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REPLY TO FLORIDA

September 22, 2021

By E-mail

Rex Budde
President & Chief Executive Officer
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SIH Exemption Committee
SIH Occupational Health & Safety
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John Daly
VP & General Counsel
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Southern Illinois Healthcare
1239 E Main Street
Carbondale, Illinois 62901

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

**THIS IS A LEGAL DEMAND LETTER INCLUDING AN EVIDENCE
PRESERVATION DEMAND. SOUTHERN ILLINOIS HEALTHCARE'S
DENIALS OF RELIGIOUS EXEMPTION FROM ITS MANDATORY
COVID-19 VACCINATION POLICY ARE UNLAWFUL. YOUR PROMPT
RESPONSE IS REQUIRED ON OR BEFORE SEPTEMBER 23, 2021 AT
5:00 P.M. TO AVOID A LAWSUIT.**

Dear Messrs. Budde and Daly and Members of SIH Exemption Committee and SIH Occupational Health & Safety:

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); *cf. Elim Romanian Pentecostal Church v. Pritzker*,

962 F.3d 341 (7th Cir. 2020) (applying reasoning later rejected by the Supreme Court in *Harvest Rock* and other decisions).

I write on behalf of the Southern Illinois Healthcare (SIH) employees named below (*infra* Pt. A), and numerous others, who are requesting exemption from SIH's mandatory COVID-19 vaccination policy as a reasonable accommodation of their sincerely held religious beliefs, but have been denied exemption by SIH without explanation or ability to appeal. Many of these employees have engaged Liberty Counsel to bring legal action if SIH continues to deny their religious exemption requests, and we are actively seeking to represent, *pro bono*, additional SIH employees who are adversely affected by SIH's illegal mandate and exemption process.

SIH has advised its employees that their deadline to receive the first dose of a COVID-19 vaccine is September 24, 2021. SIH does not inform its employees, however, of the increasingly apparent policy of the SIH Exemption Committee and SIH Occupational Health & Safety **to deny nearly all requests, regardless of merit, and without explanation**, to pressure its employees to abandon their meritorious requests and violate their consciences to keep their jobs. Moreover, some employees have received religious exemptions based on the same reasons given by employees who have been denied. In many cases, denied employees have requested SIH to provide the reasons for denial, but SIH has refused. Thus, in addition to the word games and illegal conditions on the face of the SIH exemption request form, SIH is arbitrarily (or discriminatorily) treating similarly situated employees differently, and cloaking its entire process in secrecy to avoid accountability for its unlawful process and repeated, illegal denials. Should this matter proceed to litigation, we expect the discovery process to confirm these facts.

SIH's internal inconsistency and summary denials, with no explanation or process for appeal, are illegal, and SIH is administering its vaccine policy in bad faith. SIH must cease these practices immediately.

A. SIH's Intentionally Vague and Unlawful Denials of Religious Exemption Requests.

SIH requires employees seeking religious exemption from COVID-19 vaccination to submit their requests on the SIH Request for Religious Exemption form. In addition to requiring each employee's personal statement explaining the employee's religious objection to COVID-19 vaccination, the form illegally demands that a third-party religious leader verify the sincerity of the employee's beliefs and the employee's membership "in good standing" of a religious organization. Moreover, even though the form requires employees to assent to certain workplace restrictions and protocols as a condition to receiving the requested exemption, the form purports to distinguish the requested religious exemption from a "workplace religious accommodation," presumably in an attempt to avoid legal scrutiny for its inconsistent and unsubstantiated denials.

Following are numerous examples of merited requests for religious exemption from SIH's COVID-19 vaccine requirement that resulted in SIH's illegal and unsubstantiated denial:

Employee 1: [REDACTED]. Exemption request attached as **Exhibit 1**.

Employee 2: [REDACTED]. Exemption request attached as **Exhibit 2**.

Employee 3: [REDACTED]. Exemption request attached as **Exhibit 3**.

Employee 4: [REDACTED]. Exemption request attached as **Exhibit 4**.

