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,

and

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, MACKENZIE ARMANI, 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. 1:23-939-DDD-SBP

PLAINTIFF- INTERVENOR'S VERIFIED COMPLAINT

NATURE OF THE ACTION

1. A new Colorado law targets women who have changed their minds about abortion, forcing them to undergo abortions they seek to avoid.

2. Although Colorado claims to recognize the "fundamental right to continue a pregnancy," this law, SB 23-190, actively thwarts women from making that choice, and makes it illegal for nurses and doctors to assist them or even *inform* them about their options. The law's implementing regulations leave those prohibitions in place, making it professional misconduct for doctors and nurses to assist a woman in attempting to reverse the effects of the first abortion pill.

3. That misguided approach both violates the Constitution and makes Colorado a national and international outlier.

4. Across the country and around the world, pregnant women facing threatened miscarriages are commonly treated with progesterone—a naturally occurring and safe hormone that supports pregnancy. Progesterone helps thicken the uterine lining and suppresses uterine contractions, thereby helping a woman who makes the choice to stay pregnant carry out that choice.

5. Plaintiff-Intervenor, Chelsea M. Mynyk, is an experienced, licensed Nurse Practitioner (aka Advanced Practice Nurse) who regularly provides progesterone to help women facing threatened miscarriages. She has used progesterone this way for seven women over 4 years of practice. And she has treated 30 women with progesterone for other reasons.

6. Mrs. Mynyk is religiously compelled to offer this treatment to women facing threatened miscarriage. She cannot in good conscience turn her back on either her pregnant patient or the pregnancy she seeks Mrs. Mynyk's medical help to continue.

7. In 49 states, it remains perfectly legal for healthcare providers to provide such treatment to women who seek it. But SB 23-190 (including its new implementing regulations and through the CCPA) makes it illegal to give progesterone to one particular group: women who have changed their minds about having an abortion and instead choose to stay pregnant. If Mrs. Mynyk persists in offering progesterone to help these patients carry out their choice, she will be "subject to discipline" by her licensing board and will risk losing her licenses. And by publicizing her willingness to provide this treatment option, Mrs. Mynyk is exposed to crushing financial penalties.

8. Some women initially begin the abortion process by taking a drug called mifepristone—which the FDA describes as "a drug that blocks a hormone called progesterone that is needed for a pregnancy to continue." By blocking progesterone, mifepristone eventually causes an abortion by triggering a miscarriage.

9. But as the Supreme Court has long recognized, the decision to have an abortion is often a stressful one and fraught with consequences. Sometimes women change their minds about whether to follow through with an abortion. Sadly, some women are even tricked, pressured, or physically forced into taking mifepristone in the first place, including women who are victims of sex trafficking.

10. While Colorado allows Mrs. Mynyk and other healthcare providers to use progesterone for all other women facing threatened miscarriage, SB 23-190 makes it illegal for her to offer the same treatment for women facing threatened miscarriage because they initially took mifepristone (whether willingly or not) but now want to remain pregnant. Colorado law would force these women to abort pregnancies they wish to continue.

11. After SB 23-190's enactment, the Colorado Medical, Nursing, and Pharmacy Boards convened to consider the implementing regulations required by the statute. The statute provided that abortion pill reversal would remain unprofessional conduct unless all three Boards deem it a generally accepted standard of practice. None of the three Boards made that finding, leaving the statutory prohibition in place.

12. The Medical Board initially proposed a rule stating it would investigate any complaints about abortion pill reversal on a case-by-case basis. But the political reaction was swift and furious. More than a dozen state senators and representatives submitted a rulemaking comment "express[ing] our dismay and disappointment" in even that proposed rule. Two of the bill sponsors showed up to testify against the draft rule, demanding that the Boards "reconsider your draft rules" and "carefully reread the instructions" in the statute.

13. The Medical Board promptly caved to political pressure. During its final rulemaking hearing on August 17, the Medical Board abandoned its proposed rule. Instead, it announced that using progesterone to reverse the effects of mifepristone is *not* a generally accepted standard of practice. Meanwhile, it will treat complaints about any other form of abortion pill reversal on a case-by-case basis.

14. On September 20, the Nursing Board convened its own final rulemaking hearing. Unlike the Medical Board's categorical approach forbidding progesterone, the Nursing Board's rule states that it will treat complaints about *all forms* of abortion pill reversal on an individualized case-by-case basis.

15. On September 21, the Pharmacy Board convened its final rulemaking hearing. Like the Nursing Board, the Pharmacy Board rejected the Medical Board's

categorical approach, instead opting to treat complaints about all forms of abortion pill reversal on a case-by-case basis.

16. In adopting the final rule, several Pharmacy Board members expressly noted that progesterone is both safe and effective. One Pharmacy Board member recounted that "we dispense a lot of … bioidentical progesterone from my pharmacy …. [I]t's not dangerous to the patient as far as what I've seen." Ex. Y at 11.[1] As the Board Chair put it: "We know that progesterone is safe and effective no matter … what it's being used for." Ex. Y at 17. The end result is a regulatory regime that leaves in place the statutory rule: In the state of Colorado, alone among the 50 states, abortion pill reversal is unprofessional conduct.

17. Since SB 23-190's enactment, numerous women have been referred to Mrs. Mynyk, requesting her help in reversing the effects of mifepristone, and some have received progesterone under her care.

18. Two women are currently receiving abortion pill reversal treatment under Mrs. Mynyk's care, and their pregnancies are progressing normally.

19. SB 23-190 and its implementing regulations would deprive these women and others like them of the ability to exercise their fundamental right to continue their pregnancies, leaving them at risk of being forced to undergo abortions they no longer desire.

20. SB 23-190 and its implementing regulations also force Mrs. Mynyk to imminently choose between exercising her sincerely held religious beliefs by offering these women and their babies life-affirming health care—or facing the loss of her licenses, the loss of her malpractice insurance, and severe financial penalties.

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[1] All exhibits are attached to Bella Health's First Amended Complaint unless stated otherwise.

21. Indeed, Mrs. Mynyk is currently being investigated by the Colorado Board of Nursing for providing progesterone to a patient who took mifepristone.

22. Enforcement of SB 23-190 against Mrs. Mynyk would deprive this woman and Mrs. Mynyk's other abortion pill reversal (APR) patients of the ability to exercise their fundamental right to continue their pregnancies, leaving them at risk of being forced to undergo an abortion they no longer desire. It also would force Mrs. Mynyk to choose between exercising her sincerely held religious beliefs by offering this woman and her child life-affirming health care—or facing the loss of her licenses and severe financial penalties.

23. No public health goal is served by denying Colorado women a treatment available in every other state even to women who have changed their minds and choose to continue their pregnancy after taking one abortion pill.

24. Colorado's decision to single out for draconian penalties progesterone treatment to reverse an unwanted abortion violates Mrs. Mynyk's free exercise rights. She sincerely believes that she is religiously obligated to assist any woman facing a threat of miscarriage who requests her help, whether that risk arises biologically, due to physical trauma, or because she willingly or unwillingly took the first abortion pill. Colorado, in no uncertain terms, now tells Mrs. Mynyk that if she continues to follow her religious beliefs, she risks losing her licenses and faces crushing financial penalties. This is precisely the type of targeting and coercion prohibited by the Free Exercise Clause.

25. SB 23-190 also constitutes an egregious form of content and viewpoint discrimination. It leaves healthcare providers free to publicize any and all progesterone treatments save one—progesterone administered to reverse the effects of the first abortion pill. And it applies only to advertisements falsely indicating the

speaker provides or refers for abortion or emergency contraceptives, explicitly targeting "anti-abortion centers" for their role in the "anti-choice movement." But the First Amendment roundly condemns any governmental attempt to play favorites in this fashion. And it likewise protects a patient's right to receive information. Colorado cannot decide that certain topics are off limits for healthcare providers and their patients just because Colorado does not like the message that women can choose to change their minds. And Colorado cannot target and regulate speech on only one side of the abortion debate.

26. Without immediate relief, Mrs. Mynyk is threatened with the loss of her nurse practitioner license for continuing to help women in need who choose to keep their pregnancies, as well as severe financial penalties merely for publicizing her willingness to help. Without immediate relief, Mrs. Mynyk's patients will be forced to undergo abortions they would choose not to have.

JURISDICTION AND VENUE

27. This action arises under the Constitution and the laws of the United States. This Court has subject-matter jurisdiction under 28 U.S.C. §§1331 and 1343.

28. The Court has authority to issue the declaratory and injunctive relief sought under 28 U.S.C. §§2201 and 2202.

29. Venue lies in this district under 28 U.S.C. §1391(b)(1) and (2).

THE PARTIES

Plaintiff - Intervenor

30. Chelsea Mynyk is 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.

31. She holds 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.

32. She is authorized to prescribe and administer medication such as progesterone under Colo. Rev. Stat. section 12-255-112.

33. Mrs. Mynyk has worked as a pediatric nurse and mom/baby nurse for 20 years and has delivered over 100 babies.

34. With regard to APR, Mrs. Mynyk 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.

35. She cannot refuse to administer progesterone to a woman who desires to continue her pregnancy simply because she took mifepristone.

36. In furtherance of these religious beliefs, Mrs. Mynyk has treated or is now treating three patients with progesterone to reverse the effects of mifepristone.

Defendants

37. Defendant Phil Weiser is the Colorado Attorney General. Weiser "shall prosecute" complaints referred to him by the Colorado State Board of Nursing, *id.* §12-255-119(4)(d). Weiser has authority to investigate and enforce the Colorado Consumer Protection Act. *See id.* §§6-1-103, 6-1-107. Weiser is sued in his official capacity only.

