UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Christian Healthcare Centers, Inc.

Plaintiff,

v.

Dana Nessel, in her official capacity as Attorney General of Michigan; **John E. Johnson, Jr.,** in his official capacity as Executive Director of the Michigan Department of Civil Rights; **Portia L. Roberson, Zenna Faraj Elhason, Gloria E. Lara, Regina Gasco, Rosann Barker, Richard White, David Worthams,** and **Luke R. Londo,** in their official capacities as members of the Michigan Civil Rights Commission,

Defendants.

Case No. 1:22-cv-00787-JMB-PJG

Honorable Jane M. Beckering
Magistrate Judge Phillip J. Green

Plaintiff's Brief in Support of Its Summary Judgment Motion

Oral Argument Requested

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Introduction

Plaintiff Christian Healthcare Centers, Inc. is a faith-based medical ministry that provides exceptional, low-cost healthcare to those in need. Consistent with its religious mission, the ministry incorporates spiritual wellness into its medical care. It happily treats anyone, but it only provides treatments, speaks messages, and hires employees consistent with its religious beliefs.

But Michigan's Elliott-Larsen Civil Rights Act (ELCRA) threatens the ministry's Christian existence. Unlike federal and almost every other state's law, ELCRA forces the ministry to (i) hire employees who disagree with its religious beliefs, (ii) provide so-called gender transitions, and (iii) use pronouns and similar language inconsistent with a person's sex. Plus, it (iv) bars the ministry from publicly explaining these policies. Meanwhile, Michigan exempts other organizations based on its capricious discretion.

Michigan has it wrong. The First Amendment protects Christian Healthcare's freedom to operate as a religious ministry—to hire employees of the same faith, to speak messages consistent with its faith, and to avoid harmful medical interventions that violate its faith. The Sixth Circuit already held that the ministry faces a credible threat of enforcement. *Christian Healthcare Centers, Inc. v. Nessel* (*CHC*), 117 F. 4th 826, 852–54 (6th Cir. 2024). The undisputed facts confirm that threat. The ministry requests a permanent injunction to stop Michigan from threatening its First Amendment rights so that it can treat its patients and proclaim the Gospel's healing power without risking crushing fines, intrusive investigations, and even closure.

Summary of Facts

I. Christian Healthcare follows a distinctly Christian approach to healthcare and advances its mission through its employees.

Christian Healthcare "exists to serve the Body of Christ by providing direct medical care services to its members." PageID.79. It accomplishes this mission by offering medical, wellness, and spiritual services to the public consistent with its religious beliefs and employing those who share its beliefs. Woo Decl. ¶¶ 39–41, PageID.193; PageID.111-128.

Christian Healthcare strives to be "prayer-driven" to stay "rooted" in its Christian faith. Blocher Decl. ¶¶ 10–11, PageID.181. Each morning, staff gather to pray for each other, their patients, and the ministry's mission. *Id.* And monthly and quarterly, the ministry's staff meet for a Bible-based devotional, worship, and extended corporate prayer to foster employees' spiritual growth. *Id.* ¶ 11.

Christian Healthcare's religious practices extend to its patient interactions. Christian Healthcare follows a membership model whereby member-patients receive a package of medical services for a monthly fee. Blocher Decl. ¶ 26, PageID.184 (citing revised Membership Agreement); Blocher Summ. J. Decl. ¶ 4 (incorporating complaint paragraphs). Emulating Christ's care for the needy, Christian Healthcare often heavily subsidizes membership costs for low-income families and serves anyone regardless of personal characteristics. Blocher Summ. J. Decl. ¶ 4; Woo Suppl. Decl. ¶ 7, PageID.1472. During visits, the ministry's staff spends significant time with members and often offers to pray with them, discusses sickness's spiritual dimensions, and shares the Gospel. Woo Decl. ¶¶ 39–41, PageID.193-194; Blocher Summ. J. Decl. ¶ 4; Blocher Supp. Decl. ¶23, PageID.1468-1469. Christian Healthcare incorporates spiritual care with physical wellness, recognizing that spiritual disciplines (prayer, church engagement, and biblical

principles) contribute to well-being. Woo Decl. ¶¶ 39–41, PageID.193-194; Blocher Summ. J. Decl. ¶¶ 4–9.

But Christian Healthcare cannot violate its religious beliefs about God's design for humanity—including its belief that God created humans as male and female and that one's sex cannot change. Woo Decl. ¶¶ 10–23, PageID.189-191. So, obeying its policies, the ministry (i) declines any interventions—like cross-sex hormones—to align a member's physical characteristics with gender identity rather than biological sex and (ii) declines to use biologically inaccurate pronouns or similar language. Woo Decl. ¶¶ 20–23, PageID.191; PageID.116, 119, 122, 124, 126.

Christian Healthcare depends on its employees to promote and advance its mission, communicate its faith with members and other employees, and ensure the ministry operates according to its beliefs. Blocher Suppl. Decl. ¶ 20, PageID.1468-1469. Hiring employees who disagree with the ministry's beliefs would infringe on its religious expression and burden its ability to operate as a religious organization. Blocher Summ. J. Decl. ¶¶ 9–10. So Christian Healthcare requires all employees to affirm the ministry's beliefs by signing its Religious Statements—including its beliefs on identity and sexuality. Blocher Suppl. Decl. ¶ 20, PageID.1468-1469.

But, in 2022, Christian Healthcare learned that Michigan reinterpreted ELCRA to threaten the ministry's religious practices. Blocher Decl. ¶¶ 20–42, PageID.183-186

II. Michigan's law regulates employers and public accommodations.

At that time, Michigan's Supreme Court reinterpreted ELCRA to prohibit sexual-orientation discrimination. *Rouch World, LLC v. Dep't of C.R.*, 987 N.W.2d 501, 519 (Mich. 2022). Michigan's legislature later amended ELCRA to prohibit sexual-orientation and gender-identity discrimination. Michigan broadly defines discrimination to include any difference in treatment based on a protected class.

E.g., Londo Dep., PageID.2701-2703. Michigan claims an interest "in protecting the civil rights and liberties of Michiganders." *Id.* at 110, 125; Trevino Dep., PageID.2620-2621. And it applies this interest equally across all protected classes. Londo Dep., PageID.2703. ELCRA includes four relevant clauses.

1. Employment Clause. This clause prohibits employers from failing to hire or otherwise discriminating against "an individual with respect to employment" because of sexual orientation or gender identity. MCL 37.2202(1)(a)–(b).

For Employment Clause claims, the Department considers at step one whether a complainant has shown discrimination because of a protected status. Training, PageID.2910; Trevino Dep., PageID.2589. If so, an employer can still avoid liability at step two by identifying a "legitimate non-discriminatory reason" for the adverse action. Training, PageID.2910. The Department reviews these reasons case-by-case. Trevino Dep., PageID.2590-2591. For example, although two complainants showed discrimination at step one, the Department accepted the secular employers' generic reference to "a change in business needs" and "accreditation" at step two. Material Facts ¶¶ 31–36, PageID.2349-2350.

Employers may apply for a bona fide occupational qualification (BFOQ) for a position if a discriminatory qualification is "reasonably necessary to the normal operation of the business." MCL 37.2208. Applicants must fill out a thirteen-question form, provide "an in-depth analysis of the case law" in a legal brief, and submit proposed findings of fact. PageID.2101-2103. Michigan applies its discretion, and individual Commissioners "consult their own perspectives," to grant or deny BFOQs on a case-by-case basis. Londo Dep., PageID.2669-2700. The Commission has approved BFOQ requests from secular employers like public health departments, a spa, and a probate court. BFOQs, PageID.3105-3106, 3119-3122.

There is also a limited "religious employers" exemption, but only for employers who do not serve the general public. Declaratory Ruling, PageID.2890.

2. Employment Publication Clause. This clause restricts employers from "indicat[ing]" a "preference" for prospective employees "based on" personal traits like sexual orientation and gender identity and from "elicit[ing] or attempt[ing] to elicit" that information. MCL 37.2206(1)–(2).

3. Accommodation Clause. This clause prohibits public accommodations from denying "equal" services "because of" sexual orientation and gender identity. MCL 37.2302(a); MCL 37.2102(1). Michigan defines "public accommodation" broadly but excludes "private clubs" like the Elks Lodge. MCL 37.2301(a); Case File, PageID.3088.

