

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JANE DOES 1–6, JOHN DOES 1–3, JACK DOES 1–1000, JOAN DOES 1–1000,

Applicants,

v.

JANET T. MILLS, in her official capacity as Governor of the State of Maine,
JEANNE M. LAMBREW, in her official capacity as Commissioner of the Maine
Department of Health and Human Services, NIRAV D. SHAH, in his official
capacity as Director for the Maine Center for Disease Control and Prevention,
MAINEHEALTH, GENESIS HEALTHCARE OF MAINE, LLC, GENESIS
HEALTHCARE, LLC, NORTHERN LIGHT HEALTH FOUNDATION,
MAINEGENERAL HEALTH,

Respondents.

APPENDIX OF EXHIBITS

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EXHIBIT 1

**United States Court of Appeals
For the First Circuit**

No. 21-1826

JOHN DOES, 1-3; JACK DOES, 1-1000; JANE DOES, 1-6; JOAN DOES, 1-1000,

Plaintiffs - Appellants,

v.

JANET T. MILLS, in her official capacity as Governor of the State of Maine; JEANNE M. LAMBREW, in her official capacity as Commissioner of the Maine Department of Health and Human Services; NIRAV D. SHAH, in his official capacity as Director of the Maine Center for Disease Control and Prevention; MAINEHEALTH; GENESIS HEALTHCARE OF MAINE, LLC; GENESIS HEALTHCARE, LLC; NORTHERN LIGHT HEALTH FOUNDATION; MAINEGENERAL HEALTH,

Defendants - Appellees.

Before

Howard, Chief Judge,
Lynch and Barron, Circuit Judges.

ORDER OF COURT

Entered: October 15, 2021

The appellants' emergency motion for an injunction pending appeal is denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Ryan P. Dumais
James R. Erwin
Roger K. Gannam
Richard Brian Katskee
Thomas A. Knowlton

Alexander Joseph Luchenitser
Horatio Gabriel Mihet
Kimberly Leehaug Patwardhan
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EXHIBIT 2

From: cmecf@med.uscourts.gov
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Date: Wednesday, October 13, 2021 4:50:00 PM

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U.S. District Court

District of Maine

Notice of Electronic Filing

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Case Name: JANE DOES 1-6 et al v. MILLS et al

Case Number: [1:21-cv-00242-JDL](#)

Filer:

Document Number: 68(No document attached)

Docket Text:

ORDER re [67] Motion for Order - Plaintiffs have filed an Emergency Request for Ruling on Pending Motion for Injunction Pending Appeal. ECF No. 67. The Plaintiffs have not filed a separate Motion for an Injunction Pending Appeal. However, I will treat the Emergency Request as a motion seeking a stay or other relief authorized by Fed. R. App. P. 8(a)(1)(C). For the reasons stated in the Order Denying Motion for Preliminary Injunction (ECF No. 65), Plaintiffs Motion for an Injunction Pending Appeal (ECF No. 67) is ORDERED denied. By JUDGE JON D. LEVY. (aks)

1:21-cv-00242-JDL Notice has been electronically mailed to:

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1:21-cv-00242-JDL Notice has been delivered by other means to:

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EXHIBIT 3

JANE DOES 1-6 et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:21-cv-00242-JDL
)	
JANET T. MILLS, in Her Official)	
Capacity as Governor of the)	
State of Maine, et al.,)	
)	
Defendants.)	

ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Plaintiffs, eight individual healthcare workers and one individual healthcare provider, seek a preliminary injunction (ECF No. 3) prohibiting Janet T. Mills, Maine's Governor, and other named defendants from requiring all employees of designated healthcare facilities to be vaccinated against the SARS-CoV-2 coronavirus—the cause of COVID-19 infections—through the enforcement of the rule, Immunization Requirements for Healthcare Workers, 10-144-264 Me. Code R. §§ 1-7 (2021)¹ (the "Rule"), as amended August 12, 2021. The Plaintiffs contend that the vaccination requirement violates their First Amendment and other federal constitutional and statutory rights because it does not exempt from its requirements individuals whose sincerely held religious beliefs cause them to object to being

¹ The Rule can be found at <https://www.maine.gov/dhhs/mecdc/rules/maine-cdc-rules.shtml> (perma.cc/R3UM-ZBN3) (navigate to the text of the Rule by selecting "Emergency," and then choosing "Emergency Rulemaking: 10-144 CMR Ch. 264 – Immunization Requirements for Healthcare Workers.").

vaccinated against COVID-19. Seven of the nine plaintiffs also contend that their employers violated federal employment law by refusing to grant them a religious exemption from the vaccination requirement.

The Plaintiffs' five-count Complaint (ECF No. 1) names as defendants, in their official capacities, Governor Mills; Dr. Nirav D. Shah, the Director of Maine CDC; and Jeanne M. Lambrew, the Commissioner of the Maine Department of Health and Human Services ("DHHS") (the "State Defendants"). The Complaint also names five incorporated entities that operate healthcare facilities in Maine: Defendants Genesis Healthcare of Maine, LLC; Genesis Healthcare, LLC; Northern Light Health Foundation; MaineHealth; and MaineGeneral Health (the "Hospital Defendants").

The Rule requires all employees of designated healthcare facilities² to receive their final dose of the vaccination against the SARS-CoV-2 coronavirus by September 17, 2021. 10-144-264 Me. Code R. § 5(A)(7) (effective Aug. 12, 2021). On September 2, 2021, the DHHS and Maine CDC announced that they would not begin enforcing the Rule's provisions until October 29, 2021, to allow additional time for employees of designated healthcare facilities to comply with the Rule by receiving their final vaccine dose by October 15. ECF No. 49-5 at ¶ 37. If granted, the preliminary

² Under the Rule, designated healthcare facility "means a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification." The Rule also applies to dental health practices (where dentists and/or dental hygienists provide oral health care) and to Emergency Medical Services operations. 10-144-264 Me. Code R. § 1(D), (E), (H) (Aug. 12, 2021). All references to "designated healthcare facilities" in this Order include all of the entities subject to the Rule's requirements.

injunction would prohibit the Defendants from enforcing the Rule or terminating the Plaintiffs' employment based on their refusal to be vaccinated against COVID-19.

A hearing on the Motion for Preliminary Injunction was held on September 20, 2021.³ After careful consideration and for the reasons that follow, I deny the Plaintiffs' motion. (ECF No 3).

II. BACKGROUND

The parties have filed declarations and various exhibits in support of their positions. Except where otherwise noted, I have based my findings on these documents.⁴ Additionally, I take judicial notice of certain additional facts pertinent to the Motion. *See In re Colonial Mortgage Bankers Corp.*, 324 F.3d 12, 20 (1st Cir. 2003) (noting that although a district court is generally limited to examining the record, it may also consider "the documents incorporated by reference in it, matters of public record, and other matters susceptible to judicial notice"); *see also Loucka v. Lincoln Nat'l Life Ins. Co.*, 334 F. Supp. 3d 1, 8-9 (D.D.C. 2018) ("[T]he CDC's Lyme-testing criteria and procedures are a matter of public record, and it cannot be reasonably questioned that the agency's website is an accurate source for those standards.").

³ The Plaintiffs' Motion also included a request for an ex parte temporary restraining order to the same effect. On August 26, 2021, after a conference with the Plaintiffs' counsel, I denied that portion of the Motion (ECF No. 11), concluding that the Plaintiffs had not satisfied the requirements of Federal Rule of Civil Procedure 65(b)(1) for a temporary restraining order without providing notice to the Defendants.

⁴ The bulk of my findings regarding the COVID-19 pandemic and the State's response are derived from the Declaration of Dr. Nirav D. Shah, Director of Maine CDC, (ECF No. 49-4) and the Declaration of Sara Gagné-Holmes, Deputy Commissioner of the DHHS (ECF No. 49-5). The Plaintiffs have not submitted declarations that dispute the factual assertions made in the Shah and Gagné-Holmes declarations.

To provide the necessary background, I begin by addressing: (A) COVID-19 and Maine's response; (B) the asserted religious beliefs that cause Plaintiffs to refuse to be vaccinated against COVID-19; and (C) the origin of the emergency rulemaking that required that healthcare workers be vaccinated against COVID-19.

A. The COVID-19 Global Pandemic

COVID-19 is a highly contagious disease that can cause serious illness and death. ECF No. 49-4 at ¶¶ 11, 13, 15. In March 2020, the World Health Organization declared COVID-19 to be a global pandemic. ECF No. 49-4 at ¶ 12. As of September 12, 2021, there were approximately 219 million cases of COVID-19 worldwide. ECF No. 49-4 at ¶ 13. Globally, over 4,550,000 people have died from COVID-19, including approximately 660,000 deaths in the United States. ECF No. 49-4 at ¶ 13. As of September 14, 2021, Maine had 81,177 total cases of COVID-19, with 969 deaths. ECF No. 49-4 at ¶ 14.

Variants of the virus have emerged over the course of the pandemic. ECF No. 49-4 at ¶ 20. The Delta variant, which is now the predominant variant of all COVID-19 cases in the United States, ECF No. 49-4 at ¶ 50, is more than twice as contagious as previous variants, ECF No. 49-4 at ¶ 22. As of August 27, 2021, the Delta variant accounted for 96.7% of all positive COVID-19 samples sequenced in Maine. ECF No. 49-4 at ¶ 50. A higher level of contagiousness necessitates a correspondingly higher vaccination rate among the public to achieve "herd immunity."⁵ ECF No. 49-4 at

⁵ Herd immunity refers to the population-level phenomenon whereby the community is sufficiently populated with vaccinated individuals that unvaccinated individuals can enjoy a substantially lessened risk of exposure and, therefore, of infection, as the vaccinated individuals block the virus from spreading from person to person. ECF No. 49-4 at ¶¶ 27-28.

¶ 28. With the emergence of the Delta variant, epidemiological models have increased the projected vaccination rate needed to achieve herd immunity from 70% to 90%. ECF No. 49-4 at ¶ 29.

Three COVID-19 vaccines are generally available: Pfizer-BioNTech (the “Pfizer vaccine”), Moderna, and Janssen (the “J&J vaccine”). ECF No. 49-4 at ¶ 40. All three are effective against the Delta variant. ECF No. 49-4 at ¶ 43. Prior to their availability, the United States Centers for Disease Control and Prevention (“CDC”) and Maine CDC recommended that people wear face coverings and practice physical distancing to limit the spread of the virus. ECF No. 49-5 at ¶ 5. Once the first vaccine doses became available in December 2020, Maine CDC prioritized the vaccination of frontline healthcare professionals and patient-facing staff through its eligibility guidelines. ECF No. 49-5 at ¶¶ 15-18. The vaccines are now widely available, and the State has worked in parallel with hospital systems to encourage and facilitate the widespread vaccination of Maine residents. ECF No. 49-5 at ¶¶ 19(f), 23-29.

The Rule was amended in August 2021 to add COVID-19 to the list of infectious diseases for which vaccinations are mandated for employees of designated healthcare facilities. It represented the latest in a series of measures employed by the State to combat the COVID-19 pandemic in healthcare settings. When formulating the amendment, Maine CDC reviewed and considered alternatives to mandating vaccinations, including the measures then being employed by Maine healthcare facilities, such as twice-weekly or daily testing, symptom monitoring, and the use of personal protective equipment (“PPE”). ECF No. 49-4 at ¶¶ 59-64. Maine CDC rejected twice-weekly testing as inadequate given the speed at which the Delta

variant is transmitted—a person infected with the Delta variant can transmit the infection to others within just 24 to 36 hours of exposure. ECF No. 49-4 at ¶¶ 25, 61. Similarly, Maine CDC rejected daily antigen testing as insufficient because the most effective tests (polymerase-chain-reaction tests (“PCR”)) require 24 to 72 hours to produce results and the faster rapid-antigen tests are too inaccurate and in short supply. ECF No. 49-4 at ¶ 62. Symptom monitoring as a standalone measure was rejected because the virus can be transmitted by persons who are asymptomatic. ECF No. 49-4 at ¶ 60. Similarly, sole reliance on the use of PPE was rejected because, even if worn correctly, PPE will not stop the spread of COVID-19 in healthcare settings. ECF No. 49-4 at ¶ 64.

Healthcare facilities throughout Maine have used a combination of the preceding measures to control the COVID-19 virus since the beginning of the pandemic; nonetheless, they have been the sites of numerous outbreaks of the virus. ECF No. 49-4 at ¶ 65. The number of outbreaks at designated healthcare facilities rose substantially from early August to early September 2021, notwithstanding the fact that the hospitals where the outbreaks occurred had strong infection control programs in place. ECF No. 49-4 at ¶¶ 46-47. Most of the healthcare facility outbreaks resulted from infected healthcare workers bringing COVID-19 into the facility. ECF No. 49-4 at ¶ 48.

B. The Plaintiffs’ Objection to the COVID-19 Vaccines

The Plaintiffs are nine individuals who are identified in the Complaint by pseudonyms. The Complaint alleges that Jane Does 1 through 5 and John Does 2 and 3 are healthcare workers employed by the Hospital Defendants. John Doe 1 is a

licensed healthcare provider who operates his own practice. Jane Doe 6 is a healthcare worker employed by John Doe 1.^{6, 7}

The Plaintiffs object to receiving the COVID-19 vaccines based on their stated belief that “life is sacred from the moment of conception[.]” ECF No. 1 at ¶ 54. They contend that the development of the three COVID-19 vaccines employed or benefitted from the cell lines of aborted fetuses. Specifically, the Plaintiffs object to the Moderna and Pfizer vaccines because both are mRNA vaccines which, the Plaintiffs claim, “have their origins in research on aborted fetal cells lines.” ECF No. 1 at ¶ 65.

⁶ The Complaint alleges the following facts regarding the Plaintiffs:

Plaintiff Jane Doe 1 is a Maine resident and healthcare worker employed by a healthcare facility operated by Defendant MaineHealth in Maine. She submitted a written request for a religious exemption from the vaccine mandate to her employer, which was denied.

Plaintiff John Doe 1 is a licensed healthcare provider who operates a designated healthcare facility in Maine. The Complaint alleges that he and his employees have sincerely held religious objections to receiving the COVID-19 vaccine, and that he faces the closure of his practice and loss of his business license should he consider or grant religious exemptions to the vaccine mandate to his employees.

Plaintiff Jane Doe 6 is a healthcare worker employed by John Doe 1. The Complaint is unclear as to whether she has requested a religious exemption to the mandate from her employer, John Doe 1.

Plaintiffs Jane Doe 2 and John Doe 2 are both Maine residents and healthcare workers employed by healthcare facilities operated by Defendant Genesis Healthcare in Maine. Both submitted written requests for religious exemptions from the vaccine mandate, and Genesis Healthcare denied them. Jane Doe 2 was given until August 23, 2021 to receive the vaccination and alleges that she was terminated from her employment for failure to meet this deadline.

Plaintiffs Jane Does 3 and 4 and John Doe 3 are Maine residents and healthcare workers employed by healthcare facilities operated by Defendant Northern Light Health Foundation in Maine. Each submitted written requests for religious exemptions from the vaccine mandate, and each request was denied.

Plaintiff Jane Doe 5 is a Maine resident and healthcare worker employed by a healthcare facility operated by Defendant MaineGeneral Health in Maine. She submitted a written request for a religious exemption from the vaccine mandate to her employer, which was denied.

⁷ The Complaint also names Plaintiffs Jack Does 1 through 1000 and Joan Does 1 through 1000 as putative plaintiffs who have not yet been joined in the action.

Plaintiffs also object to the J&J vaccine, asserting that aborted fetal cell lines were used in both its development and production. They allege that the use of fetal cell lines to develop the vaccines runs counter to their sincerely held religious beliefs that cause them to oppose abortion.

In their responses to the Plaintiffs' motion seeking preliminary injunctive relief, the Defendants have not challenged the sincerity of the Plaintiffs' asserted religious beliefs or that those beliefs are the reason for the Plaintiffs' refusal to be vaccinated. I therefore treat these facts as established for purposes of deciding the Preliminary Injunction Motion.⁸

C. The COVID-19 Vaccine Mandate

Mandatory vaccination requirements for healthcare workers in Maine were established long before the emergence of COVID-19 in late 2019. Since 1989, Maine has required by statute that hospitals and other healthcare facilities ensure that their employees are vaccinated against certain communicable diseases. 1989 Me. Legis. Serv. 641 (West). When the statute, 22 M.R.S.A. § 802 (1989), was first enacted, it required vaccinations for measles and rubella. Its stated purpose was to report, prevent, and control infectious diseases that pose a potential public health threat to the people of Maine. *Id.* § 802(1)(D) (1989).

The ensuing years witnessed the development of new vaccines and vaccine recommendations, resulting in frequent revisions to the statute. In response, the

⁸ Pursuant to the Court's scheduling order entered on September 2, 2021 (ECF No. 35), the deadline for the Defendants' answers to the Complaint will be set once the Court has entered an order on the Motion for Preliminary Injunction and the period for filing an interlocutory appeal of that order has expired or, if an interlocutory appeal is filed, the appeal has been finally determined. As a result, the Defendants have not yet filed answers to the Complaint.

statute was again amended in 2001 to delegate to DHHS the authority, by rulemaking, to designate mandatory vaccines for healthcare workers at designated healthcare facilities and for school children. 2001 Me. Legis. Serv. 147 (West). Accordingly, in 2002 DHHS promulgated and first adopted the rule entitled “Immunization Requirements for Healthcare Workers,” which is the Rule at issue here. 10-144-264 Me. Code R. §§ 1-7 (Apr. 16, 2002). At its adoption, the Rule required vaccinations for measles, rubella, hepatitis B, mumps, and chickenpox. *Id.* at § 5(A).

From 2001 until 2019, the statute contained three exemptions from the vaccination requirements for both Maine healthcare workers and school children: a “medical exemption” for those who provided “a physician’s written statement that immunization against one or more diseases may be medically inadvisable,” and both “religious [and] philosophical exemption[s]” for those “who state[d] in writing a sincere religious or philosophical belief that is contrary to the immunization requirement.” 22 M.R.S.A. § 802(4-B)(A), (B) (2019). In 2019, the Maine Legislature enacted legislation repealing the exemptions for religious and philosophical beliefs, 2019 Me. Legis. Serv. 386 (West), thus leaving the medical exemption as the sole exemption permitted under law. In response to this legislative change, a statewide veto referendum regarding the new law eliminating the religious and philosophical exemptions was held in March 2020 pursuant to the People’s Veto provision of the Maine Constitution, Me. Const. art. IV, pt. III, § 17. The law was upheld, with over

72% of voters voting in favor of it.⁹ In April 2021, DHHS amended the Rule by, among other things, removing the provision describing the permissible exemptions and referring back to the statute which lists medical exemptions as the sole category of exemption. *See* 10-144-264 Me. Code R. § 3 (effective Apr. 14, 2021); 22 M.R.S.A. § 802(4-B)(B).¹⁰ In August 2021, DHHS promulgated the current version of the Rule by adding the COVID-19 vaccination to the list of required vaccinations and also adding dental practices and emergency services organizations as enumerated designated healthcare facilities subject to the Rule's requirements. 10-144 C.M.R. Me. Code R. § 1 (effective Aug. 12, 2021). The Plaintiffs do not challenge the lawfulness of the rulemaking process by which the current version of the Rule was adopted.

The preceding history demonstrates that although Plaintiffs' arguments are directed at the amendment of the Rule in August 2021 and the Rule's failure to include a religious exemption from the COVID-19 vaccination requirement, it was the Legislature's revision of the statute in 2019 which eliminated the religious exemption for all mandatory vaccines. Therefore, when I refer in this decision to the COVID-19 vaccine mandate, I am referring to the Rule as it operates in conjunction with the statute, 22 M.R.S.A. § 802(4-B), which authorizes it.

⁹ Full results are available on the Maine Secretary of State website. Dep't of Sec'y of State, State of Maine, Tabulations for Elections Held in 2020, <https://www.maine.gov/sos/cec/elec/results/results20.html#ref20> (last visited Oct. 10, 2021) (to calculate the percentage, select "March 3, 2020 Special Referendum Election" to access the spreadsheet of results. Then divide the number of "no" votes (281,750) by the total number of votes cast (388,393).

¹⁰ There is an additional exemption provided specifically for the Hepatis B vaccine, as mandated under Federal Law, 22 M.R.S.A. § 802(4-B)(C), which is distinct and not relevant to the inquiry at hand.

Having provided the necessary background, I turn to the legal standard which would govern the award of a preliminary injunction.

III. PRELIMINARY INJUNCTION LEGAL STANDARD

“A preliminary injunction is an ‘extraordinary and drastic remedy . . . that is never awarded as of right.’” *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011) (quoting *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008)).

A trial court must consider four factors when assessing a request for a preliminary injunction: (1) likelihood of success on the merits, (2) whether, absent preliminary relief, the plaintiff will suffer irreparable harm, (3) whether “the balance of equities tips in [the plaintiff’s] favor,” and (4) whether granting the injunction serves the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Of these factors, “[t]he movant’s likelihood of success on the merits weighs most heavily in the preliminary injunction calculus.” *Ryan v. U.S. Immigr. & Customs Enft*, 974 F.3d 9, 18 (1st Cir. 2020). This first factor is so consequential that “[i]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.” *Me. Educ. Ass’n Benefits Tr. v. Cioppa*, 695 F.3d 145, 152 (1st Cir. 2012) (quoting *New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002)).

At this preliminary stage, the court “need not conclusively determine the merits of the movant’s claim; it is enough for the court simply to evaluate the likelihood . . . that the movant ultimately will prevail on the merits.” *Ryan*, 974 F.3d at 18.

IV. LEGAL ANALYSIS

The Plaintiffs' Complaint presents five claims arising under: (A) the Free Exercise Clause of the First Amendment; (B) Title VII, 42 U.S.C.A. § 2000e to e-17 (West 2021); (C) the Equal Protection Clause of the Fourteenth Amendment; (D) a claim of Conspiracy in violation of 42 U.S.C.A. § 1985 (West 2021); and (E) the Supremacy Clause. As will become apparent, the likelihood of the Plaintiffs' success on their Free Exercise claim largely controls the outcome as to the remaining claims for purposes of determining the Plaintiffs' entitlement to preliminary injunctive relief.

A. The Free Exercise of Religion

The Free Exercise Clause of the First Amendment, which applies to the states through the Fourteenth Amendment, provides that "Congress shall make no law prohibiting the free exercise" of religion. U.S. Const. amend. I, *see Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940) (incorporating the Free Exercise Clause of the First Amendment against the states). The clause "embraces two concepts[:] freedom to believe and freedom to act." *Cantwell*, 310 U.S. at 303. Although the freedom to believe is absolute, the freedom to act on one's religious beliefs "remains subject to regulation for the protection of society." *Id.* at 304.

The Constitution's Free Exercise Clause does not prevent states from enacting a "neutral, generally applicable regulatory law," even when that law infringes on religious practices. *See Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879-882 (1990). Laws that are deemed both neutral and generally applicable are traditionally subject to rational basis review. Thus, in *Smith*, the U.S. Supreme

Court explained: “We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition.” *Id.* at 878-79. Further, “if prohibiting the exercise of religion . . . is not the object of the [state action] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.”¹¹ *Id.* at 878. However, if a law burdens a religious practice and does not satisfy the requirements of neutrality and general applicability, the law is invalid under the Free Exercise Clause unless it survives strict scrutiny, meaning it is “justified by a compelling governmental interest and . . . narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993).

The parties’ dispute under the Free Exercise Clause centers on the standard of constitutional review that applies: rational basis review or strict scrutiny review. The Plaintiffs argue that the COVID-19 vaccine mandate’s failure to provide a religious exemption means that the regulation is not neutral and generally applicable and,

¹¹ Writing for the Court’s majority in *Smith*, Justice Scalia reasoned that the question of whether a religious exemption or accommodation should be adopted as part of a neutral, generally applicable regulatory law is not within the purview of the courts’ role in enforcing the Free Exercise Clause but is instead for the other branches of government to determine:

But to say that a nondiscriminatory religious-practice exemption is permitted [by the Free Exercise Clause], or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

therefore, must be analyzed under the more demanding strict scrutiny standard. The Defendants disagree, contending that the mandate is neutral and generally applicable notwithstanding the lack of religious exemption, and that the more deferential rational basis standard of review applies.

Under rational basis review, “a neutral, generally applicable regulatory law that compel[s] activity forbidden by an individual’s religion” withstands a Free Exercise challenge if there is a rational basis for the regulation. *Smith*, 494 U.S. at 880. Applying rational basis review to the COVID-19 vaccine mandate at issue here would be in keeping with the Supreme Court’s foundational decision in the area of mandatory vaccines—*Jacobson v. Massachusetts*, 197 U.S. 11 (1905)—in which the Court upheld the constitutionality of a state mandated smallpox vaccine. In so doing, the Court applied a deferential standard of review and rejected a Fourteenth Amendment substantive due process challenge to the law, concluding that the mandatory vaccination law was constitutional because it had a “real [and] substantial relation to the protection of the public health and the public safety.”¹² *Id.* at 31.

