

No. 26-

IN THE
Supreme Court of the United States

DEBRA NEVINS,

Petitioner,

v.

DCH HEALTH SYSTEMS, THE DCH HEALTH
CARE AUTHORITY, REBECCA BOUTWELL,
COURTNEY WINGO, FELICIA ELLISON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Appellate Court erred in determining that petitioner was lawfully terminated for non-compliance of respondent's "2020" flu vaccine policy.
2. Whether the Appellate Court erred in determining that Petitioner did not profess a sincerely held religious belief and whether the Appellate Court erred in determining that the petitioner was not similarly situated in all material respects to her comparator.
3. Whether the Appellate Court erred in determining that the "hanging of a blackface doll with a noose around its neck" was not shockingly pervasive enough to alter the terms of the petitioners employment contract.
4. Whether the Appellate Court erred in determining that respondents appeal of petitioners unemployment benefits were not an act of retaliation.

LIST OF ALL PARTIES

Petitioner Debra N. Nevins was the plaintiff-appellant in proceedings below.

Respondent DCH Health Systems, a corporate entity, were defendants-appellees in the proceeding below.

Respondent DCH Healthcare Authority, a corporate entity, were defendants-appellees in the proceeding below.

Respondent, Rebecca Boutwell, were defendants-appellees in the proceeding below.

Respondent, Courtney Wingo, were defendants-appellees in the proceeding below.

Respondent, Felicia Ellison, were defendants-appellees in the proceeding below.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Debra N. Nevins, certifies that there are no parent corporations or publicly held corporations that own 10% or more of the parties stock. Petitioner further certifies that Respondents DCH Health Care Authority and DCH Health Systems, are privately held companies, formed under the laws of the State of Alabama and have no parent corporation, and have no other ownership, nor having a publicly held company owning 10% of more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Debra Nevins v. DCH Health Systems, Rebecca Boutwell, Felicia Ellison and Courtney Wingo, Case 7:23-cv-01037-RDP, U.S. District Court for the Northern District of Alabama, Western division. Judgment entered May 21, 2025.

Debra Nevins v. DCH Health Care Authority, Rebecca Boutwell, Courtney Wingo and Felicia Ellison, No. 25-12124-J U.S. Court of Appeal for the Eleventh Circuit. Judgement entered April 23, 2026.

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OPINIONS BELOW

The memorandum disposition of the United States Court of Appeals for the Eleventh Circuit No. 25-23234-J is unpublished. The memorandum decision and order of the United States District Court for the Northern District of Alabama, Case No.: 7:23-CV-01037-LSC, unreported.

BASIS FOR JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its judgment on April 23, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is filed within ninety days of the April 23, 2026, order. See Sup. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1981 provides, in relevant part: “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens.”

42 U.S.C. § 2000e-2(a)(1) provides, in relevant part: “(a) 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; or

- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

A. Factual Background

1. The Termination.

Petitioner Debra Nevins and respondents DCH Health Systems, hereinafter "DCH" Rebecca Boutwell, hereinafter "Boutwell," Courtney Wingo hereinafter "Wingo," & Felicia Ellison hereinafter "Ellison," on or about November 25, 2020, were all employed at DCH Hospital, in various supervisory capacities over petitioner. On or about December 05, 2020, DCH, terminated the Petitioner for non-compliance of its amended flu vaccine policy.

2. Pre-2020 DCH Flu vaccine policy.

Since the introduction of DCH's flu policy in the late 1990's, DCH has encouraged employees to take the flu vaccine or in the alternative to request an exemption (medical or religious) from taking the flu vaccine. *See* District Case: 7:23-cv-01037-RDP Doc:77 pg. 02 of 38. In the thirty years the Petitioner was employed with DCH, she never participated in DCH flu vaccine program or any other vaccinations programs offered by DCH. In 2002, Petitioner was diagnosed with LUPUS. LUPUS is

an autoimmune disorder which disproportionately effect women of color. *Lupus Foundation of America*, <https://www.lupus.org/resources/lupus-facts-and-statistics>. Petitioner sought and received a medical exemption from taking the flu vaccine in each of the years DCH flu vaccine policy was enforced. Appendix – D., EEOC Letter of Determination. It is undisputed that from 2009-2019, the Petitioner requested and received a medical exemption from taking the flu vaccine through DCH Employee Health Department, *hereinafter* “Employee Health.” *See* District Case: 7:23-cv-01037-RDP Doc:71-14.

In each of those instances, where the Petitioner sought an exemption, she indicated that she was fearful of the medical complications the vaccine would have on her LUPUS. *See* District Case: 7:23-cv-01037-RDP Doc:71-14. In each of those years from 2006-2019, DCH Employee Health, granted the Petitioner request for medical exemption. *See* District Case: 7:23-cv-01037-RDP Doc:71-14.

In 2020, DCH, amended it flu vaccine policy, now requiring its employees including the Petitioner to provide a medical exemption or a religious exemption if a given employee declined to take the mandatory flu vaccine. *See* District Case: 7:23-cv-01037-RDP Doc:77-Memorandum of Opinion, pg., 02 of 38.

3. Hostile Work Environment 2019-2020.

The *first* incident which created a hostile work environment occurred on or about December of 2019. Petitioner, alleged and a witness to the incident recalled, seeing a blackface doll, *hereinafter*, “blackface doll” with a noose around its neck and pinned to the desk assigned to

the Petitioner. USCA11 Case:25-12124 Doc: 17 pg. 48-50. The Petitioner alleges that she screamed and was upset at the happening of the racially incendiary blackface doll. *See* USCA11 Case: 25-12124 Doc: 17, pg. 33-34, footnote: 10. DCH purports that the blackface doll was a multi-colored elephant and was thrown away in the trash when put on notice of the blackface doll. *Id* at pg. 50 Petitioner believes instead that the blackface doll act alone, is by itself severe or pervasive to alter the conditions of the Petitioners employment and created an abusive work environment. Indeed, the District Judge, opined that “a blackface doll has no place in civil society much less a workspace.” *See* District Case: 7:23-cv-01037-RDP Doc:77 – Memorandum of Opinion, pg. 26 of 38.

The *second* incident which created a hostile work environment occurred when the Petitioner, informed management that an employee, was wearing clothing not permitted by DCH. When this employee discovered that Petitioner informed management, that employee, confronted the Petitioner and made various threats. Respondents, were aware of prior threats being made by this employee towards other employees. The Petitioner complained to her then supervisor, Rodney Cannon and was relocated to an isolated workspace. USCA11 – Case:25-12124 Doc:17 pg. 51 of 56.

The *third* incident, which created a hostile work environment occurred when the Petitioner, emailed DCH human resource department representative Wingo on April 03, 2020, requesting a meeting concerning allegations of “discrimination and retaliation.” USCA11 – Case:25-12124 Doc:17 pg. 43-44.

The *fourth* incident which constitutes retaliation occurred when DCH, filed a post-termination appeal of Petitioners unemployment benefits, well beyond the time permitted by state law. It is undisputed that DCH appeal of Petitioner's unemployment benefits had no merit and the time for taking such an appeal had elapsed by more than a year. USCA11 – Case:25-12124 Doc:17 pg. 43 of 56.

4. 2020 Amended Flu Vaccine policy.

In August of 2020, DCH amended its flu vaccine policy. *See* District Case: 7:23-cv-01037-RDP Doc:77-Memorandum of Opinion, pg., 02 of 38. DCH amended policy required mandatory participation of all ten thousand plus employees or in the alternative the submission of a medical or religious exemption request which had to be approved by Employee Health. Unlike, DCH pre-2020 flu vaccine policies, employees seeking a medical exemption request did not have to prove a contraindication to the flu vaccine. Under the amended 2020 DCH flu vaccine policy, employee seeking a medical exemption had to provide proof of a contraindication to the flu vaccine. Nothing changed about the religious exemption request. DCH amended flu vaccine policy required all employees working on its premises to be in compliance on or before November 15, 2020, which happened to fall on a Sunday. Failure to provide proof of vaccination or an approved exemption request could result in the suspension *without* pay or the termination of a given employee. District Case: 7:23-cv-01037-RDP Doc:71-25, Respondents November 02, 2020, Flu shot reminder. It is undisputed that Petitioner's Employee Health file contained her Lupus diagnosis as early as 2006. It is further undisputed that in each of the years DCH has encouraged employees to participate in the flu vaccine

pre-2020, the Petitioner has abstained from taking the flu vaccine. *See* District Case: 7:23-cv-01037-RDP Doc:71-14.

5. Petitioner's Exemption request.

On or about November 02, 2020, Petitioners supervisor, Rodeny Cannon, *hereinafter* "Cannon" emailed the Petitioner to remind her that she still had not provided proof of vaccination or provided an exemption request. *See* District Court Case 7:23-cv-01037-RDP Doc:71-25. On or about November 04, 2020, the Petitioner submitted the *first* of *three*-exemption request to DCH. *See* District Court Case 7:23-cv-01037-RDP Doc:70-8. The Petitioner's *first* medical exemption request was rejected by DCH.¹ Petitioner sought and received a *second* medical exemption from her new primary care doctor, Keisha Lowther, *hereinafter* "Lowther," on or about November 11, 2020.² District Court Case 7:23-cv-

1. DCH- claims that in rejecting the first medical exemption provided by Petitioner on November 05, 2020, the exemption request was not specific enough to inform DCH of the medical issue preventing Petitioner from taking the flu vaccine. This is at odds, with the testimony of Tina Skelton. Tina Skelton testified that she was aware of Petitioner's concerns about taking the flu vaccine and believed the Petitioner had a genuine fear of taking the flu vaccine. Tina Skelton Deposition pg. 59., para.6-24; Tina Skelton Deposition pg. 60., para.15-17. 15· ·Q· · · Do you again believe that she was;16· ·genuinely concerned about her health? 17· ·A· · · Yes. District Court Case 7:23-cv-01037-RDP Document 71-19, para 60 15-17.

2. DCH Employee Health Department, claimed in earlier briefings before lower courts to not have received the Petitioners *second* medical exemption request which identified that the Petitioner did not want to take the flu vaccine because of her LUPUS medical condition. Further, DCH Employee Health

01037-RDP Doc:70-8. It is undisputed that the Petitioner, worked the same schedule for nearly two decades, Monday through Friday from 7:30 a.m. until 3:30 p.m. District Case 7:23-cv-01037-RDP Document 71-1, pg. 263 Q17-23 It is undisputed that Petitioner could only access work related emails while physically on DCH premises. Nevins Depo., District Court Case 7:23-cv-01037-RDP Doc:71-1 pg. 93 Q1-23. On or about Friday, November 13, 2020, at or after 5:28 p.m., Skelton, dispatched an apparent rejection of the Petitioner's *second* medical exemption request. Nevins Depo., District Court Case

representative, Skelton, admitted that the Petitioners LUPUS medical diagnosis was known within the DCH Employee Health department. EEOC, through its investigation, determined that "17 "The above-referenced charge is assigned;18 .to me for investigation. This is to advise you; 19 .that I have completed my analysis of the evidence; 20 .obtained during the investigation of this charge; 21 .The evidence indicates that Debra Nevins was 22 .discriminated against based on her disability and 23 .denied a reasonable accommodation. 24 "The evidence reveals that DCH Health; 25 .System was aware of Ms. Nevins' disability since .1 .2016 and she was exempt from taking the flu vaccine;2 .each year. The investigation revealed the policy3 .changed in 2020, and Ms. Nevins submitted;4 .documentation on November 4th, 2020, and5 .November 11th, 2020, for a medical exemption to the;6 .new policy. DCH Health System denied Ms. Nevins';7 .medical exemption request and discharged her even8 .though they were aware of her disability. There is;9 .no evidence that Ms. Nevins' request for; 10 .accommodations created an undue hardship. Based on; 11 .the evidence provided by DCH Health System and 12 .Debra Nevins, I intend to recommend to the district; 13 .director that a finding of reasonable cause be14 .issued. APPENDIX D — U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DOCUMENTS — LETTER OF DETERMINATION (DATED APRIL 26, 2023), CONCILIATION FAILURE AND NOTICE OF RIGHTS (DATED MAY 12, 2023), INVESTIGATOR'S MEMORANDUM (UNDATED).

7:23-cv-01037-RDP Doc:71-1 pg. 93 Q1-23. Ex. F³ In light of the Petitioner work schedule, Monday through Friday from 7:30 a.m. until 3:30 p.m., Petitioner would not have received the rejection of her *second* medical exemption request, because the Petitioner did not have access to her work emails from home. Petitioner consequently could not be in compliance with the November 13, 2020, internal email or the November 15, 2020, deadline because she did not work Saturdays or Sundays, at any time during her three decades of employment with DCH. Nevins Depo., District Case:7:23-cv-01037-RDP-71-1. On Monday, November 16, 2020, Petitioner was informed that she was non-compliant and asked to leave the premises. As Petitioner scrambled to get justification for the rejection of her *second* exemption request, she again consulted Dr. Lowther, who encouraged the Petitioner to request a religious exemption. Even though the Petitioner had never requested a religious exemption before, she testified in her deposition to having held a sincerely held religious belief, central to being able to make a claim for relief under a religious exemption such as the types of exemptions Defendants granted the Petitioners comparator, Tonia Williams, *hereinafter* “Comparator or Williams.” Petitioner’s comparator sought a religious exemption to avoid taking the COVID-19 vaccine and had help from her husband in drafting the exemption. APPENDIX E. On November 19, 2020, Petitioner requested a religious

3. Tina S. Skelton, Friday November 13, 2020, email at 5:28 p.m., to Debra Nevins... “Ms. Nevins, per Felicia Ellison, Director of Employee Health, you exemption is NOT APPROVED for flu vaccine exemption. You must receive your flu vaccine by Sunday, 11/15/2020 per hospital policy. Please forward proof of vaccine to our office so that we can report your compliancy. Sincerely Tina Skelton, RN, BSN, DCH Employee Health.” District Court Case 7:23-cv-01037-RDP Document 71-6.

exemption request through her primary care doctor, who then faxed the *third* exemption request to DCH. Nevins Depo., District Court Case 7:23-cv-01037-RDP Doc:71-1 pg. 263 Q16-23. At some point, on November 20, 2020, Racheal Posey, hereinafter “Posey” called the Petitioner, to inform her that she was not in compliance and whether she desired to take the flu vaccine. Nevins Depo., District Court Case 7:23-cv-01037-RDP Doc:71-1 pg. 104 Q6-23. At this point, Posey and all named respondents had actual knowledge of Petitioner’s Lupus diagnosis and abstention from taking the flu vaccine. Petitioner declined to take the flu vaccine but hoped that Respondents would work with her in providing an accommodation. Shortly thereafter the Petitioner was formally terminated on or about December 05, 2020.

6. E.E.O.C.

The Petitioner filed charge number 420-2021-00660 with the Equal Employment Opportunity Commission, *hereinafter* “EEOC”, on or about March 25, 2021, alleging in part, race discrimination and discrimination based on her LUPUS diagnosis. USCA11 – Case:25-12124 Doc:17 pg. 15 of 56. The EEOC investigated the Petitioner’s charge and were in communication with DCH’s outside counsel concerning DCH’s knowledge of Petitioner’s Lupus diagnosis and prior offerings of accommodations.

After DCH, received notice of the likelihood that the EEOC were likely to make a cause finding, against them, DCH appealed Petitioners unemployment benefits. *See* District Court Case 7:23-cv-01037-RDP Doc:71-34 filed on 11/09/24.⁴ What was remarkable about the appeal of

4. Case 7:23-cv-01037-RDP Doc:71-34 filed on 11/09/24, refers to Exhibit HH, submitted to the District Court in re Nevins v. DCH Health Systems et al.

Petitioners unemployment benefits are underscored by the fact that the time for taking an appeal of Petitioner's unemployment benefit had expired by more than a year before DCH took retaliatory actions to make an appeal. It is undisputed that DCH, waited a year or more before making their stale request for an appeal. DCH was nonetheless granted an appeal hearing on or about April 03, 2023. 7:23-cv-01037-RDP Doc:71-34 filed on 11/09/24.⁵ It is undisputed that DCH did not appear at the very hearing it requested in appealing the unemployment benefits paid to Petitioner. Id.

On or about April 26, 2023, Sheri Guenster, *hereinafter* "Guenster" the Deputy District Director of the EEOC, issued a cause finding of discrimination alleging that DCH violated the Americans with Disabilities Act of 1990, as amended (ADA). APPENDIX – D pg. 1. Guenster, alleged that "based on the foregoing and all evidence of record , I have determined there is a reasonable cause to believe that Respondent discriminated against Charging Party because of her disability in violation of the ADA." APPENDIX – D. Undeterred and unbothered DCH, declined to participate in conciliation efforts, encouraged by the EEOC. APPENDIX – D,

On May 12, 2023, the EEOC sent Petitioner notice of the "Conciliation Failure and Notice of Rights," letter. Appendix – EEOC Conciliation failure notice. The Petitioner filed suit on August 08, 2023, in the Northern Federal District Court of Alabama.