38. Defendants Bernard Joseph Franta, Lori Rae Hamilton, Karrie Tomlin, Lenny Rothermund, Hayley Hitchcock,[2] Mackenzie Armani, Phyllis

[2] As described in Defendants' Notice of Substitution of Parties, Defendant Hayley Hitchcock is no longer a member of the Colorado State Board of Nursing, but will be

Graham-Dicker- son, Brandy Valdez Murphy, Diane Reinhard, Nichele Bratton, and Aecian Pendleton are members of the Colorado State Board of Nursing. As members of the Colorado State Board of Nursing, they exercise investigative, adjudicative, and disciplinary authority over licensees, certificants, and registrants with respect to Colorado Re- vised Statutes, title 12, article 255. *See id.* §12-255-119. These Defendants control the current investigation of Mrs. Mynyk and are sued in their official capacity only.

FACTUAL ALLEGATIONS

39. Mrs. Mynyk provides medical care to women and babies through her limited liability company, Castle Rock Women's Health.

40. All of her services are provided for free or at low cost.

41. Mrs. Mynyk's 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.

42. The services are provided under her professional licenses in a clinic located in a portion of the bottom floor of her home that has been professionally finished and is equipped as a medical facility with a separate examination room.

43. Mrs. Mynyk provides all medical services within her scope of practice and pursuant to her religious beliefs.

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substituted by her successor when that successor is named. ECF No. 82, *see also* Fed. R. Civ. P. 25(d).

44. Mrs. Mynyk is a practicing Christian. She believes that all human life is sacred from conception to natural death. For this reason, she opposes induced abortion as the intentional killing of human life.

45. She bases her practice on her Christian beliefs as reflected in the Bible verse, "I will praise Thee for I am fearfully and wonderfully made." Ps. 139:14. Mrs. Mynyk chose this verse because she believes that God made each person unique, beautiful, and wonderful.

46. Those 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.

47. On or about January 6, 2024, Mrs. Mynyk began providing progesterone to a patient who had taken mifepristone, the first pill of the chemical abortion regimen.

48. That patient signed 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." This signed consent form is in the patient's chart and conforms with 3 CO ADC 716-1:1.35.

49. Mrs. Mynyk follows this same procedure with all of her other APR patients.

50. Mrs. Mynyk received notice of a Colorado State Board of Nursing complaint dated February 12, 2024.

51. The anonymous complainant alleges she knows a patient receiving OBGYN care in Mynyk's home clinic in early January and that Mrs. Mynyk is providing the patient with "abortion reversal medication."

52. Mrs. Mynyk will respond to the complaint on or before March 25, 2024.

53. Mrs. Mynyk believes that pregnancy and childbirth are beautiful and natural processes. She is devoted to honoring the dignity of the women she serves and promoting respect for their unborn children.

54. Mrs. Mynyk is 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.

55. Thus, Mrs. Mynyk's commitment to respecting the dignity of her 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.

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

57. The use of progesterone to treat women who change their minds after taking the first abortion pill is commonly known as "abortion pill reversal."

Progesterone

58. Progesterone is a naturally occurring hormone that is named for its promotion of gestation.[3]

[3] *See* W. M. Allen et al., *Nomenclature of Corpus Luteum Hormone*, 136 Nature 303, 303 (1935) https://perma.cc/DV4P-W5BL (discussing identification of the "progestational hormone").

59. Progesterone plays an essential role in regulating female reproductive function in the uterus, ovaries, mammary glands, and brain. It is particularly critical to the achievement and maintenance of a healthy pregnancy.[4]

60. During the first ten weeks of pregnancy, progesterone is naturally secreted by the corpus luteum (i.e., the remnants of the ovarian follicle that enclosed a developing ovum) while the placenta develops. It is then secreted by the placenta during the remainder of the pregnancy.[5]

61. Progesterone prepares the endometrium (the tissue lining the uterus) to allow implantation and stimulates glands in the endometrium to secrete nutrients for the embryo.[6]

62. Later in pregnancy, progesterone plays a role in the relaxation of smooth muscle cells, promoting uterine relaxation and suppressing uterine contractions prior to delivery.[7]

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[4] *See generally* Lucie Kolatorova et al., *Progesterone: A Steroid with Wide Range of Effects in Physiology as Well as Human Medicine*, 23 Int'l J. Molecular Scis., July 2022, https://perma.cc/V3JE-CGXF.

[5] Jessie K. Cable, Physiology, *Progesterone*, StatPearls Publishing (Michael H. Grider ed., 2022), https://perma.cc/VB6D-JY72.

[6] *See* Arri Coomarasamy et al., PROMISE: first-trimester progesterone therapy in women with a history of unexplained recurrent miscarriages – a randomised, double-blind, placebo-controlled, inter- national multicentre trial and economic evaluation, Health Tech. Assessment, May 2016, at 1, https://perma.cc/4BZH-NUUN.

[7] *See* N.E. Simmons et al., *The long-term effect of prenatal progesterone treatment on child development, behavior and health: a systematic review*, 128 Brit. J. of Obstetrics & Gynaecology 964, May 2021, https://bit.ly/3Ky7SGD.

63. Progesterone has been used to support female fertility in a variety of ways for more than 50 years.[8]

64. Progesterone is commonly prescribed for a host of uses in obstetrics and gynecology, including pregnancy support in patients with a history of recurrent miscarriages, prevention of preterm birth, support of endometrial function during in vitro fertilization, treatment of absent menstrual periods (secondary amenorrhea), treatment of excessive blood loss during menstruation, treatment of premenstrual syndrome, and prevention of irregular thickening of the endometrium (endometrial hyperplasia) during menopause.[9]

65. Progesterone received FDA approval in 1998 for use in treating irregular thickening of the endometrium (endometrial hyperplasia) in post-menopausal women.[10]

66. The FDA historically classified the drugs pregnant women might take into five risk categories (A, B, C, D, or X) to indicate the potential of a drug to cause adverse effects during pregnancy.

67. Progesterone is classified as a "Category B" drug for pregnant women—in the same category as Tylenol, the most commonly used pain reliever during pregnancy.[11]

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[8] *See* Gian Carlo Di Renzo et al., *Progesterone: History, facts, and artifacts*, 69 Best Practice & Rsch. Clinical Obstetrics & Gynaecology 2 (2020), https://bit.ly/3ZH1uAU.

[9] *See* Kolotorova et al., *supra* note 2.

[10] FDA, Approval Letter (Dec. 16, 1998), https://perma.cc/M7T7-VSDL.

[11] FDA, Prometrium Label, at 19, https://perma.cc/CR46-2FTS; *Prometrium Prescribing Information*, Drugs.com, https://perma.cc/RDN3-WNQ8; *see also* Emily Oster, Expecting Better 169 (2016) ("Other than prenatal vitamins, probably the

68. Healthcare professionals may lawfully prescribe or use a prescription drug both for uses suggested on the FDA-approved labeling, *i.e.*, "on-label uses," and for uses not prescribed, recommended, or suggested on the FDA-approved labeling, *i.e.*, "off-label uses." Off-label use of prescription drugs is a widespread and accepted practice in health care.[12]

69. The FDA has long recognized the freedom of healthcare professionals enjoy to prescribe FDA-approved drugs off-label, stating that "[o]nce a [drug] product has been approved for marketing, a physician may prescribe it for uses or in treatment regimens of patient populations that are not included in approved labeling."[13]

70. All uses of supplemental progesterone except for two—treatment of endometrial hyperplasia and secondary amenorrhea—are considered "off-label" uses.

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most common Category B drug is Tylenol," which is "the most commonly used pain reliever during pregnancy.").

[12] *See*, *e.g.,* Agata Bodie, Cong. Rsch. Serv., R45792, Off-Label Use of Prescription Drugs 10 (2021), https://perma.cc/T35U-H8KD (estimating that off-label prescriptions make up as much as 38% of doctor-office prescriptions in the United States (collecting sources)); *see also, e.g., Wash. Legal Found. v. Henney*, 202 F.3d 331, 333 (D.C. Cir. 2000) ("[I]t is undisputed that the prescription of drugs for unapproved uses is commonplace in modern medical practice and ubiquitous in certain specialties.").

[13] Citizen Petition Regarding the Food and Drug Administration's Policy on Promotion of Unapproved Uses of Approved Drugs and Devices; Request for Comments, 59 Fed. Reg. 59820, 59821 (Nov. 18, 1994) (quoting 12 FDA Drug Bulletin, Apr. 1982, at 5, https://perma.cc/A5UJ-C5YL); *see also Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 350 (2001) (explaining that "'off-label' usage … is an accepted and necessary corollary of the FDA's mission to regulate … without directly interfering with the practice of medicine").

71. Obstetricians frequently prescribe drugs for off-label uses during pregnancy.

72. Two recent studies evaluated progesterone to treat unexplained recurrent miscarriage or early pregnancy bleeding.

73. The first study, known as the Progesterone in Recurrent Miscarriages (PROMISE) study, evaluated more than 800 women with unexplained recurrent miscarriages in 45 hospitals in the United Kingdom and the Netherlands. It found a 2.5% greater live birth rate among the women who received progesterone therapy, but concluded there was no "significant difference" in the rate of live births with the use of progesterone.[14] There was also no increased risk of birth defects.

