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**REPLY TO FLORIDA**

September 7, 2021

**By E-mail**

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Chief Executive Officer  
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Mr. Michael O. Price  
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MHS Exemption Committee  
CovidExemptions@mhd.com

Methodist Health System  
1441 N Beckley Avenue  
Dallas, TX 75203

**Re: Unlawful Denials of Religious Exemptions from  
Mandatory COVID-19 Vaccination Policy**

**THIS IS A LEGAL DEMAND LETTER INCLUDING AN EVIDENCE  
PRESERVATION DEMAND. METHODIST HEALTH SYSTEM'S  
DENIALS OF AND CONDITIONS FOR RELIGIOUS EXEMPTION FROM  
ITS MANDATORY COVID-19 VACCINATION POLICY ARE  
UNLAWFUL. YOUR PROMPT RESPONSE IS REQUIRED ON OR  
BEFORE SEPTEMBER 10, 2021 AT 5:00 P.M. TO AVOID A LAWSUIT.**

Dear Messrs. Scoggin and Price, and MHS Exemption Committee:

Liberty Counsel is a national non-profit litigation, education, and public policy organization with an emphasis on First Amendment liberties, and a particular focus on religious freedom and the sanctity of human life. Liberty Counsel has engaged in extensive litigation in the last year regarding civil rights violations ostensibly justified by COVID-19, and has had great success holding both government and private actors accountable. *See, e.g., Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021) (permanent injunction granted and **\$1,350,000** in attorney's fees awarded in *Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal., May 17, 2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020).

I write on behalf of Methodist Health System (MHS) employees [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and numerous others, who are requesting exemption from MHS's mandatory COVID-19 vaccination policy as a reasonable accommodation of their sincerely held religious beliefs, but have been denied exemption based on unlawful pretexts manufactured by MHS. Many of these employees have engaged Liberty Counsel to bring legal action if MHS continues to deny their religious exemption requests, and we are actively seeking to represent, *pro bono*, additional MHS employees who are adversely affected by MHS's illegal mandate and exemption process.

MHS has advised its employees that their deadline to be fully vaccinated is October 1, 2021, and that their deadline to request a religious exemption is September 10, 2021. MHS does not inform its employees, however, of the increasingly apparent policy of the "MHS Exemption Committee" **to deny all or nearly all requests, regardless of merit**, solely to pressure its employees to abandon their meritorious requests and violate their consciences to keep their jobs. Should this matter proceed to litigation, we expect the discovery process to confirm this fact, given the shockingly illegal denials we have seen thus far, in repeated numbers.

MHS's denials are not even close to the line. They are so far beyond what the law allows, we have difficulty imagining that any competent legal counsel has reviewed or approved MHS's unlawful practices. MHS must cease these practices immediately.

**A. MHS's Unlawful Denials of Religious Exemption Requests.**

MHS's denials of the following four employees' requests for religious exemption from the COVID-19 vaccine requirement demonstrate the consistency and intentionality of MHS's illegal, pretextual denials:

**Employee 1:** [REDACTED]. Employee 1's request for religious exemption, MHS's denial of the request (Aug 26, 2021), Employee 1's resubmitted request, and MHS's denial of the resubmitted request (Aug 31, 2021) are attached hereto as **Exhibit 1**.

**Employee 2:** [REDACTED]. Employee 2's request for religious exemption (Aug. 6, 2021), and MHS's denial of the request (Aug. 20, 2021) are attached hereto as **Exhibit 2**.

**Employee 3:** [REDACTED]. Employee 3's request for religious exemption, MHS's denial of the request (Aug. 20, 2021), and Employee 3's resubmitted request are attached hereto as **Exhibit 3**.

**Employee 4:** [REDACTED]. Employee 4's request for religious exemption, and MHS's denial of the request (Aug. 31, 2021) are attached hereto as **Exhibit 4**.