Under this clause, the Department first analyzes the claimant's "initial burden" to show that a public accommodation denied the claimant "equal enjoyment of goods/services because of protected class status." Training, PageID.2895; Trevino Dep., PageID.2577-2580. If so, the Department assesses whether the public accommodation offered a "legitimate non-discriminatory reason" for the denial. Training, PageID.2895; Trevino Dep., PageID.2580. "[T]hat" reason "could be anything," and the Department decides those reasons on a case-by-case and discretionary basis. Trevino Dep., PageID.2580-2581; Londo Dep., PageID.2685-2686, 2708. For example, Michigan concluded that Food and Drug Administration requirements and "legal first and last name[s]" policies qualify as legitimate nondiscriminatory reasons to justify denying a service to a transgender-identifying person. Case Files, PageID.3068, 3079.

4. Accommodation Publication Clause. This clause prohibits public accommodations from publishing statements indicating (i) "that the full and equal enjoyment" of public accommodations will be denied (Denial Clause) or (ii) that someone is "objectionable, unwelcome, unacceptable, or undesirable" (Unwelcome Clause) based on sexual orientation, gender identity, and other characteristics. MCL 37.2302(b).

Michigan uses the "ordinary reader test" to evaluate publications. Trevino Dep., PageID.2571-2572. A post is unlawful if it "suggest[s] to an ordinary reader that a particular protected class was preferred or dispreferred regardless of the respondent's intent." Studio 8 Brief, PageID.2998. Michigan has no policy defining the Unwelcome Clause's terms, and at least one Commissioner is "not aware" of what those terms mean. Londo Dep., PageID.2704. He says he'd need "to ask the legislature what they meant by these" terms to understand them. *Id.*

III. Michigan actively enforces ELCRA.

Michigan actively enforces ELCRA to prohibit sexual-orientation and gender-identity discrimination. Stips. ¶ 30, PageID.2093; Report, PageID.2923 (listing 2,428 certified sex-discrimination complaints in 2024).

Michigan also makes it easy to file complaints. Anyone "claiming to be aggrieved" can file a complaint—the Commission, the Department, "testers," local governments, private associations, and individuals. Stips. ¶¶ 22–28, 40, PageID.2092, 2094; Johnson Dep., PageID.2444-2445 (testers); MCL 37.2103(h) (defining "person"); Studio 8 Complaint, PageID.2986-2987 (city had "standing to file" complaint). And a complainant need only *see* a discriminatory publication—no need for a service denial or the desire to visit the business or apply for the job in question. *See* Stips. ¶¶ 24–27, Page.ID 2092; Studio 8 Charge ¶¶ 40–47, PageID.2980; Londo Dep., PageID.2704; Johnson Dep., PageID.2431; Trevino Dep., PageID.2514, 2564-2566, 2612. Claimants don't even need to be members of a protected class. *E.g.*, Trevino Dep., PageID.2564, 2590.

The Department investigates complaints. MCL 37.2602. It can issue interrogatories, interview witnesses, compel document production, and perform site visits. MCL 37.2602(d); Trevino Dep., PageID.2527-2529. If the Department issues a discrimination charge, the case proceeds to a hearing before an ALJ who issues

preliminary rulings. Rule 37.12. The Commission then reviews the ALJ's proposals and makes its own determination. Rule 37.16. The Commission has no deadline to reach a decision, and one case has remained pending for over a year. Londo Dep., PageID.2704-2705.

Penalties for violations include fines, damages, attorney fees, orders to provide the "service" or hire the employee, and "cease and desist" orders. Stips. ¶¶ 43–44, PageID.2094. And the Commission can certify its findings to state licensing boards to revoke licenses, effectively closing a business. Trevino Dep., PageID.2575.

IV. Michigan enforces its law over First Amendment objections.

Michigan investigates and prosecutes employers and public accommodations over their First Amendment objections. The Department typically completes its investigation when a respondent raises a First Amendment defense. Trevino Second Dep., PageID.2750; Studio 8 Briefs and Orders, PageID.2988-3026; Uprooted Electrolysis Case File, PageID.3037-3060. For example, Michigan investigated several religious schools only to conclude that the ministerial exception covered the positions. Material Facts, ¶¶ 6–30, PageID.2347-2349. Michigan has also denied BFOQs to religious organizations' "staff, clerical[,] or maintenance personnel," "janitorial staff," and "office personnel." BFOQ Rulings, PageID.3113-3114.

Against public accommodations, Michigan has received complaints against religious medical-care providers for declining treatment related to a gender transition. Case Files, PageID.3027-3032, 3037-3060. Michigan's Attorney General issued a public announcement to all healthcare providers, warning them that withholding "gender-affirming care" "may constitute discrimination under" ELCRA. Letter, PageID.2925-2926. And Michigan is prosecuting a hair salon for posting a social media message sharing the owner's intent to decline to use pronouns inconsistent with a customer's sex. Studio 8 Briefs and Orders, PageID.2988-3026.

Michigan called the hair salon's First Amendment defense a "red herring," Press Conference, PageID.2934, and argued the Commission lacked jurisdiction to consider constitutional defenses, Studio 8 Briefs, PageID.2989-2992, 3005. The ALJ agreed it had "no authority to hear or decide" the First Amendment arguments. Studio 8 Orders, PageID.3009, 3012-3013.

V. Michigan's law severely burdens Christian Healthcare.

ELCRA's four clauses apply to Christian Healthcare's employment, pronoun, and medical-care policies because it is an employer and public accommodation. Stips. ¶¶ 6, 14, 50, PageID.2089-2090, 2095.

Employment policy. Christian Healthcare currently has openings for a Member Services Receptionist and a Medical Assistant. Blocher Summ. J. Decl. ¶¶ 12–14. Those positions regularly interact with other ministry employees and members. PageID.2111-2116. So the ministry requires applicants for these positions to agree with its religious beliefs, including on sexual orientation and gender identity. *Id.*; PageID.111-128. The ministry would also like to explain these beliefs in job postings. Blocher Summ. J. Decl. ¶¶ 11, 18.

But the Employment Clause prohibits the ministry from recruiting and hiring only employees who share its faith for these positions.[1] Stips. ¶¶ 51–62, PageID.2095-2098; Trevino Dep., PageID.2634-2653; Londo Dep., PageID.2711-2712; Johnson Dep., PageID.2485. To Michigan, so long as a non-believer will "follow[] the message of the organization" and mouth "Christian sounding prayers," despite not believing a word of it, Christian Healthcare must hire them. Trevino Dep., PageID.2652-2653. And the Employment Publication Clause bans the

[1] After its Court-ordered stipulations, the Department tried to reverse course by suggesting the First Amendment covers the Member Services Receptionist position. Trevino Second Dep., PageID.2740. But the stipulation entered "at the outset" of litigation remains binding. *Christian Legal Soc. v. Martinez*, 561 U.S. 661, 677 (2010) (citation modified).

ministry from publishing job descriptions outlining its beliefs. Stips. ¶¶ 51–62, PageID.2095-2098.

Medical care and pronoun policies. Christian Healthcare also declines to provide gender-transition treatments or to use biologically inaccurate language. PageID.116, 119, 122, 124, 126. The ministry wants to publish its Membership Agreement online, which explains these policies and how the ministry integrates faith and medicine. Blocher Decl. ¶¶ 20–27, PageID.183-184; PageID.111-120.

But the Accommodation Clause prohibits this. The Sixth Circuit agreed the clause arguably bans the ministry's policies and instructed Michigan to provide "clear guidance" on how the clause applies. *CHC*, 117 F.4th at 854. Michigan agreed that this clause *generally* compels medical providers to facilitate gender transitions and use inaccurate pronouns. *E.g.*, Londo Dep., PageID.2706-2707, 2710. But, despite the Sixth Circuit's and this Court's instructions, Michigan's position on possible exemptions for the ministry has meandered throughout this litigation. PageID.1827, 2150-2152, 2327.[2]

On medical care, Michigan claimed the ministry's policy violates the Accommodation Clause because the clause is "facially neutral and generally applicable" and the clause passed "rational basis." Interrogatory, PageID.2874. The Department testified that the ministry's policy "may" lead to liability. Trevino Dep., PageID.2624.

On pronouns, the Department said it "may" investigate and hold Christian Healthcare liable for following and posting its policy. Trevino Dep., PageID.2611-2624. The Department testified that an exemption *might* apply to pronoun usage but could not identify a single extra fact that it needed to make a definitive

[2] Michigan's waffling also shows that the case is not moot because the commission is "certainly entitled … to change [its] mind" as it has sporadically done here solely on its counsel's whims. Londo Dep., PageID.2721.

determination. Trevino Dep., PageID.2623-2626 Johnson Dep., PageID.2460-2461. A month later, without any new facts, the Commission testified that there would be a First Amendment exemption for pronoun usage. Londo Dep., PageID.2711.