74. The second study, known as the Progesterone in Spontaneous Miscarriage (PRISM) study, followed over 4,000 women at 48 hospitals in the United Kingdom and found a 3% greater live birth rate among the women who received progesterone therapy. The study found no "significantly higher incidence of live births" among all women who received progesterone therapy. But it did identify a differential benefit among women with prior miscarriages, showing a 15% greater live birth rate among women with early pregnancy bleeding and three or more prior miscarriages. It also found no increased risk of birth defects.[15]

75. In November 2021, the UK's National Institute of Health and Care Excellence (NICE) published new guidelines, based on a review of recent studies

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[14] Coomarasamy et al., *supra* note 4.

[15] Arri Coomarasamy et al., *A Randomized Trial of Progesterone in Women with Bleeding in Early Pregnancy*, 380 New Eng. J. Med. 1815 (2019), https://bit.ly/3m0dXCl.

(including the PRISM study), recommending progesterone therapy for women with early pregnancy bleeding and at least one previous miscarriage.[16]

76. The NICE committee specifically noted that "there was no evidence of harms for women or babies" from the use of progesterone, including "no increase in risk of stillbirth, ectopic pregnancy, congenital abnormalities or adverse drug reactions."[17]

The Abortion Pill

77. The abortion pill, also known as "medication abortion," "medical abortion," or "chemical abortion," refers to the use of prescribed drugs to terminate pregnancy, as opposed to surgical abortion.

78. Despite the common term "the abortion pill," the current abortion-pill regimen consists of two drugs: (1) mifepristone (marketed originally as "RU-486" and now as "Mifeprex"), and (2) misoprostol.

79. Mifepristone is a synthetic steroid developed in the 1980s by a research team led by Etienne-Emile Baulieu at the French pharmaceutical company Roussel-Uclaf.[18]

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[16] *Ectopic pregnancy and miscarriage: diagnosis and initial management*, National Institute for Health and Care Excellence (NICE) (updated Nov. 24, 2021), https://perma.cc/Y9TE-KCY5 (Guideline NG126, Recommendation 1.5.2).

[17] *Ectopic pregnancy and miscarriage: diagnosis and initial management*, National Institute for Health and Care Excellence (NICE), 16 (November 2021), https://perma.cc/4W4X-Q95Y (Guideline NG126 Update).

[18] *See generally The Antiprogestin Steroid RU 486 and Human Fertility Control* (Etienne-Emile Baulieu & Sheldon J. Segal eds., 1985), https://bit.ly/3zyNvTs.

80. Mifepristone is a progesterone antagonist, meaning that it binds to—and blocks—the same intracellular receptors as progesterone.[19]

81. As the FDA explains, "Mifepristone is a drug that blocks a hormone called progesterone that is needed for a pregnancy to continue."[20]

82. As Baulieu put it, the progesterone receptors are like a keyhole, and mifepristone is the "false key" that fits the lock but cannot open it.[21]

83. By blocking the progesterone receptors, mifepristone causes the uterine lining to deteriorate, blocking oxygen and nutrition to the developing embryo and eventually resulting in detachment of the embryo from the endometrium. It also softens the cervix and renders the uterus vulnerable to contractions.[22]

84. The second drug in the abortion-pill regimen, misoprostol, binds to smooth muscle cells in the uterine lining, thereby causing contractions that mechanically expel the embryo from a woman's uterus, thereby completing the abortion process.

85. Misoprostol is part of the protocol because mifepristone alone has an incomplete abortion rate of 20–40%, as determined by the end point of complete

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[19] *See id.* at 276 ("Our results confirm that RU 486 behaves as a progesterone antagonist at the receptor level.").

[20] FDA, Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation, https://perma.cc/5XDY-Q4T3.

[21] Cristine Russell, *Chemical Found by French Could Lead to Monthly Birth Control Pill*, Washington Post (Apr. 20, 1982), https://perma.cc/6VA5-5ZXJ.

[22] Mary L. Davenport et al., *Embryo Survival After Mifepristone: A Systematic Review of the Literature*, 32 Issues L. & Med. 3 (2017), https://bit.ly/3ZBFfMN.

uterine expulsion.[23] A recent scoping review indicates that the continuing pregnancy rate after ingesting mifepristone alone is generally 25% or less for gestational ages of up to 49 days.[24]

86. The FDA approved the two-drug abortion pill regimen in 2000. Under the approved protocol, a woman takes mifepristone orally, followed up to 48 hours later by misoprostol.[25]

Abortion Pill Reversal

87. Some women change their mind about terminating their pregnancies after taking mifepristone but before taking misoprostol.

88. Other women do not want to take mifepristone in the first place, but rather take it under duress or because they were tricked or forced.[26]

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[23] Mitchell D. Creinin et al., *Medical abortion in early pregnancy*, in Management of Unintended and Abnormal Pregnancy: Comprehensive Abortion Care 112 (Blackwell Publishing Ltd. 2009), https://perma.cc/3YPB-DL4C.

[24] Paul L.C. DeBeasi, *Mifepristone Antagonization with Progesterone to Avert Medication Abortion: A Scoping Review*, The Linacre Quarterly (July 2023), https://bit.ly/48knDuJ.

[25] FDA, Summary Review for Regulatory Action (Mar. 29, 2016), https://perma.cc/F468-UFEJ.

[26] *See, e.g.,* Lauren Aratani, *Texas man faces charges for allegedly slipping abortion drug in wife's drink*, Guardian (Nov. 14, 2022), https://perma.cc/8NJD-3SSF; *Civil servant guilty of spiking drink with abortion drug*, BBC News (May 3, 2022), https://perma.cc/U43C-C2VU; Andy Wells, *NHS nurse struck off for supplying abortion pills to man who 'force-fed' them to pregnant partner*, Yahoo (Sept. 23, 2021), https://perma.cc/G88T-AXHX; Kevin Murphy, *Abortion-drug dealer pleads guilty, linked to Grand Rapids man accused of poisoning pregnant woman's drink*, Wis. Rapids Trib. (Mar. 5, 2020), https://perma.cc/4JSV-AJ64; Kristine Phillips, *A doctor laced his ex-girlfriend's tea with abortion pills and got three years in prison*, Wash. Post (May 19, 2018), https://perma.cc/W7QM-Q9VZ; Loulla-Mae Eleftheriou-Smith, *Man forced ex-girlfriend to miscarry after secretly feeding her abortion pills in a smoothie*, Independent (Mar. 13, 2015), https://perma.cc/KJF4-E9VX; Lateef

89. When a woman has taken mifepristone (willingly or not) and then wants to keep her pregnancy, it no longer makes sense for her to take misoprostol. So, halting the abortion pill process starts with the patient not taking misoprostol. Healthcare providers may then prescribe progesterone in an attempt to overcome the progesterone-blocking effects of the mifepristone and maintain the pregnancy. Administering progesterone in these circumstances is known as "abortion pill reversal."

90. The basic biochemical premise of abortion pill reversal is that the function of a receptor antagonist (*i.e.*, mifepristone) can be inhibited by increasing the concentration of the receptor agonist (*i.e.*, progesterone).[27] Abortion pill reversal therefore involves administering an influx of progesterone—the same hormone inhibited by mifepristone—to curb and outlast the effects of the mifepristone.

91. Like most other uses of supplemental progesterone, the use of progesterone in abortion pill reversal is an off-label use.

92. The scientific literature demonstrates the ability of progesterone to counteract mifepristone.

93. In 1989, researchers designed a study to investigate "the role of progesterone in the maintenance of pregnancy" by using groups of pregnant rats.[28] After four days, only 33.3% of the rats who received mifepristone remained pregnant,

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Mungin, *Man pleads guilty to tricking pregnant girlfriend into taking abortion pill*, CNN (Sept. 10, 2013), https://perma.cc/RT4R-6LLL.

[27] *See generally* Barbara J. Pleuvry, *Receptors, agonists and antagonists*, 5 Neurosurgical Anaesthesia and Intensive Care, Pharmacology 350 (2004), https://bit.ly/439IXR4.

[28] Shingo Yamabe et al., *The Effect of RU486 and Progesterone on Luteal Function During Pregnancy*, 65 Folia Endocrinologica Japonica 497 (1989), https://perma.cc/FY3C-ADAD.

but 100% of the rats who were given progesterone in addition to mifepristone remained pregnant.

94. In 2018, Dr. George Delgado published an observational case series that followed 754 pregnant women who had taken mifepristone, but had not yet taken misoprostol, and were interested in reversing mifepristone's effects.

95. A total of 547 women met inclusion criteria and underwent progesterone therapy within 72 hours after taking mifepristone.[29] The overall success rate—247 live births, plus four viable pregnancies lost after 20 weeks gestation—was 48%.[30]

96. The 2018 study showed even higher success rates when the patients were divided into treatment subgroups. It showed fetal survival rates of 64% for the subgroup that received progesterone intramuscularly and 68% for the subgroup that received a high dose of oral progesterone followed by daily oral progesterone until the end of the first trimester.[31]

97. The survival rates in the 2018 study compare favorably with the baseline fetal survival rate of approximately 25% if no treatment is attempted after mifepristone is administered.[32]

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[29] George Delgado et al., *A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone*, 33 Issues L. & Med. 21, 24-25 (2018), https://perma.cc/ZR33-UJWF. The 2018 study followed a 2012 case report, also published by Drs. Delgado and Davenport, that followed seven women who had taken mifepristone and then received progesterone therapy after "s[eeking] assistance to block the mifepristone effects." George Delgado et al., *Progesterone use to reverse the effects of mifepristone*, 46 Annals Pharmacotherapy 1723, 1723 (2012), https://perma.cc/3Z7Q-JBRT. Four of the six women who completed the study were able to carry their pregnancies to term.