MHS denied all four employees' exemption requests (and numerous others') on its checkbox form titled Response to Request for COVID-19 Vaccine Exemption. (Ex. 1 at 25, 60;

Ex. 2 at 7; Ex. 3 at 4; Ex. 4 at 3.) For Employees 1, 2, and 3, MHS checked the same three reasons for denial:

The theological basis for the request to receive a Religious Exemption is based on erroneous information about the vaccines.

A contradiction with your declared denomination's public statement of support for vaccination.

Engaged in practices inconsistent with your asserted religious belief. (e.g., annual flu vaccine).

For Employee 4, MHS checked the first and third reasons. In each case, MHS's denial form advised the employee, "You may resubmit your Exemption request with additional information if you can resolve the specific issues noted above. Please do so quickly . . . . This response was generated based upon decisions made and guidelines established by the MHS Exemption Committee."

The impertinence of MHS's purported rationales for denying its employees' religious exemption requests is self-evident. MHS is cynically accusing its employees of religious ignorance and fraud, either for believing the wrong things (according to MHS) or for beliefs that purportedly contradict prior religious and medical decisions. MHS's accusations, however, are both unsupported and unsupportable, and are nothing more than illegal pretexts for denying the employees' religious exemption requests.

**B. MHS's "Erroneous Information" Rationale Is Intentionally Vague and Dishonest.**

In all four of the above examples, the first reason given by MHS for denial of the employees' religious exemption requests was that "[t]he theological basis for the request to receive a Religious Exemption is based on erroneous information about the vaccines." This rationale is both intentionally vague and dishonest.

The rationale is intentionally vague because MHS does not identify or explain what "erroneous information" it contends the employees relied on, leaving the employees to guess what information they could "resubmit" to MHS to "resolve the specific issues." MHS footnotes a Charlotte Lozier Institute publication, ostensibly endorsing one of the available vaccines, but does not identify what information in that publication MHS relies on to claim its employees are in error about the vaccines or their beliefs.

The rationale is dishonest because, to the extent MHS purports to challenge the fact that all three of the available vaccines have a connection to aborted fetal cells in some phase of their development or testing, MHS knows its employees are right. It is indisputable that **all three of the currently available COVID-19 vaccines are developed, produced, manufactured, or tested using aborted fetal cell lines**. To be sure, the Charlotte Lozier Institute, cited by MHS in its

denials, agrees with the **factual** assertions of the employees' exemption requests regarding the vaccines' connections to aborted fetal cells. See Charlotte Lozier Institute, *Analysis of COVID-19 Vaccine Candidates* (June 2, 2021), <https://s27589.pcdn.co/wp-content/uploads/2020/12/06.02.21-warp-speed-vaccines-June.pdf> (attached hereto as **Exhibit 5**) (confirming available Pfizer-BioNTech, Moderna, and Johnson & Johnson vaccines use "abortion-derived cells" in lab testing phases, and Johnson & Johnson also in development and production phases).

Moreover, public health agencies have also confirmed the connections of the available vaccines to aborted fetal cells. For example, the North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: "The non-replicating viral vector vaccine produced by Johnson & Johnson **did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.**" N.D. Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Sept. 3, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which "is a retinal cell line that was **isolated from a terminated fetus in 1985.**" La. Dep't of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Sept. 3, 2021).

The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cells lines were used in the "proof of concept" phase of the development of their mRNA vaccines. See La. Dep't of Public Health, *supra*. The North Dakota Department of Health likewise confirms: "Early in the development of mRNA vaccine technology, **fetal cells were used for 'proof of concept' (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.**" N.D. Health, *supra* (emphasis added).

