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REPLY TO FLORIDA

October 1, 2021

By E-mail

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Appeal Vaccination Exemption Committee
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Shivani Bautista
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NorthShore University HealthSystem
1301 Central Street
Evanston, Illinois 60201

**Re: Unlawful Exemption Request Form and
Unlawful Denials of Religious Exemptions from
Mandatory COVID-19 Vaccination Policy**

**NORTHSHORE'S RELIGIOUS EXEMPTION REQUEST FORM, ITS
EXEMPTION PROCESS, AND ITS INDISCRIMINATE MASS DENIALS
OF EXEMPTION REQUESTS ARE ILLEGAL.**

**THIS IS A LEGAL DEMAND LETTER INCLUDING AN EVIDENCE
PRESERVATION DEMAND.**

**YOUR PROMPT RESPONSE IS REQUIRED ON OR BEFORE OCTOBER
7, 2021 AT 5:00 P.M. TO AVOID A LAWSUIT.**

Dear Mr. Gallagher, Ms. Bautista, and Members of the NorthShore Appeal Vaccination 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); *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 both a federal district court** (*see Does v. Hochul, supra*, Doc. 35), **and the Second Circuit Court of Appeal**. *See We the Patriots USA, Inc. v. Hochul*, 21-2179, Doc. 65 (2nd Cir. September 30, 2021) (granting injunction pending appeal against state policy of denying religious exemptions to COVID-19 vaccination requirement for healthcare workers). 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 with sincere religious objections to forced vaccination mandates.

I write on behalf of the 14 NorthShore employees named below (*infra* Part B), and numerous others, who are requesting exemption from NorthShore's mandatory COVID-19 vaccination policy and a reasonable accommodation for their sincerely held religious beliefs, but have been unlawfully denied exemption by NorthShore based on a patently sham and biased process.

NorthShore's unlawful process is highlighted by the following facts. After first granting the exemptions for some employees, NorthShore then unilaterally re-reviewed the requests and denied them in mid-September. Those denials were either without explanation or purportedly because the requests failed to meet some phantom "evidence-based criteria" that NorthShore never provided its employees in advance. NorthShore then only gave employees **three** business days to file an appeal – providing no guidance on what was deficient in the original application. In that appeal, and regardless of the nature of any individual request, NorthShore also required employees to do the impossible – include their **entire vaccination history since the age of eighteen**, ostensibly to judge the validity of their religious beliefs, even though NorthShore never requested its employees to provide prior vaccine information in their initial exemption requests.

More recently, NorthShore removed all pretense of a lawful exemption process by suddenly changing its exemption form to include a warning that all religious objections based on "aborted fetal cell lines, stem cells, tissue or derivative materials" "**will result in denials**," because supposedly "[t]hese are not in the NorthShore administered vaccines." NorthShore **falsely** asserts or implies in that form that the COVID-19 vaccines have no link to aborted fetal cell lines, and also **unlawfully** purports to judge as invalid the religious beliefs of employees who object to the vaccines' indisputable connection to aborted fetal cell lines. It is not up to NorthShore to coerce an employee to not apply for religious accommodation or to argue either theologically or scientifically against their sincerely held religious beliefs.

Liberty Counsel has been retained by many of your employees to bring legal action if NorthShore continues to deny their religious exemption requests, and we are actively seeking to represent, *pro bono*, additional NorthShore employees who are adversely affected by NorthShore's illegal mandate and exemption process.

For the following reasons, we urge NorthShore to change course immediately, and to advise us that it has done so, so that imminent legal action can be avoided.

A. NorthShore's Revised Exemption Form Is Patently False and Misleading as to the Connection Between Aborted Fetal Cells and COVID-19 mRNA Vaccines.

Indisputably, **all three** of the currently available COVID-19 vaccines are produced by, derived from, manufactured with, tested on, developed with, or otherwise connected to or associated with aborted fetal cell lines. There is no question about the accuracy of this determination, and NorthShore is categorically false in its contrary directive to employees.