¹² The Plaintiffs argue that because *Jacobson* pre-dates both the application of the Free Exercise Clause to the states and the Court’s adoption of the tiers of scrutiny for constitutional questions, it is inapposite. The Defendants do not solely rest their argument on *Jacobson* but they do argue that it supports the more general proposition that a state may mandate vaccinations and need not include religious exemptions when doing so.

In the years since the Supreme Court recognized that the First Amendment’s Free Exercise Clause applies to the states, *Jacobson* has been treated as informative authority both regarding the scope of government power to enact mandatory vaccination requirements to protect public health and for the proposition that the Constitution does not require religious exemptions from state-mandated vaccinations. *See, e.g., Zucht v. King*, 260 U.S. 174, 176 (1922) (affirming that *Jacobson* “settled that it is within the police power of a state to provide for compulsory vaccination”); *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) (“The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.”); *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (“[M]andatory vaccination as a condition for admission to school does not violate the Free Exercise Clause”); *Nikolao v. Lyon*, 875 F.3d 310, 316 (6th Cir. 2017) (“[Plaintiff] has not been denied any legal right on the basis of her religion. Constitutionally, [plaintiff]

However, *Jacobson* did not specifically address the scope of an individual's constitutional rights under the First Amendment's Free Exercise Clause in relation to mandatory vaccines, and that inquiry is the crux of the dispute here.

Under strict scrutiny review, a challenged government action may be upheld only if "it is justified by a compelling interest and is narrowly tailored to advance that interest." *Lukumi*, 508 U.S. at 533. "[N]arrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam). The government must also demonstrate that it "seriously undertook to address the problem with less intrusive tools readily available to it" and "that it considered different methods that other jurisdictions have found effective." *McCullen v. Coakley*, 573 U.S. 464, 494 (2014).

has no right to a [vaccine] exemption."); *Workman v. Mingo Cnty. Bd. Of Educ.*, 419 Fed. App'x 348, 352-54 (4th Cir. 2011) (relying on the *Jacobson*, *Zucht*, and *Prince* line of cases to hold that a state mandatory vaccination law that allowed medical but not religious exemptions was constitutional); *Whitlow v. California*, 203 F. Supp. 3d 1079, 1084, 1086 (S.D. Cal. 2016) ("[I]t is clear that the Constitution does not require the provision of a religious exemption to vaccination requirements" because, "[a]s stated in *Prince*, the right to free exercise does not outweigh the State's interest in public health and safety."); *Klaassen v. Trs. Of Ind. Univ.*, No. 1:21-CV-238, 2021 WL 3073926, at *17-22, *39 (N.D. Ind. July 18, 2021) (providing a detailed analysis of *Jacobson*'s continued viability and noting that "courts have consistently held that schools that provided a religious exemption from mandatory vaccination requirements did so *above and beyond* that mandated by the Constitution"), *aff'd*, 7 F.4th 592 (7th Cir. 2021) (relying on *Jacobson* to hold that "there can't be a constitutional problem with vaccination against SARS-CoV-2" because, although *Jacobson* has been criticized, "a court of appeals must apply the law established by the Supreme Court"); *Boone v. Boozman*, 217 F. Supp. 2d 938, 954 (E.D. Ark. 2002) ("The constitutionally-protected free exercise of religion does not excuse an individual from compulsory immunization; in this instance, the right to free exercise of religion . . . [is] subordinated to society's interest in protecting against the spread of disease."); *Harris v. Univ. of Mass., Lowell*, No. 21-cv-11244, 2021 WL 3848012, at *7 (D. Mass. Aug. 27, 2021) (following the *Jacobson* line to hold that "UMass is under no constitutional obligation to offer a religious exemption to its Vaccine Requirement.").

To determine whether rational basis or strict scrutiny review applies, I turn to consider whether the COVID-19 vaccine mandate is both (1) neutral, and (2) generally applicable.

1. Neutrality

Neutrality examines whether the State’s object, or purpose, was to “infringe upon or restrict practices because of their religious motivation.” *Lukumi*, 508 U.S. at 533. A law is not neutral if its object “is to infringe upon or restrict practices because of their religious motivation.” *Id.* The first step in determining the object of a law is to examine whether it is facially neutral. *Id.* (“[T]he minimum requirement of neutrality is that a law not discriminate on its face.”).

By this standard, the COVID-19 vaccine mandate challenged here is facially neutral. Neither the applicable statute nor the Rule mention religion, even by implication. Operating in tandem, they require that all healthcare workers employed at designated healthcare facilities receive the COVID-19 vaccination. They do not treat the COVID-19 vaccine differently than any other vaccinations mandated under Maine law.

The vaccine mandate’s facial neutrality is not dispositive, though, because the “[g]overnment [also] fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). Thus, even a facially neutral law may not be neutral for Free Exercise purposes if its object is to discriminate against religious beliefs, practices, or motivations. *Lukumi*, 508 U.S. at 534 (“The Free

Exercise Clause protects against governmental hostility, which is masked, as well as overt.”).

The Plaintiffs contend that the COVID-19 vaccine mandate is not neutral because the removal of the religious exemption from the Rule “specifically target[ed] Plaintiffs’ religious beliefs for disparate and discriminatory treatment.” ECF No. 1 ¶ 131. They assert that “Maine has plainly singled out religious employees who decline vaccination for especially harsh treatment (i.e., depriving them from earning a living anywhere in the State), while favoring employees declining vaccination for secular, medical reasons.” ECF No. 57 at 4. This argument mirrors claims made recently by healthcare providers challenging New York’s COVID-19 vaccine mandate, which also did not provide for religious exemptions. *Dr. A. v. Hochul*, No. 1:21-cv-1009, at **4-6 (N.D.N.Y. Oct. 12, 2021). However, the challenged New York regulation is distinguishable from Maine’s COVID-19 vaccine mandate, because the New York regulation originally provided for a religious exemption which was then removed only a few days before the requirement became effective; additionally, New York provides religious exemptions to other mandated vaccinations for healthcare workers. *Id.* at *4, *5, *16 n.9. For these reasons, the court determined that the intentional, last-minute change to the language in the New York regulation was a “religious gerrymander” that required strict scrutiny. *Id.* at *19. In contrast, the Maine Legislature removed the religious exemption as to all mandated vaccines by amending 22 M.R.S.A. § 802(4-B) in 2019. Following the unsuccessful People’s Veto held in 2020, DHHS removed the religious exemption from the Rule in April 2021 to conform the Rule to the 2019 statutory change. This revision pre-dated the COVID-

19 vaccine requirement and served to ensure that the Rule was consistent with Maine law. The history associated with the revision of the Rule does not demonstrate animus toward religion.

In support of their argument, the Plaintiffs cite to a trio of recent per curiam or memorandum decisions issued by the U.S. Supreme Court: *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 62 (2020) (per curiam); *South Bay Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021) (mem.); and *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam). Each involved a challenge to a state law aimed at quelling the spread of COVID-19. Each was issued in response to a motion for emergency injunctive relief to preserve the status quo pending resolution of appellate review. Of the three, the Plaintiffs rest primarily on *Tandon v. Newsom*.

In *Tandon*, the Supreme Court granted injunctive relief against enforcement of a California regulation that prohibited indoor private gatherings of more than three households during the COVID-19 pandemic. 141 S. Ct. at 1297. The prohibition had the effect of restricting at-home religious gatherings while allowing groups of more than three households to gather in public settings, such as hair salons, retail stores, and restaurants. *Id.* In enjoining the regulation's enforcement, the Court explained that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* at 1296. "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks

various activities pose, not the reasons” motivating the activities. *Id.* The Court’s majority concluded that private indoor gatherings of three or more households were comparable to groups of the same or a greater number of households in public businesses, which were not prohibited by the regulation, and granted an injunction against the policy’s enforcement pending appellate review. *Id.* at 1297.

Citing *Tandon*, the Plaintiffs argue that the Free Exercise Clause prohibits the treatment of “**any** secular activity more favorably than religious activity.” ECF No. 57 at 3 (emphasis in original). This misstates *Tandon*’s holding because it omits the crucial modifier—“comparable”—from the analysis of whether a secular activity has been treated more favorably than a religious activity.

In the unique context of a vaccine mandate intended to protect public health, there is a fundamental difference between a medical exemption—which is integral to achieving the public health aims of the mandate—and exemptions based on religious or philosophical objections—which are unrelated to the mandate’s public health goals. The risks associated with the two are not comparable. Reducing the risk of adverse medical consequences for a high-risk segment of the population is essential to achieving the public health objective of the vaccine mandate. A religious exemption would not address a risk associated with the vaccine mandate’s central objectives. Under *Tandon*’s reasoning, rational basis review applies.

Tandon is distinguishable from this case in another respect. The vaccination requirement challenged here does not prevent the Plaintiffs from exercising their religious beliefs by refusing to receive the COVID-19 vaccination. In contrast, in *Tandon* interference with the free exercise of religion was direct because the statute

prevented like-minded persons from gathering together to perform religious rituals. Here, the Rule does not compel the Plaintiffs to be vaccinated against their will, and the Plaintiffs have, in fact, freely exercised their religious beliefs by declining to be vaccinated. This is not to minimize the seriousness of the indirect consequences of the Plaintiffs' refusal to be vaccinated, as it affects their employment. Nonetheless, the Rule has not prevented the Plaintiffs from staying true to their professed religious beliefs.

The two remaining decisions in the trio relied upon by the Plaintiffs are also readily distinguished. In *South Bay United Pentecostal Church v. Newsom*,¹³ the Court partially granted an application for injunctive relief from California Governor Gavin Newsom's executive order limiting attendance at indoor religious gatherings to prevent further spread of COVID-19. 141 S. Ct. at 716, 718. Writing separately, Justice Gorsuch concluded that the restrictions on religious institutions imposed by California followed a pattern of that state "openly impos[ing] more stringent regulations on religious institutions than on many businesses" throughout the pandemic, and that this represented religious discrimination and required strict scrutiny. *Id.* at 717 (statement of Gorsuch, J.). The restrictions considered in *South Bay* are unlike the vaccine mandate at issue here. *Id.* In *South Bay*, California had explicitly imposed stricter attendance limits on in-person worship services, while not

¹³ The California Order challenged in *South Bay* came before the Court twice on application for injunctive relief: in May 2020, the Court issued a memorandum opinion denying the application, 140 S. Ct. 1613, 1613 (2020) (Mem.); in February 2021 the Court denied relief with respect to the percentage capacity limitations imposed on houses of worship and limitations on singing and chanting during indoor services, and granted the injunction with respect to the other capacity limits, 141 S. Ct. 716, 716 (2021) (Mem.).

imposing similar limits in secular settings. There is no similar targeted imposition of restrictions on religious practices presented by the COVID-19 vaccine mandate.

Finally, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Supreme Court granted injunctive relief from a State of New York order that imposed severe restrictions on religious gatherings in certain high-risk zones of New York City during the first wave of the Covid-19 pandemic. 141 S. Ct. at 66. Specifically, the order limited attendance at religious gatherings in “red” zones to no more than ten persons and in “orange” zones to no more than 25 persons, while allowing myriad essential businesses in those same locations to admit an unlimited number of persons. *Id.* at 66-67. Invoking *Smith*, the Court determined that the challenged order was neither neutral nor generally applicable due to these categorizations. *Id.* at 67. Applying strict scrutiny, the Court held that although “[s]temming the spread of COVID-19 is unquestionably a compelling interest,” the regulation was likely unconstitutional for lack of narrow tailoring. *Id.* There were multiple less restrictive rules that could have achieved the State’s goal without burdening the exercise of religion so severely, such as tying the maximum attendance at a house of worship to the size of that facility. *Id.* The Court was not persuaded that the State demonstrated that houses of worship, which had “admirable safety records,” “contributed to the spread of COVID-19” such that the targeted and restrictive prohibition could be constitutionally sound. *Id.* at 67-68.

Roman Catholic Diocese of Brooklyn is distinguishable from the COVID-19 vaccine mandate at issue here because the mandate does not impose restrictions on religious practices while allowing similar secular conduct to continue unfettered.

Additionally, the vaccine mandate does not compel the Plaintiffs to be vaccinated for COVID-19 involuntarily and, therefore, the Plaintiffs have not been directly prevented from adhering to their religious beliefs as was the case in *Roman Catholic Diocese of Brooklyn*. Finally, as I will soon address, the State Defendants have demonstrated that other less-restrictive measures would be insufficient alternatives to the vaccine mandate.

Therefore, the COVID-19 vaccine mandate is facially neutral, and the trio of recent Supreme Court per curiam and memorandum COVID-19 decisions does not dictate otherwise. Additionally, in probing for covert animus, what matters is the State's motive in removing the vaccine exceptions for religion and philosophy from the statute in 2019 because it was then—not in 2021 as Plaintiffs assert—that the change took effect. The Plaintiffs have not offered any reasoned explanation as to why Maine's COVID-19 vaccine mandate for healthcare workers should be viewed as targeting religious beliefs while vaccines for other communicable diseases that may have involved fetal cell lines in their development or production should not. The record establishes that the Maine Legislature's object in eliminating the religious and philosophical exemptions in 2019 was to further crucial public health goals, and nothing more.

Specifically, the Legislature considered data establishing that it was the religious and philosophical exemptions to mandatory vaccines that had prevented Maine from achieving herd immunity as to several infectious diseases, which is a

prerequisite to eliminating those diseases.¹⁴ Measles, for example, requires a 95% population-level vaccination rate, ECF No. 49-4 ¶ 35, and this was undermined in the years prior to 2019 by the large percentage of unvaccinated persons resulting from the religious and philosophical exemptions, ECF No. 48-3 at 3-6. As Representative McDonald, cosponsor of the legislation, testified:

Maine has the seventh-highest non-medical exemption rate in the nation. . . . The average philosophical and religious exemption rate for kindergarten-aged students in Hancock County, ME was 8.7 percent. . . . There are schools [in Hancock County] experiencing non-medical exemption rates as high as 33.3 percent.

ECF No. 48-3 at 1.

Then-Acting Director of Maine CDC, Nancy Beardsley, testified that “non-medical exemptions, which include religious and philosophical reasons, were reported at 5.0% for Maine, compared to the national rate of 2.0%.” ECF No. 48-4 at 1. Medical exemptions, in contrast, accounted for 0.3% of the overall exemption rate. ECF No. 48-4 at 1. Beardsley also testified that the high exemption rates in Maine had caused pertussis outbreaks:

Hancock and Waldo counties also represent two of the four counties with the highest reported rates of pertussis cases in 2018 Not only did high exemption rates likely contribute to high rates of pertussis disease in these two counties, but also in the entire State, as Maine reported the highest rate of pertussis disease in the country for 2018.

ECF No. 48-4 at 2.

¹⁴ The statistics referenced in the legislative record, and cited here, pertain to vaccination rates for school children; however, they are relevant to the State’s motivations for healthcare workers because the statute at issue removed religious and philosophical exemptions for both of these groups and there is no colorable argument (nor have the Plaintiffs advanced one) that the State had a different motivation for removing the exemptions for healthcare workers than for school children.

The Plaintiffs have not specifically disputed that the reasons put forward by the State Defendants for the Legislature's removal of the religious and philosophical exemptions in 2019 were, in fact, the actual reasons. Accordingly, there is no factual support for the proposition that the August 2021 amendment of the Rule, adding the COVID-19 vaccine to the list of mandatory vaccinations for Maine's healthcare workers, "specifically target[ed] Plaintiffs' religious beliefs for disparate and discriminatory treatment," as the Plaintiffs argue. ECF No. 1 ¶ 131. Moreover, there is no basis to find that the August 2021 amendment of the Rule, including the removal of the religious and philosophical exemptions so that the Rule would conform to the 2019 amendment to the statute, was intended to discriminate against religious beliefs, practices, or motivations. *See Lukumi*, 508 U.S. at 534. For these reasons, the COVID-19 vaccine mandate is neutral because it is facially neutral and it was not intended to discriminate against individuals' religious beliefs, practices, or motivations.

2. General Applicability

General applicability addresses whether the State has selectively "impos[ed] burdens only on conduct motivated by religious belief." *Id.* at 543. The Plaintiffs reason that the COVID-19 vaccine mandate is not generally applicable and that it must be subjected to strict scrutiny review because the mandate favors healthcare workers who refuse to be vaccinated for medical reasons over healthcare workers who refuse to be vaccinated for religious reasons. They contend that the State's adoption of medical exemptions as the sole type of exemption reflects a value judgment by the State, one which prioritizes secular interests over religious interests. Thus, they

contend that the vaccine mandate fails the test of general applicability because it burdens religious beliefs while not similarly burdening secular interests.

Individualized exemptions undermine a regulation's general applicability if they display an unconstitutional value judgment that gives preference to secular concerns over religious concerns. In *Fulton*, the Supreme Court explained that “[a] law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” *Fulton*, 141 S. Ct. at 1877; *see also Cent. Rabbinical Cong. Of U.S. & Can. V. N.Y.C. Dep’t. of Health & Mental Hygiene*, 763 F.3d 183, 197 (2d Cir. 2014) (citing *Lukumi*, 508 U.S. at 535-38). (“A law is . . . not generally applicable if it is substantially underinclusive such that it regulates religious conduct while failing to regulate secular conduct that is at least as harmful to the legitimate government interests purportedly justifying it.” “[W]hen the government makes a value judgment in favor of secular motivations, but not religious motivations, the government’s actions must survive heightened scrutiny.” *Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999).

The Plaintiffs contend that the medical exemption at issue here should be treated as an individualized exception which is “sufficiently suggestive of discriminatory intent so as to trigger heightened [strict] scrutiny.” *Id.* They point to various judicial decisions applying strict scrutiny and invalidating regulations that permitted medical exemptions but not religious exemptions. However, the decisions cited by the Plaintiffs all relate to government regulations that were primarily intended to achieve governmental objectives other than protecting public health.

Thus, in *Fraternal Order of Police, id.*, the court applied strict scrutiny and invalidated a regulation that prohibited beards for male police officers that was adopted for the stated purpose of promoting uniformity of the officers' appearance, and which granted a medical exemption from the requirement while not exempting officers who maintained beards as a matter of religious faith. The other decisions cited by the Plaintiffs addressed similar circumstances. *See Litzman v. New York City Police Department*, No. 12 Civ. 4681, 2013 WL 6049066, at *2-3 (S.D.N.Y. Nov. 15, 2013) (requiring religious exemptions to a policy mandating once-yearly facial shaving for male police officers to ensure compliance with respirator fit-testing requirements); *Singh v. McHugh*, 185 F. Supp. 3d 201, 211-13 (D.D.C. 2015) (determining that religious accommodation was required under a policy that would not permit a Sikh student seeking to enroll in the Army's Reserve Officers' Training Corps program to wear a turban, unshorn hair, and beard due to a grooming policy to promote uniformity); and *Cunningham v. City of Shreveport*, 407 F. Supp. 3d 595, 599 (W.D. La. 2019) (determining a policy requiring beards for male officers "for officer safety reasons and to promote a uniform appearance of all officers" required religious accommodations).

Here, the purpose of requiring COVID-19 vaccinations for healthcare workers is to protect public health and not any other policy objective, such as promoting the uniformity of the appearance of police officers or firefighters. Exempting individuals whose health will be threatened if they receive a COVID-19 vaccine is an essential, constituent part of a reasoned public health response to the COVID-19 pandemic. It does not suggest a discriminatory bias against religion. *See W.D. v. Rockland County*,

521 F. Supp. 3d 358, 403 (S.D.N.Y. 2021) (concluding that New York’s emergency declaration mandating vaccinations against measles, which provided a medical exemption but not a religious exemption, met the requirement of general applicability by “encouraging vaccination of all those for whom it was medically possible, while protecting those who could not be inoculated for medical reasons.”).

The medical exemption at issue here was adopted to protect persons whose health may be jeopardized by receiving a COVID-19 vaccination. The exemption is rightly viewed as an essential facet of the vaccine’s core purpose of protecting the health of patients and healthcare workers, including those who, for bona fide medical reasons, cannot be safely vaccinated. Because the medical exemption serves the core purpose of the COVID-19 vaccine mandate, it does not reflect a value judgment prioritizing a purely secular interest—such as the uniformity of appearance of uniformed officers considered in *Fraternal Order of Police*—over religious interests. In addition, the vaccine mandate places an equal burden on all secular beliefs unrelated to protecting public health—for example, philosophical or politically-based objections to state-mandated vaccination requirements—to the same extent that it burdens religious beliefs.

The medical exemption applicable to the COVID-19 vaccine and the other vaccines required under Maine law does not reflect a value judgment unfairly favoring secular interests over religious interests. As an integral part of the vaccine requirement itself, the medical exemption for healthcare workers does not undermine the vaccine mandate’s general applicability.

3. Conclusion Regarding the Standard of Constitutional Review

For the reasons I have explained, the COVID-19 vaccine mandate is both neutral and generally applicable; therefore, rational basis review applies. The trio of recent Supreme Court *per curiam* and memorandum decisions relied on by the Plaintiffs do not suggest otherwise. I therefore turn to consider whether the mandate satisfies rational basis review.

4. Rational Basis Review

The Plaintiffs do not seriously question the existence of a rational basis for the adoption of the COVID-19 vaccine mandate. I address this question nonetheless because it is the key to deciding the requirement's constitutionality under the Free Exercise Clause. "A law survives rational basis review so long as the law is rationally related to a legitimate governmental interest." *Cook v. Gates*, 528 F.3d 42, 55 (1st Cir. 2008).

Stopping the spread of COVID-19 in Maine, and specifically stemming outbreaks in designated healthcare facilities to protect patients and healthcare workers, is a legitimate government interest. For several reasons, the mandate is rationally related to this interest.

First, data collected by Maine CDC throughout the COVID-19 pandemic demonstrates that unvaccinated individuals are substantially more likely both to contract COVID-19 and to suffer serious medical consequences as a result. ECF No. 49-4 ¶¶ 16, 23, 52. Second, the percentage of COVID-19 outbreaks occurring in healthcare facilities is increasing rapidly and most of these outbreaks are caused by healthcare workers bringing the virus into the facilities. ECF No. 49-4 ¶¶ 46-48.

Third, despite widespread availability of COVID-19 vaccinations, the rate of COVID-19 vaccinations for healthcare workers in designated healthcare facilities remains below the 90% threshold needed to stem facility-based outbreaks. ECF No. 49-4 ¶¶ 53-54. Mandating COVID-19 vaccinations for healthcare workers at designated healthcare facilities will increase the vaccination rate for a critically important segment of Maine’s workforce while lowering the risk of facility-based outbreaks.

The State defendants have provided ample support demonstrating a rational basis for their adoption of the COVID-19 vaccine mandate as a requirement that furthers the government’s interest in protecting public health, healthcare workers, vulnerable patients, and Maine’s healthcare system from the spread of COVID-19.

5. Strict Scrutiny Review

Although I conclude that rational basis, and not strict scrutiny, is the correct level of constitutional review, even if strict scrutiny were the required standard, the COVID-19 vaccine mandate for healthcare workers still withstands the Plaintiffs’ Free Exercise challenge. As previously discussed, a challenged government action subject to strict scrutiny may be upheld only if “it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Lukumi*, 508 U.S. at 533. The government must also demonstrate that it “seriously undertook to address the problem with less intrusive tools readily available to it” and “that it considered different methods that other jurisdictions have found effective.” *McCullen v. Coakley*, 573 U.S. 464, 494 (2014).

a. Compelling Interest

Curbing the spread of COVID-19 is “unquestionably a compelling interest.” *Roman Catholic Diocese of Brooklyn*, 141 S. Ct. at 67. Plaintiffs here admit as much, conceding that “[t]o be sure, efforts to contain the spread of a deadly disease are ‘compelling interests of the highest order.’” ECF No. 57 at 8 (quoting *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 910 (W.D. Ky. 2020)).

b. Narrow Tailoring

The record establishes that “[t]he gold standard to prevent and stop the spread of communicable diseases, including COVID-19, is vaccination.” ECF No. 49-4 at ¶ 34. High vaccination rates minimize the number of unvaccinated individuals in group settings—such as healthcare environments—which ultimately facilitates population-level immunity and prevents outbreaks of these diseases both within these settings and in the general population. ECF No. 49-4 at ¶¶ 35-37. Achieving the high levels of vaccination needed to establish population-level immunity is crucial to protect the health of the most vulnerable individuals, including “individuals with weakened immune systems, infants too young to be vaccinated, and persons unable to be vaccinated.” ECF No. 49-4 at ¶¶ 38-39. For “individuals undergoing treatment for serious diseases, and individuals who have a demonstrated allergy to one of the vaccine components,” certain vaccinations are inadvisable for medical reasons. ECF No. 49-4 at ¶ 39. For these people, receiving a particular vaccine could have adverse health consequences. ECF No. 49-4 at ¶ 39.

