No. 25-3828

In the United States Court of Appeals for the Ninth Circuit

CULTURE OF LIFE FAMILY SERVICES, INC.,
Plaintiff-Appellant,
v.
ROB BONTA, in his official capacity as
the California Attorney General
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of California
Honorable Gonzalo P. Curiel
(3:24-cv-01338-GPC)

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CORPORATE DISCLOSURE STATEMENT

Plaintiff Culture of Life Family Services, Inc., issues no stock and has no parent corporation.

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INTRODUCTION

Bonta's Answering Brief speaks volumes through its silence. After years-long investigation, Bonta still cannot point to a single woman in California harmed by Abortion Pill Reversal (APR). He offers no evidence proving that APR is unsafe or ineffective. And he all but concedes what the district court recognized: (at worst) the science is unsettled. That should end the matter. When the government seeks to silence speech on a hotly disputed medical issue, the First Amendment demands heightened proof, not speculation.

Instead of proof, Bonta offers rhetoric and misdirection. He insists that COLFS' speech is "false," but he does not prove actual falsity, instead arguing that the evidence is of insufficient quality to prove truth. He claims APR is "unproven" while ignoring every completed peer-reviewed human study and every animal study in the record showing positive outcomes, along with whitewashing the FDA's declaration that the "abortifacient activity of [mifepristone] is antagonized by progesterone allowing for normal pregnancy and delivery." He invokes consumer protection to prohibit speech about APR while conceding the treatment itself remains legal and available.

The Response also confirms the State's selective enforcement. Bonta does not deny that abortion providers make sweeping safety claims about chemical abortion without consequence. He does not dispute that government actors and favored speakers are exempt from the very statutes he wields against COLFS. Nor does he justify compelling COLFS to parrot his government-approved warnings that are anything but "purely factual and uncontroversial."

In short, Bonta fails to justify his censorship of truthful, religiously motivated speech on a matter of profound public concern. And he fails to meet the State's burden under any level of scrutiny. This Court should reverse.

ARGUMENT

I. COLFS is likely to succeed on its Free Speech claim.

A. COLFS' Pro-APR speech is not commercial.

Bonta insists COLFS' speech in favor of a service it provides for free—and its speech merely informing women about its availability in hopes they can find help from other providers—is commercial speech. His argument twists the law and facts and should be rejected.

1. COLFS' APR speech does not merely propose a commercial transaction.

Bonta argues COLFS' APR speech "do[es] no more than propose a commercial transaction," Response Brief at 39 n.10 ("Resp.Br."), because it is *willing* to accept insurance or payment for APR treatments *even though payment is not required*. Resp.Br.39 n.10. That argument defies the "common-sense" and "fact-driven" nature of the commercial speech inquiry. *X Corp. v. Bonta*, 116 F.4th 888, 900 (9th Cir. 2024).

COLFS speaks about (and provides) APR because of its "deeply rooted" *religious* motivation to provide "Christ-centered medical care … to all women *regardless of ability to pay*." 6-ER-944 (emphasis added). Such an explicitly religiously motivated service is quintessentially non-commercial, even if COLFS receives some fees for services. *See Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

Bonta attempts to distinguish *Murdock* by arguing the Jehovah's Witnesses there "disclose[d] [their] religious motives." Resp.Br.43. But COLFS conspicuously states its religious mission on its "About COLFS Medical Clinic" webpage, 6-ER-944, and its religiously motivated provision of APR is a protected First Amendment activity. *See Bella Health and Wellness v. Weiser*, No. 1:23-cv-00939-DDD-SKC, --- F. Supp. 3d ---,

2025 WL 2218970 (D. Colo. Aug. 1, 2025) (permanently enjoining law prohibiting APR as violation of Free Exercise Clause as applied to religiously motivated provider).

2. The Bolger factors confirm that COLFS' speech is not commercial.

Even if this case presented a close question (it does not), Bonta would be wrong that COLFS' speech is commercial under the three *Bolger* factors. *See Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983). Assuming arguendo COLFS' pro-APR speech has a commercial "component," the Court must look to "the nature of the speech taken as a whole." *Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952 (9th Cir. 2012). Here, the challenged speech "as a whole" is not commercial: this is religiously motivated speech seeking to help women save their unborn children from unwanted abortion.

a. COLFS' APR speech is informational, not a commercial advertisement for a specific product.

COLFS' pro-APR speech is not that of a merchant "tout[ing] *only its own products*." *Dex Media West*, 696 F.3d at 959 (internal quotations omitted). Much of COLFS' challenged speech appears on an FAQ page that Bonta notes includes information about COLFS' ability to directly

provide APR. Resp.Br.43-44. But he neither evaluates the page "as a whole," *Dex Media*, 696 F.3d at 957, nor even quotes it accurately. He deceptively cuts short his first exemplar statement, "At COLFS Medical Clinic we can help you," Resp.Br.44, omitting the rest of the statement, "learn everything you need to know about the APR procedure and where you can get the help you need in your local community." 5-ER-0864. The primary purpose is thus *informational*—even directing women *away* from COLFS depending on their needs and location.