The North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: “[t]he 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.**”¹ (emphasis added). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine, which used PER.C6 fetal cell line, “is a retinal cell line that was **isolated from a terminated fetus in 1985.**”² (emphasis added).

The same is true of the Moderna and Pfizer/BioNTech mRNA vaccines, despite NorthShore's false implication to the contrary. The Louisiana Department of Health's publications again confirm that aborted fetal cell lines were used in the “proof of concept” phase of the development of their COVID-19 mRNA vaccines.³ The North Dakota Department of Health, in its handout literature on COVID-19 vaccines, notes that **for the Pfizer and Moderna vaccines**: “[e]arly 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.**”⁴ And, the Los

¹ North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), available at https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf

² Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), available at https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf

³ Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), available at https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf.

⁴ See North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), available at https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf (last visited Aug. 10, 2021) (emphasis added).

Angeles County Department of Public Health has made clear that, **for both the Pfizer and Moderna Vaccines**, “a cell line was used to test the efficacy of both vaccines.”⁵

Therefore, NorthShore’s pretext for excluding religious beliefs premised on the demonstrable and undeniable association between all three COVID-19 vaccines and aborted fetal cell lines is patently false, and the exclusion of those beliefs is unlawful and discriminatory, for at least three reasons:

- 1) To the extent NorthShore states or implies that the three COVID-19 vaccines available to its employees have no connection or association with aborted fetal cell lines, NorthShore is factually dead wrong, and its position is indefensible.
- 2) To the extent any exemption requests based on the indisputable association between the three COVID-19 vaccines and aborted fetal cell lines are denied *ab initio* by NorthShore on the ground that the COVID-19 vaccines do not “contain” aborted fetal cells, such strawman denials are dishonest and unlawful because they completely sidestep the employees’ **actual** religious objections to the vaccines’ demonstrable use of fetal cell lines in their **testing, research and development**.
- 3) And finally, to the extent NorthShore deems religious objections based on the vaccines’ irrefutable use of aborted fetal cells for testing, research and development as unworthy of accommodation because NorthShore disagrees with the correctness or validity of these religious convictions, NorthShore’s denials are flatly illegal. (*See Part E, infra*).

NorthShore must immediately revise (again) its unlawful religious exemption form and must afford a reasonable opportunity to employees who wish to revise their religious exemption requests because they relied on NorthShore’s illegal directive to exclude protected religious beliefs from their initial requests or their appeals.

One final point on this subject: NorthShore’s regional peer, Advocate Health Care, previously attempted a similar maneuver as NorthShore, purporting to exclude from consideration religious beliefs based on the vaccines’ use of fetal cell lines. I assume that you know this, since NorthShore’s revised exemption form looks to be a mere copycat and plagiarized version of Advocate’s exemption form. What you may not be aware of, however, is that **Advocate ultimately heeded the warning in our demand letter** (<https://lc.org/newsroom/details/081921-advocate-health-care-must-revise-illegal-exemption-form>), and **granted every last one of the numerous exemption requests it received premised on fetal cell lines**. We are aware of many dozens of such requests that Advocate granted. In fact, we have counseled hundreds of Advocate employees, and we are not aware of a single one who submitted an exemption request based on religious objections to aborted fetal cells, and who was ultimately not approved for an exemption. Although it copied Advocate’s form, **NorthShore now stands alone**. NorthShore should continue to follow Advocate’s lead, revise its unlawful exemption form, and grant these requests.

⁵ See Los Angeles County Department of Public Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), available at http://publichealth.lacounty.gov/media/Coronavirus/docs/vaccine/VaccineDevelopment_FetalCellLines.pdf

B. NorthShore's Exemption Process is a Sham that Unlawfully and Indiscriminately Denies Meritorious Religious Exemption Requests *En Masse*.