The Plaintiffs’ sole challenge to the scientific rationale put forward by the State Defendants for the vaccine mandate is based on the Plaintiffs’ citation to an article

published in National Geographic Magazine that reports on a preliminary study that found that vaccinated persons with breakthrough COVID-19 infections can transmit the virus. This preliminary finding, however, does not address the broader question of whether COVID-19 vaccinations reduce the risk of people spreading the virus that causes COVID-19. According to the CDC, they do. CDC, *Key Things to Know About COVID-19 Vaccines*, (Oct. 7, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (“COVID-19 vaccines can reduce the risk of people spreading the virus that causes COVID-19.”). Nor does the National Geographic article address the related question of whether vaccinated persons become infected at a lesser rate than unvaccinated persons and whether vaccinations provide substantial protection against COVID-19 hospitalizations. On these points as well, the CDC indicates that they do. *Id.* (“People can sometimes get COVID-19 after being fully vaccinated. However, this only happens in a small proportion of people, even with the Delta variant. When these infections occur among vaccinated people, they tend to be mild.”); *see also* Ashley Fowlkes et al., *Effectiveness of COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance—Eight U.S. Locations, December 2020–August 2021*, CDC (Aug. 27, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm?s_cid=mm7034e4_w; Wesley H. Self, et al., *Comparative Effectiveness of Moderna, Pfizer-BioNTech, and Janssen (Johnson & Johnson) Vaccines in Preventing COVID-19 Hospitalizations Among Adults Without Immunocompromising Conditions—United States, March–August 2021*, CDC (Sept. 24, 2021),

https://www.cdc.gov/mmwr/volumes/70/wr/mm7038e1.htm?s_cid=mm7038e1_w.

The study cited by the Plaintiffs does not establish a lack of narrow tailoring for purposes of strict scrutiny analysis. If vaccinated individuals are less likely to become infected, they are less likely to transmit the disease. The preliminary study cited by the Plaintiffs does not call this crucial point into question.

Plaintiffs further contend that the COVID-19 vaccine mandate is not the least restrictive means of achieving the State's goal to protect public health and the healthcare system from communicable disease. They argue that there are alternatives to vaccination that would not restrict their religious beliefs, and that Maine has not demonstrated that these alternatives would not achieve the objectives of the Rule. Plaintiffs specifically point to the use of PPE and frequent testing as less restrictive tactics that Maine could employ.

The record demonstrates that PPE and regular testing are not sufficient to achieve Maine's compelling interest in stopping the spread of COVID-19. Regular testing, an alternative method proposed by the Plaintiffs, was considered and ultimately rejected because "regular testing for the presence of the virus in employees is insufficient to protect against the Delta variant." ECF No. 49-4 at ¶ 61. The speed of the Delta variant's transmission outpaces test-result availability. ECF No. 49-4 at ¶¶ 61-62. With weekly or twice-weekly testing, "[a]n employee who tests negative on a Monday morning could be exposed that afternoon, and, within 36 hours, could be spreading the virus to others over the course of the several days until the next test." ECF No. 49-4 at ¶ 61. Further, "[b]ecause test results are not available for at least 24 hours, and sometimes up to 72 hours, daily PCR testing is insufficient for the same

reasons.” ECF No. 49-4 at ¶ 61. Daily testing, therefore, would require the use of rapid antigen tests, which are both less accurate and in short supply. ECF No. 49-4 at ¶ 62. Accordingly, regular testing is not an alternative measure that would effectively serve to stop the spread of COVID-19.

The use of PPE is also not an equivalent alternative measure. PPE is an important measure to prevent the spread of transmissible diseases, including COVID-19, but “it does not eliminate the possibility of spreading COVID-19, especially in healthcare settings.” ECF No. 49-4 at ¶ 64. Maine healthcare facilities have utilized PPE and other practices, including regular testing and symptom monitoring, to reduce healthcare facility-based COVID-19 outbreaks. ECF No. 49-4 at ¶ 65. These measures have not been sufficient to prevent these outbreaks. In the face of the Delta variant and rising percentage of healthcare facility-based outbreaks, they are not alternative equivalent measures that would achieve the compelling interest of curbing the spread of COVID-19.

Next, Plaintiffs argue that Maine currently stands alone in the nation by not providing religious exemptions to vaccine mandates for healthcare workers,¹⁵ which necessarily demonstrates that less restrictive alternatives are available. The Plaintiffs reason that if every other state has been able to offer religious exemptions

¹⁵ At least two other states have adopted COVID-19 vaccine mandates which do not provide religious exemptions. In August 2021, the State of New York mandated COVID-19 vaccinations for healthcare workers in the state and did not include a religious exemption within the mandate. *Dr. A. v. Hochul*, No. 1:21-cv-1009, 2021 WL 4189533 (N.D.N.Y. Sept. 14, 2021). A preliminary injunction against the requirement was granted on October 12, 2021, *Dr. A. v. Hochul*, No. 1:21-cv-1009 (N.D.N.Y. Oct. 12, 2021); as previously discussed, this case is distinguishable from Maine’s vaccine mandate. Rhode Island has also mandated COVID-19 vaccinations for healthcare workers and did not provide for religious exemptions to that requirement; a temporary injunction was denied on September 30, 2021. *Dr. T v. McKee*, No. 1:21-cv-00387 (D.R.I. Sept. 30, 2021).

to COVID-19 mandates, Maine should as well. However, the Plaintiffs have not provided any scientific or expert evidence demonstrating the efficacy of the approaches adopted in other states. Maine may be one of the first states to conclude that it is wise to mandate vaccinations for certain healthcare workers, but it does not follow that other, less demanding approaches are equally effective or even appropriate given the circumstances presented in this state. The Government Defendants assert that unlike many other states, “the size of Maine’s healthcare workforce is limited, such that the impact of any outbreaks among personnel is far greater than it would be in a state with more extensive healthcare delivery systems.” ECF No. 49-4 at ¶ 66. The Plaintiffs have not presented any expert witness declarations, science-based reports or data, or any other information to support their argument that there are equally effective, less restrictive alternatives to the vaccine mandate. Based on the record before me, there is no basis to conclude that, as the Plaintiffs’ position suggests, what may be good enough for other states is necessarily equally good for the conditions presented in Maine.

Accordingly, I conclude that the COVID-19 vaccine mandate is narrowly tailored to serve the compelling interest of containing the spread of this serious communicable disease. Even if strict scrutiny were required, the Plaintiffs have not shown that they are likely to succeed on the merits of their Free Exercise claim against the Defendants.

B. Title VII

Seven plaintiffs¹⁶ assert that the Hospital Defendants refused to consider or grant religious accommodations by failing to grant exemptions from the vaccine mandate and that this refusal violates Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e to e-17 (West 2021).

Title VII forbids an employer “to discriminate against, any individual because of his . . . religion.” 42 U.S.C.A. § 2000e-2(c)(1). Discrimination is effected through an adverse employment action: “a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Title VII requires that employers “offer a reasonable accommodation to resolve a conflict between an employee’s sincerely held religious belief and a condition of employment, unless such an accommodation would create an undue hardship for the employer’s business.” *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 133 (1st Cir. 2004).

The Plaintiffs argue that the Hospital Defendants have unlawfully discriminated against them by refusing to grant exemptions to the COVID-19 vaccine mandate and terminating, or threatening to terminate, their employment for abiding by their sincerely held religious beliefs. At the time of filing, Plaintiffs had not exhausted the administrative remedies available to them for their claim of unlawful employment discrimination, such as pursuing a complaint with the Maine Human Rights Commission or Equal Employment Opportunity Commission.

¹⁶ Jane Does 1 through 5 and John Does 2 and 3.

The Supreme Court has “set a high standard for obtaining preliminary injunctions restraining termination of employment.” *Bedrossian v. Nw. Mem’l Hosp.*, 409 F.3d 840, 845 (7th Cir. 2005) (citing *Sampson v. Murray*, 415 U.S. 61 (1974)). The case must present a “genuinely extraordinary situation” to support granting an injunction, *Sampson*, 415 U.S. at 92 n.68; allegations of “humiliation, damage to reputation, and loss of income” are insufficient to meet that standard, *Bedrossian*, 409 F.3d at 845, as are “deterioration in skills” and “inability to find another job,” *id.* at 846. Courts generally do not grant preliminary injunctions to prevent termination of employment, because “the termination . . . of employment typically [is] not found to result in irreparable injury.” 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (3d ed. 2021). Injuries incurred in employment discrimination claims may be addressed through remedies at law, such as reinstatement, back pay, and damages. 42 U.S.C.A. § 2000e-5(g). In addition, in the ordinary course, Title VII violations must be addressed first through the administrative processes available under federal law. *See* 42 U.S.C.A. § 2000e-5(f)(1)), *see also Rodriguez v. United States*, 852 F.3d 67, 78 (1st Cir. 2017) (“It is settled that a federal court will not entertain employment discrimination claims brought under Title VII unless administrative remedies have first been exhausted.”).

The Plaintiffs have not shown that the injuries they have suffered or may suffer—the loss of their employment and economic harm—meet the high standard for preliminary injunctive relief required to restrain an employer from terminating an employee’s employment. Administrative remedies are available to the Plaintiffs that have not been exhausted. For these reasons, Plaintiffs have not demonstrated a

likelihood of success on their Title VII claims to the degree needed to support preliminary injunctive relief.

C. Equal Protection Clause

The Plaintiffs argue that the COVID-19 vaccine mandate impermissibly creates a class of religious objectors and then subjects them to disparate treatment, in violation of the Equal Protection Clause. “[W]here a law subject to an equal protection challenge ‘does not violate [a plaintiff’s] right of free exercise of religion,’ courts do not ‘apply to the challenged classification a standard of scrutiny stricter than the traditional rational-basis test.’” *W.D.*, 521 F. Supp. 3d at 410 (second alteration in original) (quoting *A.M. ex rel. Messineo v. French*, 431 F. Supp. 3d 432, 446 (D. Vt. 2019)); accord *Wirzburger v. Galvin*, 412 F.3d 271, 282-83 (1st Cir. 2005) (“Because we [hold] that the [challenged law] does not violate the Free Exercise Clause, we apply rational basis scrutiny to the fundamental rights based claim that [the law] violates equal protection.”).

As described above, because the Plaintiffs have not demonstrated a likelihood of success on their Free Exercise Clause claim and I have found, at this stage, that the vaccine mandate is rationally based, the Plaintiffs have not demonstrated a likelihood of success that their Equal Protection claim is warranted, and no additional analysis is required.

D. Conspiracy

The Plaintiffs claim that the State and Hospital Defendants conspired to violate their civil rights in violation of 42 U.S.C.A. § 1985, but provide only conclusory, nonfactual allegations in support. Because a violation of Plaintiffs’ First Amendment

rights has not been demonstrated, and the Plaintiffs have not submitted any declarations or other documentary evidence showing a conspiracy among the Defendants, no additional analysis regarding the claimed conspiracy is warranted.

E. Supremacy Clause

Finally, the Plaintiffs contend that the Defendants violated the Supremacy Clause of the U.S. Constitution by ignoring federal law and proceeding as if Maine law supersedes federal law.

The Supremacy Clause “is not the ‘source of any federal rights,’ and certainly does not create a cause of action.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324-25 (2015) (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 107 (1989)). Rather, the Supremacy Clause “creates a rule of decision” that “instructs courts what to do when state and federal law clash.” *Id.* Additionally, the Plaintiffs’ assertion that “Defendants have explicitly claimed to healthcare workers in Maine, including Plaintiffs, that federal law does not apply” in Maine is wholly unsupported by the record. ECF No. 1 at ¶ 1.

The Plaintiffs have not demonstrated a likelihood of success on their Supremacy Clause claim.

F. Irreparable Harm, Balancing of the Equities, and Effect of the Court’s Action on the Public Interest

Where plaintiffs fail to meet their burden to show a likelihood of success on the merits, “failure to do so is itself preclusive of the requested relief.” *Bayley’s Campground, Inc. v. Mills*, 985 F.3d 153, 158 (1st Cir. 2021). In the interest of completeness, though, I address the three remaining prongs of the preliminary injunction inquiry.

First, the harm faced by Plaintiffs Jane Does 1 through 6 and John Does 2 through 3 is the loss of their employment, which, while serious and substantial, is not irreparable. These plaintiffs may pursue remedies at law for alleged discriminatory firings, including reinstatement, back pay, and damages. Although John Doe 1, as a healthcare provider, faces the possibility of more consequential harm through the potential loss of a business license, that harm does not outweigh the other factors I must consider.

Second, the balance of equities favors the Defendants because of the strong public interest promoted by the vaccine mandate, which includes preventing facility-based COVID-19 outbreaks that risk the health of vulnerable patients, healthcare workers, and the infrastructure of Maine's healthcare system itself. If Plaintiffs were granted injunctive relief preventing the Rule from being enforced, these objectives would be thwarted. *See Bayley's Campground Inc. v. Mills*, 463 F. Supp. 22, 38 (D. Me. 2020) (denying injunctive relief against Maine's COVID-19 quarantine requirement for out-of-state visitors because "[t]he type of injunctive relief Plaintiffs seek would upset the bedrock of the state's public health response to COVID-19, an area this Court does not wade into lightly"), *aff'd*, 985 F.3d 153 (1st Cir. 2021).

Finally, the vaccine mandate is directly aimed at promoting the public interest. This factor weighs heavily against granting preliminary injunctive relief in this case. Many courts that have examined requests for preliminary injunctions against COVID-19 restrictions have come to this same conclusion, as it is clear that "[w]eakening the State's response to a public-health crisis by enjoining it from enforcing measures employed specifically to stop the spread of COVID-19 is not in

the public interest.” *Bimber’s Delwood, Inc. v. James*, 496 F. Supp. 3d 760, 789 (W.D.N.Y. Oct. 21, 2020); *see also Harris*, 2021 WL 3848012, at *8 (“[G]iven the public health efforts promoted by the [COVID-19] Vaccine Policy, enjoining the continuation of same is not in the public interest.”); *Klaassen*, 2021 WL 3073926, at *43 (noting that when individuals refuse vaccination, “the evidence reasonably shows that they aren’t the only ones harmed by refusing to get vaccinated: refusing while also not complying with heightened safety precautions could ‘sicken and even kill many others who did not consent to that trade-off,’” which “certainly impacts the public interest” (quoting *Cassell v. Snyders*, 990 F.3d 539, 550 (7th Cir. 2021)). So too, here. Enjoining the Rule is not in the public interest.

Thus, in addition to failing to show a likelihood of success on the merits, I find that the Plaintiffs have not demonstrated an entitlement to relief under any of the three other factors in the preliminary injunction inquiry.

V. CONCLUSION

Both the serious risk of illness and death associated with the spread of the COVID-19 virus and the efforts by state and local governments to reduce that risk have burdened most aspects of modern life. In this case, the Plaintiffs—healthcare workers and a healthcare provider—have shown that their refusal to be vaccinated based on their religious beliefs has resulted or will result in real hardships as it relates to their jobs. They have not, however, been prevented from staying true to their professed religious beliefs which, they claim, compel them to refuse to be vaccinated against COVID-19. Neither have they seriously challenged the compelling governmental interest in mandating vaccinations for Maine’s healthcare workers, nor

have they demonstrated that, as they contend, the vaccine mandate was motivated by any improper animus toward religion.

Because the Plaintiffs have not established grounds that would warrant the entry of a preliminary injunction enjoining the enforcement of Maine's Covid-19 vaccine mandate for healthcare workers, the Motion for Preliminary Injunction (ECF No. 3) is **DENIED**.

SO ORDERED.

Dated this 13th day of October, 2021.

/s/ JON D. LEVY
CHIEF U.S. DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Bangor Division**

EXHIBIT 4

JANE DOES 1–6, JOHN DOES 1–3,)	
JACK DOES 1–1000, JOAN DOES 1–1000,)	
)	
Plaintiffs,)	
v.)	Case No. _____
)	
JANET T. MILLS, in her official capacity as)	
Governor of the State of Maine,)	
JEANNE M. LAMBREW, in her official capacity)	
as Commissioner of the Maine Department of)	
Health and Human Services,)	
NIRAV D. SHAH, in his official capacity as)	
Director of the Maine Center for Disease Control)	
and Prevention,)	
MAINEHEALTH,)	
GENESIS HEALTHCARE OF MAINE, LLC,)	
GENESIS HEALTHCARE, LLC,)	
NORTHERN LIGHT HEALTH FOUNDATION,)	
MAINEGENERAL HEALTH,)	
)	
Defendants.)	

“I believe we must do everything in our power not to fan the flames of fear but to encourage public health professionals . . . to continue their brave humanitarian work.”—Janet Mills¹

**VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
DECLARATORY RELIEF AND DAMAGES**

For their VERIFIED COMPLAINT against Defendants, JANET T. MILLS, in her official capacity as Governor of the State of Maine, JEANNE M. LAMBREW, in her official capacity as Commissioner of the Maine Department of Health and Human Services, NIRAV D. SHAH, in his official capacity as Director of the Maine Center for Disease Control and Prevention,

¹ Jacob Sullum, *Ebola Panic Control*, Reason.com (Nov. 5, 2014), <https://reason.com/2014/11/05/ebola-panic-control/> (quoting then-Attorney General Janet Mills concerning unwarranted quarantine orders against healthcare professionals) (emphasis added)).

MAINEHEALTH, GENESIS HEALTHCARE OF MAINE, LLC, GENESIS HEALTHCARE, LLC, NORTHERN LIGHT HEALTH FOUNDATION, and MAINEGENERAL HEALTH (“Defendants”), Plaintiffs, JANE DOES 1-6, JOHN DOES 1-3, JACK DOES 1-1000, and JOAN DOES 1-1000 (“Plaintiffs”), allege and aver as follows:

URGENCIES JUSTIFYING EMERGENCY RELIEF

1. The seminal issue before this Court can be boiled down to a simple question: Does federal law apply in Maine? Though the question borders on the absurd, so does Defendants’ answer to it. Defendants have explicitly claimed to healthcare workers in Maine, including Plaintiffs, that federal law does not apply, and neither should they. Defendants have informed Plaintiffs, who have sincerely held religious objections to the Governor’s mandate that all healthcare workers in Maine must receive a COVID-19 vaccine by October 1, 2021 (the “**COVID-19 Vaccine Mandate**”), that no protections or considerations are given to religious beliefs in Maine. Indeed, Defendants’ answer has been an explicit claim that federal law does not provide protections to Maine’s healthcare workers. When presented with requests from Plaintiffs for exemption and accommodation for their sincerely held religious beliefs, Defendants have responded in the following ways:

- “I can share MaineHealth’s view that **federal law does not supersede state law in this instance.**” (*See infra* ¶87 (emphasis added).)
- “[W]e are no longer able to consider religious exemptions for those who work in the state of Maine.” (*See infra* ¶84 (bold emphasis original).)
- “All MaineGeneral employees will have to be vaccinated against COVID-19 by Oct. 1 unless they have a medical exemption. The mandate also states that only medical exemptions are allowed, **no religious exemptions are allowed.**” (*Infra* ¶93 (emphasis added).)
- “Allowing for a religious exemption would be a violation of the state mandate issued by Governor Mills. So, unfortunately, that is not an option for us.” (*Infra* ¶94.)

2. The answer to the question before this Court is clear: **federal law and the United States Constitution are supreme over any Maine statute or edict, and Maine cannot override, nullify, or violate federal law.** *See* U.S. Const. Art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). **“This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures.”** *Haywood v. Drown*, 556 U.S. 729, 734 (2009) (emphasis added). Indeed, **“[i]t is a familiar and well-established principle that the Supremacy Clause . . . invalidates state laws that interfere with, or are contrary to, federal law. Under the Supremacy Clause . . . state law is nullified to the extent that it actually conflicts with federal law.”** *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712-13 (1985) (emphasis added) (cleaned up).

3. Thus, there can be no dispute that **Maine is required to abide by federal law and provide protections to employees who have sincerely held religious objections to the COVID-19 vaccines.** And, here, the federal law is clear: There can be no dispute that Title VII of the Civil Rights Act prohibits Defendants from discriminating against Plaintiffs on the basis of their sincerely held religious beliefs. 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 . . . religion.”). And, Defendants have a duty under Title VII to provide religious exemptions and accommodations to those with sincerely held religious objections to the COVID-19 Vaccine Mandate. In direct contrast to this

unquestionable principle of black letter law, however, every Defendant in this suit has seen fit to claim to its healthcare workers that the converse is true, and that Maine law is supreme over federal law; has engaged in a conspiracy and scheme to discourage employees with religious objections to the mandatory vaccines from even seeking religious exemptions from such a policy; has informed Plaintiffs that their requests for an exemption and accommodation from the mandate cannot even be evaluated or considered; and has flatly denied all requests for religious exemption and accommodation from the mandate that all healthcare workers receive a COVID-19 vaccine. Employers bent on discrimination “usually don’t post help wanted signs reading ‘blacks need not apply.’” *Lewis v. City of Unity City*, 918 F.3d 1213, 1261 (11th Cir. 2019) (Rosenbaum, J., concurring in part). But Maine and its healthcare employers have no problem being direct: **“religious misbelievers need not apply.”**

4. The dispute in this case is not about what accommodations are available to Plaintiffs or whether accommodation of Plaintiffs’ sincerely held religious objections can be conditioned on compliance with certain reasonable requirements. Plaintiffs have already acknowledged to Defendants that they are willing to comply with reasonable health and safety requirements that were deemed sufficient a mere two weeks ago. **The dispute is about whether Defendants are required to even consider a request for reasonable accommodation of Plaintiffs’ sincerely held religious beliefs.** The answer is clear: **yes.** And this Court should require Defendants to acknowledge and accept that federal law mandates accommodation for Plaintiffs’ sincerely held religious beliefs and order that Defendants extend such protections.

5. **Plaintiffs have been given a deadline to become vaccinated by October 1, 2021, forcing them to accept a vaccine injection by September 17, 2021 at the latest. If Plaintiffs do not comply with the vaccine mandate, they will be terminated and deprived of their ability**

to feed their families. No American should be faced with this unconscionable choice, especially the healthcare heroes who have served us admirably for the entire duration of COVID-19. A TRO is needed now to ensure that Defendants are enjoined from their continued efforts to deny that federal law even applies in Maine and to compel Defendants to extend the protections that federal law demands of them. Plaintiffs will suffer (and some have already suffered) irreparable harm by being forced to choose between their jobs and their sincerely held religious beliefs. Despite the Governor's mandate only requiring full vaccination by October 1, Plaintiff Jane Doe 2 was told her deadline to comply with the mandate was August 23, and she has already suffered termination as a result of the Governor's mandate. Relief from this unconscionable and unlawful deprivation of Plaintiffs' liberties cannot wait another day.

6. Earlier this year, the Governor rightfully declared that Maine's healthcare workers were "Superheroes" and requested that "all Maine people join me in thanking all of our healthcare workers who have heeded the call of duty and worked long hours, days, and weeks, often at great sacrifice to themselves and their families, to protect Maine people during this extraordinary crisis." Office of Governor Janet T. Mills, *Governor Mills Announces Four Maine Healthcare Superheroes to Attend Super Bowl LV Thanks to Generosity of New England Patriots' Kraft Family* (Feb. 2, 2021), <https://www.maine.gov/governor/mills/news/governor-mills-announces-four-maine-healthcare-superheroes-attend-super-bowl-lv-thanks>. Every word of that statement is equally as true today as it was the day the Governor uttered it. **Yet, on August 12, 2021, those same superheroes have now been cast as evil villains for requesting exemption and accommodation from the Governor's edict for their sincerely held religious beliefs.**

7. Neither the Governor nor any of the Defendant employers is permitted to blatantly ignore federal protections under the First Amendment and Title VII, yet that is precisely why emergency relief is needed in the instant action: Plaintiffs need **an order mandating that Defendants follow federal protections for religious objectors to the COVID-19 Vaccine Mandate.**

8. Plaintiffs are all healthcare workers in Maine who have sincerely held religious beliefs that preclude them from accepting any of the COVID-19 vaccines because of the vaccines' connections to aborted fetal cell lines and for other religious reasons that have been articulated to Defendants. Since COVID-19 first arrived in Maine, Plaintiffs have risen every morning, donned their personal protective equipment, and fearlessly marched into hospitals, doctor's offices, emergency rooms, operating rooms, and examination rooms with one goal: to provide quality healthcare to those suffering from COVID-19 and every other illness or medical need that confronted them. They did it bravely and with honor. They answered the call of duty to provide healthcare to the folks who needed it the most and worked tirelessly to ensure that those ravaged by the pandemic were given appropriate care. **All Plaintiffs seek in this lawsuit is to be able to continue to provide the healthcare they have provided to patients for their entire careers, and to do so under the same protective measures that have sufficed for them to be considered superheroes for the last 18 months.** Defendants shamelessly seek to throw these healthcare workers out into the cold and ostracize them from the very medical facilities for which they have sacrificed so much solely because of Plaintiffs' desire to continue to provide quality healthcare while still exercising their sincerely held religious beliefs.