Further, a commercial advertisement touts "a product or service *for business purposes*." *Hilton v. Hallmark Cards*, 599 F.3d 894, 905 n.7 (9th Cir. 2010) (emphasis added). But COLFS is willing to provide APR *for free* and speaks for *religious* and *informational* purposes. These statements are not "in the context of commercial transactions." *Bolger*, 463 U.S. at 68. Nor do COLFS' *general* references to APR become commercial absent "sufficient control of the market for a product," a trade association posture, or a claim to be "the leader in the manufacture and sale" of a product, *id.* at 66 n.13, which are not present here. Bonta ignores *Bolger*'s constraints to simply assert the "FAQs direct consumers to COLFS for APR services throughout." Resp.Br.44 n.11. But the page "throughout" instead repeatedly promises to help women connect to support they need,

5-ER-0866, by providing "*information and resources* to make healthy choices," 5-ER-0868, while directing them to a *national* non-COLFS help-line, 5-ER-0864-0868. Read "as a whole," the speech is noncommercial, aimed at saving lives, not selling more progesterone pills.

b. COLFS' primary motive is religious and informational, not economic.

Bonta fails to even argue that economic motive is "the primary purpose for" COLFS's challenged speech. *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1117 & n.7 (9th Cir. 2021). Further, even "a simple profit motive" to "obtain an *incidental* economic benefit, without more, does not make" speech commercial. *Ariix*, 985 F.3d at 1117 (emphasis added). Otherwise, "virtually any newspaper, magazine, or book for sale" would become a commercial publication. *Id.* And the fact COLFS "depends financially" upon contributions from those able to give does not diminish First Amendment protection. *Dex Media*, 696 F.3d. at 963-65; *Riley v. Nat'l Fed'n. of the Blind of N.C.*, 487 U.S. 781, 796 (1988).

Bonta claims COLFS "solicit[s] patients to receive APR" and thus speaks "in a commercial context." Resp.Br.41. He ignores the actual context: COLFS' "deeply rooted" religious motivation to inform and assist women service "regardless" of ability to pay. 6-ER-944; ER-0864-68.

Bonta's reliance on *American Academy of Pain Management v. Joseph*, 353 F.3d 1099, 1106 (9th Cir. 2004), is misplaced. There, soliciting patients was part of the physician plaintiffs' commercial speech, 353 F.3d 1099 at 1106, and the challenged statute regulated only physicians' "advertisements" of *their own* identifying information and credentials. *Id.*; *see Dex Media West*, 696 F.3d at 959 ("tout[ing] only [one's] own products" is commercial speech). COLFS' APR speech does the opposite: it educates women about APR and how and where to obtain it–whether from COLFS *or other providers*. 5-ER-0864-68.

Put simply, COLFS' APR speech is religious and informational, not commercial, and Bonta identifies no economic motive (let along a primary economic motive) for that speech.

3. COLFS' speech is not commercial even absent an economic motive.

Bonta cites a dictum in *First Resort* for the notion that "*Bolger* does not preclude classification of speech as commercial in the absence of the speaker's economic motivation." 860 F.3d 1263, 1273 (9th Cir. 2017). Resp.Br.41. Even if that were so, *Bolger* emphasized that commercial speech typically is marked by "*all* [three] characteristics" discussed

above. *Bolger*, 463 U.S. at 67. And, as shown, Bonta has not established *even one* of them here.

Bonta also invokes *Bernardo v. Planned Parenthood Fed'n of America*, which deemed Planned Parenthood webpages discussing a proposed connection between abortion and breast cancer as "educational" rather than "commercial," partly because the webpages referenced studies with which Planned Parenthood disagreed. 115 Cal. App. 4th 322, 344-45 (2004). Resp.Br.41. But *Bernado* did not *require* a webpage to canvass all competing studies to be educational or noncommercial. And, in any event, COLFS' FAQ webpage links to studies *supporting* the abortion pill (contrary to COLFS' pro-life views), accurately describes the APR process, and provides appropriate links to studies and explainers on progesterone and APR. 5-ER-0864-69. The primary purpose is plainly informational, not commercial.

Bonta also cites *Tingley v. Ferguson* for supposed lesser protection of health professionals' speech. 47 F.4th 1055, 1083 (9th Cir. 2022). Resp.Br.42. But *Tingley* concerned regulation of a professional *service*, not public communications *about* that service. *See id.* Further, the Supreme Court has flatly rejected the notion that speech by health care

professionals receives diminished protection. *Nat'l Inst. of Fam. & Life Advocs. ("NIFLA") v. Becerra*, 585 U.S. 755, 771 (2018).

At bottom, commercial speech is considered more durable and less likely to be chilled or forgone than other speech because "advertising is the sine qua non of commercial profits." *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S 748, 771 n.24 (1976). COLFS' religiously motivated informational materials about APR are *not* essential to funding its medical practice and thus inversely are more readily vulnerable to chill—or even elimination—if California can proscribe them under the UCL and FAL.

Such proscription, if successful, would contravene the First Amendment's aim to prevent suppression of "unpopular ideas or information," even among professionals who disagree "both with each other and with government, on many topics in their respective field." *NIFLA*, 585 U.S. at 772.

Accordingly, COLFS' challenged speech is not commercial.[1]

[1] Bonta suggests in a footnote that COLFS' pre-enforcement standing "is questionable" if its speech is noncommercial. Resp.Br.38. That argument misunderstands pre-enforcement standing, which exists where, as here, the challenged restrictions "*arguably* proscribe" COLFS' speech and there is a credible threat of enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 162 (2014) (emphasis added).