Employees 1, 2, 3, and 4 unequivocally based their religious exemption requests, in principal part, on the indisputable fact that all of the available vaccines are connected to aborted fetal cells. (See Ex. 1 at 1–7 ("[T]hese vaccines were researched and tested and/or derived from aborted fetal cells. When such abortion-derived vaccines are injected into other living human beings, a subtle form of cannibalism has occurred . . . and I will not participate in that or participate in the act of using aborted fetal cells for testing."); *id.* at 27–29; Ex. 2 at 1 ("[I]t is directly in violation of our religion to inject or consume any vaccine or medication that is created with or tested with aborted fetal cells . . ."); *id.* at 6 ("Some of the vaccines use aborted fetal cells in their testing and/or confirmation phases and others use aborted fetal cells in the manufacturing and testing phases. The use of aborted fetal cells in in any part of the vaccine manufacturing process is in violation of my Christian faith."); Ex. 3 at 1 ("[T]he use of vaccines produced with the direct or indirect use of aborted fetal material is a form of cooperation in sin and contributes to the progressive dulling of social conscience to the evil of abortion."); *id.* at 5 ("The use of the COVID-19 vaccines . . . involving the use of an aborted fetus and its cells in the research, testing and/or development of the vaccines is morally unacceptable to me. Receiving a vaccine that is connected in any way to abortion would be complying with an action the Bible says the Lord

forbids and hates . . . .”); Ex. 4 at 2 (“[I]t is against my personal spiritual beliefs to receive a medication that was derived from the deliberate taking of a human life. Many vaccines use fetal cell lines during either development, testing, or production—fetal cell lines which were obtained from terminated pregnancies.”).)

The incontrovertible facts relied on by Employees 1, 2, 3, and 4 must be well known to a health system as large as MHS. To be sure, Employee 1 provided much of the above-cited materials to MHS in support of her request. (*See* Ex. 1 at 2–6.) It is unconscionable for MHS to accuse its employees of basing their requests on “erroneous information” when MHS knows the facts the employees rely on are true—regardless of whether MHS (or anyone else) agrees with its employees on the theological implications of those facts. (*See infra* Pt. C.) MHS has no authority to decide how any employee applies or should apply her own sincerely held religious beliefs to the facts, and MHS’s “erroneous information” rationale is an illegal pretext for denying its employees’ exemption requests.

**C. MHS’s Denials of Its Employees’ Religious Exemption Requests Violate Title VII Because MHS Is Not Permitted to Judge the Validity or Reasonableness of Any Employee’s Sincerely Held Religious Beliefs.**

MHS’s second and third rationales for denying the religious exemption requests of Employees 1, 2, 3, and 4 (and others) are likewise unsupported and illegally pretextual. MHS has no legal authority to tell any employee what that employee’s religion is or ought to be, or to be the arbiter of the validity or reasonableness of any employee’s religious beliefs. Nor does MHS have the authority to demand that a third party validate any employee’s religious beliefs. An employee’s religious beliefs need only be sincere to merit legal protection and require MHS’s accommodation. And given MHS’s barely concealed animus towards the religious beliefs of its employees, any employee who would risk MHS’s retaliation by making a religious exemption request should be presumed sincere, and the law requires it.

Title VII of the Civil Rights Act of 1964 prohibits MHS from discriminating against its employees on the basis of their sincerely held religious beliefs. *See* 42 U.S.C. §2000e-2(a) (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin”); *see also EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) (same). Title VII defines “religion” as “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII’s protections also extend to nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. *See EEOC, Questions and Answers: Religious Discrimination in the Workplace* (July 22, 2008), <https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace> (“Title VII’s protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs. Religious beliefs include theistic beliefs (i.e. those that include a belief in God) as well as non-theistic ‘moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.’ Although courts generally resolve doubts about particular beliefs in

favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns ‘ultimate ideas’ about ‘life, purpose, and death.’”).

MHS is not permitted to determine which religious adherent has a “correct” or “proper” or “valid” understanding of religious doctrine, or whether any employee’s sincerely held religious beliefs are shared broadly among other faithful. As the Supreme Court has recognized, employees’ “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection.” *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual’s sincerely held religious beliefs, it is not a necessary precondition. *See Frazee v. Ill. Dep’t of Emp’t Sec.*, 489 U.S. 829, 834 (1989) (“**Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization.**” (emphasis added)); *see also Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for “sincerely held religious beliefs,” “not just tenets of organized religion”).

