IN THE UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

Civil Action No. 1:25-cv-2014-RMR-STV

UNITED SPINAL ASSOCIATION;
NOT DEAD YET;
INSTITUTE FOR PATIENTS' RIGHTS;
ATLANTIS ADAPT; and
MARY GOSSMAN,
Plaintiffs,

v.

STATE OF COLORADO;
JARED POLIS, in his official capacity as Governor;
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;
JILL RYAN, in her official capacity of as Director of CDHPE;
COLORADO MEDICAL BOARD; and
ROLAND FLORES, in his official capacity as the President of the Colorado Medical Board,
Defendants.

PLAINTIFFS' OBJECTIONS TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

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Pursuant to Federal Rule of Civil Procedure 72(b)(2), Plaintiffs United Spinal Association, *et al.*, respectfully object to and request that the Court reconsider the United States Magistrate Judge's Recommendation, ECF No. 57 (the "Recommendation" or "Rec.") to Defendants' Joint Motion to Dismiss, ECF No. 20 (the "Motion").

I. INTRODUCTION

The gravamen of Plaintiffs' claims is disability discrimination. Plaintiffs allege that EOLOA defines and singles out a class of persons—the "terminally ill"—solely on the basis of disability and diverts those persons away from the suicide prevention services that Colorado provides to everyone else. The individual plaintiff, Ms. Gossman, is a member of this disfavored class. Her Article III injury arises both from the classification itself and from the substantial risk that she will be allowed to die even as Colorado seeks to prevent the suicides of those outside the disfavored class. Similarly, the organizational plaintiffs have individual members who, just like Ms. Gossman, fall within the disfavored class that EOLOA creates, supporting associational standing. These organizations also have direct organizational standing because they expend significant resources and time supporting their members and combating the adverse effects of EOLOA's discriminatory classification. The Recommendation erroneously rejects standing on all three fronts because the Magistrate Judge ignored the discriminatory classification created by Colorado law, and thus failed to address how that classification both injures Plaintiffs now and places them at substantial risk of injury in the future.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 72(b)(3), the district judge "must determine de novo any part of the magistrate judge's disposition that has been properly

objected to." The district judge may then "accept, reject, or modify the recommended disposition." *Id.* "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." Dist. of Colo. Civil Practice Standard 72.3 (quoting *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996)).

III. ARGUMENT

A. Standards of Review

Defendants here brought a "facial" Rule 12(b)(1) challenge to standing, relying entirely on the facts as alleged in the Complaint. Motion at 5. When reviewing a facial attack, the court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975); *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). Plaintiffs must show standing "with the manner and degree of evidence required at the pertinent, successive stages of the litigation." *Tandy v. City of Wichita*, 380 F.3d 1277, 1284 (10th Cir. 2004). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1162 (10th Cir. 2023) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1982)).

The Recommendation refers to the Rule 12(b)(6) standard for failure to state a claim but expressly does not reach the 12(b)(6) part of the motion. Rec. at 12, 28.

B. Individual Standing

The Recommendation errs in limiting injury-in-fact to "certainly impending" harm. Rec. at 14-17. The Supreme Court has repeatedly clarified that an "allegation of future injury may suffice if the threatened injury is 'certainly impending,' *or* there is a 'substantial risk that the harm will occur.'" *Susan B. Anthony List v. Driehaus*, 573 U.S.

149, 158 (2014) (quoting *Clapper v. Amnesty International USA*, 568 U.S. 398, 414 n.5 (2013)) (emphasis added); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 109-10 (10th Cir. 2024). For standing to exist, "'[i]t need not be literally certain that the injury will come about so long as there is a substantial risk." *United States v. Florida*, _ F.4th. _, 2026 WL 879178, at *14 (11th Cir. Mar. 31, 2026) (citing *Murthy v. Missouri*, 603 U.S. 43, 69 (2024) (explaining that "substantial risk" is the relevant standard)).