But Michigan also consistently claimed a "compelling interest" in forcing medical providers who qualify as public accommodations to use customers' chosen pronouns and to offer gender-transition treatments. Interrogatory, PageID.2874-2875; Londo Dep., PageID.2706-2707; Trevino Second Dep., PageID.2745-2746.

Because of this tee-tottering, this Court ordered Michigan to provide clearer responses and prepared witnesses. Order, PageID.2319-2328. Michigan then changed its written responses on the ministry's medical care and pronoun policies to claim that the First Amendment protects those policies. Interrogatories, PageID.2878-2879. But, in posturing this reversal, the Department and the Commission

- did not follow any formal policy or meet as an administrative body, Trevino Second Dep., PageID.2743, 2744, 2747, 2749-2750, 2752-2753; Londo Second Dep., PageID.2762, 2763-2764, 2766-2767;
- did not rely on or identify any facts besides those in the 2022 complaint, Trevino Second Dep., PageID.2744, 2746, 2751, 2753; Londo Second Dep., PageID.2766, 2770; Interrogatories, PageID.2878-2879;
- did not identify any change in law, Trevino Second Dep., PageID.2751; Londo Second Dep., PageID.2766, 2768, 2770, 2772;
- still believed ELCRA was neutral and generally applicable, Trevino Second Dep., PageID.2745, 2751; Londo Second Dep., PageID.2766, 2772; and
- still claimed a compelling interest in requiring transition services and pronoun usage, Trevino Second Dep., PageID.2745-2746; Londo Second Dep., PageID.2766; Interrogatory, PageID.2874-2875.

The Department did not know who within its office contributed to the reversal. Trevino Second Dep., PageID.2747, 2752-2753. In preparing for their second 30(b)(6) depositions, the Department's and the Commission's representatives spoke only to litigation counsel—no one else. Trevino Second Dep., PageID.2741; Londo Second. Dep. 8–9. And they relied solely on their litigation counsel's advice to flip their stance. Trevino Second Dep., PageID.2747-2748, 2750; Londo Second Dep., PageID.2768, 2772, 2777. As the Commission said, "What changed was advice of counsel"—and that was all. Londo Second Dep., PageID.2774.

Meanwhile, Michigan still interprets the Accommodation Publication Clause to ban the ministry from posting its medical care policy in its Membership Agreement. RFA 20, PageID.2861; Londo Dep., PageID.2721; Trevino Dep., PageID.2622-2624.

Michigan's mid-litigation runaround—based solely on the advice of its litigation counsel and unmoored from any formal decision or new facts or law—leaves Christian Healthcare with the same substantial risk of harm it faced when it filed suit. *See CHC*, 117 F.4th at 854. And, before the parties agreed to an injunction, the ministry had refrained from publishing its employment openings and its pronoun and medical-care policies "solely because of Michigan's laws." Blocher Suppl. Decl. ¶ 18, PageID.1468; *see also* Blocher Decl. ¶¶ 23, 27, PageID.184. Without the injunction, Christian Healthcare must choose between removing those policies to minimize the risk of prosecution or keep posting the policies and risk prosecution. Blocher Summ. J. Decl. ¶¶ 19–26. Either option burdens Christian Healthcare's freedom to operate as a religious ministry. *Id.*

Argument

Christian Healthcare deserves summary judgment because there are "no genuine dispute" about "any material fact." Fed. R. Civ. P. 56. The ministry

deserves a permanent injunction because the ministry otherwise suffers a constitutional violation which causes "irreparable injury" with no "adequate remedy at law." *Saieg v. City of Dearborn*, 641 F.3d 727, 733, 742 (6th Cir. 2011) (holding that injunctive factors were met after finding a constitutional violation). And the undisputed facts show Christian Healthcare merits a declaratory judgment. *See United Specialty Ins. v. Cole's Place, Inc.*, 936 F.3d 386, 397–402 (6th Cir. 2019) (describing elements).

As applied to Christian Healthcare's employment, pronoun, and medical policies and publications, Michigan's law violates religious autonomy; interferes with expressive association and assembly; lacks general applicability; and compels and restricts speech based on content and viewpoint. These effects trigger and fail at least strict scrutiny. And the Unwelcome Clause is facially vague and overbroad.

I. Michigan's law burdens Christian Healthcare's religious autonomy and free exercise.

Michigan's law violates Christian Healthcare's religious autonomy by restricting its ability to hire employees who share its religious beliefs and by compelling it to provide medical treatments that violate its religious views on gender identity.

Religious autonomy derives from both of the First Amendment's "Religion Clauses." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020). This autonomy guarantees the "right to organize voluntary religious associations to assist in the expression and dissemination of" faith and prevents governments from intruding on matters that "concern[] theological controversy." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727–29, 733 (1871). Under this protection, "religious organizations[]" enjoy the freedom to decide "questions of discipline, or of faith, or of ecclesiastical rule, custom or law" without "secular control." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115–16 (1952). A

law that infringes religious autonomy categorically fails, regardless of means-end scrutiny. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 196 (2012).

This autonomy protects Christian Healthcare's decisions to (A) recruit and hire co-religionist employees for the Member Services Receptionist and Medical Assistant positions and (B) decline to provide non-emergent, controversial, and harmful medical treatment that conflicts with its religious beliefs.[3]

A. The Employment Clause interferes with Christian Healthcare's faith-based employment policies and decisions.

The Employment and Employment Publication Clauses interfere with Christian Healthcare's religious autonomy by prohibiting faith-based hiring for its Member Services Receptionist and Medical Assistant positions. This violates the co-religionist exception.

Religious institutions enjoy "special solicitude" for employment decisions under the First Amendment. *Hosanna-Tabor*, 565 U.S. at 189. Depending on "what an employee does," one of two exceptions apply. *Our Lady of Guadalupe Sch.*, 591 U.S. at 753. For "key" leadership "roles," the "'ministerial exception'" applies. *Id.* at 746. For non-leadership roles, the "co-religionist[]" exception protects religious organizations' freedom to hire only those who share its beliefs and who will contribute to a shared culture of faith, conduct, and mission. *Seattle's Union Gospel Mission v. Woods* (*SUGM*), 142 S. Ct. 1094, 1094 (2022) (Alito, J., concurring in denial of certiorari). On the latter exemption, consider three examples in reverse chronological order.

[3] The ministry succeeds even under *Employment Division v. Smith*, 494 U.S. 872 (1990). But if *Smith* controls, and if ELCRA is found to satisfy *Smith*, then the ministry preserves the issue of overruling *Smith* as inconsistent with the First Amendment's text, history, and tradition as recounted below and elsewhere.

First, in *N.L.R.B. v. Catholic Bishop of Chicago*, the NLRB ordered several Catholic high schools to recognize a union and bargain with their "lay teachers." 440 U.S. 490, 493–94 & n.5 (1979). The schools raised First Amendment objections. *Id.* at 493. The Court agreed with the schools because the NLRB's jurisdiction over the lay teachers "implicate[d]" "the Religion Clauses," involved second-guessing the "good-faith" positions of the schools, and imposed a burdensome "process of inquiry." *Id.* at 502, 507.

Next, in *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, a maintenance worker alleged a church-run gymnasium violated Title VII by firing him for not being a member of the church. 483 U.S. 327, 332 n.9 (1987). The church invoked Title VII's religious exemption; the worker countered that the Establishment Clause overrode the exemption. *Id.* at 329–31. The Court rejected the worker's argument. *Id.* at 335. It held the religious exemption "alleviate[s] significant governmental interference with" religious organizations' "decision-making process" and their "ability" "to define and carry out their religious missions." *Id.* at 335–36, 339.

Last, the Sixth Circuit recognized that a religious college could terminate a student-services specialist because her views on sexuality differed from the college's. *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000). The college had "a constitutional right to be free from government intervention" because religious groups have a "constitutionally-protected interest … in making religiously-motivated employment decisions." *Id.* at 623. And courts cannot "dictate to religious institutions how to carry out their religious missions." *Id.* at 625–26.

These cases recognize that the church-autonomy doctrine protects religious employers' non-ministerial employment decisions—lay teachers, maintenance workers, and student-service specialists. Other courts have "protected the autonomy of religious organization[s] to hire personnel who share their beliefs." *SUGM*, 142 S.