5. Case 7:23-cv-01037-RDP Doc:71-34 filed on 11/09/24, refers to Exhibit HH, submitted to the District Court in re Nevins v. DCH Health Systems et al.

B. Proceedings Below

1. District Court

Petitioner filed her complaint with the U.S. District Court for the Northern District of Alabama, Western Division *hereinafter* “District Court” after the EEOC made a cause finding of discrimination in favor of the Petitioner on May 12, 2023. USCA11 Case: 25-12124 Appendix – C. Doc: 17 pg. 18 of 56. Petitioner complaint on August 7, 2023, alleged five counts: (1) wrongful termination in violation of Title VII, (2) racial discrimination, 42 U.S.C. § 1981, (3) disability discrimination, §1981(4) harassment, and (5) retaliation, 1981. *See* USCA11 – Case:25-12124 Doc:17 pg. 18-20 of 56.(Doc.# 1)⁶. On September 29, 2023, Defendant DCH Health Systems answered denying Nevins’ allegations. (Doc. #5). On November 28, 2023, Plaintiff amended her Complaint. (Doc.# 11). On December 12, 2024, DCH Health Systems filed a Motion to Dismiss Count VI of Plaintiff’s Amended Complaint.(Doc. #13). On January 8, 2024,Plaintiff replied to DCH’s Motion to Dismiss. (Doc.# 16).

Defendant’s Motion to Dismiss was DENIED. (Doc.# 17). On February 9, 2024, Defendant DCH replied to Plaintiff’s Amended Complaint. (Doc.#19). On March 25, 2024, Defendants Rebecca Boutwell, Felicia Ellson and Courtney Wingo filed a Motion for More Definite Statement. (Doc.# 35). On April 9, 2024, Plaintiff responded in opposition to Defendant’s Motion for More

6. Refers to the Petitioners Appellate brief filed with the 11th Circuit Federal Court of Appeals on 09/09/2025 – USCA11 Case: 25-12124 Document: 17.

Definite Statement. (Doc.# 40). On April 17, 2024, Defendants replied to Plaintiff's response (Doc.# 41). On May 13, 2024, Plaintiff filed her amended complaint for more definite statement. (Doc.# 46). On May 17, 2024, all Defendants filed a Motion to Strike. (Doc.# 47). On May 24, 2025, Defendant DCH filed an Answer to Amended Complaint for More Definite Statement. (Doc.# 49). On May 24, 2024, Defendants filed an Answer to Amended Complaint for more definite statement. (Doc.#50). On May 24, 2024, Defendants filed a Motion to Compel. (Doc. #51). On July 31, 2024, Defendants filed a Motion for Protective Order. (Doc. # 54). On August 11, 2024, Plaintiff filed a Response in Opposition to Motion. (Doc. # 56). After the parties engaged in discovery, the Defendants moved for summary judgment on all claims on October 11, 2024. (Doc.# 60). On October 11, 2024, DCH filed a Brief in support of its motion for summary judgment. (Doc. # 61). On October 11, 2024, DCH filed evidentiary material in support of its brief. (Doc.# 62). On October 11, 2024, the individually named defendants Boutwell, Ellison and Wingo filed its Motion for Summary Judgment. (Doc. # 63). On October 11, 2024, the individually named defendants filed a Brief in support of their motion for summary judgment. (Doc.# 64). On October 11, 2024, the individually named defendants filed evidentiary material in support of their brief. (Doc. # 65). On November 8, 2024, Plaintiff filed Opposition to both DCH's and the individually named defendant's Motion for Summary Judgment. (Doc. # 68, 69, 70 and 71). On November 19, 2024, DCH filed a Reply Brief (Doc. # 72). On November 19, 2024, the individually named defendants (Doc.# 73). On May 21, 2025, Judge R. David Proctor ordered that DCH, and the individually named defendants Motions for Summary Judgment be granted in full. (Doc. # 77).
USCA11 – Case:25-12124 Doc:17 pg. 20 of 56.

2. Eleventh Circuit.

The Eleventh Circuit affirmed in an unpublished memorandum disposition, without oral arguments. (Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 1 of 17. Per Curiam, before Judges Luck, Lagoa, and Anderson, disposed of Petitioner's race discrimination claims, essentially holding that Petitioner comparator “was not similarly situated to Nevins in all material respects...” (Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 7 of 17. The Eleventh Circuit wrongfully concluded that Petitioner's comparator was not similarly situated in all material respects “because she [comparator] applied for, and obtained, a religious exemption based on her professed sincerely held religious belief, in line with DCH policy.” Id.

It can hardly be the case that Petitioner's religious exemption request is any different from her comparator. The court further erred in giving more weight to the comparator because she quoted bible verses. *See*, APPENDIX – D – Excerpts of the Deposition of Tonia Williams.

The Eleventh Circuit further disposed of Petitioner's retaliation claim, essentially holding even if Petitioner could establish that both the relocation of her workplace and DCH appeal of her unemployment benefits were materially adverse, and that the April 03, 2020, email was protected conduct, “she still did not establish any causal connection between the email and the adverse actions. *Ismael*, 161 F. 4th at 759.” ...” (Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 13 of 17. The Eleventh Circuit further opined that “the time gap between her email and her termination was seven months, which is insufficient

to establish causation on its own. *Thomas*, 506 F 3d at 1364. ...”(Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 13 of 17. The Eleventh Circuit erred in giving credit to DCH for “withdrawing its appeal,” when in fact DCH never appeared for the hearing it requested more than a year after the time permitted by state law. If the Eleventh Circuit views DCH failing to show up to a hearing it sought as a withdrawal, then no Petitioner, much like Mrs. Nevins, who is before this Honorable Court can prevail, in establishing retaliation.

Last the Eleventh Circuit disposed of Petitioners Hostile Work Environment claim under § 1981 and Title VII. The Eleventh Circuit discounted the severity and pervasiveness of a hanging black face doll, with a noose around its neck and what if any impact it might have on a people of color in particular, the Petitioner. Even though the Chief District Judge, for the Northern District of Alabama said that “a blackface doll has no place in a civil society.” the Eleventh Circuit seem to make credibility determinations as to facts when it opined “To be clear, an unknown employee hanging a blackface doll by a noose in Nevin’s desk area-which disputed evidence supports and is accepted for purposes of summary judgment-is repugnant and racially hostile. However considering the totality of the circumstances, there is no genuine issue of objective severity or pervasiveness for a hostile work environment claim.”(Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 16 & 17. The Eleventh Circuit, erred in finding that Petitioner did not establish “sufficiently severe or pervasive harassment to support a claim of hostile work environment.” Doc. # 30-1). USCA11 – Case:25-12124 Doc:17 pg. 17.

REASONS FOR GRANTING THE PETITION

- I. Whether The Eleventh Circuit Court Erred In Determining That Petitioner Was Lawfully Terminated For Non-Compliance of Respondent’s “2020” flu vaccine policy.**
 - A. Rule 56 (a); Provides That The Court Shall Grant Summary Judgment If There Is No Genuine Dispute As To A Material Fact and The Movant Is Entitled to Judgment As a Matter of Law.**

Both the Eleventh Circuit and The District Court, erred. in granting the Respondents for summary judgment and dismissing COUNTS I and COUNTS II of the Petitioners amended complaint alleging wrongful termination in violation of Title VII and racial discrimination under § 1981. The Eleventh Circuit and the District Court did not weigh evidence and reasonable inferences in favor of the non-moving party. Put simply, the Respondents did not carry its burden. Further, the Eleventh Circuit, erred, in making credibility determinations when assessing the credibility of the Petitioner versus the credibility of some of the named defendants. Summary Judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is genuine if “the record taken as a whole could lead a rational trier of fact to find for the nonmoving party.” *Hickson Corp., v. N. Crossarm Co. Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004). “In considering a motion for summary judgment trial courts must give deference to the non-moving party by view[ing]

the materials presented and all factual inferences in the light most favorable to the nonmoving party.” *Animal Legal Def. Fund v. U.S. Dep’t of Agric.*, 789 F.3d 1206, 1213–14 (11th Cir. 2015) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,157 (1970) *Id.*

First, the Eleventh Circuit and the District Court erred by holding that “Plaintiff has not established a prima facie case of race discrimination under *McDonnell Douglas*, 411 U.S. 792 [or through circumstantial evidence giving rise to an inference of racial discrimination].” Third, even if she did establish a prima facie case of race discrimination, Plaintiff has not shown that DCH’s explanation for her termination was pretextual,” Doc. # 77 at pg., 11 of 38... As articulated above, the Appellant, has established a prima facia case of intentional discrimination via circumstantial evidence. The Petitioner, is an *African American* woman, who was terminated from a position she was qualified for. Her employer treated a similarly situated non-protected person more favorably than her. In light of her employer rejecting her religious exemption request and accepting the non-protected persons religious exemption request. Both the Petitioner and her comparator, were similarly situated in each material respect, outlined in *Lewis*, 918 F.3d 1213.

As the Eleventh Circuit once said in *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, regarding the evidentiary framework: Properly understood, *McDonnell Douglas* is an evidentiary framework that shift the burden of production between the parties to figure out if the true reason for an adverse employment action was the employee’s race. It is not a set of elements that the employee must prove – either to survive summary judgment or prevail at trial. *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th at 943.

[A]s this Supreme Court has explained, the ultimate questions in a discrimination case is whether there is enough evidence to show that the reason for an adverse employment action was illegal discrimination. The prima facie case in the *McDonnell Douglas* framework can help answer that question-but it cannot replace it.

In the Petitioner's, motion in opposition to Respondents motion for summary judgment, the Petitioner, pointed to the following: The racist blackface doll with a noose, around its neck hanging on the Plaintiff's desk. (Doc. # 70, Ex. A. Nevins Dep., 89:12:34; Doc. # 70, Ex. B. Nevins Affidavit; Doc. # 70, Ex. E, Wilson Dep., 43:15-25;44:1-23). Pertrece Wilson., hereinafter "P.W." or "Wilson" a witness to the Plaintiff blackface doll incident, worked alongside the Petitioner as registrar. Both Wilson and the Petitioner was under the supervision of Boutwell. Wilson testified that she saw a blackface doll and Boutwell saw the same blackface doll. (Doc. # 70, Ex. E, Wilson Dep., 43:15-25;44:1-23).

Last, the District Court erred in not finding the fact, that Williams., received help from more than Posey in drafting her religious exemption request. In fact, Williams., testified in her deposition that her husband helped her draft her religious exemption request. (Doc. # 70 Ex. M., Williams Dep., 24:16-19; 26:7-10). The District Court and Eleventh Circuit asserts that Williams. had no help other than Posey however the facts, evidence and record testimony of Williams demonstrates otherwise. (Doc. # 70 Ex. M., Williams Dep., 24:16-19; 26:7-10).

This Honorable Court, should reject the Eleventh Circuit and the District Court finding that the Petitioner

did not establish that Respondents proffered non-discriminatory rational for terminating the Petitioner are not to be believed.

II. This Case Is About Whether The Lower Courts Erred: In Determining that The Petitioner Did Not Express A Sincerely Held Religious Belief, In Seeking An Exemption From Respondents “2020” Flu Vaccine Policy.

The Petitioner ask this Honorable Court to decide whether Petitioner was wrongfully terminated and whether the Petitioner’s proffered comparator, was similarly situated in all material respects with the Petitioner. Namely Petitioner seeks review of the narrow subjective view that the request of religious exemption by Petitioner was materially different from her comparator. Petitioner further ask this Honorable Court to determine that Petitioner, was in fact similarly situated in all material facts and in light of that finding, further proceeding should be had to determine whether Petitioner was wrongfully terminated in violation of federal law. On appeal the Petitioner argued In short, that the Supreme Court, set out a four-part burden shifting framework, “designed to draw out the necessary evidence in employment discrimination cases.” *McDonnell Douglas Corp., v. Green*, 411 U.S. 792, 802 (1973). A plaintiff seeking to establish a prima facie claim for employment discrimination needed to demonstrate the following:

1. She belongs to a protected class;
2. She was subjected to an adverse employment action;

3. She was qualified for the position she held;
4. Her employer treated similarly situated employees outside her class more favorably.

McDonnell Douglas Corp., v. Green, 411 U.S. at 802; *Lewis v. City of Union City*, 918 F.3d 1213, 1220–21 (11th Cir. 2019). It is undisputed that the Appellant, as an African American, and belongs to a protected class of persons and meet the first element under, *McDonnell Douglas*, 411 U.S. 792. It is undisputed that the Petitioner, was subjected to an adverse employment action, when she was terminated on December 05, 2020, and thereby satisfies the second element, under *McDonnell Douglas*, 411 U.S. 792. (Doc# 70 – Exhibit #12, Nevins Separation.71 – Ex. -L). It is undisputed that the Petitioner, Debra Nevins, was qualified for the position she held, satisfying the *third* element under *McDonnell Douglas*, 411 U.S. 792. The Petitioner proffers to this court, that she met the *fourth* element under *McDonnell Douglas*, 411 U.S. 792, by proffering Willims, a white comparator who was similarly situated in all material respects with the Petitioner and who was not fired. As the Eleventh Circuit opined in *Lewis*, 918 F.3d 1213: [I]f the plaintiff succeeds in making out a prima facie case the burden, then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions.” *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253, 1010 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). Finally, should the defendant carry it burden, the plaintiff must then demonstrate that the defendant’s proffered reason was merely a pretext for unlawful discrimination, an obligation that merges with the [plaintiffs] ultimate burden of persuading the [factfinder] that she has been the victim of intentional discrimination. *Id.* at 256. *Lewis*, 918 F.3d 1213.

Analogous to both *Lewis*, 918 F.3d 1213 and *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, the District Court and the Eleventh Circuit was distracted by a perceived failure on the part of the Petitioner, in meeting all four elements articulated under the *McDonnell Douglas*, 411 U.S. 792 burden shifting framework. In other words, the District Court and the Eleventh Circuit asserted themselves as judge and juror in determining that “Williams”, was not similarly situated in all material respects instead of that question of fact being left to a jury. Petitioner did not engage in different conduct – from her comparator, Williams, the first Lewis, 918 F.3d 1213 “[guidepost]” (Doc. # 77 at pg. 13 of 38). The Petitioner disagrees and believes that the Eleventh Circuit erred in determining that the Petitioner did not satisfy the *fourth* element under the *McDonnell Douglas*, 411 U.S. 792., burden shifting framework. Furthermore, because the Petitioner established all *four* elements of the *McDonnell Douglas*, 411 U.S. 792 burden shifting framework, it created a “genuine dispute of a material fact [and] precluded the entry of summary judgment]” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (quoting *White v. Baxter Healthcare Corp.*, 533 F.3d 381).

In this instant, summary judgement was inappropriate because the Petitioner carried her burden, as she testified in her deposition that she was in fact a Christian and was fully aware of Dr. Lowther writing the religious exemption on the Petitioner behalf. District Court Case: 7:23-cv-01037-RDP DOC:70-8 – Nevins 2020 Exemptions. Both the Eleventh Circuit and the District Court should have permitted a jury to determine if Respondents proffered non-discriminatory rational for the Petitioner termination is worthy of credence and whether Williams was similarly

situated in all material respects with her comparator. Last, DCH and its approving representative in Employee Health conceded that there was no one employed by DCH to review religious exemptions nor were the bible verses by Petitioners comparator even reviewed to determine if the bible verses were even from the bible itself. District Case 7:23-cv-01037-RDP Document 71-32 – Comparator Religious Exemption request.

This Honorable Court should disregard the opinion of the Eleventh Circuit and remand this matter back to District Court for further proceedings not inconsistent with *Lewis*, 918 F.3d 1213, *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, and more recently *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939.

III. Whether the Appellate Court erred in Determining That the “Hanging of a Blackface Doll With a Noose Around its Neck” was not Shockingly Pervasive enough to alter the terms of the petitioners employment contract.

The Eleventh Circuit and the District Court erred in determining that the hanging of the black face doll was not objectively or subjectively pervasive enough to trigger automatic discrimination. USCA11 Case:25-12124 Doc:30-1 pg. 16 of 17. The Eleventh Circuit opined that “We examine conduct in context, not as isolated acts and determine under the totality of the circumstances whether the harassing conduct is sufficiently severe or pervasive to alter the terms or conditions of the [Petitioner’s] employment and create a hostile or abusive working environment.” USCA11 Case:25-12124 Doc:30-1 pg. 16 of 17.

The Eleventh Circuit further erred in determining that the Petitioner's "harassment claim did not establish severe or pervasive harassment, or that the alleged harassment was based on a protected trait." USCA11 Case:25-12124 Doc:30-1 pg. 16 of 17.

