

No. 25-3828

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CULTURE OF LIFE FAMILY SERVICES, INC.,
Appellant,

v.

ROB BONTA, *in his official capacity as
the California Attorney General*,
Appellee.

On Appeal from the United States District Court
for the Southern District of California, No. 3:24-cv-01338
Hon. Gonzalo P. Curiel, United States District Judge

BRIEF OF AMICI CURIAE LOCAL GOVERNMENTS
AND CITY ATTORNEYS IN SUPPORT OF APPELLEE

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INTERESTS OF *AMICI CURIAE*

Amici curiae are local governments and city attorneys in cities that serve as frontline providers and administrators of crucial public health services to their residents.¹ *Amici* are broadly responsible for promoting the health, safety, and wellbeing of their communities. Many run public hospitals or public health systems. In support of their public health missions, *amici* also have a duty to investigate and prevent the dissemination of false and misleading statements about health-related services. The laws *amici* enforce to effect these responsibilities are generally applicable, and are a crucial tool to protect their residents.

The spread of false and misleading information about health-related services undermines public health and interferes with *amici's* ability to

¹ This brief is filed with the consent of all parties and pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Ninth Circuit Rule 29-3. No party's counsel authored the brief in whole or in part or contributed money intended to fund the preparation or submission of the brief. No person, other than *amici curiae*, their members, or their counsel, contributed money intended to fund the preparation or submission of the brief. A list of *amici* is available at Appendix A.

effectively serve their communities. The spread of false and misleading health-related information also threatens to undermine trust in the healthcare system more broadly, particularly among underserved communities, to the detriment of public health and community wellbeing.

Amici necessarily rely on individuals' and business entities' compliance with advertising and consumer-focused laws such as the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, and the False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*—and the enforcement of those laws as needed—as a means of ensuring the safety of individuals residing in their localities.

In the past decade alone, public prosecutors throughout California have enforced generally applicable laws to the great benefit of their residents' health, safety, and welfare. For example, the Santa Clara County Counsel's Office, joined by several other local government law offices, filed the first civil law enforcement suit in the nation against drug companies—with causes of action under the UCL, FAL, and public nuisance law—for their role in the opioids epidemic, including their claims that opioids were

safe and effective to treat chronic pain. This lawsuit paved the way for thousands of government lawsuits nationwide and ultimately helped secure millions of dollars to fund overdose prevention, addiction treatment, and public education programs benefiting Californians. In recent years, the Santa Clara County Counsel's Office also filed suit under the FAL against Intuit for aggressively advertising free tax filing, including to low-income taxpayers who qualify to file their taxes for free, and then steering those customers to TurboTax products that required them to make significant payments before they could complete their tax filing. In engaging in civil enforcement actions such as these, *amici* have benefitted the overall public health of Californians, halted dangerous practices, and saved taxpayer funds by preventing harms that would otherwise require local governments to later engage in more costly interventions.

Amici share a common interest in ensuring they can prevent and address unfair and deceptive practices in their communities and enforce generally applicable laws for the public good. To assume the full weight of their roles as protectors of health and safety, *amici* must be empowered to

engage in the types of investigation, prosecutorial decision making, and enforcement of consumer protection laws with which the California Legislature has carefully entrusted them. *Amici* write to underscore that Culture of Life Family Services' ("COLFS") free exercise argument on appeal (i) lacks any legal basis; (ii) would create a standard that is unworkable in practice; and (iii) would undermine *amici's* ability to investigate wrongful conduct and protect their communities through civil enforcement.

SUMMARY OF ARGUMENT

The California UCL and FAL are vital to governmental efforts to protect consumers from predatory business practices. As written, the UCL and FAL are generally applicable laws designed to ensure the health and safety of California residents. Accordingly, the laws on their face do not trigger heightened free exercise scrutiny. COLFS argues that the Attorney General has engaged in selective enforcement and thus that the UCL and FAL are not, in practice, generally applicable. According to COLFS, if a religious entity can identify even one single secular entity engaging in

comparable misconduct that has yet to be prosecuted, the Free Exercise Clause bars prosecution of the religious entity.