In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some MHS employees requesting accommodation may have sincerely held religious beliefs that differ from those sincerely held by other individuals and organizations is irrelevant to whether **the employees’** sincerely held religious beliefs are entitled to protection under Title VII. Indeed,

**[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences . . . and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.**

450 U.S. at 715–16 (emphasis added). The denial of any employee’s request for a religious accommodation based on the views of other individuals who do not share the employee’s beliefs is unlawful. In fact, **it is legally irrelevant what other individuals think or believe.** Nor does an employee’s religious objection to a vaccine need to be unique in order to be personal and sincerely held. Once an employee has articulated **the employee’s** sincerely held religious beliefs opposing the currently available COVID-19 vaccines, whether those beliefs are the same as or nothing like any other person’s beliefs, the proper inquiry is at its end.

MHS violates Title VII at the outset of its exemption process by demanding that employees vet their sincerely held religious beliefs with a third party to complete the MHS Request for Religious Exemption from Mandatory Vaccination form. (*See, e.g.*, Ex. 2 at 1 (requiring “Clergy Signature” confirming “that this MHS employee follows religious beliefs that would qualify for an exemption”).) Employees 1, 2, 3, and 4 nevertheless followed MHS’s illegal policy and submitted their religious accommodation requests, verified by clergy, stating their sincerely held religious beliefs that accepting or receiving any of the three currently available COVID-19 vaccines would be a sin and a violation of their religious beliefs because the vaccines are developed, manufactured, produced, or tested using aborted fetal cell lines and other objectionable materials. MHS denied all of their requests (Employee 1 twice) and based its denials on vague and dishonest rationales (*see supra* Pt. B), as well as unsupported and legally irrelevant rationales concerning the employees’ assumed denominational affiliations (Employees 1, 2, 3: “A contradiction with your declared denomination’s public statement of support for vaccination.”), and past personal health decisions and the theological bases for those decisions (Employees 1, 2, 3, 4: “Engaged in practices inconsistent with your asserted religious belief. (e.g., annual flu vaccine)”). **The premises of these denial rationales—that an employee’s current request for religious accommodation must be consistent with the employees’ prior health decisions and religious understandings, or must be acknowledged by a person other than the employee—are legally invalid premises for deciding religious accommodation requests, and any denial based on such premises violates Title VII.**

To be sure, MHS makes no attempt to substantiate its assertions that the requests of Employees 1, 2, and 3 contradict their “declared denomination’s public statement of support for vaccination.” For example, Employee 2’s request declared her religion to be “Christianity.” (Ex. 2 at 1.) Employee 2 did not declare affiliation with any denomination of Christianity, and MHS can cite no “public statement of support for vaccination” by anyone presuming to speak on behalf of all Christianity. Moreover, Employee 2’s church identifies generally as Baptist, which is a designation for historically “free” churches under local, congregational governance, and disclaims any specific denomination (*e.g.*, a regional or national Baptist convention or association). Furthermore, Employee 4 also identified her religion as “Christianity” and attends the same church as Employee 2, but MHS did not accuse Employee 4 of contradicting her “declared denomination’s public statement of support for vaccination.”

In response to this same invalid denial rationale, Employee 1 provided documentation from her denomination’s website demonstrating the denomination expressly recognizes that vaccine decisions are left to the conscience of the individual believer. (Ex. 1 at 32.) Indeed, **Employee 1’s religious exemption request and resubmitted request are likely the most thorough and best supported exemption requests ever submitted to MHS, perhaps to any employer.** Despite her clear refutation of MHS’s invalid rationales, however, MHS denied Employee 1’s resubmitted request. (Ex. 1 at 60.) Employee 3 likewise resubmitted her request, addressing each of MHS’s pretextual denial rationales, and has not yet received a response.

Nor did MHS provide any of Employees 1, 2, 3, and 4 with substantiation of MHS’s denial rationale that they each “[e]ngaged in practices inconsistent with your asserted religious belief.”

