

COMMONWEALTH OF KENTUCKY
LOGAN CIRCUIT COURT
JUDGE JOE W. HENDRICKS, JR.
CASE NO. 26-CI-00313
Filed Electronically

COMMONWEALTH OF KENTUCKY, *ex*
rel. RUSSELL COLEMAN, ATTORNEY
GENERAL

PLAINTIFF

v.

NOTICE-MOTION-ORDER

MAYDAY MEDICINES, INC. D/BA/
MAYDAY HEALTH

DEFENDANT

NOTICE

Please take notice that Defendant, by and through undersigned counsel, will present the following motion on November 17, 2026 at 9:00 a.m. ET—the date provided by the Court’s staff and agreed to by the parties *via* electronic mail—in the above Court.

DEFENDANT’S MOTION TO DISMISS

Pursuant to Kentucky Revised Statute (KRS) 454.460-454.478, Kentucky Rule of Civil Procedure (CR) 12.02(f), the United States and Kentucky Constitutions, and Section 230 of the Communications Decency Act, 47 U.S.C. § 230(c)(1), Defendant Mayday Medicines Inc. d/b/a Mayday Health (Mayday or Defendant), by counsel, respectfully moves to dismiss the above-styled action with prejudice for the reasons set forth below.

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INTRODUCTION

This is a case about the government’s power to censor speech. Millions of Americans hold sincere and differing beliefs about the ethics of abortion, and *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) gives states discretion to regulate it so long as the regulations are consistent with their state constitutions. Kentucky’s General Assembly has chosen one path. Illinois, Ohio, and Virginia, for example, have chosen another. But that is not the question here. As the Commonwealth’s Complaint acknowledges, Mayday Health is an independent 501(c)(3) non-profit public health education organization dedicated to sharing accurate, evidence-based *information* about lawful reproductive healthcare services and medicines—it is not a medical provider that prescribes, handles, sells, or earns revenue from any healthcare service or medicine, or an agent or affiliate of any such provider that coordinates, shares data, or makes referrals. Just as the anti-abortion National Institute of Family and Life Advocates (NIFLA) publishes information about providers of medical services it believes the public should know about, Mayday publishes information because it, too, believes people have a right to make informed choices.

In this Kentucky Consumer Protection Act (KCPA) case, the Attorney General claims that Mayday’s moral and political speech (i) misleads consumers into believing that abortion pills may be lawfully ordered by mail to addresses in Kentucky, and (ii) facilitates criminal acts by providing information a reader could use to import abortion pills into Kentucky. Because this claim targets protected, non-commercial speech, it must be dismissed under both the Kentucky Uniform Public Expression Protection Act (UPEPA) and CR 12.02(f).

First, the Kentucky Constitution and the First Amendment to the United States Constitution bar the Commonwealth’s claim because Mayday’s truthful speech about matters of public concern enjoys virtually absolute constitutional protection. Indeed, in similar actions

involving the identical speech, federal courts in *Mayday Health v. Rhoden*, 2026 WL 2070966, at *11-14 (D.S.D. July 17, 2026), and *Mayday Health v. Jackley*, No. 1:26-cv-00078-KPF, ECF 48 at 15:13-17:7 (S.D.N.Y. Feb. 17, 2026), concluded that Mayday’s website and identical gas station signs express fully protected non-commercial speech that state governments may not lawfully restrain through consumer protection statutes. The Commonwealth likewise seeks to punish and prevent Mayday from speaking based on the content of the information it publishes and the viewpoint that motivates Mayday to publish it. This asserted application of the KCPA to Mayday’s speech is subject to strict scrutiny, and the Commonwealth cannot show that enforcing the KCPA in this way is the least restrictive alternative to accomplish any compelling government interest.

Second, the Commonwealth independently fails to allege that any of Mayday’s challenged speech violates or is even subject to the KCPA. To the extent the KCPA applies to speech, it reaches only commercial speech made in connection with “trade” or “commerce.” KRS 367.110, 170. But Mayday’s publication of truthful health information—speech the Complaint acknowledges is published for purely moral and political reasons—falls outside that scope. Additionally, the Commonwealth fails to allege that Mayday’s speech was deceptive. The Complaint acknowledges that Mayday expressly disavows providing legal advice, and it does not (nor can it) point to any statement on Mayday’s website or signs stating that abortion pills may be legally imported to Kentucky. And since Kentucky law does not criminalize the self-administration of abortions, KRS 311.990(39)(b), even to the extent the Commonwealth suggests Mayday enables such acts by providing information—and the Complaint acknowledges that Mayday does not encourage anyone to make any choice with that information—doing so could not form the basis for liability.

Third, the Commonwealth’s claim is preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230(c)(1), to the extent it seeks to hold Mayday liable for linking to

objectionable third-party content that appears on third-party websites Mayday did not create.

Mayday respectfully asks the Court to dismiss the action with prejudice and award Mayday its fees and costs pursuant to UPEPA.

FACTUAL BACKGROUND

A. Mayday Publishes Truthful Public Health Information on Its Website¹

Mayday is a nonprofit health education organization that provides an information clearinghouse for reproductive health resources. Compl. ¶ 6. Mayday’s mission is “to share information about abortion pills, birth control, and gender-affirming care in any state,” and “empower people to make their own informed decisions about their own bodies.” Compl. Ex. 6, Attachment B of the Sept. 2026 Aff. of S. Whitaker (Whitaker Aff. Attachment B), at 69. Mayday is not affiliated with or an agent of any provider, and does not coordinate to make referrals. *Id.* Mayday does not even encourage or intend for any person to make any particular decision in response to the information it provides—Mayday “just want[s] people to know their options.” *Id.*

Mayday’s website provides information about abortion, morning-after pills, birth control, and gender-affirming care. For the abortion category, Mayday provides links to third-party websites, including Aid Access, Cambridge Reproductive Health Consultants, A Safe Choice, Abuzz, and We Take Care of Us. Compl. ¶ 17. Mayday also links to organizations offering supporting services, including the Digital Defense Fund’s privacy guide, the Miscarriage and Abortion Hotline, and the If/When/How Repro Legal Helpline. Whitaker Aff. Attachment B, at 70.

