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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION**

**OBRIA GROUP, INC., and MY
CHOICES d/b/a OBRIA MEDICAL
CLINICS PNW,**

Plaintiffs,

v.

**ROBERT FERGUSON, in his official
capacity as Attorney General for the
State of Washington,**

Defendant(s).

Civil No.: 3:23-cv-06093

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM IN SUPPORT**

NOTE ON MOTION CALENDAR:

December 22, 2023

ORAL ARGUMENT REQUESTED

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INTRODUCTION

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2 Plaintiffs Obria Group, Inc. and My Choices d/b/a Obria Medical Clinics PNW
3 (together, the “Obria Ministry”) are Christian pro-life medical non-profits that serve
4 pregnant mothers, mothers of newborns, and fathers. Defendant Robert Ferguson
5 openly opposes such organizations, having aligned himself with Planned
6 Parenthood’s pro-abortion mission. While he is entitled to those personal views, he is
7 not entitled to use the authority of his office to harm those who disagree with him.
8 Yet he has selectively targeted the Obria Ministry based on its religious speech and
9 pro-life views by serving the ministry with wide-ranging, unfounded, and
10 burdensome civil investigative demands (CIDs) that have caused it substantial
11 injury. This is an offense to the Constitution, and the Court should issue a
12 preliminary injunction to stop it.

13 Attorney General Ferguson has invoked the Washington Consumer Protection
14 Act (WCPA) to serve the Obria Ministry with civil investigative demands that require
15 extensive answers to interrogatories and production of documents on pain of judicial
16 sanctions. He barely even attempts to show that statements of these nonprofits,
17 which provide free services to their patients, concern “trade or commerce” subject to
18 the WCPA. In fact, his demands span a period of *more than thirteen years*, far
19 exceeding the WCPA’s four-year statute of limitations. Nor does he identify any false
20 or misleading statements by the Obria Ministry. He purports to be concerned with
21 “possible” deceptive marketing about Abortion Pill Reversal (APR)—a treatment the
22 Obria Ministry does not even provide—and unfair collection and use of consumer
23 data. But he cites nothing to show any basis for suspicion on those topics, and he
24 demands information and documents wholly unrelated to them. And even though the
25 Obria Ministry has produced 1,500 pages of documents, that has not stopped AG
26 Ferguson. He has gone on to serve similar demands on other organizations who work
27

1 with the Obria Ministry, burdening them with discovery obligations solely because
2 they chose to associate with the ministry.

3 AG Ferguson’s exorbitant demands are calculated to leverage the threat of
4 sanctions under the WCPA to frustrate the Obria Ministry’s Christian, pro-life
5 mission. He has already obtained that predictable result and caused great harm to
6 the Obria Ministry: he has chilled its speech, quashed its religious message, disrupted
7 its relationships, and drained its resources. This unlawful enterprise violates the
8 First and Fourth Amendments, and the Court should put a stop to it.

9 First, AG Ferguson’s demands violate bedrock guarantees of the First
10 Amendment: freedom of speech, freedom of religion, freedom of association, and the
11 First Amendment privilege. He has chilled the Obria Ministry’s speech about APR by
12 serving it with retaliatory demands and by selectively enforcing the WCPA against
13 the Ministry based on disagreement with his views on abortion. He has injured the
14 Obria Ministry’s free exercise of religion by using his discretionary enforcement
15 authority to single out the ministry’s religious views about abortion for hostile action.
16 He has injured the Obria Ministry’s freedom of association by harming its
17 relationships with others. And he wrongly demands production of internal
18 communications and documents from the Ministry that are protected by the First
19 Amendment privilege. These actions all infringe on the Obria Ministry’s First
20 Amendment liberties and the Court should enjoin them.

21 Second, AG Ferguson’s wildly expansive demands harm the Obria Ministry’s
22 rights under the Fourth Amendment, which prohibits the government from
23 conducting unreasonable searches and seizures. The CIDs purportedly pertain to
24 “possible past or current . . . unfair or deceptive acts and practices with respect to the
25 marketing, advertising, and other representations [and] collection and use of
26 consumer data.” Yet the CIDs demand information that bears no relation to such
27

1 unnamed “possible past or current violations” and span a period three times the
2 applicable statute of limitations. This is unreasonable and unconstitutional.

3 These constitutional violations irreparably harm the Obria Ministry and
4 warrant an injunction against the demands.

5 FACTUAL BACKGROUND

6 *The Obria Ministry*

7 The Obria Group, Inc., began as a nonprofit pregnancy resource center founded
8 in 1981 in California. Compl. ¶ 22. Its founder Kathleen Eaton Bravo had a painful
9 experience with abortion that compelled her to dedicate her life to helping others
10 facing unplanned pregnancies. *Id.* ¶¶ 23-24. Ms. Eaton Bravo reopened an existing
11 pregnancy center, and as operations expanded, the organization became The Obria
12 Group, Inc., *id.* ¶ 27-29, a network of licensed health clinics that serves thousands of
13 women and men every year. *Id.* ¶ 30. The clinics have flourished by caring for those
14 experiencing sexual health issues and unplanned pregnancies. *Id.* ¶ 31. The Obria
15 Group’s medical services, education programs, and myriad resources empower young
16 women and men to make healthy, life-affirming choices. *Id.* ¶ 32. The Obria Group
17 now has twenty affiliated medical clinics in California, Oregon, Washington, Iowa,
18 Texas, and Georgia, and two mobile clinics. *Id.* ¶ 34.

19 Obria Medical Clinics PNW is an affiliate of the Obria Group. *Id.* ¶ 44. It began
20 in 1984 as Crisis Pregnancy Center of Port Angeles. *Id.* ¶ 35. Services included
21 pregnancy testing, non-abortion community referrals, and non-medical maternal and
22 infant resources. *Id.* ¶ 36. In 2008, with the addition of a physician as Medical
23 Director, the organization began to provide ultrasounds to determine gestational age
24 and viability. *Id.* ¶ 38. In 2014, the organization was certified by the Accreditation
25 Association for Ambulatory Health Care (AAAHC). *Id.* ¶ 39. AAAHC accredits
26 healthcare organizations such as ambulatory surgery centers and health plans. *Id.* ¶
27 40. AAAHC accreditation indicates high patient safety standards and permits

1 organizations to qualify for Medicare and Medicaid certification without separate
2 federal and state regulatory inspections. *Id.* ¶ 41.

3 The Obria Ministry believes all human life is sacred and should be valued and
4 respected as a gift from God. *Id.* ¶ 49. Obria Group Board members and officers are
5 required to be committed Christians who actively participate in a local church. Ex. C
6 at OG000026-29. The Obria Group's Board of Directors takes the confidentiality of its
7 internal affairs seriously. All Board members are bound by a confidentiality
8 agreement regarding information obtained in their role as Board members, including
9 verbal presentations, written materials, discussions, and deliberations; failure to
10 keep confidentiality should result in removal of a member from the Board. *Id.* at
11 OG000033.

12 ***Obria Services***

13 All Obria Ministry medical services such as, pregnancy testing, sexually
14 transmitted disease and infection (STD/STI) testing, ultrasounds, well-woman
15 examinations and cancer screenings, when provided, are provided under the direction
16 of a Medical Director. Compl. ¶ 62. The ministry serves patients without regard to
17 age, race, income, nationality, religious affiliation, or disability. Ex. C at OG000017.
18 It is committed to treating patients with kindness, compassion, and in a caring
19 manner, and to providing honest and open answers to their patients' questions. *Id.*
20 As part of its mission, the ministry provides all services at no cost to the patient and
21 waive co-payments that would be required for services billed to insurance. Compl. ¶
22 65.