MHS made no attempt to identify what “practices” are “inconsistent” with any of their stated beliefs. (MHS cannot seriously point to prior receipt of the annual flu vaccine as inconsistent with its employees’ current objections to the COVID-19 vaccines—the available flu vaccines were not developed, produced, manufactured, or tested using aborted fetal cell lines.) Employees 1, 2, 3, and 4 each explained why receiving any COVID-19 vaccine would violate her sincerely held religious beliefs, and where applicable, how her knowledge, understanding, and beliefs towards vaccinations have changed over time. MHS cannot simply rebut the employees’ testimonies by *ipse dixit*. It is beyond dispute that none of them has ever previously taken any of the COVID-19 vaccines because they did not previously exist. Without any factual basis to suggest any of the employees is *currently* acting inconsistently with the religious beliefs she substantiated in her request, MHS’s “inconsistency” rationale is yet another illegal pretext for denying their exemption requests.

Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, many MHS employees’ sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, any MHS employee is entitled to interpret the Scriptural commands against murder and polluting the body differently, which many indisputably do.

Many MHS employees have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception to natural death. *See Psalm 139:13–14* (ESV) (“For you formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made.”); *Psalm 139:16* (ESV) (“Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them.”); *Isaiah 44:2* (KJV) (“the LORD that made thee, and formed thee from the womb”); *Isaiah 44:24* (KJV) (“Thus saith the LORD, thy redeemer, and he that formed thee from the womb, I am the LORD that maketh all things.”); *Isaiah 49:1* (KJV) (“The LORD hath called my from the womb; from the bowels of my mother hath he made mention of my name.”); *Isaiah 49:5* (KJV) (“the LORD that formed me from the womb to be his servant”); *Jeremiah 1:5* (KJV) (“Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, and I ordained thee.”). These employees also have sincerely held religious beliefs that every child’s life is sacred because each is made in the image of God. *See Genesis 1:26–27* (KJV) (“Let us make man in our image, after our likeness. . . . So God created man in his own image; in the image of God created he him; male and female created he them.”).

Many MHS employees also have sincerely held religious beliefs that because life is sacred from the moment of conception, the killing of that innocent life is the murder of an innocent human in violation of Scripture. *See, e.g., Exodus 20:13* (KJV) (“Though shalt not kill.”); *Exodus 21:22–23* (setting the penalty as death for even the accidental killing of an unborn child); *Exodus 23:7* (KJV) (“the innocent and righteous slay thou not, for I will not justify the wicked”); *Genesis 9:6*



(KJV) (“Whoso sheddeth a man’s blood, by man shall his blood be shed: for in the image of God made he man.”); *Deuteronomy 27:25* (KJV) (“Cursed be he that taketh reward to slay an innocent person.”); *Proverbs 6:16–17* (KJV) (“These six things doth the LORD hate: yea, seven are an abomination to him . . . hands that shed innocent blood.”). Many MHS employees also have sincerely held religious beliefs that it would be better to tie millstones around their necks and be drowned in the sea than to bring harm to an innocent child. *See Matthew 18:6; Luke 17:2.*

Many MHS employees also have sincerely held religious beliefs that their bodies are temples of the Holy Spirit, and that to inject medical products that have any connection whatsoever to aborted fetal cell lines would be defiling the temple of the Holy Spirit. (*See 1 Corinthians 6:15–20* (KJV) (“Know ye not that your bodies are the members of Christ? shall I then take the members of Christ and make them members of an harlot? God forbid. . . . What? Know ye not that your body is the temple of the Holy Ghost which is in you, which have of God, and ye are not your own? For ye are bought with a price: therefore glorify God in your body, and in your spirit, which are God’s.”).

The Hebrew word for “abomination” in the *Proverbs 6:16–17* (KJV) text quoted above is תועבה (to’eba). The verbal form is “abhor,” “loath,” “detest,” and “exclude.” Twelve times the Book of Proverbs uses תועבה in reference to an “abomination to the LORD.” (יהוה or Yahweh). The word is also used in conjunction with the Ammonites and the Ashtoreth, the Sidonians, Chemosh, and Moab. Some of these nations sacrificed their children to Baal. Indeed, *Jeremiah 19:4–9*, refers to the shedding of innocent blood by sacrificing children as the reason for judgement against Judah. Abortion is the modern-day sacrifice of children made in the image of God. Many MHS employees do not want to be a part of such an “abomination.” They do not want to be in any way associated with abortion, directly or indirectly. For them, doing so is abhorrent, loathsome, detestable—abominable—to God.

