IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-02177

DOXA ENTERPRISE, LTD d/b/a BORN AGAIN USED BOOKS,

Plaintiff,

vs.

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

Defendants.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Born Again Used Books is a family-owned Christian bookstore in Colorado Springs. The owners believe that God creates each individual either male or female, and that sex is immutable. To stay faithful to these beliefs, Born Again Used Books will not use pronouns, honorifics, or other language inconsistent with a person's sex, such as referring to a male who identifies as a woman as "she" or "Ms." Instead, Born Again Used Books uses biologically accurate language when referring to customers, employees, and anyone else. It would like to formalize this policy, publish it to its employees and customers, and publicly explain the religious basis for the policy, including by writing about it on the Bookstore's blog.

But Colorado makes this illegal. HB25-1312 ("the Act") recently redefined "gender expression" in the Colorado Anti-Discrimination Act (CADA) to include "how an individual chooses to be addressed"—e.g., pronouns and titles based on gender identity, rather than biological sex—so long as the chosen language is not "offensive" or requested for "frivolous purposes." Because CADA forbids public accommodations from discriminating in services and advertisements based on "gender expression," CADA now forces businesses like Born Again Used Books to use biologically inaccurate language in their publications, policies, and customer interactions—on pain of hefty fines and penalties. Although Born Again Used Books happily sells books to everyone, Colorado now compels the bookstore to speak using pronouns and titles based on a person's preferred gender expression—thereby requiring the bookstore to prioritize self-professed identity over biological reality. That violates Born Again Used Books's Christian beliefs. And it violates the First Amendment.

As the Supreme Court has repeatedly affirmed, Colorado has no business trying to excise traditional views about sex and gender from the marketplace of ideas. Nor can it compel Coloradans to speak in ways that violate their deeply held religious beliefs. Born Again Used Books should not have to continually choose whether to violate the law or speak consistently with its Christian beliefs. If an LGBT bookstore can speak and use pronouns consistent with its views about gender identity—and many do—Born Again Used Books should have the same freedom. So Born Again Used Books asks this Court for a preliminary injunction to stop the ongoing chill and violation of its First Amendment rights.

FACTUAL BACKGROUND

I. Born Again Used Books exists to serve the Christian community and spread a Christian message.

Born Again Used Books operates a brick-and-mortar Christian bookstore in Colorado Springs. V.C. ¶ 23. The Bookstore mainly sells used Christian books, classics, and homeschool curricula. V.C. ¶ 27. It is a key provider of Christian literature and homeschool materials in the Colorado Springs area, carrying around 50,000 titles. V.C. ¶ 25.

Born Again Used Books' mission is to provide literature that supports customers in their relationship with God and others. V.C. ¶ 38. To this end, the Bookstore curates its selection according to its Christian faith, refusing to sell books with a message contradicting the store's mission of providing uplifting Christian support. V.C. ¶ 41. The Bookstore's employees recommend books to customers that they believe will provide tailored Christian guidance. V.C. ¶ 54. The employees often pray with customers. V.C. ¶ 56. And Born Again Used Books hosts a blog on

its website, where the Bookstore shares personal reflections from the owners from a Christian perspective. V.C. ¶ 59.

As a Christian business, Born Again Used Books follows Christian teachings—including the belief that God created everyone in His image, male or female, worthy of dignity and respect. V.C. ¶ 4. The store serves and sells everything in it to everyone regardless of gender identity. V.C. ¶¶ 65, 108. That includes customers who present as transgender. *Id.* But the Bookstore cannot speak contrary to its beliefs—to affirm, for example, the view that sex is changeable. V.C. ¶¶ 63–78. So the store cannot use pronouns, titles, or other language contrary to a person's biological sex. *Id.*

Born Again Used Books wants to put this policy in writing, publish it, and share the publication with its employees and the public. *See* V.C. ¶ 84 & Ex. A ("Pronoun Policy"). And it wants to publish a post on its blog explaining to customers the Biblical reasoning for the policy. *See* V.C. ¶¶ 85 & Ex. B ("Pronoun Blog Post"). Born Again Used Books would like to publish its Pronoun Policy and Blog Post to be transparent with customers and employees about its beliefs. V.C. ¶ 83. But the Bookstore has refrained from publishing them out of fear that Colorado will prosecute it. V.C. ¶ 115.

II. Colorado law compels and restricts the Bookstore's speech.

CADA—as amended by the Act—compels and restricts the Bookstore's speech by making its practice of using sex-based pronouns and other biologically accurate language illegal. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014) (standing where plaintiff's intended future speech was "arguably proscribed" by the challenged law).

CADA had defined "gender expression" as "an individual's way of reflecting and expressing the individual's gender to the outside world, typically demonstrated through appearance, dress, and behavior." Colo. Rev. Stat. § 24-34-301(9) (2024). The Act adds an individual's "chosen name" and "how the individual chooses to be addressed." Colo. Rev. Stat. § 24-34-301(9). The Act defines "chosen name" as "a name that an individual requests to be known as in connection to the individual's … gender expression … so long as the name does not contain offensive language and the individual is not requesting the name for frivolous purposes." Colo. Rev. Stat. § 24-34-301(3.5). So if a male identifies as transgender and wants people to address him as a girl, that's now part of his (or, per CADA's mandate, "her") protected category of "gender expression."

These new definitions operate through at least six CADA provisions (the "Challenged Provisions") to compel and restrict the Bookstore's speech.[1] CADA regulates "places of public accommodation" in two sections—one focused on discrimination in public accommodations (Colo. Rev. Stat. § 24-34-601) and one focused on discriminatory advertisements by public accommodations (Colo. Rev. Stat § 24-34-701).