23 The Obria Ministry websites clearly state it does not provide or refer patients
24 for abortions. *Id.* ¶ 63f. The ministry does, however, provide accurate information
25 about abortion procedures and risks. Ex. C at OG000017. All of its advertising and
26 communication accurately describe the services it offers. *Id.* The ministry works to
27 provide a safe environment by conducting criminal background checks for all

1 volunteers and staff who interact with patients. Compl. ¶ 63h. And the ministry
2 complies with applicable legal and regulatory requirements for employment,
3 financial matters, public disclosure., and medical standards, under the supervision of
4 a licensed physician. Ex. C at OG000017.

5 The Obria Ministry does not currently provide APR. Compl. ¶ 69. Instead, the
6 Obria Ministry stands ready to refer pregnant women who have taken the abortion
7 drug mifepristone and changed their mind to healthcare providers who offer APR by
8 administering progesterone to stop the abortion process. *Id.* ¶ 118. Progesterone is a
9 hormone naturally produced by pregnant women and is commonly administered to
10 address a variety of pregnancy-related concerns in women at risk of miscarrying. *See,*
11 *e.g.,* Errol R. Norwitz & Aaron B. Caughey, *Progesterone Supplementation and the*
12 *Prevention of Preterm Birth*, 4 REVIEWS IN OBSTET. & GYNECOL. 60, 61 (2011).
13 Mifepristone, the first drug in the two-drug medication abortion regime, is a
14 progesterone antagonist that can cause hemorrhaging and is meant to kill the
15 developing fetus by starving it. Blake M. Autry & Roopma Wadhwa, Mifepristone,
16 LIBRARY OF MEDICINE, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (May 8,
17 2022), <https://www.ncbi.nlm.nih.gov/books/NBK557612/>. If APR is begun quickly
18 after taking mifepristone, it can counter mifepristone's effects. Indeed, one study
19 showed that approximately two-thirds of pregnancies were successfully continued
20 after APR, with no apparent risk of birth defects. George Delgado et al., *A case series*
21 *detailing the successful reversal of the effects of mifepristone using progesterone*, 33
22 ISSUES IN LAW & MED. 21, 21-31 (2018). APR "does not appear to pose severe health
23 risks to patients who receive it." *Bella Health & Wellness v. Weiser*, 115 Fed. R. Serv.
24 3d 690 (D. Colo. Apr. 15, 2023). The treatment is legal in forty-eight states, including
25 Washington, and a law against it in Colorado has been enjoined. *See Bella Health &*
26
27

1 *Wellness v. Weiser*, No. 123CV00939DDDSKC, 2023 WL 6996860, at *1 (D. Colo. Oct.
2 21, 2023).¹

3 ***Patient Data Handling by the Obria Ministry and Abortion Providers***

4 The Obria Ministry is subject to the patient information handling
5 requirements of HIPAA. Compl. ¶ 71. The Obria Ministry holds patients' information
6 in strict confidence and obtains patient releases and permissions where appropriate.
7 *Id.* ¶ 72. It discloses patient information only as required by law. *Id.* ¶ 73. The Obria
8 Group's website lists its legal duties concerning, uses of, and disclosures of patients'
9 health information, and policies to protect patients' health information and maintain
10 their privacy.²

11 In contrast, handling of patient data has been a repeated issue for the abortion
12 providers that espouse views opposite to those of the Obria Ministry. Of the forty-six
13 abortion clinics in Washington,³ eleven are operated by Planned Parenthood,⁴ which
14 offers chemical and surgical abortions, STD testing, pregnancy testing, physical
15 exams, adoption referral, and other functions related to reproduction.⁵ Planned
16 Parenthood has been criticized for negligent data practices that caused patient
17 information—including abortion method, IP address, the specific Planned
18 Parenthood clinic for the appointment, zip codes, phone type, and internet browser

19 ¹ Vermont recently passed a bill to include “[p]roviding or claiming to provide services
20 or medications that are purported to reverse the effects of a medication abortion” in
21 its list of “Unprofessional Conduct” for healthcare providers. VT. STAT. ANN. tit. 3, §
129a(29).

22 ² *HIPAA Notice*, OBRIA MEDICAL CLINICS, obia.org/terms-of-use/hipaa-notice/ (last
visited Oct. 31, 2023).

23 ³ *Abortion*, WASHINGTON STATE DEPARTMENT OF HEALTH, [https://doh.wa.gov/you-and-
your-family/sexual-and-reproductive-health/abortion](https://doh.wa.gov/you-and-your-family/sexual-and-reproductive-health/abortion) (last visited Oct. 31, 2023).

24 ⁴ PLANNED PARENTHOOD OF GREATER WASHINGTON AND NORTH IDAHO,
25 [https://www.plannedparenthood.org/planned-parenthood-greater-washington-north-
idaho](https://www.plannedparenthood.org/planned-parenthood-greater-washington-north-idaho) (last visited Oct. 31, 2023).

26 ⁵ *Our Services*, PLANNED PARENTHOOD OF GREATER WASHINGTON AND NORTH IDAHO,
27 [https://www.plannedparenthood.org/planned-parenthood-greater-washington-north-
idaho/get-care/our-services](https://www.plannedparenthood.org/planned-parenthood-greater-washington-north-idaho/get-care/our-services) (last visited Aug. 16, 2023).

1 version—to be shared with major tech companies.⁶ In 2021, there was a breach of
 2 the “names, addresses, dates of birth, diagnoses, treatments and prescription
 3 information[, and] Social Security and financial information” of Planned Parenthood
 4 clients.⁷ That same year, another Planned Parenthood failed to secure the personal
 5 information of 400,000 patients.⁸

6 ***AG Ferguson’s Abortion Advocacy and Hostility to Pregnancy Centers***

7 AG Ferguson has made no secret of whose side he takes on these questions. He
 8 is open about his support for Planned Parenthood, having warned in 2015 against
 9 “unfounded allegations” against the abortion provider.⁹ In 2019, AG Ferguson said
 10 his office “worked very closely, obviously, with Planned Parenthood” in abortion
 11 litigation.¹⁰ Planned Parenthood calls him a “champion for abortion access”¹¹ and
 12 “reproductive health.”¹² He recently celebrated “Abortion Provider Appreciation Day”
 13

14 ⁶ Tatum Hunter, *You scheduled an abortion. Planned Parenthood’s website could tell*
 15 *Facebook*, WASHINGTON POST (June 29, 2022), <https://www.washingtonpost.com/technology/2022/06/29/planned-parenthood-privacy/>.

16 ⁷ Brittany Renee Mayes, *D.C.’s Planned Parenthood reports data was breached last*
 17 *fall*, WASHINGTON POST (Apr. 16, 2021), <https://www.washingtonpost.com/dc-md-va/2021/04/16/data-breach-planned-parenthood-dc/>.