As lower courts including the Eleventh Circuit have opined, to establish that harassment was sufficiently severe pervasive to alter the terms or conditions of an employment contract, the employee must prove that her work environment was both subjectively and objectively hostile. Wilson testified that the hanging blackface doll caused the Petitioner to scream and that it was a racially insensitive object. APPENDIX – C Excerpts from the Deposition of Pertrece Wilson. As articulated in the Petitioner's initial brief before the Eleventh Circuit, "in other words, the employee must first establish that she "subjectively perceive[d] the environment to be abusive" *Harris v. Forklift Sys., Inc.*, 510 U.S. at 21, 114. It is little doubt that Petitioner who testified to screaming and Wilson, who witnessed the incident, did find or perceive her work environment to be abusive. This is further corroborated by the testimony of Wilson, who alleged that the blackface doll incident occurred after Petitioner complained about a white coworker within the registration department. The second prong in *Harris*, provides that the Petitioner must satisfy the "objective component" by showing that her work environment was on "that a reasonable person would find hostile or abusive." USCA11 Case:25-12124 Doc:17 pg. 47 of 56. It should be little doubt, in the modern era, that the hanging of a blackface doll should make any one uncomfortable but without question a historical incendiary object such as a blackface doll would create a hostile or abusive environment for all

reasonable people. As articulated in Petitioner’s brief before the Eleventh Circuit, “the display of a blackface doll suspended by a noose” on [Petitioner’s] desk is a racially charged act of intimidation that conveys an implicit threat of violence. USCA11 Case:25-12124 Doc:17 pg. 50 of 56 Again, it is not lost, on the Petitioner, that the District Court Judge, opined that a blackface doll has no place in the society and if so, on its face, the blackface doll warrants a finding of a hostile and abusive environment subjectively and objectively. Indeed, the very question itself, create a genuine issue of material fact, for which a jury ought to answer.

This Honorable Court should disregard the opinion of the Eleventh Circuit that the blackface doll was *not* objectively or subjectively pervasive to alter the terms of the Petitioners employment. Further that the blackface doll did constitute harassment and created a hostile or abusive environment. Finally, to remand this matter back to District Court for further proceedings not inconsistent with *Adams v. Austal, U.S.A., L.L.C.*, 754 F.3d 1240, 1251-57 (11th Cir. 2014); *Vance v. S. Bell Tel. & Tel. Co.*, 863 F.2d 1503, 1510 (11th Cir. 1989); *Tademy v. Union Pac., Corp.*, 614 F.3d 1132, 1142-43 (10th Cir. 2008).

IV. Whether the Appellate Courts Err in Determining That Respondents Post-termination Appeal of Petitioners Unemployment Benefits Were not an Act of Retaliation.

Title VII prohibits an employer from firing an employee in retaliation for opposing or complaining about an unlawful employment practice such as racial discrimination. 42 U.S.C. § 2000e-3(a). USCA11 Case:25-

12124 Doc:17 pg. 41 of 56. To establish a prima facie case of retaliation, a plaintiff must show: (1) she engaged in statutorily protected activity, (2) she suffered a materially adverse action, and (3) a causal connection between the protected activity and the adverse action. *Meeks v. Comput. Int'l*, 15 F.3d 1013, 1021 (11th Cir. 1994). As articulated in *Univ. Sw. Med. Ctr. v. Nassar*, 570, U.S. 338, 362 (2013), Ultimately, the plaintiff must prove that the desire to retaliate was the but for cause of the employers action. *Id.* After reporting harassment to Respondents, Petitioner experienced tangible adverse actions, including but not limited to

1. Reassignment to an isolated workplace in January of 2020;
2. April 03, 2020, email outlining harassment and discrimination. District Court Case: 7:23-cv-01037-RDP Doc:71-4 – April 03, 2020, email;
3. Post-termination interference with Petitioners unemployment benefits. District Court Case: 7:23-cv-01037-RDP Doc:71-34 -Respondents post termination appeal.

The Eleventh Circuit erred in finding a lack of temporal proximity between the acts alleged above by Petitioner which she offers as evidence of harassment. The Eleventh Circuit court essentially opined that three months between alleged acts are outside the framework to be temporally proximate to create a causal connection to actionable harassment. USCA11 Case: 25-12124 Document: 30-1 pg. 12 of 17. The Eleventh Circuit further

opined that the “withdrawal” of DCH from Respondents requested appeal of Petitioner unemployment benefits somehow remove the stench of retaliation. District Court Case:7:23-cv-01037-RDP Doc:71-34.

As articulated in the Petitioners brief before the Eleventh Circuit, “The temporal proximity between [Petitioner’s] complaints and the adverse actions, combined with other evidence of her supervisors knowledge, supports a finding of retaliation.” Separately without question the post-termination appeal more than a year after the time for Respondents to take an appeal of Petitioner’s unemployment benefit can be viewed only as an act of retaliation given the knowledge and likelihood that the EEOC was about to enter in a cause charge against Respondents one of the largest employers in the state of Alabama. *See* APPENDIX – D, EEOC Letter of Determination. Further, the Eleventh Circuit and the District Court, are essentially giving license for post termination retaliation so long as the act falls outside of a three-month window?

A. The Eleventh Circuit Erred in Concluding that Petitioner April 03, 2020, Email Did Not Constitute Protected Activity under Title VII or § 1981.

As articulated in the Petitioner’s brief before the Eleventh Circuit, “Title VII protects employees who “oppose any practice made an unlawful employment practice” or participate in an investigation or proceeding.” 42 U.S.C. § 2000e-3(a).” Petitioner’s April 03, 2020, email, specifically stated as briefed before the lower courts that

I am writing to request that management cease all forms of retaliation and discrimination against me. On several occasions, I have been retaliated against by management... I have been denied promotions and treated inferior than others... Again, I am requesting that I not be singled out and treated differently in the future based on discrimination and retaliation. See USCA11 Case:2512124 Doc:17 pg. 44 of 56.

As articulated in the briefing before the Eleventh Circuit, this email demonstrated the opposition to ongoing unlawful employment practices, including race-gender based discrimination, satisfying the “opposition clause” under Title VII. *Murphy v. City of Aventura*, 383 F. App’x 915, 918 (11th Cir. 2010); *Jeronimus v. Polk Cnty., Opportunity Council inc.*, 145 F. App’x 319, 326 (11th Cir. 2005). The relocation to a secluded workspace following the April 03, 2020, email constitute a materially adverse action by Respondents. The temporal proximity between Petitioner’s protected activity and these adverse actions, combines with Respondents inconsistent explanations for its conduct, create a question of fact and establish a triable issue of fact as to causation and pretext. USCA11 Case:2512124 Doc:17 pg. 44 of 56.

This Honorable Court should disregard the opinion of the Eleventh Circuit and hold that the April 03, email of harassment and discrimination constitute a protected activity and the relocation to a secluded or isolated workspace are temporally proximate to her exemption requested being denied for the first time in the nearly two decades of making exemption request and also temporally proximate to the appeal of the Petitioner’s unemployment

benefits despite the fact that the appeal of those benefits would fall outside of the narrow temporal proximate window the Eleventh Circuit has defined. The Petitioner request that on this point, this Honorable Court reverses and remands this matter for further proceedings in the District Court, not inconsistent with your holding.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED APRIL 23, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 25-12124

DEBRA NEVINS,

Plaintiff-Appellant,

v.

DCH HEALTH SYSTEMS, THE DCH HEALTH
CARE AUTHORITY, REBECCA BOUTWELL,
COURTNEY WINGO, FELICIA ELLISON,

Defendants-Appellees.

Filed: 04/23/2026

OPINION

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 7:23-cv-01037-RDP

Before LUCK, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Debra Nevins appeals the district court's order
granting the defendants' motions for summary judgment

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on her claims for racial discrimination, retaliation, and harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a), and 42 U.S.C. § 1981. First, she argues that the district court erred in granting summary judgment on her racial discrimination claim because she presented sufficient circumstantial evidence to support a reasonable inference that she was terminated at least partly because of her race instead of her failure to comply with the flu vaccine policy. Second, she argues that the district court erred in granting summary judgment on her retaliation claim because she established that her relocation to a different workspace and appeal of her award of unemployment benefits were retaliatory to her email alleging discrimination or her Equal Employment Opportunity Commission (“EEOC”) charge. Finally, she argues that the district court erred in granting summary judgment on her harassment claim because she demonstrated sufficiently severe or pervasive harassment to support a claim of a hostile work environment.

I. DISCUSSION**A. Standard of Review**

We review a district court’s grant of summary judgment *de novo*. *Ismael v. Roundtree*, 161 F.4th 752, 758 (11th Cir. 2025). In doing so, we view all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the non-moving party. *Id.*

A court may grant summary judgment “if the movant shows that there is no genuine dispute as to any material

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fact and the movant is entitled to judgment as a matter of law.” *Id.* (quoting Fed. R. Civ. P. 56(a)). There is no genuine issue of material fact when a rational trier of fact cannot find for the non-moving party based on the record. *Id.*

B. Racial Discrimination

Title VII forbids employment discrimination against any person on the basis of their race or color. 42 U.S.C. § 2000e-2(a). Section 1981 also prohibits race discrimination in the making and enforcement of public and private contracts, including employment contracts. *Ferril v. Parker Grp., Inc.*, 168 F.3d 468, 472 (11th Cir. 1999). Discrimination claims under § 1981 and Title VII are subject to the same analysis. *Bryant v. Jones*, 575 F.3d 1281, 1296 n.20 (11th Cir. 2009). However, Title VII does not allow for individual liability. *Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006).

In evaluating claims of discrimination based on circumstantial evidence, courts may use the burden-shifting evidentiary framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Ismael*, 161 F.4th at 759-60, 764. Under *McDonnell Douglas*, the plaintiff first may show a prima facie case by demonstrating “(1) that she belongs to a protected class, (2) that she was subject to an adverse employment action, (3) that she was qualified to perform the job in question, and (4) that her employer treated ‘similarly situated’ employees outside her class more favorably.” *Lewis v. City of Union City, Ga.* 918 F.3d 1213, 1220-21 (11th Cir. 2019) (en banc) (quotation marks omitted). A comparator must be “similarly situated

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in all material respects,” meaning that the plaintiff and the comparator are “sufficiently similar, in an objective sense” and “cannot reasonably be distinguished.” *Id.* at 1218, 1228 (quotation marks omitted). This standard requires a case-by-case analysis, and minor differences in job functions between a plaintiff and a comparator are not dispositive as to whether they are similarly situated. *Id.* at 1227. However, a similarly situated comparator will ordinarily have engaged in the same basic conduct as the plaintiff, will have had the same supervisor, and will share the plaintiff’s employment or disciplinary history. *Id.* at 1227-28.

If the plaintiff establishes a prima facie case, “she is entitled to a rebuttable presumption of illicit intent.” *Ismael*, 161 F.4th at 764. The burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* at 759. If “the defendant comes forth with evidence and successfully rebuts the presumption, ‘the *McDonnell Douglas* framework—with its presumptions and burdens—is no longer relevant.’ It ‘simply drops out of the picture.’” *Id.* at 764 (citations omitted) (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993)). In that case, “the court must proceed to ask whether ‘the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination . . . by the decisionmaker.’” *Id.* (quoting *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011)). The “convincing mosaic” is a metaphor for the summary judgment standard by which a plaintiff may

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overcome a motion for summary judgment by presenting circumstantial evidence of any form that creates a triable issue of the employer's discriminatory intent. *McCreight v. Auburn Bank*, 117 F.4th 1322, 1335-37 (11th Cir. 2024). Evidence that an employer's nondiscriminatory reason is pretext for discrimination is relevant to this inquiry, but "a plaintiff's inability to disprove the defendant's rationale cannot be the sole grounds for summary judgment." *Ismael*, 161 F.4th at 764. To establish pretext, the plaintiff "must demonstrate 'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.'" *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1136 (11th Cir. 2020) (en banc) (quoting *Jackson v. State of Alabama State Tenure Comm'n*, 405 F.3d 1276, 1289 (11th Cir. 2005)).

If, on the other hand, the plaintiff does not establish a prima facie case, "the consequence is that the plaintiff must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate a material issue of triable fact." *Ismael*, 161 F.4th at 765. In other words, "the court should advance directly to the convincing mosaic inquiry." *Id.*

A § 1981 discrimination claim requires proof that race was the but-for cause of an adverse employment action. *Ossmann v. Meredith Corp.*, 82 F.4th 1007, 1014 (11th Cir. 2023). Likewise, a single-motive theory of Title VII discrimination requires proof that illegal discrimination was the but-for cause of an adverse employment action.

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McCreight, 117 F.4th at 1330-31. On the other hand, a mixed-motive theory of Title VII discrimination, by which a plaintiff alleges that a protected characteristic was a “motivating factor” for an employment practice, 42 U.S.C. § 2000e-2(m), requires proof “that an illegal reason played a part in the decision—not that it had a dispositive role,” *McCreight*, 117 F.4th at 1331. Mixed-motive and single-motive are not distinct claim types, but instead “offer alternative theories of causation for proving discrimination under Title VII.” *Id.* Therefore, the plaintiff need not allege a mixed-motive theory in her complaint, but she still must raise the mixed-motive theory for the district court to consider it at summary judgment. *Id.* at 1331-32; *see id.* at 1333 (evaluating discrimination claim under single-motive theory on appeal because the plaintiff only cited one mixed-motive case to the district court and never argued to the district court “that a mix of legitimate and illegitimate motives played a role in her firing”). The *McDonnell Douglas* framework is not appropriate for evaluating mixed-motive theories of discrimination at summary judgment. *Qui v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1238 (11th Cir. 2016). Instead, a court must evaluate whether there is sufficient evidence to support a reasonable inference that a protected characteristic was a motivating factor for an adverse employment action. *Id.* at 1239.

As initial matters, first, the district court correctly entered summary judgment in favor of the individual defendants as to the Title VII claims because Title VII does not provide individual liability, though the race discrimination claims may be considered against the

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individual defendants under § 1981. *Dearth*, 441 F.3d at 933. Second, though DCH argues that Nevins did not raise a mixed-motive theory of causation to the district court to preserve it for appeal, the district court nevertheless explained the difference between the single-motive and mixed-motive theories of causation that could support discrimination claims and it substantively evaluated whether the record showed that race played any role in any employment decision. Though Nevins focuses her appellate arguments primarily on but-for causation, she also argues that her race was a motivating factor in her termination and reports ample caselaw on the mixed-motive theory, so this Court may consider whether any evidence shows that her race played any part in an adverse employment decision for purposes of her Title VII claims. *Qui*, 814 F.3d at 1239. Third, to the extent Nevins advances a mixed-motive theory of causation as to her § 1981 claims, that is not appropriate because § 1981 requires proof of but-for causation. *Ossmann*, 82 F.4th at 1014.

Here, the district court correctly concluded that Nevins could not establish a *prima facie* case of discrimination against any of the defendants and, even if she had, the defendants rebutted the inference of discrimination, and the record did not contain a convincing mosaic of circumstantial evidence showing discrimination played any part in her termination. T.W. was not a valid comparator and was not similarly situated to Nevins in all material respects because she applied for, and obtained, a religious exemption based on her professed sincerely held religious belief, in line with DCH policy. Nevins, on the other hand, only submitted a note from her physician that

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said, “Patient is exempt for religious purposes,” without professing any particular religious belief. Indeed, Nevins explicitly testified that she did not have a particular religious belief that prevented her from receiving the flu vaccine and that she did not want a “religious” note from her physician because it would be a “lie.” Further, Nevins suggests that the district court misinterpreted “similarly situated in all material respects,” but, because Nevins’s allegation is that the defendants wrongly denied her medical exemption requests,¹ the type of exemption request submitted by a purported comparator

1. Nor is there any genuine dispute that the notes from Nevins’s physician failed to satisfy the proof that the DCH policy required for an exemption. The policy provided:

Exemption to immunization may be granted for medical contraindications after Employee Health receives appropriate proof. Ex: letter from primary care physician including medical contraindication[.]

[. . .]

If an employee requests a religious belief exemption, they must provide this in writing to Employee Health

With respect to Nevins’s medical exemption request, her physician’s first note merely stated that Nevins desired an exemption, and that the physician had advised her of the risks of not getting the vaccination. The note did not satisfy the critical requirement of the policy—i.e. the doctor’s statement that the vaccination was medically contraindicated for Nevins. The physician’s second note was identical, adding only that Nevins had a history of Lupus, but with no indication that the flu vaccination was contraindicated. Indeed, one of the DCH doctors testified that the flu vaccination was not contraindicated for a person with a history of Lupus, and there was no contrary evidence.

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is necessarily material. *Lewis*, 918 F.3d at 1218, 1227-28. Thus, T.W. and Nevins cannot be considered valid comparators, and the different treatment between the two is not circumstantial evidence of discrimination. *Id.*

Even if Nevins had established a prima facie case of racial discrimination, the defendants rebutted it with evidence that DCH terminated her for non-compliance with the vaccine policy, and Nevins did not present any evidence showing that race played any part in her termination. *See Ismael*, 161 F.4th at 764. As to whether the defendants' explanation is pretext, Nevins merely disagreed with the defendants about their choice not to accept her flu vaccine exemption, which demonstrates neither that the reason was false nor that discrimination was the real reason. *Gogel*, 967 F.3d at 1136. Nevins's requests for medical exemption and religious exemption were non-compliant because Lupus was not a contraindication to the flu vaccine, and she never explained to her employer how her religious belief prevented her from getting the vaccine.