¹ The Court may consider the full contents of Mayday’s website on this motion because the website is attached to, and incorporated by reference into, the Commonwealth’s Complaint. *See* Compl. ¶¶ 8, 15-17. Kentucky courts need not convert a motion to dismiss into one for summary judgment when considering information incorporated by reference in the Complaint, as long as the plaintiff had “(1) actual notice of the extraneous information and (2) relied upon the documents in framing the complaint.” *Schell v. Young*, 640 S.W.3d 24, 33 (Ky. Ct. App. 2021).

Much of the linked information comes from clinicians, lawyers, and health experts. *Id.* at 69. If medically appropriate, some third-party clinics may provide access to abortion pills.

Mayday does not sell, handle, or benefit financially from the sale of abortion pills, and it operates independently from organizations that do. *See* Whitaker Aff. Attachment B, at 69. Nor does Mayday itself provide any medical or legal advice, charge any fee, collect any revenue related to the provision of medical or legal services, or obtain any other valuable consideration in exchange for disseminating its message. *Id.* at 69, 88. Mayday also does not monetize its users’ data. *Id.* Rather, Mayday simply wants to give people information “to understand every reproductive healthcare option available to them.” *Id.* at 77.

The information Mayday publishes is provided as a charitably funded public service—free of charge to users—as an expression of Mayday’s values and beliefs. Through its website and advocacy, Mayday provides truthful, non-commercial information of public concern, including resources for individuals seeking to understand their reproductive healthcare options. *Id.* at 69. Mayday believes its work is essential to ensuring that individuals can make informed decisions about their health and well-being. *Id.*

B. Mayday Publicizes Its Website to Kentuckians

To raise awareness about reproductive healthcare options in the United States, Mayday publicizes the informational and educational resources on its website with signs, billboards, airplane banners, art installations, and other tangible media. In October 2025, Mayday placed signs at gas stations around Kentucky. The signs read: “Pregnant? Don’t want to be?” with a prompt for consumers to “Learn more” by visiting Mayday’s website. Compl. ¶ 7. In August 2026, Mayday flew a banner over the Kentucky State Fair which read “Abortion Pills By Mail” with Mayday’s website, mayday.health, listed underneath. *Id.* ¶ 11.

C. The Commonwealth Sues to Punish and Restrain Mayday’s Speech

The Commonwealth filed this action on September 3, 2026. The Commonwealth asserts that Mayday’s signs, airplane banner, and the information it publishes on its globally accessible website violate the KCPA by allegedly suggesting that abortion pills may be legally imported into Kentucky, and by facilitating criminal acts by providing information a Kentucky reader could use to import and take such medicines. Compl. ¶¶ 29-31. The Commonwealth’s requested relief includes a permanent injunction to silence Mayday’s speech in the future, unspecified equitable relief to redress unidentified and unalleged consumer injuries, plus civil penalties, attorney’s fees, and costs. *Id.* at Prayer for Relief ¶¶ 1-7.

LEGAL STANDARDS

UPEPA provides a special motion for expedited relief to stay litigation and dismiss causes of action based on a party’s exercise of its First Amendment rights in relation to speech on a matter of public concern. The statute must be construed broadly. “Kentucky’s protections encompass all speech and press, public or private, and in all forums, about matters of public concern.” *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 S.W.3d 140, 155 (Ky. Ct. App. 2024).

Under UPEPA, the Court must dismiss a claim with prejudice if the movant (1) shows that the claim relates to a category of communication covered by the statute, (2) the respondent fails to establish that any of the statute’s exceptions apply, and (3) the respondent “fail[s] to state a cause of action upon which relief can be granted.” *Id.* at 152 (citing KRS 454.472(1)(c)). The filing of a UPEPA motion stays “all other proceedings between the moving and responding party.” KRS 454.466(1)(a). If dismissal is granted, the moving party is entitled to “court costs, reasonable attorney’s fees, and reasonable litigation expenses related to the motion.” KRS 454.478. Decisions on UPEPA motions are immediately appealable as a matter of right. KRS 454.476.

Mayday also moves to dismiss the Complaint on the independent and adequate ground that

it fails to state a claim upon which relief can be granted pursuant to CR 12.02(f). A Rule 12.02(f) motion should be granted if “[the] plaintiff would not be entitled to relief under any statement of facts which could be proved in support of the claim.” *Seiller Waterman, LLC v. RLB Props., Ltd.*, 610 S.W.3d 188, 195 (Ky. 2020) (citation omitted). The plaintiff must plead “facts and not conclusions”—a pleading which contains “only the latter” cannot state a claim to relief. *Id.*

UPEPA APPLIES TO THIS ACTION

UPEPA applies because the Complaint seeks to impose liability upon Mayday’s “[e]xercise of the right of freedom of speech” guaranteed by the Kentucky and United States Constitutions “on a matter of public concern.” KRS 454.462(1)(c). This is a broad standard. Under UPEPA, a matter of public concern means any “statement or activity regarding ... a matter of political, social, or other interest to the community” or on “a subject of concern to the public.” KRS 454.460(4)(b), (c). Matters of reproductive health present “profound moral questions” of great public interest, *Dobbs*, 597 U.S. at 302, so speech on that subject falls within this standard. Because the Commonwealth’s action targets speech covered by UPEPA, it bears the burden to show that a statutory exception applies that removes this action from its ambit.

