LIBERTY COUNSEL

DISTRICT OF COLUMBIA
109 Second Street NE
Washington, DC 20002
Tel 202-289-1776
Fax 407-875-0770
LC.org

FLORIDA
PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770

REPLY TO FLORIDA

VIRGINIA
PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

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By E-mail

Phillip M. Kambic, MBA, FACHE
President and Chief Executive Officer
pkambic@rhc.net

Paula M. Jacobi, Esq.
Senior Vice President and General Counsel
pjacobi@rhc.net

Riverside Healthcare
350 North Wall Street
Kankakee, Illinois 60901

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

THIS IS A LEGAL DEMAND LETTER INCLUDING AN EVIDENCE PRESERVATION DEMAND. RIVERSIDE HEALTHCARE'S DENIALS OF RELIGIOUS EXEMPTION FROM ITS MANDATORY COVID-19 VACCINATION POLICY ARE UNLAWFUL. YOUR PROMPT RESPONSE IS REQUIRED ON OR BEFORE SEPTEMBER 29, 2021 AT 5:00 P.M. TO AVOID A LAWSUIT.

Dear Mr. Kambic and Ms. Jacobi:

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).

We have also sued the States of Maine and New York over their refusals to afford religious accommodations to healthcare workers under forced COVID-19 vaccination mandates. *See Does v. Mills*, No. 1:21-cv-00242-JDL, Doc. 1 (D. Me. Aug. 25, 2021); *Does v. Hochul*, No. 1:21-CV-

05067-AMD-TAM, Doc. 1 (E.D.N.Y. Sept. 10, 2021). New York's unconstitutional mandate is now enjoined by a federal court (*see Does v. Hochul*, *supra*, Doc. 35), and we are expecting a similar outcome in Maine. In addition, we are preparing individual and class action lawsuits against healthcare employers nationwide for their unlawful refusals to provide reasonable accommodations to their employees.

I write on behalf of the Riverside Healthcare employees named below (*infra* Pt. A), and numerous others, who are requesting exemption and accommodation from Riverside's mandatory COVID-19 vaccination policy because of their sincerely held religious beliefs, and who are victims of Riverside's across-the-board denial of exemptions on the pretext that it would be an "undue hardship" on Riverside to accommodate employees in "patient-facing positions" regardless of the merit of their exemption requests. Many of these employees have engaged Liberty Counsel to bring legal action if Riverside continues to deny their religious exemption requests, and **we are actively seeking to represent, *pro bono*, additional Riverside employees who are adversely affected by Riverside's illegal mandate and exemption process**.

Riverside is administering its vaccine policy in bad faith, and its arbitrary denial of all religious exemptions (but not medical exemptions) for patient-facing employees is illegal. Riverside must cease these practices immediately.

A. Riverside's Unlawful Denials of Religious Exemption Requests.

Riverside invited its employees to participate in a process through which they could ostensibly request exemption from the mandatory COVID-19 vaccination policy, using Riverside's Religious/Strongly Held Beliefs Declination of COVID-19 Vaccination form. The form allows employees to indicate a religious reason for declining vaccination, conditioned on providing a statement explaining the employee's beliefs opposing the vaccination, and further conditioned on validation of the employee's beliefs by clergy.

The form does not advise employees, however, that patient-facing employees are disqualified from receiving a religious exemption. Riverside's post hoc decision to deny the religious (but not medical) exemption requests of all patient-facing employees on "undue hardship" grounds—as if a healthcare system had not considered that patient-facing employees would seek exemption—demonstrates that the denials are arbitrary and pretextual. Thus, in addition to the illegal condition on the face of the exemption request form (clergy validation of an employee's personal, sincerely held religious beliefs), Riverside has unlawfully subjected its patient-facing employees to a sham process and arbitrary denials. Should this matter proceed to litigation, we expect the discovery process to confirm these facts.

The following employees (and numerous others) represented by Liberty Counsel have been illegally denied religious exemption by Riverside:

Employee 1: [redacted]
Riverside not only denied Employee 1's religious exemption request, but also terminated Employee 1 for not capitulating to vaccination in violation of her sincerely held religious beliefs.