[30] Delgado et al., *A Case Series*, *supra* note 26, at 25-26.

[31] *Id.* at 26.

[32] *Id.*; *see also* Davenport et al., *supra* note 20.

98. Notably, the 2018 study found no increased risk of birth defects after progesterone therapy. And the rate of preterm delivery was 2.7%, compared with a 10% average in the general population in the United States.[33]

99. In the case of a woman choosing to stop the abortion-pill process after taking mifepristone, the 2018 study recommended a protocol to reverse the effects of mifepristone by administering progesterone, either orally or by intramuscular injection, "as soon as possible" after taking mifepristone, followed by supplemental progesterone until the end of the first trimester (if taken orally) or for a series of additional intramuscular injections.[34]

100. Since the outset of this litigation, two additional studies have been published that further strengthen the evidence that abortion pill reversal is safe and effective.

101. One of those studies is a rat study, published in July 2023, indicating "a clear progesterone-mediated reversal of an initiated mifepristone-induced termination in a rat model at first-trimester human equivalent."[35] The other is a scoping review, also published in July 2023, that shows "no increased maternal or fetal risk from using bioidentical progesterone in early pregnancy," and concludes

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[33] Delgado et al., *A Case Series*, *supra* note 26, at 26.

[34] *Id.* at 29.

[35] Christina Camilleri & Stephen Sammut, *Progesterone-mediated reversal of mifepristone-induced pregnancy termination a rat model: an exploratory investigation,* 13 Scientific Reports 10942 (2023), https://perma.cc/4SAL-DDP3.

that "mifepristone antagonization with progesterone is a safe and effective treatment."[36]

Mrs. Mynyk's Experience with Progesterone Therapy and Abortion Pill Reversal

102. Because progesterone is used to treat so many conditions affecting the female reproductive system, it is one of the most common prescriptions written by Mrs. Mynyk in her OB-GYN practice.

103. Mrs. Mynyk's general practice is to check baseline progesterone levels for patients considering initiating natural progesterone or if a pregnant woman has any of the following risk factors: previous spontaneous miscarriage, infertility, or symptoms or concerns about hormone levels.

104. If a woman presents with one or more of these risk factors, Mrs. Mynyk's practice is to offer progesterone therapy to reduce the risk of miscarriage and preterm birth. Mrs. Mynyk's practice is to prescribe bioidentical progesterone, so named because its chemical structure is identical to natural progesterone.

105. Mrs. Mynyk offers progesterone therapy to her patients at risk of miscarriage, whether that risk arises biologically, due to physical trauma, or because the woman willingly or unwillingly ingested mifepristone.

106. As a matter of conscience, Mrs. Mynyk cannot refuse to help a woman who desires to continue her pregnancy simply because she first took mifepristone. Consistent with her core religious beliefs in human dignity, Mrs. Mynyk is religiously obligated to offer abortion pill reversal so long as she has the means and ability to do so.

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[36] Paul L.C. DeBeasi, *Mifepristone Antagonization with Progesterone to Avert Medication Abortion: A Scoping Review*, The Linacre Quarterly (July 2023), https://bit.ly/48knDuJ.

107. When a woman contacts Mrs. Mynyk seeking abortion pill reversal, her practice is to prioritize that patient's timely care.

108. After receiving a referral for a woman seeking abortion pill reversal, Mrs. Mynyk will call and discuss the patient's inquiry about APR and initiate progesterone therapy. Mrs. Mynyk will meet the woman at the clinic the same or next day, including on nights, weekends, and holidays.

109. Mrs. Mynyk informs each woman that the use of progesterone to attempt to reverse the effects of mifepristone is an off-label use and that success is not guaranteed.

110. If the woman chooses to maintain her pregnancy and wants to proceed with abortion pill reversal, then Mrs. Mynyk offers progesterone therapy, just as in any other circumstance involving risk of miscarriage where progesterone therapy is indicated.

111. Mrs. Mynyk has treated three abortion pill reversal patients and two have successfully maintained their pregnancies. The third patient discontinued treatment.

112. Mrs. Mynyk is intimately involved with her patients' health care and thus shares an inherently close relationship with her patients.

113. Mrs. Mynyk's patients have a strong interest in keeping their personal reproductive health care decisions private.

114. In addition, Mrs. Mynyk's prospective abortion pill reversal patients do not know sufficiently far in advance that they will seek that service and therefore cannot identify themselves and sue *ex ante*. Once those patients can identify themselves, they are in a race against time to access this care before the unwanted abortion takes place.

Mrs. Mynyk's Speech About Her Services

115. Mrs. Mynyk publicizes her services in a variety of media.

116. The "About" page of her website states, "My husband, Daniel, and I are excited to open a women's health clinic in Castle Rock that promotes the value of life at every stage, speaks God's truth and love to women, and supports and encourages women through their individual journeys. Our key verse is Psalms 139:14 "I will praise Thee for I am fearfully and wonderfully made." The foundation of our care is based on this verse that God made each person unique, beautiful and wonderful. Castle Rock Women's Health seeks to provide women of all ages and backgrounds with life-affirming, evidence-based care by both natural and conventional means."

117. Prior to SB 23-190, Mrs. Mynyk's website also affirmed her commitment to saving mothers and babies through Abortion Pill Reversal. She removed that language because the statute now prohibits it.

Reproductive Health Equity Act

118. On April 4, 2022, Governor Jared Polis signed into law the Reproductive Health Equity Act (RHEA). *See* H.B. 22-1279, 73rd Gen. Assemb., Reg. Sess. (Co. 2022), https://perma.cc/9U3B-8UXR.

119. RHEA declares that "[a] pregnant individual has a fundamental right to continue a pregnancy and give birth or to have an abortion and to make decisions about how to exercise that right." Colo. Rev. Stat. §25-6-403(2).

120. To secure that right, RHEA makes it unlawful for a "public entity" to "[d]eny, restrict, interfere with, or discriminate against an individual's fundamental right … to continue a pregnancy and give birth or to have an abortion in the regulation or provision of benefits, facilities, services, or information," or to

"[d]eprive, through prosecution, punishment, or other means, an individual of the individual's right to act or refrain from acting during the individual's own pregnancy based on the potential, actual, or perceived impact on the pregnancy, the pregnancy's outcomes, or on the pregnant individual's health." *Id.* §25-6-404.

121. RHEA defines "[p]ublic entity" as

> the state, the judicial department of the state, any county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

Id. §24-10-103(5); *see id.* §25-6-402(3).

122. RHEA's substantive provisions are based on a series of legislative declarations, including that "Colorado voters have demonstrated that they trust individuals to make their own ethical decisions about abortion care based on what is best for their health and their families," HB 22-1279 §1(1)(f), and that "[p]olitically motivated, medically inappropriate restrictions on health care have no place in our statutes or our medical offices," *id.* § 1(1)(g).

Colorado Nursing Licensing Regime

123. The State Board of Nursing was created by the Nurse and Nurse Aid Practice Act and comprises 11 members appointed by the Governor. *Id.* §§12-255-101, 105. It is funded by legislative appropriations and cash funds derived from regulated entities and federal funding. *See* Colo. Rev. Stat. §12-20-103.

124. As a "regulator" of the nursing profession, the State Board of Nursing may discipline licensees who engage in "conduct that constitutes grounds for discipline or unprofessional conduct." *Id.* §12-20-404(1). Such disciplinary actions

can include, save certain statutory exemptions, issuing a letter of admonition; placing a licensee, certificant, or registrant on probation; imposing an administrative fine; or denying, refusing to renew, revoking, or suspending the license, certification, or registration of an applicant, licensee, certificant, or registrant. *Id.*

125. As a regulator, the board has general authority to impose disciplinary action if it "determines that an applicant, licensee, certificate holder, or registrant has committed an act or engaged in conduct that constitutes grounds for discipline or unprofessional conduct under a part or article of this title 12 governing the particular profession or occupation." *Id.* §12-20-404(1). Such disciplinary actions can include, save certain statutory exemptions, issuing a letter of admonition; placing a licensee, certificant, or registrant on probation; imposing an administrative fine; or denying, refusing to renew, revoking, or suspending the license, certification, or registration of an applicant, licensee, certificant, or registrant. *Id.*

126. The board may issue cease-and-desist orders if it believes "based upon credible evidence as presented in a written complaint by any person, that a licensee, certificate holder, or registrant is acting in a manner that is an imminent threat to the health and safety of the public." *Id.* §12-20-405(1)(a).

127. The Colorado State Board of Nursing has authority to investigate, conduct hearings, and impose disciplinary action for statutory violations, including, *inter alia*, suspension, revocation, or nonrenewal of a license to practice nursing and a fine between $250 and $1,000 per violation. *Id.* §12-255-119(4)(c)(III). If a Board of Nursing investigation discloses "facts … that warrant further proceedings by formal complaint," the Board "should … refer[]" the matter to the attorney general, who then "shall prosecute" the complaint. *Id.* §12-255-119(3)(c)(V).

128. Complaints regarding a licensee's conduct "may be made" to the State Board of Nursing "by any person or may be initiated by an inquiry panel of the board on its own motion." Colo. Rev. Stat. §12-255-119(3)(a)(II).