This argument is untenable. First, the main precedent on which COLFS relies to cobble together its argument is inapposite. None of the cases relate to enforcement activity. Second, and for several reasons described in detail below, this is a dangerous and an entirely unworkable standard that would prevent public prosecutors from effectively protecting the health and safety of their residents. Among other things, COLFS' position could potentially require public prosecutors to enforce generally applicable laws against *all* secular entities, no matter the scope or degree of a violation, before enforcing against a religiously affiliated organization. COLFS' argument could also demand disclosure of confidential investigatory information. At a minimum, any adoption of COLFS' position is likely to have a chilling effect on public prosecutors and would severely harm the ability of public prosecutors to exercise discretion and effectively allocate limited resources.

ARGUMENT

I. California's UCL and FAL Are Generally Applicable Laws Local Governments Use to Ensure the Health and Safety of California Residents.

State and local governments are the primary protectors of the health and safety of their communities. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 603 (Cal. 1997). As such, local and state government law offices are uniquely empowered by state law to investigate potential violations of law and to decide whether to bring enforcement actions on the public's behalf depending on what those investigations reveal.

In California, the UCL and FAL are laws of general applicability that deputize public prosecutors—including the Attorney General, district attorneys, city attorneys, and county counsels—to file suit on behalf of the People of the State of California to protect the public as a whole. *See* Cal. Bus. & Prof. Code §§ 17204, 17535; *see also* Cal. Code Civ. Proc. § 731. At their core, the UCL and FAL are consumer protection statutes: they apply broadly to shield residents from unlawful business practices and false and misleading

information about goods and services.² See Cal. Bus. & Prof. Code §§ 17200, 17500; *Abbott Labs. v. Superior Ct.*, 467 P.3d 184, 191, 192 (Cal. 2020) (noting frequently the UCL’s “broad language”).

For both the UCL and FAL, the statutory scheme carefully and uniquely entrusts the civil law enforcement power solely in the public prosecutors listed above. See Cal. Bus. & Prof. Code §§ 17204, 17535.³ The

² Every state has a law generally prohibiting unfair and deceptive commercial conduct to prevent consumer abuse in the marketplace, similar to the requirements of the California UCL. These statutes are commonly referred to as Unfair and Deceptive Acts and Practices (“UDAP”) laws. See Carolyn Carter, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, Nat’l Consumer L. Ctr. 1 (Mar. 2018), <https://filearchive.nclc.org/udap/udap-report.pdf>, archived at <https://perma.cc/9HVU-4JFL>. Just as state UDAP laws are deemed to be generally applicable, so too are the UCL and FAL. See *Agustin v. PNC Fin. Servs. Grp., Inc.*, 707 F. Supp. 2d 1080, 1094 (D. Haw. 2010) (noting state UDAP law is generally applicable).

³ Indeed, the Legislature has methodically approached the granting of this power even to additional public prosecutors, focusing on the key purpose of these statutes—which is protection of the public. It was not until 2022 that the Legislature fully empowered certain county counsels to bring UCL actions through the enactment of California Senate Bill 461. In so doing, the Legislature expressly recognized that “[a]mending the UCL in this way is meant to provide *greater protection for the public* from the conduct prohibited by the UCL[.]” and noted “the importance to the public of enhancing the resources available for public protection[.]” Cal. Sen. Rules Com., Off. of Sen.

statutes allow these prosecutors to pursue remedies that individual members of the public may not, *see, e.g., id.* §§ 17206, 17526 (authorizing only public prosecutors to pursue civil penalties in UCL and FAL actions); *see also Abbott Labs.*, 467 P.3d at 188–89 (“While the UCL provides for both public and private enforcement, authorized public prosecutors have an additional tool to enforce the state’s consumer protection laws: civil penalties.”), and to do so without needing to prove individual harm, *see* Cal. Bus. & Prof. Code §§ 17204, 17535; *Abbott Labs.*, 467 P.3d at 188 (requiring individual plaintiffs, but *not* public prosecutors, to prove they have suffered an injury in fact due to a violation of the statute). By legislative design, these specialized remedies and proof requirements recognize the distinctive and critical role that public entities and officials play in protecting the community, including consumers who lack the knowledge, resources, or ability to protect themselves.⁴

Floor Analyses, 3d reading analysis of Sen. Bill No. 461 (2021-2022 Reg. Sess.) July 9, 2021, p. 2 (emphasis added), *available at* <https://perma.cc/V8NY-YRQ8>.