Ct. at 1094 (Alito, J., concurring in denial of certiorari) (collecting cases); *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 653 (10th Cir. 2002) ("church autonomy" protects personnel decisions "based on religious doctrine"). Still others have recognized that church autonomy is at least co-extensive with Title VII religious-employer exemptions. *E.g. Korte v. Sebelius*, 735 F.3d 654, 678 (7th Cir. 2013) ("The religious-employer exemptions in [two federal laws] are legislative applications of the church-autonomy doctrine."); *E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 618 n.13 (9th Cir. 1988) (similar).

The co-religionist exception protects the ministry's Member Services Receptionist and Medical Assistant openings. Christian Healthcare's activities revolve around its religious purpose to serve others through medical care and to share the Gospel through words and acts of service. Blocher Decl. ¶¶ 6–7, PageID.181. The ministry seeks to fulfill this purpose in every interaction with members and the public, and in employees' interactions with other employees. Blocher Decl. ¶¶ 10–18, PageID.181-183; Woo Decl. ¶¶ 39–41, PageID.193-194; Blocher Suppl. Decl. ¶ 23, PageID.1469.

To accomplish these goals, Christian Healthcare requires its employees to agree with its religious beliefs. Blocher Suppl. Decl. ¶ 20, PageID.1468-1469; Blocher Summ. J. Decl. ¶ 10. The Member Services Receptionist welcomes members, takes telephone calls, acts as the face of the ministry, conveys the ministry's "distinctly Christian message," comforts patients, prays with members, and answers questions about the ministry's "message and mission." Page.ID.2115-2116. The Medical Assistant greets members, provides them with medical information, educates them on care plans, and assists with medical treatment. PageID.2112-2113; Blocher Suppl. Decl. ¶ 16, PageID.1468. Each role is expected to perform its duties "in a manner consistent with the organization's Christian commitment." PageID.2112-2116. And both positions interact with other ministry

employees daily. *Id.*; Blocher Decl. ¶ 10, PageID.181. The ministry seeks to fill these roles with employees who agree with its religious values. Blocher Summ. J. Decl. ¶¶ 10–14.

But Michigan admits that the Employment Clause prohibits requiring employees in these positions to share the ministry's beliefs, and the Employment Publication Clause prohibits advertising that requirement. Stips. ¶¶ 12, 20, 53–54, 56–57, 59–60, PageID.2090-2091, 2096-98. So the ministry must either (a) break the law and risk enforcement or (b) compromise its religious mission by hiring non-believers. Blocher Summ. J. Decl. ¶¶ 15–26.

This false choice interferes with "the way" Christian Healthcare "carrie[s] out [its] religious mission," *Amos*, 483 U.S. at 336, and infringes on an "internal [religious] decision that affects" its "faith and mission," *Hosanna-Tabor*, 565 U.S. at 190. Michigan says otherwise. In its view, as long as an employee is willing to mouth a "Christian-sounding prayer" and parrot the ministry's values, the employee need not believe them. Trevino Dep., PageID.2638, 2643-2644, 2650-2653. But the view that belief is immaterial to prayer or message entangles Michigan with a theological position—a position that conflicts with Christian Healthcare's beliefs. Blocher Summ. J. Decl. ¶ 9.

Michigan's stance ignores Christian Healthcare's freedom to decide which "activities are in furtherance of" its "religious mission, and that only those committed to that mission should conduct them." *Amos*, 483 U.S. at 342 (Brennan, J., concurring). By depriving the ministry of its right to hire those who share its vision and values, Michigan's law violates the First Amendment.

B. The Accommodation Clause forces Christian Healthcare to provide medical services that contradict its religious beliefs.

The Accommodation Clause violates the ministry's religious autonomy by forcing it to provide medical services that contradict its religious beliefs about the

immutability of sex. The clause falls outside of *Smith* and triggers at least strict scrutiny by "substantially interfer[ing]" with the ministry's religiously-motivated acts of service. *Mahmoud v. Taylor*, 606 U.S. 522, 550, 564–69 (2025).

Courts review history to evaluate how the "Religion Clauses" apply today. *Hosanna-Tabor*, 565 U.S. at 181–85 (reviewing history since the Magna Carta to support ministerial exception); *accord Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (focusing on "history" and collecting cases). Near the founding, "the issue of exemptions did not arise often." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1466 (1990). But when "religious convictions" conflicted with legislation, governments typically allowed for "religion-specific exemptions" because exemptions "were familiar and accepted means of accommodating these conflicts." *Id.* at 1472; *id.* at 1467–72 (collecting examples). During the founding era, "equitable exemptions . . . were a judicial norm," and religious exemptions were "well within our constitutional traditions." Stephanie H. Barclay, *The Historical Origins of Judicial Religious Exemptions*, 96 Notre Dame L. Rev. 55, 124 (2020).

Likewise, during the Antebellum and Reconstruction periods, Americans asserted religious exemptions for "acts of charity motivated by … religious conscience." Kurt T. Lash and Stephanie Hall Barclay, *A Crust of Bread: Religious Resistance and the Fourteenth Amendment*, 78 Vanderbilt Law Review 1203, 1222 (2025). For example, Christian abolitionists commonly argued that the Free Exercise Clause empowered them to put their "faith in action" by serving those fleeing from slavery. *Id.* at 1238. So, when the Fugitive Slave Act burdened this religiously-motivated aid, it violated the Free Exercise Clause "even in the face of neutral and generally applicable laws." *Id.* at 1207, 1238–1240, 1254, 1263. The Framers "likely thought government action making religiously motivated charitable ministries impossible would seldom prove justified." *Id.* at 1261.

For a long time, medical providers had no need for similar religious exceptions because there was no systematic threat to their autonomy. At common law, physicians had "no obligation to engage in practice or to accept" employment. Samuel Williston, *Williston on Contracts* § 62:12 n.2 (4th ed. 2002) (collecting cases). Things changed in 1973 after *Roe v. Wade*, 410 U.S. 113 (1973). That year, in response to *Roe*, "Congress passed the first conscience clause law," known as the Church Amendment, 42 U.S.C.A. § 300a-7. Jon O. Shimabukuro, CRS Report for Congress, *The History and Effect of Abortion Conscience Clause Laws* 1, https://bit.ly/3JplRk7 (Jan. 29, 2010). Within five years, "virtually all of the states had enacted conscience clause legislation." *Id.* As areas of potential conflict have expanded, so too have conscience clauses. Today, all states authorize health facilities, physicians, or other medical staff to decline at least some medical treatments (including abortions, sterilizations, and physician-assisted suicide) that violate their religious beliefs. *See* Ex. B (fifty-state survey).

What's true in law is true in ethics. The American Medical Association, the Council on Ethical and Judicial Affairs, and the Code of Ethics for Nurses acknowledge providers' right to decline to participate in morally objectionable actions. Woo Decl. ¶¶ 32–38, PageID.193 (listing opinions); PageID.299, 302, 319. Such exemptions are particularly apt for controversial treatments like "abortion" and "sterilization." PageID.304; Woo Decl. ¶ 27, PageID.192.

So conscience protections for non-emergent care and "contentious medical cases" are the norm, historically and currently. Justin E. Butterfield & Stephanie N. Taub, *The Jurisprudence of the Body: Conscience Rights in the Use of the Sword, Scalpel, and Syringe*, 21 Tex. Rev. L. & Pol'y 409, 416 (2017); PageID.299 (discussing expectation of physicians to "provide care in emergencies"); PageID.303, 305, 309 (similar).

Gender-transition interventions fit that description. Christian Healthcare does not provide emergency care. Woo Decl. ¶ 9, PageID.189. And these interventions are "ethically controversial." Woo Decl. ¶ 27, PageID.192. Over 20 states ban "the provision of sex transition treatments to minors." *United States v. Skrmetti*, 605 U.S. 495, 504 (2025). Medical authorities call these interventions an "experimental practice" based on studies with "highly uncertain" reliability. *Id.* at 1825 (cleaned up). One systematic review found "remarkably weak evidence" supporting these interventions. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* 13 (2024). The federal government agrees. Dep't of Health & Human Servs., *Treatment for Gender Dysphoria: Review of Evidence and Best Practices* 24 (May 1, 2025) (HHS Report), https://perma.cc/7B96-VTXG. The FDA has not approved cross-sex hormones for treating gender dysphoria. *Skrmetti*, 605 U.S. at 531–32 (Thomas, C., concurring); Woo Decl. ¶¶ 24–25, PageID.192. And medical interventions on minors include risks of "infertility/sterility," decreased bone density, "adverse cognitive impacts," and much more. HHS Report 142–45; Woo Decl. ¶ 27, PageID.192.

