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REPLY TO FLORIDA

June 21, 2021

VIA FACSIMILE

Pamela G. Costas
General Counsel
Loyola University Chicago
820 N. Michigan Suite 750
Chicago, IL 60611
FAX: 312.915.6208

RE: Loyola University Chicago COVID vaccine mandates

Dear Ms. Costas:

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 have had great success holding both government entities 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); *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341 (7th Cir. 2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020).

We are writing on behalf of students of Loyola University Chicago ("Loyola" or "the University") who have engaged us to secure their constitutional and statutory rights not to be required to undergo COVID-19 vaccination as a condition of enrollment and participation in in-person classes and activities. Undoubtedly, many of their classmates have similar convictions, and we write on their behalf as well. One such student, _____, provided the University with the excerpted religious accommodation request below.

_____ is one student among many who have contacted Liberty Counsel regarding recent directives mandating the COVID vaccine as a condition of further participation in in-person learning. _____ wishes to decline the University's vaccination demands based upon her sincerely held religious beliefs and conscience objections, without adverse enrollment action taken against her.

Loyola's Nondiscrimination Policy states that the University "does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of race,

color, **religion.... This Nondiscrimination Policy prohibits discrimination in employment and in providing access to educational opportunities.**"¹ (Emphasis added).

engaged with the University on the issue of why her religious beliefs do not allow her to accept the vaccine, founding the request on various scriptural grounds, including sanctity of life. On May 14, Loyola responded denying request, stating her objections only applied to the Johnson & Johnson vaccine's use of a certain aborted fetal cell line. On Thursday, May 20, 2021, appealed to the Student Wellness Center. sent a copy of the appeal to the Office of the General Counsel, in applicable part:

I'm writing to appeal the denial of my initial request for a religious exemption. In addition to all of the reasons I have set forth in my initial request, I have prayed long and hard about whether I should accept any COVID shots. Based on my asking God for wisdom in what to do, my conscience simply will not let me get the shot.

I'll explain further: before Jesus went back to his Father in Heaven, he promised to send His Holy Spirit to indwell any person who recognizes their sin, repents of their sin and places their trust in Him alone for salvation by grace and through faith in His finished work on the Cross. No good works that we do can gain us favor with God – only our faith in Jesus.

Jesus said the Holy Spirit will guide each person who repents of their sin and believes on Him into all truth. As a believer in Jesus, the Holy Spirit lives in me. As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not accept the COVID shot. If I were to go against the moving of the Holy Spirit, I would be sinning and jeopardizing my relationship with God, and violating my conscience.

As of today, has not heard back from Loyola's Student Wellness Center or Office of the General Counsel. The University has mandated that students take the COVID injections, and is now threatening the students' degree completion programs if they do not accept the COVID shots.

The COVID-19 pandemic does not justify violations of fundamental individual, economic and religious liberties. These include the rights of personal autonomy and bodily integrity, and the right to accept or reject the various COVID vaccines based on religious belief. Aside from religious objections, all existing COVID vaccines are permitted under a federal Emergency Use Authorization ("EUA"), and the University may not condition participation in degree programs, housing or continued enrollment on taking an EUA-authorized COVID vaccine.

Notwithstanding certain religious leaders' blessing of various COVID vaccines, some of the faculty, staff and students within the Loyola University community nonetheless hold sincere religious or conscience-based personal beliefs against taking any vaccines, or taking those derived from aborted fetal cell lines, or taking those sold by companies that profit from the sale of vaccines and other products derived from abortion. Others are concerned regarding the potential long-term health effects of all of the current COVID vaccines, which have not been subject to long-term testing, and have only been approved by the Food and Drug Administration ("FDA") under an EUA. These

¹ <https://www.luc.edu/nondiscrimination.shtml>

latter have conscience rights as well, under Illinois law.

For the reasons that follow, Loyola University must respect these religious and conscience objections and cannot condition enrollment, course selection or degree completion on mandatory vaccinations.