In reviewing exemption request documents from dozens of NorthShore employees, one thing is very clear – NorthShore's entire exemption process is a sham. Until recently, NorthShore required employees seeking religious exemption from COVID-19 vaccination to submit their requests on a previous version of its Religious Exemption Form, which contained no "criteria," "evidence-based" or otherwise, to guide employees as to what information or "evidence" NorthShore was seeking. The **sole requirement** provided by NorthShore to anyone seeking a religious exemption was to include "a description of my sincerely held religious principle or practice that guides my objection to receiving the required vaccination." NorthShore asked employees to limit their responses to a mere **five lines of text**, "if possible," indicating to them very clearly that NorthShore was **not** seeking detailed explanations.

Even though NorthShore's employees went far above and beyond what NorthShore itself requested, and submitted **detailed** letters explaining the basis of their sincerely held religious beliefs against the vaccine, NorthShore ultimately and uniformly denied all exemptions for no reason at all, or for supposed lack of "evidence-based criteria," without identifying any such evidence – either in advance or at the time of the denials. In fact, NorthShore had previously granted one of its employees (Employee 1) a "lifetime religious exemption" to all vaccines, and told her that she did "**not need to submit exemption requests anymore**," (Exhibit 1, p. 3), but then denied even her a religious exemption to the COVID-19 vaccine for supposed lack of "evidence-based criteria." (Exhibit 1, p. 4).

With no guidance from NorthShore as to the criteria it would use in reviewing the exemption requests, NorthShore simply denied them and instructed employees to file their appeals within three business days. NorthShore's "Appeal for Exemption" form also contained no guidance for employees as to any criteria NorthShore would be using or expecting.

In at least one case, an employee privately requested clarification as to what NorthShore meant by "evidence-based criteria." NorthShore privately told the employee that the committee supposedly evaluated (1) whether the request includes a clear description of the sincerely held religious belief or practice that supports the request and (2) why such belief or practice guides the individual's objection to receiving the required vaccination. The email further stated that if the employee previously obtained vaccines, then a "satisfactory explanation of how this vaccine impacts their religious belief or practice is necessary."

As explained below, all of the dozens of individual exemption requests we have reviewed clearly meet NorthShore's unpublished, purported "criteria," yet were **still** denied. Moreover, as also discussed below, although NorthShore is entitled to request a description of its employees' sincerely held religious belief and how those beliefs guide their objection to the vaccine, NorthShore is **not** permitted to judge the validity or reasonableness of its employees' religious beliefs, including whether NorthShore believes an employee has always acted in the way NorthShore believes would be consistent with the stated religious beliefs. Yet, it appears the entire

appeals process has placed NorthShore in judgment of its employees' religious beliefs. Indeed, the recent change to the exemption form brings that judgment to light – telling employees not even to bother with asserting the basis of their religious beliefs if it relates to the use of aborted fetal tissue.

Following are numerous examples of meritorious requests for religious exemption from NorthShore's COVID-19 vaccine requirement that resulted in NorthShore'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**.

Employee 8: [REDACTED]. Exemption request attached as **Exhibit 8**.

Employee 9: [REDACTED]. Exemption request attached as **Exhibit 9**.

Employee 10: [REDACTED]. Exemption request attached as **Exhibit 10**.

Employee 11: [REDACTED]. Exemption request attached as **Exhibit 11**.

Employee 12: [REDACTED]. Exemption request attached as **Exhibit 12**.

Employee 13: [REDACTED]. Exemption request attached as **Exhibit 13**.

Employee 14: [REDACTED]. Exemption request attached as **Exhibit 14**.