In addition to not disputing DCH's race-neutral reason for her termination, the evidence does not create a triable issue of discriminatory intent under either a single-motive or mixed-motive theory. Each alleged

With respect to a religious exemption—and wholly aside from Nevins's testimony disavowing the same—the third note from Nevins's physician contained a merely conclusory assertion that Nevins is exempt for religious purposes, with no attempt to satisfy the requirement that employee seeking a religious exemption had to describe their sincerely held religious beliefs on DCH's religious exemption request form.

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racial incident to which Nevins points was isolated and happened in the years prior to the vaccine policy change. For example, Boutwell's comments about hair burning and the hoodie were sometime in 2019. The blackface doll incident occurred in December 2019, almost a year before her termination. The incidents, at most, involved Boutwell, who had no discretion when it came to the zero-tolerance vaccine policy. Nevins's prior years of compliance with the policy were unrelated to the new vaccine policy that created new rules for compliance and created a zero-tolerance policy. Further, the email sent months prior to her termination only vaguely suggested racial discrimination and there is no evidence of race factoring into DCH's response to the email. Additionally, the data and testimony from Human Resources showed that race was not relevant in considering who was terminated for failure to comply with the vaccine policy. Rather, every employee who failed to comply either quit, came into compliance, or was terminated. Nevins's disagreement with the defendants' decision regarding her exemption request does not suggest that she was fired for any reason other than non-compliance with the flu vaccine policy, and does not create a triable issue as to her employer's intent. *McCreight*, 117 F.4th at 1335-37.

Accordingly, we affirm the district court on this claim.

C. Retaliation

Title VII prohibits an employer from discriminating against any individual because she "has opposed any practice made an unlawful employment practice by

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[Title VII], or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].” 42 U.S.C. § 2000e-3(a). Section 1981 also encompasses claims of retaliation. *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 457 (2008). The same analytical framework applies to retaliation claims brought under Title VII and § 1981. *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1307 (11th Cir. 2023).

Like discrimination claims, retaliation claims are ordinarily analyzed under the *McDonnell Douglas* burden-shifting framework. *Ismael*, 161 F.4th at 759. The prima facie case of retaliation requires the plaintiff to show: “(i) that she engaged in a protected activity, like filing a complaint for discrimination; (ii) that she suffered a material adverse action; and (iii) that there was a causal connection between the protected activity and the adverse action.” *Id.* If the plaintiff establishes a prima facie case and the employer rebuts it with a nonretaliatory reason, then the court must evaluate whether the record presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional retaliation, an inquiry to which evidence of pretext is relevant. *Id.* at 764. If the plaintiff does not establish a prima facie case, then the court proceeds directly to the convincing-mosaic inquiry. *Id.* at 765. “Whatever form the evidence takes, ‘so long as it raises a reasonable inference’ that the employer retaliated against the employee, ‘summary judgment is improper.’” *Berry*, 84 F.4th at 1311 (alteration adopted) (quoting *Smith*, 644 F.3d at 1328).

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A material adverse action, as required to state a prima facie case of retaliation, is an action that “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 861 (11th Cir. 2020) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

As to the causation element of the prima facie case, where temporal proximity is the only evidence of causation, that proximity must be “very close.” *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007) (quoting *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001)). We have held that a gap of three months or longer between the two events, without more, is insufficient to infer causation. *Id.*

Here, the district court correctly granted summary judgment on Nevins’s retaliation claim because Nevins could not establish a prima facie retaliation claim and, even if she had, the defendants rebutted it and there was no circumstantial evidence of retaliatory intent. First, her 2014 EEOC charge, which was six years before her termination, is clearly too remote to be considered. Thus, Nevins’ April 3, 2020, email is her only relevant protected activity. And that April 3, 2020, email only broadly alleged discrimination and that she had been “singled out,” which is insufficient to support a claim of retaliation based on participation in any protected investigation or proceedings. 42 U.S.C. § 2000e-3(a). It is also only weak support for a claim of retaliation based on opposing an unlawful employment practice because it is only a conclusory assertion that her employer had engaged in

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an unlawful practice, or that her complained-of treatment was in any way based on her protected characteristics. *Id.*

Second, it is not clear whether Nevins established that she had been subject to any material adverse action. Assuming, *arguendo*, that she could establish that both the relocation of her workspace and DCH's appeal of her unemployment benefits were materially adverse, and that the April 3, 2020, email was protected conduct, she still did not establish any causal connection between the email and the adverse actions. *Ismael*, 161 F.4th at 759. The time gap between her email and her termination was seven months, which is insufficient to establish causation on its own. *Thomas*, 506 F.3d at 1364. Nevins never testified as to when her workspace was relocated, so it cannot be established as temporally proximate to her email, and she provided nothing more to establish causation.

Further, though DCH correctly points out Nevins did not explicitly classify the interference with unemployment benefits as a material adverse action for purposes of a retaliation claim, she did still raise it as an alleged act of harassment that took place after she allegedly engaged in protected activity, so this Court may consider it. Even so, Nevins cannot establish any causal connection between the appeal and her April 3, 2020, email. *Ismael*, 161 F.4th at 759. The time gap between the email and her appeal of unemployment benefits was at least seven months, which is insufficient to establish causation on its own. *Thomas*, 506 F.3d at 1364. Additionally, Nevins provided nothing more to establish causation, and DCH withdrew its appeal. Thus, Nevins did not establish a *prima facie* retaliation claim. *See Ismael*, 161 F.4th at 759.

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Nevins also fails to establish a convincing mosaic of circumstantial evidence to create a triable issue as to DCH's intent. *McCreight*, 117 F.4th at 1335-37. None of the evidence Nevins contends supports her claim suggests that DCH terminated her employment for any reason other than her failure to comply with the mandatory flu vaccine policy or took any other action in retaliation for protected activity. Even if her April 2020 email was a protected complaint about unlawful activity, between the time she made that complaint and her termination seven months later, she failed to comply with a mandatory vaccine policy that resulted in the termination of any employee who failed to comply. She failed to demonstrate that she actually did comply with that policy, that anyone else who failed to comply with the policy was not fired, or that DCH found her noncompliant for any reason other than her failing to receive the vaccine or provide a sufficient exemption to the vaccine. And, as explained, no circumstantial evidence would suggest a retaliatory motive behind the workspace relocation that occurred at some unknown time. Thus, there is no evidence that would allow a jury to infer intentional retaliation by DCH. *Ismael*, 161 F.4th at 764.

Accordingly, we affirm as to this issue.

D. Hostile Work Environment

We apply the same standards to evaluate racially hostile work environment claims under § 1981 and Title VII. *Melton v. I-10 Truck Ctr. Inc.*, 166 F.4th 905, 916 (11th Cir. 2026). To establish a racially hostile work environment

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claim, the plaintiff must prove that (1) she is a member of a protected class; (2) she was subjected to “unwelcome” harassment; (3) the harassment was “based on [her] race”; (4) the harassment “was severe or pervasive enough to alter the terms and conditions of [her] employment”; and (5) “the employer is responsible for the environment.” *Id.* at 918 (quoting *Adams v. Austal, U.S.A., L.L.C.*, 754 F.3d 1240, 1248-49 (11th Cir. 2014)).

Either severity or pervasiveness suffices to establish the fourth element. *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 808 (11th Cir. 2010) (en banc). Additionally, the fourth element of the hostile-work-environment test contains both a subjective and objective component. *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1246 (11th Cir. 1999) (en banc). The employee must “subjectively perceive” the harassment as severe or pervasive enough to change the terms or conditions of employment, and the district court must find that this perception was objectively reasonable. *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). The objective component is fact intensive, and in making the determination, the following factors should be considered: “(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee’s job performance.” *Id.* We examine “conduct in context, not as isolated acts, and determine under the totality of the circumstances whether the harassing conduct is sufficiently severe or pervasive to alter the terms or conditions of the plaintiff’s employment and

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create a hostile or abusive working environment.” *Id.* An environment may be unlawfully hostile even if racial remarks are not directed at the employee. *Melton*, 166 F.4th at 918.

Here, the district court did not err in granting defendants summary judgment on Nevins’s harassment claim because Nevins did not establish severe or pervasive harassment or that the alleged harassment was based on a protected trait. Nevins identified a variety of incidents of purported harassment, but DCH was correct that only three were arguably based on race—the blackface doll incident and the burning hair and hoodie comments. The other three incidents—revealing that Nevins reported a coworker for a dress code violation, her supervisor’s remark about someone else’s chicken order, and her supervisor monitoring her—are not based on race and thus cannot support a claim of hostile environment. *Melton*, 166 F.4th at 918.

Even if the doll incident and the two comments were racial in nature, they were not sufficiently pervasive or severe to alter the terms of Nevins’s employment. To be clear, an unknown employee hanging a blackface doll by a noose in Nevins’s desk area—which disputed evidence supports and is accepted for purposes of summary judgment—is repugnant and racially hostile. However, considering the totality of the circumstances, there is no genuine issue of objective severity or pervasiveness for a hostile work environment claim. The racial incidents were only three in number over a two-year period, two of which were comments not made in Nevins’s presence,

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and none of which unreasonably interfered with Nevins's job performance. *Mendoza*, 195 F.3d at 1246. Further, Boutwell took prompt remedial action by telling Nevins to throw the doll away. Thus, Nevins has not established sufficiently severe or pervasive harassment to support a claim of hostile work environment.

Accordingly, we affirm as to this issue

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

**APPENDIX B — MEMORANDUM OPINION OF
THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA,
WESTERN DIVISION, FILED MAY 21, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

Case No.: 7:23-cv-01037-RDP

DEBRA NEVINS,

Plaintiff,

v.

DCH HEALTH SYSTEMS, *et al.*,

Defendants.

Filed May 21, 2025

MEMORANDUM OPINION

This matter is before the court on Defendant DCH Health Systems’ (“DCH”) Motion for Summary Judgment (Doc. # 60) and Defendants Rebecca Boutwell (“Boutwell”), Felicia Ellison (“Ellison”), and Courtney Wingo’s (“Wingo”) Motion for Summary Judgment. (Doc. # 63). These Motions have been fully briefed and are ripe for a decision. (*See* Docs. # 61, 68, 72; 64, 69, 73). For the reasons discussed below, the Motions (Docs. # 60, 63) are due to be granted.

*Appendix B***I. Background**

In this case, Plaintiff Debra Nevins (“Plaintiff”) has asserted claims of race discrimination, disability discrimination, racial harassment, retaliation, and defamation relating to the termination of her employment with DCH. (*See* Doc. # 46).

Plaintiff is an African American woman who worked at DCH for over thirty years – from 1989 until November 25, 2020. (Docs. # 65-5 at 88; 71-1 at 78; 65-1 ¶ 2). Plaintiff has Lupus. (Docs. # 61 ¶ 2; 68 ¶ 2). In 2020, she worked as a registrar (Doc. # 65-1 ¶ 2) and was supervised by Rodney Cannon (“Cannon”) and Rachel Posey (“Posey”). (Doc. # 65-5 at 17). While at DCH, Plaintiff received at least two “star performance awards” or “shout-outs.” (Doc. # 70-15 at 2, 5-6). “[Defendant] Ellison was the Director of Employee Health, [Defendant] Wingo was a Human Resources Consultant, and [Defendant] Boutwell was Assistant Director of Patient Access.” (Docs. # 64 ¶ 2; 69 ¶ 2).

A. The Flu Vaccine Policy

From 2016 to 2019, DCH’s flu vaccine policy “strongly encourage[d]” all employees to get a flu vaccine but permitted them to “opt out of the influenza vaccination due to . . . personal preference.” (Docs. # 64 ¶ 4; 65-6 at 3). Each year during this period, Plaintiff opted out of receiving the flu vaccine by submitting the declination form. (Docs. # 64 ¶ 5; 65-5 at 18, 74-75).

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In 2020, DCH modified its flu vaccine policy, making receipt of the vaccine “mandatory each year unless a medical or religious belief exemption has been granted.” (Doc. # 65-5 at 89). The Medical/Religious Exemption section of the 2020 policy stated:

Exemption to immunization may be granted for medical contraindications after Employee Health receives appropriate proof. Ex: letter from primary care physician including medical contraindication[.]

[. . .]

If an employee requests a religious belief exemption, they must provide this in writing to Employee Health.

(Docs. # 61 ¶ 6; 68 ¶ 6; 65-5 at 89-90).

To obtain a religious exemption, employees had to submit “in writing” a specific form outlining the reason for their religious objection. (Docs. # 65-5 at 90, 97; 65-7 at 37-38). Failure to receive either the flu vaccine or an exemption by November 15, 2020 could “result in separation of the employee’s employment.” (Docs. # 65-1 ¶ 7; 65-5 at 91). Peggy Sease, Vice President of Human Resources (“HR”) at DCH, testified that “[p]atient safety is very important to us. And for safety reasons for our patients, it’s important that we were having our employees vaccinated.” (Doc. # 71-22 at 25, 47).

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Plaintiff requested a medical exemption on November 10, 2020 by submitting a note from Dr. Keisha Lowther that stated: “Mrs. Nevins[] has expressed a desire to refrain getting the influenza vaccine this season. She has been made aware of the risk of not getting inoculated and has voiced understanding.” (Docs. # 65-1 ¶ 8; 65-5 at 94).

DCH denied Plaintiff’s medical exemption request because an employee’s desire to not be vaccinated was not a basis for exemption. (Doc. # 65-7 at 16). Ellison called Plaintiff to inform her about the denial. (Doc. # 65-5 at 22). Plaintiff perceived Ellison’s tone as “so rude” (Doc. # 62-2 at 22); and later, Ellison was “still demanding that she was not going to accept my exemption.” (*Id.* at 24).

Plaintiff contends that she submitted a second note from Dr. Lowther dated November 11, 2020 that stated: “Mrs. Nevins[] has expressed a desire to refrain getting the influenza vaccine this season. Mrs. Nevins[] has a history of Lupus. She has been made aware of the risk of not getting inoculated and has voiced understanding.” (Docs. # 65-5 at 95; 61 ¶ 14; 64 ¶ 15).¹ Again, DCH did not accept Lupus as a contraindication for the flu vaccine. (Doc. # 65-7 at 18).

1. DCH denies receiving this medical exemption request (Docs. # 61 ¶ 15; 64 ¶ 16) but clarifies its position. Even if it had received this exemption request it would have denied the request because “it does not constitute proof that Plaintiff has a medical contraindication to the flu vaccine. Lupus is not contraindicated to the flu vaccine.” (Doc. # 65-1 ¶ 9).

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On November 16, 2020, Plaintiff's supervisor Posey told her (Plaintiff) that she could not continue working because she had neither received the flu vaccine nor an approved exemption by the deadline. (Doc. # 65-5 at 28). Plaintiff had Dr. Lowther submit the following note on November 19, 2020: "Please excuse Mrs. Nevins' participation in receiving the influenza vaccine this year. Patient is exempt for religious purposes." (*Id.* at 96). Peggy Sease stated that DCH denied this religious exemption request because it "failed to explain Plaintiff's sincerely held religious belief for declining the flu vaccine." (Doc. # 65-1 ¶ 10). Tina Skelton of Employee Health called Dr. Lowther to explain "that the religious exemption request had to be submitted by Plaintiff on DCH's religious exemption request form and had to describe Plaintiff's sincerely held religious belief." (Doc. # 65-9 ¶ 6).

As of November 19, 2020, Plaintiff had failed to receive either the flu vaccine or an exemption and Posey contacted her regarding her non-compliance. (Doc. # 65-10). On December 5, 2020, Wingo sent Plaintiff a letter confirming that her employment with DCH had been terminated effective November 25, 2020 "due to flu non-compliance." (Doc. # 65-5 at 98).

B. Harassment Allegations

At some point in or around 2019, Plaintiff complained to Boutwell about a "black face doll" that was left at her desk. (Doc. # 62-9 at 2). Boutwell testified that the item in question was a "blue, multicolored elephant" that a coworker brought back from Thailand. (*Id.*). Peggy Sease

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testified similarly. (Doc. # 62-4 at 56-57). One of Plaintiff's coworkers, P.W.,² testified that the item was a "Blackface doll hanging" from a "noose-type thing, and it was hanging on the [thumb tack]." (Doc. # 62-10 at 5, 12, 24). Boutwell told Plaintiff to "[j]ust throw it away." (*Id.* at 13).