EUA Vaccines Cannot Be Mandatory

University employees and students are protected against mandated COVID vaccines under [21 U.S.C. §360bbb-3](#), which provides that Emergency Use Authorization products (like all of the COVID vaccines) require (as a condition of emergency approval) that people have “**the option to accept or refuse administration of the product.**” “FDA has an obligation to ensure that recipients of the vaccine under an EUA are informed... that they have the option to accept or refuse the vaccine...”² Amanda Cohn, MD, the Executive Secretary of The Centers for Disease Control Advisory Committee on Immunization Practices (CDC-ACIP) confirmed the non-mandatory nature of an EUA vaccine: “I just wanted to add that, just wanted to remind everybody, that **under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory.** So, early in this vaccination phase, individuals will have to be consented and they won’t be able to be mandated.” (Emphasis added).³

Illinois Executive Orders and Laws:

Illinois has not issued or authorized Loyola University’s COVID vaccine mandate. Governor Pritzker has not mandated that every Illinois resident take COVID vaccinations (nor can he).⁴ Statewide in Illinois, COVID cases have been declining, without mandatory vaccinations.⁵

Illinois’s **Religious Freedom Restoration Act (“Illinois RFRA”)** defines an “Exercise of religion” as “an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.”

The **Illinois Health Care Right of Conscience Act**, 745 ILCS § 70/1 *et seq*, applies to teachers, staff, and students, and expressly prohibits even private universities such as Loyola University from taking adverse employment or education action against anyone who declines a COVID injection on the basis of 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,

² <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

³ <https://www.youtube.com/watch?v=p0zCEiGohJs&list=PLvvp9iOILTQb6D9e1YZWpbUvzfptNMKx2&index=43>. See Minute 1:14:40.

⁴ <https://www.dph.illinois.gov/covid19/governor-pritzkers-executive-orders-and-rules>

⁵ <https://www.wifr.com/2021/03/28/idph-2678-new-cases-of-covid-19-25-deaths/>

...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 Legislature has also specifically outlawed employment discrimination as well:

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 [essentially anything]... in connection with the use or procurement of contraceptives and sterilization or abortion procedures...**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 rendered by "paraprofessionals" and other persons within the contemplation of the Act.

Courts in Illinois have held that the Health Care Right of Conscience Act's non-discrimination provisions protect **all** "persons," not just employees in the healthcare field. See *e.g.*, *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052, 1057 (C.D. Ill. 2007) ("Wal-Mart also argues that the Right of Conscience Act is also limited to 'health care personnel' as defined in the statute. However, **the anti-discrimination provisions are not limited to health care personnel.** ... the Right of Conscience Act prohibits **discrimination against any 'person.'**" (emphasis added)).

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 the University. 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).

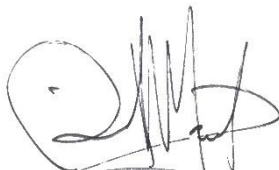
The University must accommodate sincere religious beliefs, and comply with federal and state law. Moreover, given the University’s threats of adverse enrollment consequences for dissenters, our client and constituents are concerned that the University will retaliate against them for their objections to the University’s mandatory vaccination policy.

We are therefore requesting a written assurance from the University that: (1) the University vaccine mandate has been withdrawn as to [redacted] and any other students who have made a religious or conscience objection to the vaccine; and (2) the University will not take any adverse employment or enrollment action, or otherwise retaliate, against any employee or student who objects to the University’s vaccination mandate and requests an exemption.

If we do not receive these assurances by close of business on June 28, 2021 we will unfortunately conclude that only litigation will prevent Loyola University from inflicting irreparable harm on the rights of students and staff, and we will proceed accordingly.

Thank you for your consideration and prompt response.

Sincerely,



Richard L. Mast†



Horatio G. Mihet††

CC

Via Email

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