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

Each and every single one of these employees plainly and completely explained their sincerely held religious objections to receiving a COVID-19 vaccine. (Exhibits 1 – 14). For example:

- 1) Each of these employees provided “evidence” of their religious beliefs, including references to multiple Bible verses which they understand as commands from God to abstain from this vaccine. (*Id.*)
- 2) With only one or two exceptions, each of these employees provided the name and telephone number of their religious leader, as improperly requested by NorthShore. (*Id.*) (*See Part E, infra*). Most of the employees also provided letters of support from their clergy and churches, further discussing and validating their sincere religious beliefs, even though NorthShore did not, and could not legally, require such letters. (Exhibits 1- 14) (*See Part E, infra*).
- 3) These employees also provided ample “evidence” of the indisputable connection between the COVID-19 vaccines and aborted fetal cells, including by reference to multiple government websites that establish and document this connection. (Exhibits 2 – 14). Several of the clergy letters provided by these employees also themselves contain further evidence of the connection between COVID-19 vaccines and aborted fetal cells. (*Id.*)

Indeed, many of these requests are among the most complete we have seen in our work nationwide, and we have seen many **thousands** of such requests. And yet, NorthShore has denied all fourteen employees’ exemption requests (and numerous others) with the same generic and non-descript communication referring to phantom “evidence-based criteria.” It is clear from NorthShore’s denials, that NorthShore never intended to grant any of these exemption requests to begin with, and that its entire exemption process is a sham.

In fact, we are confident that the discovery process in any litigation will reveal that NorthShore’s exemption process was designed to result, and indeed resulted, in the rote and indiscriminate denial of all or almost all legally sufficient requests. (Please see the evidence preservation demand at the end of this letter.) And, the fact that (prior to receiving this letter) NorthShore has granted none, or only a minuscule portion, of the many exemption requests it received will be powerful evidence of its sham process and bad faith in dealing with these requests.

Let us be clear: NorthShore’s claim that these employees somehow failed to explain their religious beliefs sufficiently to apprise NorthShore of the need for accommodation is both offensive and laughable. **It will not survive summary judgment in a court of law.**

NorthShore’s employees provided all of the explanation and “evidence” that the law requires, and much more, because:

... inquiry into the sincerity of a person’s religious belief **must be handled with a light touch**, or judicial shyness. Examining religious convictions any more deeply would stray into the realm of religious inquiry, an area into which we are forbidden to tread. Indeed, **the sincerity of a plaintiff’s engagement in a particular religious practice is rarely challenged**, and claims

of sincere religious belief in a particular practice have been accepted on little more than the plaintiff's credible assertions.

Davis v. Fort Bend County, 765 F.3d 480, 485–86 (5th Cir. 2014) (emphasis added) (cleaned up). Indeed:

In such an intensely personal area, of course, **the claim of the registrant that his belief is an essential part of a religious faith must be given great weight. The validity of what he believes cannot be questioned.** Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's 'Supreme Being' or the truth of his concepts. But these inquiries are foreclosed to Government.

Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 448 (7th Cir. 2013) (emphasis added) (cleaned up).

In applying a heavy and unforgiving boot instead of the "light touch" permitted by courts, and in questioning the sincerity of its employees' beliefs even though sincerity is "rarely challenged," *Davis*, 765 F. 3d at 485-86, NorthShore is running a fool's errand. These tactics will not succeed in any eventual litigation, where courts, unlike NorthShore, will give the asserted beliefs of NorthShore's employees "great weight," and will not question their validity. *Adeyeye*, 721 F.3d at 448.

In sum, NorthShore received from its employees exactly what NorthShore requested on its original exemption form, and much more – a description of the employees' sincerely held religious beliefs against the COVID-19 vaccination requirement. NorthShore did not ask for more, and cannot lawfully require more. NorthShore must grant these exemptions forthwith.

C. NorthShore Cannot Justify Mass and Indiscriminate Denials of Exemption Requests Based Upon Prior Vaccination Records.

The pretextual and sham nature of NorthShore's religious exemption process is also evidenced by NorthShore's recent insistence that its employees suddenly provide – within just three business days – their vaccination records for their entire adult lives. This purported requirement is so far beyond the line of legality that we have difficulty imagining that it was ever vetted or approved by legal counsel. There are multiple reasons why NorthShore's purported requirement for prior vaccination histories is pretextual and will not withstand legal scrutiny:

- 1) As with all other phantom "criteria," NorthShore did not disclose this purported requirement on its initial exemption request form. When it denied those initial exemption requests *en masse*, NorthShore then gave employees only **three** business days to provide their full vaccination records for their entire adult lives, knowing full well that this would be an impossible task to complete for most employees on such an artificially truncated time frame.