Also in 2019, P.W. had a conversation with Plaintiff that was generally "about how [DCH has] a culture of . . . mistreating black people." (Doc. # 62-2 at 57). P.W. told Plaintiff that Boutwell made the following comments: "I smell hair burning," and "if I see someone with a hoodie . . . they are dead." (*Id.* at 55-56). Plaintiff testified that she perceived both comments as racial, in part "[b]ecause black people do press their hair." (*Id.*). To be clear, the dress code did not permit a registrar to wear a hoodie. (Doc. # 62-10 at 22).

When asked what Ellison had done to harass Plaintiff, Plaintiff stated that Ellison "kept demanding me to take the flu shot after I made it blatantly clear five years prior to that I don't take the flu vaccine." (*Id.* at 38-39). Plaintiff testified that Ellison had "stormed out of the [Employee Health] office into the hallway and almost attacked me with her words" by telling Plaintiff that she would not accept Plaintiff's vaccine exemption request. (*Id.* at 39).

When asked what Boutwell had done to harass Plaintiff, Plaintiff testified that in 2019 or 2020, Plaintiff had reported another employee who was not compliant

2. Although the parties differ on their treatment of non-party names, the court uses initials for certain deponents and other non-parties in the interest of preserving their privacy.

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with the DCH dress code. (*Id.* at 39-40). Boutwell told that employee that Plaintiff had reported her, and the employee confronted Plaintiff and used “threatening” body language. (*Id.*). Plaintiff further testified that Boutwell came in one morning and “locked herself in her office to eavesdrop on us.” (*Id.* at 41-42). Plaintiff stated that “the whole atmosphere” felt like harassment. (*Id.* at 45).

Plaintiff also testified that at some point, “they moved me upstairs into a little area that nobody was at,” and her supervisor Cannon “came in one morning and sat behind me with his legs crossed watching [] how fast I worked.” (*Id.* at 40). Plaintiff testified that Cannon watched her for “over an hour” and was “threatening, crossing his legs.” (*Id.* at 41). When asked whether there was “anything negative about that floor,” Plaintiff responded, “I made it work for me,” and explained that “[o]ne of the doctors gave me a refrigerator and I had a good little work area.” (*Id.*).

P.W. testified that Cannon once made a comment that when he worked at Church’s Chicken, one customer would come in and order “two titties and a leg.” (Doc. # 62-10 at 9).

On March 25, 2020, Plaintiff was “brought [] into a meeting with HR,” but was not warned that HR employee Wingo would be there. (Doc. # 65-5 at 43; Doc. # 62-15 at 13). Plaintiff believed that Cannon had invited Wingo to the meeting “to intimidate” Plaintiff. (Doc. # 65-5 at 43-44). Wingo testified that the meeting was to discuss why Plaintiff was not completing patient forms in a timely manner. (Doc. # 62-15 at 9).

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In response to the question “[d]o you believe you had a target on your back?” Plaintiff answered, “I felt like it.” (Doc. # 65-5 at 75). Plaintiff sent an email to Boutwell on April 3, 2020, stating:

I am writing to request that management cease all forms of retaliation and discrimination against me. On several occasions, I have been retaliated against by management. It has been a continuation of continued harassment and retaliation that I have been subjected to for several years. My qualifications and demonstrated commitment to this organization has been met with retaliation and discrimination. I have been denied Promotions and treated inferior than others, which is against company policy. Again, I am requesting that I not be singled out and treated differently in the future based on discrimination and retaliation.

(*Id.* at 142).

On April 9, 2020, Plaintiff discussed “the issues that [were] going on” with Boutwell and Cannon in a meeting with Wingo and Keri Hindman. (Doc. # 62-2 at 47-50).

After Plaintiff was terminated, she was approved for unemployment benefits, but after the appeal period had lapsed, DCH attempted to appeal this approval. (Docs. # 68 at 23; 69 at 26).

*Appendix B***C. Comparators**

T.W. was a white registrar at DCH who received a religious exemption to the COVID vaccine. (Docs. # 62-14 at 5, 7; 71-22 at 156; 71-31 at 37). T.W. has never been disciplined at DCH. (Doc. # 62-14 at 11). T.W.'s exemption request stated: "[t]he vaccine goes against my belief as a Christian because I believe it goes against God's Word and Scriptures." (*Id.* at 18). On an attached page, T.W. cited Bible verses and explained how those verses related to her objection to the COVID vaccine. (*Id.* at 19). T.W. showed the exemption request to her manager Posey, who advised T.W. to turn it into Employee Health. (*Id.* at 8; Doc. # 71-31 at 39-41).

D. EEOC Charges

During the course of her employment, Plaintiff has filed two EEOC charges – one over a decade ago, and the other related to this lawsuit. Plaintiff filed an EEOC charge in November 2014 alleging DCH discriminated against her based on her race by denying her a promotion to the Patient Liaison position in April 2014. (Doc. # 65-5 at 88). The EEOC dismissed the charge as untimely. (Doc. # 65-1 ¶ 3).

Plaintiff filed a second EEOC charge on March 25, 2021. (Doc. # 65-5 at 139). In the charge, Plaintiff alleges her termination from DCH was (1) in retaliation for her 2014 EEOC charge and her April 2020 email to management and (2) based on her race and disability. (*Id.* at 139).

*Appendix B***E. Allegedly Defamatory Statements**

In her Fourth Supplemented Response to Interrogatories, Plaintiff identified five allegedly defamatory statements. First, she referenced a statement between Ellison and either Boutwell or Posey that “ ‘she’ (Plaintiff) was not in compliance for whatever reason they [F.E.; R.B. and C.W.] ‘so declared.’ ” (Doc. # 62-18 at 3). Plaintiff contended that the statement was made to the EEOC and the State of Alabama Department of Labor, and that it was untrue because the rejection of this request “was not due to the ‘lack of specificity’ of the request.” (*Id.*). Second, Plaintiff highlighted a statement in a letter to the EEOC under the heading “Charging Party’s Refusal to Receive Vaccination or Provide Exemption Information.” (*Id.*). Third, Plaintiff included a position statement that DCH provided to the EEOC “which intentionally misrepresented Plaintiff’s compliance with DCH’s flu vaccine revised policy.” (*Id.*). Plaintiff listed written statements to the EEOC titled “Timeline of Attempted Contact” that assert Posey and Wingo tried to call Plaintiff on November 16, 2020 and November 24, 2020. (*Id.* at 3-4). Fourth, Plaintiff identified a letter that DCH submitted to the EEOC that stated “[t]hat the plaintiff did not provide a second medical exemption request for the flu vaccine on November 11, 2020, but instead presented her first request for exemption which was dated November 4, 2020.” (*Id.* at 4). Fifth, Plaintiff pointed out DCH’s statement to the Alabama Department of Labor that “Plaintiff was discharged for violation of company policy.” (*Id.*).

*Appendix B***II. Standard of Review**

Under Federal Rule of Civil Procedure 56, summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party asking for summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings or filings which it believes demonstrate the absence of a genuine issue of material fact. *Id.* at 323. Once the moving party has met its burden, Rule 56 requires the non-moving party to go beyond the pleadings and – by pointing to affidavits, or depositions, answers to interrogatories, and/or admissions on file – designate specific facts showing that there is a genuine issue for trial. *Id.* at 324.

The substantive law will identify which facts are material and which are irrelevant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the non-movant. *See Allen v. Bd. of Pub. Educ. for Bibb Cnty.*, 495 F.3d 1306, 1314 (11th Cir. 2007); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *See id.* at 249.

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When faced with a “properly supported motion for summary judgment, [the nonmoving party] must come forward with specific factual evidence, presenting more than mere allegations.” *Gargiulo v. G.M. Sales, Inc.*, 131 F.3d 995, 999 (11th Cir. 1997). As *Anderson* teaches, under Rule 56(c) a plaintiff may not simply rest on her allegations made in the complaint; instead, as the party bearing the burden of proof at trial, she must come forward with at least some evidence to support each element essential to her case at trial. *See Anderson*, 477 U.S. at 252. “[A] party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.’” *Id.* at 248 (citations omitted).

Summary judgment is mandated “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp.*, 477 U.S. at 322. “Summary judgment may be granted if the non-moving party’s evidence is merely colorable or is not significantly probative.” *Sawyer v. Sw. Airlines Co.*, 243 F. Supp. 2d 1257, 1262 (D. Kan. 2003) (citing *Anderson*, 477 U.S. at 250-51).

“[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249. “Essentially, the inquiry is ‘whether the evidence presents a sufficient disagreement to require submission to the

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jury or whether it is so one-sided that one party must prevail as a matter of law.” *Sawyer*, 243 F. Supp. 2d at 1262 (quoting *Anderson*, 477 U.S. at 251-52); *see also LaRoche v. Denny’s, Inc.*, 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) (“The law is clear . . . that suspicion, perception, opinion, and belief cannot be used to defeat a motion for summary judgment.”).

III. Analysis

In her complaint, Plaintiff brings the following claims: (1) Wrongful Termination against all Defendants (Count I); (2) Racial Discrimination against DCH, Ellison, and Boutwell (Count II); (3) Disability Discrimination against all Defendants (Count III); (4) Racial Harassment – hostile work environment – against DCH, Ellison, and Boutwell (Count IV); (5) Retaliation against all Defendants (Count V); and (6) Defamation/Slander Per Quod against all Defendants (Count VI). (Doc. # 46). The Defendants have moved for summary judgment on all claims brought against them. (*See* Docs. # 60, 63). The court considers each claim, in turn.

A. Wrongful Termination under Title VII (Count I) and Race Discrimination under 42 U.S.C. § 1981 (Count II)

“[E]mployers are free to fire their employees for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all.” *Flowers v. Troup Cnty., Ga., Sch. Dist.*, 803 F.3d 1327, 1338 (11th Cir. 2015). However, under Title VII and § 1981, an employer cannot fire an

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employee based on a protected classification. Title VII prohibits discrimination based on “race, color, religion, sex or national origin,” 42 U.S.C. § 2000e-2(a)(1), and § 1981 prohibits “intentional race discrimination.” *Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 472 (11th Cir. 1999).

Plaintiff’s complaint asserts discrimination claims under both § 1981 and Title VII. (*See* Doc. # 46). Section 1981 discrimination can only be established under a single-motive theory – showing racial discrimination was the *only* (*i.e.*, but-for) cause of the adverse employment action. *See Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1321 (11th Cir. 2023). In contrast, Title VII discrimination can be established under a mixed-motive theory – that is, by showing discrimination was one of many “motivating factors” in the adverse employment action. 42 U.S.C. § 2000e-2(m). For obvious reasons, the Eleventh Circuit has described the former as a higher standard for causation. *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 943 (11th Cir. 2023) (citing *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 336-41 (2020)). Like Plaintiff here, the employment-discrimination plaintiff in *Flowers* brought claims under both § 1981 and Title VII. *Flowers*, 803 F.3d at 1333. In *Flowers*, the Eleventh Circuit found the plaintiff’s § 1981 claim “r[ose] and f[ell] with his Title VII” claim. *Id.* at 1335 n.7. Similarly, here, Plaintiff’s § 1981 claim falls with her Title VII claim.

Plaintiff has asserted a claim for “wrongful termination in violation of Title VII” against all Defendants (Count I) as well as “racial discrimination, 42 U.S.C. § 1981” against DCH, Ellison, and Boutwell (Count II). (Doc.

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46 at 9-13). As part of her wrongful termination claim, Plaintiff lists theories related to retaliation (*id.* ¶ 94), race, medical condition, and gender. (*Id.* ¶ 100). The court separately considers Plaintiff’s retaliation claim with the retaliation claim in Count V. Plaintiff cannot pursue Title VII claims in Count I “on the basis of . . . gender” because Plaintiff did not raise this claim in her March 25, 2021 EEOC charge. (*See* Doc. # 46 ¶ 100). This means that the gender discrimination claim is unexhausted, and therefore, barred. *See Gregory v. Ga. Dep’t Hum. Res.*, 355 F.3d 1277, 1279-80 (11th Cir. 2004). Similarly, Plaintiff can only pursue a *race*-related discrimination claim under § 1981. *Ferrill*, 168 F.3d at 472. And, neither § 1981 nor Title VII protect against discrimination based on a medical condition, so the court here only considers Plaintiff’s race discrimination claim.

After careful review, the court concludes that Plaintiff’s claims for race discrimination cannot survive summary judgment. First, Title VII does not allow for individual liability. Second, Plaintiff has not established a *prima facie* case of race discrimination under *McDonnell Douglas*. Third, even if she did establish a *prima facie* case of race discrimination, Plaintiff has not shown that DCH’s explanation for her termination was pretextual. Finally, Plaintiff has not explained how the Rule 56 record demonstrates a convincing mosaic of race discrimination. Because Plaintiff has failed to carry her burden under Rule 56 of showing that there are genuine issues of material fact as to her race discrimination claims, Defendants are entitled to summary judgment on both claims.

*Appendix B***1. Individual Liability Under Title VII**

The individual Defendants – Ellison, Boutwell, and Wingo – are entitled to summary judgment on Count I because Title VII does not give rise to individual liability. *See Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006) (holding that “relief under Title VII is available against only the employer and not against individual employees”). Plaintiff concedes this. (Doc. # 69 at 11-12). Therefore, the individual Defendants (Ellison, Boutwell, and Wingo) are due to be dismissed from Count I.

2. Prima Facie Race Discrimination Claim

“When direct evidence of unlawful discrimination is lacking,” some courts utilize the *McDonnell Douglas* “burden-shifting framework” to establish intentional discrimination with circumstantial evidence. *Flowers*, 803 F.3d at 1335 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Under this framework, the employee first must show a prima facie case of discrimination. *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1237 (11th Cir. 2016) (citing *McDonnell Douglas*, 411 U.S. at 802). Then, the employer must articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* Once the employer has done that, the employee’s job is to demonstrate that the employer’s proffered reason was, in fact, merely pretext for the employer’s acts. *Id.*

The Eleventh Circuit has explained that to establish a prima facie case of race discrimination, an employee must

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show that: “(1) she belonged to a protected class, (2) she was subjected to an adverse employment action, (3) she was qualified to perform the job in question, [and] (4) her employer treated similarly situated employees outside her class more favorably.” *Phillips*, 87 F.4th at 1321 (internal quotations marks omitted).

Plaintiff’s prima facie case fails at the fourth step. It is undisputed that Plaintiff belongs to a protected class – race (Docs. # 65-5 at 88; 71-1 at 78; 65-1 ¶ 2), that she was subjected to an adverse employment action – termination (Doc. # 65-5 at 98), and that Plaintiff was qualified for her position. (See Docs. # 61, 64 (not disputing this)). But, Plaintiff cannot demonstrate that her employer treated similarly situated employees outside her class more favorably.

A comparator employee must be “similarly situated in all material respects” to the plaintiff. *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019) (en banc) (*Lewis I*). The Eleventh Circuit has outlined the following “guideposts”: “[o]rdinarily, for instance, a similarly situated comparator -” (1) “will have engaged in the same basic conduct (or misconduct) as the plaintiff,” (2) “will have been subject to the same employment policy, guideline, or rule as the plaintiff,” (3) “will ordinarily (although not invariably) have been under the jurisdiction of the same supervisor as the plaintiff . . . and” (4) “will share the plaintiff’s employment or disciplinary history.” *Id.* at 1227-28.

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Plaintiff argues T.W., a white DCH employee, was similarly situated to Plaintiff but received different treatment when DCH granted her religious exemption request. (Doc. # 69 at 22).³ In particular, Plaintiff argues that T.W. received differential treatment because Posey helped her submit the exemption request and T.W.'s exemption request was granted. (*Id.* at 21-22).

After careful review, the court concludes that Plaintiff and T.W. were not similarly situated in all material respects because they engaged in different conduct – the first *Lewis I* “guidepost[.]” *Lewis I*, 918 F.3d at 1227. Plaintiff’s religious exemption request varied drastically from T.W.’s, as it was sent from her doctor and merely stated that Plaintiff was “exempt for religious purposes.” (Doc. # 65-5 at 96). Further, it was only sent after two requests for exemption, which did not reference any religious objections, were submitted and not approved. (Docs. # 65-1 ¶ 8; 65-5 at 94-95; 61 ¶¶ 14-15). In contrast, T.W. submitted her own religious exemption request, and the request explained in detail what her religious beliefs are and how those beliefs are connected to her objection to the vaccine. (Doc. # 70-31 at 3-4). For example, T.W.’s exemption request stated that “[t]he vaccine goes against my belief as a Christian because I believe it goes against God’s Word and Scriptures.” (Doc. # 62-14 at 18). On an attached page, T.W. cited several Bible verses and

3. Although Plaintiff mentions other employees, such as Dr. Givhan and Peggy Yeatman, she concedes that they are “not [] similarly situated in all material respects to the Plaintiff.” (Doc. # 69 at 22).

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explained how she believed that those verses related to her objection to receiving the COVID vaccine. (*Id.* at 19).

