clinic located in a portion of the bottom floor of my home that has been professionally finished and is equipped as a medical facility with a separate examination room.

10. I provide all medical services within my scope of practice and pursuant to my religious beliefs.

My Religious Beliefs

11. I am a practicing Christian.

12. I believe that all human life is a gift from God and is sacred from conception to natural death. I also believe that pregnancy and childbirth are beautiful and natural processes. I am devoted to honoring the dignity of the women I serve and promoting respect for their unborn children.

13. For this reason, I oppose induced abortion as the intentional killing of human life.

14. I base my practice on my Christian beliefs as reflected in the Bible verse, "I will praise Thee for I am fearfully and wonderfully made." Ps. 139:14. I chose this verse because I believe that God made each person unique, beautiful, and wonderful.

15. My beliefs require me to value life at every stage, speak God's truth and love to women, and support and encourage women through their individual journeys.

16. I am committed to providing the best possible care to all pregnant women, including women who are experiencing threatened miscarriage, regardless of the cause of that threat.

My Provision of Abortion Pill Reversal

17. My commitment to respecting the dignity of my patients extends to women who decided to take the first drug in the abortion-pill regimen before concluding that they wish to continue their pregnancies.

18. Consistent with my commitment to honor the dignity of my patients and provide life-affirming health care, I offer progesterone therapy to all pregnant women experiencing threatened miscarriage—including women who have taken the first abortion pill and then choose to continue their pregnancies.

19. Women seeking abortion pill reversal may call the Abortion Pill Reversal Network hotline to be connected with a provider, like myself, trained to prescribe progesterone treatment.

20. After receiving a referral for a woman seeking APR, I normally call the patient to discuss their situation and preferred treatment.

21. If the patient is interested in APR, I will meet her at my clinic the same or next day.

22. I inform each patient that the use of progesterone to attempt to reverse the effects of mifepristone is an off-label use and that success is not guaranteed. I also have patients sign a consent form describing the APR process, listing the risks and benefits of taking progesterone, referencing initial studies regarding success rates, noting pregnancy may continue even without APR if misoprostol is not taken, and stating "the outcome of your particular reversal attempt cannot be guaranteed."

23. If the patient wants to proceed with APR, I prescribe 400 mg bioidentical progesterone in capsule form, by mouth, as follows: (1) ASAP and at bedtime the first day (at least 5 hours later); (2) two capsules AM and PM on days 2 and 3; and then (3) two capsules at bedtime until the end of the first trimester. I prescribe only bioidentical progesterone, which has a chemical structure that is identical to natural progesterone.

24. Thus far, I have treated four APR patients. Two of those patients have given birth to healthy babies and a third is due in April. The remaining patient decided to discontinue treatment.

25. The primary reason my APR patients seek to reverse their abortion is to save their unborn babies' lives, not economic reasons.

Advertising my Services

26. I advertise my services through various media, including my website and in brochures.

27. My website states that my practice "promotes the value of life at every stage" and "seeks to provide women of all ages and backgrounds with life-affirming, evidence-based care."

28. My website advertises obstetrics care up to 20 weeks gestation, but I do not provide abortions. It also affirms my commitment to saving mothers and babies through APR.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on January 31, 2025.

/s/ Chelsea Mynyk

Chelsea Mynyk