18 ⁸ Gregory Yee & Christian Martinez, *Hack exposes personal information of 400,000*
 19 *Planned Parenthood Los Angeles patients*, L.A. TIMES (Dec. 1, 2021),
 20 [https://www.latimes.com/california/story/2021-12-01/data-breach-planned-](https://www.latimes.com/california/story/2021-12-01/data-breach-planned-parenthood-los-angeles-patients)
 21 [parenthood-los-angeles-patients](https://www.latimes.com/california/story/2021-12-01/data-breach-planned-parenthood-los-angeles-patients).

22 ⁹ Press Release, Office of the Attorney General, AG Ferguson: No evidence to support
 23 allegations against Planned Parenthood in Washington (Nov. 16, 2015),
 24 [https://www.atg.wa.gov/news/news-releases/ag-ferguson-no-evidence-support-](https://www.atg.wa.gov/news/news-releases/ag-ferguson-no-evidence-support-allegations-against-planned-parenthood-washington)
 25 [allegations-against-planned-parenthood-washington](https://www.atg.wa.gov/news/news-releases/ag-ferguson-no-evidence-support-allegations-against-planned-parenthood-washington).

26 ¹⁰ *Gov. Inslee and AG Bob Ferguson on their fight to protect Planned Parenthood*,
 27 KING-TV (Aug. 22, 2019), [www.king5.com/video/news/gov-inslee-and-ag-bob-](http://www.king5.com/video/news/gov-inslee-and-ag-bob-ferguson-on-their-fight-to-protect-planned-parenthood/281-184f1733-c5ee-476a-996b-3891e2cf20e5)
 28 [ferguson-on-their-fight-to-protect-planned-parenthood/281-184f1733-c5ee-476a-](http://www.king5.com/video/news/gov-inslee-and-ag-bob-ferguson-on-their-fight-to-protect-planned-parenthood/281-184f1733-c5ee-476a-996b-3891e2cf20e5)
 29 [996b-3891e2cf20e5](http://www.king5.com/video/news/gov-inslee-and-ag-bob-ferguson-on-their-fight-to-protect-planned-parenthood/281-184f1733-c5ee-476a-996b-3891e2cf20e5).

30 ¹¹ Planned Parenthood of Greater Washington and North Idaho (@PPGWNI),
 31 TWITTER (Feb. 24, 2023, 5:47 PM), [twitter.com/PPGWNI/status/](https://twitter.com/PPGWNI/status/1629266790273683458)
 32 [1629266790273683458](https://twitter.com/PPGWNI/status/1629266790273683458).

33 ¹² Planned Parenthood of Greater Washington and North Idaho (@PPGWNI),
 34 TWITTER (Mar. 28, 2023, 4:27 PM), [twitter.com/PPGWNI/status/](https://twitter.com/PPGWNI/status/1640827880782561281)
 35 [1640827880782561281](https://twitter.com/PPGWNI/status/1640827880782561281)

1 by participating in a forum with Planned Parenthood, local abortion providers, and
2 abortion advocates.¹³

3 In contrast, AG Ferguson has shown open animus to organizations like the
4 Obria Ministry that provide pregnancy services without performing abortions.
5 Through an online form, he invites the public to report that they “[e]xperienced
6 deception, harassment, or other misconduct at a crisis pregnancy center.”¹⁴ But he
7 offers no invitation for patients to inform him if they experience “deception,
8 harassment, or other misconduct” at an abortion clinic. And on October 23, 2023, he
9 joined a letter with fifteen other state attorneys general that made sweeping
10 accusations about pregnancy centers.¹⁵ He criticized all centers that do not offer
11 abortion¹⁶ and specifically targeted APR as “an unproven and potentially risky
12 medical protocol.”¹⁷

13
14
15 ¹³ Press Release, Sen. Patty Murray, On Abortion Provider Appreciation Day,
16 Murray, Cantwell, AG Ferguson Outline Path Forward in Fight to Protect
17 Reproductive Health Care (Mar. 10, 2023) (www.murray.senate.gov/on-abortion-provider-appreciation-day-murray-cantwell-ag-ferguson-outline-path-forward-in-fight-to-protect-reproductive-health-care/).

18 ¹⁴ *Reproductive Rights Complaint Form*, Office of the Attorney General,
19 <https://fortress.wa.gov/atg/formhandler/ago/reproductiverights.aspx> (last visited Oct.
20 31, 2023).

21 ¹⁵ Open Letter from Attorneys General Regarding CPC Misinformation and Harm
22 (Oct. 23, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-leads-coalition-16-attorneys-general-open-letter>.

23 ¹⁶ *Id.*

24 ¹⁷ *Id.* The letter implied that the mere study of APR sent three study participants by
25 ambulance to the hospital for “severe vaginal bleeding.” *Id.* This itself is misleading:
26 in the actual study, two of the three women who needed emergency treatment for
27 hemorrhaging received a placebo, not APR—mifepristone caused massive
hemorrhaging, not progesterone. Mitchell D. Creinin, et al., *Mifepristone
Antagonization With Progesterone to Prevent Medical Abortion: A Randomized
Controlled Trial*, *OBSTETRICS & GYNECOLOGY* 135(1), 158-165 (2020),
[https://journals.lww.com/greenjournal/abstract/2020/01000/mifepristone_](https://journals.lww.com/greenjournal/abstract/2020/01000/mifepristone_antagonization_with_progesterone_to.21.aspx)
[antagonization_with_progesterone_to.21.aspx](https://journals.lww.com/greenjournal/abstract/2020/01000/mifepristone_antagonization_with_progesterone_to.21.aspx).

1 In all of this, AG Ferguson never identified any instance of a pregnancy center
 2 failing to secure consumer data, or mentioned Planned Parenthood’s recent, large,
 3 and well-documented patient data failures. St. Hilaire Decl. ¶ 8. Neither has he
 4 served WCPA demands on Planned Parenthood, its affiliates, or any other abortion
 5 provider. Instead, he has focused on pregnancy centers expressing a Christian, pro-
 6 life message.

7 ***AG Ferguson’s Unreasonable Civil Investigative Demands***

8 Amid this one-sided hostility to pregnancy resource centers, AG Ferguson
 9 served CIDs on the Obria Ministry to investigate “possible past or current violations”
 10 of the WCPA, which prohibits “[u]nfair methods of competition and unfair or
 11 deceptive acts or practices in the conduct of any trade or commerce.” Ex. A at 1; Ex.
 12 B at 1. The CIDs state that AG Ferguson is investigating “unfair or deceptive acts
 13 and practices . . . concerning services provided to Washington consumers, including
 14 . . . Abortion Pill Reversal,” and “unfair acts or practices related to the collection and
 15 use of consumer data.” Ex. A at 1; Ex. B at 1. They cite no basis for this suspicion.
 16 The CIDs require that the Obria Ministry answer interrogatories for a “relevant time
 17 period” of January 1, 2010, to the present, Ex. A at 6; Ex. B at 6, *inter alia*:

18 a. “relationships with *any* parent, affiliate, sister, licensee, fran-
 19 chisee, subsidiary, predecessor, or successor assignee(s),” Ex. A at 10; Ex. B at
 20 10;

21 b. identities of *every* person who provided “accounting, book keeping,
 22 payroll, or tax preparation services,” Ex. A at 11; Ex. B at 11;

23 c. all deposit and credit accounts, including the name of the
 24 institution, authorized signors, account numbers, Ex. A at 11; Ex. B at 11; and

25 d. identities, dates of association, health profession licensures,
 26 duties, pay status, and any familial relationship of “*all* directors, officers,
 27

1 principals, agents, members, employees, contractors, and *volunteers*
2 associated with” the ministry, Ex. A at 11; Ex. B at 11 (italics added).