- 2) Moreover, an employee's prior vaccination record is irrelevant, because:
- (a) prior vaccines, such as the annual flu shot, may not have been developed, tested or researched using fetal cell lines from aborted children;
 - (b) even if some prior vaccines taken by NorthShore employees were developed, tested or researched using fetal cell lines, NorthShore's employees were not aware of those connections, and therefore cannot be faulted for having taken them; and,
 - (c) most importantly, even if some prior vaccines taken by NorthShore employees were developed, tested or researched using fetal cell lines, and even if any NorthShore employee was aware of such a connection (which is not conceded), NorthShore's policy and inquiry leaves no room for such employees to regret and repent of those prior actions, and to attempt to be more faithful in their religious convictions going forward. NorthShore's inquisition seeks to deny a core concept of Christian theology, namely that God is faithful and just to forgive past sins which a Christian confesses and repents of (meaning turns away from **and genuinely tries not to repeat**). *See* 1 John 1:9

NorthShore's insistence on vaccination records, and its denials of exemptions on this ground, is transparently pretextual, and will not survive summary judgment in a court of law. NorthShore must immediately rescind and abandon this unlawful requirement.

D. Illinois Law Prohibits NorthShore'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 NorthShore 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 NorthShore employees and expressly prohibits public **and private** entities like NorthShore 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 NorthShore. 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. E), 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 NorthShore employees submit to one of the COVID-19 vaccines, and by refusing exemptions based on religious opposition to the vaccines, NorthShore runs roughshod over this basic protection. If any NorthShore 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).

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

NorthShore has no legal authority to dictate what its employees’ religion is or ought to be, or to be the arbiter of the validity or reasonableness of any employee’s religious beliefs. Nor does NorthShore 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 NorthShore’s accommodation. And given NorthShore’s barely concealed animus towards the religious beliefs of its employees, any employee who would risk NorthShore’s retaliation by making a religious exemption request should be presumed sincere, as the law requires.

Title VII of the Civil Rights Act of 1964 prohibits NorthShore 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.’”).

NorthShore 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 ... 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 NorthShore 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.

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

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,⁶ **does not change the EUA status** of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020.⁷ 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.⁸ 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).”⁹ Thus, it is not clear when (or if) any NorthShore employee will have access to the “approved” COMIRNATY vaccine, leaving all (or at least the vast majority of) NorthShore employees who may elect to receive the “Pfizer” vaccine pursuant to NorthShore’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, NorthShore’s denials of the religious exemption requests of Employees 1–14 are unlawful. Indeed, NorthShore cannot compel any employee’s compliance with NorthShore’s mandatory COVID-19 vaccination policy against the employee’s sincerely held religious beliefs. Moreover, it is unlawful for NorthShore to exclude consideration of any employee’s sincerely held beliefs against the use of aborted fetal cells in vaccination, or 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 NorthShore that its ongoing and unsubstantiated denials of its employees’ requests for religious accommodation are unlawful. Should NorthShore continue its summary denials, however, Liberty Counsel will be forced to conclude that NorthShore 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.

⁶ BLA Approval Letter for COMIRNATY, COVID-19 Vaccine, mRNA (Aug. 23, 2021), <https://www.fda.gov/media/151710/download>.

⁷ EUA Extension Letter for Pfizer-BioNTech COVID-19 Vaccine (Aug. 23, 2021), <https://www.fda.gov/media/150386/download>.

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

⁹ See BLA Approval Letter, *supra* note 1, at 2.