Colorado Consumer Protection Act

129. The Colorado Consumer Protection Act (CCPA) makes it a "deceptive trade practice" to "knowingly or recklessly make[] a false representation as to the characteristics, … uses, [or] benefits … [of] services," *Colo. Rev. Stat.* §6-1-105(1), (1)(e), or to "knowingly or recklessly engage[] in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice," *id.* §6-1-105(1)(rrr).

130. A deceptive trade practice under the CCPA "requires a false statement of fact that either induces the recipient to act or has the capacity to deceive the recipient." *Renfro v. Champion Petfoods USA, Inc.*, 25 F.4th 1293, 1301–02 (10th Cir. 2022) (quoting *Rhino Linings USA, Inc. v. Rocky Mt. Rhino Lining, Inc.*, 62 P.3d 142, 144 (Colo. 2003)).

131. The CCPA defines "[a]dvertisement" as "the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property." Colo. Rev. Stat. §6-1-102(1)."The attorney general and the district attorneys of the several judicial districts of this state are concurrently responsible for the enforcement of [the Colorado Consumer Protection Act]." Colo. Rev. Stat. §6-1-103.

132. The attorney general and the district attorneys of the judicial districts of Colorado are "concurrently responsible" for CCPA enforcement. *Id.* §6-1-103.

133. The attorney general and the district attorneys may bring a civil action under the CCPA seeking imposition of a civil penalty of up to $20,000 per violation. *Id.* §6-1-112(1)(a). "[A] violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved." *Id.*

134. Private parties who are "actual or potential consumer[s]" and are injured by a deceptive practice can also sue under the CCPA. *Id.* §6-1-113(1)(a). Private claimants can seek damages for the greater of $500, the "amount of actual damages sustained," or three times that amount "if it is established by clear and convincing evidence that such person engaged in bad faith conduct," in addition to the claimant's attorneys' fees and costs. *Id.* §6-1-113(2).

Colorado Senate Bill 23-190

135. On April 14, 2023, Governor Jared Polis signed into law Senate Bill 23-190, a bill for an act "[c]oncerning policies to make punishable deceptive actions regarding pregnancy-related services." SB 23-190 was one of three bills in the so-called "Safe Access to Protected Health Care" legislative package. The full text of SB 23-190 is at Ex. H.

136. SB 23-190 took effect immediately upon signature.

137. Section 1 of SB 23-190 declares, among other things, that "anti-abortion centers" are the "ground-level presence of a well-coordinated anti-choice movement" and engage in "deceptive advertising tactics to target and acquire clients." §1(1)(a), (d)-(e). It specifically accuses "[a]nti-abortion centers" of "go[ing] so far as to advertise medication abortion reversal, a dangerous and deceptive practice that is not sup- ported by science or clinical standards." §1(1)(f).

138. Section 1's final subsection then makes clear that SB 23-190, both on its own and through the CCPA, targets those who wish to publicize or provide

abortion pill reversal. It "declare[s]" that Section 6-1-105(1)(e) and (1)(rrr)—two of the CCPA's prohibitions on deceptive trade practices—"appl[y] to disseminating or causing to be disseminated false advertising relating to the provision of abortion or emergency contraceptive services, or referrals for those services, and *advertising for or providing or offering to provide or make available medication abortion reversal*." §1(3) (emphasis added); *see* Colo. Rev. Stat. §§6-1-105(1)(e); 6-1-105(1)(rrr).

139. Section 2 of SB 23-190 specifically targets speech by those who do not provide or refer for abortion or emergency contraceptives. Specifically, it adds a new provision to the CCPA providing that it is a "deceptive trade practice" to "make[] or disseminate[] 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." §2(2); *see* Colo. Rev. Stat. §6-1-734.

140. Section 3 of SB 23-190 bans abortion pill reversal treatment, making it "unprofessional conduct" for a licensee to "provide[], prescribe[], administer[], or attempt[] medication abortion reversal in this state." §3(2); *see* Colo. Rev. Stat. §12-30-120.

141. Section 3 defines "[m]edication abortion" as "an abortion conducted solely through the use of one or more prescription drugs." §3(1)(b). It separately defines "[m]edication abortion reversal" as "administering, dispensing, distributing, or delivering a drug with the intent to interfere with, reverse, or halt a medication abortion." §3(1)(c).

142. The statute provided a single mechanism to undo its prohibition on abortion pill reversal. Under Section 3, abortion pill reversal is "unprofessional

conduct"—unless the Colorado Medical Board, the State Board of Nursing, and the State Board of Pharmacy, "in consultation with each other," adopt "rules finding that it is a generally accepted standard of practice to engage in medication abortion reversal" by October 1, 2023. §3(2)(a)-(b).

Legislative Record[37]

143. The debate surrounding SB 23-190 shows that it targets religious organizations in Colorado that offer alternatives to abortion, including abortion pill reversal.

144. Senator Janice Marchman, one of the bill's sponsors, stated that SB 23-190 will "crack down on anti-abortion centers," Ex. I at 5, 7 (Press Conference, Mar. 9, 2023), which she described as "fake clinics," *id*. at 2, 4, 6, 8; Ex. J at 2. She explained that the bill's reference to "anti-abortion centers" referred to "faith-based organizations" that offer alternatives to abortion in Colorado. Ex. J at 1 (Senate Judiciary Hearing, Mar. 15, 2023).

145. Marchman lamented that "Colorado has more than 50 religious-based" organizations "that encourage women to keep their babies or link them with adoption agencies," Ex. J at 3, and she accused these "ideologically-driven" religious organizations of "trad[ing] on the goodwill of legitimate medicine to defraud patients" by "us[ing] disinformation, intimidation, shame, and delay tactics to withhold essential and time-sensitive reproductive healthcare" and by "lur[ing] people in and steer[ing] them away from abortion," Ex. I; Ex. J at 2–3.

[37] Citations to legislative sessions in this section are to unofficial transcripts that have been transcribed by a third party. Recordings of the sessions can be found at https://leg.colorado.gov/watch- listen.

146. Marchman also stated that these "fake clinics" were the "only ones that can prescribe abortion pill reversal." Ex. K at 3,4 (Senate Second and Third Reading, Mar. 20, 2023). And she argued that these "fake clinics" must be stopped from offering this "life threatening" procedure. Ex. I at 6.

147. Senator Faith Winter, the bill's other Senate sponsor, accused faith-based organizations of "taking advantage of vulnerable populations" by "purposely target[ing] young people, low-income communities, rural communities, and communities of color." Ex. J at 5.

148. Representative Elisabeth Epps, one of the bill's House sponsors, levied similar charges, accusing "fake clinics" of us[ing] "free pregnancy tests," ultrasounds, and prenatal care as "disinformation, intimidation and delay tactics" and faulting "fake clinics" for "advertis[ing] in languages other than English specifically to target immigrant communities." Ex. I at 8–9.

149. Epps stated that such organizations employ "rhetoric" telling women that "you are less or incomplete or broken because of the status of your uterus." Ex. M at 15 (House Third Reading, Mar. 30, 2023). And she called abortion pill reversal "dangerous," claiming that it causes "harm" to pregnant women, Ex. I at 10, and that taking progesterone to reverse an abortion is as effective as taking "a Tylenol or a Viagra or a juju bean" to achieve the same effect. Ex. M at 16.

150. According to Epps, when it comes to abortion pill reversal and other services provided by religious organizations, "there's not room for nuance." *Id.* at 5.

151. Representative Karen McCormick, the bill's other House sponsor, accused these religious organizations of engaging in a "bait and switch," Ex. M at 2, by "fool[ing] or deceiv[ing] or … outright [lying] to" their patients. *Id.* at 3.

According to McCormick, "religiously affiliated" organizations offer information that is "riddled with … guilt-inducing anti-abortion … messages." *Id.* at 13

152. Representative Stephanie Vigil lamented how "explicitly religious" organizations are "deeply integrated" in "a massive, well-funded, and very intentional movement" known as the "anti-choice movement." *Id.* at 12.

153. These and other accusations caused Sen. James Smallwood, Jr. to describe the bill as "as close to pure vitriolic dribble that I've ever seen" in seven years as a legislator, and to comment that "the sheer lack of even thinly veiled neutrality is just appalling." Ex. K at 5.

154. Bill sponsors explained that SB 23-190 would "prohibit" advertising for abortion pill reversal and "define it as a deceptive trade practice." Ex. J at 2 (Marchman); *see also* Ex. J at 4–5 (Winter). Representative Epps similarly explained that SB 23-190 "prohibits the use of deceptive advertising by these centers and that limits what they market, what they want us to believe is an abortion reversal pill." Ex. I at 10.

155. Bill sponsors also identified the terms "comprehensive" and "full range" of services (or similar terms) as deceptive advertising when used by pro-life providers.

156. For example, Senator Marchman described "anti-abortion center[s]" as "faith-based organizations that *pose as a comprehensive reproductive healthcare clinic*." Ex. J at 2 (emphasis added).

157. Senator Winter claimed that "many anti-abortion centers are *purposefully misleading about offering* unbiased, medically-based … *comprehensive healthcare*. … [A]nti-abortion clinics should not act as though they offer a *full range of reproductive healthcare*." Ex. J at 5 (emphasis added); *see also* Ex. M at 1 (McCormick) ("Comprehensive reproductive care includes the following: access to contraception,

emergency [c]ontraception … [and] abortion or referral for abortion[.]"); Ex. L at 1 (McCormick)(similar).