Thus, while there may be leaders and other adherents of certain employees’ faith traditions whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their association with aborted fetal cell lines, that is irrelevant to the protection of Employees 1, 2, 3, and 4 and other MHS employees who sincerely believe otherwise. Likewise irrelevant is whether any MHS employee currently seeking a religious exemption formerly understood or believed any religious doctrine differently as applied to vaccines. Because all three of the currently available COVID-19 vaccines are developed, produced from, tested with, researched on, or otherwise associated with the aborted fetal cell lines HEK-293 and PER.C6, many MHS employees’ sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales.

**In sum, it is unlawful for MHS to condition any employee’s request for religious accommodation on a third party’s beliefs or acknowledgement of the employee’s beliefs, or on the employee’s past health decisions or the theological reasons for those decisions.**

**D. The Rights of MHS Employees to Religious Accommodation and Abstention From Any Participation in Abortion are Guaranteed Under Texas Law.**

Like Title VII, the Texas Commission on Human Rights Act (TCHRA), Tex. Lab. Code §§ 21.001–21.556, requires employers to accommodate employees’ sincerely held religious beliefs:

An employer commits an unlawful employment practice if because of . . . religion . . . the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Tex. Lab. Code § 21.051. Thus, Title VII’s protections for employees with sincerely held religious objections to COVID-19 vaccines (*see supra* Pt. C) are equally protected under Texas law. *See Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 633–34 (Tex. 2012) (“Section 21.051 is effectively identical to Title VII, its federal equivalent . . . . Because one of the purposes of the TCHRA is to provide for the execution of the policies of Title VII . . . we have consistently held that those analogous federal statutes and the cases interpreting them guide our reading of the TCHRA.” (cleaned up)).

Moreover, Texas law also protects the rights of all health care workers to abstain from participation in abortion:

A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to **directly or indirectly . . . participating in an abortion procedure** may not be required to directly or indirectly . . . participate in the procedure.

Tex. Occ. Code § 103.001 (emphasis added). And:

A hospital or health care facility may not discriminate against a physician, nurse, staff member, or employee, or an applicant for one of those positions, who refuses to . . . participate in an abortion procedure.

Tex. Occ. Code § 103.002(a). Thus, in accordance with the strong public policy of the State of Texas against any coerced participation in abortion, directly or indirectly, as enacted by statute,

MHS must accommodate any employee with a sincere religious objection to receiving a COVID-19 vaccine because of the vaccine's connection to abortion procedures. MHS's denials of the religious exemption requests of Employees 1, 2, 3, and 4 violate both the law and public policy of the State of Texas.

**E. The Federal Emergency Use Authorization Statute Prohibits Mandating Any of the Currently Available COVID-19 Vaccines.**

The United States Code provides:

**[S]ubject to the provisions of this section**, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use.”

21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. *See* 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that “individual to whom the product is administered are informed . . . **of the option to accept or refuse administration of the product**” (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines **cannot be mandatory** under the plain text of the EUA Statute.

The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. *See* Moderna, *Fact Sheet for Recipients and Caregivers* (June 24, 2021), <https://www.fda.gov/media/144638/download> (“**It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)); Pfizer-BioNTech, *Fact Sheet for Recipients and Caregivers* (June 25, 2021), <https://www.fda.gov/media/144414/download> (“**It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)); Janssen, *Fact Sheet for Recipients and Caregivers* (July 8, 2021), <https://www.fda.gov/media/146305/download> (“**It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)).