⁴ Indeed, because civil penalties for UCL violations must be used for enforcement of consumer protection laws, public prosecutors in California lack the profit motive of private litigators and instead have the sole purpose of protecting the public. *Abbott Labs.*, 467 P.3d at 195.

Curtailing public prosecution activity would undermine the Legislature's intent and deprive the public of a means of protection that is not readily replaceable.

The District Court recognized as much, concluding that the UCL and FAL are neutral and generally applicable public protection statutes. As the lower court noted,

[b]roadly speaking, there are two ways a law is not generally applicable. The first is if there is a 'formal mechanism for granting exceptions' that 'invite[s] the government to consider the particular reasons for a person's conduct.' The second is if the law 'prohibits religious conduct while permitting secular conduct' that also works against the government's interest in enacting the law.

Appx. at 1-ER-0060 (cleaned up). Neither of these mechanisms is present in the UCL or FAL.

Notably, "[n]either the UCL nor the FAL have a formal mechanism that allows 'individual exceptions'" —instead they prohibit all misleading advertising and unfair business practices. *Id.* The UCL prohibits "*any* unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200 (emphasis added). The purpose of the UCL "'is to protect both

consumers and competitors by promoting fair competition in commercial markets for goods and services.’’ *Abbott Labs.*, 467 P.3d at 188 (quoting *Kasky v. Nike, Inc.*, 45 P.3d 243, 249 (Cal. 2020)). The FAL similarly makes it unlawful for “any person, firm, corporation or association . . . [to] disseminate . . . any statement . . . which is untrue or misleading.” Cal. Bus. & Prof. Code § 17500 (emphasis added).

Furthermore, the UCL and FAL are generally applicable laws that do not treat comparable secular activity more favorably than religious exercise. Just as is the case with other generally applicable laws—from requirements that cars stop at red lights to sidewalk obstruction ordinances—the texts of the UCL and FAL neither singles out nor prefers any religion or religious practice.

II. COLFS’ Proposed Standard for Free Exercise Claims Would Severely Obstruct Public Prosecutors’ Ability to Enforce General Health and Safety Laws.

COLFS argues that the State “has rendered the UCL and FAL non-generally applicable *as applied*,” asserting that the Attorney General “has not sued (or threatened to sue) speakers for deceptive speech opposing [abortion

pill reversal,]” nor has the Attorney General sued Planned Parenthood over any statements it has made about mifepristone. Op. Br. at 50–51. According to COLFS, “if even one secular activity is favored over even one comparable religious activity,” a government action is not generally applicable and is subject to strict scrutiny. *Id.* at 48.

Setting aside whether the examples COLFS provides are “comparable,”⁵ *amici* write to alert this Court that COLFS’ interpretation of the Free Exercise Clause, if adopted here, would have extremely serious consequences for prosecutorial decision-making in enforcing the UCL, FAL, and other generally applicable laws. The standard COLFS asserts is neither supported by judicial precedent nor workable for prosecutors or for courts applying the standard.

A. COLFS’ Cited Authority for its Proposed Standard Is Inapposite.

As this Court held in *Tingley v. Ferguson*, a law is neutral unless “the purpose of the law is to restrict practices *because of* the religious motivations

⁵ See Answ. Br. at 29–30 (further discussion of these comparisons).

of those performing the practices....” 47 F. 4th 1055, 1085 (9th Cir. 2022) (emphasis in original). Here, the purposes of the UCL and FAL are to protect consumers by prohibiting false and misleading advertisements and unlawful business practices. *See* Cal. Bus. & Prof. Code §§ 17200, 17500. The laws are not tethered to religious motivations whatsoever.