Plaintiff characterizes T.W.’s request as containing “adlibbed and inaccurate bible verses,” but Plaintiff does not (and, indeed, cannot) challenge the fact that T.W.’s request contained a profession of a religious belief and an explanation of its connection with her vaccine objection. (Doc. # 69 at 22). And, although Plaintiff argues that Posey helped T.W., Posey merely advised T.W. to turn the request into Employee Health. (Docs. # 62-14 at 8, 18-19; 71-31 at 39-41). It is not clear to the court how informing T.W. about where to send her request was more favorable (discriminatory) treatment, especially given that there is no contention that Plaintiff did not know where to send her request.

While other *Lewis I* guideposts may point to similarities between T.W. and Plaintiff – *e.g.*, they were subject to the same policy,⁴ under the same supervisor (Doc. # 61 at 18-19), and shared a similar disciplinary history (Doc. # 69 at 22; 62-14 at 11) – *Lewis I* does not present these guideposts as part of a balancing test. Rather, *Lewis I* lists the factors in the disjunctive. The court envisions that an employer might “accord different treatment to employees . . . who engaged in different conduct, who were subject to different policies, *or* who

4. Although T.W.’s request was for an exemption from the COVID vaccine, while Plaintiff’s request was for an exemption from the flu vaccine, both exemption requests were made after the 2020 DCH vaccine exemption policy was enacted. (Docs. # 62-14 at 5, 7, 18; 71-22 at 156; 71-31 at 37).

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have different work histories.” *Lewis I*, 918 F.3d at 1228 (emphasis added). To be sure, the “or” indicates that any one of these “guideposts” could disqualify a proffered comparator. Because Plaintiff’s conduct differed materially from T.W.’s, T.W. is not a valid comparator, and Plaintiff has failed to establish a prima facie case of race discrimination.

3. Rebutting Legitimate, Non-discriminatory Reason as Pretextual

Even if Plaintiff had established a prima facie case (and, to be clear, she has not), she has not successfully rebutted Defendants’ legitimate, non-discriminatory reason for her termination. That reason is that “Plaintiff failed to comply with DCH’s 2020 flu vaccine policy, and DCH terminated Plaintiff’s employment pursuant to that policy.” (Doc. # 61 at 29).

If an employee does not comply with their employer’s vaccination policy (particularly if the employer is in healthcare), that employer could be legitimately motivated to terminate the non-complying employee. *See Biden v. Missouri*, 595 U.S. 87, 95 (2022) (per curiam) (“Healthcare workers around the country are ordinarily required to be vaccinated for diseases such as hepatitis B, *influenza*, and measles, mumps, and rubella.”) (emphasis added). Indeed, Peggy Sease testified that “[p]atient safety is very important to us. And for safety reasons for our patients, it’s important that we were having our employees vaccinated.” (Doc. # 71-22 at 47).

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If the employer satisfies its burden by articulating a legitimate, non-discriminatory reason for termination, the presumption of discrimination dissolves, and the burden shifts back to the plaintiff to show that the reason given by the employer is pretext for illegal discrimination. *Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983). “To establish pretext, an employee must ‘cast sufficient doubt on the [employer’s] proffered nondiscriminatory reasons’” for the adverse employment action “by demonstrating ‘such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.’” *Phillips*, 87 F.4th at 1323-24 (quoting *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997)).

Plaintiff argues Defendants’ non-discriminatory reason was pretextual because DCH had previously allowed her to refuse the flu vaccine. (Docs. # 68 at 12-13; 69 at 13-14, 16). Plaintiff also states that she had repeatedly notified Defendants that she had Lupus and that “she was concerned about getting sick after receiving the vaccine” (Docs. # 68 at 13; 69 at 16-17). Finally, Plaintiff implies that DCH’s rejection of her religious exemption request was discriminatory because DCH had granted T.W.’s request. (Docs. # 68 at 18-19; 69 at 21). She also states that “their legitimate non-discriminatory justification does not make sense. The Plaintiff testified [in her deposition] that she is a Christian.” (Doc. # 68 at 18). None of these arguments suggest pretext.

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First, Plaintiff's exemption requests were non-compliant because her religious exemption request did not identify a religious belief or explain how that belief was linked to her opposition to the flu vaccine. Indeed, the first two requests did not even mention any religious belief. DCH policy stated: "If an employee requests a religious belief exemption, they must provide this in writing to Employee Health." (Docs. # 61 ¶ 6; 68 ¶ 6; 65-5 at 89-90). To be "in writing," employees had to fill out a form outlining their religious objection. (Docs. # 65-5 at 90, 97; 65-7 at 37-38). Plaintiff did not do so. Her religious exemption request was a note from her doctor stating: "Please excuse Mrs. Nevins' participation in receiving the influenza vaccine this year. Patient is exempt for religious purposes." (Doc. # 65-5 at 96). Even if Plaintiff had filled out the required form with this information, it still would not explain what Plaintiff's religious belief against the flu vaccine was. This was not a secret withheld from Plaintiff – Tina Skelton of Employee Health called Plaintiff's doctor after receiving this request, explaining "that the religious exemption request had to be submitted by Plaintiff on DCH's religious exemption request form and had to describe Plaintiff's sincerely held religious belief." (Doc. # 65-9 ¶ 6). Plaintiff never complied with that policy.

Second, Plaintiff's medical exemption requests were non-compliant because they did not identify any medical contraindications. The 2020 policy required "appropriate proof" of "medical contraindications." (Docs. # 61 ¶ 6; 68 ¶ 6; 65-5 at 89-90). Plaintiff's first medical exemption request did not identify any medical condition, describing

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only Plaintiff's "*desire* to refrain getting the influenza vaccine this season." (Doc. # 65-5 at 94) (emphasis added). Plaintiff's second medical exemption request added: "Mrs. Nevins[] has a history of Lupus." (*Id.* at 95). However, DCH did not accept Lupus as a contraindication for the flu vaccine. (Doc. # 65-7 at 18). The phrasing of the note suggests that Plaintiff's doctor did not accept Lupus as a contraindication either, as it describes the "risk of *not* getting inoculated." (Doc. # 65-5 at 94-95) (emphasis added).

Finally, the court cannot discern any argument made by Plaintiff indicating that the Rule 56 record suggests the real reason that her two medical exemption requests were denied was because of her race. (*See* Docs. # 68, 69). And regarding Plaintiff's argument that DCH's rejection of her religious exemption was discriminatory in favor of the comparator T.W., the court has already rejected this argument. T.W. is not a valid comparator. Further, Plaintiff has not come close to rebutting Defendants' legitimate, non-discriminatory reason for terminating her.

4. Convincing Mosaic Theory

Plaintiff states in an introduction that her "evidence will demonstrate a convincing mosaic or circumstantial evidence [from] which a jury may infer that the Plaintiff was discriminated against and because of her race." (Doc. # 69 at 5; *see also* Doc. # 68 at 4 (similar)). But, Plaintiff's convincing mosaic discussion is limited to her harassment claim. (Docs. # 68 at 21; 69 at 23).

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Even if Plaintiff had briefed this theory related to her claim of race discrimination, the Rule 56 record does not provide any support for her argument. A plaintiff may overcome a summary judgment motion using the “convincing mosaic theory” when she presents sufficient circumstantial evidence that would allow “a reasonable factfinder to infer intentional discrimination in an employment action – the ultimate inquiry in a discrimination lawsuit.” *Tynes*, 88 F.4th at 946; *see also Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011). “That evidentiary picture may include, ‘among other things,’ (1) suspicious timing or ambiguous statements, (2) systematically better treatment of similarly situated employees, and (3) pretext.” *Yelling v. St. Vincent’s Health Sys.*, 82 F.4th 1329, 1342 (11th Cir. 2023) (citing *Lewis v. City of Union City*, 934 F.3d 1169, 1185 (11th Cir. 2019) (*Lewis II*)).

The Rule 56 record suggests none of those elements and does not in any way paint a picture of race discrimination. Plaintiff has not pointed to any pieces of evidence that, when viewed together, raise an inference of discrimination. Even under the mosaic framework, Plaintiff’s race discrimination claim fails.

B. Disability Discrimination under 42 U.S.C. § 1981 (or the Americans with Disabilities Act) (Count III)

In her complaint, Plaintiff describes Count III as a claim for disability discrimination under 42 U.S.C. § 1981.

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(Doc. # 46 at 13). But § 1981 only prohibits discrimination based on race. *See Ferrill*, 168 F.3d at 472. In her response to Defendants’ motion for summary judgment, Plaintiff recharacterizes Count III as arising under the Americans with Disabilities Act (“ADA”), which prohibits discrimination based on disability. (Doc. # 68 at 19). But, “[a] plaintiff may not amend her complaint through argument in a brief opposing summary judgment.” *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004). Therefore, because there is no disability discrimination claim under § 1981, Defendants are entitled to summary judgment on Count III.

Even construing Plaintiff’s claim in Count III as if it had been brought under the ADA, it would still fail. A claim for disability discrimination under the ADA requires evidence that the plaintiff “(1) is disabled, (2) is a ‘qualified individual,’ and (3) was discriminated against because of h[er] disability.” *Beasley v. O’Reilly Auto Parts*, 69 F.4th 744, 754 (11th Cir. 2023) (citations removed).

Plaintiff alleges that her Lupus condition barred her from being inoculated with the flu vaccine and that Defendants’ termination of her for failure to receive the vaccine constituted disability discrimination. (Doc. # 68 at 19). As an initial matter, the court notes that Plaintiff has not alleged that she is disabled (*see* Doc. # 46 ¶¶ 126-80), but instead she describes her Lupus as a “diagnosis” (*id.* ¶¶ 129-31, 139, 173), a “medical condition” (*id.* ¶ 138), or a “medical contradiction.” (*Id.* ¶¶ 159, 161, 169). So, Plaintiff has not satisfied the minimal requirements for a disability discrimination claim under the ADA. And there

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are additional reasons why Plaintiff has failed to state a claim under the ADA. The court addresses those below.

1. Individual Liability Under the ADA

An ADA does not give rise to a claim for individual liability. *See Albra v. Advan, Inc.*, 490 F.3d 826, 830 (11th Cir. 2007). Plaintiff concedes this. (Doc. # 69 at 22-23). Therefore, the individual Defendants – Ellison, Boutwell, and Wingo – are entitled to summary judgment on the claim in Count III.

2. Failure to Provide Reasonable Accommodation

DCH is entitled to summary judgment on Count III because Plaintiff has not presented any evidence that DCH did not provide her a reasonable accommodation for her Lupus. The ADA defines “reasonable accommodation” as “appropriate adjustment or modifications of examinations, training materials or policies.” 42 U.S.C. § 12111(9). But “an employer is not required to accommodate an employee in any manner that the employee desires – or even provide that employee’s preferred accommodation.” *D’Onofrio v. Costco Wholesale Corp.*, 964 F.3d 1014, 1022 (11th Cir. 2020).

Plaintiff wanted DCH to accommodate her Lupus by allowing her to self-exempt from receiving the flu vaccine. While it no longer allowed employees to simply elect not to receive the flu vaccine, DCH’s 2020 policy still provided a “reasonable accommodation” in the form of a medical or

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religious exemption. (Doc. # 62-2 at 89). As discussed at length above, Plaintiff's medical and religious exemption requests were denied because they did not comply with DCH's requirements. While requiring Plaintiff to provide documentation of a medical contraindication or religious belief was not the accommodation Plaintiff wanted, it was reasonable and satisfied the ADA. Thus, Defendants are entitled to summary judgment as to Count III.

C. Harassment under 42 U.S.C. § 1981 (or Title VII) (Count IV)

Count IV of Plaintiff's complaint purports to assert a harassment claim under § 1981. Plaintiff complains she was harassed "for making complaints about or opposing conduct [§ 1981] prohibits" (Doc. # 46 ¶ 182), and because of her race (*id.* ¶ 184) and disability. (*Id.* ¶ 185). Section 1981 only covers claims for *racial* harassment. *See Ferrill*, 168 F.3d at 472. In her response to the motion for summary judgment, Plaintiff clarifies that her claim is one for only *racial* harassment through a hostile work environment and she seeks to clarify that her claim is brought under *both* Title VII and § 1981. (Docs. # 69 at 23, 28; 68 at 21, 25). Again, "[a] plaintiff may not amend her complaint through argument in a brief opposing summary judgment." *Gilmour*, 382 F.3d at 1315. However, there are other reasons her claims – whether based on § 1981 or Title VII – fail. For completeness, the court evaluates her harassment claim under both statutory frameworks.

*Appendix B***1. Racially Hostile Work Environment Claim**

Section 1981 prohibits racial discrimination in employment contracts, *Ferrill*, 168 F.3d at 472, and that prohibition includes workplace harassment that creates a racially hostile work environment. *See, e.g., Yelling*, 82 F.4th at 1329. “To succeed on a racially hostile work environment claim under [] § 1981 [or Title VII], [a plaintiff] must prove (1) she belongs to a protected class, (2) she experienced unwelcome harassment, (3) the harassment was based on her race, (4) the harassment was sufficiently severe or pervasive to alter the terms of her employment, [and] (5) employer responsibility under a theory of vicarious or direct liability.” *Id.* at 1334. Harassment under § 1981 must have been “caused by [racial] discrimination, such as that similarly situated white employees were treated differently.” *Harris v. Pub. Health Tr. of Miami-Dade Cnty.*, 82 F.4th 1296, 1304 (11th Cir. 2023).

It is not clear which specific instances Plaintiff contends constitute a racially hostile work environment. Plaintiff’s complaint and briefing contain a variety of incidents that Plaintiff does not connect to race, that Plaintiff did not personally hear or observe, and that did not apply only to Plaintiff. As best the court can tell, Plaintiff’s harassment allegations are based on the following alleged incidents:

- What appeared to be a blackface doll was hanging on a “noose-type thing” from a thumb tack at

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Plaintiff's desk in or around 2019. (Docs. # 62-9 at 2; 62-10 at 12).⁵

- Outside of Plaintiff's presence, Boutwell made the following comments: "I smell hair burning," and "if I see someone with a hoodie . . . they are dead." (Doc. # 62-2 at 55-56).
- Ellison repeatedly demanded that Plaintiff get a flu shot. (*Id.* at 38-39).
- Boutwell told an employee that Plaintiff had reported the employee for being in violation of the DCH dress code, and the employee later confronted Plaintiff and used "threatening" body language. (*Id.* at 39-40).
- Boutwell "locked herself in her office to eavesdrop on" Plaintiff and her co-workers one morning. (*Id.* at 41-42).
- Plaintiff was moved upstairs where "nobody was at," although she "made it work" and described it

5. Although it is disputed whether the object in question was an elephant or a blackface doll, *compare* (Docs. # 62-9 at 2; 62-4 at 56-57 (testimony that it was an elephant)), *with* (Docs. # 62-9 at 2; 62-1 at 5, 12, 24 (testimony that it was a blackface doll)), all reasonable doubts and all justifiable inferences about the facts are resolved in favor of the non-movant. *See Allen*, 405 F.3d at 1314; *Fitzpatrick*, 2 F.3d at 1115. Therefore, the court assumes for the purposes of summary judgment analysis that Plaintiff is correct that the object was a blackface doll.

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as “a good little work area” with a refrigerator. (*Id.* at 41).

- Cannon “came in one morning and sat behind [Plaintiff] with his legs crossed watching [] how fast [Plaintiff] worked.” (*Id.*).
- Plaintiff was told to attend a meeting about why she was not completing patient forms in a timely manner, but Plaintiff was not warned beforehand that Wingo would be there. (*Id.* at 43; Doc. # 62-15 at 9).
- Plaintiff stated in an email: “I have been denied Promotions and treated inferior than others.” (Doc. # 65-5 at 142).⁶
- P.W. testified that Cannon made a comment that when he worked at Church’s Chicken, one customer would come in and order “two titties and a leg.” (Doc. # 62-10 at 9).
- Plaintiff was terminated for failure to comply with DCH’s flu vaccine policy. (Doc. # 62-2 at 42-43).
- DCH attempted to appeal Plaintiff’s approval of unemployment benefits after the appeal time had lapsed. (Docs. # 68 at 23; 69 at 26).

6. As it relates to Title VII, the only promotion that the Rule 56 record shows Plaintiff was denied is one from her 2014 EEOC charge, which is clearly untimely. (Docs. # 65-5 at 88; 65-1 ¶ 3).