158. Representative McCormick insisted that "[c]*omprehensive reproductive care includes* [] access to contraception, emergency contraception, . . . *abortion [and] referral for abortion*." Ex. M at 2 (emphasis added); *see also* Ex. L at 2 (similar). She claimed that anti-abortion centers falsely "give consumers the impression that they offer *full reproductive care*." Ex. L at 2 (emphasis added).

159. Legislators opposed to SB 23-190 repeatedly noted that its proponents offered no testimony that any woman in Colorado had been harmed by progesterone treatment of any kind—including abortion pill reversal—nor that any medical licensing board has ever taken action against a healthcare professional for offering abortion pill reversal. *See* Ex. N at 3 (House Third Reading, Apr. 1, 2023) (statement of Rep. Gabe Evans); *id.* at 5 (statement of Rep. Stephanie Luck); *id.* at 8 (statement of Rep. Bob Marshall).

160. To support their statements about abortion pill reversal, the bill's proponents offered testimony from Dr. Mitchell Creinin, an OB-GYN who has served as a paid consultant of Danco Laboratories, the distributor of mifepristone in the United States. Ex. J at 7–16.[38]

[38] *See, e.g.*, Kelly Cleland & Mitchell D. Creinin et al., *Significant Adverse Events and Outcomes After Medical Abortion*, 121 Obstetrics & Gynecology 166, 171 (2013), https://perma.cc/DNJ2-L7VJ (disclosing that Creinin receives compensation from the company that sells Mifeprex as its sole product).

161. Creinin described abortion pill reversal as "medical fraud." Ex. J at 6. He based this conclusion on a failed randomized trial he conducted in 2019 to test the "efficacy and safety" of abortion pill reversal.[39]

162. Creinin's study was intended to enroll 40 pregnant women to be divided into two control groups: one group receiving mifepristone followed by progesterone, and the other group receiving mifepristone followed by a placebo. But only 12 women were enrolled in the study, and only 10 women ultimately completed it.

163. Creinin testified that "[w]e had to stop the study after 12 women were enrolled because three of the women had such significant bleeding that had to be rushed to the emergency room or they called in an ambulance," which he described as "incredibly rare[,] more than rare." Ex. J at 11. He then immediately had to clarify that of those three women, "two of the people had received placebo and one had received progesterone." *Id.* He ultimately testified that "my study was inconclusive as far as showing whether or not the [progesterone] treatment might work." *Id.* at 13.

164. What Creinin's testimony failed to disclose, however, was that "no intervention was needed" for the one woman who had received progesterone and went to the emergency department. Ex. L at 6.

165. By contrast, the two women receiving placebo in Creinin's study "required emergency suction aspiration abortions. They needed secondary surgical abortions because they had retained products and because they were bleeding significantly, severely bleeding. One of them required a blood transfusion because her hemoglobin dropped significantly." *Id.*

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[39] Mitchell D. Creinin et al., *Mifepristone Antagonization With Progesterone to Prevent Medical Abortion: A Randomized Controlled Trial*, 135 Obstetrics & Gynecology 158 (2020), https://perma.cc/8LPN- NSKK.

166. These clarifications about the outcomes of the three affected women in Creinin's study came to light through the testimony of Dr. George Delgado. Delgado also testified about the results of his 2018 study that documented fetal survival rates up to 64-68% for women who received progesterone within 72 hours of taking mifepristone. *See Id.* at 4–9; *see supra* ¶¶ 86–91.

167. Creinin admitted that, even under his view, "it's always possible" that abortion pill reversal could become effective, Ex. J at 14, and that "the FDA does not require randomized control trials for drug approval." Ex. L at 12.

168. Creinin also admitted that no jurisdiction in the United States has ever made a finding that a medical healthcare provider engaged in professional misconduct for administering abortion pill reversal. Ex. J at 14–15.

169. Creinin opined that progesterone should not be used to treat miscarriage, since in his view progesterone "does nothing to increase the likelihood of them having another continuing pregnancy." *Id.* at 11–12; Ex. J at 10.

Procedural History

170. On April 14, 2023, hours after SB 23-190's signing, Plaintiffs sued and moved for a temporary restraining order and preliminary injunction. Dkt. 7. This Court entered a temporary restraining order that night. Dkt. 8.

171. On April 24, this Court held a hearing on Plaintiffs' preliminary injunction motion. Dkt. 46. Following the hearing, the Court declined to enter a preliminary injunction given the State's assurances that it would not enforce SB 23-190 until the rulemaking process had concluded. Dkt. 48 at 4.

SB 23-190 Rulemaking

172. On June 5, 2023, the Colorado Medical Board, Board of Nursing, and Board of Pharmacy held a joint stakeholder meeting to gather "stakeholder feedback

regarding the implementation of []Colorado Senate Bill 23-190." Ex. O at 2; June 5, 2023 Joint Stakeholder Meeting, https://bit.ly/46omD6K.

173. Prior to the June 5 meeting, the Bella Health plaintiffs submitted a public comment explaining "why there is good scientific reason to believe that abortion pill reversal is safe and effective and why the claims about abortion pill reversal in SB 23-190 are unsupported by credible medical data." Ex. P At 2. Plaintiffs also attached an appendix containing the numerous medical journal articles cited in their comment. Written Stakeholder Comments, at 238–779, https://perma.cc/53ZP-HBKF.

174. Dozens of Colorado doctors and nurses filed public comments and made oral statements in support of abortion pill reversal at the June 5 hearing. *See*, *e.g.,* Written Stakeholder Comments, at 166–69, 209–15, https://perma.cc/53ZP-HBKF. These doctors and nurses explained the scientific evidence that abortion pill reversal is safe and effective. They also expressed alarm that SB 23-190 represents an unprecedented intrusion on patient choice and medical freedom.

175. Several women who sought and received abortion pill reversal treatment after taking the first abortion pill—and who went on to deliver healthy babies—also submitted comments urging the Boards not to deprive other women of the ability to change their minds about abortion. *Id.* at 217-18, 878; *see also id.* at 1055–56.

176. On the other side, a handful of opponents of abortion pill reversal also submitted comments. These included a two-page submission from Dr. Mitchell Creinin reiterating his testimony in the Colorado legislature that abortion pill reversal is "misleading" and "medical fraud." *Id.* at 223–25.

177. On July 14, the Medical Board filed a notice of proposed rulemaking in accordance with the Colorado Administrative Procedure Act, including the text of a proposed rule implementing SB 23-190. Dkt. 73; Ex. Q.

178. The proposed rule did not find that abortion pill reversal is unprofessional conduct. It instead stated that "[t]he Board will not treat medication abortion reversal as a per se act of unprofessional conduct. Rather, the Board will investigate all complaints related to medication abortion reversal in the same manner that it investigates other alleged deviations from generally accepted standards of medical practice." Ex. Q at 11.

179. Three bill sponsors of SB 23-190—along with more than a dozen other state senators and representatives—submitted a comment "express[ing] our dismay and disappointment in the proposed 'draft' rules to SB190." Written Stakeholder Comments, at 1238, https://perma.cc/53ZP-HBKF. The legislators emphasized their "frustration" that the draft rule "would have the opposite effect" of their intent in passing SB 23-190—which was to "stop and limit the harm" caused by abortion pill reversal. *Id.*

180. Dozens of organizations that endorsed SB 23-190 also submitted a comment "express[ing] our disappointment in the draft rules" and insisting that abortion pill reversal is unprofessional conduct. *Id.* at 1222–29.

181. New Era Colorado—the self-described "leading voice for young people in Colorado politics"—submitted more than 100 form letters urging the Board to declare that abortion pill reversal is unprofessional conduct "because I believe it is my right to receive safe and well-studied health care treatments to protect my physical and mental health in the state of Colorado." *Id.* at 1069–1188.

182. At the same time, Bella Health and its providers submitted a second rulemaking comment urging the Boards to conclude, in line with all credible medical data, that abortion pill reversal is a generally accepted standard of practice. Ex. T. Numerous other Colorado doctors submitted comments asking the Boards to reach that

same conclusion. *See, e.g.,* Written Stakeholder Comments, at 1020–21, 1045–50, https://perma.cc/53ZP-HBKF.

183. At the second joint stakeholder meeting on August 4, two of the bill sponsors of SB 23-190 showed up to testify against the draft rules.

184. Representative McCormick stated that because abortion pill reversal is "particularly harmful" the "General Assembly has called it out as unprofessional conduct for you in law." Ex. U at 7; August 4, 2023 Joint Stakeholder Meeting, at 16:03–16:16, https://bit.ly/3ZwYAjR. She asked the Boards to "reconsider your draft rules" and "carefully reread the instructions" in the statute. Ex. U at 7; August 4, 2023 Joint Stakeholder Meeting, at 17:14–17:21, https://bit.ly/3ro0KG0.

185. Senator Winter similarly stated that "I just wan[t] [to] make it incredibly clear what the legislative intent was because I don't think these draft rules meet legislative intent." Ex. U at 11; August 4, 2023 Joint Stakeholder Meeting, at 27:53–28:03, https://bit.ly/46kziYC. She further insisted that the draft rule "is not what we wanted. That's not legislative intent. That's actually the reverse of the legislative intent," and she asked the Boards to "hold up legislative intent on what was actually passed." Ex. U at 11; August 4, 2023 Joint Stakeholder Meeting, at 29:16–29:30, https://bit.ly/3PMCSVU.