9. The law mandates that Defendants permit them to do both. Regardless of whether Maine sees fit to extend protections to religious objectors under its own statutory framework,

federal law demands that these Plaintiffs and all employees in Maine receive protections for their sincerely held religious beliefs. This Court should hold Maine to the bargain it made with its citizens when it joined the union and ensure that Maine extends the required protections that federal law demands. As the Supreme Court held just last year, “**even in a pandemic, the Constitution cannot be put away and forgotten.**” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2021) (emphasis added). When we have demanded so much of our healthcare heroes, we owe them nothing less than the full measure of our own commitment to constitutional principles. Anything less would be desecrating the sacrifice these medical heroes made for untold numbers of people—including Defendants—when the call of duty demanded it of them.

PARTIES

10. Plaintiff Jane Doe 1 is a citizen of the State of Maine and is a healthcare worker employed by Defendant MaineHealth at one of its healthcare facilities in Maine. Jane Doe 1 submitted a written request for an exemption and accommodation from the Governor’s COVID-19 Vaccine Mandate based upon her sincerely held religious beliefs but was denied an exemption because MaineHealth informed her that the Governor does not allow MaineHealth to consider or grant religious exemption or accommodation requests.

11. Plaintiff Jane Doe 2 is a citizen of the State of Maine and is a healthcare worker employed by Genesis Healthcare at one of its healthcare facilities in Maine. Jane Doe 2 submitted a written request for an exemption and accommodation from the Governor’s COVID-19 Vaccine Mandate based upon her sincerely held religious beliefs but was denied an exemption because Genesis Healthcare informed her that the Governor does not allow Genesis Healthcare to consider or grant religious exemption or accommodation requests. Jane Doe 2 was given until August 23rd

to receive the vaccination or be terminated from her employment in the healthcare industry. Jane Doe 2 has received notification that the exercise of her religious beliefs has resulted in her termination from Genesis Healthcare.

12. Plaintiff Jane Doe 3 is a citizen of the State of Maine and is a healthcare worker employed by Northern Light Health Foundation at one of its healthcare facilities in Maine. Jane Doe 3 submitted a written request for an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate based upon her sincerely held religious beliefs but was denied an exemption because Northern Light Health Foundation informed her that the Governor does not allow Northern Light Health Foundation to consider or grant religious exemption or accommodation requests.

13. Plaintiff Jane Doe 4 is a citizen of the State of Maine and is a healthcare worker employed by Northern Light Health Foundation at one of its healthcare facilities in Maine. Jane Doe 4 submitted a written request for an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate based upon her sincerely held religious beliefs but was denied an exemption because Northern Light Health Foundation informed her that the Governor does not allow Northern Light Health Foundation to consider or grant religious exemption or accommodation requests.

14. Plaintiff Jane Doe 5 is a citizen of the State of Maine and is a healthcare worker employed by MaineGeneral Health at one of its healthcare facilities in Maine. Jane Doe 5 submitted a written request for an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate based upon her sincerely held religious beliefs but was denied an exemption because MaineGeneral Health informed her that the Governor does not allow MaineGeneral Health to consider or grant religious exemption or accommodation requests.

15. Plaintiff Jane Doe 6 is a citizen of the State of Maine and is a healthcare worker employed by Plaintiff John Doe 1. Jane Doe 6 has sincerely held religious objections to accepting or receiving the COVID-19 vaccine, but the Governor's mandate against her employer threatens to close his practice and revoke his business license for granting Jane Doe 6's request for an accommodation based on her sincerely held religious beliefs.

16. Plaintiff John Doe 1 is a licensed healthcare provider in Maine, operating his own practice with employees who all have sincerely held religious objections to the Governor's COVID-19 Vaccine Mandate. John Doe 1 has sincerely held religious objections to accepting or receiving the COVID-19 vaccines (*see infra*) and has sincerely held religious beliefs that he is to honor the sincerely held religious beliefs of his employees who object to the COVID-19 vaccines. John Doe 1 has been threatened with closure of his practice and loss of his business license for considering and granting religious accommodations and exemptions to his employees.

17. Plaintiff John Doe 2 is a citizen of the State of Maine and is a healthcare worker employed by Genesis Healthcare at one of its healthcare facilities in Maine. John Doe 2 submitted a written request for an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate based upon his sincerely held religious beliefs but was denied an exemption because Genesis Healthcare informed him that the Governor does not allow Genesis Healthcare to consider or grant religious exemption or accommodation requests.

18. Plaintiff John Doe 3 is a citizen of the State of Maine and is a healthcare worker employed by Northern Light Health Foundation at one of its healthcare facilities in Maine. John Doe 3 submitted a written request for an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate based upon his sincerely held religious beliefs but was denied an exemption because Northern Light Health Foundation informed him that the Governor does not

allow Northern Light Health Foundation to consider or grant religious exemption or accommodation requests.

19. Plaintiffs Jack Does 1–250 are citizens of the State of Maine and are healthcare workers employed by MaineHealth at its healthcare facilities in Maine. Jack Does 1–250 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because MaineHealth informed Jack Does 1–250 that the Governor does not allow MaineHealth to consider or grant religious exemption or accommodation requests.

20. Plaintiffs Joan Does 1–250 are citizens of the State of Maine and are healthcare workers employed by MaineHealth at its healthcare facilities in Maine. Joan Does 1–250 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because MaineHealth informed Joan Does 1–250 that the Governor does not allow MaineHealth to consider or grant religious exemption or accommodation requests.

21. Plaintiffs Jack Does 251–500 are citizens of the State of Maine and are healthcare workers employed by Northern Light Health Foundation at its healthcare facilities in Maine. Jack Does 251–500 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because Northern Light Health Foundation informed Jack Does 251–500 that

the Governor does not allow Northern Light Health Foundation to consider or grant religious exemption or accommodation requests.

22. Plaintiffs Joan Does 251–500 are citizens of the State of Maine and are healthcare workers employed by Northern Light Health Foundation at its healthcare facilities in Maine. Joan Does 251–500 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because Northern Light Health Foundation informed Joan Does 251–500 that the Governor does not allow Northern Light Health Foundation to consider or grant religious exemption or accommodation requests.

23. Plaintiffs Jack Does 501–750 are citizens of the State of Maine and are healthcare workers employed by Genesis Healthcare at its healthcare facilities in Maine. Jack Does 501–750 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because Genesis Healthcare informed Jack Does 501–750 that the Governor does not allow Genesis Healthcare to consider or grant religious exemption or accommodation requests.

24. Plaintiffs Joan Does 501–750 are citizens of the State of Maine and are healthcare workers employed by Genesis Healthcare at its healthcare facilities in Maine. Joan Does 501–750 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied

exemptions because Genesis Healthcare informed Joan Does 501–750 that the Governor does not allow Genesis Healthcare to consider or grant religious exemption or accommodation requests.

25. Plaintiffs Jack Does 751–1000 are citizens of the State of Maine and are healthcare workers employed by MaineGeneral Health at its healthcare facilities in Maine. Jack Does 751–1000 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because MaineGeneral Health informed Jack Does 751–1000 that the Governor does not allow MaineGeneral Health to consider or grant religious exemption or accommodation requests.

26. Plaintiffs Joan Does 751–1000 are citizens of the State of Maine and are healthcare workers employed by MaineGeneral Health at its healthcare facilities in Maine. Joan Does 751–1000 would like to submit requests for exemptions and accommodations but have been told not to do so or have submitted written requests for exemptions and accommodations from the Governor’s COVID-19 Vaccine Mandate based upon their sincerely held religious beliefs but were denied exemptions because MaineGeneral Health informed Joan Does 751–1000 that the Governor does not allow MaineGeneral Health to consider or grant religious exemption or accommodation requests.

27. Defendant, Janet T. Mills, in her official capacity as Governor of the State of Maine (“the Governor”) is responsible for enacting the COVID-19 Vaccine Mandate. Governor Mills is sued in her official capacity

28. Defendant Jeanne M. Lambrew, in her official capacity as the Commissioner of the Maine Department of Health and Human Services is responsible for overseeing the healthcare

industry in Maine and is responsible for the Governor's COVID-19 Vaccine Mandate and enforcing the provisions of threatened loss of licensure for those healthcare providers who refuse to mandate the COVID-19 vaccine. Defendant Lambrew is sued in her official capacity.

29. Defendant Nirav D. Shah in his official capacity as the Director of the Maine Center for Disease Control and Prevention is responsible for overseeing the healthcare industry in Maine and is responsible for the Governor's COVID-19 mitigation measures and COVID-19 Vaccine Mandate and enforcing the provisions of threatened loss of licensure for those healthcare providers who refuse to mandate the COVID-19 vaccine. Defendant Shah is sued in his official capacity.

30. Defendant MaineHealth is a nonprofit corporation incorporated under the laws of the State of Maine, employees a number of Plaintiffs in this action, has refused to even consider requests for religious accommodations, and has threatened to terminate Plaintiffs for their refusal to accept a vaccine that violates their sincerely held religious beliefs.

31. Defendant Genesis Healthcare of Maine, LLC is a limited liability company organized under the laws of the State of Maine, employees a number of Plaintiffs in this action, has refused to even consider requests for religious accommodations, and has threatened to terminate Plaintiffs for their refusal to accept a vaccine that violates their sincerely held religious beliefs. Defendant Genesis Healthcare, LLC is a foreign limited liability company organized under the laws of the State of Delaware and is a corporate parent of Genesis Healthcare of Maine, LLC. Plaintiffs collectively refer to the parent and subsidiary corporations as Genesis Healthcare in this Verified Complaint.

32. Defendant Northern Light Health Foundation is a nonprofit corporation incorporated under the laws of the State of Maine, employees a number of Plaintiffs in this action, has refused to even consider requests for religious accommodations, and has threatened to

terminate Plaintiffs for their refusal to accept a vaccine that violates their sincerely held religious beliefs.

33. Defendant MaineGeneral Health is a nonprofit corporation incorporated under the laws of the State of Maine, employees a number of Plaintiffs in this action, has refused to even consider requests for religious accommodations, and has threatened to terminate Plaintiffs for their refusal to accept a vaccine that violates their sincerely held religious beliefs.

JURISDICTION AND VENUE

34. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. This action also arises under federal statutory laws, namely 42 U.S.C. § 1985(3) and 42 U.S.C. § 2000e-2.

35. This Court has jurisdiction over the instant matter pursuant to 28 U.S.C. §§ 1331 and 1343.

36. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

37. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, implemented through Rule 57 of the Federal Rules of Civil Procedure.

38. This Court is authorized to grant Plaintiffs' prayer for a temporary restraining order and preliminary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

39. This Court is authorized to grant Plaintiffs' prayer for relief regarding damages under 42 U.S.C. § 2000e-5.

40. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. THE GOVERNOR'S COVID-19 VACCINE MANDATE FOR HEALTHCARE WORKERS.

41. On August 12, 2021, Governor Mills announced that Maine will now require health care workers to accept or receive one of the three, currently available COVID-19 vaccines in order to remain employed in the healthcare profession. *See* Office of Governor Janet Mills, *Mills Administration Requires Health Care Workers To Be Fully Vaccinated Against COVID-19 By October 1* (Aug. 12, 2021), <https://www.maine.gov/governor/mills/news/mills-administration-requires-health-care-workers-be-fully-vaccinated-against-covid-19-october> (last visited Aug. 24, 2021) (hereinafter "COVID-19 Vaccine Mandate"). (A true and correct copy of the Governor's COVID-19 Vaccine Mandate is attached hereto as **EXHIBIT A** and incorporated herein.)

42. The Governor's COVID-19 Vaccine Mandate defines health care workers as "any individual employed by a hospital, multi-level health care facility, home health agency, nursing facility, residential care facility, and intermediate care facility for individuals with intellectual disabilities that is licensed by the State of Maine" as well as "those employed by emergency medical service organizations or dental practices."

43. The Governor's COVID-19 Vaccine Mandate also says that "[t]he organizations to which this requirement applies must ensure that each employee is vaccinated, with this requirement being enforced as a condition of the facilities' licensure."

44. **Thus, the Governor has threatened to revoke the licenses of all health care employers who fail to mandate that all employees receive the COVID-19 vaccine.**

45. In addition to the Governor's mandate, Plaintiffs and all health care workers in Maine were also stripped of their rights to request a religious exemption and accommodation from the COVID-19 Vaccine Mandate.

46. On August 14, 2021, Dr. Shah and the Maine Center for Disease Control and Prevention ("MCDC") amended 10-144 C.M.R. Ch. 264 to eliminate the ability of health care workers in Maine to request and obtain a religious exemption and accommodation from the COVID-19 Vaccine Mandate.

47. The only exemptions Maine now lists as available to health care workers are those outlined in 22 M.R.S. § 802.4-B, which purports to exempt only those individuals for whom an immunization is medically inadvisable and who provide a written statement from a doctor documenting the need for an exemption.

48. Under the prior version of the rule, 10-144 C.M.R. Ch. 264, §3-B a health care worker could be exempt from mandatory immunizations if the "employee states in writing an opposition to immunization because of a sincerely held religious belief." *Id.*

49. In fact, as acknowledged by MCDC, Maine removed the religious exemption to mandatory immunizations in early August 2021. *See* Division of Disease Surveillance, *Maine Vaccine Exemption Law Change 2021*, <https://www.maine.gov/dhhs/mecdc/infectious-disease/immunization/maine-vaccine-exemption-law-changes.shtml> (last visited Aug. 17, 2021) ("The health care immunization law has removed the allowance for philosophical and religious exemptions and has included influenza as a required immunization.").

B. PLAINTIFFS' SINCERELY HELD RELIGIOUS OBJECTIONS TO COVID-19 VACCINE MANDATE.

50. Plaintiffs all have sincerely held religious beliefs that preclude them from accepting or receiving any of the three available COVID-19 vaccines because of the connection between the

various COVID-19 vaccines and the cell lines of aborted fetuses, whether in the vaccines' origination, production, development, testing, or other inputs.

51. A fundamental component of Plaintiffs' sincerely held religious beliefs is that all life is sacred, from the moment of conception to natural death, and that abortion is a grave sin against God and the murder of an innocent life.

52. Plaintiffs' sincerely held religious beliefs are rooted in Scripture's teachings that "[a]ll Scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, [and] for instruction in righteousness." *2 Timothy* 3:16 (KJV).

53. Because of that sincerely held religious belief, Plaintiffs believe that they must conform their lives, including their decisions relating to medical care, to the commands and teaching of Scripture.

54. Plaintiffs have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception. *See Psalm* 139:13–14 (ESV) ("For you formed my inward parts; you knitted me together in my mother's womb. I praise you, for I am fearfully and wonderfully made."); *Psalm* 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); *Isaiah* 44:2 (KJV) ("the LORD that made thee, and formed thee from the womb"); *Isaiah* 44:24 (KJV) ("Thus saith the LORD, thy redeemer, and he that formed thee from the womb, I am the LORD that maketh all things."); *Isaiah* 49:1 (KJV) ("The LORD hath called my from the womb; from the bowels of my mother hath he made mention of my name."); *Isaiah* 49:5 (KJV) ("the LORD that formed me from the womb to be his servant"); *Jeremiah* 1:5 (KJV) ("Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, and I ordained thee.").

55. Plaintiffs also have sincerely held religious beliefs that every child's life is sacred because they are made in the image of God. *See Genesis* 1:26–27 (KJV) (“Let us make man in our image, after our likeness. . . . So God created man in his own image; in the image of God created he him; male and female created he them.”).

56. Plaintiffs also have sincerely held religious beliefs that because life is sacred from the moment of conception, the killing of that innocent life is the murder of an innocent human in violation of Scripture. *See, e.g., Exodus* 20:13 (KJV) (“Though shalt not kill.”); *Exodus* 21:22–23 (setting the penalty as death for even the accidental killing of an unborn child); *Exodus* 23:7 (KJV) (“the innocent and righteous slay thou not, for I will not justify the wicked”); *Genesis* 9:6 (KJV) (“Whoso sheddeth a man's blood, by man shall his blood by shed: for in the image of God made he man.”); *Deuteronomy* 27:25 (KJV) (“Cursed be he that taketh reward to slay an innocent person.”); *Proverbs* 6:16–17 (KJV) (“These six things doth the LORD hate: yea, seven are an abomination to him . . . hands that shed innocent blood.”).

57. Plaintiffs also have the sincerely held religious belief that it would be better to tie a millstone around their necks and be drowned in the sea than bring harm to an innocent child. *See Matthew* 18:6; *Luke* 17:2.

58. Plaintiffs have sincerely held religious beliefs, rooted in the Scriptures listed above, that anything that condones, supports, justifies, or benefits from the taking of innocent human life via abortion is sinful, contrary to the Scriptures, and must be denounced, condemned, and avoided altogether.

59. Plaintiffs have sincerely held religious beliefs, rooted in the Scriptures listed above, that it is an affront to Scripture's teaching that all life is sacred when any believer uses a product derived from or connected in any way with abortion.

60. Plaintiffs' sincerely held religious beliefs, rooted in the above Scriptures, preclude them from accepting any one of the three currently available COVID-19 vaccines derived from, produced or manufactured by, tested on, developed with, or otherwise connected to aborted fetal cell lines.

61. Plaintiffs have sincerely held religious objections to the Johnson & Johnson (Janssen Pharmaceuticals) vaccine because it unquestionably used aborted fetal cells lines to produce and manufacture the vaccine.

62. As reported by the North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, "[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.**" *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. 2, 2021) (bold emphasis original).

63. The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine, which used the PER.C6 fetal cell line, "is a retinal cell line that was **isolated from a terminated fetus in 1985.**" Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), https://ldh.la.gov/assets/oph/Center-PHCH/CenterPH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (last visited Aug. 2, 2021) (emphasis added).

64. Scientists at the American Association for the Advancement of Science have likewise published research showing that the Johnson & Johnson vaccine used aborted fetal cell lines in the development and production phases of the vaccine. *Meredith Wadman, Vaccines that*

use human fetal cells draw fire, Science (June 12, 2020), available at <https://science.sciencemag.org/content/368/6496/1170.full> (last visited Aug. 22, 2021).

65. Plaintiffs have sincerely held religious objections to the Moderna and Pfizer/BioNTech COVID-19 vaccines because both of these vaccines, too, have their origins in research on aborted fetal cells lines.

66. As reported by the North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, the Moderna and Pfizer mRNA vaccines are ultimately derived from research and testing on aborted fetal cell lines. In fact, “[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.**” 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. 22, 2021) (emphasis added).

67. The Louisiana Department of Health’s publications again confirm that aborted fetal cells lines were used in the “proof of concept” phase of the development of their COVID-19 mRNA vaccines. 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 (last visited Aug. 22, 2021).

68. 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, Plaintiffs’ sincerely held religious beliefs compel them to abstain from

obtaining or injecting any of these products into their body, regardless of the perceived benefit or rationale.

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

70. In addition to their sincerely held religious beliefs that compel them to abstain from any connection to the grave sin of abortion, Plaintiffs have sincerely held religious beliefs that the Holy Spirit—through prayer and the revelation of Scripture—guide them in all decisions they make in life.

71. Plaintiffs have sincerely held religious beliefs that Jesus Christ came to this earth, died on the cross for their sins, and was resurrected three days later, and that when He ascended to Heaven, He sent the Holy Spirit to indwell His believers and to guide them in all aspects of their lives. *See John* 16:7 (KJV) (“Nevertheless I tell you the truth, It is expedient for you that I go away: for if I go not away, the Comforter will not come unto you; but if I depart, I will send him unto you.”); *John* 14:26 (KJV) (“But the Comforter, which is the Holy Ghost, whom the Father will send in my name, he shall teach you all things, and bring all things to your remembrance, whatsoever I have said unto you.”).

72. Plaintiffs have sincerely held religious beliefs that the Holy Spirit was given to them by God to reprove them of righteousness and sin and to guide them into all truth. *See John*

16:8, 13 (KJV) (“And when he is come, he will reprove the world of sin, and of righteousness, and of judgment [W]hen he, the Spirit of truth, is come, he will guide you into all truth: for he shall not speak of himself; but whatsoever he shall hear, that shall he speak: and he will shew you things to come.”).

73. Plaintiffs also have sincerely held religious beliefs that they shall receive all answers to their questions through prayer and supplication, including for decisions governing their medical health. *See James* 1:5 (KJV) (“If any of you lack wisdom, let him ask of God, that giveth to all men liberally, and upbraideth not; and it shall be given him.”); *Mark* 11:24 (KJV) (“Therefore I say unto you, What things soever ye desire, when ye pray, believe that ye receive them, and ye shall have them.”); *Philippians* 4:6–7 (KJV) (“Be careful for nothing, but in everything by prayer and supplication with thanksgiving let your request be made known to God. And the peace of God, which passeth all understanding, shall keep your hearts and minds through Christ Jesus.”); *1 John* 4:14–15 (KJV) (“And this is the confidence we have in him, that, if we ask anything according to his will, he heareth us. And if we know that he hear us, whatsoever we ask, we know that we have the petitions that we desired of him.”).

74. Through much prayer and reflection, Plaintiffs have sought wisdom, understanding, and guidance on the proper decision to make concerning these COVID-19 vaccines, and Plaintiffs have been convicted by the Holy Spirit in their beliefs that accepting any of the three currently available vaccines is against the teachings of Scripture and would be a sin.

C. PLAINTIFFS’ WILLINGNESS TO COMPLY WITH ALTERNATIVE SAFETY MEASURES.

75. Plaintiffs have offered, and are ready, willing, and able to comply with all reasonable health and safety requirements to facilitate their religious exemption and accommodation from the COVID-19 Vaccine Mandate.

76. Plaintiffs have all informed their respective employers that they are willing to wear facial coverings, submit to reasonable testing and reporting requirements, monitor symptoms, and otherwise comply with reasonable conditions that were good enough to permit them to do their jobs for the last 18 months with no questions asked.

77. In fact, last year the State said Plaintiffs were heroes because of their willingness to abide by the same conditions and requirements that Plaintiffs are willing to abide by now.

78. In fact, Defendant Shah and the MCDC continues to say that facial coverings are one of the most effective ways to prevent COVID-19. In its Face Covering FAQs page, the MCDC states:

How does wearing a face covering prevent the spread of COVID-19?

COVID-19 is an airborne virus that most commonly spreads between people who are in close contact with one another. It spreads through respiratory droplets or small particles, such as those in aerosols, produced when an infected person coughs, sneezes, sings, talks, or breathes. Because it helps contain respiratory droplets, **wearing a face covering has been proven to be one of the most significant, effective, and easiest ways to reduce the spread of COVID-19.**

COVID-19 Response, *Face Covering FAQs* (July 29, 2021), <https://www.maine.gov/covid19/faqs/face-coverings> (emphasis added).

79. In fact, the MCDC still recommends that vaccinated individuals wear a mask in public settings. And the reason for this is simple,

A preliminary study has shown that in the case of a breakthrough infection, the Delta variant is able to grow in the noses of vaccinated people **to the same degree as if they were not vaccinated at all.** The virus that grows is just as infectious as that in unvaccinated people, meaning vaccinated people can transmit the virus and infect others.

National Geographic, *Evidence mounts that people with breakthrough infections can spread Delta easily* (Aug. 20, 2021), <https://www.nationalgeographic.com/science/article/evidence-mounts->

that-people-with-breakthrough-infections-can-spread-delta-easily (last visited Aug. 23, 2021) (emphasis added).

80. Masking and testing protocols remain sufficient to prevent the spread of COVID-19 among healthcare workers, and constitute a reasonable alternative to vaccination as an accommodation of sincerely held religious beliefs.

81. In fact, the United States District Court for the Western District of Louisiana just issued a temporary restraining order against a medical school for the school's failure to grant religious exemptions when reasonable accommodations were available (such as masking, testing, etc.) and mandatory vaccination was not the least restrictive means of achieving the school's interest in protecting the school's student body. *See Magliulo v. Edward Via College of Osteopathic Medicine*, No. 3:21-CV-2304, 2021 WL 36799227 (W.D. La. Aug. 17, 2021).