Employee 5: [REDACTED]. Exemption request attached as **Exhibit 5**.

Employee 6: [REDACTED]. Exemption request attached as **Exhibit 6**.

Employee 7: [REDACTED]. Exemption request attached as **Exhibit 7**.

Other employees: Liberty Counsel has been engaged by numerous other SIH employees, but time and space constraints prohibit their specific inclusion.

Despite having plainly and completely explained their sincerely held religious objections to receiving a COVID-19 vaccine, SIH denied all seven employees' exemption requests (and numerous others') with a generic, "Dear Employee" communication (copy attached as **Exhibit 8**), offering no explanation for denial and threatening termination if the employee is not vaccinated. SIH has also refused to provide any explanation for denial when asked directly by denied employees. Thus, while SIH promises to "carefully review" each request, SIH aims to avoid all accountability by hiding its rationale for each denial and refusing any appeal. And while SIH ostensibly allows its employees "to reapply if new documentation and information should become available," SIH's generic denials do not inform its employees what "documentation or information" SIH considered deficient or incomplete in issuing the denials. By intentionally depriving its employees of any rationale for its denials of their good faith religious exemption requests and depriving them of any meaningful review, SIH not only violates the law, but also its own purported values of "integrity, accountability and respect." *About Us*, Southern Illinois Healthcare, <https://www.sih.net/about-us> (last visited September 22, 2021).

B. The Denied Religious Exemption Requests Were Factually Supported.

Employees 1–7 all included as grounds for their religious exemption requests, in whole or in part, their sincerely held religious beliefs against abortion and the connection of all available COVID-19 vaccines to aborted fetal cell lines. (Exs. 1–7.) As a factual matter, it is indisputable that **all three of the currently available COVID-19 vaccines are developed, produced, manufactured, or tested using aborted fetal cell lines**. Public health agencies have confirmed these connections. 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),

19_Vaccine_Fetal_Cell_Handout.pdf (emphasis added) (last visited Sept. 22, 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 (emphasis added) (last visited Sept. 22, 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).

These incontrovertible facts relied on by Employees 1–7 must be well known to a health system as large as SIH. Thus, SIH has no factual justification to deny any employee’s religious exemption request based on a sincerely held religious objection to abortion and the connection of all available COVID-19 vaccines to aborted fetal cell lines.

C. Illinois Law Prohibits SIH’s Discrimination Against Its Employees on the Basis of Refusal to Be Injected With a Vaccine to Which They Have Sincerely Held Religious Objections.

Illinois law dictates that SIH employees have the fundamental right to determine what medical care to accept and refuse. A person’s right to refuse or accept medical care is not one to be interfered with lightly. As Justice Cardozo stated, “Every human being of adult years and sound mind has a right to determine what shall be done with his own body” *Cohen v. Smith*, 269 Ill. App. 3d 1087, 1095 (1995).

Indeed, the **Illinois Health Care Right of Conscience Act**, 745 ILCS 70/1, *et seq.*, applies to SIH employees and expressly prohibits public **and private** entities like SIH from taking adverse employment action against anyone who declines a COVID injection on the basis of conscience or religious belief:

Findings and policy. The General Assembly finds and declares that **people and organizations hold different beliefs about whether certain health care services are morally acceptable.** It is the public policy of the State of Illinois to **respect and protect the right of conscience of all persons who refuse to obtain, receive or accept . . . health care services and medical care whether acting individually, corporately, or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons**

or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in . . . refusing to obtain, receive, accept . . . health care services and medical care.

745 ILCS 70/2 (emphasis added). The General Assembly has accordingly prohibited:

Discrimination. It shall be unlawful for **any person, public or private institution**, or public official to discriminate **against any person in any manner**, including but not limited to, licensing, **hiring, promotion**, transfer, staff appointment, hospital, managed care entity, **or any other privileges, because of such person's conscientious refusal to receive, obtain, accept**, perform, assist, counsel, suggest, recommend, refer or participate in any way in **any particular form of health care services contrary to his or her conscience**.