Where Article III standing is based on the violation of a statutory right, the court must look to the contours of the right as defined by Congress. *Warth,* 422 U.S. at 500-501. In the Americans with Disabilities Act, Congress defined a broad right to be free of disability discrimination. *See Pennsylvania Dep't of Corr. v. Yeskey,* 524 U.S. 206, 212 (1998) (use of broad language in Title II of the ADA reflects Congress's intent that the anti-discrimination principles there be applied broadly). The right against disability discrimination is broad enough to embrace not only past and immediately imminent injuries but also risks of future injury. *Florida*, 2026 WL 879178, at *13 (holding that persons at risk of harm from ADA violations have suffered an injury). Ms. Gossman need not have the lethal pills in her hand to have Article III standing to challenge EOLOA. She need not wait until the harm has already occurred to bring a case for injunctive relief.

Even if the law required imminence at the extreme level indicated by the Recommendation, which it does not, the Recommendation ignores the harm of the discrimination itself. Plaintiffs' injury is discrimination now, not just later death by assisted suicide. Suicidal people with life-threatening disabilities are injured by EOLOA because (1) they are placed in a disfavored tier of medical care for their suicidality, and (2) they are deprived of the benefits of State laws and programs designed to protect the

lives of non-disabled people who consider suicide. *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003) (injury in fact "is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit") (internal citation omitted). EOLOA is a separate program under the ADA, which the government deems a "benefit" but which they cannot deny consists of death provided by State-licensed providers, for which people with "terminal" diagnoses are eligible *simply because* they are a qualifying person with disabilities. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 601 (1999).

These injuries are not hypothetical and have already occurred. Ms. Gossman has a disability, anorexia, that has already been used as the basis for lethal prescriptions under EOLOA. ECF No. 1 ("Compl.") at ¶¶ 81-87. Ms. Gossman has seriously considered suicide, *id.* at ¶¶ 32, 34, and is already discriminated against because EOLOA substantially increases the risk that a medical provider will endorse her suicidality and provide her with lethal drugs rather than provide mental health care and suicide prevention as would be the standard of care for non-disabled patients. Ms. Gossman is currently death-eligible under the Act due to her ongoing anorexia diagnosis, multiple hospitalizations for anorexia, and her provider's prognoses that she could "die within weeks" and that there was "nothing more they could do for her."[1] *See id.* at ¶¶ 31-33, 36. By qualifying for EOLOA simply due to her disability fitting within the definition of "terminal illness," Ms. Gossman is no longer protected by a default rule that protects non-disabled people who express suicidal ideation. As a result of the State's expansion of EOLOA to make assisted suicide faster and easier*, id.* at ¶¶ 38, 113,

[1] The Recommendation rejects this likelihood of relapse and hospitalization for anorexia, but that is a factual issue and a subject of expert opinion. Rec. at 15-16.

Ms. Gossman need only stop eating for a few days to become immediately eligible for the lethal prescriptions that Colorado providers have already written for persons with anorexia, causing their deaths. *Id*. at ¶¶ 76-87.

Finally, the Recommendation errs in concluding that there is no harm here without "multiple unfulfilled, prerequisite *ifs*." Rec. at 16 (citing *Amgen Inc. v. Mizner*, No. 24-CV-00810-NYW-SBP, 2025 WL 947474 (D. Colo. Mar. 28, 2025)). *Amgen* is nothing like this case. There, the drug company Amgen tried to block Colorado's effort to regulate the prices consumers pay for medicine on the grounds that such price restrictions might eventually put pressure on the prices wholesalers paid to Amgen. The "if" chain consisted of the many complex sales and reimbursement transactions in the long chain between the drug maker and end user, about which the Court had a full factual record on cross-motions for summary judgment. *Id.* at *7-*8. Here, by contrast, there is no long chain between the EOLOA-authorization for lethal medications and end users like Ms. Gossman. EOLOA provides persons with disabilities like Ms. Gossman direct and nearly immediate access to suicide drugs. There is no chain of "ifs."