Public Accommodation Provisions. CADA's **"Denial Clause"** makes it unlawful for anyone "directly or indirectly, to refuse, withhold from, or deny to an individual or a group … the full and equal enjoyment of the … privileges, advantages, or accommodations of a place of public accommodation" because of gender expression. Colo. Rev. Stat. § 24-34-601(2)(a). "[A]ny business offering wholesale or retail sales to the public" is a public accommodation subject to these

[1] For ease of reference, each of the Challenged Provisions is in the chart attached as **Exhibit C**.

provisions. Colo. Rev. Stat. § 24-34-601(1). Born Again Used Books sells books to the public, so it is a place of public accommodation subject to CADA.

Born Again Used Books uses biologically accurate pronouns and language with everyone. V.C. ¶¶ 75, 77. That practice matches the "gender expression," as CADA defines it, of people who identify with their natal sex, but clashes for those who don't. So in Colorado's view, using a person's biology-based pronouns if that person identifies as the opposite sex denies that person the "full and equal enjoyment" of the "privileges, advantages, and accommodations" of the Bookstore's business based on "gender expression." Colo. Rev. Stat. § 24-34-601(2)(a).

The original meaning of the phrase "full and equal enjoyment" is broad, covering not merely access to a business's products but "undifferentiated," "equal," and "courteous" treatment from the business at issue.[2] That means public accommodations must provide exactly the same treatment, advantages, and privileges to all regardless of protected traits. *Cf. Telescope Media Grp. v. Lucero (TMG)*, 936 F.3d 740, 748–49, 750 n.2 (8th Cir. 2019) (interpreting similar language this way). But by using exclusively biologically accurate pronouns and titles, Born Again Used Books "den[ies] to transgender individuals the privilege, enjoyed by cisgender individuals, of using pronouns … in accordance with their gender identity." *Christian Healthcare Centers, Inc. v. Nessel ("CHC")*, 117 F.4th 826, 845 (6th Cir. 2024) (holding pronoun use violates a similar denial clause in Michigan law).

Just having a policy to that effect violates the law as Colorado interprets it. 3 Colo. Code Reg. § 708-1.10.2(K) (making discriminatory "practices" illegal); *accord*

[2] Elizabeth Sepper, *The Original Meaning of "Full and Equal Enjoyment" of Public Accommodations*, 11 Cal. L. Rev. Online 572, 584 (2021).

Darren Patterson Christian Acad. v. Roy (Darren Patterson I), 699 F. Supp. 3d 1163, 1175 (D. Colo. 2023) (agreeing that school's policy against using biologically inaccurate pronouns arguably violates similar Colorado anti-discrimination rules); Ex. A. And Colorado regulations already define "[d]eliberately misusing an individual's preferred name, form of address, or gender-related pronouns" as a form of sexual-orientation harassment prohibited by CADA for places of public accommodation. 3 Colo. Code Regs. § 81.6(a)(4). Plus, several states—even states that lack Colorado's new "gender expression" definition—claim that laws much like the Denial Clause compel public accommodations to use biologically inaccurate names, pronouns, and similar language. These include New York,[3] Washington,[4] New Jersey,[5] Vermont,[6] and the District of Columbia.[7] And several entities other than Born Again Used Books read CADA, as amended by the Act, to compel pronouns and similar language. *See Defending Educ. v. Sullivan*, No. 1:25-cv-01572

[3] N.Y. Div. of Hum. Rts., Guidance on Protections from Gender Identity Discrimination under the N.Y. State Hum. Rts. Law 6–7 (2020), https://on.ny.gov/3A3b7k3 (doctor's office calling a biological male "Mr." is unlawful).

[4] Wash. State Hum. Rts. Comm'n, Sexual Orientation & Gender Identity Discrimination is Prohibited under Washington State Law 2, https://bit.ly/3p5JyA8 (refusal to use preferred names or pronouns unlawful).

[5] N.J. Div. on C.R., 5 Things You Should Know about Protection from Discrimination and Harassment in Public Accommodations Based on Gender Identity or Expression (2021), https://bit.ly/3QMwegz (unlawful not to use person's "chosen name, title, or pronoun").

[6] Vermont Hum. Rts. Comm'n, Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont's Anti-Discrimination Law for Stores, Restaurants, Schools, Professional Offices and other Places of Public Accommodation, http://bit.ly/4kRrJA1.

[7] D.C. Mun. Regs. tit. 4, § 808.2(a) (prohibiting "misusing an individual's preferred name form of address or gender-related pronoun").

(D. Colo. 2025); *Comm. of Five dba XX-XY Athletics v. Sullivan*, No. 1:25-cv-01668 (D. Colo. 2025). So Born Again Used Books violates the Denial Clause any time it refuses to use a potential customer's preferred pronouns, title, or other gendered references.

The "**Publication Clause**," prohibits saying that a company will violate the Denial Clause. *See* Colo. Rev. Stat. § 24-34-601(2)(a). The Publication Clause makes it an unlawful discriminatory practice "to publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual … because of … gender expression." Colo. Rev. Stat. § 24-34-601(2)(a).

That covers the Pronoun Policy and Blog Post. Each explains that Born Again Used Books will use only biologically accurate pronouns and titles when referring to customers. Thus, they state that the Bookstore will violate the Denial Clause by denying transgender-identifying individuals the "full and equal enjoyment" of the service of using pronouns consistent with their gender identity. *Id.*

The "**Unwelcome Clause"** makes it unlawful to publish something suggesting "that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of … gender expression." *Id.* Terms like "unwelcome," "objectionable," and "undesirable," which the statute does not define, inherently reference the "subjective experience" of people interacting with the business. *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1212 (10th Cir. 2021) (Tymkovich, C.J., dissenting), *rev'd,* 600 U.S. 570 (2023). So if a male customer who identifies as a woman feels "unwelcome"

because the Bookstore publishes that it won't use feminine pronouns—and that it regards doing so as telling a lie—that publication would violate the Unwelcome Clause. And it's no stretch to think that kind of publication might make a transgender-identifying person feel subjectively "unwelcome" or "objectionable." Indeed, proponents of preferred names and pronouns often point to those considerations to support their position.[8]

Even before Colorado passed the Act, it contended that using biologically accurate references for a transgender-identifying person amounts to "unwelcome conduct" in the employment context that, if repeated, can create a "hostile" or "abusive" environment. Br. of Cal. et al. as Amici Curiae in Supp. of Neither Party, *Tennessee v. Dep't of Educ.*, No. 22-5807, 2022 WL 18027407 at *2 (6th Cir. Dec. 22, 2022). And the Colorado Civil Rights Commission's regulations already affirmed this position for places of public accommodation: "[d]eliberately misusing an individual's preferred name, form of address, or gender-related pronoun" amounts to unlawful harassment. 3 Colo. Code Regs. § 81.6(a)(4). So there's every reason to think that the Bookstore saying that it won't use biologically inaccurate language because such language is a lie would violate the Unwelcome Clause.