B. COLFS' speech is protected scientific opinion.

With no evidence APR has ever harmed anyone, the First Amendment forbids government from picking a winner and loser in the live scientific debate about APR. And even if government could do so, Bonta still fails to show COLFS' speech is actually or potentially misleading.

1. Bonta's targeting is plainly content- and viewpoint-based.

Contrary to Bonta's arguments, Resp.Br.58-59, determining falsity inherently requires judging a statement's "topic." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *accord United States v. Alvarez*, 567 U.S. 709, 716-17 (2012). Thus, because COLFS' speech is noncommercial, Bonta's attempt to restrict it under the FAL and UCL triggers strict scrutiny. *See Reed*, 576 U.S. at 164.

Additionally, COLFS has shown selective-enforcement-style viewpoint discrimination under *Hoye v. City of Oakland*, 653 F.3d 835, 854-56 (9th Cir. 2011), despite Bonta's protestations to the contrary. It chronicled Bonta's deep-seated animus and campaign against pro-life viewpoints since *Dobbs*, beginning with his creation of a "Reproductive Justice Unit" and extending to a "Consumer Alert" targeting pro-life pregnancy centers, and an unsuccessful formal investigation into their activities

that culminated in a malicious state enforcement action against Heartbeat International and RealOptions over their own truthful but disfavored APR statements. Opening Brief at 19-20 ("Op.Br.").

Bonta's brief pretends away that evidence of animus, which collectively reveals an "intentional policy or practice" of selectively enforcing the UCL and FAL against truthful pro-*life* speech while leaving actually misleading pro-*abortion* speech unpoliced. *Hoye*, 653 F.3d at 855. Even a single enforcement action can evince an official "policy." *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-84 (1986). Accordingly, Bonta's attempted restriction of COLFS' speech must undergo strict scrutiny.

2. Bonta's attempted suppression of COLFS' scientific opinions about APR remains prohibited.

Bonta attempts to decide a scientific debate that he insists does not exist. But he fails to offer any argument undermining the fact that COLFS' pro-APR speech "relate[s] to a matter of public concern," is not "provably false," and is thus entitled to "full constitutional protection." *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20 (1990).

Bonta contends there is no cognizable "debate" because, allegedly, "no scientific evidence show[s] APR works." Resp.Br.53. Even setting aside the obvious circularity of that argument—just last month a federal

court recognized that the "debate" not only exists but is "substantial." *Bella Health*, 2025 WL 2218970, at *1, *5; *see also Nat'l Inst. for Fam. & Life Advocs. v. James*, 746 F. Supp. 3d 110, 118, 122 (W.D.N.Y. 2024).

Further, even when a plaintiff must show likely success on the merits, "within that merits determination the government bears the burden of justifying its speech-restrictive law." *Cal. Chamber of Com. v. Council for Educ. & Rsrch. on Toxics*, 29 F.4th 468, 477 (9th Cir. 2022) (cleaned up). Accordingly, Bonta's failure to present *any* proof that APR does not work fails to meet *his* burden. *Id.* The district court's finding that the "science here is unclear" confirms as much. 1-ER-0020.

Bonta cites *Bellion Spirits, LLC v. United States*, 7 F.4th 1201, 1213 (D.C. Cir. 2021), for the proposition that "commercial speech lacking any reliable support" is misleading and thus proscribable. Resp.Br.53. But here the district court expressly found COLFS' experts "reliable." 1-ER-0015. And even assuming COLFS' speech is commercial (it is not), *Bellion* addressed only a desired label messaging about a compound that might counteract alcohol's harm to DNA, *id.* at 1204—hardly a matter of substantial scientific debate on a matter of public concern. *Milkovich*, 497 U.S. at 20. That is an important distinction, as speech on matters of public concern (such as about scientific study of APR) receives "special

protection" to preserve an uninhibited marketplace of ideas. *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011); *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 579 (2011) ("ideas and information flourish" even in the "commercial marketplace").

A similar error infects Bonta's string cites to FTC cases, which involved expert findings of falsity about ordinary products not subject to the same ethical constraints in testing as APR. *See ECM BioFilms, Inc. v. FTC*, 851 F.3d 599 (6th Cir. 2017) (biodegradable plastic additives); *POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015) (pomegranate-based products); *Sears, Roebuck and Co. v. FTC*, 676 F.2d 385 (9th Cir. 1982) (dishwasher). The difference is meaningful, as the Sixth Circuit noted when explaining that *disclaimers* rather than bans are generally preferred under the First Amendment. *ECM BioFilms*, 851 F.3d at 614-15, 616-17.

Bonta says *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490 (2d Cir. 2013), is limited to communications among scientists. Not so. Resp.Br.54-55. Defendants there were alleged to have intentionally omitted data from their published study on the parties' competing products, "to mask the fact that the neonatal infants treated with [plaintiff's product] had a greater ex ante chance of survival than did the group treated

with [defendants' product]." *Id.* at 495. "After the article's publication, [defendants] issued a press release touting its conclusions and distributed promotional materials that cited the article's findings." *Id.* *ONY* broadly held that publishing accurate "*statements*" of nonfraudulent data, and resulting conclusions, by "a *speaker* or author" on subjects of "legitimate ongoing scientific disagreement," are not actionable as false advertising under the Lanham Act or New York deceptive practices laws, in view of the First Amendment. *Id.* at 498 (emphasis added). And the Court specifically held that defendants' "touting and distributing the article's findings for promotional purposes" was not actionable because "plaintiff does not allege . . . the promotional materials misstated the article's conclusions." *Id.* at 499. That rule thus applies whether the audience is scientists *or* consumers.