Employee 2: [redacted]

Employee 3: [redacted]

Employee 4: [redacted]

Employee 5: [redacted]

Employee 6: [redacted]

Despite having plainly and completely explained their sincerely held religious objections to receiving a COVID-19 vaccine, Riverside denied all six employees' exemption requests (and numerous others') with a generic "To: Employee" communication dated September 17, 2021 (copy attached as **Exhibit 1**) claiming that accommodating patient-facing employees would cause Riverside an "undue hardship." On the same date, Riverside sent a memo to its employees (copy attached as **Exhibit 2**) informing them of the "**important modification**" to the exemption policy singling out for disqualification otherwise qualified **religious** exemption requests from patient-facing employees.

We believe litigation discovery would confirm that, under the "**important modification**" to Riverside's exemption policy, Riverside has granted (or will grant) **medical** and **pregnancy** exemptions, keeping those patient-facing employees in their current roles with appropriate precautions. These are the reports we are receiving, and we believe Riverside has express, written policies so stating.

Assuming this bears out factually, Riverside's unwillingness to extend the same accommodation to employees with **religious** objections will demonstrate Riverside's religious animus to the court and the jury. If an unvaccinated employee poses any increased risk of transmission at all, which is not conceded, an employee unvaccinated for medical reasons or during pregnancy would pose **exactly the same risk** as an employee unvaccinated for religious reasons. Accommodating one and not the other is discrimination[1] (and undermines any claim that Riverside is guided by "careful consideration of the scientific evidence").

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[1] The argument on pages 2–13 of the plaintiffs' brief filed by Liberty Counsel at Doc. 57, *Does v. Mills*, No. 1:21-cv-00242-JDL (D. Me. Sept. 17, 2021), *available at* https://lc.org/091721MaineHealthCareWorkerReply.pdf., addresses a similarly discriminatory policy in the context of a First Amendment claim against a state actor. But the principles apply with equal force on the question of religious discrimination by a private employer under Title VII and cognate Illinois law.

B. Riverside Can Reasonably Accommodate Its Patient-Facing Employees' Sincerely Held Religious Beliefs Without Undue Hardship.

Riverside's undue hardship pretext is as implausible as it is illegal. Riverside cannot seriously argue it is unable to accommodate its patient-facing employees with sincerely held religious objections to COVID-19 vaccination (especially while Riverside is apparently quite able and willing to accommodate its patient-facing employees with medical or pregnancy objections). Large and small healthcare employers in Illinois and across the country are regularly providing religious accommodations to patient-facing 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 Riverside'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 patient-facing healthcare employees from around the country, including four from Illinois (attached as **Exhibits 3–6**), demonstrating the availability and workability of accommodations for patient-facing healthcare workers with sincerely held religious objections to COVID-19 vaccination. (*See* Docs. 57-2 to 57-33, *Does v. Mills*, No. 1:21-cv-00242-JDL (D. Me. Sept. 17, 2021).) 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. 4; *see also* Ex. 3 (registered nurse in pediatric emergency room at University of Chicago Medical Center, Chicago); Ex. 5 (registered nurse at Advocate Aurora Health, Park Ridge); Ex. 6 (ICU nurse at Advocate Sherman Hospital, Elgin).) All of these declarations were obtained on short notice, in a matter of two days. We have since obtained many more. We are confident that, should this matter proceed to litigation, we will have **hundreds** of such declarations available.

In addition to the attached declarations from Illinois healthcare workers, the declarations filed in the Maine litigation demonstrate similar accommodations granted to patient-facing 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), *available at* https://lc.org/091721MaineHealthCareWorkerReply.pdf.) 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, 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 Riverside cannot follow the same accommodation policy.

Given that numerous employers similarly situated to Riverside have effectively accommodated their patient-facing employees with reasonable safety protocols (e.g., PPE, temperature checks, self-monitoring and reporting of symptoms, testing, etc.), which Riverside's employees are ready and willing to adopt, Riverside will not be able to carry its burden to show that accommodation of its employees will cause an undue hardship. Riverside cannot show that it is so uniquely situated that it cannot possibly provide its patient-facing employees the same accommodations provided by hundreds of healthcare employers to thousands of employees throughout the nation, including in Illinois.[2]

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

Implausibility aside, Riverside's "undue hardship" pretext is **legally irrelevant** under Illinois law guaranteeing Riverside employees the fundamental right to determine what medical care to accept and refuse. The **Illinois Health Care Right of Conscience Act**, 745 ILCS 70/1, *et*