But Michigan forces the ministry to provide these interventions. Recall that Christian Healthcare will prescribe estrogen to reduce a woman's menopause symptoms but not to feminize a man's body. Woo. Decl. ¶ 23, PageID191. Michigan says the ministry's policy discriminates because two people with the same gender identity "are … receiving different treatment." Londo Dep., PageID.2710; Johnson Dep., PageID.2465-2466 (same); Trevino Dep., PageID.2611-2624 (similar); Interrogatory, PageID.2874. To Michigan, that conclusion is "pretty self-evident." Londo Second Dep., PageID.2771.

Michigan later backtracked based solely on "advice of counsel." *Id.* at PageID.2774. But the undisputed facts reveal that Michigan's belated retreat—based on no formal policy, no new facts, and no new law—is a fleeting litigation

position, not a permanent rule. Summary of Facts § V (listing facts). Especially so where Michigan still claims a compelling interest here, *id.*, prosecuted a faith-based business for declining medical treatment, Uprooted Electrolysis Case File, PageID.3037-3060, and just published a statewide letter warning medical providers about refusing "gender affirming care," Letter, PageID.2925-2926.

What's more, Michigan typically finishes its investigation before reaching conclusions on affirmative defenses. Trevino Second Dep., PageID.2750; Studio 8 Briefs and Orders, PageID.2988-3026; Uprooted Electrolysis Case File, PageID.3037-3060. Conducting that investigation against Christian Healthcare empowers Michigan to assess whether the ministry's religious views are a "legitimate non-discriminatory reason" for denying cross-sex hormones. Training, PageID.2895; Trevino Dep., PageID.2580. Michigan must pry into the theology behind that decision, interpret those beliefs, and exercise unfettered discretion to decide whether it considers those beliefs discriminatory—the epitome of religious entanglement.

The religious autonomy doctrine prohibits this intrusion. The doctrine applies to medical services that "are inextricably intertwined with … religious tenets" because "ecclesiastical rule, custom, or law" permeate those services. *Means v. United States Conference of Cath. Bishops*, No. 1:15-CV-353, 2015 WL 3970046, at *12–13 (W.D. Mich. June 30, 2015), *aff'd on other grounds*, 836 F.3d 643 (6th Cir. 2016). For example, in *Means*, a woman alleged that a Catholic hospital negligently failed to talk to her about terminating her pregnancy. *Id.* at *2. The court dismissed her case because it implicated the "medical moral teachings" of the Catholic Church, required "a nuanced discussion about how 'direct abortion' is defined in Catholic doctrine," and involved intricate "questions" about "the Catholic Church's religious tenets." *Id.* at *2, 13. Courts have reached similar conclusions under the Religious Freedom Restoration Act, confirming that religious exemptions apply in the medical

context. *See Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 592 n.5, 609 (8th Cir. 2022) (affirming that healthcare provider could decline to facilitate gender transitions).

That makes sense. After all, faith-based providers offer healthcare as a concrete expression of faith and mission. Blocher Decl. ¶ 6, PageID.181. Their religious autonomy recognizes the "special solicitude to the rights of religious organizations," *Hosanna-Tabor*, 565 U.S. at 189, and preserves "a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs," *id.* at 199 (Alito, J., concurring). Michigan's law usurps the ministry's "internal management decisions" related to its "central mission"—providing healthcare consistent with its faith. *Our Lady of Guadalupe Sch.*, 591 U.S. at 746.

Likewise, Michigan's law substantially interferes with Christian Healthcare's historically protected ability to serve its community. If enforced, the Accommodation Clause would require the ministry to either compromise its religious beliefs on core doctrine or stop providing hormone treatment altogether. Both are off the table. Christian Healthcare provides a one-stop-shop primary care services. Woo Decl. ¶¶ 7–8, PageID.189; App. to Mot. for Prelim. Inj., PageID.227-231. Sex-appropriate hormone treatment is routine in that context. Woo Summ. J. Decl. ¶ 9. Having to stop providing these services would undermine the ministry's mission to provide comprehensive primary care and impair its ability to serve its members. Woo Summ. J. Decl. ¶9.

Michigan's law interferes with the ministry's religious autonomy and burdens its religiously-motivated acts of service. For that reason, the law is per se unconstitutional, or, at least, is subject to strict scrutiny here. *See Hosanna-Tabor*, 565 U.S. at 196; *Means*, 2015 WL 3970046, at *13; *Mahmoud*, 606 U.S. at 564.

II. Michigan's law co-opts Christian Healthcare's expressive association and undermines its freedom of assembly.

The Employment and Employment Publication Clauses force Christian Healthcare to associate with employees who undermine its religious messages. This violates the ministry's freedoms of (A) expressive association and (B) assembly.

A. Michigan's law co-opts Christian Healthcare's expressive association.

Christian Healthcare enjoys "a corresponding right to associate with others in pursuit of … religious … ends." *Roberts v. Jaycees*, 468 U.S. 609, 622 (1984). Christian Healthcare satisfies the Supreme Court's three-part test for expressive association. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

First, Christian Healthcare "engage[s] in some form of expression." *Id.* at 648. It shares the Gospel with patients and prays with them. Blocher Decl. ¶¶ 10–11, PageID.181; Woo Decl. ¶¶ 39–41, PageID.193-194. Employees regularly pray, talk, and commune with each other too. *Id*. The Medical Assistant and Member Services Receptionist positions are distinctly Christian roles. Blocher Summ. J. Decl. ¶¶ 9–14. They promote Christian Healthcare's "distinctive faith-based" views by greeting, comforting, praying with, and communicating with members, and conveying the ministry's values. PageID.2111-2116.

Second, Michigan's law "affects in a significant way" the ministry's "ability to advocate public or private viewpoints," *Dale*, 530 U.S. at 648, and interferes with its right to "not … associate." *Jaycees*, 468 U.S. at 622–23. The law forbids Christian Healthcare's faith-based employment policy for positions Michigan considers non-ministerial. Stips. ¶¶ 12, 20, 53–60, PageID.2090-2091, 2096-2098. Michigan says the ministry must hire employees who "disagree[]" with its beliefs "as long as they can give and provide [a] basic overview." Trevino Dep., PageID.2650. To Michigan, it's fine for Christian Healthcare employees to "pray with people" even if they do not

"believe in a certain philosophy or religion." Trevino Dep., PageID.2638. And, to Michigan, if an employee can offer empty "Christian sounding prayers," the ministry must hire them. *Id.* at PageID.2652-2653. This is a "severe intrusion" on the ministry's "right[] to freedom of expressive association." *Dale*, 530 U.S. at 659. It makes the ministry out as a "hypocrite[]"—offering employees who say one thing while doing and believing another. *Slattery v. Hochul*, 61 F.4th 278, 290 (2d Cir. 2023). But, as an expressive association, the ministry has a right to "limit its employees to people who share its views." *Id.* at 291.

Third, forcing Christian Healthcare to associate with employees who disagree with its beliefs fails strict scrutiny. *Dale*, 530 U.S. at 556–57. So the First Amendment protects the ministry's employment decisions for its open Member Services Receptionist and Medical Assistant positions.

B. Michigan's law undermines Christian Healthcare's freedom of assembly.

The First Amendment protects Christian Healthcare's right to assemble. *See Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 249–250 (6th Cir. 2015) (listing examples of protected assemblies). The Supreme Court looks to history and tradition for the scope of First Amendment rights. *Vidal v. Elster*, 602 U.S. 286, 300–01 (2024). Historically, the "freedom of assembly was understood to protect not only the assembly itself but also the right to organize assemblies through . . . associations and for those associations to select their own members by their own criteria." Michael W. McConnell, *Freedom by Association*, First Things (Aug. 2012). Christian Healthcare fits the historical definition of a protected assembly because its employees gather corporately to express a particular message. *Id.*; § II.A. But Michigan cannot "justify" this application of ELCRA "by demonstrating that [it is] consistent with the Nation's historical tradition" of regulating assemblies because the State has no "representative historical analogue." *New York State Rifle & Pistol*

Ass'n, Inc. v. Bruen, 597 U.S. 1, 24, 30 (2022). Without any historical comparators involving similar regulation, ELCRA cannot be applied to undermine Christian Healthcare's freedom of assembly.