D. DEFENDANTS' RESPONSES CLAIMING FEDERAL LAW IS IRRELEVANT IN MAINE.

82. Consistent with her sincerely held religious beliefs, Jane Doe 1 submitted to her employer, Defendant MaineHealth, a request for a religious exemption from the Governor's COVID-19 Vaccine Mandate.

83. On August 17, 2021, MaineHealth denied Jane Doe 1's request for a religious exemption and accommodation. (A true and correct copy of the communications between MaineHealth and Jane Doe 1 is attached hereto as **EXHIBIT B** and incorporated herein.)

84. In its response, MaineHealth stated:

Please be advised that due to the addition of the COVID-19 vaccine to Maine's Healthcare Worker Immunization law announced by the governor in a press conference on 8/12/21, **we are no longer able to consider religious exemptions for those who work in the state of Maine. This also includes those of you who submitting [sic] influenza exemptions as well.** The State of Maine now requires all healthcare workers to be fully vaccinated by October 1st, which means you are

two weeks beyond the completion of a COVID-19 vaccination series. (i.e. Both doses of the mRNA vaccine, or the single dose of J & J) as of that date.

You submitted a religious exemption, your request is unable to be evaluated due to a change in the law. Your options are to receive vaccination or provide documentation for a medical exemption to meet current requirements for continued employment.

(Exhibit B at 2 (bold emphasis original).)

85. On August 20, 2021, after receiving her first denial from MaineHealth, Jane Doe 1 responded to MaineHealth, stating:

My request for an exemption was made under federal law, including Title VII of the Civil Rights [Act] of 1964. The Constitution provides that federal law is supreme over state law, and Maine cannot abolish the protections of federal law. You may be interested in this press release from Liberty Counsel, and the demand letter they have sent to Governor Mills on this issue (which is linked in the press release): <https://lc.org/newsroom/details/081821-maine-governor-must-honor-religious-exemptions-for-shot-mandate>. Regardless of what the Governor chooses to do, Franklin Memorial has a legal obligation under federal law to consider and grant my proper request for a religious exemption. Please let me know promptly if you will do so.

(Exhibit B at 1.)

86. That same day, MaineHealth responded to Jane Doe 1 stating that federal law does not supersede state law or the Governor's COVID-19 Vaccine Mandate and that MaineHealth would not be following federal law on the issue.

87. Specifically, MaineHealth stated:

Although I cannot give legal guidance to employees, **I can share MaineHealth's view that federal law does not supersede state law in this instance.** The EEOC is clear in its guidance that employers need only provide religious accommodations when doing so does not impose an undue hardship on operations. Requiring MaineHealth to violate state law by granting unrecognized exemptions would impose such a hardship. **As such, we are not able to grant a request for a religious exemption from the state mandated vaccine.**

(Exhibit B at 1 (emphasis added).)

88. Plaintiff Jane Doe 2 submitted to her employer, Genesis Healthcare, a request for a religious exemption and accommodation from the Governor's COVID-19 Vaccine Mandate. After

reviewing Jane Doe 2's submission, which articulated her sincerely held religious beliefs, Genesis Healthcare sent Jane Doe 2 a cursory response stating that her religious beliefs did not qualify for an exemption from the vaccine mandate. **Plaintiff Jane Doe 2 was given until August 23 to become vaccinated, and when her request for a religious objection and accommodation was denied, Jane Doe 2 was terminated from her employment.**

89. Plaintiff Jane Doe 3 submitted a request to her employer, Defendant Northern Light Health Foundation, seeking an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate. Northern Light responded to Jane Doe 3, denying her request and stating that the Governor's COVID-19 Vaccine Mandate does not permit exemptions or accommodations for sincerely held religious beliefs. (A true and correct copy of Northern Light's denial of Jane Doe 3's request for a religious exemption and accommodation is attached hereto as **EXHIBIT C** and incorporated herein.)

90. Specifically, Northern Light informed Jane Doe 3 that her request for a religious exemption could not be granted because Maine law and the Governor do not permit "non-medical exemptions," and stated, "the only exemptions that may be made to this requirement are medical exemptions supported by a licensed physician, nurse practitioner, or physician assistant." (Exhibit C at 1.)

91. Northern Light therefore ignored federal law on the basis that the Governor has removed any exemptions for sincerely held religious beliefs.

92. On August 19, 2021, Jane Doe 5 submitted a request to her employer, Defendant MaineGeneral Health, stating that she has sincerely held religious objections to the COVID-19 vaccines and requesting an exemption and accommodation from the Governor's COVID-19 Vaccine Mandate. MaineGeneral responded to Jane Doe 5, stating that no religious exemptions

were permitted under the Governor's mandate and that her request for a religious exemption and accommodation was denied. (A true and correct copy of MaineGeneral's denial of Jane Doe 5's request for a religious exemption is attached hereto as **EXHIBIT D** and incorporated herein.)

93. Specifically, MaineGeneral stated:

MaineGeneral Health must comply with Governor's Mill's [sic] COVID-19 vaccination mandate for all health care employees. All MaineGeneral employees will have to be vaccinated against COVID-19 by Oct. 1 unless they have a medical exemption. **The mandate also states that only medical exemptions are allowed, no religious exemptions are allowed.**

(Exhibit D at 1 (emphasis added).)

94. Thus, MaineGeneral has made it abundantly clear to its employees that religious exemptions are not available because of the Governor's Mandate. But, if its initial denials left any room for doubt, its follow-up response to Jane Doe 5 put all doubt to rest: **"Allowing for a religious exemption would be a violation of the state mandate issued by Governor Mills. So, unfortunately, it is not an option for us."** (Exhibit D at 2.)

95. The responses from Defendants MaineHealth, Genesis Healthcare, Northern Light Health Foundation, and MaineGeneral Health have been virtually identical for all other Plaintiffs as well, indicating that the various Defendants were not permitted by the Governor's COVID-19 Vaccine Mandate to allow for (or even consider) an exemption and accommodation for sincerely held religious beliefs.

E. DEFENDANTS ADMIT THAT OTHER, NON-RELIGIOUS EXEMPTIONS ARE AVAILABLE.

96. Defendants' responses to Plaintiffs' requests for exemption and accommodation for their sincerely held religious beliefs confirm that Maine is, indeed, willing to grant other exemptions from the Governor's COVID-19 Vaccine Mandate but have relegated religious exemption requests to constitutional orphan status.

97. In its response to Jane Doe 1, Defendant MaineHealth has indicated it is perfectly willing to accept and grant medical exemptions but will not allow religious exemptions. Specifically, it told Jane Doe 1:

You submitted a religious exemption, your request is unable to be evaluated due to a change in the law. Your options are to receive vaccination or provide documentation for a medical exemption to meet current requirements for continued employment.

(Exhibit B at 2.)

98. Thus, while MaineHealth says it will consider and grant the preferred medical exemptions, **it will not even consider the constitutionally orphaned religious exemption requests.**

99. To make matters even more clear, MaineHealth subsequently informed Jane Doe 1 that she was permitted to seek any other exemption, except a religious one: “If you seek an accommodation **other than a religious exemption** from the state mandated vaccine, please let us know.” (Exhibit B at 1 (emphasis added).)

100. Defendant Northern Light gave a similar response to Jane Doe 3, indicating that only medical exemptions would be considered or approved. Specifically, it stated that “the only exemptions that may be made to this requirement are medical exemptions” and that all Northern Light employees must comply with the Governor’s COVID-19 Vaccine Mandate “except in the case of an approved medical exemption.” (Exhibit C at 1.)

101. Defendant MaineGeneral issued a similar response to Jane Doe 5, stating that all healthcare workers must comply with the Governor’s COVID-19 Vaccine Mandate “unless they have a medical exemption,” and that the Governor’s “mandate states that only medical exemptions are allowed, no religious exemptions are allowed.” (Exhibit D at 1.)

102. The Governor, through her COVID-19 Vaccine Mandate, has created a two-tiered system of exemptions, and placed religious beliefs and those who hold them in a class less favorable than other exemptions that Defendants are perfectly willing to accept.

103. Under the Governor's scheme of creating a disfavored class of religious exemptions, Defendants are not even willing to consider religious exemptions, much less grant them to those who have sincerely held religious objections to the COVID-19 vaccines.

F. IRREPARABLE HARM SUFFERED BY PLAINTIFFS.

104. Because Jane Doe 1's request for an exemption and accommodation of her sincerely held religious beliefs has been denied by MaineHealth, Jane Doe 1 faces the unconscionable choice of accepting a vaccine that conflicts with her religious beliefs or losing her job. Unless Jane Doe 1 immediately violates her conscience and sincere religious beliefs by beginning the Governor's mandatory COVID-19 vaccine process, she will be terminated from her employment on October 1.

105. Jane Doe 2's employer, Genesis Healthcare, mandated that she receive the vaccine by August 23, even though the Governor did not require compliance until October 1. Jane Doe 2 was informed that her religious beliefs would not be accommodated because religious exemptions were not available in Maine. Jane Doe 2 was informed that her employment was terminated on August 23 at 11:59 p.m.

106. Because Jane Doe 3's request for an exemption and accommodation of her sincerely held religious beliefs has been denied by Northern Light, Jane Doe 3 faces the unconscionable choice of accepting a vaccine that conflicts with her religious beliefs or losing her job. Unless Jane Doe 3 immediately violates her conscience and sincere religious beliefs by

beginning the Governor's mandatory COVID-19 vaccine process, she will be terminated from her employment on October 1.

107. Because Jane Doe 4's request for an exemption and accommodation of her sincerely held religious beliefs has been denied by Northern Light, Jane Doe 4 faces the unconscionable choice of accepting a vaccine that conflicts with her religious beliefs or losing her job. Unless Jane Doe 4 immediately violates her conscience and sincere religious beliefs by beginning the Governor's mandatory COVID-19 vaccine process, she will be terminated from her employment on October 1.

108. Because Jane Doe 5's request for an exemption and accommodation of her sincerely held religious beliefs has been denied by MaineGeneral, Jane Doe 5 faces the unconscionable choice of accepting a vaccine that conflicts with her religious beliefs or losing her job. Unless Jane Doe 5 immediately violates her conscience and sincere religious beliefs by beginning the Governor's mandatory COVID-19 vaccine process, she will be terminated from her employment on October 1.

109. Because John Doe 2's request for an exemption and accommodation of his sincerely held religious beliefs has been denied by Genesis Healthcare, John Doe 2 faces the unconscionable choice of accepting a vaccine that conflicts with his religious beliefs or losing his job. Unless John Doe 2 immediately violates his conscience and sincere religious beliefs by beginning the Governor's mandatory COVID-19 vaccine process, he will be terminated from her employment on October 1.

110. Because John Doe 3's request for an exemption and accommodation of his sincerely held religious beliefs has been denied by Northern Light, John Doe 3 faces the unconscionable choice of accepting a vaccine that conflicts with his religious beliefs or losing his

job. Unless John Doe 3 immediately violates his conscience and sincere religious beliefs by beginning the Governor's mandatory COVID-19 vaccine process, he will be terminated from her employment on October 1.

111. Because of the Governor's COVID-19 Vaccine Mandate, John Doe 1 faces the unconscionable choice of violating his own sincerely held religious beliefs and accepting the Governor's mandatory vaccine or potentially losing his practice and business license for failure to comply.

112. Because of the Governor's COVID-19 Vaccine Mandate, John Doe 1 also faces the unconscionable choice of refusing to grant his employees' requests for exemptions and accommodation from the Governor's COVID-19 Vaccine Mandate or losing his practice and his business license.

113. Because of the Governor's COVID-19 Vaccine Mandate, Jane Doe 6 is faced with the unconscionable choice of receiving a vaccine to which she has sincerely held religious objections and keeping her job or losing her job and source of income.

114. As a result of the Governor's COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being prohibited from engaging in their constitutionally and statutorily protected rights to the free exercise of their sincerely held religious beliefs.

115. As a result of the Governor's COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being forced to choose between maintaining the ability to feed their families and the free exercise of their sincerely held religious beliefs.

116. As a result of the Governor's COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being stripped of their rights to equal protection of the law and being subjected to disfavored class status in Maine.

G. PLAINTIFFS' ATTEMPTS TO SECURE RELIEF PRIOR TO SEEKING A TRO AND PRELIMINARY INJUNCTION.

117. On August 18, 2021, Plaintiffs' counsel sent the Governor, Director Shah, and Commissioner Lambrew a letter informing them that their COVID-19 Vaccine Mandate, on its own, and in its interpretation and application by others deprives Plaintiffs of their rights to request a sincerely held religious exemption and accommodation under federal law. (A true and correct copy of the Letter sent to the Governor, Director, and Commissioner is attached hereto as **EXHIBIT E** and incorporated herein.)

118. Plaintiffs requested that the Governor withdraw her unlawful directives and publicly announce that any interpretation of her mandate to deprive Plaintiffs and all healthcare workers in Maine of their right to request and receive an exemption and accommodation for their sincerely held religious objections to the mandatory COVID-19 vaccine was unlawful and impermissible.

119. Plaintiffs requested the response and the public announcement from the Governor prior to August 20, 2021, as that was the given deadline for compliance with the vaccine mandate for those individuals choosing a particular vaccine and because some of Defendants were demanding that their employees receive the first dose of a vaccine by that date.

120. Plaintiffs' counsel requested a response informing counsel that the Governor's directives, and the interpretation of the Governor's COVID-19 Vaccine Mandate to deprive Plaintiffs of their federal rights were impermissible, and that the Governor would permit Plaintiffs and other healthcare workers with sincere religious objections to the vaccine to request and receive reasonable accommodation to the mandate.

121. Neither Governor Mills, Director Shah, nor Commissioner Lambrew responded to Plaintiffs' counsel, nor announced that federal law would continue to apply in Maine, nor provided

any information to healthcare employers in Maine that federal law required Defendants to accept and permit their healthcare employees to request and receive religious exemptions and accommodation to the COVID-19 Vaccine Mandate.

**COUNT I—VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST
AMENDMENT TO THE UNITED STATES CONSTITUTION.
(All Plaintiffs v. Government Defendants)**

122. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1-121 above as if fully set forth herein.

123. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Plaintiffs' rights to free exercise of religion.

124. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

125. Plaintiffs reallege the discussion of their sincerely held religious beliefs (*supra* Section B) as if fully set forth herein.

126. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, targets Plaintiffs' sincerely held religious beliefs by prohibiting Plaintiffs from seeking and receiving exemption and accommodation for their sincerely held religious beliefs against the COVID-19 vaccine.

127. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, impermissibly burdens Plaintiffs' sincerely held religious beliefs, compels Plaintiffs to either change those beliefs or act in contradiction to them, and forces Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of Scripture and the State's imposed value system.

128. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, places Plaintiffs in an irresolvable conflict between compliance with the mandate and their sincerely held religious beliefs.

129. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, puts substantial pressure on Plaintiffs to violate their sincerely held religious beliefs or face loss of their ability to feed their families.

130. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, is neither neutral nor generally applicable.

131. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, specifically targets Plaintiffs' religious beliefs for disparate and discriminatory treatment.

132. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, creates a system of individualized exemptions for preferred exemption requests while discriminating against requests for exemption and accommodation based on sincerely held religious beliefs.

133. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, constitutes a religious gerrymander by unconstitutionally orphaning exemption and accommodation requests based solely on sincerely held religious beliefs of healthcare workers in Maine while permitting the more favored medical exemptions to be granted.

134. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, constitutes a substantial burden on Plaintiffs' exercise of their sincerely held religious beliefs.

135. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, fails to accommodate Plaintiffs' sincerely held religious beliefs.

136. There is no legitimate, rational, or compelling interest in the Governor's COVID-19 Vaccine Mandate's exclusion of exemptions and accommodations for sincerely held religious beliefs.

137. The Governor's COVID-19 Vaccine Mandate is not the least restrictive means of achieving an otherwise permissible government interest.

138. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

139. Plaintiffs have no adequate remedy at law to protect the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT II—DEFENDANTS' WILLFUL DISREGARD OF FEDERAL PROTECTIONS
VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION
BY ATTEMPTING TO MAKE MAINE LAW SUPERSEDE FEDERAL LAW
(All Plaintiffs v. All Defendants)**

140. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1-121 above as if fully set forth herein.

141. The Supremacy Clause provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Art. VI, cl. 22 (emphasis added).

142. **"When federal law forbids an action that state law requires, the state law is without effect."** *Mutual Pharm. Co., Inc. v. Bartlett*, 570 U.S. 472, 486 (2013) (emphasis added).

143. Simply put, **“It is a familiar and well-established principle that the Supremacy Clause . . . invalidates state laws that interfere with, or are contrary to, federal law. Under the Supremacy Clause . . . state law is nullified to the extent that it actually conflicts with federal law.”** *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712-13 (1985) (emphasis added) (cleaned up).

144. By claiming that the protections of Title VII are inapplicable in the State of Maine, which all Defendants have either explicitly or tacitly stated, Defendants are running roughshod over the Supremacy Clause and appointing themselves independent of the protections of federal law.

145. As demonstrated by Defendant MaineHealth’s response to Jane Doe 1, MaineHealth believes that **“federal law does not supersede state law in this instance”** because it believes granting the religious exemptions required by Title VII would “[r]equir[e] MaineHealth to violate state law.” (Exhibit B at 1 (emphasis added).)

146. Similarly, in its response to Jane Doe 5, MaineGeneral explicitly stated that **“[a]llowing for a religious exemption would be a violation of the state mandate issued by Governor Mills.”** (Exhibit C at 2 (emphasis added).)

147. Further, MaineGeneral noted that the Governor’s “mandate also states that . . . no religious exemptions are allowed.” (Exhibit C at 1.)

148. Thus, all Defendants have purported to remove the availability of religious exemptions and accommodations within the State of Maine, have ignored Title VII’s commands that employers provide reasonable accommodations to individuals with sincerely held religious beliefs, and have claimed that the Governor’s COVID-19 Vaccine Mandate prohibits employers in Maine from even considering a religious exemption or accommodation request.

149. By purporting to place itself outside of the protections of Title VII and the First Amendment, Maine and each individual Defendant have violated the most basic premise that **“federal law is as much the law of the several States as are the laws passed by their legislatures.”** *Haywood v. Drown*, 556 U.S. 729, 734 (2009) (emphasis added).

150. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs’ sincerely held religious beliefs.

151. Plaintiffs have no adequate remedy at law for the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT III—VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(All Plaintiffs v. Government Defendants)**

152. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1-121 above as if fully set forth herein.

153. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

154. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, is an unconstitutional abridgment of Plaintiffs’ right to equal protection under the law, is not neutral, and specifically targets Plaintiffs’ sincerely held religious beliefs for discriminatory and unequal treatment.

155. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, is an unconstitutional abridgement of Plaintiffs’ right to equal protection because it permits the State to

treat Plaintiffs differently from other similarly situated healthcare workers on the basis of Plaintiffs' sincerely held religious beliefs.

156. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, singles out Plaintiffs for selective treatment based upon their sincerely held religious objections to the COVID-19 vaccines.

157. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, is intended to inhibit and punish the exercise of Plaintiffs sincerely held religious beliefs and objections to the COVID-19 vaccines.

158. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, creates a system of classes and categories that permit the Governor to accommodate the exemptions of some healthcare workers while denying consideration of those individuals requesting religious exemptions to the COVID-19 Vaccine Mandate.

159. By removing statutorily required religious accommodations from consideration in Maine, the Governor has created and singled out for disparate treatment a specific class of healthcare employees (*i.e.*, religious objectors to COVID-19 vaccinations) as compared to other similarly situated healthcare workers (*i.e.*, those with medical exemption requests).

160. There is no rational, legitimate, or compelling interest in the Governor's COVID-19 Vaccine Mandate's application of different standards to the similarly situated field of healthcare workers.

161. The Governor's COVID-19 Vaccine Mandate, on its face and as applied, discriminates between religion and nonreligion by allowing certain, nonreligious exemptions to the COVID-19 Vaccine Mandate while prohibiting religious exemptions to the same mandate for the same similarly situated field of healthcare workers.

162. The Governor’s COVID-19 Vaccine Mandate and the MCDC’s removal of religious exemptions for healthcare workers in Maine, on their face and as applied, are each a “status-based enactment divorced from any factual context” and “a classification of persons undertaken for its own sake,” which “the Equal Protection Clause does not permit.” *Romer v. Evans*, 517 U.S. 620, 635 (1996).

163. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, “identifies persons by a single trait [religious beliefs] and then denies them protections across the board.” *Id.* at 633.

164. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, along with the MCDC’s removal of religious exemptions from immunizations—while keeping medical exemptions as perfectly acceptable in the healthcare field—results in a “disqualification of a class of persons from the right to seek specific protection [for their religious beliefs].” *Id.*

165. “A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek [an exemption from the COVID-19 Vaccine Mandate] is itself a denial of equal protection of the laws in the most literal sense.” *Id.* The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, and the MCDC’s removal of religious exemptions for healthcare workers, are each such a law.

166. The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs’ sincerely held religious beliefs.

167. Plaintiffs have no adequate remedy at law to protect the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT IV—VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. § 2000e, et seq.
(All Plaintiffs v. Private Employer Defendants)**

168. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1-121 above as if fully set forth herein.

169. Title VII prohibits discrimination against employees on the basis of their religion. 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 . . .”).

170. Title VII defines the protected category of religion to include “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 nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. *See EEOC, Questions and Answers: Religious Discrimination in the Workplace* (June 7, 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.”); (*Id.* (“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.’”).)

171. Each of Defendants MaineHealth, Genesis Healthcare, Northern Light, and MaineGeneral Health is an employer within the meaning of Title VII and employs more than 15 employees.

172. By refusing to even consider, much less grant, any religious accommodation or exemption to the Governor’s COVID-19 Vaccine Mandate, Defendants have discriminated against Plaintiffs’ sincerely held religious beliefs with respect to the terms, conditions, and privileges of employment.

173. By threatening to fire Plaintiffs unless they violate their sincerely held religious beliefs and comply with the Governor’s COVID-19 Vaccine Mandate, Defendants have unlawfully discriminated against Plaintiffs by discharging them or constructively discharging them for the exercise of their religious beliefs.

174. Each Plaintiff has a bona fide and sincerely held religious belief against the COVID-19 vaccines, as outlined above.

175. Plaintiffs’ sincerely held religious beliefs conflict with Defendants’ policies in collusion with the Governor to impose the Governor’s COVID-19 Vaccine Mandate and to withhold from Plaintiffs any consideration of sincerely held religious objections.

176. Plaintiffs have all raised their sincerely held religious beliefs with their respective Defendant employers, have brought their objections and their desire for a religious accommodation and exemption to the Defendants’ attention, and have requested a religious exemption and accommodation from the COVID-19 Vaccine Mandate.

177. Defendants' termination, threatened termination, denial of benefits, and other adverse employment actions against Plaintiffs are the result of Plaintiffs' exercise of their sincerely held religious beliefs.

178. Defendants' refusal to consider or grant Plaintiffs' requests for accommodation and exemption from the Governor's COVID-19 Vaccine Mandate has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

179. Plaintiffs have no adequate remedy at law for the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT V—DEFENDANTS HAVE ENGAGED IN AN UNLAWFUL CONSPIRACY TO VIOLATE PLAINTIFFS' CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1985
(All Plaintiffs v. All Defendants)**

180. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1-121 above as if fully set forth herein.

181. Section 1985 provides a cause of action against public and private defendants who unlawfully conspire to deprive an individual of his constitutionally protected liberties. 42 U.S.C. § 1985(3) ("If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws").

182. The elements of the claim of conspiracy to violate civil rights under § 1985 include (1) a conspiracy, (2) a conspiratorial purpose to deprive the plaintiff of the equal protection of the laws or of a constitutionally protected liberty, (3) an overt act in furtherance of the conspiracy, and

(4) a deprivation of a constitutionally protected right. *See Parker v. Landry*, 935 F.3d 9, 17–18 (1st Cir. 2019).

183. The Governor’s COVID-19 Vaccine Mandate, combined with the Defendant employers’ agreements to enforce its provisions and revoke any potential for a religious exemption for healthcare workers in Maine, constitutes a conspiracy to violate Plaintiffs’ civil and constitutional rights.

184. The Governor, Director Shah, and Commissioner Lambrew have all reached an agreement with the Defendant employers to deprive all healthcare workers in Maine with any exemption or accommodation for the exercise of their sincerely held religious beliefs.

185. MaineHealth’s agreement with the Governor to deprive Plaintiffs of their constitutionally protected liberties is evidenced in its denial of Jane Doe 1’s request for a religious exemption and accommodation. Specifically, its statement that MaineHealth is “**no longer able to consider religious exemptions for those who work in the state of Maine.**” (Exhibit B at 2 (emphasis added).) By agreeing to refuse to even consider its employees’ requests for religious exemption and accommodation, MaineHealth has reached an express or tacit agreement to deprive Plaintiffs of their constitutionally protected rights to equal protection and religious exercise.