None does. Although KRS 454.462(2)(a)(2) and KRS 454.462(2)(a)(10) exempt certain KCPA actions, as well as other government enforcement actions brought to thwart “imminent threat[s] to public health or safety,” neither exception applies when the underlying cause of action targets conduct “related to the ... creation, dissemination, exhibition, or advertisement or other similar promotion of a political, journalistic, or otherwise artistic work.” KRS 454.462(2)(b)(1). This is clear from KRS 454.462(2)(a), which states that the ten enumerated statutory exceptions that follow apply “[e]xcept as provided” by this limitation. *See Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 428 (2018) (statutes using the phrase “except as provided in” followed

by a cross-reference “indicate that one rule should prevail over another in any circumstance in which the two conflict”); *see also* ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* § 13 at 114-16 (2012) (discussing the subordinating canon), available at <https://perma.cc/ZG3F-YCUM>.

Mayday’s signs and website convey political, journalistic, editorial, and moral beliefs covered by this override. *See* Whitaker Aff. Attachment B, at 69. Political speech is a broad category not limited to partisan electioneering. *See Minnesota Voters All. v. Mansky*, 585 U.S. 1, 17-18 (2018) (political speech “can be expansive” and reach anything “relating to, or dealing with the structure or affairs of government, politics, or the state”) (quoting American Heritage Dictionary 1401 (3d ed. 1996)). Truthfully informing people about reproductive healthcare, as Mayday does, is political speech because it “express[es] personal political beliefs” to advance Mayday’s moral objectives “rather than to derive financial gain.” *In re Primus*, 436 U.S. 412, 422, 428–32 (1978) (lawyers’ communications for public interest purposes expressed political beliefs); *see also infra* § I.B (discussing why Mayday’s speech is not commercial speech for this reason). And publishing independent research to provide the public with information about third-party services, as Mayday does, is also independently carved out as journalism because it expresses an editorial viewpoint. *See, e.g., Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 503-14 (1984) (informing consumers about the price, quality, and availability of a loudspeaker is protected editorial speech). Above all, Mayday’s publications express its moral belief that Americans have a right to information that empowers them to make informed decisions about their reproductive health. *See* Whitaker Aff. Attachment B, at 69, 77.

Additionally, the “imminent threat to public health or safety” exception cannot apply because there is no imminent threat. KRS 454.462(2)(a)(2). Mayday’s website has been globally

accessible including in Kentucky since 2022. The Commonwealth has not identified any imminent threat to public health safety because none exists.

ARGUMENT

I. THE UNITED STATES AND KENTUCKY CONSTITUTIONS BAR THE COMMONWEALTH’S CLAIM

The truthful, non-commercial reproductive health information Mayday publishes is protected expression under the United States and Kentucky Constitutions. The Commonwealth’s attempt to penalize Mayday for publishing that information—or to prevent Mayday from publishing it at all—is an unconstitutional prior restraint and viewpoint-based speech restriction.

A. The First Amendment and Kentucky Constitution Protect Mayday’s Speech

“Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned.” *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Truthful speech about matters of public concern thus enjoys virtually absolute constitutional protection. *See Bartnicki v. Vopper*, 532 U.S. 514, 527, 535 (2001) (First Amendment protected publication of truthful information on public issues even when the information had been leaked unlawfully). This is true under both the First Amendment to the U.S. Constitution and the Kentucky Constitution. *See* Ky. Const. § 1(4) (guaranteeing “the right of freely communicating [one’s] thoughts and opinions”); *id.* § 8 (“Every person may freely and fully speak, write and print on any subject”). Indeed, the Kentucky Supreme Court has affirmed that “the disclosure of truthful, relevant information is more likely to make a positive contribution to decision making than is concealment of such information.” *In re Hughes & Coleman*, 60 S.W.3d 540, 545 (Ky. 2001) (quoting *Peel v. Att’y Reg. and Disc. Com’n of Ill.*, 496 U.S. 91, 108 (1990)).

The public health information on Mayday’s website—and the signs publicizing it to audiences offline—fall squarely within the First Amendment’s protections for truthful speech on

matters of public concern. Abortion presents a moral question of great public interest, and the reproductive health information at issue on Mayday’s website is truthful. Mayday’s website contains links to third-party websites where users can obtain abortion medication, including Mifepristone and misoprostol. Mifepristone and misoprostol are FDA-approved as safe and effective to “end an intrauterine pregnancy.”² Mayday likewise truthfully informs readers what third-party providers charge for abortion pills, where those providers mail abortion pills, and how long those providers predict it will take for the pills to arrive. Compl. ¶¶ 16, 29. Mayday “does not provide legal advice” or direct any action that would violate any state’s laws; instead, it only links to third-party resources a reader can consult to make their own choices. Whitaker Aff. Attachment B, at 69, 88. Instead, Mayday links to third-party resources a reader can consult to make their own choices. *Id.*

Just last year, the Second Circuit affirmed that the same publishing activities *by abortion opponents* were fully protected by the First Amendment in *NIFLA v. James*, 160 F.4th 360, 379-80 (2d Cir. 2025). That case involved anti-abortion non-profits’ First Amendment rights “to make informational statements on their websites” about options to *reverse* mifepristone-and-misoprostol induced abortions—including by posting “links and instructions for accessing” third-party providers—“so that women can receive more information about” these options and “if they so choose, be matched with a third-party provider.” *Id.* at 375. Because the non-profits were “morally motivated,” “receive[d] no remuneration or financial benefit for engaging in” their speech, and did

² “Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation,” U.S. Food & Drug Administration, <https://perma.cc/T7BA-HF9W> (last updated April 8, 2026). The Court may take judicial notice that the FDA has approved both medications because this is a fact “[c]apable of accurate and ready determination by resort [a] source[] whose accuracy cannot reasonably be questioned.” Ky. R. Evid. 201(b)(2).