III. Michigan's law lacks general applicability.

Michigan's Employment and Accommodation Clauses also infringe on Christian Healthcare's free-exercise rights because they lack general applicability twice over. They (A) allow for "individualized exemptions" through discretionary, case-by-case decision making. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). And they (B) treat "comparable secular activity" "more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

A. The Clauses authorize individualized exemptions.

The Employment and Accommodation Clauses are not generally applicable because they employ a system of individualized exemptions.

Employment Clause. Employers may obtain a BFOQ by showing that certain traits are "reasonably necessary" to their "normal operation." MCL 37.2208; Stips. ¶ 46, PageID.2095. The BFOQ application contains more requirements. Employers must "explore alternatives," "justify the BFOQ exemption[s]," provide an "in-depth analysis of the case law," propose "findings of fact and conclusions of law," and respond to a list of thirteen questions. PageID.2101-2103. This process gives Michigan "sole discretion" to authorize "individualized exemptions" for some employment-related activities through a "formal" exemption process. *Fulton,* 593 U.S. at 533, 537.

For example, the Department's witness testified that the Department

- considers the "[r]easonably necessary qualification" as a "case by case determination," Trevino Dep., PageID.2598;

- approaches exemptions in a "very fact specific" way by "weighing and looking at the duties, *id.* at PageID.2599-2600; and
- grants exemptions "on a case by case basis per se," *id.* at PageID.2646.

The Commission's witness likewise testified that the Commission

- considers the "essential to the normal operation of the business" language on "a case by case basis," Londo Dep., PageID.2699;
- agrees that the BFOQ system is "designed to be decided on a case by case basis," *id.*; *see also id.* at PageID.2699-2700, and
- "consult[s] their own perspectives in making" a "determination" about BFOQ alternatives, *id.* PageID.2700.

Michigan has exercised its discretion to grant BFOQs to probate courts, spas, and governmental entities. BFOQ Chart, PageID.3104-3107. And it has granted BFOQs to health departments to protect "privacy." BFOQ Rulings, PageID.3119-3122. The Commission has so much discretion that its representative changed his mind about one employment position *during his deposition in this case*. *Compare* Londo Dep., PageID.2733 (confirming Sexton position qualified for ministerial exception) *with id.* at PageID.2736 (reversing conclusion).

Flaunting its unfettered discretion, the Commission issued an atextual employee-benefits declaratory ruling and recently modified the ruling on a whim during a deposition. *Compare* Londo Dep., PageID.2695-2696 (discussing the contraceptive equity ruling) *with* Declaratory Ruling, PageID.2890 (same ruling). That ruling exempts only those religious employers whose "purpose" is the "inculcation of religious values" and who "serve[] primarily" co-religionists. Declaratory Ruling, PageID.2890. But inculcating religious doctrine is a "theological choice[]," as is who to serve, and Michigan's law thus "favors some denominations over others." *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*,

605 U.S. 238, 252 (2025). And it leaves out a wide swath of religious entities—like religious soup kitchens, homeless shelters, and medical ministries.

There's more. Under the Employment Clause, the claimant must make an initial showing of unlawful discrimination. Training, PageID.2910. If so, the burden shifts to the employer to provide a "legitimate non-discriminatory reason for the adverse action." *Id.* In that analysis, the Department's discretion is "very broad," it adjudicates cases on case-by-case, and it has discretion to decide whether the employer's reason for the adverse action is legitimate. Trevino Dep., PageID.2590-2591. For example, the Department deemed a passing reference to a "change in business needs" or "accreditation" as legitimate despite the complainants making an initial showing of discrimination. Material Facts, ¶¶ 31–36, PageID.2349–2350.

Accommodation Clause. For similar reasons, the Accommodation Clause also lacks general applicability by allowing individualized exemptions.

The Department evaluates whether a public accommodation had a "legitimate non-discriminatory reason" to deny a service on a case-by-case basis. Trevino Dep., PageID.2580-2581; Training, PageID.2898. That reason "could be anything" the Department decides. Trevino Dep., PageID.2580-2581. Applying its discretion, the Department found that following Food and Drug Administration requirements and policies on using "legal first and last name[s]" qualify as legitimate reasons for denying a service to a transgender person. Case Files, PageID.3068, 3079. Likewise, though declining abortion services would ordinarily be unlawful sex discrimination, a Michigan statute allowing medical providers to do so on religious grounds counts as a legitimate non-discriminatory reason. *See* Trevino Dep., PageID.2584; MCL 333.20182.

And the Commission's witness testified that the Department considers exemptions for public accommodations "on a case by case basis" by "analyz[ing] the totality of the situation and make an informed decision." Londo Dep., PageID.2708.

In fact, the Commission set up the whole system for decision-making to turn on individualized assessments of cases. *Id.* at PageID.2865-2686.

* * *

These features of the Employment and Accommodation Clauses create "a formal mechanism for granting exceptions" and "renders" them "not generally applicable." *Fulton*, 593 U.S. at 535–37; *accord Dahl v. Bd. of Trs. of W. Michigan Univ.*, 15 F.4th 728, 733–35 (6th Cir. 2021) (holding university's individualized vaccine policy for religious exemptions lacked general application). And it does not matter that Christian Healthcare never applied for an exemption. The exceptions' mere existence defeats general applicability. *See Fulton*, 593 U.S. at 537. Bottom line: the clauses flunk *Fulton*.

B. The Clauses treat religious exercise worse than comparable secular conduct.

The Employment and Accommodation Clauses also treat secular conduct better than Christian Healthcare's religious exercise.

To determine if activities are comparable, courts evaluate whether secular and religious activities pose the same "risk" of undermining the "asserted government interest that justifies the regulation." *Tandon*, 593 U.S. at 62. If a law "fail[s] to prohibit nonreligious conduct that endangers these interests in a similar or greater degree," the law is "underinclusive" and not generally applicable. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). Often, *other* laws render the challenged law underinclusive. *See id.* at 546 (looking at state law to determine city ordinance lacked general applicability); *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep't*, 984 F.3d 477, 480–81 (6th Cir. 2020) (comparing dissimilar "forms of activity" and different "statutes or decrees"). Following this approach, the Accommodations Clause is not generally applicable.

Michigan repeatedly claims an interest in protecting against "unlawful discrimination based on protected bases in general." Trevino Dep., PageID.2621; Londo Dep., PageID.2702-2703. In safeguarding that interest, Michigan "ha[s] no favorite children"—"[a]ll of these" protected classes "receive equal consideration." *Id.* at PageID.2703. Judged against that interest, Michigan's anti-discrimination laws have many holes.

For example, Michigan allows "sports schools or leagues" to engage in sex discrimination. MCL 37.2302a(4). Elsewhere, Michigan's law bans sex- and gender-identity discrimination in education and real estate (MCL 37.2102(1)) but allows schools to serve members of only one sex (MCL 37.2404) and some landlords to discriminate on any basis for any reason (MCL 37.2503). And Michigan exempts "private clubs" like the Elks Lodge from its public-accommodation definition, even when they act like restaurants. Case File, PageID.3087.

Michigan also asserts the same interest in "securing access to cross-sex hormones" as "access to abortion." Interrogatories, PageID.2857. But Michigan allows medical providers to decline to participate in an abortion for "professional, ethical, moral, *or* religious grounds." MCL 333.20182 (emphasis added). It has no similar exceptions for medical interventions related to gender transitions. *See* Interrogatory, PageID.2874; Uprooted Electrolysis Case File, PageID.3037-3060.

The exemptions discussed above (§ III.A) add to the clauses' problems. In those cases, Michigan first necessarily concluded that the activities were discriminatory—otherwise there would be no need for the exemption—but exempted the activities anyway. *E.g.*, Londo Dep., PageID.2705. By exempting those discriminatory activities but not Christian Healthcare's, Michigan treats the ministry's employment policies "less favorably than it does comparable secular" actors. *Monclova Christian Acad.*, 984 F.3d at 480.

IV. Michigan's law compels Christian Healthcare to speak a viewpoint about gender identity to which it objects.

The Accommodation Clause requires Christian Healthcare to contradict its religious beliefs by using pronouns and similar language based on gender identity, not sex.

But the First Amendment protects the right to express one's views on sex by declining to use pronouns that conflict with someone's sex. *See Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, No. 23-3630, 2025 WL 3102072, at *5, 12–13, 16, 18 (6th Cir. Nov. 6, 2025) (en banc). Masculine and feminine pronouns "convey a powerful message implicating a sensitive topic of public concern"—gender identity. *Meriwether v. Hartop*, 992 F.3d 492, 503, 508 (6th Cir. 2021).