Bonta errs in relying on *Eastman Chemical Co. v. Plastipure, Inc.*, which wrongly cabined *ONY* to exclude disputed scientific statements in promotional materials. 775 F.3d 230, 237 (5th Cir. 2014). Regardless, *Eastman* involved a brochure that did not disseminate the underlying article and contained information not present in that article. *Id.* In contrast, COLFS' FAQ page presents the underlying 2018 Delgado study, and its APR information accurately reflects that and other studies. 5-ER-

0866 (citing Footnote 6); 5-ER-0869; *see also* 3-ER-0385-0394; 6-ER-0949-50.[2]

Bonta contends COLFS fails to "disclose" a scientific debate, which (he says) distinguishes this case from *Bernado*. But *Bernado* considered presentation of other studies only to decide whether speech was commercial. 115 Cal. App. 4th at 346. It ultimately held that even if Planned Parenthood's speech were commercial, it was protected because, as an *objective matter*, "the claimed link between abortion and breast cancer is a public health issue" over which a "good-faith" scientific disagreement exists. *Id.* a 359. The same is true here.[3]

Finally, Bonta relegates precedents demanding "exacting proof requirements" for protected speech like COLFS' to a footnote as allegedly

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[2] Bonta points to *Conformis, Inc. v. Aetna, Inc.*, which refused to extend *ONY* to statements by an *insurance company* to both laypeople *and physicians* about its coverage limitations, which statements were not "meant to communicate insights into matters of scientific debate." 58 F.4th 517, 534 (1st Cir. 2023). Here, COLFS' pro-APR speech is expressly intended to communicate such insights about APR. *See Pacira BioSciences, Inc. v. Am. Soc. of Anesthesiologists, Inc.*, 63 F.4th 240, 247-50 (3d Cir. 2023) (applying *ONY* to public podcast).

[3] While mere "reference[] to public health issues" does not "immunize false or misleading product information," *Bolger*, 463 U.S. at 68, here the question is whether COLFS' speech on a matter of public concern and scientific debate is actually false or misleading, triggering *Milkovich* and *ONY*.

inapposite. Resp.Br.57. But these requirements (such as a subjective mental state) reduce the risk that actions like Bonta's "will deter speakers from making even truthful statements" on matters of public concern. *Counterman v. Colorado*, 600 U.S. 66, 76 (2023). And even *actually* false speech cannot be banned absent an associated "legally cognizable harm." *United States v. Alvarez*, 567 U.S. 709, 719 (2012) (plurality). Bonta offers no evidence APR has ever caused, or is likely to cause, harm. The First Amendment accordingly protects COLFS' challenged speech.

C. Scientific evidence supports COLFS' APR statements.

Even if the First Amendment did not apply, the challenged APR statements are not inherently or potentially misleading. Bonta's contrary view rests on misread science, strained statistics, misapplied caselaw, and distortions of the record. He can identify not even one datum showing APR is ineffective or unsafe—much less a finding robust enough to counterweigh decades of contrary evidence.

D. The Biochemical Theory Behind APR.

The Attorney General still mischaracterizes COLFS as claiming that a completed abortion can be reversed, but COLFS instead states that APR can reverse mifepristone's ongoing *effects*.

Bonta argues the theory must be wrong because mifepristone binds to progesterone receptors more strongly than progesterone does. True, but irrelevant: in several clinical settings (as COLFS' reliable experts explain), a chemical with weaker binding affinity can outcompete chemicals with stronger binding affinity by sheer concentration—2-ER-0257-58; 5-ER-0877, 5-ER-0887—the microscopic equivalent of a pack of hyenas outcompeting a lion for a meal.

E. The Scientific Method and Levels of Scientific Evidence.

Bonta faults COLFS for citing case series rather than RCTs. Resp.Br.8. But requirements for substantiating a speaker's safety and effectiveness claims depends on context. For instance, the FTC puts great weight on accepted norms in relevant fields of research when RCTs are infeasible, confident that "rigorous, unbiased peer review … provides some level of assurance that the research meets" those accepted norms. FTC, *Health Products Compliance Guidance*, §§ II.B-II.B.2 (Dec. 1, 2022), 2022 WL 17902118, at *9, 11, 14. And the FDA long has allowed animal studies to stand in for RCTs when an RCT would be dangerous or unethical. *See* 31 C.F.R. 314.600, 314.610(a).

Here, COLFS relies on *peer-reviewed* studies observing the safety and efficacy of APR via such accepted methodological norms. *See* 3-ER-0385-0394; 5-ER-0908; 5-ER-0910; 6-ER-0949-50. In so doing, they follow the accepted norms of the field of obstetrics research, where hundreds of articles published in leading journals rely on observational studies and even case reports because of the unique ethical concerns that arise when treating pregnant women. *See* Catherine Y. Spong & James R. Scott, *Introducing the "Level of Evidence" to Obstetrics & Gynecology*, 103(1) Obstet. & Gynec. 1 (2004).