Advertisement Provisions. The Bookstore's Pronoun Policy and Blog Post could also lead to criminal liability under the second group of CADA provisions, the Advertisement Clauses. CADA prohibits public accommodations from publishing statements that Colorado considers discriminatory on pain of criminal penalty. Colo. Rev. Stat. § 24-34-705. Born Again Used Books is a public accommodation

[8] *See, e.g.*, Chan Tov McNamara, *Misgendering*, 109 Cal. L. Rev. 2227, 2265–2271 (2021) (contending that "misgendering" causes feelings of embarrassment, disrespect, and subordination).

under the Advertisement Clauses, which incorporate a definition from federal law. *See* Colo. Rev. Stat. § 24-34-301(16) (incorporating the definition from the Americans With Disabilities Act); *see* 42 U.S.C.A. § 12181(7)(e) (place of public accommodation includes a "sales or rental establishment" that "affect[s] commerce").

The **"Denial Advertisement Clause"** makes it unlawful for a public accommodation to "directly or indirectly" "publish" a communication that "[s]tates that any of the accommodations, rights, privileges, advantages, or conveniences of the place shall or will be refused, withheld from, or denied to any person or class of persons on account of" gender expression. *Id.* §§ 24-34-701(1)(b). This has the same effect as the Publication Clause, and publishing Born Again Used Books' Pronoun Policy and Blog Post would violate it for the same reasons.

The **"Discriminatory Advertisement Clause"** makes it unlawful for a public accommodation to "publish, issue, circulate, send, distribute, give away, or display in any way, manner, or shape or by any means or method … any communication … or advertisement of any kind, nature, or description that … [i]s intended or calculated to discriminate or actually discriminates against any person or class of persons on account of … gender expression … in the matter of furnishing or neglecting or refusing to furnish … any … accommodation, right, privilege, advantage, or convenience offered to or enjoyed by the general public." Colo. Rev. Stat. §§ 24-34-701(1)(a). The Pronoun Policy and Blog Post violate this clause because they say that Born Again Used Books will use biologically accurate language rather than "how the individual chooses to be addressed," which discriminates based on gender expression, as Colorado now defines it. And the Pronoun Policy and Blog Post say that the Bookstore regards using the language

Colorado requires as telling a lie. Colorado has already claimed that "pronoun misuse" amounts to unlawful discrimination against transgender-identifying individuals. Br. of Amici Curiae, *Tennessee*, 2022 WL 18027407 at *2. So the Pronoun Policy and Blog Post are discriminatory as Colorado understands that term.

Finally, the **"Unwelcome Advertisement Clause"** makes it unlawful for any owner, employee, or agent of a place of public accommodation to publish anything "directly or indirectly" suggesting that "the patronage, custom, presence, frequenting, dwelling, staying, or lodging at the place by any person or class of persons belonging to or purporting to be of any particular … gender expression … is unwelcome or objectionable or not acceptable, desired, or solicited." *Id.* §§ 24-34-701(1)(c). Just as the Pronoun Policy and Blog Post violate the Unwelcome Clause for potentially making transgender-identifying individuals feel "unwelcome" at Born Again Used Books, so they violate the Unwelcome Advertisement Clause too.

III. Born Again Used Books faces a credible threat of Colorado enforcing CADA for the Bookstore's speech.

There's every reason to believe Colorado will enforce CADA against Born Again Used Books if it published its statement on pronouns and gender ideology.

First, CADA's stated purpose is broad: to "prohibit[] discrimination" and "ensure[] that every Coloradan is free from discrimination." Colo. Rev. Stat. § 24-34-300.7(1). Colorado has declared in many contexts that refusing to use a transgender-identifying person's preferred mode of address is discriminatory. *See, e.g.*, Br. of Amici Curiae, *Tennessee*, 2022 WL 18027407 at *2 ("pronoun misuse" causes harms "cognizable under well-established anti-discrimination case law"); 3 Colo. Code Regs. § 81.6(a)(4) ("Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun" amounts to unlawful

harassment.). Courts have long said they will liberally construe CADA to accomplish that purpose. *ConAgra Flour Mill Co.*, 736 P.2d at 846 (CADA "should be liberally construed in favor of the legal remedies which it provides").

Second, Colorado has repeatedly prosecuted businesses that do not comply with its speech orthodoxy. Take Masterpiece Cakeshop. Colorado prosecuted the cakeshop under CADA for declining to create a custom wedding cake for a same-sex wedding, even though the bakery owner contended that doing so would violate his religious beliefs. Colorado stopped only when the Supreme Court held that the state's hostility and unequal treatment violated the cake designer's freedom of religion. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 640 (2018). Undeterred, Colorado prosecuted the cakeshop again for declining to create a custom cake celebrating a gender transition. Colorado only backed down after the cakeshop sued, and this Court found a plausible basis that Colorado officials had acted in bad faith. *Masterpiece Cakeshop Inc. v. Elenis*, 445 F. Supp. 3d 1226, 1257–58 (D. Colo. 2019).