The Recommendation speculates that Ms. Gossman might fail EOLOA's minimal competency requirement due to her history of mental illness. Rec. at 17. But Colorado providers approved Jane, another person with anorexia, for assisted suicide despite a hospice determining that she was not mentally competent to consent to medical treatments. Compl. at ¶ 85; *see also id.* ¶ 83 n.52 (finding that clinical rationales used to affirm patients with anorexia for assisted suicide often lack validity). Defendant Colorado Department of Public Health and Environment reports that, in the last eight years, less than 1% of the 1,676 individuals who were approved for lethal drugs under

EOLOA received a mental health evaluation. Compl. at ¶ 58 & n.21.

C. Associational Standing

Plaintiffs also respectfully object to the Recommendation regarding associational standing for Plaintiffs United Spinal and Atlantis ADAPT. *See* Rec. at 17-20.

First, the Recommendation finds that Plaintiffs' allegations regarding United Spinal are "conclusory" in part because they are made on "information and belief." Rec. at 18-19. The Recommendation errs by equating information and belief pleading with conclusive or formulaic recitations of the elements of the cause of action. Rec. at 18 (citing *McCartney v. United States*, 31 F. Supp. 3d 1340, 1345 (D. Utah 2014); *Perington Wholesale, Inc. v. Burger King Corp.*, 631 F.2d 1369, 1373 (10th Cir. 1979)). Neither of these cases bar factual allegations on information and belief, but rather address conclusory recitations of an element, which Plaintiffs' complaint does not do. The Recommendation's conclusion contradicts Tenth Circuit precedent allowing for allegations based on information and belief even under heightened pleading standards that do not apply here. *Scheidt v. Klein*, 956 F.2d 963, 967 (10th Cir. 1992).

The Recommendation also errs in implying that Plaintiffs need to identify members by name. Rec. at 19-20. Courts have long allowed plaintiffs to plead under "outright anonymity." *Speech First, Inc. v. Shrum*, 92 F.4th 947, 952 (10th Cir. 2024). The complaint specifically alleges that United Spinal members in Colorado have considered and accessed lethal medications and provides detailed information about why members are made vulnerable by EOLOA. Compl. at ¶¶ 14-18. In contrast to Defendants' claims, Motion at 14, Plaintiffs do not allege a "statistical probability" that organizational members have been harmed, nor do they make allegations based on a "self-description[]" of an organization's membership. *Compare* Compl. at ¶¶ 14-18 *to*

Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009).

Similarly, Plaintiffs allege that members of Atlantis ADAPT are made vulnerable and harmed by EOLOA. Rec. at 20. The complaint plainly states that the law "further[s] the deaths of constituents" of Atlantis ADAPT and that it "threatens the lives" of its members. Compl. at ¶¶ 21-23. In the context of physician assisted suicide, accepting general factual allegations regarding standing is even more critical because terminally ill patients may die during the case, which "underscores the practical barrier to direct patient suits and satisfies whatever prudential considerations may matter here." *Bryman v. Murphy*, 161 F.4th 174, 180 (3d Cir. 2025).

D. Direct Organizational Standing

The Recommendation misconstrues Plaintiffs' argument regarding organizational standing. *See* Rec. at 20-28. Plaintiff organizations do not assert standing "simply because they object to the government's actions." Rec. at 23 (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024)). Rather, Plaintiff organizations have standing based on concrete injury to the services they provide to their disabled constituents.

United Spinal's core business activity is to empower people with spinal cord injuries through mentorship, advocacy, and training for hospitals who treat those with spinal cord injuries. Compl. at ¶¶ 13-15, 18. Through EOLOA, Colorado's government has taken on a mission opposite United Spinal's—setting up a state-endorsed suicide system by which persons with spinal injuries can act upon the despair from which United Spinal exists to protect them. *Id.* at ¶¶ 17, 18.

Atlantis ADAPT's core business activity is to fight institutionalization and second-class services for people with disabilities and to assist them to live independently. *Id.* at

¶¶ 20, 21, 23. EOLOA hinders this activity by putting the state's imprimatur on the opposite message—that persons with disabilities should not live at all. As with United Spinal, everything Atlantis ADAPT does toward its core mission becomes more difficult and expensive when the state puts a thumb on the scale in favor of suicide of the disabled. *Id*.