745 ILCS 70/5 (emphasis added). In addition to this broad non-discrimination provision that expressly applies here, the Illinois General Assembly has also specifically outlawed employment discrimination:

Discrimination by employers or institutions. It shall be **unlawful for any public or private employer**, entity, agency, institution, official or person...to deny admission because of, to place any reference in its application form concerning, to orally question about, **to impose any burdens in terms or conditions of employment on, or to otherwise discriminate against**, any applicant, in terms of employment, admission to or participation in any programs for which the applicant is eligible, **or to discriminate in relation thereto, in any other manner, on account of the applicant's refusal to receive, obtain, accept**, perform, counsel, suggest, recommend, refer, assist or participate in any way in **any forms of health care services contrary to his or her conscience**.

745 ILCS 70/7 (emphasis added). Further, Section 3(a) of the Act defines “health care” broadly as:

any phase of patient care, including but not limited to, testing; diagnosis; prognosis; ancillary research; instructions; . . . **medication; surgery or other care or treatment rendered by a physician or physicians, nurses, paraprofessionals or health care facility, intended for the physical, emotional, and mental well-being of persons**

745 ILCS 70/3(a) (emphasis added). Vaccines are indisputably within the broad coverage of the Act.

Section 3(e) of the Act defines “conscience” as a “sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths.” 745 ILCS 70/3(e). The Act supersedes “all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act.” 745 ILCS 70/14.

Notably, the Act provides a private cause of action against offending entities, such as SIH. 745 ILCS 70/12. Indeed, demonstrating the reprehensibility of discrimination based on health care decisions, the Act imposes liability for “**threefold the actual damages . . . the costs of suit and reasonable attorney’s fees,**” *id.* (emphasis added), “**but in no case shall recovery be less than \$2,500 for each violation in addition to costs of the suit and reasonable attorney’s fees.**” *Id.* (emphasis added). Moreover, unlike in Title VII cases (*see infra* Pt. D), an employee’s recovery under the Act is not limited by the availability of a reasonable accommodation for the employee or any claimed undue hardship on the employer.

By mandating that SIH employees submit to one of the COVID-19 vaccines, and by refusing exemptions based on religious opposition to the vaccines, SIH runs roughshod over this basic protection. If any SIH employee decides to abstain from forcible injection of a COVID-19 vaccine that violates the employee’s sincerely held religious beliefs, that is the employee’s basic right. Put simply, “[t]he forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty.” *Washington v. Harper*, 494 U.S. 210, 229 (1990) (emphasis added).

D. SIH’s Denials Violate Title VII Because SIH Is Not Permitted to Judge the Validity or Reasonableness of Any Employee’s Sincerely Held Religious Beliefs.

SIH has no legal authority to dictate what 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 SIH 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 SIH’s accommodation. And given SIH’s barely concealed animus towards the religious beliefs of its employees, any employee who would risk SIH’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 SIH 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.’”).

SIH 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 SIH 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.

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, and for other reasons, the sincerely held religious beliefs of Employees 1–7 and many other SIH employees compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Employees 1–7 each explained why receiving any COVID-19 vaccine would violate the employee’s sincerely held religious beliefs and, where applicable, how the employee’s knowledge, understanding, and beliefs towards vaccinations have changed over time. SIH 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 SIH exemption request form. SIH likewise violates Title VII if it denies a religious exemption request because a third party did not vouch for the employee’s sincerely held beliefs. 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 or other objections, any SIH employee is entitled to interpret the Scriptural commands against murder and polluting the body differently, which many indisputably do.

In sum, it is unlawful for SIH to condition any employee’s request for religious accommodation on a third party’s beliefs or acknowledgement of the employee’s beliefs.

E. SIH Can Accommodate Its Employees’ Sincerely Held Religious Beliefs.

SIH cannot seriously argue that it is unable to accommodate its employees with sincerely held religious objections to COVID-19 vaccination. Large and small healthcare employers in Illinois and across the country are regularly providing religious accommodations to patient-facing healthcare employees by allowing them to continue their regular duties and responsibilities while observing enhanced safety protocols—as the entire healthcare system has done for the better part of two years prior to SIH’s arbitrary vaccine mandate.