Third, Colorado has already demonstrated that it views failure to use gender-identity-based pronouns as discrimination and will enforce the law accordingly. Darren Patterson Academy, a private Christian school, recently alleged that its policy of using biologically accurate pronouns and language violated a Colorado funding condition that it "provide eligible children an equal opportunity to enroll and receive preschool services regardless of … gender identity." *Darren Patterson Christian Acad. v. Roy (Darren Patterson II)*, 765 F. Supp. 3d 1194, 1197 (D. Colo. 2025). Colorado didn't disavow this interpretation. *Darren Patterson I*, 699 F. Supp. 3d at 1179–80. And Colorado is now appealing a permanent injunction that

precludes it from defunding Patterson on free-exercise grounds. Civil Appeal, *Darren Patterson Christian Acad. v. Roy*, No. 25-1187 (10th Cir. May 8, 2025).

Born Again Used Books reasonably fears that if it formalized its policy on gender identity and pronouns and spoke about that policy on its blog, Colorado would swoop in to punish it under CADA.

ARGUMENT

To evaluate preliminary-injunction requests, courts consider the likelihood of success on the merits, whether plaintiffs will suffer irreparable harm, whether the balance of harm tips in plaintiffs' favor, and whether an injunction will serve the public interest. *Beltronics USA, Inc. v. Midwest Inventory Distribution, LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009). Likelihood of success "will often be the determinative factor" in First Amendment cases like this one. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (internal quotation marks omitted). That factor predominates "because of the seminal importance of the interests at stake." *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016).

As applied to Born Again Used Books, CADA (I) violates the First Amendment because it compels speech and discriminates based on content and viewpoint. Strict scrutiny applies, and CADA's provisions do not satisfy it. On top of that, some provisions (II) are facially viewpoint-based, overbroad, and vague. And (III) the "gender expression" definition is vague as applied to the Bookstore. Born Again Used Books is thus likely to succeed on the merits and (IV) easily satisfies the other preliminary-injunction factors.

I. CADA's application violates the First Amendment because it compels and restricts Born Again Used Books' speech based on content and viewpoint.

The First Amendment protects "the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). So a speaker has "the autonomy to choose the content of his own message." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024) (affirming right in "exercising editorial discretion in the selection and presentation of content" (cleaned up)). And a speaker may not be compelled to "either speak as the State demands or face sanctions for expressing her own beliefs." *303 Creative*, 600 U.S. at 589.

The Denial Clause (A) unconstitutionally compels Born Again Used Books to speak in ways that affect and undermine its core message. If that were not enough, all of the Challenged Provisions also (B) regulate the Bookstore's speech based on content and viewpoint. Both defects (C) trigger strict scrutiny, which Colorado cannot satisfy. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–65 (2015).

A. The Denial Clause compels Born Again Used Books to speak.

The way Born Again Used Books chooses to refer to individuals constitutes protected speech. The Bookstore interacts with customers and the public using pronouns and titles, both orally and in writing. Engaging in the "spoken or written word" constitutes protected speech. *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219, 1227 (10th Cir. 2021) (internal quotation marks omitted). That doesn't change because the Bookstore is a business or because it operates for profit. First Amendment protections don't disappear in the commercial context. *See Pac. Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1 (1986) (electric company); *303 Creative*, 600 U.S. 570 (website-design company).

A law unconstitutionally compels speech if it forces a speaker to say things she doesn't want to say that affect her message. *303 Creative*, 600 U.S. at 599 (finding CADA violated the First Amendment where it compelled "expressive activity" and "pure speech"); *Hurley*, 515 U.S. at 572–73 (concluding that parade was expressive and that public-accommodation law "alter[ed]" parade's "expressive content"). The Denial Clause does just that.

This clause compels the Bookstore to speak pronouns, titles, and similar language it doesn't want to speak. To refer to individuals consistent with their "gender expression," as defined by the Act, public accommodations must use language consistent with "how [the individual] choose[s] to be addressed." Colo. Rev. Stat. § 24-34-301(9). This requirement, which is incorporated into the Denial Clause, forces Born Again Used Books to make an impossible choice: use words—like pronouns or honorifics—it does not want to, or refrain from speaking at all, which is unrealistic in the context of a brick-and-mortar retail store interacting with potential customers. That undermines the Bookstore's core message.

The Bookstore often engages with potential customers, including those who identify as transgender. V.C. ¶ 78. But Born Again Used Books and its staff do not comply with requests by transgender-identifying individuals to use their preferred pronouns. V.C. ¶ 77. Because the Bookstore refers to those who do not identify as transgender using language that matches their gender identity, the Denial Clause compels the Bookstore to also provide "transgender individuals the privilege … of using pronouns … in accordance with their gender identity." *CHC*, 117 F.4th at 845. To avoid prosecution under the Denial Clause, the Bookstore now must use preferred pronouns and honorifics, like referring to a male customer who identifies as a woman using "she" and "Ma'am." *See supra* pp. 4–6. That is compelled speech.

Complying with CADA's preferred-form-of-address requirements would alter the Bookstore's message. Pronouns "convey a powerful message implicating a sensitive topic of public concern"—gender identity and expression. *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021); *see Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 913–14 (2018) ("gender identity … [is a] sensitive political topic[] … of profound value and concern to the public" (cleaned up)). Born Again Used Books has taken a stance on this topic, using pronouns and titles consistent with customers' and other individuals' sex, not gender identity. In doing so, the Bookstore affirms its view that biology matters and that people cannot change whether they are male or female. That "advance[s] a viewpoint on gender identity." *Merriwether*, 992 F.3d at 509.

By forcing the Bookstore to use biologically inaccurate pronouns, the Denial Clause makes it change its message, speak what the Bookstore regards as a lie, and convey that gender identity trumps biology. This "violates" a "cardinal constitutional command"—forcing Born Again Used Books "to mouth support for views [it] find[s] objectionable." *Janus*, 585 U.S. at 892; *see also Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013) ("It is … a basic First Amendment principle that freedom of speech prohibits the government from telling people what they must say." (internal quotation marks omitted)); *303 Creative*, 600 U.S. at 603 (2023) ("Colorado" cannot "force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance.").