“not provide” the procedures themselves, “but rather provide the public with information ... and access to third-party providers who can offer” them, the Second Circuit affirmed that the First Amendment protected their websites. *Id.* at 375-76. That conclusion applies here. *See also, e.g., Greater Baltimore Center for Pregnancy Concerns, Inc. v. Baltimore*, 879 F.3d 101, 108–11 (4th Cir. 2018) (First Amendment protected anti-abortion non-profit’s morally motivated efforts to raise awareness of non-abortion pregnancy services).

It makes no difference that it is now illegal to provide most abortions in Kentucky and some other states. The Supreme Court addressed an analogous fact pattern in *Bigelow v. Virginia*, 421 U.S. 809 (1975) and held that a Virginia law criminalizing the dissemination of information with tendency to “encourage or prompt the procuring of an abortion” violated a Virginia newspaper’s First Amendment right to publish information about, and endorse an organization that facilitated, access to abortions that were then illegal in Virginia. *Id.* at 811-12. The Court explained that the published material “conveyed information of potential interest and value to a diverse audience—not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter”—and that Virginia had no legitimate “interest in shielding its citizens” from this information. *Id.* at 822 n.7, 827-28. The Commonwealth has no legitimate interest in doing so here. *See, e.g., Planned Parenthood Great Nw., Hawai’i, Alaska, Indiana, Kentucky, Inc. v. Comm’r of the Indiana State Dep’t of Health*, --- F.4th ---, 2026 WL 2409722, at *12-13 (7th Cir. Aug. 18, 2026) (affirming that First Amendment protects non-profit’s right to “provid[e] information and referrals so clients can make their own decisions” about obtaining abortion care that is lawful in some states); *Matsumoto v. Labrador*, 122 F.4th 787, 812 (9th Cir. 2024) (First Amendment “squarely protect[s]” providing “[i]nformation and instructions regarding the availability and means of procuring an abortion

procedure or drug,” including “specifics, such as who the provider is, when and where the procedure would take place, or what a drug would cost”); *Welty v. Dunaway*, 791 F. Supp. 3d 818, 831 (M.D. Tenn. 2025) (First Amendment protects sharing information about how “to get abortion pills and do a self managed abortion or to seek abortion care” that is lawful in some states).

B. Mayday’s Speech Is Not Commercial Speech

The Commonwealth cannot avoid the constitutional protections afforded to Mayday’s expression by mischaracterizing Mayday’s publications as deceptive or illegal commercial speech. *See* Compl. ¶¶ 21-32. First, Mayday’s speech is not deceptive and does not propose any illegal transaction—it is truthful information about the availability of various healthcare options. *See infra* § B(3) (explaining why Mayday’s speech does not violate the KCPA). But just as critically, Mayday’s speech is not commercial speech regulable as a deceptive trade practice. *See Zauderer v. Off. of the Disciplinary Counsel*, 471 U.S. 626, 638 (1985) (deceptive practices statutes constitutional only to restrict “the dissemination of commercial speech”); KRS 367.170(1) (KCPA applies only to “unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce”). Commercial speech at its core “does no more than propose a commercial transaction.” *Harris v. Quinn*, 573 U.S. 616, 648 (2014) (citation omitted).

Even in close cases—unlike this one—involving speech with a mix of commercial and non-commercial elements, speech is *not commercial* when it does not advertise the sale of a specific product the speaker has an economic motivation for selling. *See Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983) (setting forth these *Bolger* factors). Thus in *Bose*, 466 U.S. at 503-14, it was not commercial speech to inform consumers about the price, quality, and availability of a loudspeaker, nor was it commercial speech in *Lowe v. SEC*, 472 U.S. 181, 210 & n.58 (1985), to publish reviews and commentary about investments. *See also, e.g., Rosemond v. Markham*, 135 F. Supp. 3d 574, 583 (E.D. Ky. 2015) (commentary was not commercial speech

even if published on revenue-generating website).

The Second Circuit’s decision in *NIFLA* is again instructive because it concerned mirror-image facts. 160 F.4th at 374–75. As the Commonwealth does here, the New York Attorney General there asserted authority to regulate anti-abortion organizations’ websites pursuant to New York’s consumer protection laws, claiming the organizations published commercial speech that was “false or misleading because they misrepresented the efficacy and safety” of off-label and unregulated abortion-pill reversal procedures and “induced individuals” to undertake them. *Id.* at 365–66. The court rejected this contention and held that the non-profits’ speech advising readers as to the availability of these services was informational and educational. *Id.* at 375-76. Predicting a case like this one, the court warned any other ruling would “subject a sweeping range of non-profits to regulation of their speech for providing the public with information,” including “a reproductive rights group in a state with abortion restrictions that provides information about out-of-state organizations that will help women obtain the procedure.” *Id.* at 376.