3 They also demand, *inter alia*, production of:

4 a. “articles of incorporation, any original, amended or restated
5 articles, bylaws, and operational/internal policies (e.g., whistleblower policies,
6 conflict of interest policies, non-fraternization policies, etc.) *and any and all*
7 *past iterations thereof*,” Ex. A at 19; Ex. B at 18;

8 b. “*all* notices, agendas, and MINUTES for *every meeting* of YOUR
9 Board of Directors . . . YOUR Medical Advisory Board . . . and/or general
10 meetings of YOUR executive and/or operations team(s) (and any
11 subcommittees thereof),” Ex. A at 19; Ex. B at 18;

12 c. “copies of *all* tax forms and related schedules or attachments
13 prepared for YOU or on YOUR behalf that are not publically [sic] available
14 through the Internal Revenue Service’s Tax Exempt Organization Search
15 feature (<https://apps.irs.gov/app/eos/>) *during the Relevant Time Period*.” In
16 addition, “the State seeks *any and all* DOCUMENTS filed with the Internal
17 Revenue Service, [State] Department of Revenue, and any other taxing
18 authority or revenue-collecting agency,” Ex. A at 20; Ex. B at 20;

19 d. “*all* DOCUMENTS relating to draft and final financial
20 statements, balance sheets, general ledger(s), and other financial disclosures,
21 *from 2010 to the present*, including, *without limitation*, documents and
22 calculations relied upon in creating such documents and/or provided to
23 auditors, lenders, grantors, and/or donors,” Ex. A at 20; Ex. B at 20;

24 e. *all* documents relating to operating expenses, Ex. A at 21; Ex. B
25 at 20;

1 f. “all plans, policies, and procedures related to COMPENSATION
2 . . . [including] *pension(s) or retirement account contributions*,” Ex. A at 21; Ex.
3 B at 21; and

4 g. “all DOCUMENTS reflecting payments or other transfers of
5 value, including, *without limitation*, in-kind transfers to or from any affiliate
6 organizations and/or their respective parent, subsidiaries, and/or affiliate
7 ENTITIES,” Ex. A at 25; Ex. B at 24 (capital lettering in originals, italics
8 added).

9 While these demands purport to seek information about APR and data
10 handling, many have nothing to do with those topics. In addition, while AG Ferguson
11 invokes his authority under the WCPA to issue these requests, he seeks information
12 going back to 2010—nearly a decade past the operative statute of limitations.

13 Counsel for the Obria Ministry conferred with AG Ferguson’s office about the
14 breadth of the CIDs. St. Hilaire Decl. ¶ 4. The ministry also provided hundreds of
15 pages of responsive documents while also objecting to some interrogatories and
16 requests because they seek information or documents not discoverable under the
17 Washington Rules of Civil Procedure, and based on privilege, arbitrariness,
18 vagueness, overbreadth, undue burden, relevance, unreasonableness, exceeding the
19 scope of the demands, and infringement of free association. Exs. D and E. They also
20 served supplemental responses restating many of the same objections and providing
21 additional documents and information. Exs. F, G, and H. At no time during this
22 correspondence has AG Ferguson identified a complaint or any other basis for his
23 demands. St. Hilaire Decl. ¶ 8.

24 Still, the ministry’s document production did not satisfy AG Ferguson. Instead,
25 he issued CIDs to individuals and entities associated with the Obria Ministry and
26 identified in its responses to the original CIDs, including one of the ministry’s
27 contractual partners. Exs. D and I. He has issued related CIDs to other parties

1 associated with and identified in the ministry’s disclosures. He then issued letters to
2 the ministry alleging failures to provide “full and complete responses” to the CIDs.
3 Exs. J and K. The ministry served more supplemental responses, now totaling more
4 than 1,500 pages of documents, to try to satisfy his demands. Exs. L and M.

5 These unfounded demands have harmed—and continue to harm—the Obria
6 Ministry in several ways. Apart from the burden of responding to oppressive CIDs
7 and successive deficiency letters, the demands have chilled the ministry’s speech
8 about APR. In particular, Obria PNW previously has spoken about APR, and would
9 like to publish a brochure about it for social media and its clinics, but it has not said
10 anything further publicly amid AG Ferguson’s demands. Compl. ¶ 119-120. The
11 demands have also harmed the ministry’s speech and associational relationships with
12 its contractual partners, and has diminished its use of those services because of the
13 strain caused in those relationships. *Id.* ¶ 172. The demands have thus chilled both
14 the ministry’s current relationships with other groups and its ability to form new
15 relationships to advance its mission. *Id.* ¶ 113. So the Obria Ministry filed this
16 lawsuit—and this motion—to lift the cloud of AG Ferguson’s unlawful CIDs.

17 ARGUMENT

18 “A plaintiff seeking a preliminary injunction must establish that he is likely to
19 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
20 preliminary relief, that the balance of equities tips in his favor, and that an injunction
21 is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
22 “When the government is a party, these last two factors merge.” *Drakes Bay Oyster*
23 *Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The Obria Ministry meets this
24 standard here.

1 **I. The Obria Ministry is likely to succeed on its constitutional claims.**

2 **A. AG Ferguson’s demands violate the First Amendment.**

3 **1. The CIDs violate the Ministry’s freedom of speech.**

4 AG Ferguson has violated the First Amendment’s speech protections by
 5 serving the CIDs on the Obria Ministry to burden its speech based solely on its pro-
 6 life content and viewpoint, including its discussion of APR, a matter of public policy
 7 that has grown even more salient in the wake of *Dobbs*. “[S]peech concerning public
 8 affairs is . . . the essence of self-government,” *Garrison v. Louisiana*, 379 U.S. 64, 74–
 9 75 (1964), and it is “fundamental . . . that governments have no power to restrict
 10 expression because of its message, its ideas, its subject matter, or its content,” *NIFLA*
 11 *v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (quotation omitted). Regulating the content
 12 of speech “poses the inherent risk that the Government seeks not to advance a
 13 legitimate regulatory goal, but to suppress unpopular ideas or information.” *Id.* at
 14 2374 (quotation omitted). That is exactly what AG Ferguson has achieved here: the
 15 enforcement threat of those CIDs and the burden imposed in responding to them has
 16 chilled the Obria Ministry’s speech about APR. Compl. ¶ 120. And that is particularly
 17 troubling because the Washington Consumer Protection Act does not even apply to
 18 the free services that this non-profit ministry offers. *Browne v. Avvo Inc.*, 525 F. Supp.
 19 2d 1249, 1254 (W.D. Wash. 2007). AG Ferguson’s content- and viewpoint-based
 20 enforcement action is a double violation of the First Amendment’s speech protections,
 21 both as unlawful retaliation and as selective enforcement.