That's what Christian Healthcare does: it expresses that God created humankind as "male and female" by using biology-based pronouns. Woo Decl.¶¶ 10, 20–21, PageID.189, 191; Ex. 6, PageID.125-126. It believes that using biologically inaccurate pronouns endorses a view that it opposes. *See* Ex. 3, PageID.111-120; Woo Decl. ¶¶ 20–21, PageID.191.

But the Accommodation Clause makes this illegal by requiring the ministry to provide "equal enjoyment" of their privileges, advantages, and accommodations. MCL 37.2302(a); MCL 37.2102(1). Michigan claims the ministry's pronoun policy counts as unequal treatment because it leads to the "use" of "the same pronouns for two people that are differently situated." Londo Dep., PageID.2705-2707; Johnson Dep. PageID.2460-2461. And Michigan claims a "compelling interest" in stopping this. Interrogatories, PageID.2874-2875. Michigan's last-minute attempt to re-write history based solely on advice of its litigation counsel does nothing to alleviate the ministry's credible threat of enforcement. *See* Statement of Facts § V (summarizing history). And it defies Michigan's position in an *ongoing* enforcement action.

The Department is prosecuting a hair salon for publishing on social media that it would not use a customer's preferred pronoun. Studio 8 Charge ¶ 19, PageID.2970. The Department called the salon's First Amendment a "red herring" and claimed that its First Amendment defense could not be considered. Press Conference, PageID.2934; Studio 8 Briefs, PageID.2989-2992, 3005. The ALJ agreed. Studio 8 Orders, PageID.3009, 3012-3013.

In turn, Michigan compels the ministry to speak the government's "preferred message" on gender identity by forcing it to refer to biological males who identify as female with feminine pronouns and vice versa to avoid penalty. *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). Christian Healthcare objects to this compelled speech. *E.g.*, Woo Decl. ¶¶ 13, 20–21, PageID.190-191.

Worse, the compulsion is content- and viewpoint-based. The law is content-based because it regulates speech on the "topic" of gender identity. *Meriwether*, 992 F.3d at 508. The law is viewpoint-based because it prohibits Christian Healthcare's exclusive use of sex-based-pronouns—which communicates the idea that sex "cannot be changed"—and requires gender-identity-based pronouns—which expresses an opposite view. *Id.* at 506, 508; *Defending Educ.*, 2025 WL 3102072, at *15. Because Michigan engages in "odious viewpoint discrimination," the law is per se unconstitutional, or, at least, fails strict scrutiny. *Defending Educ.*, 2025 WL 3102072, at *9, 16–18.

V. Michigan's law restricts Christian Healthcare's speech based on content and viewpoint.

The Employment and Accommodation Publication Clauses also restrict Christian Healthcare's constitutionally-protected speech about its employment, medical-care, and pronoun policies based on the speech's content and viewpoint. A content-based law "draws distinctions based on" a speaker's "message." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). A viewpoint-based law targets a speaker's

"particular views … on a subject," is an "egregious form of content discrimination," and is "presumptively unconstitutional." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829–830 (1995). Each clause does both.

Employment Publication Clause. This clause restricts the ministry's speech by prohibiting statements that "express[] preference" for or "attempt[] to elicit information concerning" a prospective employee's sexual orientation or gender identity. MCL 37.2206(1)–(2). By banning a "subclass" of speech on only those topics, the law is facially content-based. *Planet Aid v. City of St. Johns*, 782 F.3d 318, 329 (6th Cir. 2015).

It is also content-based as applied to Christian Healthcare, which desires to post job descriptions for its Member Services Receptionist and Medical Assistant positions. Blocher Supp. Decl. ¶¶ 16–19, PageID.1468. Those posts reference Christian Healthcare's Statement of Faith, which requires employees to agree that "human beings are not at liberty to alter their biological sex" and that marriage is "exclusively the union of one man and one woman." PageID.2105. The posts violate this clause because they express an employment preference based on gender identity and sexuality. Stips. ¶¶ 12, 20, 53–60, PageID.2090-2091, 2096-2098; Londo Dep., PageID.2714. But employers can post statements preferring Michigan State graduates because the clause doesn't prohibit school favoritism. That distinction turns on content.

The restriction is also viewpoint based because it treats religious employment discussions worse than secular conversations. The clause muzzles the ministry's views, but other employers may discuss their secular workplace policies with prospective employees. *See Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–95 (1993) (holding school policy viewpoint-based that prohibited using buildings for "religious purposes" but allowed using them for similar secular purposes). By taking sides in a policy debate, Michigan engages in "uniquely

harmful" viewpoint discrimination that is per se unconstitutional. *Defending Educ.*, 2025 WL 3102072, at *14.

Accommodation Publication Clause. This clause restricts Christian Healthcare's speech on pronouns and medical care. The Accommodation Publication Clause's Denial Clause prohibits statements "indicat[ing] that the full and equal enjoyment" of public accommodations will be denied because of gender identity. MCL 37.2302(b). And the Unwelcome Clause bans any statements "indicat[ing]" that someone is "unwelcome, unacceptable, or undesirable" because of their gender identity. *Id.* So the clauses are facially content-based because their restrictions "depend entirely on the communicative content of the" speech. *Reed*, 576 U.S. at 164. The law regulates speech about gender identity, but not all such speech and not all topics. While Christian Healthcare doesn't seek to *facially* enjoin the Accommodation Publication Clause, it is still facially content-based.

This clause also applies to Christian Healthcare's desired speech based on its content. Christian Healthcare hopes to publish its Membership Agreement, which explains its faith-based policy of using sex-based pronouns and refusing gender-transition interventions. Woo Decl. ¶¶ 20–23, PageID.191; Blocher Decl. ¶¶ 20–27, PageID.183-184. But Michigan is prosecuting a hair salon for publishing that it won't use biologically inaccurate pronouns. Studio 8 Briefs and Orders, PageID.-2988-3026. And Michigan admitted that posting the agreement is unlawful because it indicates a "refusal to provide gender-affirming care." RFA 20, PageID.2861; Londo Dep., PageID.2721. Meanwhile, Michigan allows medical providers to post messages saying they use any requested pronouns or provide gender-transition interventions. The difference in outcome turns on the difference in content.

This clause is also doubly viewpoint based. The Denial Clause only restricts Christian Healthcare's speech on pronouns and medical care because of the ministry's view that sex is unchangeable. Other public accommodations can express

contrary opinions about gender identity with impunity. *See Meriwether*, 992 F.3d at 509 (explaining why this imposes a viewpoint). And the Unwelcome Clause's use of "unwelcome, unacceptable, or undesirable," all vague and undefined terms, imply a viewpoint. Those terms allow "positive" statements about certain protected classes, but not statements that some may view as "derogatory," "offensive," or contrary to "society's sense of decency or propriety." *Iancu v. Brunetti*, 588 U.S. 388, 393–94 (2019) (citation modified). By putting a "thumb on the scale in favor of certain perspectives," Michigan commits textbook viewpoint discrimination. *Defending Educ.*, 2025 WL 3102072, at *14.

That's not to say that Christian Healthcare intends to give offense—it simply expresses its religious beliefs. But the clause applies "regardless of the respondent's intent." Studio 8 Brief, PageID.2998. And claimants "need not be members of the protected class" to complain or file suit. Trevino Dep., PageID.2564. Given that breadth, the clause chills the ministry's speech about its constitutionally-protected activities based on content and viewpoint. The First Amendment forbids this censorship.

VI. Michigan's law fails strict scrutiny as applied to Christian Healthcare.

Michigan's laws are per se unconstitutional because they invade Christian Healthcare's religious autonomy and freedom of assembly and compel and restrict speech based on its viewpoint. *See* §§ I, II.B, IV, V. Regardless, they must at least satisfy strict scrutiny because they violate Christian Healthcare's First Amendment rights. *See Reed*, 576 U.S. at 171 (speech); *Fulton*, 593 U.S. at 541 (free exercise); *Dale*, 530 U.S. at 658–59 (expressive association). This requires Michigan to prove that its law (A) serves a compelling interest in (B) the most narrowly tailored way. But Michigan cannot.

A. Michigan's law does not advance a compelling interest.

A compelling interest must be "of the highest order." *Fulton*, 593 U.S. at 541. And it must be "precise," not "broadly formulated." *Id.* (citation modified). Plus it must solve "an actual problem." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822–24 (2000).