Not Dead Yet's core business activity is to "advance the rights of people with disabilities to live free from pressure from a medical care system grounded in the misconception that people with disabilities are leading lives that are not worth living." *Id.* at ¶ 25. EOLOA directly hinders this activity because it exposes the same population who Not Dead Yet seeks to protect to a medical care system where people with disabilities are told that their lives are not worth living. *Id.* at ¶ 26.

Institute for Patients' Rights' core business activity is to help people with disabilities get the care they need from the medical system without discrimination. *Id.* at ¶ 28. EOLOA hinders this activity because it requires Institute for Patients' Rights to expend money and resources, including through developing new courses and materials, to address the ways that the law steers people away from quality health care and towards early death. *Id.* EOLOA also makes Institute for Patients' Rights less effective at its core business activity of helping people with disabilities obtain medical care because it prevents them from getting the care they need due to instead being steered towards assisted suicide. *Id.* at ¶ 27.

The Recommendation dismisses many of these core business activities, such as for Atlantis ADAPT and Not Dead Yet, as simply "an ideological objection to EOLOA." Rec. at 26-27. But whether a core business activity supports standing cannot be based

on whether the activity is deemed "ideological." The vast majority of non-profit organizations, just like Plaintiff organizations in this case, provide services or carry out other activities that are tied to, or in furtherance of, a well-defined ideological mission. To disfavor one core business activity over another on such a basis is itself an ideological undertaking which is not supported by precedent. *See, e.g.*, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 368, 379 (1982) (finding that a nonprofit organization whose ideological mission was "to make equal opportunity in housing a reality" had standing to sue because defendant's actions "impaired [its] ability to provide counseling and referral services" in furtherance of that mission); *see also All. for Hippocratic Med.*, 602 U.S. at 395 (applying *Havens* to the legal framework of "core business activities").

The Recommendation also errs in claiming that the organizations do not have standing because they are "not regulated by EOLOA" and are "not require[d] … to do anything or refrain from doing anything." Rec. at 24. As outlined, the organizations have *already* been required to expend additional resources and provide additional services as a result of EOLOA. Whether this harm is "direct" or "indirect" misses the point—it is based on the predictable and actual ways EOLOA functions to discriminate against these organizations' members. *Diamond Alternative Energy, LLC v. Envtl. Prot. Agency*, 606 U.S. 100, 112-13 (2025) (finding that fuel producers had standing to sue EPA for regulations that required car manufacturers to limit emissions and make a percentage of their new car production electric vehicles). Reasonable minds may differ on what constitutes a "predictable chain of events" under the legal standard in *Alliance for Hippocratic Medicine. See* 602 U.S. at 385. But Plaintiffs allege that these organizations have *already* been harmed by EOLOA, and the pleading standard at this

stage requires that these allegations be accepted as true and construed in Plaintiffs' favor. *See Tandy*, 380 F.3d at 1284.

Finally, as acknowledged by the Recommendation, Plaintiff organizations allege that they have diverted money and resources to counteract the effects of EOLOA. Rec. at 22, 25, 27-28. The Recommendation misapplies the standard in *Alliance for Hippocratic Medicine*, finding that Plaintiff organizations are attempting to "spend [their] way into standing simply by expending money to gather information and advocate against" EOLOA. Rec. at 26 (quoting 602 U.S. at 394). Plaintiff organizations allege that they have spent substantial money and resources, not to fight EOLOA's passage or for information gathering purposes, but to better support their members through services and education due to the harm caused by the EOLOA. Crucially, this harm goes well beyond the diversion of money and resources to directly impeding the effectiveness of these organizations' core business activities.

E. Leave to Amend

The Court should grant leave for Plaintiffs to amend the complaint "freely" absent "a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." Fed. R. Civ. P. 15(a)(2); *Egbert v. Griswold*, No. 22-CV-02943-RMR-MEH, 2023 WL 11862310, at *1 (D. Colo. Mar. 29, 2023) (quoting *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993)). The Recommendation errs by failing to even mention leave to amend.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask the Court to reject the Magistrate Judge's Recommendation regarding Defendants' Joint Motion to Dismiss.

Dated: April 14, 2026

Respectfully Submitted,

By: */s/ Ernest Galvan*

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