22 First, AG Ferguson’s actions are unlawful retaliation against protected speech.
 23 “[T]he law is settled that as a general matter the First Amendment prohibits
 24 government officials from subjecting an individual to retaliatory actions . . . for
 25 speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). A plaintiff is subject to
 26 unlawful retaliation if “(1) he was engaged in a constitutionally protected activity, (2)
 27

1 the defendant’s actions would chill a person of ordinary firmness from continuing to
2 engage in the protected activity and (3) the protected activity was a substantial or
3 motivating factor in the defendant’s conduct.” *O’Brien v. Welty*, 818 F.3d 920, 932 (9th
4 Cir. 2016) (quotation omitted). If a plaintiff proves these elements, “the burden shifts
5 to the government to show that it ‘would have taken the same action even in the
6 absence of the protected conduct.’” *Id.*

7 These elements are met here. The Obria Ministry has engaged in
8 constitutionally protected speech advancing a pro-life message, including providing
9 information about APR. Compl. ¶ 119; see *Planned Parenthood of Cent. & N. Ariz. v.*
10 *Arizona*, 718 F.2d 938, 944 (9th Cir. 1983). So by subjecting the ministry to extensive
11 and invasive investigations of that speech about a treatment it doesn’t even perform,
12 much less profit from, AG Ferguson has engaged in conduct that would chill a person
13 of ordinary firmness from continuing to engage in protected speech—in fact, it *has*
14 chilled that speech. Compl. ¶¶ 120-23; see *White v. Lee*, 227 F.3d 1214, 1228–29 (9th
15 Cir. 2000) (holding HUD investigation into plaintiffs who vocally opposed multi-
16 family housing facility chilled plaintiffs’ speech). And the Obria Ministry’s pro-life
17 messaging “was a substantial or motivating factor” in AG Ferguson’s decision to issue
18 the CIDs. *O’Brien*, 818 F.3d at 932. He has referred to pro-life pregnancy centers as
19 “insidious,” Compl. ¶ 80, and has placed opposition to the pro-life cause as a central
20 agenda item for his office, *id.* ¶¶ 90–100. Not only that, but he ignores well-
21 established data breaches by pro-abortion groups while investigating the ministry
22 without any stated evidentiary support. *Id.* ¶ 140. The Obria Ministry is thus likely
23 to succeed on its retaliation theory.

24 Second, AG Ferguson has selectively enforced the law based upon viewpoint.
25 “[A]lthough prosecutorial discretion is broad, it is not unfettered.” *Wayte v. United*
26 *States*, 470 U.S. 598, 608 (1985) (cleaned up). In a selective enforcement claim, “a
27 plaintiff must demonstrate (1) he was similarly situated in material respects to other

1 individuals against whom the law was not enforced, and (2) the selective enforcement
2 infringed a constitutional right.” *Frederick Douglass Found., Inc. v. D.C.*, 82 F.4th
3 1122, 1136 (D.C. Cir. 2023); *Hoye v. City of Oakland*, 653 F.3d 835, 855 (9th Cir.
4 2011).

5 Regarding the first element, parties “are similarly situated when their
6 circumstances present no distinguishable legitimate prosecutorial factors that might
7 justify making different prosecutorial decisions with respect to them.” *Branch*
8 *Ministries v. Rossotti*, 211 F.3d 137, 145 (D.C. Cir. 2000) (quotation omitted). Here,
9 AG Ferguson overlooks dozens of reproductive health-related organizations while
10 targeting the Obria Ministry. The similarities these organizations share with the
11 ministry include clientele—*i.e.*, women and men seeking reproductive health
12 services—and many services they provide—*e.g.*, pregnancy testing, STD testing,
13 breast and pelvic examinations, adoption referrals, etc. They also handle similar
14 data. Yet AG Ferguson declines to investigate reproductive health-related
15 organizations that share his view on abortion, despite multiple recent and significant
16 exposures of patient data, while imposing unfounded and overbroad demands on the
17 ministry, which does not share his view. As with California’s action in *NIFLA*, AG
18 Ferguson’s action here “covers a curiously narrow subset of speakers.” 138 S. Ct.
19 2361, 2377 (2018).

20 Regarding the second element, AG Ferguson’s selective enforcement of the
21 WCPA “amounts to viewpoint discrimination in violation of the First Amendment.”
22 *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998), *as amended on denial of*
23 *reh’g* (July 29, 1998). “[G]overnment favoritism in public debate is so pernicious to
24 liberty and democratic decisionmaking that viewpoint discrimination will almost
25 always be rendered unconstitutional.” *Frederick Douglass Found.*, 82 F.4th at 1141
26 (quotation omitted). AG Ferguson has declared his hostility toward pro-life pregnancy
27 centers and does not hide his affinity for abortion providers; this is a central feature

1 of his political persona. This suffices to establish discriminatory intent. *See Hoye*, 653
2 F.3d at 854-55. Such intent can also be inferred from the fact that Defendant has
3 singled out from among similarly situated entities only those promoting a pro-life
4 point of view. *Frederick Douglass Found.*, 82 F.4th at 1140.

5 These actions have injured the Obria Ministry. Proving a First Amendment
6 violation does not require a plaintiff to “show his speech was actually inhibited or
7 suppressed” if “an official’s acts would chill or silence a person of ordinary firmness
8 from future First Amendment activities.” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 916
9 (9th Cir. 2012) (quotation omitted). Nevertheless, the Obria Ministry has already
10 suffered that harm here. AG Ferguson’s actions have chilled the ministry’s current
11 speech about APR and hampered its ability to speak further about APR in the way it
12 otherwise would. Compl. ¶ 120. This has also chilled the ministry’s speech through
13 its contractual partners. *Id.* ¶ 123.

14 Notably, this is not the first time AG Ferguson issued CIDs that violate the
15 First Amendment. He recently sued a for-profit solicitor of charitable contributions,
16 alleging that the business was deceiving consumers into believing it was a nonprofit
17 organization. *State v. TVI, Inc.*, 524 P.3d 622, 628 (Wash. 2023). In a unanimous
18 ruling, the Washington Supreme Court held that “[c]ompanies have a First
19 Amendment right to advertise their ‘lawful activity’” and that AG Ferguson’s WCPA
20 claims infringed on TVI’s First Amendment rights. *Id.* at 634. Because of this, the
21 trial court granted attorneys’ fees and costs to TVI. *See State v. TVI, Inc.*, No. 17-2-
22 32886-3 SEA, slip op. at 6–7 (Wash. Super. Aug. 9, 2023). AG Ferguson had
23 repeatedly—and falsely—asserted in public that TVI “‘deceived’ Washington
24 consumers,” *id.* at 9, which raised “concerns about government overreach” and
25 “heavy-handedness.” *Id.* at 16-17. He even went so far as to publicly state that TVI
26 “can’t hide behind the 1st Amendment to deceive customers,” taking a “dismissive
27 stance” towards a litigant “who raised constitutional challenges to the considerable

1 power the State wields” under the WCPA. *Id.* at 18–19. Though it should have been
2 “fair to assume that the Attorney General, the State’s chief legal officer, would view
3 adherence to the Constitution as a paramount duty,” *id.* at 23, he “fail[ed] to heed the
4 First Amendment rights of those Washington entities.” *Id.* at 21.

5 The Obria Ministry has every reason to believe that AG Ferguson will be even
6 more aggressive against it, especially when he has publicly singled out pregnancy
7 resource centers with open animus. The Court should nip these unlawful demands in
8 the bud and issue a preliminary injunction against them.