186. At the final rulemaking hearing on August 17, the Medical Board abruptly reversed course. Ex. V. at 2–4. It now announced that "the Board does not consider administering, dispensing, distributing, or delivering progesterone with the intent to interfere with, reverse, or halt a medication abortion undertaken through the use of mifepristone and/or misoprostol to meet generally accepted standards of medical practice." Dkt. 78. But "[f]or other conduct that could meet the definition of medication abortion reversal, the Board will investigate such deviation on a case-by-case basis." *Id.*

187. Meanwhile, the State Board of Nursing proposed a draft rule that was materially identical to the Medical Board's proposed rule, and thus did not purport to treat abortion pill reversal as a per se act of unprofessional conduct. Ex. R.

188. The Nursing Board held its final rulemaking hearing on September 20, 2023. *See* Ex. W. No sponsors of SB 23-190 testified at that hearing—and the Nursing Board adopted (with one minor modification) the rule it had originally proposed. Ex. X.

189. Thus, the Nursing Board's rule will not treat providing progesterone to counteract the effects of mifepristone as a *per se* act of unprofessional conduct, but will instead evaluate complaints about all forms of abortion pill reversal on an individualized case-by-case basis.

190. On September 21, the Pharmacy Board convened its final rulemaking hearing. The Pharmacy Board also rejected the Medical Board's categorical approach, instead opting to treat complaints about all forms of abortion pill reversal on a case-by-case basis.

191. Notably, several Pharmacy Board members expressly stated that progesterone is both safe and effective. One Pharmacy Board member recounted that "we dispense a lot of … bioidentical progesterone from my pharmacy …. [I]t's not dangerous to the patient as far as what I've seen." Ex. Y at 11. As the Board Chair put it: "We know that progesterone is safe and effective no matter … what it's being used for." Ex. Y at 17.

192. Although the Board rules were effective as of October 1, 2023, all Defendants agreed to a non-enforcement period that expired at 12:00 a.m. on October 24, 2023. Dkt. 88.

Harm to Mrs. Mynyk and her Patients

193. The harm inflicted by SB 23-190 and its implementing regulations on Mrs. Mynyk and the women she serves is massive and imminent.

194. Because of SB 23-190 and its implementing regulations, Mrs. Mynyk is unable to help pregnant women who seek abortion pill reversal without putting her medical licenses at risk. If a woman calls Mrs. Mynyk today seeking abortion pill reversal, she will be forced to choose between complying with SB 23-190 and following her conscience and core religious commitments to help that woman and her unborn child by offering abortion pill reversal.

195. This harm is far from speculative; it is ongoing right now. She is providing APR to two patients and being investigated by the Board of Nursing based on an anonymous complaint regarding one of them.

196. Before SB 23-190 and its implementing regulations, Mrs. Mynyk could have freely exercised her religious obligations to continue providing life-affirming care to these patients and the children they wish to carry to term. And those patients could have freely received medication that may allow them to exercise their "fundamental right" to maintain their pregnancies.

197. Now Mrs. Mynyk stands on the brink of losing her Advanced Practice Nurse license and facing ruinous fines if she continues to follow her sincerely held beliefs by continuing to offer life-affirming care to these patients and their children. And if she bows under the weight of the state's pressure, her patients will forever lose their ability to attempt to undo a deeply significant decision that is fraught with personal consequences.

198. Because in Colorado abortion pill reversal is now unprofessional conduct— and not a generally accepted standard of practice—Mrs. Mynyk also risks

the loss of her malpractice insurance, jeopardizing the future existence of her practice altogether.

199. SB 23-190 separately subjects Mrs. Mynyk to liability if she continues publicizing abortion pill reversal, as she has done in a variety of media over the years.

200. Because of SB 23-190, Mrs. Mynyk has been forced to remove information about abortion pill reversal from her website. Mrs. Mynyk desires to continue publicizing abortion pill reversal but has been chilled from doing so because of SB 23-190. She would immediately resume publicizing abortion pill reversal on her website if SB 23-190 were enjoined.

201. In addition, Mrs. Mynyk will be forced to remove any brochures and handouts that mention abortion pill reversal from her office and incur the costs of reprinting those materials free from any mention of abortion pill reversal. Materials describing Mrs. Mynyk's services including abortion pill reversal are also already on display at many third-party locations.

202. Because Section 1 expressly applies the CCPA's prohibitions on deceptive practices to abortion pill reversal—and because the Colorado legislature has declared abortion pill reversal to be unprofessional conduct—Mrs. Mynyk can no longer continue publicizing abortion pill reversal without risking public and private enforcement actions and ruinous financial penalties.

203. Mrs. Mynyk desires to continue publicizing abortion pill reversal but is chilled from doing so. Every day that Mrs. Mynyk is forced to remain silent about abortion pill reversal, women in Colorado are deprived of information about a highly qualified and local nurse practitioner who would help them if they have willingly or unwillingly taken mifepristone. Absent an injunction, these women may miss the

critical window needed to effectuate their choice to continue their pregnancies, and Mrs. Mynyk will miss the opportunity to help them.

CLAIMS FOR RELIEF

Count I

42 U.S.C. § 1983
Violations of U.S. Const. Amend. I: Free Exercise Clause
Not Generally Applicable (Comparable Secular Activity)

204. Paragraphs 1 through 203 are incorporated by reference.

205. "[L]aws burdening religious practice must be of general applicability." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

206. A law fails general applicability if it "treat[s] *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam).

207. "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* The comparability analysis "is concerned with the *risks* various activities pose," not the "reasons why" people engage in those activities. *Id.* (emphasis added).

208. Consistent with her underlying commitment to the dignity of every human life, Mrs. Mynyk must provide life-affirming medical care to every woman at risk of miscarriage—whether that risk arises biologically, due to physical trauma, or because she has willingly or unwillingly ingested the first abortion pill. As a matter of conscience, Mrs. Mynyk cannot refuse to administer progesterone to a woman

who desires to continue her pregnancy simply because she first took mifepristone. Mrs. Mynyk is therefore religiously obligated to offer abortion pill reversal.

209. Colorado's asserted interest in prohibiting abortion pill reversal is to protect women from "a dangerous and deceptive practice that is not supported by science or clinical standards." SB 23-190 §1(1)(f).

210. But abortion pill reversal is nothing more than supplemental progesterone. And there are a multitude of off-label uses of progesterone, which has been widely prescribed to women—including pregnant women—for more than 50 years.

211. Yet Section 3 and its implementing regulations, as well as Section 1 (on its own and through the CCPA) make no attempt to regulate—much less outright prohibit—the off-label use of progesterone (or any other drug) in any other circumstance. That omission renders SB 23-190 and its regulations not generally applicable.

212. SB 23-190 and its implementing regulations thus trigger strict scrutiny.

213. Colorado has no compelling interest in prohibiting the off-label use of progesterone for abortion pill reversal.

214. Colorado has not selected the least restrictive means to further any governmental interest.

215. Mrs. Mynyk and the women she serves have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

Count II

42 U.S.C. § 1983
Violation of U.S. Const. Amend. I: Free Exercise Clause
Not Generally Applicable (discretionary exemptions)

216. Paragraphs 1 through 203 are incorporated by reference.

217. "[L]aws burdening religious practice must be of general applicability." *Lukumi*, 508 U.S. at 542.

218. A law fails general applicability if it contains "a formal mechanism for granting exceptions [that] invites the government to decide which reasons for not complying with the policy are worthy of solicitude." *Fulton v. City of Philadelphia*, 141 S.Ct. 1868, 1879 (2021) (cleaned up).

219. This is so "*regardless whether any exceptions have been given*," *id.* at 1879, because the mere existence of discretion "undermines the [State's] contention that its [regulations] can brook no departures," *id.* at 1882 (emphasis added).

220. SB 23-190 and its implementing regulations expressly contain such a discretionary system of exemptions.

221. The Nursing and Pharmacy Board regulations afford them unbridled discretion *to evaluate all forms* of abortion pill reversal on a case-by-case basis. Ex. X at 2; Ex. Z at 1.

222. SB 23-190 and its regulations thus trigger "the strictest scrutiny." *Fulton*, 141 S. Ct. at 1881.

223. Colorado has no compelling interest in prohibiting the use of progesterone for abortion pill reversal.

224. Colorado has not selected the least restrictive means to further any governmental interest.

225. Mrs. Mynyk and the women she serves have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

Count III

42 U.S.C. § 1983
Violation of U.S. Const. Amend. I:
Free Exercise Clause Not Neutral

226. Paragraphs 1 through 203 are incorporated by reference.

227. The government is "obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [religious actors'] religious beliefs." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018).

228. "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 141 S. Ct. at 1877.

229. Laws are not neutral when they accomplish a "religious gerrymander." *Lukumi*, 508 U.S. at 535.

230. A religious gerrymander occurs when "the burden of the [law], in practical terms, falls on [religious] adherents but almost no others." *Id.* at 536.

231. A law is also not neutral when "the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body" demonstrate animus toward religion. *Masterpiece*, 138 S. Ct. at 1731.

232. When "'official expressions of hostility' to religion accompany laws or policies burdening religious exercise," courts must "'set aside' such policies without further inquiry." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 n.1 (2022) (quoting *Masterpiece*, 138 S. Ct. at 1732).

233. SB 23-190 and its implementing regulations are not neutral with regard to religion.

234. SB 23-190's legislative history, rulemaking history, and narrow application demonstrate that defendants have proceeded in a manner intolerant of religious beliefs.

235. SB 23-190 and its regulations lack a religious exemption, despite the legislature's awareness of health care providers who feel a religious obligation to provide abortion pill reversal.