[2] Moreover, Riverside's already dubious "scientific" justification for claiming undue hardship—"safety risks and legal liability from an increased risk for transmission"—is further weakened by the COVID-19 data constantly being compiled and analyzed. *See, e.g.*, Sanjay Mishra, *Evidence mounts that people with breakthrough infections can spread Delta easily*, National Geographic (Aug. 20, 2021), https://www.nationalgeographic.com/science/article/evidence-mounts-that-people-with-breakthrough-infections-can-spread-delta-easily; *see also Statement from CDC Director Rochelle P. Walensky, MD, MPH on Today's MMWR*, CDC, https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html (noting "**the Delta infection resulted in similarly high SARS-CoV-2 viral loads in vaccinated and unvaccinated people**" (emphasis added)).

seq., applies to Riverside employees and expressly prohibits public **and private** entities like Riverside from taking adverse employment action against anyone who declines a COVID-19 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 Riverside. 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. As noted in the opening paragraph, Liberty Counsel has recently obtained an attorney's fee award of $1,350,000 against the State of California for its violation of religious liberty rights on account of COVID-19. We believe that individual and class action suits against Riverside will result in fee liability easily dwarfing this figure, in addition to the significant discrimination damages recoverable by the employees themselves.

In sum, a person's right to refuse or accept medical care is not one to be interfered with lightly. As Justice Cardozo taught, "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). 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). By mandating that Riverside employees submit to one of the COVID-19 vaccines, and by refusing exemptions based on religious opposition to the vaccines, Riverside runs roughshod over the fundamental rights protected by the Act, and subjects Riverside to liability without regard to Riverside's pretextual justifications for its violations.

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

Riverside 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 Riverside 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 Riverside's accommodation. And given Riverside's barely concealed animus towards the religious beliefs of its employees, any employee who would risk Riverside's retaliation by making a religious exemption request should be presumed sincere, and the law requires it. By requiring clergy validation letters Riverside's exemption and accommodation process was illegal from the start. Employees who were discouraged from seeking exemptions by this unlawful practice must be given a chance to do so now, without this unlawful encumbrance.

Title VII of the Civil Rights Act of 1964 prohibits Riverside 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.'").

Riverside 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 Riverside 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 articulated reasons, the sincerely held religious beliefs of Employees 1–6 and many other Riverside employees compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Employees 1–6 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. Riverside 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 Riverside exemption request form. Riverside 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 Riverside 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 Riverside to condition any employee's request for religious accommodation on a third party's beliefs or acknowledgement of the employee's beliefs.

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 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,[3] does not change the EUA status of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020.[4] 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.[5] 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)."[6] Thus, it is not clear when (or if) any Riverside employee will have access to the "approved" COMIRNATY vaccine, leaving all (or at least the vast majority of) Riverside employees who may elect to receive the "Pfizer" vaccine pursuant to Riverside'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, Riverside's denials of the religious exemption requests of Employees 1–6 are unlawful. Riverside cannot compel any employee's compliance with Riverside's mandatory COVID-19 vaccination policy against the employee's sincerely held religious beliefs, and cannot single out religious exemption requests for disfavored treatment, even as against medical or pregnancy exemption requests. Moreover, it is unlawful for Riverside 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 Riverside that its pretextual and discriminatory denials of its employees' requests for religious accommodation are unlawful. Should Riverside continue its unlawful denials, however, Liberty Counsel will be forced to conclude that Riverside 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.

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

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

[5] *See* EUA Extension Letter, *supra* note 2, at 2 n.8.

[6] *See* BLA Approval Letter, *supra* note 1, at 2.

Liberty Counsel is giving Riverside the opportunity to grant the religious exemption requests of Employees 1–6 without litigation. To avoid litigation, Riverside must provide, prior to Thursday, September 29, at 5:00 P.M., Riverside's assurances that:

1) **Riverside has granted the religious exemption requests of Employees 1–6 and notified them of their granted exemptions;**

2) **Riverside has reinstated the employment of Employee 1, with the same compensation and benefits as before termination, and paid or agreed to pay Employee 1 the value of all lost wages and benefits and any out-of-pocket expenses resulting from the period of her unlawful termination;**

3) **Riverside will not deny (and will reverse any prior denial of) any religious exemption request based solely on the employee's patient-facing position;**

4) **Riverside will not deny (and will reverse any prior denial of) any religious exemption request based on evaluation criteria less favorable to religious exemption requests than to medical, pregnancy, or any other category of exemption allowed by Riverside;**

5) **Riverside 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;**

6) **Riverside 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;**

7) **Riverside 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; and**

8) **Riverside 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.**

Riverside's failure to respond positively or timely, or Riverside's taking of any adverse or retaliatory action against Employees 1–6 (or further adverse or retaliatory action against Employee 1), or any other employee who has requested religious accommodation, will indicate to Liberty Counsel that Riverside 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 1–6, and other Riverside employees, without further warning.