The Sixth Circuit confirmed that forcing someone to use gender-identity-based pronouns unconstitutionally changes the speaker's message. *Meriwether*, 992 F.3d at 498. There, a university forced a professor to use students' chosen pronouns. *Id.* The professor objected because of his "conviction that one's sex cannot be

changed." *Id.* at 508. The university disciplined him, the professor sued, and the Sixth Circuit found a plausible First Amendment violation. *Id.* at 510. Compelling the pronouns forced the professor to say what he didn't want to say. *Id.* at 506–07. And that compulsion altered the "content" of his chosen message on "gender identity—a hotly contested matter of public concern." *Id.* at 508–09. His choice to use biology-based pronouns "concern[ed] a struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes." *Id.* at 508. And for that reason, "his mode of address *was* the message." *Id.*

The same is true for Born Again Used Books. To advocate for its beliefs that each person is created male or female, that sex is immutable, and that saying otherwise is a lie, the Bookstore must use language that recognizes biological sex. Doing otherwise would contradict the Bookstore's beliefs and alter its message. Because the Denial Clause "applie[s] to expressive activity to compel speech," it violates the First Amendment as applied to Born Again Used Books. *303 Creative*, 600 U.S. at 592 (cleaned up).

B. All the Challenged Provisions regulate Born Again Used Books' speech based on content and viewpoint.

All the Challenged Provisions either compel or restrict speech based on content and viewpoint. This triggers strict scrutiny, which Colorado cannot satisfy. *Animal Legal Def. Fund*, 9 F.4th at 1232.

A regulation is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 576 U.S. at 163–65. A regulation is viewpoint-based if it targets "the specific motivating ideology or the opinion or perspective of the speaker…" *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). The Challenged Provisions fail these tests

because they compel identity-based language or forbid biology-based language, favoring one side (viewpoint) in the debate about gender ideology (topic).

Content-based. The Denial Clause is content-based because, as explained above, it compels Born Again Used Books to use particular pronouns and titles, altering the content of its desired speech. *See supra* pp. 4–6. "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech" and constitutes a "content-based regulation of speech." *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 795 (1988); *see Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (same). And by prohibiting the Bookstore from using its desired form of address—biologically accurate pronouns and language—the Denial Clause impermissibly "restrict[s] expression because of its message [and] its content." *Reed*, 576 U.S. at 163.

As explained above, the Publication Clause, Denial Advertisement Clause, and Discriminatory Advertisement Clause preclude the Bookstore from publishing its Pronoun Policy and Pronoun Blog Post because those documents say the Bookstore will violate the Denial Clause and engage in speech Colorado deems discriminatory. *See supra* pp. 7–10. This is so because of the "idea or message expressed": the Bookstore won't use biologically inaccurate language because it regards doing so as a lie. *Reed*, 576 U.S. at 163–65. So these clauses regulate speech based on its content.

The same is true for the Unwelcome Clause and Unwelcome Advertisement Clause. They prohibit speech that might lead a member of a protected class—here, "gender expression"—to feel "unwelcome," like the Pronoun Policy or Pronoun Blog Post. *See supra* pp. 7, 10. Of course, the only way to know if a publication might have that effect is to review the content of the publication. So these clauses are also

content-based regulations. *Chelsey Nelson Photography LLC v. Louisville/Jefferson Cty. Metro Gov't*, 624 F.Supp.3d 761, 802 (W.D. Ky. 2022) (holding that similar clauses are content-based).

Viewpoint-based. The Challenged Provisions are also viewpoint-based because they take a position on an ongoing public debate. The Denial Clause forces all regulated entities to use pronouns promoting the view that sex is mutable. *See supra* pp. 4–6. And the other Challenged Provisions keep regulated entities from speaking contrary to that message. *See supra* pp. 7–10. Born Again Used Books wants to formalize its practice of politely refusing to use biologically inaccurate language in a written policy and write about its beliefs on its blog. V.C. ¶¶ 84–85. Doing so, however, would violate the Publication Clause and Denial Advertisement Clause because the statements "indicate" that the "full and equal enjoyment" of the "privilege" of using preferred names and pronouns is unavailable because of "gender expression." Colo. Rev. Stat. § 24-34-601(2)(a); *id.* § 24-34-701(1)(b) ("State[]" that "privileges … will be refused"); *see CHC*, 117 F.4th at 846 (finding similar notices arguably violated public accommodation publication clause). It would also violate the Discriminatory Advertisement Clause, the Unwelcome Clause, and the Unwelcome Advertisement Clause—it would be publishing information that Colorado considers discriminatory and could make a person feel unwelcome. And just having such a policy could violate the Denial Clause, too. *See* 3 Colo. Code Reg. § 708-1.10.2(K).

But if the Bookstore wanted to adopt the opposite policy—using a transgender-identifying individual's preferred form of address, like gender-identity-based pronouns—the Challenged Provisions would allow it. Same if the Bookstore wrote about that kind of policy on its blog. So businesses that agree with the

government's message are free to use biologically inaccurate pronouns and to promote the view that doing so is good. But businesses that disagree are not free to use biologically accurate language or promote the view that doing so is appropriate. Whether a business's speech violates the law turns entirely on the viewpoint. Like the university policy in *Meriwether*, the Challenged Provisions force the Bookstore "to avoid controversial viewpoints altogether in deference to a state-mandated orthodoxy." *See also 303 Creative*, 600 U.S. at 588 (Colorado employed CADA to "excis[e] certain ideas or viewpoints from the public dialogue" (internal quotation mark omitted)); *Animal Legal Def. Fund*, 9 F.4th 1219 at 1233 (finding viewpoint discrimination because "the Act places pro-animal facility viewpoints above anti-animal facility viewpoints").