COLFS' experts agree. *See, e.g.*, 2-ER-0251; 2-ER-0077; 5-ER-0887. Bonta's assertions to the contrary lack support.

F. COLFS' Effectiveness Claims Are Supported by Every Peer-Reviewed APR Study Ever Published.

Every completed scientific study on APR reports greater pregnancy-continuation rates than found with "watchful waiting." The largest case series, Delgado 2018, found 64-68% success for the administration routes COLFS uses. COLFS merely recites that figure in its challenged statements, but Bonta disputes these percentages by vaguely alleging the underlying study had four design "flaws" that undermine its conclusions. Resp.Br.46. That argument cannot withstand scrutiny.

1. Heterogeneity in mifepristone success rate.

Bonta first appears to try to argue that the case series and other APR research cannot establish APR is effective because mifepristone studies report varying embryonic demise rates. Resp.Br.4-5; 3-ER-351-52, 360. That argument ignores that well-established statistical tools exist to control for that heterogeneity and pool an estimate for mifepristone "success" rate across studies. *See, e.g.*, Jonathan AC Sterne et al., *ROB-INS-I: A Tool for Assessing Risk of Bias in Non-Randomized Studies of Interventions*, 155 Brit. Med. J. i4919 (2016). But even that analysis is not necessary to engage in the cross-study Bonta claims is insuperable, by simply comparing the *highest* rate of continuing pregnancy rate in any mifepristone study to the *lowest* rate in any APR study. If even the best-case mifepristone survival rate is lower than the worst-case APR survival rate, APR necessarily improves outcomes.

It is easy to perform that simple analysis even just on studies introduced into the record in this case. The highest continuation rate found across sixteen studies of the current mifepristone protocol found a

maximum continuation rate of 23.3%. 1-ER-23.[4] The lowest APR continuation rate by the worst-performing route of administration in the Delgado 2018 APR study for which there was a sample large enough to yield a statistically significant result was 39%, *see* 3-ER-0391.

Given those margins, mere heterogeneity in mifepristone studies cannot salvage Bonta's challenge to APR's demonstrated effectiveness and COLFS' accurate recitation of nonfraudulent data in peer-reviewed research showing that effectiveness.

2. Other purported "flaws" in the 2018 Delgado study.

Bonta suggests Delgado biased his sample by screening with ultrasound. Resp.Br.11-12. But because contemporaneous mifepristone studies *also* screened participants with ultrasounds (as then required to detect contraindicated ectopic pregnancies)—*see* Nathalie Kapp et al., *Efficacy of Medical Abortion Prior to 6 Gestational Weeks: A Systematic Review*, 97 Contraception 90, 91-94 tbls.1-2, 98 (2018) (collecting studies)—

[4] The district court misread a systematic review and so pegged the highest pregnancy continuation rate under a mifepristone-only regimen at 46%. *See* 1-ER-23. The cited study used a long-abandoned dosing protocol. 1-ER-23. The highest continuing pregnancy rate under the current dosing protocol (200 mg) in the metastudy the district court relied on or elsewhere in the peer-reviewed literature is 23.3%. 1-ER-23.

using the same screening *strengthened* Delgado's conclusions by avoiding a genuine design flaw.

Bonta next argues Delgado failed to control for subjects' gestational age and lacked a control group. *See* Resp.Br.49-50. But that conflates study *power* with study *validity*; controls like those Bonta proposes can increase only the former. *See* Bernard Rosner, *Fundamentals of Biostatistics* 232-88, 512-18 (8th ed. 2016).

3. COLFS' statements about APR effectiveness in non-standard situations.

COLFS explained in its opening brief that, the district court's holding notwithstanding, COLFS has never claimed APR can reverse the effects of abortion chemicals other than mifepristone. *See* Op.Br.44. Bonta answers that "COLFS listed these statements in its preliminary injunction notice." Resp.Br.47 (citing 5-ER-933). But the cited page shows COLFS merely asked the district court to enjoin Bonta from suing it on a series of possible false accusations he might bring, including any statement that APR "may still be effective in non-standard situations." 5-ER-933. The examples that follow are *examples* of hypothetical false accusations, not COLFS' statements. 5-ER-933.

As to the post-72 hours statement, Bonta speculates that mifepristone is all but fully metabolized at that point and thus has "taken full effect." Resp.Br.47. But his own sources show that in clinical settings mifepristone metabolizes the half-life of mifepristone in about 25-30 hours for an average patient—meaning roughly one-fourth to one-eighth of the original dose will still be working at 72 hours. *See, e.g.*, Oskari Heikinheimo et al., *The Pharmacokinetics of Mifepristone in Humans Reveal Insights into Differential Mechanisms of Antiprogestin Action*, 68 Contraception 421, 422 (2003). . That fact fatally undercuts the premise that mifepristone has "taken full effect" by then and supports COLFS' modest claim that progesterone *might* still be able to counteract the residual mifepristone's ongoing effects.

4. COLFS' Safety Claims Are Supported by Every Completed Peer-Reviewed APR Study Yet Published.

APR is just progesterone supplementation during pregnancy—a use the FDA has long recognized as safe and that has safely been performed worldwide for more than six decades to improve pregnancy survival after IVF and prevent miscarriage. 5-ER-0883, 0885. Unsurprisingly, researchers studying the same intervention in the APR context also find it to be safe. *See, e.g.*, 6-ER-950; 3-ER-0385-0394.