9 **2. The CIDs violate the Ministry’s freedom of religion.**

10 Just as AG Ferguson’s content- and viewpoint-based demands violate the
11 ministry’s freedom of speech, they also violate the First Amendment’s Free Exercise
12 clause, which “work[s] in tandem” with its protection of speech. *Kennedy v. Bremerton*
13 *Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022). There is no question that the Obria Ministry’s
14 pro-life beliefs are sincere and “rooted in religious belief,” and its statements in
15 support of APR are directly related to that belief. *Malik v. Brown*, 16 F.3d 330, 333
16 (9th Cir. 1994), *supplemented*, 65 F.3d 148 (9th Cir. 1995). AG Ferguson has violated
17 the Free Exercise clause by singling out these religious beliefs and statements about
18 them for unfavorable treatment.

19 The Free Exercise clause forbids “governmental hostility” to religion, whether
20 it be “overt” or “masked.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508
21 U.S. 520, 534 (1993). Thus, when government action “targets religious conduct for
22 distinctive treatment,” it cannot be “shielded by mere compliance with the
23 requirement of facial neutrality.” *Id.* “Government fails to act neutrally when it
24 proceeds in a manner intolerant of religious beliefs or restricts practices because of
25 their religious nature.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021);
26 *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018).

1 As the Ninth Circuit recently explained in a landmark en banc ruling, government
2 action that is not neutral to religion will be upheld only if it “satisfies strict scrutiny.”
3 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th
4 664, 686 (9th Cir. 2023) (en banc). AG Ferguson’s actions fail to pass the test of
5 neutrality for three reasons set forth by the Ninth Circuit in *Fellowship of Christian*
6 *Athletes*.

7 “First, a purportedly neutral ‘generally applicable’ policy may not have ‘a
8 mechanism for individualized exemptions,’” *id.*, that allows the government “to decide
9 which reasons for not complying with the policy are worthy of solicitude on an ad hoc
10 basis.” *Fulton*, 141 S. Ct. at 1879 (internal quotations omitted). “[T]he mere existence
11 of a discretionary mechanism to grant exemptions can be sufficient to render a policy
12 not generally applicable, regardless of the actual exercise.” *Fellowship*, 82 F.4th at
13 687-88. That is exactly what AG Ferguson has exercised here: discretionary authority
14 under the WCPA to target organizations that make statements with which he
15 disagrees. He has invoked that authority against those whose views he dislikes, and
16 left alone the others.

17 Second, government action is not neutral if it “treat[s] any comparable secular
18 activity more favorably than religious exercise.” *Fellowship*, 82 F.4th at 686 (citing
19 *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021)). “[W]hether two activities are
20 comparable for purposes of the Free Exercise Clause must be judged against the
21 asserted government interest that justifies the regulation at issue.” *Id.* Here, Planned
22 Parenthood and the Obria Ministry are similarly situated in their clientele and in
23 many of the services they provide, save for abortion. Yet AG Ferguson has looked the
24 other way with regard to Planned Parenthood’s well-documented data breaches while
25 singling out the ministry for investigation without any evidence of such a failure. And
26 he has threatened enforcement against the Obria Ministry over its mere statements
27 about APR—a service it does not even provide.

1 Third, the government may not act in a manner “hostile to . . . religious beliefs”
2 or inconsistent with the Free Exercise Clause’s bar on even “subtle departures from
3 neutrality.” *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (citation omitted); *Lukumi*, 508
4 U.S. at 534. AG Ferguson’s campaign to investigate the Obria Ministry’s religious
5 messaging—divorced from any actual services it provides, much less a consumer
6 relationship—evinces “hostility” that is “neither subtle nor covert.” *See Fellowship*,
7 82 F.4th at 690. Here, hostility is readily apparent from AG Ferguson’s many
8 statements above showing overt animus to pregnancy care centers.

9 Thus, AG Ferguson’s hostile actions are subject to strict scrutiny, a stringent
10 standard they cannot survive. AG Ferguson’s threat of civil sanctions places a
11 substantial burden on the Obria Ministry’s religious speech, which arises directly out
12 of its Christian belief that all life is sacred and created by God. *Hernandez v. Comm’r*,
13 490 U.S. 680, 699 (1989). AG Ferguson lacks a compelling state interest to investigate
14 that speech. Even if the WCPA’s pro-consumer purposes were compelling, that law
15 does not even apply, since there is no relevant “trade or commerce” here, *Browne*, 525
16 F. Supp. 3d at 1254, and the Obria Ministry’s statements about APR concern a
17 treatment that it does not even provide to patients, much less profit from. Compl. ¶
18 69. Nor are AG Ferguson’s demands narrowly tailored—he cannot “show that
19 measures less restrictive of the First Amendment activity could not address its
20 interest.” *Tandon*, 141 S. Ct. at 1296-97. Because AG Ferguson “permits other
21 activities” by Planned Parenthood despite its well-established data breaches, he
22 cannot show that any such concerns he has about the Obria Ministry—for which he
23 has cited no evidence—make it somehow “more dangerous than those activities” he
24 allows from Planned Parenthood. *Id.* at 1297. AG Ferguson’s targeting of the
25 ministry’s religious speech cannot survive strict scrutiny and the Court should enjoin
26 his unlawful CIDs.

1 **3. The CIDs violate the Ministry’s freedom of association.**

2 AG Ferguson’s groundless demands have also harmed the Obria Ministry’s
 3 freedom of association by damaging its working relationships. “[I]mplicit in the right
 4 to engage in activities protected by the First Amendment [is] a corresponding right
 5 to associate with others in pursuit of a wide variety of political, social, economic,
 6 educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622
 7 (1984). These First Amendment associational rights apply “not only to the
 8 organization itself, but also to its staff, members, contributors, and others who
 9 affiliate with it.” *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of*
 10 *Am., & its Locs. 1093, 558 & 25 v. Nat’l Right to Work Legal Def. & Ed. Found., Inc.*,
 11 590 F.2d 1139, 1147 (D.C. Cir. 1978). Unconstitutional actions that infringe on the
 12 freedom of association “can take a number of forms.” *Roberts*, 468 U.S. at 622. These
 13 include penalizing individuals for membership in a disfavored group and interfering
 14 with the group’s internal affairs. *Id.* at 622-23.

15 Thus, the government infringes on free association when it issues baseless
 16 investigative process. A plaintiff can establish a violation of its free association right
 17 in this context by showing “enforcement of the subpoenas will result in
 18 (1) harassment, membership withdrawal, or discouragement of new members, or
 19 (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the
 20 members’ associational rights.” *Brock v. Loc. 375, Plumbers Int’l Union of Am., AFL-*
 21 *CIO*, 860 F.2d 346, 350 (9th Cir. 1988). The “evidence offered need show only a
 22 reasonable probability that the compelled disclosure . . . will subject [associates] to
 23 threats, harassment, or reprisals from either Government officials or private parties.”
 24 *Id.* at 350 n.1.

25 Again, those consequences have already occurred. The Obria Ministry
 26 identified certain of its partners and vendors, but objected that AG Ferguson’s
 27 demands for disclosure of its “volunteers, staff, donors[,] and others (both individuals

1 and entities)” would stifle the First Amendment’s “guaranty of freedom of
2 association.” Exs. D and E. And that is exactly what happened. AG Ferguson then
3 served oppressive demands on the ministry’s vendors and other organizational
4 partners. That has damaged the Obria Ministry’s relationships with these other
5 organizations, who know that they must now respond based solely on the fact that
6 they have done business with the ministry. Several of those organizations have
7 expressed displeasure at coming under investigation for associating with the Obria
8 Ministry, which has diminished the work it does with those organizations as a result.
9 Compl. ¶¶ 112-13. The stigma of these CIDs jeopardizes both the ministry’s ability to
10 associate with those organizations and its ability to associate with others for the same
11 purpose.