These principles govern here. Mayday publishes accurate information about reproductive healthcare, including by describing the amount third-party providers charge for abortion pills, as well as those providers’ location and the time they predict prescribed medication could arrive. *See* Compl. ¶¶ 16-17. Mayday provides no medical service and receives no payment for publishing any information. *Id.*, Whitaker Aff. Attachment B, at 69. It does so because of its convictions. *Id.* Those concessions are dispositive, as cases like *In re Primus*, 436 U.S. at 422, 428-32 (discussed above), *NIFLA*, 160 F.4th at 375-76 (same), and *Greater Baltimore Center for Pregnancy Concerns*, 879 F.3d at 108–09 (non-profit’s speech was non-commercial where motivation for increasing awareness of anti-abortion pregnancy services was “not economic but moral” and “philosophical”) make clear. And, indeed, two other federal courts already considered (and

decided) that Mayday’s speech is non-commercial speech protected by the First Amendment. *See Rhoden*, 2026 WL 2070966 at *11 (Mayday’s signs and website was not commercial speech); *Jackley*, No. 1:26-cv-00078-KPF, ECF 48 at 14:7-10 (agreeing that “the proper way to view Mayday’s website and the materials on it is noncommercial speech subject to protection under the First Amendment,” but no longer having jurisdiction to convert TRO to preliminary injunction).

C. Mayday’s Speech Is Not “Integral To Criminal Conduct”

The Commonwealth alternatively claims that Mayday’s signs and website are punishable as speech integral to criminal conduct because they publish information the Commonwealth believes could encourage someone to solicit someone else to violate Kentucky law at some point. *See, e.g.*, Compl. ¶¶ 8-9, 11. That extraordinary conclusory allegation—belied by the Complaint’s own admissions—fails as a matter of law.

Although the First Amendment does not protect speech “integral to criminal conduct,” *United States v. Stevens*, 559 U.S. 460, 468 (2010), it provides breathing room for the type of truthful general publications at issue here. *See United States v. Williams*, 553 U.S. 285, 298-300 (2008) (explaining that even “abstract advocacy of illegality” is protected). To be completely clear, Mayday does not even abstractly advocate for illegality. As shown by the attachments to the Complaint, Mayday seeks only to destigmatize abortion and provide information for readers to make their own choices, not to encourage or facilitate any specific reader to make any particular choice. *See, e.g.*, Whitaker Aff. Attachment B, at 69 (acknowledging that Mayday “just want[s] people to know their options”); Compl. Ex. 4 at 42 (acknowledging that Mayday simply believes that “everyone in this country deserves equal access to the truth”). This kind of speech is not illegal facilitation, as a matter of law, because Mayday is not alleged to help any person specifically intending “to bring about a particular unlawful act.” *United States v. Hansen*, 599 U.S. 762, 771 (2023) (speech only becomes criminal facilitation if it amounts to aiding and abetting under this

standard). That is especially so because Kentucky explicitly excludes pregnant women from potential criminal liability for securing, attempting to secure, or self-administering an abortion. *See* KRS 311.990(39)(b) (“No criminal penalty may be assessed against a pregnant patient upon whom a drug-induced abortion is attempted, induced, or performed”).

The Supreme Court rejected a similar argument in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), where the government tried punishing speech it claimed promoted child pornography. “The government may not prohibit speech because it increases the chance an unlawful act will be committed ‘at some indefinite future time,’” the Court explained, even if the targeted speech allegedly has the “tendency” “to encourage unlawful acts.” *Id.* at 253 (quoting *Hess v. Indiana*, 414 U.S. 105, 108 (1973)). Speech may not be restricted where there is only “a remote connection ... that might encourage thoughts” to solicit a crime. *Id.* Even the statement, “I encourage you to obtain child pornography,” is thus protected. *Williams*, 553 U.S. at 300. The Fourth Circuit recently applied these principles to protect direct exhortations to particular individuals to commit terrorism—including instructions about where and how to obtain training. *See United States v. Al-Timimi*, 164 F.4th 292, 310-11 (4th Cir. 2026). Mayday’s publication of information that may be used for any number of lawful purposes is even more clearly protected.

The Ninth Circuit’s decision in *Conant v. Walters*, 309 F.3d 629, 632, 635-36 (9th Cir. 2002) is also instructive. The First Amendment there protected a medical doctor’s “recommendation to obtain marijuana in violation of federal law,” rejecting arguments that such recommendations were integral to criminal conduct. *Id.* at 635-36. “[W]hatever conduct the doctor could anticipate a patient might engage in,” the court concluded, “is simply beyond the scope of either conspiracy or aiding and abetting.” *Id.* at 636. So, too, here. And just as there are lawful reasons for a marijuana recommendation like advocacy or lawful procurement in a different state,

id. at 634-35, Mayday’s speech invites similar lawful choices—like crossing state lines for an abortion, going to an out-of-state pharmacy, having pills sent to a friend or relative in Illinois, or choosing not to have an abortion.

Applying these authorities following a preliminary injunction hearing that included live testimony from Mayday Executive Director Leo Raisner, a South Dakota federal court held that Mayday’s speech was *not* integral to criminal conduct because “Mayday does not recruit anyone to do anything, does not attempt to influence anyone’s choice to have an abortion, and does not recommend anyone commit an illegal act.” *Rhoden*, 2026 WL 2070966, at *15-16. The court likewise found that “the reference to ‘trusted sources’ on Mayday’s website does not mean that Mayday is promoting abortion pills” but “indicates that the information on its website can be trusted.” *Id.* at *15 (finding Raisner’s “testimony on these matters credible”). Its decision followed a New York federal court’s similar rejection of an argument that Mayday’s “website solicits or abets acts that are illegal.” *Jackley*, No. 1:26-cv-00078-KPF, ECF 48 at 16:8-19 (citing *Free Speech Coalition*, 535 U.S. at 253-54). The Commonwealth’s allegations are no different from what these courts rejected, and they fail as a matter of law.