Bonta strains to defend the district court's conclusion that APR is not safe, based on an alleged lack of evidence of APR's safety. He ultimately leans only on the thin reed of opinion statements by ACOG and two foreign obstetrics associations which likewise presented no evidence of harm. Resp.Br.10-11.

Without evidence that APR generally is unsafe, Bonta points to COLFS' claims about the possible safety of APR more than 72 hours after mifepristone ingestion, Resp.Br.47-48, and that APR does not cause life-threatening side effects, Resp.Br.50. Again lacking any evidence that either statement is false or even misleading, Bonta asserts that the district court could conclude the statements were misleading without *any* evidence to support that opinion. He cites *Bellion Spirits*, Resp.Br.47, which is inapposite for the reasons already discussed, effectively conceding he cannot prove APR is unsafe.

G. Bonta still fails any level of scrutiny.

1. Strict Scrutiny.

Bonta does not even attempt to satisfy the strict scrutiny required (at minimum) for enforcing the UCL and FAL against COLFS' noncommercial APR speech. He has thus waived any such argument—which would be futile anyway. *See* Op.Br.56-58.

2. Intermediate Scrutiny.

Bonta argues—for the first time in this lawsuit—that restricting COLFS' pro-APR speech satisfies intermediate scrutiny. He bore the burden of establishing that his restrictions meet heightened scrutiny, but he decided not to contest it below. *See* Op.Br.56 n.22. The district court's *sua sponte* conclusion that intermediate scrutiny was satisfied therefore was error. *See Edenfield v. Fane*, 507 U.S. 761, 768 (1993).

Regardless, Bonta wrongly claims his UCL/FAL enforcement here is narrowly tailored to restricting false or misleading speech. Resp.Br.52-53. Not so. He offers no evidence that the harms he recites are real. *See Junior Sports Mag., Inc. v. Bonta*, 80 F.4th 1109, 1117 (9th Cir. 2023). And he does not show how applying the UCL and FAL here could advance a substantial government interest when APR itself remains legal. *See United States v. Caronia*, 703 F.3d 149, 162-69 (2d Cir. 2012). He also ignores narrower alternatives like competing advertising, warnings, or disclaimers. *Id.* at 168; *NIFLA*, 585 U.S. at 775; *Sorrell*, 564 U.S. at 578.

3. *Zauderer*.

Bonta also fails to satisfy the *Zauderer* test for compelling COLFS to lie that APR might lead to life-threatening bleeding. *See Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626,

651 (1985). He does not dispute that the compelled statement is "controversial," not "purely factual," unjustified, and unduly burdensome. *See id.* *See* Resp.Br.50 n.15. His claim in a footnote that COLFS can avoid the compelled lie by self-censoring fares no better: the difference between compelled speech and compelled silence regarding protected speech is constitutionally insignificant. *Riley*, 487 U.S. at 796. His attempt to silence speech on a disputed matter of public concern thus fails both strict and intermediate scrutiny.

Accordingly, COLFS is likely to succeed on the merits of its Free Speech claim.

II. COLFS is suffering irreparable harm, and the balance of equities favors a preliminary injunction.

Bonta insists COLFS is not suffering irreparable harm because it delayed filing suit. Resp.Br.61-62. But delay "is not particularly probative in the context of ongoing, worsening injuries." *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014). That is especially true in the First Amendment context—where violating free speech rights "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). COLFS' likelihood to succeed on the merits also "tips the public interest sharply in [its] favor" given the public interest in protecting First

Amendment rights. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). A preliminary injunction should issue.

III. Free Exercise Claim.

A. Applying the UCL and FAL to COLFS's Provision of APR Triggers Strict Scrutiny Under the Free Exercise Clause.

Bonta does not dispute that enforcing the UCL and FAL against COLFS' speech burdens its religious exercise. He instead claims the exemptions COLFS identifies are not "comparable" and thus do not defeat general applicability. *See* Resp.Br.28-34. And his Reproductive Rights Task Force, 6-ER-962, pens an *amicus* brief warning that faithful application of precedent would create "unworkable" situations for prosecutors and be "impracticable." *See Amicus* Br. at 4, 14 ("Am.Br."). Those fears are unfounded, as discussed below.

1. Exemption for Government Hospitals and Politicians.

The UCL expressly exempts government entities, and courts have read an additional exemption for politicians into it. Op.Br.49-50; *see* Cal. Bus. & Prof. Code §§ 17201, 17206; *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164, 1203 (2006). For example, the California Milk Producers Advisory Board was held not chargeable under the UCL for

misleadingly portraying dairy cows as raised on "spacious, grassy pastures on beautiful, rolling hills." *PETA, Inc. v. Cal. Milk Producers Advisory Bd.*, 125 Cal. App. 4th 871, 876-81 (2005).

Nor do the statutes police allegedly fraudulent campaign ads, *Nat'l Comm. of Reform Party of U.S. v. Democratic Nat'l Comm.*, 168 F.3d 360, 363 (9th Cir. 1999), because the UCL is "tailored for the business world, not for the political arena." *O'Connor v. Superior Ct.*, 177 Cal. App. 3d 1013, 1017-19 & n.3 (1986).