Liberty Counsel is giving NorthShore the opportunity to grant the religious exemption requests of Employees 1–14, and all other similarly situated employees, without litigation. To avoid litigation, NorthShore must provide, prior to October 7, 2021, at 5:00 P.M., an assurance that:

- 1) NorthShore has granted the religious exemption requests of Employees 1–14 and notified them of their granted exemptions;**
- 2) NorthShore has revised its current religious exemption request form, to remove all unlawful exclusions of protected religious beliefs against the use of aborted fetal cells in vaccinations, and NorthShore will provide employees who have already used this form with an opportunity to re-submit their exemption requests free of NorthShore’s unlawful limitations and exclusions;**
- 3) NorthShore will not deny (and will reverse any prior denial of) any religious exemption request where the request plainly discloses an employee’s sincere religious objection to receiving the COVID-19 vaccines developed, tested, produced, or otherwise connected to aborted fetal cell lines, or plainly discloses any other religious objection to receiving any of the COVID-19 vaccines;**
- 4) NorthShore 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;**
- 5) NorthShore 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;**
- 6) NorthShore 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**
- 7) NorthShore will not deny any religious exemption request without providing specific reasons for the denial, tailored to each individual request, and will provide specific and individual reasons for denial at the request of any previously denied employee.**

NorthShore’s failure to respond positively or timely, or NorthShore’s taking of any adverse or retaliatory action against Employees 1–14, or any other employee who has requested religious accommodation, will indicate to Liberty Counsel that NorthShore 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 1–14, and other NorthShore employees, without further warning.

EVIDENCE PRESERVATION DEMAND

In connection with the foregoing Legal Demand, Liberty Counsel also demands that NorthShore 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 NorthShore's committee tasked with evaluating religious exemption requests;
2. All internal and external communications of NorthShore regarding the availability of religious exemption requests, the procedures for requesting same, the bases for granting or denying same, the strategies for encouraging increased vaccination rates, and the goals, objectives and strategies of NorthShore in dealing with religious exemption requests.
3. All internal and external communications of NorthShore regarding its forms for requesting religious exemptions, including all considered and actual revisions of such forms;
4. All requests for exemption from, or workplace religious accommodation to, receiving a COVID-19 vaccine submitted to NorthShore by Employees 1-14, or any other NorthShore employee, and all communications, analyses, opinions, deliberations, decisions, meetings, and other official or unofficial actions of NorthShore concerning such exemption or accommodation requests; and
5. Any training received by any NorthShore employee, consultant, or volunteer regarding the conception, enactment, and administration of NorthShore'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 NorthShore to preserve records, data, documents, devices, and things from January 1, 2020, to the present (and continuing) in NorthShore's possession and in the possession of any third party under its control. If NorthShore knows or reasonably determines that any older records, data, documents, devices, or things are potentially relevant, however, NorthShore 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 NorthShore 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 NorthShore may deem not reasonably accessible. Liberty Counsel demands that NorthShore preserve all responsive ESI, even if NorthShore does not anticipate an obligation to produce such ESI in future litigation.

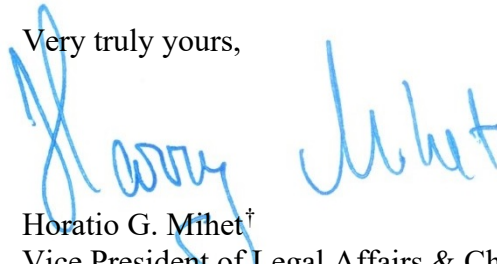
Preservation of ESI may require more than simply refraining from efforts to destroy or dispose of such evidence. NorthShore may have to affirmatively intervene in automatic processes to prevent data loss due to routine operation and overwriting. For instance, sources of ESI can be altered and erased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

NorthShore should be aware that employees or others may seek to hide, destroy, or alter ESI, and NorthShore 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 NorthShore will act swiftly to preserve data on office workstations and servers, NorthShore should also determine whether any home or portable systems contain potentially responsive ESI. NorthShore 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, NorthShore 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 NorthShore's failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production to which plaintiffs in litigation against NorthShore 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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