236. SB 23-190 and its regulations create a religious gerrymander by targeting a subset of religiously motivated actors while failing to pursue the same alleged state interest against those who provide, prescribe, and administer progesterone off-label for uses other than abortion pill reversal.

237. SB 23-190 and its regulations thus "violate the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint." *Masterpiece*, 138 S. Ct. at 1731.

238. A strict scrutiny defense is not even available for a non-neutral law, *Kennedy*, 142 S. Ct. at 2422 n.1, and Defendants could not satisfy strict scrutiny in any event because they lack a compelling interest and the law is not narrowly tailored.

239. Mrs. Mynyk and the women she serves have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

Count IV

42 U.S.C. § 1983
Violation of U.S. Const. Amend. I: Free Speech Clause Content and Viewpoint Discrimination

240. Paragraphs 1 through 203 are incorporated by reference.

241. Under the First Amendment, "governments have 'no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Nat'l Inst. of Fam. & Life Advocs. v. Becerra (NIFLA)*, 138 S. Ct. 2361, 2371 (2018) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)).

242. A law is content based if it "on its face draws distinctions based on the message a speaker conveys" or if it "cannot be justified without reference to the content of the regulated speech, or [was] adopted by the government because of disagreement with the message the speech conveys." *Reed*, 576 U.S. at 163–64 (cleaned up); *see also City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1471 (2022) ("A regulation of speech is facially content based under the First Amendment if it targets speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed." (cleaned up)).

243. Viewpoint discrimination is "an egregious form of content discrimination," in which "the government 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). A law is viewpoint based "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.*

244. Content-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*, 576 U.S. at 163.

245. Even within a proscribed category of speech, the government may not engage in content or viewpoint discrimination within that proscribed category. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384 (1992) ("[T]he government may

proscribe libel; but it may not make the further content discrimination of proscribing *only* libel critical of the government.").

246. Section 1, both on its own and through the CCPA, and Section 2 of SB 23-190 turn on the content and viewpoint of speech by targeting speech restrictions at "anti-abortion centers," §1(1).

247. Section 1, both on its own and through the CCPA, punishes advertising for abortion pill reversal and prohibits Plaintiff-Intervenor from counseling patients in connection with abortion pill reversal.

248. Section 2 prohibits false advertising only of speakers who do not provide or refer for abortion or emergency contraceptives.

249. Thus, Section 1, both on its own and through the CCPA, and Section 2 are content-based because, "on [their] face," each "draws distinctions based on the message a speaker conveys" and "cannot be justified without reference to the content of the regulated speech, or [was] adopted by the government because of disagreement with the message the speech conveys." *Reed*, 576 U.S. at 163–64 (cleaned up).

250. Section 1, both on its own and through the CCPA, and Section 2 are also viewpoint-discriminatory because each "targets … particular views taken by speakers on a subject." *Rosenberger*, 515 U.S. at 829.

251. Because Section 1, both on its own and through the CCPA, and Section 2 turn on the content and viewpoint of a person's speech and were enacted out of disagreement with the message of "anti-abortion centers," SB 23-190 and its implementing regulations content and viewpoint based and presumptively unconstitutional.

252. Colorado has no compelling interest in targeting the speech of life-affirming OB-GYN medical providers, including nurse practitioners, and pro-life pregnancy centers.

253. Colorado has no compelling interest in prohibiting Mrs. Mynyk from publicizing the availability of abortion pill reversal.

254. Colorado has no compelling interest in prohibiting Mrs. Mynyk from counseling women in connection with abortion pill reversal.

255. Colorado has not selected the least restrictive means to further any government interest.

256. Section 1, both on its own and through the CCPA, and Section 2 have chilled and will chill Mrs. Mynyk's speech about abortion pill reversal, and about her services, under threat of severe financial penalties.

257. Mrs. Mynyk and the women she serves have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

Count V

42 U.S.C. § 1983
Violation of U.S. Const. Amend. I: Free Speech Clause Patients' Right to Receive Information

258. Paragraphs 1 through 203 are incorporated by reference.

259. The First Amendment protects not only the right to disseminate information but also the "reciprocal right to receive" information. *Virginia State Bd. of Pharm. v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 757 (1976); *see also Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) ("[T]he right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own right[] of speech").

260. A patient's right to engage freely in conversations with her doctor is a corollary to the constitutional right to refuse "unwanted medical treatment," *Cruzan v. Director*, 497 U.S. 261, 278 (1990), as well as the right "to bodily integrity," *Washing- ton v. Glucksberg*, 521 U.S. 702, 720 (1997) (citing *Rochin v. California*, 342 U.S. 165 (1952)), which underlies the doctrine of informed consent, *see Schloendorff v. Soc'y of N.Y. Hosp.,* 105 N.E. 92, 92 (N.Y. 1914) (Cardozo, J.).

261. By banning publicizing, providing, administering, or attempting abortion pill reversal, Section 1, both on its own and through the CCPA, and Section 3 of SB 23-190 and its implementing regulations, force women to undergo abortions that they want to avoid. They do so by depriving pregnant women who have taken mifepristone the right to receive from Mrs. Mynyk information on the full range of treatment options available, including the use of progesterone as abortion pill reversal.

262. SB 23-190 and its implementing regulations are content- and viewpoint-based restrictions on speech.

263. Colorado has no compelling interest in depriving women of information about abortion pill reversal and thereby forcing women to undergo abortions that they want to avoid.

264. Colorado has no compelling interest in targeting life-affirming OB-GYN medical providers and pro-life pregnancy centers that publicize abortion pill reversal.

265. Colorado has no compelling interest in targeting life-affirming OB-GYN medical providers, including nurse practitioners, and pro-life pregnancy centers that attempt abortion pill reversal by administering progesterone.

266. Colorado has not selected the least restrictive means to further any government interest.

267. Plaintiff-intervenor's current and prospective patients have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

Count VI

42 U.S.C. § 1983
Violation of U.S. Const. Amend. XIV:
Due Process Clause Void for Vagueness

268. Paragraphs 1 through 203 are incorporated by reference.

269. Under the Due Process Clause of the Fourteenth Amendment, a state statute "is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

270. The void-for-vagueness doctrine requires that a statute define the prohibition "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (collecting cases).

271. The vagueness of speech regulations "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997).

272. Section 2 of SB 23-190 is unconstitutionally vague.

273. Section 2 of SB 23-190 offers no standards or guidelines on what sort of advertisement "indicates" that a person "provides abortions or emergency contraceptives, or referrals for abortions or emergency contraceptives."

274. Section 2 of SB 23-190 does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

275. A person of ordinary intelligence does not know whether a medical practice's advertising of OB-GYN 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.

276. Section 2 of SB 23-190 fails to provide adequate standards or guidelines to govern the actions of those authorized to enforce the Colorado Consumer Protection Act and thus encourages arbitrary and discriminatory enforcement.

277. The lack of adequate standards or guidelines leaves those authorized to bring enforcement actions free to do so based on their personal predilections or for discriminatory purposes, including disapproval of the beliefs, viewpoint, or messages of a particular speaker.

278. The vagueness of Section 2 has an actual chilling effect on Mrs. Mynyk's speech.

279. The vagueness of Section 2 renders SB 23-190 unconstitutionally vague.

280. Mrs. Mynyk has suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

PRAYER FOR RELIEF

Wherefore, Plaintiff-Intervenor requests that the Court:

a. Issue a preliminary and permanent injunction prohibiting Defendants, their agents and employees, and all those acting in concert with them, from enforcing Section 1 of SB 23-190 (on its own and through the CCPA), Section 2 of

SB 23-190, and Section 3 of SB 23-190 and its implementing regulations against Mrs. Mynyk.

b. Declare that SB 23-190 and its implementing regulations are unconstitutional both on their face and as applied to Mrs. Mynyk and her current and prospective patients;

c. Declare that:

1. Section 3 of SB 23-190 and its implementing regulations, and Section 1 of SB 23-190 (on its own and through the CCPA), violate the Free Exercise Clause of the First Amendment to the United States Constitution because they are not generally applicable;
2. SB 23-190 and its implementing regulations violate the Free Exercise Clause of the First Amendment to the United States Constitution because they are not neutral;
3. Section 1 of SB 23-190 (both on its own and through the CCPA) and Section 2 of SB 23-190 violate the Free Speech Clause of the First Amendment to the United States Constitution by discriminating against Plaintiff-intervenor based on the content and viewpoint of her speech;
4. Section 2 of SB 23-190 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by being impermissibly vague;

d. Issue a preliminary injunction and permanent injunction prohibiting Defendants, their agents and employees, and all those acting in concert with them, from taking any enforcement action under Section 3 of SB 23-190 and its implementing regulations and/or Section 1 of SB 23-190 (either on its own and

through the CCPA), against Plaintiff-Intervenor;

e. Issue a preliminary injunction and permanent injunction prohibiting Defendants, their agents and employees, and all those acting in concert with them from taking any enforcement action under Section 2 of SB 23-190, against Plaintiff-Intervenor and all those acting in concert with her, based on the Plaintiff-Intervenor's advertising that she provides OBGYN care up to 20 weeks gestation;

f. Award Mrs. Mynyk reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and

g. Award such other relief as the Court may deem equitable, just, and proper.

Respectfully submitted this 10th day of April, 2024.

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VERIFICATION

I am over the age of 18 and am a Plaintiff in this action. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing VERIFIED COMPLAINT, and the factual allegations thereof, and that to the best of my knowledge the factual allegations alleged therein are true and correct.

Executed on March 20, 2024.

s/Chelsea M. Mynyk
Chelsea M. Mynyk