Whether an exemption is comparable depends on a challenged policy's asserted underlying interests. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021). The UCL and FAL aim to preserve "fair business competition" and prevent "injuries to consumers." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999); *see* Op.Br.49. Bonta does not disagree. *See* Resp.Br.38. The question, then, is whether exempting government entities and politicians from these acts undermines those interests in a similar way as exempting COLFS would. *Tandon*, 593 U.S. at 62; *Fellowship of Christian Athletes ("FCA") v. San Jose Unified Sch. Dist. Bd. of Ed.*, 82 F.4th 664, 686 (9th Cir. 2023) (en banc).

Bonta claims government entities and political actors are not comparable to COLFS because electoral accountability makes them less

likely to engage in false or misleading speech. Resp.Br.29-30. Even setting aside the abstract viability of that theory in California, Bonta confuses the *reason* for an exemption with whether comparable conduct undermines a law's asserted interests. *Tandon*, 563 U.S. at 62. The *availability* of a comparable exemption is what matters, even if the "risk" of someone using it is small. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021).

Bonta similarly invokes sovereign immunity and the First Amendment as rationales for the same exemptions. Resp.Br.29-30. Again, that is all beside the point. "When a Policy makes a value judgment in favor of secular motivations, but not religious motivations, it is not generally applicable." *Does 1-11 v. Univ. of Colo.*, 100 F.4th 1251, 1277 (10th Cir. 2024) (internal marks omitted).

2. Bonta's De Facto Exemption for Abortion Providers.

a. Exemption for Planned Parenthood Speech is Comparable.

COLFS identified two UCL violations by Planned Parenthood. Op.Br.50-51. First, Planned Parenthood falsely states that APR has never "been tested for safety, effectiveness, or the likelihood of side effects." 6-ER-964 (citation omitted). Second, it markets the abortion pill

as "a safe and effective way of ending an early pregnancy," sometimes omitting mention of side effects and other times minimizing them. 6-ER-964-65 (citation omitted).

In response, Bonta deceptively argues Planned Parenthood merely asserts that studies "do not *establish* that APR is safe, effective, or has no or low risks of side effects." AAB-43 (emphasis added). But the quoted claim is considerably broader: APR has *never* even "been tested." 6-ER-964. That is indisputably false. *See* 6-ER-946-50.

As to side-effects disclosures, Bonta insists Planned Parenthood discloses those side effects at the end of a chain of successive hyperlinks. Resp.Br.33 & n.7 (citing 4-ER-693-94). But COLFS discloses potential side-effects directly in the FAQs on the APR webpages of both COLFS and Heartbeat. *See* 5-ER-865-66; 4-ER-593-94. It is untenable to deem COLFS misleading when it requires women to look only at a different part of the same webpage but deem Planned Parenthood *not* misleading when it requires women to hunt down side-effect information in a multi-link chain.

b. Exemptions for Other Progesterone Uses Are Comparable.

As to other permitted uses of progesterone, *see* Op.Br.52-53, Bonta counters that COLFS identifies "no providers who falsely advertise other off-label uses of progesterone." Resp.Br.34. That misses the point: those uses are likewise debated and (unlike APR) are not based on *any* scientific studies, yet anyone who knows how to use Google can find information about those uses online in seconds. *Compare, e.g.*, Planned Parenthood Mar Monte, *Gender Affirming Care Services* (Dec. 8, 2020), http://bit.ly/4fWEOXe (discussing use of "micronized progesterone" in femininizing hormone therapy); *with* WPATH, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l. J. of Transgender Health S1, S122 (2022) ("no quality studies evaluating the role of progesterones in hormone therapy for transgender patients.").

c. The Exemptions for Actual Provision of APR.

Bonta has repeatedly stated COLFS *can* provide APR itself, *see* 4-1-Dkt-32 ("the Attorney General is not attempting to restrict APR"); 10-Dkt-15. That stance undercuts his purported interest in shielding "consumers from false and/or misleading statements" about "medical

treatments" he without evidence claims are not just *ineffective* but *potentially dangerous*. Resp.Br.32 (citing 6-ER-998-1027).

Bonta addresses this problem only in a footnote, claiming it was waived because COLFS did not raise it below. *See* Resp.Br.34 n.8. Not so. COLFS consistently argued below that selective targeting of APR speech triggers strict scrutiny; merely choosing on appeal particular comparator *examples* to illustrate that argument is not waiver. *See Allen v. Santa Clara Cnty. Corr. Peace Officers Ass'n*, 38 F.4th 68, 71 (9th Cir. 2022) ("Appellants can make any argument in support of their claim on appeal—they are not limited to the precise arguments they made below.") (cleaned up). In any event, COLFS permissibly raised the argument in response to Bonta's evolving legal position. *See Smith v. Arthur Andersen LLP*, 421 F.3d 989, 999 (9th Cir. 2005).

On the merits, Bonta contends that there is less harm in the mere provision of APR because physicians allegedly will advise women that APR is "experimental" after "deploying their best judgment in the face of weak or nonexistent medical evidence." Resp.Br.34 n.8. But no informed-consent law compels such a disclosure, and in any event, permitting physicians to provide a medication poses at least as much risk as merely talking about it. *Cel-Tech Commc'ns, Inc.*., 20 Cal. 4th at 180.

Analogously, the FDA counts dozens of women mifepristone has killed since it was approved in 2003, but COLFS knows of no woman directly killed just by an abortion provider talking about mifepristone.