12 In addition, AG Ferguson demands that the Obria Ministry identify names,
13 relationship to the ministry, business and home addresses, telephone numbers, and
14 email addresses of *all* auditors, bookkeepers, payroll service providers, tax preparers,
15 directors, officers, principals, members, employees, agents, contractors, *and*
16 *volunteers*. Requiring identification of persons and entities with no relation to the
17 stated subject of his demands both discourages new associations with the Obria
18 Ministry and encourages withdrawal from existing relationships.

19 **4. The CIDs violate the Ministry’s First Amendment**
20 **privilege.**

21 Even further, much of what AG Ferguson demands regarding the Obria
22 Ministry’s other associational memberships is protected by First Amendment
23 privilege. Invoking that privilege requires a showing “that enforcement of the
24 [discovery requests will result in (1) harassment, membership withdrawal, or
25 discouragement of new members, or (2) other consequences which objectively suggest
26 an impact on, or ‘chilling’ of, the members’ associational rights.” *Brock*, 860 F.2d at
27 350. Once that showing is made, the burden shifts to the government to “demonstrate

1 that the information sought . . . is rationally related to a compelling governmental
 2 interest . . . [and] the ‘least restrictive means’ of obtaining the desired information.”
 3 *Id.* (quotation omitted).

4 “The question is therefore whether the party seeking the discovery ‘has
 5 demonstrated an interest in obtaining the disclosures it seeks . . . which is sufficient
 6 to justify the deterrent effect . . . on the free exercise . . . of [the] constitutionally
 7 protected right of association.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1161 (9th Cir.
 8 2010) (quotation omitted). The government “must show that the information sought
 9 is *highly relevant* to the claims or defenses in the litigation—a more demanding
 10 standard of relevance than that under [FED. R. CIV. P. 26].” *Id.* (emphasis added).
 11 “The request must also be carefully tailored to avoid unnecessary interference with
 12 protected activities, and the information must be otherwise unavailable.” *Id.* In close
 13 cases, “[w]here the First Amendment is implicated, the tie goes to the speaker.” *Fed.*
 14 *Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 474 (2007).

15 With remarkable boldness, AG Ferguson demands a slew of internal, nonpublic
 16 information about the Obria Ministry’s relationships with others:

- 17 • agreements with healthcare providers who lawfully provide APR;
- 18 • training provided to persons “*employed by, volunteering for, contracting with,*
 19 *or otherwise associated with*” the ministry;
- 20 • the identities of the trainers and employees, volunteers, and contractors who
 21 received the training;
- 22 • current and previous iterations of governing documents, “including, *without*
 23 *limitation,*” articles, bylaws, and “operational/internal polices” like
 24 whistleblower, conflict of interest, and non-fraternization policies; *all* notices,
 25 agendas, and minutes for *every* meeting of the ministry’s boards of directors,
 26 medical advisory boards, and “general meetings of YOUR executive and/or
 27 operations team(s), and any subcommittees thereof”;

- 1 • “all DOCUMENTS relating to certificates and licenses held or maintained by
- 2 HEALTH CARE PROVIDERS employed by, contracting with, volunteering for,
- 3 providing services on [the ministry’s] behalf, and/or affiliated with [the
- 4 ministry], without limitation [sic] any applications and corresponding
- 5 documents submitted during the [thirteen-year] Relevant Time Period”;
- 6 • “*all* DOCUMENTS relating to *draft and final* financial statements, balance
- 7 sheets, general ledger(s), and other financial disclosures, *from 2010 to the*
- 8 *present*, including, *without limitation*, documents and calculations relied upon
- 9 in creating such documents and/or provided to auditors, *lenders*, grantors,
- 10 and/or *donors*.”

11 (Italics added.)¹⁸ Hardly narrow, AG Ferguson casts his net to catch as many of the
 12 ministry’s associations as possible without any relationship to the purported topics of
 13 his CIDs, much less to the “trade or commerce” the WCPA regulates.

14 The Obria Ministry has shown both the “harassment” and “chilling” elements
 15 of the tests above. First, AG Ferguson has already served investigative demands on
 16 associates identified in the ministry’s disclosures. Ex. I. In deficiency letters, he
 17 reasserts demands for the identities of and information about individuals and
 18 organizations with whom the ministry have associated throughout its lawful
 19 activities. Exs. J and K. These demands extend not only to directors and paid
 20 executives, employees, and contractors, but also donors and unpaid volunteers who
 21 give money and time to serve clients in difficult circumstances, and have no
 22 involvement with the ministry’s public statements or its handling of consumer data.
 23

24 ¹⁸ Besides the overarching First Amendment objections referred to in Section I.A.,
 25 *supra*, the Obria Group specifically asserted the First Amendment privilege in
 26 response to Interrogatories 1, 3–6, 11, 12, 14, and 18, and to RFP 5, 11, and 22. Ex.
 27 E. Obria PNW asserted the privilege in response to Interrogatories 1, 3–6, 11–13, 15,
 and 23, and RFP 5, 6, 8, 12, 14, and 18–21. Ex. D.

1 And AG Ferguson has already begun investigations into entities identified in the
2 ministry's responses to his CIDs. So it is reasonable to infer from his persistence in
3 seeking more information about more people and entities that he intends to similarly
4 target others. And as explained above, complying with his demands has had, and will
5 continue having, a chilling effect on the Obria Ministry's associations. None of this is
6 relevant—much less “highly relevant”—to a legitimate claim. The Court should
7 enjoin it.

8 **B. AG Ferguson's demands violate the Fourth Amendment.**

9 AG Ferguson's demands also violate the Fourth Amendment, which “requires
10 that [a] subpoena be sufficiently limited in scope, relevant in purpose, and specific in
11 directive so that compliance will not be unreasonably burdensome.” *See v. City of*
12 *Seattle*, 387 U.S. 541, 544 (1967). “The relevance of the sought-after information is
13 measured against the general purposes of the agency's investigation, ‘which
14 necessarily presupposes an inquiry into the permissible range of investigation under
15 the statute.’” *In re McVane*, 44 F.3d 1127, 1135–36 (2d Cir. 1995) (quoting *Linde*
16 *Thomson Langworthy Kohn & Van Dyke, P.C. v. Resol. Tr. Corp.*, 5 F.3d 1508, 1516
17 (D.C. Cir. 1993)). AG Ferguson's CIDs abuse his authority under the WCPA and
18 vastly exceed the limits of the Fourth Amendment.