186. Even if MaineHealth’s denials of its employees’ requests for religious exemptions was somehow insufficient to demonstrate an agreement, the Governor’s own Official Statement concerning the imposition of the COVID-19 Vaccine Mandate shows that MaineHealth entered into an agreement with the Governor by noting the Governor’s mandate was “welcomed by . . . MaineHealth” and its CEO’s statement that it “*applauds Gov. Mills’ decision to make COVID-19 vaccination a requirement for the state’s health care workforce for the same reasons our organization chose to require vaccination for all its care team members.*” (Exhibit A). *See also*

Office of Governor Janet Mills, *Mills Administration Requires Health Care Workers To Be Fully Vaccinated Against COVID-19 By October 1* (Aug. 12, 2021), <https://www.maine.gov/governor/mills/news/mills-administration-requires-health-care-workers-be-fully-vaccinated-against-COVID-19-october> (italics original).

187. Defendant Northern Light’s explanation of its agreement with the Governor to deprive Plaintiffs of their rights to seek and receive an accommodation of their sincerely held religious beliefs was even more explicit: “*Governor Mills’ decision to require vaccination of health care workers is another example of close alignment between the government and the health care community.*” (Exhibit A) See also Office of Governor Janet Mills, *Mills Administration Requires Health Care Workers To Be Fully Vaccinated Against COVID-19 By October 1* (Aug. 12, 2021), <https://www.maine.gov/governor/mills/news/mills-administration-requires-health-care-workers-be-fully-vaccinated-against-COVID-19-october> (italics original).

188. MaineGeneral’s agreement with the Governor to deprive its employees of their constitutionally protected exercise of religious beliefs is plainly evidenced by its statements to Jane Doe 5 that it was not permitted to even consider a request for a religious exemption because of the Governor’s mandate. (Exhibit D at 1-2.).

189. The Governor and Defendant employers have reached an express or tacit agreement to mandate COVID-19 vaccines for their employees while explicitly agreeing to deprive them of their right to request and receive an accommodation and exemption for their sincerely held religious beliefs.

190. The purpose behind the Governor’s COVID-19 Vaccine Mandate, the MCDC’s removal of the option for a religious exemption in the State of Maine, and all Defendants’ agreement to blatantly ignore federal law’s requirement that employees be provided with a

religious exemption and accommodation for sincerely held religious beliefs is based upon a conspiratorial purpose to deprive Plaintiffs of their rights to the exercise of their religious beliefs and equal protection.

191. Defendants' conspiratorial agreement has been made express by their stating that no religious exemptions would be permitted and by informing Plaintiff employees of the legally ridiculous position that Title VII does not apply in Maine and that federal law does not supersede Maine law when it comes to the Governor's COVID-19 Vaccine Mandate.

192. The Governor has engaged in an overt act in furtherance of the conspiracy to deprive Plaintiffs of their civil rights by mandating that all healthcare workers receive a mandatory COVID-19 vaccine and by failing to recognize that federal law provides each of these employees with the option to request and receive a religious exemption and accommodation from the COVID-19 Vaccine Mandate.

193. Defendant employers have each engaged in an overt act in furtherance of the conspiracy to deprive Plaintiffs of their civil rights by refusing to consider, evaluate, or accept any Plaintiff's request for a religious exemption and accommodation from the COVID-19 Vaccine Mandate.

194. By denying Plaintiffs their requested religious exemption and accommodation and threatening termination and discharge from employment because of the exercise of their sincerely held religious beliefs, Defendants' conspiracy has resulted in a deprivation of Plaintiffs' constitutionally protected right to free exercise of religion.

195. By denying Plaintiffs their requested religious exemption and accommodation and threatening termination and discharge from employment because of the exercise of their sincerely held religious beliefs while at the same time granting and accepting the preferred category and

class of medical exemptions for similarly situated healthcare workers, Defendants' conspiracy has resulted in a deprivation of Plaintiffs' constitutionally protected right to equal protection of the laws under the Fourteenth Amendment.

196. Defendants' refusal to consider or grant Plaintiffs' requests for accommodation and exemption from the Governor's COVID-19 Vaccine Mandate has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

197. Plaintiffs have no adequate remedy at law for the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

A. That the Court issue a temporary restraining order restraining and enjoining Defendants, all of their officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with the Governor's COVID-19 Vaccine Mandate such that:

- i. Defendant Governor Mills will not enforce her unconstitutional mandate that John Doe 1 require his employees to receive a COVID-19 vaccine and refuse to provide a religious exemption or accommodation for such employees in violation of John Doe 1's and his employees' sincerely held religious beliefs;

- ii. Defendants immediately cease in their refusal to consider, evaluate, or accept Plaintiffs' requests for exemption and accommodation for their sincerely held religious beliefs;
- iii. Defendants will immediately grant Plaintiffs' requests for religious exemption and accommodation from the Governor's COVID-19 Vaccine Mandate, provided that Plaintiffs agree to abide by reasonable accommodation provisions such as masking, testing, symptom monitoring, and reporting;
- iv. Defendants will immediately cease threatening to discharge and terminate Plaintiffs from their employment for failure to accept a COVID-19 vaccine that violates their sincerely held religious beliefs; and
- v. Defendants will immediately cease proclaiming that federal law does not apply in Maine or otherwise declining Plaintiffs' requests for religious exemption on the basis that Title VII does not apply in the State of Maine;

B. That the Court issue a preliminary injunction pending trial, and a permanent injunction upon judgment, restraining and enjoining Defendants, all of their officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with the Governor's COVID-19 Vaccine Mandate such that:

- i. Defendant Governor Mills will not enforce her unconstitutional mandate that John Doe 1 require his employees to receive a COVID-19 vaccine and refuse to provide a religious exemption or accommodation for such

employees in violation of John Doe 1's and his employees' sincerely held religious beliefs;

- ii. Defendants immediately cease in their refusal to consider, evaluate, or accept Plaintiffs' requests for exemption and accommodation for their sincerely held religious beliefs;
- iii. Defendants will immediately grant Plaintiffs' requests for religious exemption and accommodation from the Governor's COVID-19 Vaccine Mandate, provided that Plaintiffs agree to abide by reasonable accommodation provisions such as masking, testing, symptom monitoring, and reporting;
- iv. Defendants will immediately cease threatening to discharge and terminate Plaintiffs from their employment for failure to accept a COVID-19 vaccine that violates their sincerely held religious beliefs; and
- v. Defendants will immediately cease proclaiming that federal law does not apply in Maine or otherwise declining Plaintiffs' requests for religious exemption on the basis that Title VII does not apply in the State of Maine;

C. That this Court render a declaratory judgment declaring that the Governor's COVID-19 Vaccine Mandate, both on its face and as applied by Defendants is illegal and unlawful in that it purports to remove federal civil rights and constitutional protections from healthcare workers in Maine, and further declaring that

- i. in imposing a mandatory COVID-19 vaccine without any provision for exemption or accommodation for sincerely held religious beliefs, the Governor has violated the First Amendment to the United States

Constitution by imposing a substantial burden on Plaintiffs' sincerely held religious beliefs while granting exemptions to similarly situated healthcare workers with medical exemptions to the COVID-19 Vaccine Mandate;

- ii. by refusing to consider or evaluate Plaintiffs' requests for religious exemption and accommodation, Defendants have violated Title VII and other federal protections for Plaintiffs in Maine and have blatantly ignored the Supremacy Clause's mandate that federal protections for religious objectors in Maine supersede and apply with full force in Maine;
- iii. by terminating, threatening to terminate, or otherwise taking adverse employment action against Plaintiffs on the basis of their sincerely held religious beliefs, Defendants have violated Title VII of the Civil Rights Act of 1964;
- iv. that by creating a class system in which religious objectors in Maine are disparately and discriminatorily denied the option of receiving an exemption or accommodation while simultaneously allowing and granting exemptions for other nonreligious reasons, Defendant Governor Mills has violated Plaintiffs' rights to equal protection of the law; and
- v. that by entering into an agreement to unlawfully deprive Plaintiffs of their right to request and receive a religious exemption and accommodation from the Governor's COVID-19 Vaccine Mandate, Defendants have conspired to violate Plaintiffs' civil rights to free exercise of religious beliefs and equal protection of the law;

D. That this Court award Plaintiffs damages in an amount to be proven at trial, including damages for adverse employment action resulting in lost wages and other compensatory damages, and further including nominal damages in the absence of proof of damages;

E. That this Court adjudge, decree, and declare the rights and other legal obligations and relations within the subject matter here in controversy so that such declaration shall have the full force and effect of final judgment;

F. That this Court retain jurisdiction over the matter for the purposes of enforcing the Court's order;

G. That this Court award Plaintiffs the reasonable costs and expenses of this action, including a reasonable attorney's fee, in accordance with 42 U.S.C. § 1988; and

H. That this Court grant such other and further relief as the Court deems equitable and just under the circumstances.

Respectfully submitted,

/s/ Stephen C. Whiting

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Attorneys for Plaintiffs

VERIFICATION

I, Jane Doe 1, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 1_____

Jane Doe 1

(Original Signature of Jane Doe 1 retained by Counsel)

VERIFICATION

I, Jane Doe 2, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 2
Jane Doe 2
(Original Signature of Jane Doe 2 retained by Counsel)

VERIFICATION

I, Jane Doe 3, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 3
Jane Doe 3
(Original Signature of Jane Doe 3 retained by Counsel)

VERIFICATION

I, Jane Doe 4, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 4
Jane Doe 4
(Original Signature of Jane Doe 4 retained by Counsel)

VERIFICATION

I, Jane Doe 5, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 5
Jane Doe 5
(Original Signature of Jane Doe 5 retained by Counsel)

VERIFICATION

I, Jane Doe 6, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ Jane Doe 6
Jane Doe 6
(Original Signature of Jane Doe 6 retained by Counsel)

VERIFICATION

I, John Doe 1, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ John Doe 1

John Doe 1

(Original Signature of John Doe 1 retained by Counsel)

VERIFICATION

I, John Doe 2, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ John Doe 2
John Doe 2
(Original Signature of John Doe 2 retained by Counsel)

VERIFICATION

I, John Doe 3, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: August 24, 2021

/s/ John Doe 3

John Doe 3

(Original Signature of John Doe 3 retained by Counsel)

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Mills Administration Requires Health Care Workers To Be Fully Vaccinated Against COVID-19 By October 1

August 12, 2021

Governor Mills' decision garners support from a broad coalition of health care providers across Maine

Augusta, MAINE – The Mills Administration announced today that it will require health care workers in Maine to be vaccinated against COVID-19 to protect the health and lives of Maine people, safeguard Maine's health care capacity, and limit the spread of the virus.

The Maine Department of Health and Human Services (DHHS) and Center for Disease Control and Prevention (Maine CDC), utilizing their authority under existing law to require certain vaccinations of people who work in health care settings, issued an emergency rule that will require health care workers to be fully vaccinated by October 1, 2021. This timeframe provides health care workers the next five weeks to receive their needed shots.

Health care workers are defined as including any individual employed by a hospital, multi-level health care facility, home health agency, nursing facility, residential care facility, and intermediate care facility for individuals with intellectual disabilities that is licensed by the State of Maine. The emergency rule also requires those employed by emergency medical service organizations or dental practices to be vaccinated for COVID-19.

With this move, Maine becomes one of the most aggressive states in the nation in requiring vaccination of health care workers, both in terms of the scope of health care workers and timeframe for vaccination.

"Vaccinations are the best tool we have to protect the lives and livelihoods of Maine people and to curb this pandemic," said Governor Mills. "Health care workers perform a critical role in protecting the health of Maine people, and it is imperative that they take every precaution against this dangerous virus, especially given the threat of the highly transmissible Delta variant. With this requirement, we are protecting health care workers, their patients, including our most vulnerable, and our health care capacity. I continue to strongly urge all Maine people to get vaccinated because doing so may save your life, the life of a family member or friend, or the life of a child not yet eligible for a vaccine."

"Maine's hospitals, clinics, nursing facilities and other health providers are on the front lines of the fight against COVID-19," said Jeanne Lambrew, Commissioner of the Maine Department of Health and Human Services. "We thank those who have already taken this critical step for themselves, their patients and their communities, but with the arrival of the Delta variant in Maine, it is more important than ever to protect these workers through vaccination."

"Scientific data show that vaccination is our best protection against all strains of the virus that causes COVID-19," said Nirav D. Shah, Director of the Maine Center for Disease Control and Prevention. "Given the elevated risk posed by the Delta variant, this is a prudent step in preventing COVID-19 from putting more Maine people at risk, especially those who care for others."

The State of Maine has long required the immunization of employees of designated health care facilities to reduce the risk of exposure to, and possible transmission of, vaccine-preventable diseases. These immunizations include measles, mumps, rubella, chickenpox, hepatitis B, and influenza. This existing rule has been amended to include the COVID-19 vaccine. The organizations to which this requirement applies must ensure that each employee is vaccinated, with this requirement being enforced as a condition of the facilities' licensure.

According to a [mandated survey](#) of health care settings by the Department of Health and Human Services, 80.3 percent of staff at hospitals, 73 percent of staff at nursing facilities, and 68.2 percent of staff at intermediate care facilities for individuals with intellectual disabilities have been fully vaccinated against COVID-19.

The move was welcomed by a broad coalition of health care providers across Maine, including Maine Hospital Association, Maine Medical Association, Maine Primary Care Association, and Maine Health Care Association, along with the state's two largest health systems, MaineHealth and Northern Light Health.

*"Maine's hospitals and health systems are beyond thankful for the Governor's leadership on this issue," said **Steven Michaud, President of the Maine Hospital Association.** "A statewide health care worker vaccine mandate protects our patients and workforce and is critically needed as we continue our battle with this pandemic. Patient safety is our number one priority and this initiative is the very best way to provide that protection. This will save lives, keep caregivers healthy, and keep our hospitals safe as we care for all of our patients, those with COVID-19 and those without."*

*"Over 95 percent of physicians and nearly 200 million Americans have received a vaccine. It's clear they are safe and highly effective," said **Karen Saylor, MD, President of the Maine Medical Association.** "The Delta variant is much more aggressive and currently overwhelming hospitals across the country. Unvaccinated health care workers put sick patients and facility residents at risk. This is the next step in our state's responsible path of keeping us ready with the staff and space needed to care for all Mainers at risk of severe illness or death."*

*"Maine's long term care providers continue to provide high quality care to residents," said **Angela Westhoff, president and CEO of the Maine Health Care Association.** "Our residents are among the most vulnerable when it comes to this virus. While we have made significant progress in increasing staff vaccination rates through education campaigns, there is more work to be done to combat the highly contagious Delta variant. MHCA supports this move to protect the health and wellbeing of our residents. COVID-19 vaccines have dramatically reduced COVID-19 cases and the severity of illness in long term care settings, and this is the best tool we have to fight the pandemic."*

*"We know that every health care organization is undergoing careful consideration to ensure the health and safety of patients and staff," said **Tim Dentry, President and CEO of Northern Light Health.** "At Northern Light Health we feel strongly that vaccinations are our best path forward and away from the dangers of the COVID-19 virus. Governor Mills' decision to require vaccination of health care workers is another example of close alignment between the government and the health care community. There is a reason why Maine is among the best states for COVID care and vaccination. With the new Delta variant, we cannot stray from our course."*

*"MaineHealth applauds Gov. Mills' decision to make COVID-19 vaccination a requirement for the state's health care workforce for the same reasons our organization chose to require vaccination for all of its care team members," said **Dr. Andrew Mueller, MD, CEO of MaineHealth.** "The vaccines are proven safe and effective, and vaccination remains the best way for us to protect our patients and communities from this terrible pandemic."*

*"The Maine Primary Care Association supports the state's decision to mandate the COVID-19 vaccine for all health care employees," said **Darcy Shargo, CEO of the Maine Primary Care Association.** "We believe that everyone who is able to get the vaccine should, including the community health centers' workforce, which has been so vital to our state's pandemic response. This step is so important to getting us to the next level of response as a state, and it has the potential to get us closer to the lives we led before COVID."*

*"EMS clinicians across the state are an integral component of the health care system and continue to be critical to the response to the COVID-19 pandemic," said **Sam Hurley, Maine State EMS Director.** "As health care professionals, it makes sense that we should do everything in our power to protect the health*

and safety of ourselves, our families, our colleagues, and our patients, including receiving the COVID-19 vaccine.”

“The Maine Dental Association and its members have been proactive about COVID-19 vaccinations and keeping their practices as safe as possible for patients,” **said Dr. Heather Keeling, President of the Maine Dental Association’s Board of Directors.** “That will continue with the Governor’s new requirement, which we fully support. Recent data from the American Dental Association has shown dental offices are one of the safest health care facilities during this pandemic. Just like our fellow front line health care professionals, we are ready to continue to do our part to prevent infection.”

Maine continues to make nation-leading progress with its vaccination effort. On Monday, Governor Mills announced that 80 percent of adults in Maine have received at least one dose of a COVID-19 vaccine, achieving another milestone for the state as it continues to confront an increase in cases associated with the Delta variant. According to the U.S. Centers for Disease Control and Prevention (U.S. CDC), 80.5 percent of adults (18+) in Maine have received a COVID-19 vaccination, one of eight states in the nation to reach the milestone.

Maine is the third best state in the nation in the percentage of residents who are fully vaccinated, with more than 64 percent of all residents – including children under 12 who are not yet eligible for a vaccine – fully vaccinated against COVID-19. Maine also continues to make progress in vaccinating younger people, with more than 50 percent of youth ages 12 to 19 being fully vaccinated.

COVID-19 vaccines are available at no charge at sites across the state. For information on getting a vaccine, please visit [Maine.gov/covid19/vaccines](https://www.maine.gov/covid19/vaccines) or call the Community Vaccination Line at 1-888-445-4111.

Despite having the oldest median age population in the country, Maine, adjusted for population, ranks fourth lowest in the nation in hospitalizations over the last two weeks, third lowest in total number of cases, and fourth lowest in number of deaths from COVID-19, according to the Maine Department of Health and Human Services.

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Governor Janet Mills
1 State House Station
Augusta, ME 04333
207-287-3531

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On Fri, Aug 20, 2021, 2:35 PM FluVaccine <fluvaccine@mainehealth.org> wrote:

Although I cannot give legal guidance to employees, I can share MaineHealth's view that federal law does not supersede state law in this instance. The EEOC is clear in its guidance that employers need only provide religious accommodations when doing so does not impose an undue hardship on operations. Requiring MaineHealth to violate state law by granting unrecognized exemptions would impose such a hardship. As such, we are not able to grant a request for a religious exemption from the state mandated vaccine.

If you seek an accommodation other than a religious exemption from this state mandated vaccine, please let us know. And, as noted in earlier communication, please discuss any concerns with your primary care provider.

Thank you

Susan L. Guerin-Staples, FACHE
Sr. Director
Employee Health
MaineHealth

From:

Sent: Friday, August 20, 2021 8:46 AM

To: FluVaccine <fluvaccine@mainehealth.org>

Subject: Re: Religious Exemption - NEEDS ACTION

CAUTION - EXTERNAL EMAIL

My request for an exemption was made under federal law, including Title VII of the Civil Rights of 1964. The Constitution provides that federal law is supreme over state law, and Maine cannot abolish the protections of federal law. You may be interested in this press release from Liberty Counsel, and the demand letter they have sent to Governor Mills on this issue (which is linked in the press release): <https://lc.org/newsroom/details/081821-maine-governor-must-honor-religious-exemptions-for-shot-mandate>. Regardless of what the Governor chooses to do, _____ has a legal obligation under federal law to consider and grant my proper request for a religious exemption. Please let me know promptly if you will do so.



Virus-free. www.avg.com

On Tue, Aug 17, 2021 at 9:37 AM FluVaccine <fluvaccine@mainehealth.org> wrote:

Please be advised that due to the addition of the Covid-19 vaccine to Maine's Healthcare Worker Immunization law announced by the governor in a press conference on 8/12/21, **we are no longer able to consider religious exemptions for those who work in the state of Maine. This also includes those of you who submitting influenza exemptions as well.** The State of Maine now requires all healthcare workers to be fully vaccinated by October 1st, which means you are two weeks beyond the completion of a Covid-19 vaccination series. (i.e. Both doses of the mRNA vaccine, or the single dose of J & J) as of that date.

You submitted a religious exemption, your request is unable to be evaluated due to a change in the law. Your options are to receive vaccination or provide documentation for a medical exemption to meet current requirements for continued employment. Please be aware of the deadlines to meet the State Mandate:

September 17th is the deadline written in the State's emergency rules for the final dose of vaccine.

If September 17th is the date for their final dose, then:

August 20th is the latest date for a first shot of Moderna;

August 27th is the latest date for the first shot of Pfizer;

September 17th is the latest date for the first and only shot of J&J/Janssen vaccine.

There is an educational session about Covid-19 vaccination today at noon on Zoom.

Tuesday, August 17 – 12:00-1:00 P.M. | [Zoom link](#)
with Dora Mills, MD, MPH, and Cheryl Liechty, MD

The EUA information about each vaccine is available on this weblink [Vaccine Resources \(mainehealth.org\)](#) as is information about how to schedule vaccination.

Please know, we understand this change is upsetting to you. If you have questions, please talk to your primary care provider on what vaccination may be best for you.

Thank you,

Susan L. Guerin-Staples MSB, FACHE
Senior Director
Employee Health Services
MaineHealth

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Cc: Sheila Raymond, Assistant Manager
Mikele Lynn Neal, AVP
Deb Sanford, VP

Dear Ms.

I am in receipt of your request for an exemption from Northern Light Health's mandatory vaccination requirements for a non-medical reason.

On August 12, 2021, the Mills administration announced that the Maine Department of Health and Human Services (DHHS) and the Center for Disease Control and Prevention (Maine CDC), utilizing their authority under existing law to require certain vaccinations of people who work in health care settings, amended 10-144 CMR Chapter 264 to include the COVID-19 vaccination for all healthcare workers. The state established deadline for health care workers to be fully vaccinated is October 1, 2021.

The Maine Statute can be found at 22 MRS § 802. This statute specifies that the only exemptions that may be made to this requirement are medical exemptions supported by a licensed physician, nurse practitioner, or physician assistant. Should you wish to submit a medical request, please send me a completed form.

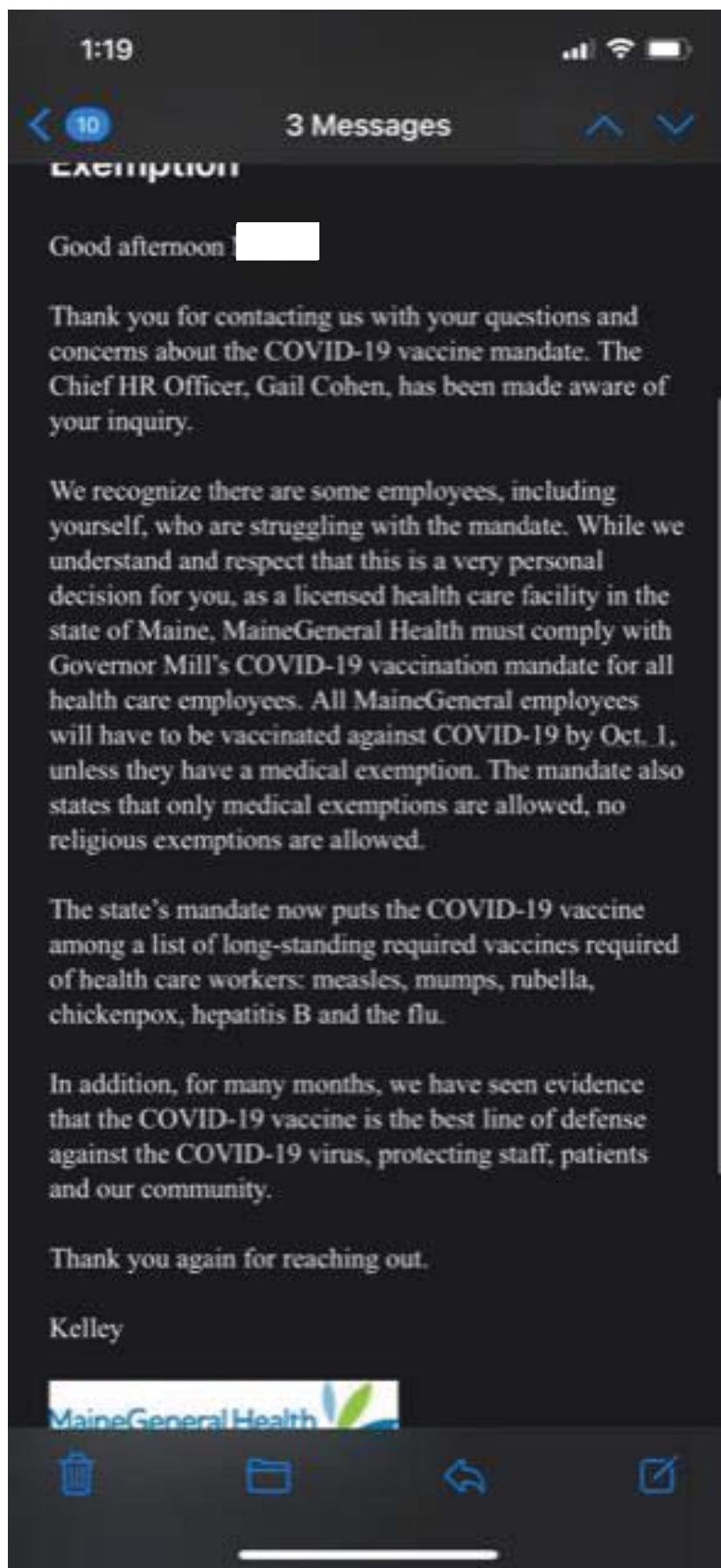
Medical science has shown that vaccination is the best form of prevention to stop the spread of COVID-19 and protect our people from the new COVID-19 variants. As the especially virulent delta variant takes hold, hospitals, homecare agencies and long-term care facilities across the country are experiencing surges that are continuing to intensify to a worrying degree. To date, Maine's COVID-19 infection experience remains better than most of the rest of the country--- but that could change.