The recent FDA biologics license application (BLA) approval of the product COMIRNATY, COVID-19 Vaccine, mRNA, manufactured by BioNTech Manufacturing GmbH,<sup>1</sup>

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<sup>1</sup> BLA Approval Letter for COMIRNATY, COVID-19 Vaccine, mRNA (Aug. 23, 2021), <https://www.fda.gov/media/151710/download>.

does not change the EUA status of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020.<sup>2</sup> According to the EUA extension letter issued by the FDA to Pfizer on August 23, 2021, the Pfizer-BioNTech COVID-19 Vaccine and BioNTech's COMIRNATY, COVID-19 Vaccine, mRNA "are legally distinct" products.<sup>3</sup> Moreover, the now "approved" COMIRNATY vaccine cannot be distributed for use until BioNTech submits "final container samples of the product in final containers together with protocols showing results of all applicable tests" and BioNTech receives "a notification of release from the Director, Center for Biologics Evaluation and Research (CBER)."<sup>4</sup> Thus, it is not clear when (or if) any MHS employee will have access to the "approved" COMIRNATY vaccine, leaving all (or at least the vast majority of) MHS employees who may elect to receive the "Pfizer" vaccine pursuant to MHS's mandatory vaccine policy to receive a dose of the current stock of Pfizer-BioNTech vaccine still being administered subject to EUA rules. Thus, under the EUA Statute, administration of the **currently available** vaccines cannot be mandatory. At any rate, even without the EUA Statute, these employees still have legal rights to religious accommodation under federal and state law.

### **LEGAL DEMAND**

As shown above, MHS's denials of the religious exemption requests of Employees 1, 2, 3, and 4 are unlawful. Indeed, MHS cannot compel any employee's compliance with MHS's mandatory COVID-19 vaccination policy against the employee's sincerely held religious beliefs. Moreover, it is unlawful for MHS to deny any employee's request for religious accommodation either because other religious adherents have beliefs different from the employee's or because of the employee's past personal health decisions, whatever the employee's theological reasons for those decisions.

Liberty Counsel prefers to avoid the need for further legal action, and trusts that the points and authorities presented in this letter demonstrate to MHS that its ongoing denials of its employees' requests for religious accommodation are based on false and illegal rationales and therefore unlawfully pretextual. Should MHS continue its denials on such premises, however, Liberty Counsel will be forced to conclude that MHS is disregarding its obligations to provide accommodations to employees with sincerely held religious objections to the COVID-19 vaccines in violation of both federal and state law.

**Liberty Counsel is giving MHS the opportunity to grant the religious exemption requests of Employees 1, 2, 3, and 4 without litigation. To avoid litigation, MHS must provide, prior to Friday, September 10, at 5:00 P.M., MHS's assurances that:**

- 1) MHS has granted the religious exemption requests of Employees 1, 2, 3, and 4 and notified them of their granted exemptions;**

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<sup>2</sup> EUA Extension Letter for Pfizer-BioNTech COVID-19 Vaccine (Aug. 23, 2021), <https://www.fda.gov/media/150386/download>.

<sup>3</sup> See EUA Extension Letter, *supra* note 2, at 2 n.8.

<sup>4</sup> See BLA Approval Letter, *supra* note 1, at 2.

- 2) **MHS will not deny (and will reverse any prior denial of) any religious accommodation request where the request is based on an employee's sincere religious objection to receiving the COVID-19 vaccines developed, tested, produced, or otherwise connected to aborted fetal cell lines, or from receiving any of the COVID-19 vaccines if such act conflicts with any other sincerely held religious belief;**
- 3) **MHS will not deny (and will reverse any prior denial of) any religious accommodation request based on the absence of approval or acknowledgement of the employee's religious beliefs by a third party;**
- 4) **MHS will not deny (and will reverse any prior denial of) any religious accommodation request based on any stated or perceived different beliefs by any religious denomination or organization; and**
- 5) **MHS will not deny (and will reverse any prior denial of) any religious accommodation request based on an employee's past vaccination or other health decisions or the employee's theological reasons for those decisions.**

**MHS's failure to respond positively or timely, or MHS's taking of any adverse or retaliatory action against Employee 1, 2, 3, or 4, or any other employee who has requested religious accommodation, will indicate to Liberty Counsel that MHS will not comply with its legal obligations against discrimination without judicial intervention. In that event, we will proceed directly with litigation to vindicate the legal rights of Employees 1, 2, 3, and 4, and other MHS employees, without further warning.**