19 **1. The CIDs far exceed the scope of what the Fourth**
20 **Amendment permits.**

21 Legal process such as a civil investigative demand “will not be enforced if the
22 party being investigated proves it is overbroad or unduly burdensome.” *Reich v.*
23 *Montana Sulphur & Chem. Co.*, 32 F.3d 440, 448 (9th Cir. 1994). A subpoena is
24 enforceable only if “the agency possesses the investigative authority” and “the
25 evidence sought is relevant and material to the investigation.” *Groves v. State of*
26 *Wash.*, 863 F.2d 886 (9th Cir. 1988) (table). Here, the WCPA does not provide that
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1 authority, since it requires a connection “trade or commerce,” which does not apply to
2 the services that the Obria Ministry provides here without any charge to patients.
3 WASH. REV. CODE ANN. § 19.86.020. For example, the court in *Browne* held the WCPA
4 did not apply to an information clearinghouse and ratings service that collected data
5 and then provided that data to consumers free of charge, since “[n]o assets or services
6 are sold to people who visit the site” and “no charge is levied against attorneys or
7 references who choose to provide information.” 525 F. Supp. 2d at 1254; *see also*
8 *Romero v. Nw. Area Found.*, 129 F. App’x 337 (9th Cir. 2005) (noting there is “no
9 sense in which [a constructive charitable trust] is generally engaged in commercial
10 activities contemplated by the statute.”); *Dedication & Everlasting Love to Animals*
11 *v. Humane Soc. of U.S., Inc.*, 50 F.3d 710, 712 (9th Cir. 1995) (“[S]olicitation of
12 contributions by a nonprofit organization is not trade or commerce.”). Here too, the
13 Obria Ministry does not charge patients for their services, Compl. ¶ 65, and the
14 statements that AG Ferguson investigates concern a treatment that the ministry
15 does not even offer. His demands thus exceed the scope permitted by the Fourth
16 Amendment.

17 The scope of the CIDs is also vastly overbroad in the materials they reach. That
18 is true under both the Fourth Amendment and under Washington law, which forbids
19 “unreasonable or improper” demands, WASH. REV. CODE ANN. § 19.86.085, and does
20 not require “disclosure of any documentary material which would be privileged” or
21 otherwise not required “by a subpoena duces tecum issued by a [Washington] court,”
22 *id.* § 19.86.110(3). The stated purpose of the CIDs is to investigate “possible . . . unfair
23 or deceptive . . . marketing, advertising, and other representations concerning
24 services provided to Washington consumers . . . as well as unfair acts or practices
25 related to the collection and use of consumer data.” But it strains credulity to believe
26 that the CIDs’ demands for the identities of the ministry’s accountants, employees,
27 and *volunteers*; “all past iterations” of its articles of incorporation, whistleblower

1 policies, and bylaws; complete minutes of every board and subcommittee meeting;
 2 obscure tax schedules; employee pension and retirement account contributions; and
 3 documents provided to lenders and donors, *inter alia*, are relevant to the stated
 4 subject of his demands. And that is even more concerning with the expansive
 5 definition of “YOU” in the CIDs, which purports to reach not just Plaintiffs, but all of
 6 their affiliates. The Fourth Amendment does not permit fishing expeditions.

7 **2. The CIDs demand information for a period of time far**
 8 **exceeding what the Fourth Amendment permits.**

9 AG Ferguson’s demands are also overbroad in the period of time they embrace.
 10 The CIDs demand information for a period spanning thirteen years—three times the
 11 WCPA’s four-year statute of limitation. *See* WASH. REV. CODE ANN. § 19.86.120.
 12 Untethered to any allegation of wrongdoing—much less one he could reach with an
 13 enforcement action so far beyond the statutory limit—the period covered by these
 14 demands is the antithesis of a limited scope or a specific directive, and thus violates
 15 the Fourth Amendment. In *United States v. Goldman*, the Ninth Circuit affirmed a
 16 refusal to enforce a subpoena demanding tax records preceding the years that the
 17 government was investigating. 637 F.2d 664, 666 (9th Cir. 1980). The lack of a
 18 “reference to any transaction which might possibly afford a realistic expectation
 19 necessary to obtain the [earlier] documents” justified the district court’s conclusion
 20 that the government had not met its burden. *Id.* at 667. The period of time
 21 encompassed by AG Ferguson’s demands far exceeds any cause of action authorized
 22 by the WCPA.

23 **II. The CIDs will cause irreparable harm without an injunction.**

24 “It is well established that the deprivation of constitutional rights
 25 unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d
 26 976, 994 (9th Cir. 2017) (cleaned up). This includes “[t]he loss of First Amendment
 27

1 freedoms, for even minimal periods of time[.]” *Klein v. City of San Clemente*, 584
2 F.3d 1196, 1208 (9th Cir. 2009) (cleaned up). As set forth above, AG Ferguson’s
3 unlawful demands have chilled the Obria Ministry’s protected speech, discriminated
4 against their viewpoint and their religious exercise, harmed their protected First
5 Amendment association rights and damaged their working relationships with
6 others, and burdened them with unwarranted production of documents in violation
7 of the Fourth Amendment. Deprivation of those constitutional rights is an
8 irreparable injury, and only an injunction can stop it from continuing.

9 **III. The balance of equities and public interest favor the Obria Ministry.**

10 Ninth Circuit “caselaw clearly favors granting preliminary injunctions to a
11 plaintiff . . . likely to succeed . . . on the merits of [its] First Amendment claim.” *Klein*,
12 584 F.3d at 1208. “The balance of equities and the public interest thus tip sharply in
13 favor of enjoining” these unlawful demands. *Id.* AG Ferguson faces no legitimate
14 hardship in being denied an opportunity at selective harassment of speech and
15 religion through fishing expedition into records and activities predating the statute
16 of limitations by nearly a decade. The Obria Ministry, however, faces very real
17 hardship. It must choose between risking sanctions, on one hand, or submitting to
18 discriminatory and burdensome demands for sensitive information for which AG
19 Ferguson’s appetite has proved insatiable. To submit would be to alienate directors,
20 employees, donors, volunteers, and vendors, while draining the ministry’s resources
21 through extensive responses to discovery requests. The Obria Ministry has shown it
22 “likely will suffer irreparable harm if” AG Ferguson can proceed with his demands
23 under these circumstances. *Am. Beverage Ass’n v. City & Cnty. of San Francisco*, 916
24 F.3d 749, 758 (9th Cir. 2019). “[I]t is always in the public interest to prevent the
25 violation of a party’s constitutional rights,” *Melendres v. Arpaio*, 695 F.3d 990, 1002
26 (9th Cir. 2012) (quotation omitted), particularly “the ‘significant public interest’ in
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1 upholding free speech principles” both as to the ministry and for “other people
2 subjected to the same [demands],” *Klein*, 584 F.3d at 1208 (cleaned up).

3 **CONCLUSION**

4 *Dobbs* returned “the authority to regulate abortion . . . to the people and their
5 elected representatives,” 142 S. Ct. at 2279, to be determined through “the democratic
6 process,” *id.* at 2265. Yet AG Ferguson has worked to stifle that process with threats
7 of enforcement calculated to silence one side of the debate. His actions violate the
8 Obria Ministry’s free expression, free religion, free association, and First Amendment
9 privilege and constitute unreasonable searches. The Court should grant a
10 preliminary injunction to protect these rights from irreparable harm and further the
11 public’s interest in avoiding constitutional violations.

12 * * * *

13 I certify that this memorandum contains 8,361 words, in compliance with the
14 Local Civil Rules.

15 Respectfully submitted this 29th day of November, 2023.

16 /s/ Lincoln Davis Wilson

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CERTIFICATE OF SERVICE

I certify that on November 29, 2023, I caused a true and correct copy of the foregoing document to be served via U.S. Mail upon the following:

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DATED: November 29, 2023.

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