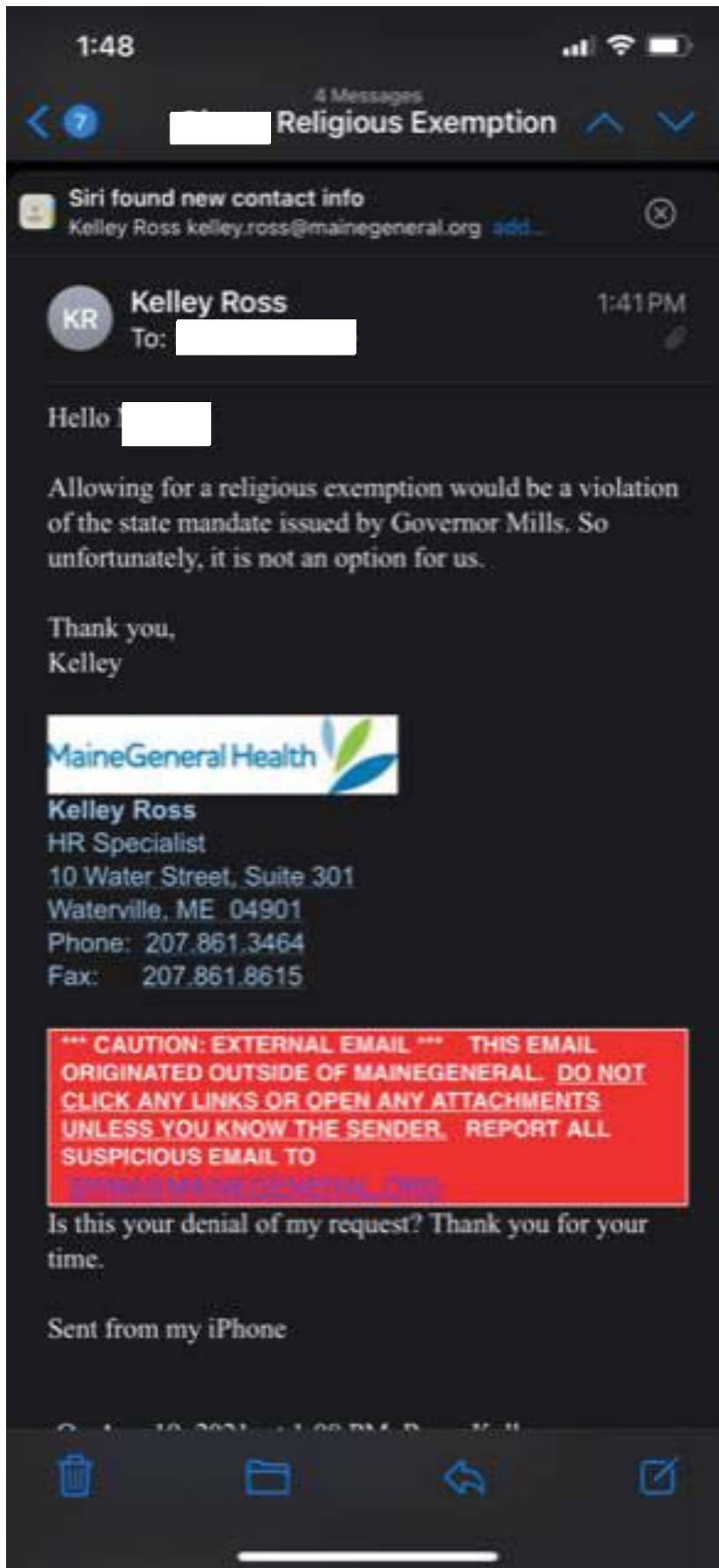
Therefore, except in the case of an approved medical exemption, all healthcare workers in Maine must be fully vaccinated by October 1, 2021. This would require you to receive your first vaccination of Moderna by August 20, 2021, Pfizer by August 27, 2021 or Johnson and Johnson by September 17, 2021. These vaccines are available at no cost to you at all Northern Light Pharmacy locations, and at vaccination clinics that are held on campus. Choice of vaccine may be limited by supply.

Should you have any questions, please contact me at the number and email listed below.

Sincerely,

Ali Worster, Esq.
Vice President
Human Resources and Patient Experience
Northern Light Health
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REPLY TO FLORIDA

August 18, 2021

VIA EMAIL

Janet T. Mills
Governor
State of Maine
1 State House Station
Augusta, ME 04333
Phone: 207-875-3531
Janet.T.Mills@maine.gov

Nirav D. Shah
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Jeanne M. Lambrew
Commissioner
Department of Health and Human Services
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Phone: (207) 287-4223
Email: jeanne.m.lambrew@maine.gov

RE: Unlawful Attempt to Remove Religious Exemptions and Accommodations from
State's Mandatory COVID-19 Vaccine Policy

**THIS IS A LEGAL DEMAND LETTER. YOUR PROMPT RESPONSE IS
REQUIRED ON OR BEFORE FRIDAY, AUGUST 20, 2021 AT 5:00 P.M. TO
AVOID A LAWSUIT**

Dear Governor Mills, Director Shah, and Commissioner Lambrew:

As you know, 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 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*

Religious Exemption and Accommodations from Mandatory Covid-19 Vaccine Policy
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Church, Inc. v. Beshear, 957 F.3d 610 (6th Cir. 2020). In fact, as you are aware, Liberty Counsel is currently representing Calvary Chapel of Bangor in its lawsuit against Governor Mills for her unconstitutional, unconscionable, and discriminatory restrictions on religious worship services.

I write on behalf of numerous doctors, nurses, medical professionals, and other health care workers who have been forced to choose between the exercise of their sincerely held religious beliefs and feeding their families. No individual in Maine should be forced into such an unconscionable decision. On August 12, 2021, Governor Mills announced that Maine will now require health care workers to accept or receive one of the three, currently available COVID-19 vaccines in order to remain employed in the healthcare profession. *See* Office of Governor Janet Mills, *Mills Administration Requires Health Care Workers To Be Fully Vaccinated Against COVID-19 By October 1* (Aug. 12, 2021), <https://www.maine.gov/governor/mills/news/mills-administration-requires-health-care-workers-be-fully-vaccinated-against-covid-19-october> (last visited Aug. 17, 2021) ((hereinafter “Mandatory COVID-19 Vaccination Policy”). The Mandatory COVID-19 Vaccination Policy defines health care workers to include “any individual employed by a hospital, multi-level health care facility, home health agency, nursing facility, residential care facility, and intermediate care facility for individuals with intellectual disabilities that is licensed by the State of Maine.” *Id.* In addition, the Mandatory COVID-19 Vaccination Policy includes emergency medical service organizations and dentists to accept or receive the mandatory shot.

These health care workers that are now subject to a mandatory vaccine policy were also ostensibly and unlawfully stripped of their rights to request a religious exemption and accommodation from the Mandatory COVID-19 Vaccination Policy. On April 14, 2021, Dr. Shah and the Maine Center for Disease Control and Prevention (“MCDC”) amended 10-144 C.M.R. Ch. 264 to eliminate a religious exemption from the Policy. The only exemptions Maine now lists as available to health care workers are those outlined in 22 M.R.S. §802(4-B), which purports to exempt only those individuals for whom an immunization is medically inadvisable and who provide a written statement from a doctor documenting the need for an exemption. Under the prior version of the rule, 10-144 C.M.R. Ch. 264, §3-B provided that a health care worker could be exempt from mandatory immunizations if the “employee states in writing an opposition to immunization because of a sincerely held religious belief.” *Id.* In fact, as acknowledged by MCDC, Maine purported to remove the religious exemption to mandatory immunizations only earlier this month. *See* Division of Disease Surveillance, *Maine Vaccine Exemption Law Change 2021*, <https://www.maine.gov/dhhs/mecdc/infectious-disease/immunization/maine-vaccine-exemption-law-changes.shtml> (last visited Aug. 17, 2021) (“The health care immunization law has removed the allowance for philosophical and religious exemptions and has included influenza as a required immunization.”).

It has been reported to us that, following the above developments and guidance from Maine, a number of communications have taken place that purport to inform health care workers in Maine that no religious exemptions should be submitted because health care workers are not entitled to such exemptions for their sincerely held religious beliefs. In fact, the health care workers

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who have contacted us have been told by their employers, following Maine's guidance, that exemptions and accommodations for sincerely held religious objections to the COVID-19 Vaccination Policy will not be granted, or in some instances, even considered.

As you are undoubtedly aware, while Maine may choose not to provide certain religious exemptions in its state statutory scheme under some circumstances, virtually every employee in Maine – including the health care workers who have been subjected to the Mandatory COVID-19 Vaccination Policy – are protected by Title VII of the Civil Rights Act, which does provide for religious exemptions and accommodations, and mandates that employers provide them.

Maine cannot override federal law, or the federal Constitution. Maine's purported guidance and attempts to remove federal protections and even religious exemptions available under federal law is causing direct and irreparable harm.

We ask that you advise us and the public by close of business on this Friday, August 20, 2021, that Maine will honor all federal protections and entitlements to accommodation for sincerely held religious beliefs. Your failure to timely and positively provide this assurance will indicate to us that Maine is, in fact, continuing in its attempt to nullify and override legal protections afforded to religious objectors under federal law and the United States Constitution. In that event, we will proceed with an emergency legal action against Maine and other entities to protect the fundamental rights of Maine's citizenry.

A. Maine's Attempt to Nullify, Override, Dissuade, Discourage, or Suppress Requests for Religious Accommodations and Exemptions is Plainly Inconsistent with Title VII; Denying Merited Religious Exemptions and Accommodations Would Violate Title VII; and Maine is Not Permitted to Inquire into Correctness of an Employee's Sincerely Held Religious Beliefs.

As you are undoubtedly aware, Title VII of the Civil Rights Act prohibits every employer in Maine 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 (1) 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). And, **health care workers who are employed by the State of Maine itself are also afforded the same protection under Title VII.** *See* 42 U.S.C. §2000e(f); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976) (noting that States are also required to abide by Title VII's mandates in relation to their employees). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Put simply, an employer violates Title VII if it makes employment decisions related to an employee based solely upon that individual's sincerely held religious beliefs. *Abercrombie &*

Religious Exemption and Accommodations from Mandatory Covid-19 Vaccine Policy
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Fitch, 575 U.S. at 773 (“An employer may not make an applicant’s religious practices, confirmed or otherwise, a factor in employment decisions.” (emphasis added)).

As you also must know, **federal law and the United States’ Constitution are supreme over any Maine statute or edict, and Maine cannot override, nullify, or violate federal law.** See U.S. Const. Art. VI, cl. 2 (“**This Constitution, and the Laws of the United States** which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” (emphasis added)). “**This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures.**” *Haywood v. Drown*, 556 U.S. 729, 734 (2009) (emphasis added). In fact, as the Supreme Court has made clear,

It is a familiar and well-established principle that the Supremacy Clause . . . invalidates state laws that interfere with, or are contrary to, federal law. Under the Supremacy Clause . . . state law is nullified to the extent that it actually conflicts with federal law.

Hillsborough Cnty. v. Automated Med. Labs., Inc., 471 U.S. 707, 712-13 (1985) (emphasis added) (cleaned up). **Thus, as you are undoubtedly aware, Maine’s constant refrain to its health care workers that there is no religious exemption to the Mandatory COVID-19 Vaccination Policy is legally incorrect. Federal law provides protection for every health care worker in Maine with a religious objection, and requires accommodation from such mandates. Maine simply has no authority to override this federal law.**

While there may be some who consider COVID-19 vaccines to be acceptable as a matter of religious doctrine or belief, no employer in Maine – including the State – is permitted to determine which religious adherent has a correct understanding of religious doctrine or whether a health care worker’s sincerely held religious beliefs are shared broadly among members of her faith. As the Supreme Court has recognized, an employee’s “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Ind. Emp. 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 religious 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. 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*

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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 individuals may have sincerely held religious beliefs that differ from those espoused by health care providers with a sincere religious objection to the three currently available COVID-19 vaccines is irrelevant to whether those 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).

Moreover, the denial of an employee’s request for a religious accommodation and exemption based upon the views of other individuals who do not share their sincere religious beliefs is unlawful. In fact, it is legally irrelevant what other individuals think or religiously believe. Once an employee has articulated her sincerely held religious objections to acceptance or receipt of the currently available COVID-19 vaccines, the proper inquiry is at its end.

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 aborted fetal cell lines. There is no question about the accuracy of this determination. The North Dakota Department of Health, in its literature for those considering one of the three, currently available 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.**” 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 (bold 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.**” Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), available at

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https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (bold added).

The same is true of the Moderna and Pfizer/BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cells lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. 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. The North Dakota Department of Health, in its handout literature on COVID-19 vaccines, notes: "[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.**" 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).

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, the sincerely held religious beliefs of the employees we represent compel them to abstain from accepting or injecting any of these products into their body, regardless of the perceived benefit or rationale. 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, official recognition of a sincerely held religious objection to acceptance or receipt of a vaccine that is inextricably intertwined with aborted fetal cell lines is unnecessary to warrant protection.

In sum, denying a health care worker's request for a religious accommodation based upon the beliefs of others is unlawful, and refusing to grant a health care worker a religious accommodation at all is plainly a violation of Title VII, regardless of the MCDC rule or any other provision of Maine law.

B. The First Amendment to the United States Constitution Protects Maine Healthcare Workers Employed by the State of Maine.

Further, all healthcare workers in the State of Maine that are employed by the State also have protection for the exercise of their sincerely held religious beliefs under the First Amendment. It is beyond cavil that government employees do not shed their constitutional rights upon entering government employment. See *Martin v. Lauer*, 686 F.2d 24, 31(D.C. Cir. 1982) ("**government employees do not shed their first amendment rights on assuming public responsibilities**" (emphasis added)). Indeed, "**people do not give up their free-exercise or free-speech rights when they become government employees.**" *Warnock v. Archer*, 380 F.3d 1076, 1082 (8th Cir.

Religious Exemption and Accommodations from Mandatory Covid-19 Vaccine Policy
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2004) (emphasis added). *See also Bd. of Cnty. Comm’rs, Wabaunsee Cnty. v. Umbehr*, 518 U.S. 668, 675 (1996) (“The First Amendment’s guarantee . . . protects government employees.”); *Putnam v. Regional Sch. Unit 50*, No. 1:14-cv-154-JAW, 2015 WL 5440783, *14 (D. Me. Sept. 15, 2015) (“This guarantee applied to government employees as well, who should not ‘suffer reprisal from a government official . . . because of the possible chilling effect against the free exercise of constitutional rights.’” Quoting *Rosaura Bldg. Corp. v. Mun. of Mayaguez*, 778 F.3d 55, 66 (1st Cir. 2015)).

As the Supreme Court made clear last year, “**even in a pandemic, the Constitution cannot be put away and forgotten.**” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (emphasis added). Moreover, the Supreme Court has further noted that it will not “abandon the field when government officials with experts in tow seek to infringe a constitutionally protected liberty.” *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 718 (2021) (Gorsuch, J.). Indeed, “[e]ven in times of crisis—perhaps especially in times of crisis—we have a duty to hold governments to the Constitution.” *Id.* (emphasis added).

Every healthcare worker employed by the State of Maine has the First Amendment right to the free exercise of their religion, including whether to accept a forcible injection of a vaccine. Neither the flick of the Governor’s pen, nor a purported public health emergency can override those cherished constitutional liberties.

C. **Maine Law Prohibits Discrimination on the Basis of An Employee’s Sincerely Held Religious Beliefs.**

The Maine Human Rights Act also provides statutory protection for the health care workers with sincerely held religious objections to the currently available COVID-19 vaccines. Indeed, the Maine Human Rights Act states that “**it is declared to be the policy of this State . . . to prevent discrimination in employment**, housing or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, **religion**, ancestry or national origin.” 5 M.R.S.A. §4552 (emphasis added). Because of that explicit statement of Maine’s public policy, the Maine Human Rights Act further provides that “[t]he opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry, national origin or familial status is recognized as and declared to be a civil right.” 5 M.R.S.A. §4571. And, as with Title VII, “[i]t is **unlawful employment discrimination, in violation of this Act . . . For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of . . . religion.**” 5 M.R.S.A. §4572(1) (emphasis added). The State, too, is subject to the provisions of the Human Rights Act because it applies to any public or private entity. 5 M.R.S.A. §4553(1).

Because the health care workers we represent have a sincerely held religious objections to the currently available COVID-19 vaccines and because they are unable to comply with Maine’s Mandatory COVID-19 Vaccination Policy as it conflicts with their sincerely held religious beliefs,

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all employers in Maine – including the State – are mandated to accommodate these religious beliefs under Maine law. As with Title VII (and the First Amendment for state employees) discussed above, an employer’s failure to accommodate a health care worker’s sincerely held religious objections to the COVID-19 vaccines is unlawful and discriminatory.

D. Maine Law Protects Every Individual’s Right to Refuse Unwanted Medical Treatment.

Maine law provides a long-established common law right to all individuals to refuse unwanted medical care. *See In re Gardner*, 534 A.2d 947, 951 (Me. 1987) (“we have continued to recognize the validity of a battery analysis, with its focus on the patient’s right to be free from nonconsensual invasions of his bodily integrity”); *Id.* (“Maine’s law of informed consent supports the right of an individual to decline medical care.”); *Downer v. Veilleux*, 322 A.2d 82, 91 (Me. 1974) (“**every competent adult has the right to forego treatment, or even cure, if it entails what for him are intolerable consequences**” (emphasis added)).

As the California Supreme Court noted,

Anglo American law starts with the premise of thorough-going self-determination. It follows that **each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of lifesaving surgery, or other medical treatment.** A doctor might well believe that an operation or form of treatment is desirable or necessary, but the law does not permit him to substitute his own judgment for that of the patient by any form of artifice or deception.

Thor v. Superior Ct., 855 P.2d 375, 381-82 (Cal. 1993) (emphasis added).

Put simply, “if the patient’s informed consent is to have any meaning at all, **it must be accorded respect even when it conflicts with the advice of the doctor or the values of the medical profession as a whole.**” *Thor*, 855 P.2d at 386. By mandating that all Maine health care workers submit to one of the COVID-19 vaccines as a condition of retaining their ability to feed their families and earn a living, Maine runs roughshod over this basic protection. If an employee decides for herself that she desires to abstain from forcible injection of a COVID-19 vaccine that violates her sincerely held religious beliefs, that is her 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). The Governor’s Mandatory COVID-19 Vaccination Policy blatantly ignores this well-established principle of bodily integrity and personal autonomy.

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E. The Emergency Use Authorization Statute Prohibits Mandating the COVID-19 Vaccine.

The United States Code provides that

subject 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) (“EUA Statute”). Part of the explicit statutory conditions for an EUA under the EUA Statute, the statute mandates that all individuals to whom the product approved for Emergency Use 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 the United States Code. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute.

Even the statutorily required Fact Sheets for each of the EUA-approved COVID-19 vaccines demonstrate that individuals cannot be compelled to accept or receive the vaccine. *See* Modern, 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 RECIPIENT 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)).

Thus, under the EUA Statute and as recognized by the manufacturers of the currently available COVID-19 vaccines, individuals have the option to accept or refuse administration of the product, and it cannot be mandatory. Maine’s current policy ignores this statutory protection and is therefore unlawful.

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CONCLUSION

We await your prompt confirmation, on or before close of business on this Friday, August 20, 2021, that Maine will no longer purport to nullify or override the right of Maine citizens to seek religious exemptions from vaccination requirements under federal and state law. Absent this confirmation, we will understand that Maine is continuing in its attempt to nullify and override legal protections afforded to religious objectors, and we will proceed with an emergency legal action against Maine and other entities to protect the fundamental rights of Maine's citizenry. We will seek emergency injunctive relief and all other remedies available under law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Daniel J. Schmid', is written over a horizontal line.

Daniel J. Schmid[†]

cc:

Christopher C. Taub, Chief Deputy Attorney General, State of Maine

[†] Licensed in Virginia

EXHIBIT 5

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Bangor Division**

JANE DOES 1–6, JOHN DOES 1–3,)	
JACK DOES 1–1000, JOAN DOES 1–1000,)	
)	
Plaintiffs,)	
v.)	Case No. _____
)	
JANET T. MILLS, in her official capacity as)	
Governor of the State of Maine,)	
JEANNE M. LAMBREW, in her official capacity)	
as Commissioner of the Maine Department of)	
Health and Human Services,)	
NIRAV D. SHAH, in his official capacity as)	
Director of the Maine Center for Disease Control)	
and Prevention,)	
MAINEHEALTH,)	
GENESIS HEALTHCARE OF MAINE, LLC,)	
GENESIS HEALTHCARE, LLC,)	
NORTHERN LIGHT HEALTH FOUNDATION,)	
MAINEGENERAL HEALTH,)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION WITH INCORPORATED MEMORANDUM OF LAW**

Pursuant to Fed. R. Civ. P. 65 and L.R. 7, Plaintiffs, JANE DOES 1–6, JOHN DOES 1–3, JACK DOES 1–1000, and JOAN DOES 1–1000, hereby move this Court for a temporary restraining order (TRO) and preliminary injunction (PI) against Defendants, JANET T. MILLS, in her official capacity as Governor of the State of Maine, JEANNE M. LAMBREW, in her official capacity as Commissioner of the Maine Department of Health and Human Services, NIRAV D. SHAH, in his official capacity as Director of the Maine Center for Disease Control and Prevention, MAINEHEALTH, GENESIS HEALTHCARE OF MAINE, LLC, GENESIS HEALTHCARE, LLC, NORTHERN LIGHT HEALTH FOUNDATION, and MAINEGENERAL HEALTH, as set forth below and in Plaintiffs’ contemporaneously filed Verified Complaint. In the alternative,

should this Court deny Plaintiffs' motion, Plaintiffs also move this Court for an injunction pending appeal under Fed. R. App. P. 8.

MEMORANDUM OF LAW IN SUPPORT

To obtain a TRO or PI, Plaintiffs must demonstrate that they have a strong likelihood of success on the merits, that they will suffer irreparable injury absent the order, that the balance of the equities favors the order, and that the public interest is served by the Court's issuing the order. *See Bl(a)ck Tea Soc'y v. Boston*, 378 F.3d 8, 11 (1st Cir. 2004); *Bourgoin v. Sebelius*, 928 F. Supp. 2d 258, 267 (D. Me. 2013) ("The standard for granting a temporary restraining order is the same as for a preliminary injunction."). Plaintiffs easily satisfy each of these elements factually and legally. (Plaintiffs hereby incorporate by reference the allegations of the Verified Complaint, filed contemporaneously herewith, as their statement of facts in support of this motion.)

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIM THAT DEFENDANTS MUST FOLLOW FEDERAL LAW AND GRANT RELIGIOUS ACCOMMODATIONS AND EXEMPTIONS FROM THE GOVERNOR'S COVID-19 VACCINE MANDATE.

A. Defendants' Refusal to Recognize the Supremacy Clause's Mandate That State Law Align With Federal Law Is Plainly Unlawful.