### **EVIDENCE PRESERVATION DEMAND**

In connection with the foregoing Legal Demand, Liberty Counsel also demands that MHS preserve all records, data, documents, devices, and things in its possession or the possession of its employees, including private wireless phones and devices and records and data found thereon, from January 1, 2020 to the present (and continuing), constituting, reflecting, or reasonably related to the following:

1. The conception, formation, membership, staff, volunteers, administration, policies, guidelines, communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of the MHS Exemption Committee;
2. All requests for exemption from receiving a COVID-19 vaccine submitted to the MHS Exemption Committee or any other person or persons employed by or under the direction and control of MHS, from Employee 1, 2, 3, or 4 or any other MHS employee, and all communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of the MHS Exemption Committee or such other person or persons concerning such exemption requests; and

3. Any training received by any MHS Exemption Committee member, consultant, employee, or volunteer, or any MHS employee, consultant, volunteer, or board member regarding the conception, enactment, and administration of MHS's mandatory COVID 19 vaccination policy, including without limitation the review, consideration, and disposition of requests for religious exemption from the policy, and further including without limitation any such training received at or from Houston Methodist or any affiliate thereof.

The records, data, and documents subject to this demand include all paper and other physical files and all electronically stored information (ESI), including but not limited to e-mail, text, SMS, MMS, social media, and other electronic communications, whether maintained on a personal or business device or account, including on personal wireless devices, personal e-mail accounts, and personal social media accounts; and further including without limitation word processing documents, spreadsheets, databases, calendars, telephone logs, contact information, usage files, and access information from networks, databases, computer systems (including legacy systems, hardware, and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges, and other storage media, laptops, personal computers, tablets, digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail).

Liberty Counsel expects MHS to preserve records, data, documents, devices, and things from January 1, 2020 to the present (and continuing) in MHS's possession and in the possession of any third party under its control. If MHS knows or reasonably determines that any older records, data, documents, devices, or things are potentially relevant, however, MHS should preserve such materials from the relevant earlier period as well.

ESI is an important and irreplaceable source of evidence in connection with this matter. Liberty Counsel cautions MHS that this preservation demand should be afforded the broadest possible interpretation with respect to ESI, and that responsive ESI can reside not only in areas that are reasonably accessible but also in areas that MHS may deem not reasonably accessible. Liberty Counsel demands that MHS preserve all responsive ESI, even if MHS does not anticipate an obligation to produce such ESI in future litigation.

Preservation of ESI may require more than simply refraining from efforts to destroy or dispose of such evidence. MHS may have to affirmatively intervene in automatic processes to prevent data loss due to routine operation and overwriting. For instance, sources of ESI can be altered and erased simply through continued use of a computer or other device. Booting a drive, examining its contents, or running any application can irretrievably alter the evidence it contains and may constitute unlawful spoliation of evidence. MHS should take care to employ proper techniques and protocols, hiring an expert to assist if necessary.

MHS should be aware that employees or others may seek to hide, destroy, or alter ESI, and MHS must act to prevent or guard against such actions. Users may seek to delete or destroy information they regard as personal, confidential, or embarrassing and, in so doing, may also delete or destroy responsive ESI. Though Liberty Counsel expects MHS will act swiftly to preserve data

on office workstations and servers, MHS should also determine whether any home or portable systems contain potentially responsive ESI. MHS must preserve the contents of the systems, devices, and media used for those purposes as well.

I am available to discuss reasonable preservation steps; however, MHS should not delay in taking proper precautions to preserve relevant records, data, documents, and things if they may be lost or corrupted as a consequence of delay. Should MHS's failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production to which Employee 1, 2, 3, or 4 may later be entitled, such failure would constitute spoliation of evidence, for which sanctions may be imposed.

Please govern yourselves accordingly.

Very truly yours,



Roger K. Gannam<sup>†</sup>  
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