COLFS would have the Court look to standards articulated in *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (“FCA”), and *Tandon v. Newsom*, 593 U.S. 61 (2021), to determine whether the Attorney General has selectively enforced these laws. But both cases are inapposite. At the outset, neither case involved a government investigation or enforcement action, which necessarily involve the choice of a particular entity or person as the target. That alone makes them inapt in the context of a challenge to the Attorney General’s use of his enforcement authority on behalf of the People of the State of California.

FCA concerned the issue of a religious student organization’s right to operate on high school campuses within the San José Unified School District. In that case, the school district retained the ability to offer individualized

exemptions from its non-discrimination rule requiring that every club accept all students. *FCA*, 82 F.4th at 687–88. This Court held that the District’s policy in *FCA* was not generally applicable because it offered discretionary exemptions that “invite[d] the government to consider the particular reasons for a person’s conduct[.]” *Id.* at 688 (cleaned up). In this case, however, neither the Attorney General nor any local prosecutor may offer exemptions from the requirements of the UCL or FAL—nor does such a framework even make sense in the context of prosecutorial authority.

Similarly, in *Tandon*, plaintiffs who wished to gather for religious exercise brought an action alleging that restrictions on private gatherings during the COVID-19 pandemic violated, among other rights, their First Amendment right to free exercise. *See generally* 593 U.S. 61 (2021). There, the Supreme Court held, in a short *per curiam* opinion on the emergency docket, that restrictions on home worship violated the Free Exercise Clause. *Id.* This was partially because the restrictions at issue allowed more people to gather in secular settings such as “hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor

restaurants,” than in private settings, including prayer groups. *Id.* at 63. The California Public Health Guidance at issue in *Tandon* had different requirements and prohibitions for different types of gatherings. *Tandon v. Newsom*, 992 F.3d 916, 918 (9th Cir. 2025). The UCL and FAL, on the other hand, do not have subgroups which may receive preferential treatment over potentially religiously aligned groups. This makes *Tandon’s* reasoning entirely inapplicable in the context of local enforcement of generally applicable consumer protection statutes, such as the UCL or the FAL.

B. COLFS Proposed Standard for Free Exercise Claims Is Unworkable for Public Prosecutors

COLFS assertion that if “even one secular activity is favored over even one comparable religious activity, the restriction is not generally applicable,” *Op. Br.* at 48, also leads to entirely impracticable results. Under COLFS’ proposed standard, to show that not “even one secular activity is favored,” a public prosecutor would need to demonstrate, for *each* enforcement action against a religiously aligned entity or individual, that it was enforcing the same generally applicable law against *all* secular violators. For example, in the context of food safety ordinances, a public entity would need to show

that it was enforcing anti-vermin standards against *all* commercial kitchens in the city during the same period that it inspected and enforced against a religiously aligned kitchen. Likewise, a District Attorney's office would need to show proof that it had enforced speed restrictions against *all* drivers prior to prosecuting a speeding ticket against the pastor of a church. This is utterly unworkable. Even if the standard applied only to known or believed violators of the law, the standard would eliminate the discretion and prioritization essential to the work of legal enforcement. In such a context, prosecutors would appear to be unable to account for differences in degree and scope of violation, both of which are common in whether and how state and local offices decide to bring enforcement actions. Such a requirement would completely undermine the ability of public prosecutors to protect their residents from unfair or unsafe practices, and to appropriately exercise their discretion in determining how best to use their resources to do so. *Yelp Inc. v. Paxton*, 137 F.4th 944, 954 (9th Cir. 2025) (“[S]tate enforcement arms will not be able to pursue every false or misleading statement or other law violation, and it would read too much into their enforcement decisions

invariably to presume bias, selective retaliation, or unconstitutional harassment[.]”).