In a federal lawsuit challenging the State of Maine’s prohibition of religious exemptions from the State’s COVID-19 vaccine mandate, the plaintiff employees (represented by Liberty Counsel) just filed 32 sworn declarations of healthcare employees from around the country, including 4 from Illinois (attached as **Exhibits 9–12**), demonstrating the availability and workability of accommodations for patient-facing healthcare workers with sincerely held religious objections to COVID-19 vaccination. For example, a respiratory therapist at Advocate Children’s Hospital in Oak Lawn, Illinois, declared:

[M]y employer granted me a religious exemption and accommodation from its mandatory COVID-19 vaccination policy. . . .

My accommodation permits me to continue all of my previous duties and responsibilities, including working on-site, interacting with colleagues, and providing quality and safe care to my patients. As part of my accommodation, I am required to use PPE, self-monitor and report symptoms daily using a company app, and follow company guidance on travel and testing requirements. I comply with all of these requirements.

(Ex. 10; *see also* Ex. 9 (registered nurse in pediatric emergency room at University of Chicago Medical Center, Chicago); Ex. 11 (registered nurse at Advocate Aurora Health, Park Ridge); Ex. 12 (ICU nurse at Advocate Sherman Hospital, Elgin).)

In addition to the attached declarations from Illinois healthcare workers, the declarations filed in the Maine litigation demonstrate similar accommodations granted to healthcare workers in Maine, Oregon, California, Washington, New Mexico, Missouri, Texas, Wisconsin, Minnesota, Colorado, Michigan, Ohio, Pennsylvania, Delaware, Maryland, and Florida. (*See Docs. 57-2 to 57-33, Does v. Mills*, No. 1:21-cv-00242-JDL (D. Me. Sept. 17, 2021).) The healthcare employers granting the accommodations include (a) top education and research hospitals, such as University of Chicago, University of Colorado, University of Maryland, and Temple University, (b) some of the largest healthcare providers in the nation, including Advocate Aurora Health, Veterans Health Administration (VHA), Kaiser Permanente, and Trinity Health, having hundreds of thousands of patient-facing employees and accommodating the subset of those with sincere religious beliefs, and (c) mid-sized and smaller healthcare providers also readily accommodating patient-facing personnel with sincere religious beliefs.

To be sure, the VHA is the largest integrated healthcare system in the United States, employing more than 367,200 full time healthcare professionals and support staff, delivering care to over 9 million veterans at 1,293 facilities throughout the United States (including many in Illinois). (*About VHA*, Veterans Administration, <https://www.va.gov/health/aboutvha.asp> (last visited September 22, 2021).) Obtaining a religious exemption from mandatory COVID-19 vaccination at the VHA only requires an employee to check a box on a form indicating a deeply held religious belief against the vaccination, and exempted employees are able to continue their same job functions with the same duties and responsibilities. (*See Docs. 57-2 to 57-4, Does v. Mills, supra.*) There is no reason why SIH cannot follow the same accommodation policy.

F. 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 emergency use authorization (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,¹ does not change the EUA status of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020.² 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

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

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

COMIRNATY, COVID-19 Vaccine, mRNA “are legally distinct” products.³ 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).”⁴ Thus, it is not clear when (or if) any SIH employee will have access to the “approved” COMIRNATY vaccine, leaving all (or at least the vast majority of) SIH employees who may elect to receive the “Pfizer” vaccine pursuant to SIH’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, SIH’s denials of the religious exemption requests of Employees 1–7 are unlawful. Indeed, SIH cannot compel any employee’s compliance with SIH’s mandatory COVID-19 vaccination policy against the employee’s sincerely held religious beliefs. Moreover, it is unlawful for SIH to deny any employee’s request for religious accommodation based on the absence of a third party’s endorsement, or based on the religious beliefs of any other person or organization.