D. The Commonwealth’s Asserted Application of the KCPA Is An Unconstitutional Content- and Viewpoint-Based Prior Restraint

“[S]tate action to punish the publication of truthful information seldom can satisfy constitutional standards.” *Bartnicki*, 532 U.S. at 527 (citation omitted). The Supreme Court has never upheld state action to prevent or punish the publication of such information, whether they be state secrets, *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971), names of juvenile delinquents, *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 105-06 (1979), identities of rape victims, *The Florida Star v. B.J.F.*, 491 U.S. 524, 532-41 (1989), or even information obtained through “a stranger’s illegal conduct,” *Bartnicki*, 532 U.S. at 527, 535. Even when the Supreme

Court has “hypothesiz[ed]” what “state interest[s] of the highest order” might justify restricting truthful speech on issues of public concern under the strictest imaginable scrutiny, it has confined those interests to the extreme margins of ordinary discourse, such as preventing “publication of the sailing dates of transports or the number and location of troops” at sea in wartime. *Fla. Star*, 491 U.S. at 532-33 (quoting *Near v. Minnesota*, 283 U.S. 697, 716 (1931)).

This strictest possible scrutiny thus applies to the Commonwealth’s attempted application of the KCPA to Mayday. Its claim not only seeks to impose formal and informal prior restraints preventing or deterring Mayday from publishing truthful information about reproductive healthcare, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963) (explaining that “the threat of invoking legal sanctions” against protected speech is an “informal” prior restraint subject to strict scrutiny no less than requests for prospective injunctive relief); *Hill v. Petrotech Resources Corp.*, 325 S.W.3d 302, 306 (Ky. 2010) (speech injunction is a prior restraint), but also seeks to silence Mayday because its protected speech and animating convictions conflict with the Commonwealth’s current governing philosophy. See Compl. ¶ 20.³ This kind of viewpoint-based censorship predicated on contempt for “the specific motivating ideology” behind Mayday’s publications presents the most “egregious form” of speech restriction. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). That is so because it seeks through suppression “to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Such viewpoint-based prior restraints are arguably not just subject to strict scrutiny, *Chiles v. Salazar*, 607 U.S. 627, 629-30

³ Announcing this lawsuit, Attorney General Coleman described Mayday as “an activist organization” whose speech “taint[s] our values.” OFFICE OF THE KENTUCKY ATTORNEY GENERAL, Press Release, “Attorney General Coleman Files Lawsuit Against Mayday Health for Unlawful Advertisement of Mail Order Abortion Pills” (Sept. 3, 2026), <https://perma.cc/3MYH-VFLT>.

(2026), but may be “unconstitutional per se.” *Cath. Charities v. Whitmer*, 162 F.4th 686, 696 (6th Cir. 2025) (Kethledge, J.); *see also Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 864 (11th Cir. 2020) (citing cases); *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109, 1124 & 1124 n.1 (9th Cir. 2023) (Van Dyke, J., concurring) (same).

Strict scrutiny, at minimum, applies because the Commonwealth’s KCPA claim is content-based since the asserted liability turns on what Mayday says. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–65 (2015); *Flying J Travel Plaza v. Commonwealth*, 928 S.W.2d 344, 350–51 (Ky. 1996). The State argues that what Mayday says is regulable because it is misleading commercial speech or speech integral to criminal conduct, but because those contentions fail, *supra* §§ I.B-C, what remains is a claim to punish Mayday *because of the information* it publishes. *See* Compl. ¶¶ 8, 11, 17–20, 29–31. Government action to penalize speech based on its substance and “concern for the effect of the subject matter” on its audience “is the essence of content-based regulation.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 811-12 (2000) (state action to restrict specific kind of programming based on its anticipated effect on viewers was content-based because it “focuses only on the content of the speech and the direct impact that speech has on its listeners”) (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)).

The Commonwealth cannot satisfy that standard. “Strict scrutiny is unforgiving” and effectively “fatal” “absent truly extraordinary circumstances.” *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 484-85 (2025). State action subject to strict scrutiny is presumptively invalid unless the government shows it is necessary to achieve a compelling interest and uses the least restrictive means. *See Reed*, 576 U.S. at 163. This is the Commonwealth’s burden. *See Playboy*, 529 U.S. at 816-17. To survive review, it must specifically identify an actual problem in need of solving, and the curtailment of free speech must be actually necessary and the least restrictive

means to the solution. *Id.* at 813; *accord Flying J*, 928 S.W.2d at 348–51 (same standard under Kentucky Constitution).

Nothing justifies the Commonwealth’s attempted application of the KCPA under this test. If the interest were preventing the spread of information that could enable readers to make the informed choice to obtain a *legal* abortion, that is not a compelling—much less legitimate—interest his office may pursue. *See Bigelow*, 421 U.S. at 822 & n.7, 827-28. If the interest were preventing *illegal* abortions or the importation of abortion medicines, the Commonwealth has less restrictive tools at its disposal that do not involve suppressing truthful public health information, including enforcing Kentucky anti-abortion laws against abortion providers and pill providers who violate them. *See McCullen v. Coakley*, 573 U.S. 464, 490-92 (2014) (abortion-related speech regulation failed even intermediate scrutiny when the only conduct it legitimately proscribed was already criminalized by other state laws). The failure to do so here is dispositive.

II. MAYDAY’S SPEECH DOES NOT VIOLATE THE KCPA

The Complaint also fails to state a claim for relief because it does not allege that Mayday engaged in any speech that falls within the scope of the KCPA.