This result also discriminates based on viewpoint by allowing one side of an intense public debate to "fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992). And it's no answer to say that declining to use a person's preferred pronouns or form of address is offensive: "[g]iving offense is a viewpoint." *Matal v. Tam*, 528 U.S. 218, 220 (2017). So favoring speech that the government finds benign or laudable while "disapprov[ing] a subset of messages [found] offensive" is classic viewpoint discrimination. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019). But that's what the Challenged Provisions do; they punish speech promoting a particular view of sex and gender that Colorado deems discriminatory while freely allowing speech promoting the view that Colorado favors. This viewpoint discrimination violates the First Amendment.

C. CADA's application to Born Again Used Books triggers per se invalidation but also fails strict scrutiny.

Both compelling speech and viewpoint discrimination are per se improper. *303 Creative*, 600 U.S. at 592, 596 (invalidating compelled speech without applying strict scrutiny); *Matal*, 582 U.S. at 253 (Kennedy, J., concurring in judgment) (viewpoint discrimination only constitutional when the government is speaking). So all of the Challenged Provisions fail as a matter of law.

In addition, the Challenged Provisions cannot survive strict scrutiny—"the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 509 (1997). Under this test, Colorado would have to prove that applying CADA to Born Again Used Books's speech is narrowly tailored to serve a compelling interest. *Reed*, 576 U.S. at 163. It can't.

CADA seeks to "prohibit[] discrimination" and "ensure[] that every Coloradan is free from discrimination." Colo. Rev. Stat. § 24-34-300.7(1). But that interest sets the level of generality too high when "the First Amendment demands a more precise analysis." *See Fulton v. City of Phila.*, 593 U.S. 522, 541 (2021). So Colorado cannot show a compelling interest here. *See FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 477–78 (2007) (plurality) ("A court applying strict scrutiny must ensure that a compelling interest supports each application of a … statute restricting speech.").

To be sure, Colorado has an interest in "assuring its citizens in ensuring "equal access to publicly available goods and services," *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). The Bookstore welcomes and sells books to everyone, so forcing it to use certain pronouns or forgo certain speech does not further any legitimate interest in ensuring equal access to products. Even if the state had a compelling interest in ensuring access to bookstores with gender-identity-based pronoun practices, that would not justify compelling Born Again Used Books to

adopt one. Many other bookstores promote gender ideology. *See* V.C. ¶¶ 165–176. Born Again Used Books may be "unique" (like most independent bookstores, it strives to be so), but that "hardly means a State may coopt [the Bookstore's] voice for its own purposes." *303 Creative*, 600 U.S. at 592.

Nor is regulating the Bookstore's speech "the least restrictive means among available, effective alternatives" to promote any legitimate interest. *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). Colorado could achieve any legitimate interest in equal access to the Bookstore's products by requiring just that—equal access to the Bookstore's products—while leaving the Bookstore's speech alone. Or it could run a "public-information campaign" to promote the use of preferred pronouns and its view that sex is mutable. *National Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 775 (2018). It could also create a database of bookstores that use its preferred language or promote its preferred views. *United States v. Alvarez*, 567 U.S. 709, 729 (2012) (plurality op.). Or it could sell books directly to its citizens and use whatever language it prefers while doing so. *Burwell*, 573 U.S. at 728. With numerous less restrictive options, Colorado cannot survive strict scrutiny.

II. The Unwelcome Clauses and gender-expression definitions are facially overbroad, vague, and viewpoint-based.

"[I]f a substantial amount of protected speech is prohibited or chilled" by a speech regulation, it may not ban even unprotected speech. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 237 (2002). And any law regulating speech "must give fair notice of conduct that is forbidden or required." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). The Unwelcome Clauses and CADA's definition of "gender expression" violate these principles.

A. The Unwelcome Clauses are overbroad and unconstitutionally vague.

The Unwelcome Clauses make it illegal to "directly or indirectly" publish anything that suggests that a person's presence or patronage is "unwelcome, objectionable, unacceptable, or undesirable" (Unwelcome Clause) or "unwelcome or objectionable or not acceptable, desired, or solicited" (Unwelcome Advertisement Clause) because of various protected traits. Colo. Rev. Stat. §§ 24-34-601(2)(a), 24-34-701(1)(c). This language is overbroad and vague.

Overbreadth. "[I]t is impossible to determine whether a statute reaches too far without first knowing what the statute covers," so "[t]he first step in an overbreadth analysis is to construe the challenged statute." *United States v. Williams*, 553 U.S. 285, 293 (2008). The Unwelcome Clauses on their face target speech: they prohibit publishing anything that might lead a person to feel "unwelcome," "objectionable," or "undesirable." Colo. Rev. Stat. §§ 24-34-601(2)(a), 24-34-701(1)(c). And these words are necessarily subjective and tied to the feelings of the listener. *See supra* p. 7; *Chelsey Nelson Photography LLC*, 624 F.Supp.3d. at 802 (noting that "the speaker's rights are conditioned on the listener's feelings").

But nearly any critical statement related to any protected trait could subjectively cause a person to feel "unwelcome." Criticizing the influence of the America Israel Public Affairs Committee may bring charges of antisemitism.[9] Quoting the Catholic Catechism's language that "homosexual acts are intrinsically

[9] *See* Caroline Kelly, *House Foreign Affairs leader tells Omar to apologize for saying pro-Israel groups push foreign allegiance*, CNN Politics (Mar. 2, 2019), https://www.cnn.com/2019/03/01/politics/ilhan-omar-engel-statement/index.html.

disordered" may bring charges of homophobia.[10] Saying, "All Lives Matter" may bring charges of racism.[11] And posting a popular "Karen" meme may bring charges of sexism.[12] *303 Creative*, 6 F.4th at 1214, *rev'd*, 600 U.S. 570 (2023) (Tymkovich, T., dissenting) (discussing problems with Unwelcome Clause's broad language); *Chelsey Nelson Photography LLC*, 624 F.Supp.3d. at 802 (same).