Liberty Counsel prefers to avoid the need for further legal action, and trusts that the points and authorities presented in this letter demonstrate to SIH that its ongoing unsubstantiated denials of its employees’ requests for religious accommodation are unlawful. Should SIH continue its summary denials, however, Liberty Counsel will be forced to conclude that SIH 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 SIH the opportunity to grant the religious exemption requests of Employees 1–7 without litigation. To avoid litigation, SIH must provide, prior to Thursday, September 23, at 5:00 P.M., SIH’s assurances that:

- 1) SIH has granted the religious exemption requests of Employees 1–7 and notified them of their granted exemptions;**
- 2) SIH will not deny (and will reverse any prior denial of) any religious exemption 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 See EUA Extension Letter, *supra* note 2, at 2 n.8.

⁴ See BLA Approval Letter, *supra* note 1, at 2.

- 3) **SIH will not deny (and will reverse any prior denial of) any religious exemption request based on the absence of approval or acknowledgement of the employee's religious beliefs by a third party;**
- 4) **SIH will not deny (and will reverse any prior denial of) any religious exemption request based on any stated or perceived different beliefs by any religious denomination or organization;**
- 5) **SIH will not deny (and will reverse any prior denial of) any religious exemption request based on an employee's past vaccination or other health decisions or the employee's theological reasons for those decisions;**
- 6) **SIH will not deny (and will reverse any prior denial of) any religious exemption request based on SIH's distinction between a religious exemption and a workplace religious accommodation to the extent that SIH's classification of a request based on this distinction results in a less favorable outcome for the employee; and**
- 7) **SIH will not deny any religious exemption request without providing specific reasons for the denial, and will provide specific reasons for denial at the request of any previously denied employee.**

SIH's failure to respond positively or timely, or SIH's taking of any adverse or retaliatory action against Employees 1–7, or any other employee who has requested religious accommodation, will indicate to Liberty Counsel that SIH 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 1–7, and other SIH employees, without further warning.

EVIDENCE PRESERVATION DEMAND

In connection with the foregoing Legal Demand, Liberty Counsel also demands that SIH 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 SIH Exemption Committee;
2. The conception, formation, membership, staff, volunteers, administration, policies, guidelines, communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of SIH Occupational Health & Safety;

3. All requests for exemption from or workplace religious accommodation with respect to receiving a COVID-19 vaccine submitted to the SIH Exemption Committee, SIH Occupational Health & Safety, or any other person or persons employed by or under the direction and control of SIH, from Employee 1, 2, 3, 4, 5, 6, or 7, or any other SIH employee, and all communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of the SIH Exemption Committee, SIH Occupational Health & Safety, or such other person or persons concerning such exemption or accommodation requests; and
4. Any training received by any SIH Exemption Committee or SIH Occupational Health & Safety member, consultant, employee, or volunteer, or any SIH employee, consultant, volunteer, or board member regarding the conception, enactment, and administration of SIH's mandatory COVID 19 vaccination policy, including without limitation the review, consideration, and disposition of requests for religious exemption or accommodation from the policy.

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 SIH to preserve records, data, documents, devices, and things from January 1, 2020, to the present (and continuing) in SIH's possession and in the possession of any third party under its control. If SIH knows or reasonably determines that any older records, data, documents, devices, or things are potentially relevant, however, SIH 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 SIH 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 SIH may deem not reasonably accessible. Liberty Counsel demands that SIH preserve all responsive ESI, even if SIH 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. SIH 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. SIH should take care to employ proper techniques and protocols, hiring an expert to assist if necessary.

SIH should be aware that employees or others may seek to hide, destroy, or alter ESI, and SIH 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 SIH will act swiftly to preserve data on office workstations and servers, SIH should also determine whether any home or portable systems contain potentially responsive ESI. SIH 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, SIH 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 SIH's failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production to which Employee 1, 2, 3, 4, 5, 6, or 7 may later be entitled, such failure would constitute spoliation of evidence, for which sanctions may be imposed.

Please govern yourselves accordingly.

Very truly yours,



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