A. Mayday’s Speech Is Not Made in “Trade” or “Commerce”

A KCPA claim requires an “[u]nfair, false, misleading, or deceptive act[] or practice[] in the conduct of any trade or commerce.” KRS 367.170(1). The statute defines “trade” and “commerce” as “the advertising, offering for sale, or distribution of any services and any property, tangible or intangible real, personal or mixed, and any other article, commodity, or thing of value.” *Id.* § 367.110(2). Kentucky courts thus require statements to bear a nexus to the “entrepreneurial, commercial, or business aspect” of an activity before the KCPA applies. *Simmons v. Stephenson*, 84 S.W.3d 926, 928 (Ky. Ct. App. 2002) (dismissing complaint because alleged statements “did not relate to the entrepreneurial, commercial, or business aspect” of defendant’s activities); *Barnett*

v. Mercy Health Partners-Lourdes, Inc., 233 S.W.3d 723, 729 (Ky. Ct. App. 2007) (same).

Simmons and *Barnett* illustrate the KCPA's intended scope. *Simmons* involved KCPA allegations that a defendant acted negligently when he left a lens fragment in plaintiff's eye after performing cataract correction surgery. 84 S.W.3d at 927. The plaintiff argued that the defendant violated the KCPA through "misleading" and "deceptive" acts when he advised plaintiff to return six months after surgery rather than advising him of the presence of the lens fragment and performing surgery to remove it. *Id.* The Court of Appeals affirmed summary judgment against this theory, explaining that the surgery did not constitute "trade" or "commerce" under the KCPA because the allegations "did not relate to the entrepreneurial, commercial, or business aspect of" the defendant's "practice of medicine." *Id.* at 928. Similarly, in *Barnett*, the Court of Appeals dismissed a KCPA claim stemming from an allegedly botched surgery because there were no "allegations that the actions complained of were part of the business aspect[s]" of the defendant's operations. 233 S.W.3d at 730.

These definitions reflect constitutional boundaries on the types of speech the government may regulate through strict-liability deceptive practices statutes. As a general rule, the First Amendment prohibits speech-based liability unless it involves a "knowing or reckless falsehood" made with actual malice and associated with "some other legally cognizable harm" such as proof of reputational damage or the loss of property. *United States v. Alvarez*, 567 U.S. 709, 718-19 (2012). The Supreme Court has recognized an exception for commercial speech. Because commercial speech is presumed less likely to be chilled in light of a commercial speaker's profit motive, and because commercial speakers are presumed better equipped to accurately describe their own products and services than other speakers, *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 772 n.24 (1976), governments may "prevent the

dissemination of commercial speech that is false, deceptive, or misleading” through consumer protection laws *without* proving scienter or proof of actual damages, *Zauderer*, 471 U.S. at 638. Consumer protection laws like the KCPA thus comport with the First Amendment by reaching *only* commercial speech proposing a transaction. *See* KRS 367.170 (requiring a nexus to commerce).

Mayday’s speech does not (and cannot) meet this test for the same reasons its speech is not commercial speech. The Commonwealth tacitly acknowledges that Mayday is an independent donor-funded educational non-profit that publishes reproductive health resources because of its founders’ and directors’ moral beliefs. *See* Whitaker Aff. Attachment B, at 69. And it indeed recognizes that Mayday does not benefit financially from anyone’s decision to buy or use abortion medication, including through any kind of referral fee or commission from the third-party providers Mayday reviews and lists on its website. *Id.*

The Complaint’s citation (Compl. ¶ 28) to *Commonwealth v. ABAC Pest Control, Inc.*, 621 S.W.2d 705, 708 (Ky. App. 1981) and *Dare To Be Great, Inc. v. Commonwealth*, 511 S.W.2d 224, 225 (Ky. 1974), does not change the analysis. Both cases are inapposite because they relate to fraudulent commercial schemes, such as a fraudulent sales operation or pyramid scheme; they do not involve a non-profit organization publishing free public health information. Unlike the defendants in those cases, Mayday does not participate in the sale of any product or service, receive transaction-based compensation, or share in any third-party provider’s proceeds. The truthful information Mayday publishes is the product of independent editorial judgments, not participation in an enterprise that would give rise to a duty to disclose, prevent, or withdraw from a knowingly fraudulent or illegal conspiracy.

B. Mayday’s Speech Is Not Deceptive

The Commonwealth asserts a claim for “false, misleading, or deceptive” acts or practices. *See* KRS 376.170. But Mayday’s speech is none of these things, and the Commonwealth has not

identified any false, misleading, or deceptive statement that Mayday has made to Kentucky consumers.⁴ The KCPA claim fails for this additional and independent reason.

Although the Commonwealth avers that Mayday’s speech “give[s] the impression” that abortion pills may be lawfully imported into Kentucky across state lines, Compl. ¶ 30, none of the gas station or plane-pulled signs targeted by the Complaint (or anything on Mayday’s website) actually represents that distributing abortion pills in Kentucky is legal. In fact, the Complaint shows that Mayday explicitly disavows providing any advice about the legality of any actions that could be taken with the information it provides. *See* Whitaker Aff. Attachment B, at 69 (“We do not give medical or legal advice”), *id.* at 88 (“Mayday does not provide legal advice”). Kentucky courts recognize that this type of warranty disclaimer can defeat KCPA liability as a matter of law. *Cf. Roberts v. Lanigan Auto Sales*, 406 S.W.3d 882, 884–85 (Ky. Ct. App. 2013) (affirming dismissal of KCPA claim that product was of a particular quality when defendant disclaimed any warranty as to that characteristic).