After all, most topics covered by the Unwelcome Clauses reach "controversial" and "sensitive" subjects like "sexual orientation and gender identity … and minority religions." *Janus*, 585 U.S. at 913–914. And banning speech on those topics is far too broad. Courts regularly invalidate the same language as facially overbroad in like statutes. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963) (ban on "objectionable" publications vague and overbroad); *Brush & Nib Studio, LC v. City of Phoenix*, 418 P.3d 426, 442–43 (Ariz. Ct. App. 2018) (striking "unwelcome," "objectionable," "unacceptable," and "undesirable" language as vague and overbroad); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001) (Alito, J.) (invalidating policy covering "any unwelcome verbal" conduct as overbroad); *Armstrong v. D.C. Pub. Library*, 154 F. Supp. 2d 67, 77–80 (D.D.C. 2001) (invalidating regulation denying library access to patrons with an "objectionable" appearance as vague and overbroad). This court should too.

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[10] *See* CNI Church News Ireland, *Mary McAleese condemns Catholic Church for 'intrinsically evil' teachings on homosexuality* (July 1, 2020), http://www.churchnewsireland.org/news/irish-uk-news/mary-mcaleese-condemns-catholic-church-for-intrinsically-evil-teachings-on-homosexuality/.

[11] *See* Karen Stoltznow, *Why is it so offensive to say 'all lives matter'?*, The Conversation (Jan. 13, 2021), https://theconversation.com/why-is-it-so-offensive-to-say-all-lives-matter-153188.

[12] *See* Ethan Alter, *Gloria Steinem and Julie Taymor explain why the 'Karen' meme is sexist*, Yahoo (Sept. 30, 2020), https://www.yahoo.com/now/gloria-steinem-julie-taymor-karen-meme-sexist-162810020.html.

Vagueness. The Unwelcome Clauses are also vague. The Due Process Clause requires laws to give people of ordinary intelligence an understanding of what they can and can't do. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Laws must also provide "minimal guidelines to govern law enforcement." *Id.* at 358 (cleaned up). A "more stringent vagueness" test applies to laws that regulate speech. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982).

The Unwelcome Clauses fail this standard. They do not define "unwelcome," "objectionable," "unacceptable," "undesirable," or not "solicited." Colo. Rev. Stat. §§ 601(2)(a), 701(1)(c). That leaves public accommodations guessing about what they may or may not say. Born Again Used Books wants to explain its views on gender expression and pronoun use, but the store has no way to know for sure whether the Clauses ban such discussions. V.C. ¶ 127. Businesses in Colorado cannot possibly know which statements about protected traits violate the Unwelcome Clauses and which don't. Almost any critical statement about a protected trait could. That deters protected speech and gives officials unconstitutional discretion to play favorites. *See People for Ethical Treatment of Animals, Inc. v. Shore Transit*, 580 F. Supp. 3d 183, 198 (D. Md. 2022) (ban on "objectionable" advertisements facially vague).[13]

[13] The Tenth Circuit's discussion of the Unwelcome Clause in *303 Creative* does not control because the court misunderstood what speech restrictions were constitutionally permissible. There, the court believed that CADA legitimately prohibited 303 Creative from stating that it would decline to make custom websites promoting same-sex weddings. *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1183 (10th Cir. 2021), *rev'd* 600 U.S. 570 (2023). Based on this flawed premise, the Court found that the Unwelcome Clause's legitimate reach was large enough to preclude an overbreadth challenge. *Id.* at 1189. By overturning the premise of the Tenth Circuit's overbreadth analysis—that 303 Creative's statement was not constitutionally protected—the Supreme Court necessarily undermined its conclusion as well.

B. The gender-expression definitions are facially viewpoint-based, overbroad, and vague.

The gender expression and chosen-name definitions are overbroad and vague. Under the Act, CADA prohibits discrimination based on a person's "chosen name" and "how the individual chooses to be addressed." Colo. Rev. Stat. § 24-34-301(9). That means "a name that an individual requests to be known as in connection to the individual's" protected characteristics—but not if the name contains "offensive language" or has "frivolous purposes." *Id.* § 24-34-301(3.5). The definitions' viewpoint discrimination, overbreadth, and vagueness require facial invalidation.

Viewpoint Discrimination. On their face, the chosen-name exceptions for "offensive language" and "frivolous purpose" discriminate based on viewpoint. Both exceptions turn on "society's sense of decency and propriety"—the law requires public accommodations to use chosen names that comport with that sense, and exempts them from using names society would deem offensive or frivolous. *Brunetti*, 139 S.Ct. at 2300. That's "facial viewpoint bias," and it's unconstitutional. *Id*.

Overbreadth. Again, overbreadth analysis begins with construing the challenged statute. *Williams*, 553 U.S. at 293. Here, the Act's additions to the definition of gender expression do one thing: they add a speech component to a protected trait that formerly dealt with appearances and behavior. The new definition makes it unlawful to speak using biologically accurate pronouns or other language that a transgender-identifying individual doesn't like. Colo. Rev. Stat. § 24-34-601(2)(a); *id.* § 24-34-701; *see supra* pp. 4–10. This effectively transforms CADA into a prohibition on "misgendering"—a constitutionally protected practice. *See supra* pp. 12–21; *Meriwether*, 992 F.3d at 511–12.

To be sure, CADA's gender-expression applications include non-expressive conduct like locking the shop door to a customer because of gender identity. If no

speech is involved, the First Amendment isn't implicated. So the statute has some "legitimate sweep" for purposes of overbreadth analysis. *Moody*, 603 U.S. at 744. But its unconstitutional applications are significant—too significant in proportion with the legitimate ones.