B. Amici's Arguments Are Baseless.

Bonta's *amici* tempt the Court to ignore *FCA* and *Tandon* just because the outcome they compel allegedly is "unworkable." Am.Br.14. Of course, that absurd position is foreclosed by precedent on precedent, and also is wrong on the facts. Politically motivated enforcement actions regrettably occur, and courts may not blind themselves to facially neutral laws enforced discriminatorily. *Hoye*, 653 F.3d at 854.

Bonta's tactic of selective enforcement sadly is less historic than it is histrionic. Those whom voters have entrusted with impartially enforcing the law too often have abused their positions, as Bonta has, to selectively enforce the law against only ideological foes instead. *See, e.g.*, *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 152-53, 167-68 (3d Cir. 2002); *FCA*, 82 F.4th at 689; *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 643-54 (Gorsuch, J., concurring); *Buck v. Gordon*, 429 F. Supp. 3d 447, 450-60 & n.9, 461-65 (W.D. Mich. 2019); *see also Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141-47 (D.C. Cir. 2023).

The pretentions of Bonta's amici notwithstanding, remaining faithful to precedent would not lead to "extremely serious consequences" or "obstruct" legitimate law enforcement efforts either. Am.Br.10-11. The UCL and FAL are business fraud statutes; if a charity commits fraud, the government can easily pursue a properly tailored fraud action with its "[e]xacting proof requirements." *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 620 & n.9 (2003). That holds just as true in the Free Exercise context as any other. *See Molko v. Holy Spirit Assn.*, 46 Cal. 3d 1092, 1114-18 (1988); *Paul v. Watchtower Bible & Tract Soc. of N.Y., Inc.*, 819 F.2d 875, 877, 883 (9th Cir. 1987).

Bonta's *amici* thus entirely miss the point. The Free Exercise Clause does not require the Attorney General to sue every potential UCL or FAL violator; it merely forbids victimless prosecutions burdening the speaker's sincere exercise of religion—in the face of manifestly comparable conduct by the enforcer's ideological allies left unprohibited—that "invite arbitrary, unpredictable, and inevitably selective use of the judicial system for political ends." *People ex rel. James v. Trump*, No. 2023-04925, 2025 WL 2412681, at *108 (N.Y. App. Div. Aug. 21, 2025) (Friedman, J., concurring).

IV. Substantive Due Process and Right to Receive Information.

COLFS identifies two rights "implicit in the concept of ordered liberty" and thus protected by the Fourteen Amendment: the decision whether to bear or beget a child, and the right to refuse unwanted medical treatment (with the adjacent right to make major medical decisions with a physician's advice). Bonta concedes that government infringes the right to procreate when it "prevents individuals from having offspring." Resp.Br.35-36. That is what happens here when Bonta tries to keep women in the dark about APR: he forces her to finish a medical procedure designed to kill a child she desperately wants to bear.[5]

Bonta also concedes a liberty interest exists in avoiding unwanted medical treatment. Resp.Br.35. That liberty includes revoking consent midcourse for treatment a patient initially consented to. *Thor v. Superior Ct.*, 5 Cal. 4th 725, 732 (1993); *see Washington v. Glucksberg*, 521 U.S. 702, 724, 725 (1997). A woman therefore has a liberty interest in halting

[5] Bonta misreads *Skinner,* which struck down an Oklahoma law allowing permanent forced sterilization of certain criminals. But prohibiting a government from *permanently* preventing a person from procreating does not imply a government may *temporarily* prevent her from procreating. Instead, strict scrutiny applies whenever "regulations impos[e] a burden" on a decision "whether to bear or beget a child." *Carey v. Population Servs., Int'l*, 431 U.S. 678, 686 (1977).

an unwanted chemical before taking misoprostol; forcing her to take it in fact constitutes battery. *Cf.* Restatement (Second) of Torts § 892A & cmt. i (Oct. 2024)*; see also Ashcraft v. King*, 228 Cal. App. 3d 604, 609–12 (Cal. Ct. App. 1991). That right is hollow if California can prevent women from discovering revocation is possible. She thus has a derivative constitutional right to receive that information to keep her substantive right from becoming less secure. *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965).[6]

Bonta's fight to keep patients in the dark about APR infringes these fundamental rights and thus is subject to strict scrutiny. But he fails to even argue a "relevant state interest" outweighs that infringement. *Cruzan v. Dir., Mo. Dept of Health*, 497 U.S. 261, 279 (1990).[7]

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[6] Bonta asserts that COLFS waived its argument regarding a right to receive information because it only appeared in a footnote. Resp.Br. 36. COLFS expanded the argument across three pages of its brief. (Op.Br.54-56).

[7] In *Cruzan,* Missouri asserted "an unqualified interest in the preservation of human life" which the Supreme Court found to justify a high evidentiary burden of patient intent before permitting removal of life-saving treatment. *Cruzan,* 497 U.S. at 282. Whatever Bonta's interest is, it is different than Missouri's, as APR both enacts a mother's consent and can preserve a human life.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's denial of a preliminary injunction, as well as its dismissal of claims.

Respectfully submitted,

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/s/*Peter Breen*
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I hereby certify that on September 3, 2025, I electronically filed the Opening Brief of Plaintiff-Appellant with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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UNITED STATES COURT OF APPEALS
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