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With these assertions in mind, the court addresses Plaintiff's harassment claim.

a. Protected Class

Plaintiff satisfies the first element of a hostile work environment claim. She belongs to a protected class. (Docs. # 65-5 at 88; 71-1 at 78; 65-1 ¶ 2).

b. Unwelcome Harassment

The court assumes Plaintiff also satisfies the second element because the Rule 56 record includes her testimony that she experienced what she perceived as harassment and that it was unwelcome. (*See, e.g.*, Docs. # 62-2 at 57 (Plaintiff talked with P.W. about DCH's "culture" of "mistreating black people"), 39-40 (Boutwell told another employee that Plaintiff reported her for violation of the dress code), 45 (Plaintiff testified that "the whole atmosphere" of DCH felt like harassment)).

c. Based on Race

The court assumes Plaintiff satisfies the third element, but only with respect to the blackface incident and the comments about hair burning and wearing a hoodie. The blackface incident is based on race for obvious reasons. *See, e.g., Pyatt v. AECOM Tech. Servs.*, 2019 WL 13256820, at *4 (S.D. Fla. Dec. 2, 2019) (discussing blackface as evidence of race discrimination); *Kline v. Atlanta Hawks, LLC*, 2020 WL 13653829, at *23-24 (N.D. Cal. Jan. 22, 2020) (similar). And, regarding Boutwell's comments about

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hair burning and wearing a hoodie, Plaintiff testified that she perceived them as racial. (Doc. # 62-2 at 55-56).

i. Skepticism about Boutwell's Comments

There may be some question as to whether using a hot hair tool and wearing a hoodie is behavior that is so limited to one race that mentioning it is inherently racially discriminatory. Additionally, it is not outside the realm of possibilities that a comment about wearing hoodies at DCH could be linked to the non-racial topic of compliance with the DCH dress code. (See Doc. # 62-10 at 22 (registrars were not permitted to wear a hoodie under the dress code)). In *Yelling*, for example, the Eleventh Circuit noted that comments about former President Obama were “not inherently racial” even when they used words like “stupid,” the “worst,” or a “piece of s***” in describing the former President. 82 F.4th at 1336. As in *Yelling*, even though hair burning or wearing hoodies could be linked to race, that does not mean that negative comments about these behaviors are inherently racial. The Eleventh Circuit in *Yelling* also rejected the plaintiff’s contention that coworkers’ comments about being “confederate flag flyers” were race-based because the plaintiff had not explained anything beyond “generalizations about changing ‘societal norms.’” *Id.* Similarly, here, Plaintiff has not offered any explanation of why Boutwell’s comments are racial beyond asserting that Black people “do press their hair.” (Doc. # 62-2 at 55). It also is of note that these comments were not even made to Plaintiff. Rather, a coworker told Plaintiff about

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these comments. Although it is theoretically possible for a hostile work environment to be predicated on comments made out of a plaintiff's earshot, *see Adams v. Austal, U.S.A., L.L.C.*, 754 F.3d 1240, 1250 (11th Cir. 2014), this detail adds to the court's skepticism. However, resolving all justifiable inferences in favor of the non-movant, the court assumes that Boutwell's comments were racial in nature.

ii. Denied 2014 Promotion

The 2014 promotion denial cannot be part of this claim because it is clearly untimely. *See Fortson v. Carlson*, 618 F. App'x 601, 605 (11th Cir. 2015). Although hostile work environment claims can be based on untimely incidents if they are sufficiently related to timely incidents, Plaintiff has failed to show that the promotion denial nearly a decade ago is sufficiently related to the blackface doll and Boutwell's two comments such that they form part of a continuing hostile work environment. "Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for purposes of determining liability." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) (citing 42 U.S.C. § 2000e-5(e)(1)). "The pivotal question is whether the timely discrete acts are sufficiently related to the hostile work environment claim." *Chambless v. Louisiana-Pac. Corp.*, 481 F.3d 1345, 1350 (11th Cir. 2007).

Even putting aside the substantial temporal gap between the events, to be sufficiently related, the

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circumstances surrounding the promotion denial must “suggest that [that] discrete act[] w[as] the same type of ‘discriminatory intimidation, ridicule, and insult’ that characterized the untimely allegations.” *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). Characteristics that make actions of the “same type” include whether they were similar kinds of actions, whether this specific type of conduct was repeated, and whether the same individuals engaged in the conduct. *Morgan*, 536 U.S. at 120-21.

Both law and logic make clear that a promotion denial is a different type of discrimination action than the presence of a blackface doll, a comment about smelling burnt hair, or a comment about hoodies. While the denial of a promotion is an official employment-related action, the three timely incidents did not concern Plaintiff’s job title, pay, or employment status. The denied promotion was not repeated conduct. And it is not clear whether the same individuals engaged in the conduct, as there is no evidence of who put the blackface doll on Plaintiff’s desk, and there is no evidence that Boutwell was involved in the 2014 denied promotion. Therefore, the untimely 2014 denied promotion is not sufficiently related to the timely incidents to be considered in this claim.

iii. Other Non-Racial Incidents

The court also does not consider the other incidents Plaintiff complains about – such as Plaintiff’s workspace being moved, her vaccine exemption requests being repeatedly denied, her being called into a meeting without

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a warning that an HR employee would be there, or her hearing about the “two titties and a leg” comment – racial in nature. Plaintiff has not come close to explaining how these incidents are in any way related to her race.

d. Sufficiently Severe or Pervasive to Alter Terms of Employment

After the analysis detailed above, what remains are Plaintiff’s claims about the blackface incident and the two comments allegedly made by Boutwell. The court concludes with respect to these claims that Plaintiff has failed to satisfy the fourth element – that the harassment was sufficiently severe or pervasive to alter the terms of her employment. This element requires a plaintiff to show the “work environment was both subjectively and objectively hostile.” *Smelter v. S. Home Care Servs. Inc.*, 904 F.3d 1276, 1285 (11th Cir. 2018) (quoting *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1246 (11th Cir. 1999)). This severe or pervasive element “often tests the legitimacy of most harassment claims.” *Barrow v. Ga. Pac. Corp.*, 144 F. App’x 54, 56 (11th Cir. 2005) (citing *Gupta v. Fla. Bd. of Regents*, 212 F.3d 571, 583 (11th Cir. 2000)). To determine whether an environment is objectively hostile, courts “look[] at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Forklift Sys., Inc.*, 510 U.S. at 23.

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Finding a blackface doll hanging by a noose at one's desk is both offensive and distressing, and it is an understatement to say that such an object has no place in a civilized society, much less a workplace. But as the Rule 56 record makes clear, here it was an isolated incident, and therefore it was not pervasive. Although a single but horrific incident can in certain cases create a hostile work environment, that incident must be sufficiently and objectively severe. *See Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1276 (11th Cir. 2002) (conduct must be severe or pervasive). As the Eleventh Circuit has noted, “[i]solated or sporadic incidents of harassment are not objectively severe or pervasive enough to alter the terms or conditions of employment.” *Shine v. Univ. of Ala. – Birmingham*, 2023 WL 1099766, at *3 (11th Cir. Jan. 30, 2023) (per curiam). In *Shine*, the Eleventh Circuit affirmed a grant of summary judgment to dismiss a plaintiff’s racially hostile work environment claim predicated on a “gun incident” in which a “white employee pulled up his shirt to reveal a loaded handgun in [one of the plaintiffs’] presence. The employee did not point the handgun at [one of the plaintiffs], and [that plaintiff] could not recall what the employee said at that time.” *Id.* The panel noted that, although the presence of a gun “weighs heavily on the severity factor, a single incident absent any allegation of threat, interference with job performance, or repetition is not enough to meet the criteria of objective severity.” *Id.*

Similarly, here, the blackface incident was not sufficiently severe. This is particularly so because (unlike a gun), there is no evidence that the doll itself was physically

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threatening,⁷ particularly given that it was immediately thrown away. (Doc. # 62-10 at 13). There is also no evidence that it interfered with – much less unreasonably interfered with – Plaintiff’s job performance. In fact, despite this incident, Plaintiff received at least two “star performance awards” or “shout-outs” while working at DCH. (Doc. # 70-15 at 2, 5-6). Although she was terminated, it was for noncompliance with DCH’s vaccine requirements – not bad job performance.

Turning to Boutwell’s comments about hair burning and someone in a hoodie being “dead,” the evidence demonstrates that, even if made, they were non-severe and isolated. The Eleventh Circuit has held that to succeed at trial on a racially hostile work environment claim predicated on “racial slurs,” those slurs “had to be so ‘commonplace, overt and denigrating that they created an atmosphere charged with racial hostility.’” *Edwards v. Wallace Cmty. Coll.*, 49 F.3d 1517, 1521 (11th Cir. 1995) (quoting *EEOC v. Beverage Canners, Inc.*, 897 F.2d 1067, 1068 (11th Cir. 1990)). Even interpreting Boutwell’s two comments as racial slurs, they were not commonplace, overt, or denigrating – much less *so* commonplace, overt, or denigrating that they created an atmosphere charged with racial hostility. Boutwell’s two comments were not physically threatening or humiliating. Plaintiff was not even in the room when Boutwell made these comments. “[O]verhearing offensive comments is less severe or humiliating than being the intended target of direct

7. There is also evidence suggesting that the alleged “black face doll” was a multicolored elephant from Thailand. (Docs. # 62-4 at 56-57; 62-9 at 2).

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harassment.” *Yelling*, 82 F.4th at 1336; *see also Small v. City of Hollywood*, 661 F. Supp. 3d 1187, 1201 (S.D. Fla. 2023) (noting that a “comment regarding ‘Jamaicans’ was made outside of [the plaintiff’s] presence and, consequently, as also not directed at [the plaintiff]”). And, the severity of the remarks is even more attenuated given that Plaintiff heard of these remarks via hearsay. Further, it is not clear how Plaintiff could have felt personally targeted by the hoodie comment, as registrars were not allowed to wear a hoodie at work and she never testified that she did so. (Doc. # 62-10 at 22). As already noted, there is no evidence that these comments unreasonably interfered with Plaintiff’s job performance. And while a work environment with *daily* racist comments could be hostile, *see Smelter*, 904 F.3d at 1285-86 (finding a hostile work environment when the employee heard racist comments every day of her two-month employment including a coworker calling her a “dumb black n**”), Boutwell’s comments were nothing close to daily. She is only alleged to have made two.

Examining the totality of these circumstances, this case resembles cases in which courts have held that a work environment was not hostile. In *Harris*, for example, the Eleventh Circuit held that a workplace was not hostile when a supervisor made one “highly offensive comment,” micromanaged the employee, asked coworkers to report violations by the employee, and ignored the employee’s discrimination complaints. 82 F.4th at 1305. Similarly, here, the blackface doll could be seen as one “highly offensive” incident, while the two comments by Boutwell were at worst, slightly objectionable behavior. This case is also like *Yelling*, in which the Eleventh Circuit held that

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a workplace was not hostile even though coworkers made comments about President Obama, Confederate flags, and racial epithets. 82 F.4th at 1335-337. Here, the blackface doll could be viewed as equivalent to racial epithets, while Boutwell's alleged remarks could resemble the comments about President Obama.

In contrast, this case is unlike those in which courts have found a hostile work environment, such as *Adams v. Austal, U.S.A., L.L.C.* In *Adams*, the Eleventh Circuit held that a workplace was hostile when a Black employee encountered two nooses in the workplace, heard other Black employees called "boy" and "monkey," witnessed a coworker kick another Black employee and wear Confederate flags every day, and heard her supervisor describe a racist, lewd drawing of her. 754 F.3d at 1251. Here, even though the blackface doll was hanging by what appeared to be a noose at Plaintiff's desk, it was a single incident and was not accompanied by the other severe and patently offensive behavior as seen in *Adams*. The two comments by Boutwell were isolated, made outside of Plaintiff's presence, and were not obviously racist, and there is no indication they were about her.

Plaintiff has failed to demonstrate a dispute of material fact as to whether these three incidents could constitute a hostile work environment.

For these reasons, Defendants are entitled to summary judgment on Plaintiff's claims in Count IV.

*Appendix B***D. Retaliation under Title VII (Count I) and 42 U.S.C. § 1981 (Count V)**

In Count V, Plaintiff alleges that her termination represented unlawful retaliation under § 1981, and she also appears to allege such a claim pursuant to her Title VII claim of “wrongful termination” in Count I. (Doc. # 46 ¶¶ 94, 205-59). Title VII prohibits an employer from firing an employee in retaliation for opposing or complaining about an unlawful employment practice such as racial discrimination. 42 U.S.C. § 2000e-3(a). A *McDonnell Douglas* framework can be used to evaluate a Title VII or § 1981 retaliation claim. *Patterson v. Ga. Pac., LLC*, 38 F.4th 1336, 1344-45 (11th Cir. 2022).

After careful review, the court concludes that Defendants are entitled to summary judgment on both claims. First, Title VII does not allow for individual liability. Second, Plaintiff has not established a prima facie case of retaliation under *McDonnell Douglas*. Finally, even if she had established a prima facie case, Plaintiff has not shown that DCH’s explanation for her termination was pretextual.

1. Individual Liability Under Title VII

As already explained in assessing Plaintiff’s discrimination claim in Count I above, the individual Defendants – Ellison, Boutwell, and Wingo – are entitled to summary judgment on the retaliation claim because Title VII does not give rise to individual liability. *See Dearth*, 441 F.3d at 933. Plaintiff concedes this. (Doc. # 69

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at 11-12). Therefore, the individual Defendants are due to be dismissed as to Plaintiff's retaliation claim in Count I.

Plaintiff's retaliation claim against DCH fares no better, but for different reasons.

2. Prima Facie Retaliation Claim

To make out a prima facie case of retaliation, a Plaintiff must show: "(1) that she engaged in statutorily protected activity, (2) that she suffered an adverse action, and (3) that the adverse action was causally related to the protected activity." *Patterson*, 38 F.4th at 1344-45 (11th Cir. 2022) (citing *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1134 (11th Cir. 2020)). Section 1981 also permits retaliation claims, provided the basis of the claim relates to race. *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 445-46 (2008). "A [retaliation] claim brought under 42 U.S.C. § 1981 is analyzed under the same framework as a Title VII claim because both statutes have the same requirements of proof." *Wilson v. Farley*, 203 F. App'x 239, 247 (11th Cir. 2006) (citing *Standard v. ABEL Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998)).

a. Statutorily Protected Activity

Plaintiff argues that she engaged in statutorily protected activity on two occasions: when she filed her 2014 EEOC charge (Docs. # 46 ¶ 8; 65-5 at 88), and when she sent the April 3, 2020 email complaining of harassment, discrimination, and retaliation. (Docs. # 46 ¶ 186; 65-5 at 142). Upon review, the court concludes that the only

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protected conduct that Plaintiff alleges is the 2014 EEOC charge.⁸

Statutorily protected expression under Title VII includes where an employee “has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a). These clauses are known as the “opposition clause” and the “participation clause.” *See Crawford v. Metro. Gov. of Nashville & Davidson Cnty., Tenn.*, 555 U.S. 271, 274 (2009).

Defendants concede that the 2014 EEOC charge was statutorily protected conduct. The court agrees. (Docs. # 61 at 28; 64 at 26-29). However, Defendants dispute that the April 3, 2020 email was statutorily protected expression. (Docs. # 61 at 27; 64 at 27). They argue that it is merely a complaint “about being singled out, being subjected to a campaign of harassment, and working in a hostile environment,” but that it does “not suggest that the treatment is related to a protected characteristic.” (Docs. # 61 at 27; 64 at 27-28).

8. Plaintiff also argues in her summary judgment briefing that she engaged in protected conduct by reporting a co-worker’s non-compliance with DCH’s policy. (Docs. # 68 at 27; 69 at 30). But, “[a] plaintiff may not amend her complaint through argument in a brief opposing summary judgment.” *Gilmour*, 382 F.3d at 1315. Further, even if the court allowed Plaintiff to do this, the co-worker’s non-compliance was with the company’s dress code, not with Title VII or § 1981. (Doc. # 71-1 at 39-40). Therefore, it is not statutorily protected conduct.

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Once again, the 2020 email stated:

I am writing to request that management cease all forms of retaliation and discrimination against me. On several occasions, I have been retaliated against by management. It has been a continuation of continued harassment and retaliation that I have been subjected to for several years. My qualifications and demonstrated commitment to this organization has been me[t] with retaliation and discrimination. I have been denied Promotions and treated inferior than others, which is against company policy. Again, I am requesting that I not be singled out and treated differently in the future based on discrimination and retaliation.

(Doc. # 65-5 at 142).

Plaintiff's 2020 email certainly was not "participation" under the participation clause because it was not "in conjunction with or after the filing of a formal charge with the EEOC." *EEOC v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1174 (11th Cir. 2000) (citing *Silver v. KCA, Inc.*, 586 F.2d 138, 141 (9th Cir. 1978)). Nor was Plaintiff's 2020 email "opposition." It did not reference unlawful employment discrimination either explicitly or implicitly. "A complaint about an employment practice constitutes protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination."

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Murphy v. City of Aventura, 383 F. App'x 915, 918 (11th Cir. 2010) (citing EEOC Comp. Man. (CCH) §§ 8-11-B(2) (2006)). Employment discrimination is *unlawful* under Title VII if it is based on a characteristic that Title VII protects, such as race. If a plaintiff's complaint does not suggest that the complained-of treatment "was in any way related to [] race," then it is not protected activity. *Jerominus v. Polk Cnty. Opportunity Council, Inc.*, 145 F. App'x 319, 326 (11th Cir. 2005). Under this legal standard, Plaintiff's 2020 email, which does not reference race, was not protected activity.

b. Adverse Action

"Termination is a materially adverse action." *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 924 (11th Cir. 2018). Plaintiff has easily satisfied this element.