The Commonwealth’s facilitating-illegal-conduct theory of deception fares no better for essentially same reasons Mayday’s speech is not integral to criminal conduct. “Mayday does not recruit anyone to do anything, does not attempt to influence anyone’s choice to have an abortion, and does not recommend anyone commit an illegal act.” *Rhoden*, 2026 WL 2070966, at *15-16. But beyond that, the theory also fails because the conduct allegedly facilitated is not actually illegal. It is not a crime to self-administer, or attempt to self-administer, an abortion in Kentucky. *See* KRS 311.990(39)(b) (“No criminal penalty may be assessed against a pregnant patient upon whom a drug-induced abortion is attempted, induced, or performed”). And to the extent the

⁴ The Commonwealth does not allege a KCPA claim under the “unfair” prong that requires allegations of an unconscionable act. *See* KRS 376.170(2).

Commonwealth avers (Compl. ¶¶ 8-9, 11, 29-30) that Mayday’s speech aids, abets, or assists the importation of abortion medicine into Kentucky (which it does not, *supra* § I.C), Mayday respectfully preserves the argument that Sections 1 and 2 of the Kentucky Constitution, as well as policy determinations by the U.S. Food and Drug Administration (FDA), protect that conduct such that it cannot supply the predicate illegality on which this KCPA theory depends. *See Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 664 S.W.3d 633, 659-61 (Ky. 2023) (leaving open whether the Kentucky Constitution protects abortion rights); *Exela Pharma Scis., LLC v. Sandoz, Inc.*, 486 F. Supp. 3d 1001, 1015 (W.D.N.C. 2020) (a state law that “remov[es] a product that the FDA expressly allowed in the market . . . interferes with federal objectives” and is preempted); *Zogenix, Inc. v. Patrick*, 2014 WL 1454696, at *1-2 (D. Mass. Apr. 15, 2014) (similar).

III. SECTION 230 BARS THE CLAIM PREDICATED ON THIRD-PARTY CONTENT

Finally, Section 230 bars state-law claims that seek to hold providers or users of interactive computer services liable as publishers of third-party information. 47 U.S.C. § 230(c)(1), (e)(3). As the Sixth Circuit explains, a website that merely links to or “displays content that is created entirely by third parties” is “immune from claims predicated on that content.” *O’Kroley v. Fastcase, Inc.*, 831 F.3d 352, 355 (6th Cir. 2016) (quoting *Jones v. Dirty World Entm’t Recordings LLC*, 755 F.3d 398, 408 (6th Cir. 2014)). The defense applies when (1) the defendant provides or uses an interactive computer service, (2) the claim seeks to treat the defendant as the publisher or speaker of information, and (3) that information was supplied by another information content provider. *Jones*, 755 F.3d at 417. Each requirement is satisfied here

Mayday provides an interactive computer service. An interactive computer service is any service that provides or enables multiple users to access a computer server. 47 U.S.C. § 230(f)(2). The Sixth Circuit expressly recognizes that website operators qualify. *Jones*, 755 F.3d at 406 n.2. Here, the Complaint acknowledges that Mayday operates a publicly accessible website connecting

visitors to third-party abortion-pill providers. Compl. ¶¶ 6–8, 16.

The challenged conduct involves publishing third-party information. Section 230 protects editorial decisions about “whether to publish, withdraw, postpone or alter content.” *O’Kroley*, 831 F.3d at 355. In *O’Kroley*, the Sixth Circuit held that Google could not be liable for providing access to and reproducing third-party text. *Id.* Here, the State likewise objects that Mayday hyperlinks to abortion-pill distributors through its website. Compl. ¶¶ 29–31. Because that theory challenges Mayday’s selection, organization, and display of third-party provider information and hyperlinks, it targets the same protected publishing functions: selecting what third-party content to display, and linking to objectionable material the Commonwealth claims Mayday should have withdrawn.

The linked content comes from other information content providers. Under *Jones*, a website develops third-party content only when it materially contributes to what makes that content allegedly unlawful. 755 F.3d at 410, 413. Selecting content for publication, or even adopting or ratifying it, does not transform a publisher into a creator of third-party content. *Id.* at 415–16. The information on the linked provider websites—including their descriptions of services and ordering procedures—comes from the providers themselves. Mayday directs readers to those independently operated sites. Selecting those sources and linking to their content does not, without more, make Mayday responsible for creating or developing that content. *See also, e.g., Monsarrat v. Newman*, 28 F.4th 314, 319 (1st Cir. 2022) (Section 230 barred liability for reposting content because the defendant did nothing to contribute to the posts’ unlawfulness); *Atlantic Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690, 700-01 (S.D.N.Y. 2009) (Section 230 barred liability for providing an index of links to songs available on third-party websites because the defendant neither created nor developed the objectionable underlying information).

CONCLUSION

Mayday respectfully requests an order granting this motion, dismissing the Complaint with prejudice, and awarding attorney fees and costs to Mayday under UPEPA.

s/ William E. Sharp

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** Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2026, a copy of the foregoing was filed electronically via the CourtNet 2.0 system, and I further certify that a copy was served via electronic mail on the following:

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COMMONWEALTH OF KENTUCKY
LOGAN CIRCUIT COURT
JUDGE JOE W. HENDRICKS, JR.
CASE NO. 26-CI-00313

COMMONWEALTH OF KENTUCKY, *ex*
rel. RUSSELL COLEMAN, ATTORNEY
GENERAL

PLAINTIFF

v.

ORDER

MAYDAY MEDICINES, INC. D/BA/
MAYDAY HEALTH

DEFENDANT

* * * * *

Motion having been made, and the Court being sufficiently advised:

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss the above-styled
action is **GRANTED**.

So ordered this _____ day of _____, 2026.

Judge, Logan Circuit Court