Even before Colorado passed the Act, CADA's unwelcome clauses were overbroad, *see supra* § II.A., and Colorado repeatedly applied the Publication Clauses to unconstitutionally compel speech, *see*, *e.g.*, *303 Creative*, 600 U.S. 570; *Masterpiece Cakeshop*, 584 U.S. 617. But the amended gender-expression definition leaps forward with unconstitutional applications, specifically applying CADA "to expressive activity … simply to require speakers to modify the content of their expression." *Hurley*, 515. U.S. at 578. Requiring public accommodations to conform their own speech to "how [an] individual chooses to be addressed," Colo. Rev. Stat. § 24-34-301(9), is unconstitutional in most, if not all, applications. It compels speech by anyone who does not agree with the state's preferred message, and it discriminates based on content and viewpoint. *See supra* pp. 12–21. Because using biologically accurate language to convey a message about gender identity, a matter of "profound value and concern to the public," is constitutionally protected, definitions that wholesale prohibit that speech—and do little more—are overbroad. *Janus*, 585 U.S. at 914 (cleaned up).

Vagueness. A law is unconstitutionally vague under the Fourteenth Amendment if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1234 (10th Cir. 2023) (quoting *Hill v. Colorado*, 530 U.S. 703, 732

(2000)). Both situations apply here on the face of the definitions and "in light of the facts of the case at hand." *Id.* (internal quotations omitted).

As defined under the Act, "gender expression" includes whatever manner an individual wishes to be addressed, and CADA makes various things unlawful on that basis. Take the Denial Clause. No one disagrees that Colorado could enforce CADA against a retailer for refusing to sell off-the-shelf products to someone who identifies as transgender. *See Pittsburgh Press Co.*, 413 U.S. at 389 (illegal advertisements in sex-selective columns were unprotected). That would "deny" a person services at a public accommodation based on gender identity. Colo. Rev. Stat. § 24-34-601(2)(a). But under the new gender-expression definitions, merely refusing to use a chosen name or pronoun arguably denies services in violation of the Denial Clause. Indeed, Colorado already considers doing so unlawful harassment. 3 Colo. Code Regs. § 708-1.81.6(a)(4). Yet choice of pronouns and related language is protected speech. Businesses in Colorado cannot know whether their speech violates the Denial Clause.

The meaning of "gender expression" becomes even less clear because it requires businesses to refer to individuals by their "chosen name"—but not if the name contains "offensive language" or has "frivolous purposes." Colo. Rev. Stat. § 24-34-301(3.5). The statute provides no guidance on what names may be "offensive" or "frivolous," requiring businesses to guess. That task is impossible, for whether a name is "offensive" is a subjective standard. *See F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 252 (2012) ("patently offensive" standard for television broadcasts was unconstitutionally vague). Nor can public accommodations reasonably navigate the "amorphous considerations of intent and effect" in the "frivolous purpose" exemption. *Fed. Election Comm'n*, 551 U.S. at 469. Businesses

are thus left without "fair notice of conduct that is forbidden or required." *F.C.C.*, 567 U.S. at 253.

Courts have accordingly struck down similar language for failing to provide notice of what speech is forbidden. *See Coates v. City of Cincinnati*, 402 U.S. 611, 611 (1971) (statute banning assembly "in a manner annoying to persons passing by" was unconstitutionally vague); *City of Chicago v. Morales*, 527 U.S. 41, 62 (1999) (statute banning assembly for "no apparent purpose" was unconstitutionally vague). This Court should do the same here.

III. The gender-expression definitions are also vague as applied to the Bookstore's speech.

Beyond the facial problem, as applied to its own speech, the Bookstore cannot determine which males are using female names and pronouns (or vice versa) for reasons Colorado would consider "frivolous," or which names it would consider "offensive." By exempting names that contain "offensive language" or a "frivolous purpose[]," the definition requires public accommodations to use a subset of requested names based on the names' content and viewpoint. Colo. Rev. Stat. § 24-34-301. It is unclear exactly what names it compels. But it apparently requires businesses to comply if Jane asks to be called Jesus because she identifies as a boy, but not if she does so to be funny (frivolous) or to insult Christian proprietors (offensive). And it expects public accommodations like Born Again Books to somehow make that determination.

That's an impossible task. The Bookstore cannot know why a person is requesting a particular name or pronouns, nor can it know if its sense of propriety sufficiently comports with society's to make firm judgments about frivolity or offensiveness. *Fox Television Stations*, 567 U.S. at 252; *Wis. Right to Life*, 551 U.S. at 469. So the law is vague as applied to the Bookstore's speech.

IV. Born Again Used Books satisfies the other preliminary-injunction factors.

CADA's violations of the First and Fourteenth Amendments mean that Born Again Used Books is likely to succeed on the merits of its claims. These violations irreparably harm Born Again Used Books because "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1190 (10th Cir. 2003) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.)). Born Again Used Books's harms, absent an injunction, outweigh Colorado's, for when a law "is likely unconstitutional," the state's interests "do not outweigh" a plaintiff's interest "in having his constitutional rights protected." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). And "it is always in the public interest to prevent the violation of a party's constitutional rights." *Id.* at 1132 (internal quotation marks omitted). Moreover, the Bookstore's requested relief would maintain the status quo by continuing to allow CADA's enforcement as it existed before the Act. Colorado cannot show that anyone would be harmed by speech that has been lawful for decades under CADA.

CONCLUSION

As the Supreme Court has told Colorado before, "no public accommodations law is immune from the demands of the Constitution." *303 Creative*, 600 U.S. at 592. Yet the state once again seeks to deploy CADA to impose a government orthodoxy in businesses' speech on contested matters of gender ideology and sexuality. Born Again Used Books respectively asks this Court to grant its requested injunction, let it choose its desired language and express its policies, and stop the ongoing violation of its constitutional rights.

Respectfully submitted this 16th day of July, 2025,

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and will serve the same on all parties via private process server. In addition, I certify that I will provide a copy of the foregoing to the following non CM/ECF participant via electronic mail:

s/ Henry W. Frampton, IV
Henry W. Frampton, IV