Start with the last point. Michigan does not contend that Michiganders lack access to non-religious employers or medical providers. Interrogatories, PageID.2843-2845. And Michigan has no evidence that Christian Healthcare's policies create a problem. Since the parties stipulated to an injunction almost a year ago, Michigan has seen no increase in discrimination complaints, nor has the injunction disrupted Michigan's ability to enforce ELCRA. Londo Dep., PageID.2718-2719.

Even so, Michigan claims a general interest in ending discrimination justifies the burden on Christian Healthcare's employment, pronoun, and medical care policies. Interrogatories, PageID.2855-2856. But Michigan's witnesses offered zero specificity. The Commission identified its interest as "preserv[ing] the civil rights of members of the state of Michigan." Londo Dep., PageID.2710. The Department's witness fared no better, asserting "overall interests … to make sure that there is not unlawful discrimination based on protected bases just in general." Trevino Dep., PageID.2621. She could not pinpoint any "more specific" interest. *Id.*

But Michigan's general "non-discrimination" interests aren't the issue; it's "whether" Michigan "has such an interest in denying an exception to" Christian Healthcare. *Fulton*, 593 U.S. at 541; *accord Dale*, 530 U.S. at 659 (holding interests must "justify" constitutional "intrusion" at issue). Michigan articulates none.

Michigan's law also has many holes that render it underinclusive as to its claimed interests. *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 802 (2011) (stating "[u]nderinclusiveness raises serious doubts about" the government's interests); *City*

of Hialeah, 508 U.S. at 547 (holding "restriction" on the First Amendment "is not compelling" when a law fails to prevent other harms).

For example, Michigan's BFOQ application creates "a system of exceptions" that "undermine[]" its "contention that" ELCRA "can brook no departures." *Fulton*, 593 U.S. at 542. And the Commission follows a ruling that allows some—but not all—religious employers to avoid paying for emergency contraception, even though that would otherwise be sex discrimination. Londo Dep., PageID.2695-2697. Likewise, under the Accommodation Clause, some entities can discriminate without consequence. Case File, PageID.3087. And Michigan's abortion opt-out law permits what would otherwise be considered sex discrimination. MCL 333.20181; Trevino Dep., PageID.2584. If these exemptions don't undermine Michigan's interests, neither would exempting Christian Healthcare.

Michigan's non-discrimination interests also do not apply to the ministry's pronoun and medical-care policies. Christian Healthcare happily serves transgender members. *See* Woo Suppl. Decl. ¶ 7, PageID.1472. When pronouns come up with such members, the ministry continues to serve them and addresses them with first or last names. *Id.* at ¶¶ 20–21, PageID.191. Nor does declining to prescribe cross-sex hormones to facilitate a gender transition undermine any legitimate non-discrimination interests. That decision turns on the "particular medical uses" of the treatment, not the status of the member. *Skrmetti*, 605 U.S. at 515–16. The ministry's choice also helps members avoid serious harms associated with medicalized transitions—like sterilization, loss of bone density, and more. HHS Report at 142–45; Woo Decl. ¶¶ 22–23, 27, PageID.191. Michigan should encourage—not punish—that outcome.

B. Michigan's law is not narrowly tailored.

Michigan's law also fails the "exceptionally demanding" narrow-tailoring prong. *Holt v. Hobbs*, 574 U.S. 352, 364 (2015). Michigan must prove that regulating Christian Healthcare is "the least restrictive means among available, effective alternatives." *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). Michigan must have "consider[ed]" alternatives and "demonstrate that" they "would fail." *McCullen v. Coakley*, 573 U.S. 464, 494–95 (2014). But many more tailored options exist. Michigan never considered them.

On pronouns, Michigan could hold that declining to use a customer's chosen pronouns is not discrimination if the business otherwise serves the customer. Likewise, on medical care, Michigan could agree that declining to prescribe cross-sex hormones is not discrimination because the ministry's decision turns on medical use, not transgender status. *See Skrmetti*, 605 U.S. at 511–12. Besides the ministry's medical policy, Michigan is unaware of any situation where ELCRA would require a medical provider to offer a treatment for one diagnosis because the provider offers the treatment for a different diagnosis. Trevino Dep., PageID.2620.

Also on medical care, Michigan could exempt religious medical providers from providing controversial treatment that violates their conscience. Michigan does this for abortion. MCL 333.20181. The federal government and other states offer similar exemptions, including some across-the-board conscience objections. *See* 42 U.S.C.A. § 300a-7; Ex. B (fifty-state survey). Or Michigan could follow California to require insurance providers to offer a "directory" of network providers who offer "gender-affirming services." Cal. Ins. Code § 10133.14. Or it could provide the objectionable interventions itself through state-operated providers. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014) (suggesting that government pay for medical services to which employers object on religious grounds).

Last, on employment, Michigan could exempt religious organizations from its employment law like the federal government and most states. *See* 42 U.S.C.A. § 2000e-1(a); Ex. A (fifty-state employment-law survey).

In short, other governments offer exemptions without undermining their interests. Michigan's witnesses admitted that they were "unaware" of whether the legislature considered any alternatives before amending ELCRA. Trevino Dep., PageID.2653-2654; Londo Dep., PageID.2718. That proves the law lacks narrow tailoring. *See Mahmoud*, 145 at 2332 (showing how Maryland could adopt practice of other states); *McCullen*, 573 U.S. at 494 (holding governments must "consider[] different methods that other jurisdictions have found effective"). So Michigan's law cannot survive strict scrutiny.

VI. The Unwelcome Clause facially violates the First and Fourteenth Amendments because it is vague and overbroad and allows unbridled discretion.

The Unwelcome Clause prohibits speech which indicates a person's patronage "is objectionable, unwelcome, unacceptable, or undesirable" because of protected traits. MCL 37.2302(b). This language is facially vague, overbroad, and grants Michigan officials unbridled enforcement discretion.

Vagueness and unbridled discretion. Due process requires laws to give reasonable people "fair notice" of what they prohibit and provide "guidance" to prevent "arbitrary" enforcement. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). The Unwelcome Clause fails both principles. It relies on vague terms giving arbitrary enforcement power.

For example, the Commission's witness couldn't define "objectionable, unwelcome, unacceptable, [or] undesirable." Londo Dep., PageID.2704. Worse, the Commission does not have "written policies or rules" or, indeed, "any policy" at all defining these terms. *Id.* To glean its meaning, the witness suggested asking "the

legislature" about "what they meant." *Id.* But the legislature never defined these terms—that's the problem. And with no definitions or written policies, the Unwelcome Clause is vague. *See Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 558-59 (6th Cir. 1999) (term "reasonable" vague when enforcement officials could not define it). Indeed, given the "subjective valence," of the terms "unwelcome, objectionable, unacceptable, [and] undesirable" their "definitions could be nearly limitless." *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1215 (10th Cir. 2021) (Tymkovich, C.J., dissenting), *rev'd*, 600 U.S. 570 (2023). Vagueness compounded by subjective terms leads to unfettered enforcement discretion. *Id.* at 1213–14 (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972)). Michigan can employ the clause as a "convenient tool" for "enforcement against particular groups deemed to merit [its] displeasure." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972) (citation modified).

Overbreadth. A statute is overbroad when a "substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens,* 559 U.S. 460, 473 (2010) (cleaned up). The Unwelcome Clause is overbroad because terms like "objectionable, unwelcome, unacceptable, or undesirable" ban too much speech. *See 303 Creative LLC,* 6 F.4th at 1213–14 (10th Cir. 2021) (Tymkovich, C.J., dissenting) (providing examples). For example, these terms could prevent a Muslim shop owner from hanging a "There is no God but Allah" sign if it made a Christian customer feel unwelcome. *Id.* Or Michigan could enforce the terms to prohibit a public accommodations from expressing their views on gender identity by posting a sign stating "There are only two genders." Studio 8 Charge, PageID.2973. The Unwelcome Clause's terms are also superfluous if they are read to prohibit statements indicating an intent to deny services because the Denial Clause already bans such statements. MCL 37.2302(b). Under the canon against surplusage, where each "word of a statute should be given

meaning," the Unwelcome Clause must ban statements *besides denials*. *Baker v. Gen. Motors Corp.*, 297 N.W.2d 387, 398 (Mich. 1980). The remaining communications contain a substantial number of statements that the First Amendment protects—i.e., all communication besides denials.

Conclusion

Michigan's law irreparably harms Christian Healthcare by violating its First Amendment rights and threatens its ability to serve those in its community. To stop this violation, Christian Healthcare asks this Court to grant its summary-judgment motion, declare its constitutional and statutory rights, and permanently enjoin Michigan's law.

Respectfully submitted this 21st day of November, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2025, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

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