EVIDENCE PRESERVATION DEMAND

In connection with the foregoing Legal Demand, Liberty Counsel also demands that Riverside 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 Riverside Healthcare COVID-19 Vaccination Declination Consideration Committee;

2. All requests for exemption from or workplace religious accommodation with respect to receiving a COVID-19 vaccine submitted to the COVID-19 Vaccination Declination Consideration Committee or any other person or persons employed by or under the direction and control of Riverside, from Employee 1, 2, 3, 4, 5, or 6, or any other Riverside employee, and all communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of the COVID-19 Vaccination Declination Consideration Committee or such other person or persons concerning such exemption or accommodation requests; and

3. Any training received by any COVID-19 Vaccination Declination Consideration Committee member, consultant, employee, or volunteer, or any Riverside employee, consultant, volunteer, or board member regarding the conception, enactment, and administration of Riverside'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 Riverside to preserve records, data, documents, devices, and things from January 1, 2020, to the present (and continuing) in Riverside's possession and in the possession of any third party under its control. If Riverside knows or reasonably determines that

any older records, data, documents, devices, or things are potentially relevant, however, Riverside 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 Riverside 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 Riverside may deem not reasonably accessible. Liberty Counsel demands that Riverside preserve all responsive ESI, even if Riverside does not anticipate an obligation to produce such ESI in future litigation.

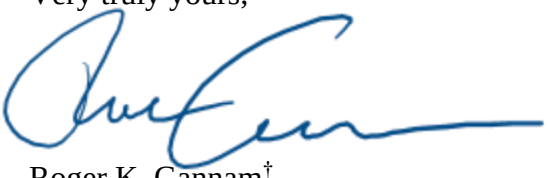
Preservation of ESI may require more than simply refraining from efforts to destroy or dispose of such evidence. Riverside may have to affirmatively intervene in automatic processes to prevent data loss due to routine operation and overwriting. For instance, sources of ESI can be altered and erased simply 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. Riverside should take care to employ proper techniques and protocols, hiring an expert to assist if necessary.

Riverside should be aware that employees or others may seek to hide, destroy, or alter ESI, and Riverside 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 Riverside will act swiftly to preserve data on office workstations and servers, Riverside should also determine whether any home or portable systems contain potentially responsive ESI. Riverside 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, Riverside 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 Riverside's failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production to which Employee 1, 2, 3, 4, 5, or 6 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†
Asst. Vice President of Legal Affairs
LIBERTY COUNSEL

c:	Andreas Mamalakis[‡] Local Counsel	andreasmamalakis@yahoo.com
	Kyle E. Benoit, MHA, FACHE Senior Vice President, Chief Operating Officer	kbenoit@rhc.net
	Patricia K. Vilt, CPA, MBA, MJ Senior Vice President, Chief Financial Officer, Chief Compliance Officer	pvilt@rhc.net
	LaTivia Carr, RN, MSN, NEA-BC Vice President, Chief Nursing Officer	lcarr@rhc.net
	Rebecca K. Hinrichs, MBA, SPHR, SHRM-SCP, CCP, CHHR, HCS Vice President of Human Resources	bhinrichs@rhc.net
	Kirk B. Larson, MHSA, MBA Vice President, Chief Information Officer	klarson@rhc.net
	Keith A. Moss, MD, MA, FACP Vice President, Chief Medical Officer, Chief Medical Information Officer	kmoss@rhc.net
	Kathy O'Grady, RN, MSN Vice President of Clinical Services	kogrady@rhc.net
	Rebecca L. Schiltz, PT, MHS, MBA, LNHA Vice President of Post-Acute Services	rschiltz@rhc.net
	Dawn Willbarger, MBA Vice President of Riverside Medical Group	dwillbarger@rhc.net
	Jo Kilpatrick, RN, MSN Director of Perioperative Services	jkilpatrick@rhc.net

[†] Licensed in Florida
[‡] Licensed in Illinois.