As a matter of black letter law, federal law and the United States Constitution are supreme over any contrary Maine statute, edict, or executive decree from the Governor, and Maine cannot override, nullify, or violate federal law. *See* U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). In fact, it is an elementary principle of the Nation's founding charter that the laws of the federal government constitute the laws applicable in the states. *Haywood v. Drown*, 556 U.S. 729, 734 (2009) ("**This Court has long made clear that federal**

law is as much the law of the several States as are the laws passed by their legislatures.” (emphasis added)). For this Court and Defendants in this case, the Supremacy Clause “provides a rule of decision for determining whether federal or state law applies in a particular situation,” *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020), and where—as here—federal law “imposes restrictions [and] confers rights on private actors,” and Maine law “imposes restrictions that conflict with the federal law,” **“the federal law takes precedence** and the state law is preempted.” *Murphy v. NCAA*, 138 S. Ct. 1461, 1480 (2018) (emphasis added). Indeed, **“[i]t is a familiar and well-established principle that the Supremacy Clause . . . invalidates state laws that interfere with, or are contrary to, federal law. Under the Supremacy Clause . . . state law is nullified to the extent that it actually conflicts with federal law.”** *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712–13 (1985) (emphasis added) (cleaned up).

Here, Defendants have purported to exclude themselves from the requirements and mandates of federal law. There can be no dispute that Title VII of the Civil Rights Act prohibits Defendants from discriminating against Plaintiffs on the basis of their sincerely held religious beliefs. 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 . . . religion . . .”). And, Defendants have a duty under Title VII to provide religious exemptions and accommodations to those with sincerely held religious objections to the COVID-19 Vaccine Mandate. Yet, when presented with requests from Plaintiffs outlining their sincerely held religious objections to the mandate, Defendant employers have all issued blanket denials of such exemptions, refused to even consider or evaluate such requests, refused to grant any reasonable accommodation for Plaintiffs’ sincerely held religious beliefs, and

threatened to terminate Plaintiffs for their failure to violate their conscience by complying with the Governor's mandate. (V. Compl. ¶¶ 1, 5, 82–95.)

As detailed in Plaintiffs' Verified Complaint, Defendants are callously and unconscionably ignoring federal law and its demand that sincerely held religious belief be protected and accommodated. (*Id.*) Specifically, Plaintiffs are receiving the following responses to their requests for religious exemption and accommodation:

- “I can share MaineHealth’s view that **federal law does not supersede state law in this instance.**”
- “[W]e are no longer able to consider religious exemptions for those who work in the state of Maine.”
- “All MaineGeneral employees will have to be vaccinated against COVID-19 by Oct. 1 unless they have a medical exemption. The mandate also states that only medical exemptions are allowed, **no religious exemptions are allowed.**”
- “Allowing for a religious exemption would be a violation of the state mandate issued by Governor Mills. So, unfortunately, that is not an option for us.”

(V. Compl. ¶ 1, Exs. A–C (emphasis added).)

While Defendants might be forgiven for articulating such responses if Plaintiffs were raising them only under Maine law, Defendants are fully aware of the fact that Plaintiffs were seeking to invoke the protections of federal law and nevertheless refused to accept the supremacy of such federal protections. Indeed, Jane Doe 1 informed Defendant MaineHealth that she was seeking her accommodation under Title VII (V. Compl. ¶ 85), yet her request was still rejected upon the premise that “**federal law does not supersede state law in this instance.**” (V. Compl. ¶ 87 (emphasis added).) In fact, Defendants have flatly refused to even consider religious exemption requests. (*See* V. Compl. ¶¶ 84, 97 (“You submitted a religious exemption, **your request is unable to be evaluated at this time.**” (emphasis added)).) MaineGeneral’s response

was similar, in that it noted that federal law provides no refuge for Plaintiffs’ requests for religious exemption because employers in Maine “must comply with Governor Mills’ COVID-19 vaccination mandate [and] **no religious exemptions are allowed.**” (V. Compl. ¶ 93 (emphasis added).)

For Defendants, it is as if the protections for religious beliefs demanded by the First Amendment (for the Governor) and Title VII (for employers in Maine) simply do not exist. But Defendants’ willful disregard of federal law provides no refuge for their unconstitutional and unlawful denials of Plaintiffs’ requests for accommodation. For, “**as stated [nearly two centuries ago], the Supremacy Clause invalidates state laws that interfere with or are contrary to the laws of congress.**” *Chicago & N.W. Transp. Co. v. Kalo Brick Tile Co.*, 450 U.S. 311, 317 (1981) (emphasis added) (quoting *Gibbons v. Ogden*, 22 U.S. 1, 211 (1824)). The constitutional structure of the Republic demands that the State, including Maine, comply with and adhere to the demands of federal law. Defendants have ignored this structure.

B. The Governor’s COVID-19 Vaccine Mandate Violates the Free Exercise Clause of the First Amendment.

1. Imposing the Governor’s Mandate on John Doe 1’s practice violates the Free Exercise Clause.

Plaintiff John Doe 1 is a licensed healthcare provider in Maine, operating his own practice with employees who all have sincerely held religious objections to the Governor’s COVID-19 Vaccine Mandate. (V. Compl. ¶ 16.) John Doe 1 has sincerely held religious objections to accepting or receiving the COVID-19 vaccines and has sincerely held religious beliefs that he is to honor the sincerely held religious beliefs of his employees who object to the COVID-19 vaccines. (*Id.*) John Doe 1 has been threatened with closure of his practice and loss of his business license for considering and granting religious accommodations and exemptions for his employees.

(*Id.*) And, there is no question that the Governor has threatened John Doe 1 with the penalty of the loss of his license for failure to comply with the Governor’s mandate. (V. Compl. ¶ 43 (“[t]he organizations to which this requirement applies must ensure that each employee is vaccinated, with this requirement being enforced as a condition of the facilities’ licensure.”).)

The Governor’s mandate and its threat of revocation of John Doe 1’s license for failure to comply is almost identical to the mandates struck down by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). There, the federal government mandated that Hobby Lobby (a privately held corporation with sincerely held religious beliefs against abortion) provide insurance coverage for its employees to receive abortion-inducing drugs and contraceptives. 573 U.S. at 690–91. There, the Court noted that the plaintiffs—as here—

have a sincere religious belief that life begins at conception. They therefore object on religious grounds to providing health insurance that covers methods of birth control that, as HHS acknowledges . . . may result in the destruction of an embryo. By requiring the Hahns and Greens and their companies to arrange for such coverage, **the HHS mandate demands that they engage in conduct that seriously violates their religious beliefs.**

Id. at 720 (emphasis added). Here, too, the Governor’s mandate imposes a substantial burden on Plaintiffs’ religious beliefs. In fact, John Doe 1 must either mandate that his employees receive a vaccine they find objectionable under their sincerely held religious beliefs, or deprive his employees of their abilities to feed their families. Such an unconscionable choice is clearly a substantial burden. Indeed, the First Amendment can hardly be thought to countenance as “a tolerable result to put a family-run business to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing [employment].” *Id.* at 722.

There, as here, the Court was faced with a government mandate that conflicted with the sincerely held religious beliefs of the plaintiffs. There, as here, compliance with the government’s mandate imposed a substantial burden on the plaintiffs’ sincerely held religious beliefs. There, as

here, the government's restrictions on the plaintiffs' sincerely held religious beliefs were subject to (and failed) strict scrutiny. Because the Governor's COVID-19 Vaccine Mandate is not neutral or generally applicable, and provides for individualized medical exemptions but not religious, the mandate is subject to strict scrutiny, and Defendants utterly fail to carry their burden under that standard. (*See infra.*)

2. The Governor's refusal to permit accommodation of sincerely held religious beliefs violates the Free Exercise Clause.

In *Tandon v. Newsom*, the Supreme Court held that the government violates the First Amendment "**whenever it treats *any* comparable activity more favorably than religious exercise.**" 141 S. Ct. 1294, 1296 (2021) (bold emphasis added). Here, that is plainly what Defendants have done. The government Defendants have mandated that individuals who are employed in the healthcare industry accept and receive a COVID-19 vaccine. No choice has been given to religious adherents, yet nonreligious exemptions and accommodations are readily available.

And, there is no dispute about the two separate categories of exemptions the Governor has created. Plaintiffs have been informed that while religious exemptions are per se barred in the State of Maine, the more favored medical category of exemptions is alive and well in Maine. (V. Compl. ¶¶ 96–103.) Specifically, in its response to Jane Doe 1, Defendant MaineHealth has indicated it is perfectly willing to accept and grant medical exemptions but will not allow religious exemptions. Specifically, MaineHealth told Jane Doe 1:

You submitted a religious exemption, your request is unable to be evaluated due to a change in the law. Your options are to receive vaccination or provide documentation for a medical exemption to meet current requirements for continued employment.

(V. Compl. ¶ 97 and Exhibit A at 2.) As MaineHealth informed Jane Doe 1, though her request for a religious exemption was denied, she was invited to submit a request for a medical exemption. (V. Compl. ¶ 99 (“If you seek an accommodation **other than a religious exemption** from the state mandated vaccine, please let us know.” (emphasis added).))

3. The Governor’s discriminatory mandate fails strict scrutiny.

Because the Governor’s COVID-19 Vaccine Mandate is neither neutral nor generally applicable, and indeed because it singles out religious objectors for disparate treatment, it must satisfy strict scrutiny, meaning the restrictions must be supported by a compelling interest and narrowly tailored. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 62, 67 (2000); *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228, 1233 (9th Cir. 2020) (“disparate treatment of religion triggers strict scrutiny”). “That standard is not watered down; it really means what it says.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021). This is “the most demanding test known to constitutional law,” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), which is rarely passed. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992) (“[W]e readily acknowledge that a law rarely survives such scrutiny . . .”). This is not that rare case.

Whatever interest the Governor claims, she cannot show the orders are the least restrictive means of protecting that interest. And it is the Governor’s burden to make the showing because “the burdens at the preliminary injunction stage track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). “As the Government bears the burden of proof on the ultimate question of . . . constitutionality, **[Plaintiffs] must be deemed likely to prevail unless the Government has shown** that [their] proposed less restrictive alternatives are less effective than [the mandate].” *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004) (emphasis added). Under this standard, “[n]arrow tailoring requires the government to demonstrate

that a policy is the ‘least restrictive means’ of achieving its objectives.” *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 633 (2d Cir. 2020) (quoting *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 718 (1981)).

To meet this burden, the government must show it “**seriously** undertook to address the problem with less intrusive tools readily available to it,” meaning that it “**considered different methods that other jurisdictions have found effective.**” *McCullen v. Coakley*, 573 U.S. 464, 494 (2014) (emphasis added). *See also Agudath Israel*, 983 F.3d at 633 (same). And the Governor must “show either that **substantially less-restrictive alternatives were tried and failed**, or that the **alternatives were closely examined and ruled out for good reason,**” *Bruni v. City of Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2016) (emphasis added), and that “imposing lesser burdens on religious liberty ‘would fail to achieve the government’s interest, not simply that the chosen route was easier.’” *Agudath Israel*, 983 F.3d at 633 (quoting *McCullen*, 573 U.S. at 495).

Here, for 18 months Plaintiffs have risen every morning, donned their personal protective equipment (PPE), and fearlessly marched into hospitals, doctors’ offices, emergency rooms, operating rooms, and examination rooms with one goal: to provide quality healthcare to those suffering from COVID-19 and every other illness or medical need that confronted them. They did it bravely and with honor. They answered the call of duty to provide healthcare to the folks who needed it the most and worked tirelessly to ensure that those ravaged by the pandemic were given appropriate care. For 18 months PPE and other protocols have been sufficient to protect both Plaintiffs and their patients. Yet now, Defendants claim that such measures do not suffice. The Governor tried nothing else. She went straight to a COVID-19 Vaccine Mandate for healthcare workers and purported to remove any protections for their sincerely held religious beliefs. That plainly fails strict scrutiny, as the other, less restrictive alternatives—including alternatives that

the MCDC still says are “**proven to be one of the most significant, effective, and easiest ways to reduce the spread of COVID-19,**” (V. Compl. ¶ 78 (emphasis added))—are available and protect Defendants’ interests while still preserving Plaintiffs’ rights under federal law.

C. Defendants Have Conspired to Violate Plaintiffs’ Civil Rights.

Section 1985(3) prohibits Defendants from conspiring to deprive Plaintiffs of the equal protection of the laws or to deprive them of other constitutionally protected liberties. 42 U.S.C. § 1985(3). Such claims include a prohibition on Defendants’ conspiring together to deprive Plaintiffs of their constitutionally protected right to the free exercise of religion under the First Amendment. *See, e.g., United Bhd. of Carpenters & Joiners of Am. Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 830–31 (1983) (holding that a “conspiracy to infringe First Amendment rights is [a] violation of § 1985(3) [if] it is proved that the state is involved in the conspiracy”); *Perez-Sanchez v. Public Bldg. Auth.*, 531 F.3d 104, 109 (1st Cir. 2008) (noting that § 1985(3) claims extend to “members of recognized classifications such as race, sex, religion, or national origin” (citing *Brown v. Reardon*, 770 F.2d 896, 906 (10th Cir. 1985))); *Palm v. Sisters of Charity Health Sys.*, No. 07-120-B-W, 2008 WL 2229764, *2 (D. Me. May 28, 2008) (noting that conspiracies to deprive a plaintiff of his First Amendment rights are actionable if state action is involved).

Here, Defendants have plainly entered into an agreement to deprive Plaintiffs of their constitutionally protected rights to equal protection and the free exercise of their religion, have done so with a conspiratorial purpose to so deprive them of such rights, have committed overt acts in furtherance of the conspiracy, and have actually deprived Plaintiffs of their constitutionally cherished liberties. *See Aulson v. Blanchard*, 83 F.3d 1 (1st Cir. 1996).

1. Defendants entered into an agreement to violate Plaintiffs' rights.

There is no question that the Governor and her officials have entered into an agreement with Defendant employers to deprive Plaintiffs of their constitutionally protected liberties. Indeed, the Governor's own press release announcing her mandate that all healthcare workers in Maine receive a COVID-19 vaccine states that Defendants agree with her concerning its provisions. For example, Defendant MaineHealth stated that it agreed with the Governor's decision to mandate the vaccine and prohibit religious exemptions from it. (V. Compl. ¶¶ 185-186.) Defendant Northern Light was even more explicit in its confirmation of agreement with the Governor's mandate when it stated that "*Governor Mills' decision to require vaccination of health care workers is another example of close alignment between the government and the health care community.*" (V. Compl. ¶ 187 (italics original).)

And, if these statements of Defendants were somehow insufficient to demonstrate their express agreement with the Governor to enforce her COVID-19 Vaccine Mandate without providing any religious exemptions whatsoever, the actions and other statements of Defendants confirm their agreement. MaineHealth's agreement with the Governor to deprive Plaintiffs of their constitutionally protected liberties is evidenced in its denial of Jane Doe 1's request for religious exemption and accommodation. (V. Compl. ¶ 185.) Specifically, the statement that MaineHealth is "**no longer able to consider religious exemptions for those who work in the state of Maine**" (*id.* and Ex. A at 2 (emphasis added)) demonstrates that MaineHealth has reached an agreement with the Governor to refuse requests for religious exemptions based on the State's mandate.

These statements and actions have more than demonstrated Defendants' agreement to deprive Plaintiffs of their constitutionally protected liberties. "In order to maintain an action under Section 1985, a plaintiff 'must provide some factual basis supporting a meeting of the minds, such

that defendants entered into an agreement, express **or tacit**, to achieve an unlawful end.’” *Webb v. Goord*, 340 F.3d 105, 110 (2d Cir. 2003) (emphasis added) (quoting *Romer v. Morganthau*, 119 F. Supp. 2d 346, 363 (S.D.N.Y. 2000)). Defendants’ public representations that they are in lockstep with the Governor in requiring Plaintiffs to receive a COVID-19 vaccine and that no religious accommodations are available plainly demonstrates a tacit—if not express—agreement to preclude Plaintiffs from seeking and receiving a religious accommodation to the COVID-19 Vaccine Mandate.

2. Defendants acted with a conspiratorial purpose and committed overt acts in furtherance of the conspiracy.

The conspiratorial purpose of Defendants’ agreement to deprive Plaintiffs of their constitutionally and statutorily protected rights to a religious accommodation is manifested by Defendants’ overt acts in furtherance of the conspiratorial agreement. The Governor and her officials engaged in an overt act in furtherance of the conspiracy by removing all religious protections from mandatory vaccines via the agency rule change. (*See, e.g.*, V. Compl. ¶¶ 46–49.) Indeed, on August 14, 2021, Dr. Shah and the MCDC amended 10-144 C.M.R. Ch. 264 to eliminate the ability of health care workers in Maine to request and obtain a religious exemption and accommodation from the COVID-19 Vaccine Mandate. (V. Compl. ¶ 46.) The only exemptions Maine now lists as available to health care workers are those outlined in 22 M.R.S. § 802.4-B, which purports to exempt only those individuals for whom an immunization is medically inadvisable and who provide a written statement from a doctor documenting the need for an exemption, despite the fact that the prior version of the rule permitted religious exemptions. (V. Compl. ¶¶ 47–48.) Moreover, the Governor’s officials engaged in an overt act of denying even consideration of religious exemptions by stating to the public that religious accommodations and

exemptions were no longer permissible in Maine, regardless of federal law's requirement that such accommodations be made available to conscientious and religious objectors. (V. Compl. ¶ 49).

Defendant employers in Maine engaged in overt acts in furtherance of their conspiratorial purpose by falsely stating to their employees that religious exemptions, **including those offered and mandated by federal law**, were inapplicable in Maine. (*See, e.g.*, V. Compl. ¶¶ 1, 82–95.)

Thus, Defendants have all engaged in overt acts in furtherance of their conspiracy and conspiratorial motives by publicly stating—falsely—that no protections or accommodations are available to those individuals who might have sincerely held religious objections to the COVID-19 Vaccine Mandate. **Those statements to the public and the explicit denials of religious exemptions to Plaintiffs on the false premise that federal protections do not apply in Maine are overt acts in furtherance of Defendants' conspiracy to deprive Plaintiffs of any accommodation for their sincerely held religious beliefs to which the law entitles them.**

3. Defendants have deprived Plaintiffs of their constitutionally protected civil rights to Equal Protection and Free Exercise.

Not only have Defendants agreed to deprive Plaintiffs of their constitutionally and statutorily protected liberties and engaged in overt acts in furtherance of their conspiratorial motives, Defendants have actually deprived Plaintiffs of their protected civil liberties in violation of 42 U.S.C. § 1985(3). Indeed, Jane Doe 2 was terminated from her position for her refusal to accept a vaccine that violates her sincerely held religious beliefs. (V. Compl. ¶ 11.) Defendants have also informed Plaintiffs—who fortunately still have their jobs for now—that as of October 1, they will be terminated if they refuse to accept the COVID-19 vaccine regardless of their sincerely held religious objections to it. (V. Compl. ¶¶ 82–95, 104–116.)

Thus, because Defendants have agreed to deprive, and in fact have deprived, Plaintiffs of their rights to accommodation of their sincerely held religious beliefs, Defendants have violated

Section 1985(3) and must be enjoined from continuing to engage in their unlawful and unconscionable conspiracy to deprive Plaintiffs of their protected free exercise of their sincerely held religious beliefs.

D. The Governor’s Impermissible Creation of an Unprotected Class of Religious Objectors in the Healthcare Industry Violates Plaintiffs’ Right to Equal Protection.

The Equal Protection Clause of the Fourteenth Amendment makes it unconstitutional for any state to “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV § 1. “[T]he concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the government action questioned or challenged.” *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). Indeed, when the Governor engages in a system of systematically targeting religious objectors for disparate treatment under Maine’s immunization laws, her actions plainly violates the Equal Protection Clause.

The Governor’s COVID-19 Vaccine Mandate and the MCDC’s removal of religious exemptions for healthcare workers in Maine, on their face and as applied, are each a “status-based enactment divorced from any factual context” and “a classification of persons undertaken for its own sake,” which “the Equal Protection Clause does not permit.” *Romer v. Evans*, 517 U.S. 620, 635 (1996). The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, “identifies persons by a single trait [religious beliefs] and then denies them protections across the board.” *Id.* at 633. Under such a scenario, *Romer* demands a finding that the removal of protections that previously existed represents per se animus in violation of the Fourteenth Amendment. Defendants’ removal of religious exemptions from immunizations—while keeping medical exemptions as perfectly acceptable in the healthcare field—results in a “disqualification of a class of persons from the right to seek specific protection [for their religious beliefs].” *Id.* Indeed, “[a]

law declaring that in general it shall be more difficult for one group of citizens than for all others to seek [an exemption from the COVID-19 Vaccine Mandate] is itself a denial of equal protection of the laws in the most literal sense.” *Id.* (emphasis added). The Governor’s COVID-19 Vaccine Mandate, on its face and as applied, and the MCDC’s removal of religious exemptions for healthcare workers, are each such a law.

II. DEFENDANTS’ UNLAWFUL CONDUCT IS CAUSING PLAINTIFFS’ IRREPARABLE HARM.

As the Supreme Court has just recently affirmed, “**There can be no question that the challenged restrictions, if enforced, will cause irreparable harm.**” ‘The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Catholic Diocese*, 141 S. Ct. at 67 (emphasis added) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Here, for Plaintiffs, the Governor’s COVID-19 Vaccine Mandate and its unlawful and impermissible prohibition of religious exemptions that are required under federal law is causing immediate and irreparable harm to Plaintiffs. Because Jane Doe 1’s request for exemption and accommodation of her sincerely held religious beliefs has been denied by MaineHealth, Jane Doe 1 faces the unconscionable choice of accepting a vaccine that conflicts with her religious beliefs or losing her job. (V. Compl. ¶ 104.) Jane Doe 1 will only remain employed until October 1 if she does not violate her conscience and sincere religious beliefs and accept the Governor’s mandatory COVID-19 vaccine. (*Id.*) Jane Does 3–5 all face the identical scenario: violate their sincerely held religious beliefs by complying with the Governor’s mandate or lose their ability to feed their families. (V. Compl. ¶¶ 105–108.) Jane Doe 2 already lost her job because she chose not to violate her conscience, and she cannot obtain new employment in the healthcare field despite her experience and qualifications because of the Governor’s COVID-19 Vaccine Mandate. (V. Compl. ¶¶ 5, 11, 88.)

Because of the Governor's COVID-19 Vaccine Mandate, John Doe 1 faces the unconscionable choice of violating his own sincerely held religious beliefs and accepting the mandatory vaccine or potentially losing his practice and business license for failure to comply. (V. Compl. ¶ 111.) And John Doe 1 also faces the unconscionable choice of refusing to grant his employees' requests for exemption and accommodation from the Governor's COVID-19 Vaccine Mandate or losing his practice and his business license. (V. Compl. ¶ 112.)

The Governor's mandate, which force Plaintiffs to choose between their sincerely held religious beliefs and compliance with an unlawful edict that prohibits mandatory federal protections, is unconscionable, unconstitutional, and unlawful. It imposes immediate and irreparable harm on Plaintiffs each day it is permitted to continue. A TRO and preliminary injunction are needed now to protect Plaintiffs' cherished First Amendment liberties and the protections afforded to them under the Constitution.

III. PLAINTIFFS SATISFY THE REMAINING REQUIREMENTS FOR A TRO AND PRELIMINARY INJUNCTION.

When Defendants impose a mandatory vaccine upon Plaintiffs and purport to strip them of their abilities to receive exemption and accommodation for the exercise of their sincerely held religious beliefs, courts "have a duty to conduct a serious examination of the need for such a drastic measure." *Catholic Diocese*, 141 S. Ct. at 68. And, as here, "it has not been shown that granting the applications will harm the public." *Id.* Nor could it be shown, as Plaintiffs are merely seeking to rise each morning, don the same personal protective equipment that sufficed to make them heroes for 18 months, and continue to provide quality healthcare to those who need it most. Plaintiffs' vaccination status was irrelevant for 18 months, and it is irrelevant today.

Moreover, the State "is in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Legend Night Club v. Miller*, 637 F.3d 291,

302–03 (4th Cir. 2011). But, for Plaintiffs, even minimal infringements upon First Amendment values constitute irreparable injury. *Catholic Diocese*, 141 S. Ct. at 67. As such, there is no comparison between the irreparable injury suffered by Plaintiffs and the non-existent interest Defendants have in enforcing unconstitutional mandates and depriving Plaintiffs of federally required protections of their sincerely held religious beliefs and the exercise thereof. Absent a preliminary injunction, Plaintiffs “face an impossible choice: [accept a vaccine] in violation of their sincere religious beliefs, or risk [termination] for practicing those sincere religious beliefs.” *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 914 (W.D. Ky. 2020). The TRO and preliminary injunction should issue immediately to protect Plaintiffs’ sincerely held religious beliefs and ensure that federal protections afforded to them are honored by Maine and the employers located therein.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ Motion and issue a TRO and preliminary injunction immediately. In the alternative, Plaintiffs’ request that this Court issue a preliminary injunction pending appeal.

Respectfully submitted,

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