Amici note that COLFS’ position here is even more extreme, as this is a pre-enforcement challenge brought by a clinic against which the Attorney General *has filed no action*. COLFS’ position seems to be that the Attorney General’s enforcement of the UCL and FAL against *other* religious organizations will at some point in the future infringe upon its own free exercise rights; this is speculative at best. Here, the Attorney General faces a free exercise defense from an entity that *is not currently the subject of any enforcement action*. Endorsing such a position would force state and local governments to justify investigations and potential litigation even before they have occurred, severely impeding public prosecutors’ abilities to address potential harms.

Further, the investigative and prosecutorial resources of public prosecutors—from local officials to the Attorney General—are limited. As the California Supreme Court has noted, “litigation against corporate defendants is expensive,” and many prosecutors are understaffed and

therefore unable to proceed against even the most brazen violators. *Abbott Labs.*, 467 P.3d at 195 (cleaned up). Under COLFS' proposed regime, not only would public prosecutors have to spend limited resources only on areas where they could prosecute *all* violators, they would also have to justify existing enforcement actions to third parties against which no enforcement action was pending.

In addition, requiring prosecutors to demonstrate enforcement of generally applicable laws against *all* violators—religiously affiliated and secular alike—would necessarily force them to divulge ongoing investigation materials to defend themselves against free exercise challenges. Such investigation materials, however, are privileged. *See, e.g.*, Cal. Code of Civ. Proc. § 2018.030; Cal. Evid. Code § 1040; Cal. Gov. Code § 11183. For every case public prosecutors bring, there are numerous other potential cases that they investigate—whether through informal investigation (which a potential defendant might never know occurred) or by using more formal investigative tools—but ultimately do not bring. There is simply no way that a public prosecutor, bound by the highest standards

of ethics and confidentiality, could ever reveal all of the cases that prosecutor investigated; nor would it be in the public interest for them to do so. Especially here, where an entity is not even an established target of an investigation or enforcement action, the revelation of such privileged materials would be highly inappropriate.

Finally, COLFS' proposed standard would impose an insurmountable administrative burden on public prosecutors to categorize organizations that may not outwardly advertise a religious affiliation as either "religious" or "secular." Many individuals or entities do not maintain an outwardly religious appearance. For example, COLFS' website does not conspicuously disclose that its medical clinic is religiously affiliated—rather, it advertises a "holistic approach to healthcare."⁶ Similarly, COLFS' proposed standard would put government in the untenable position of determining, for

⁶ *COLFS Med. Clinic*, COLFS, <https://colfsclinic.org/>, archived at <https://perma.cc/NB3D-M342>. It is only upon delving deeper into the website information that COLFS notes that it integrates "traditional Christian ethics" into its practice, without further addressing how the clinic's patient care is affected by these values. See *About Us*, COLFS, <https://colfsclinic.org/about-us/>, archived at <https://perma.cc/9HE3-ARPE>.

example, whether a restaurant that advertises Halal food, or a commercial business that specializes in crafting nativity scenes, is a “religious” or “secular” entity. It would thus be impossible for a public prosecutor to determine which, if any, investigations would require them to justify their efforts with a “secular” point of comparison. Public prosecutors should not be forced to guess at, much less investigate or establish, the religious affiliation and beliefs of entities and individuals violating laws of general applicability before proceeding with enforcement.

In sum, under COLFS’ proposed Free Exercise Clause standard, a public entity seeking to enforce a generally applicable law against a religiously aligned entity would need to produce evidence that it was investigating or otherwise enforcing that law against *all* similarly situated secular analogues. Courts have never forced attorneys general, district attorneys, and other public prosecutors, such as *amici*, to divulge their investigations, internal strategy, and other protected materials to defeat a free exercise claim, and such a standard would not allow prosecutors to keep

their decision-making confidential, even from potential targets, as the public interest demands they be able to do.

CONCLUSION

For the foregoing reasons and for the reasons provided by the Appellee in its Answering Brief, this Court should affirm the district court's denial of a preliminary injunction, as well as its dismissal of COLFS' claims.

Respectfully submitted,

Dated: August 20, 2025

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