Plaintiff also argues in her summary judgment briefing that another adverse action occurred when she was "relocated to a smaller working space in a more secluded area." (Doc. # 68 at 28). But, Plaintiff has not clarified when she was relocated to a smaller working space. (Doc. # 71-1 at 40).

In the retaliation context, an adverse employment action is "an action that 'produces an injury or harm' and would dissuade a reasonable worker from engaging in protected conduct." *Hitt v. CSX Transportation, Inc.*, 672 F. Supp. 3d 1192, 1201 (N.D. Ala. 2023) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67-68 (2006)). Plaintiff does not allege that there were any changes in

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her employment status, responsibilities, or benefits due to her relocation. In fact, when asked whether there was “anything negative about that floor,” Plaintiff responded, “I made it work for me,” and explained that “[o]ne of the doctors gave me a refrigerator and I had a good little work area.” (Doc. # 62-2 at 41). However, the Eleventh Circuit has held that an adverse employment action can include a failure to promote or transfer an employee until after the resolution of his EEOC charge. *Copeland v. Ga. Dep’t of Corr.*, 97 F.4th 766, 782 (11th Cir. 2024). Although a failure to transfer or promote is not identical to a change in office location, resolving all justifiable inferences in favor of Plaintiff, the court concludes that moving an employee to a new work area apart from her coworkers “well might have dissuaded” a reasonable employee from reporting discriminatory conduct. Therefore, it was an adverse employment action.

Assuming each event – her discharge and her relocation – are adverse actions, the question is whether they are causally related to protected activity.

c. Causally Related

Generally, “close temporal proximity between the employee’s protected conduct and the adverse employment action is sufficient circumstantial evidence to create a genuine issue of material fact about a causal connection.” *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 799 (11th Cir. 2000). Where temporal proximity is the *only* evidence of causation, that proximity must be “very close.” *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361,

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1364 (11th Cir. 2007) (quoting *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001)). As the Eleventh Circuit has held, an adverse employment action that occurs within one month of the protected activity satisfies the causation requirement for summary judgment purposes. See *Summers v. City of Dothan*, 444 F. App'x 346, 351 (11th Cir. 2011); *Donnello v. Frehauf Corp.*, 794 F.2d 598, 601-02 (11th Cir. 1986). In contrast, standing alone, a gap of two months or longer between the two events has been found to be insufficient to infer causation. See *Williams v. Waste Mgmt., Inc.*, 411 F. App'x 226, 229-30 (11th Cir. 2011) (holding that a two-month gap is not “very close”); *Thomas*, 506 at 1364 (finding that a period of three months was too long to create an inference of causation).

The gap between Plaintiff's 2014 EEOC charge and her termination on November 25, 2020, is approximately six years. (Doc. # 65-5 at 98). And, even if Plaintiff's April 3, 2020 email constituted protected conduct (which, to be clear, it does not), Plaintiff sent that email over seven months before her termination. If a gap of two or three months is too long to justify an inference of causation, then a gap of six years or seven months is, too.

Regarding the adverse employment action of moving Plaintiff's work area, there is no evidence in the Rule 56 record as to *when* Plaintiff's work area was moved, which makes it impossible for the court to evaluate whether there was temporal proximity between her 2014 EEOC charge and the workplace move. Additionally, in describing that move, Plaintiff does nothing to causally connect it to the 2014 EEOC charge (or even to the April 3, 2020 email). (See

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Doc. # 71-1 at 40-41 (testifying about the new work area immediately after discussing the dress code incident)).

For these reasons, Plaintiff has not established a prima facie case for retaliation.

3. Rebutting Legitimate, Non-Retaliatory Reason as Pretextual

Even if Plaintiff had established a prima facie case for retaliation (and, to be clear, she has not), she has not sufficiently rebutted Defendants' non-retaliatory reason as pretextual. Defendants proffer the following legitimate, non-retaliatory reason for Plaintiff's termination: "Plaintiff failed to comply with DCH's 2020 flu vaccine policy, and DCH terminated Plaintiff's employment pursuant to that policy." (Docs. # 61 at 29; 64 at 29). The court has already concluded that this was a legitimate reason for Plaintiff's discharge in its analysis of her discrimination claim. For the same reasons, it is a legitimate explanation in the context of retaliation as well. Therefore, the burden shifts to Plaintiff to rebut this reason as pretextual.

Again, Plaintiff has not rebutted Defendants' reason for her termination. Her argument is brief: "A reasonable jury could find that Defendant's actions were motivated by retaliation, not legitimate business reasons." (Docs. # 68 at 29; 69 at 32). It is also unavailing. This is a conclusion – not an argument. Additionally, "[a] plaintiff cannot rebut a reason 'by simply quarreling with the wisdom of that reason' or substituting her 'business judgment for that of the employer.'" *Patterson*, 38 F.4th at 1353 (quoting

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Chapman v. AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000)). Plaintiff has, therefore, not carried her burden of rebutting Defendants' legitimate, non-retaliatory reason.

For these reasons, Defendants are entitled to summary judgment on Plaintiff's retaliation claims in Counts I and V.

E. Defamation or Slander Per Quod (Count VI)

Plaintiff alleges that Defendants defamed her when they "falsely, wrongfully, negligently, recklessly, wantonly and unskillfully communicated to third persons[] that Plaintiff[] had failed to provide the appropriate documentation to support her exemption request for the flu vaccine." (Doc. # 46 ¶ 261). Plaintiff has conceded that the individual Defendants are entitled to summary judgment on Count VI, so the court considers this claim only against DCH. (Doc. # 69 at 32-33).

In Alabama, the elements of a defamation claim are:

1) a false *and* defamatory statement concerning the plaintiff; 2) an unprivileged communication of that statement to a third party; 3) fault amounting at least to negligence on the part of the defendant; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication of the statement.

McCaig v. Talladega Publ'g Co., 544 So. 2d 875, 877 (Ala. 1989). "Truth is an absolute defense to defamation. . . ."

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Foley v. State Farm Fire & Cas. Ins. Co., 491 So. 2d 934, 937 (Ala. 1986).

Plaintiff has identified five alleged defamatory statements. The first one was between Ellison and either Boutwell or Posey that “‘she’ (Plaintiff) was not in compliance for whatever reason they [F.E.; R.B. and C.W.] ‘so declared.’” (Doc. # 62-18 at 3). Plaintiff also stated that the statement “was made to: [the EEOC] & [the State of Alabama Department of Labor],” and that it was untrue because the rejection of this request “was not due to the ‘lack of specificity’ of the request.” (*Id.*). The second, third, fourth, and fifth statements were all statements made to the EEOC or the Alabama Department of Labor. (*Id.* at 2-4).

The first statement is not defamatory because it is true. *Foley*, 491 So. 2d at 937. As discussed above, Plaintiff was not in compliance with the DCH flu vaccine policy. Further, even if the statement were untrue, this statement was not published. Under Alabama law, “[c]ommunications among the managerial personnel of a corporation about the company’s business do not constitute a publication.” *K-Mart Corp. v. Pendergrass*, 494 So. 2d 600, 603 (Ala. 1986) (cleaned up). Ellison, Boutwell, and Posey were all managerial personnel (Docs. # 64 ¶ 2; 69 ¶ 2; 65-5 at 17), and they were discussing “the company’s business” – that is, Plaintiff’s noncompliance with DCH vaccine requirements. To the extent that the first statement was made to the EEOC and the Alabama Department of Labor, it was also not defamatory because, like the other four statements, it is protected by absolute privilege under Alabama law.

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Alabama law confers an absolute privilege over communications “made in the course of legislative or judicial proceedings.” *O’Barr v. Feist*, 296 So. 2d 152, 156 (Ala. 1974). This absolute privilege extends to quasi-judicial proceedings. *Webster v. Byrd*, 494 So. 2d 31, 34 (Ala. 1986). The EEOC was functioning in a quasi-judicial capacity when investigating Plaintiff’s EEOC charge, and therefore any statements made in connection with this investigation are privileged.

Although Alabama caselaw classifies other entities as quasi-judicial,⁹ the court can find no Supreme Court of Alabama decision addressing whether proceedings before the EEOC are quasi-judicial. To be sure, the Eleventh Circuit has weighed in on this question, albeit in an unpublished decision. That panel described an EEOC investigation of a discrimination charge as quasi-judicial. *Mack v. Delta Air Lines, Inc.*, 639 F. App’x 582, 586 (11th Cir. 2016). Another district court in this circuit has reached the same decision: “the court concludes that Alabama’s absolute privilege extends to statements

9. The Supreme Court of Alabama has held that the following proceedings are quasi-judicial: a hearing before the Alabama Board of Pardons and Paroles, *Sullivan*, 925 So. 2d at 976, a disciplinary action by the State Board of Chiropractic Examiners, *Mooneyham v. State Bd. of Chiropractic Examiners*, 802 So. 2d 200, 206 (Ala. 2001), a hearing before the State Tenure Commission, *State Tenure Comm’n v. Madison Cnty. Bd. of Educ.*, 213 So. 2d 823, 834 (Ala. 1968), a liquor license approval by a Board of Commissioners, *Ott v. Everett*, 420 So. 2d 258, 261 (Ala. 1982), and a decision by the Alabama Public Service Commission, *Glen McClendon Trucking Co. v. Hall Motor Exp., Inc.*, 229 So. 2d 488, 493 (Ala. 1969).

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that were made in connection with, and were relevant to, the administrative proceedings before the EEOC . . . because such proceedings were ‘quasi-judicial.’” *Redmon v. Auto*, 2014 WL 4855023, at *6 (M.D. Ala. Sept. 29, 2014). Consistent with these rulings, the court holds that the EEOC’s investigation of Plaintiff’s charge was quasi-judicial; therefore, Defendants’ statements to the EEOC – specifically, the first, second, third, and fourth statements – are all privileged.

The first and fifth statements are similarly privileged because Alabama law confers an absolute privilege to statements from an employer to the Alabama Department of Labor in connection with the administration of unemployment compensation laws. Ala. Code § 25-4-116 (stating that all communications “from employer or employee . . . to the secretary . . . or to any official or board functioning under this chapter . . . in connection with the requirements and administration of this chapter, shall be absolutely privileged”).

For these reasons, Defendants are entitled to summary judgment on Plaintiff’s claims in Count VI.

IV. Conclusion

For the reasons discussed above, DCH’s Motion for Summary Judgment (Doc. # 60) is due to be granted and Defendants Ellison, Boutwell, and Wingo’s Motion for Summary Judgment (Doc. # 63) is due to be granted. The court will enter an Order consistent with this Memorandum Opinion.

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DONE and **ORDERED** this May 21, 2025.

s/ R. David Proctor
R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

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**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ALABAMA, WESTERN DIVISION,
FILED MAY 21, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

Case No.: 7:23-cv-01037-RDP

DEBRA NEVINS,

Plaintiff,

v.

DCH HEALTH SYSTEMS, *et al.*,

Defendants.

Filed May 21, 2025

ORDER

This matter is before the court on Defendant DCH Health Systems’ (“DCH”) Motion for Summary Judgment (Doc. # 60) and Defendants Rebecca Boutwell (“Boutwell”), Felicia Ellison (“Ellison”), and Courtney Wingo’s (“Wingo”) Motion for Summary Judgment. (Doc. # 63). These Motions have been fully briefed and are ripe for a decision. (*See* Docs. # 61, 68, 72; 64, 69, 73). For the reasons discussed in the Memorandum Opinion

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contemporaneously filed with this Order, the Motions (Docs. # 60, 63) are **GRANTED**.

As there are no remaining claims or Defendants in this action, the Clerk of Court is **DIRECTED** to close the case.

Costs are to be taxed against Plaintiff.

DONE and **ORDERED** this May 21, 2025.

s/ R. David Proctor
R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

**APPENDIX D — U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION DOCUMENTS—
LETTER OF DETERMINATION (DATED APRIL
26, 2023), CONCILIATION FAILURE AND
NOTICE OF RIGHTS (DATED MAY 12, 2023),
INVESTIGATOR’S MEMORANDUM (UNDATED)**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
BIRMINGHAM DISTRICT OFFICE**

EEOC Charge No. 420-2021-00660

Debra K. Nevins Charging Party
c/o Kayarda K. Lowe

vs.

DCH Health System Respondent
c/o Jeffery L. Thompson
Constangy, Brooks, Smith, & Prophete LLP

LETTER OF DETERMINATION

The following Determination is issued on the merits of the subject charge filed with the Commission and alleging violations of the Americans with Disabilities Act of 1990, as amended, (ADA). Respondent is an employer within the meaning of the ADA. Timeliness and all other requirements for coverage have been met.

Charging Party alleges that Respondent discriminated against her when she was denied a reasonable

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accommodation and discharged because of her disability. Respondent denies Charging Party's allegations of discrimination and contends that Charging Party was discharged when she refused to get the flu vaccine and failed to provide evidence that she had a disability related issue that would prevent her from doing so.

The evidence obtained during the Commission's investigation indicates that Respondent discharged Charging Party on November 25, 2020, after they failed to provide her with a reasonable accommodation for her disability. Evidence shows that Charging Party requested and received a medical exemption from the flu vaccine in 2015, 2016, 2017, 2018, and 2019, so Respondent was already aware of her disability. Evidence also shows that Charging Party requested a reasonable accommodation in November 2020, but her request was denied. Respondent has failed to show that providing an accommodation would have posed an undue hardship.

Based on the foregoing and all evidence of record, I have determined there is reasonable cause to believe that Respondent discriminated against Charging Party because of her disability in violation of the ADA.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate unlawful practices by informal methods of conciliation (i.e., settlement). Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. If you wish to participate in conciliation, please email Andre Williams andre.williams@eeoc.gov, within ten (10) days of the date of this Letter of Determination.

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Should there be no response from the Respondent within ten (10) days of the date of this determination; the Commission may conclude that further conciliation efforts would be futile or nonproductive.

When the Respondent declines to enter into conciliation discussions, or when the Commission's representative for any reason is unable to secure a settlement acceptable to the Commission, the Commission shall so inform the parties in writing and advise them of the court enforcement alternative available to the Charging Party, aggrieved persons and the Commission.

The confidentiality provisions of the statute and Commission Regulations apply to information discussed or given during conciliation.

On behalf of the Commission:

April 26, 2023
Date Uploaded

SHERI GUENSTER [Digitally
signed by SHERI GUENSTER
Date: 2023.04.26 13:45:22 -05'00']

/for Bradley A. Anderson
District Director

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
BIRMINGHAM DISTRICT OFFICE

**CONCILIATION FAILURE AND
NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: May 12, 2023

To: Debra Nevins

Charge No: 420-2021-00660

EEOC Representative and email:

ANDRE WILLIAMS

Investigator

andre.williams@eeoc.gov

CONCILIATION FAILURE OF CHARGE

To the person aggrieved: This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

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NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 420-2021-00660.

On behalf of the Commission,
SHERI GUENSTER [Digitally
signed by SHERI GUENSTER
Date: 2023.05.12 15:50:27 -05'00']
/for Bradley A. Anderson
District Director

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
BIRMINGHAM DISTRICT OFFICE

INVESTIGATOR'S MEMORANDUM

TO: Sheri Guenster
Enforcement Supervisor

FROM: Andre Williams
Federal Investigator

SUBJECT: *Debra K. Nevins v. DCH Health System*
Charge Number 420-2021-00660

A. 1. JURISDICTION

Earliest Alleged Violation: November 25, 2020
Latest Alleged Violation: November 25, 2020
Charge filed: March 24, 2021
Amended Charge filed: NA
Respondent Type: Hospital
Respondent Size: 500+

2. SCOPE OF INVESTIGATION

<u>Statute</u>	<u>Basis</u>	<u>Issue</u>	<u>Recommendation</u>
ADA	Disability	Discharge	
Title VII	Race (African American)	Discharge	

*Appendix D***B. EVIDENCE/RATIONALE FOR
RECOMMENDATION:**

DCH Health System (“Respondent”), is an employer within the meaning of Title I of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. §12101, et seq., and has employed the requisite number of employees. This charge is timely filed. and all jurisdictional requirements have been met.

C. CHARGING PARTY’S ALLEGATIONS:

CP is an individual with a disability (Lupus). CP was hired by R in 1989 as a secretary. CP was discharged on November 25, 2020, for non-compliance with R’s flu policy. CP alleged that she submitted multiple reasonable accommodation request. but her requests were denied, CP alleged that she was retaliated against and discharged for prior EEOC complaints and internal HR complaints of discrimination. harassment. and retaliatory conduct of her managers. CP believes that she was discriminated against based on her disability when her reasonable accommodation request was denied, and she was discharged.

**D. RESPONDENT’S DEFENSE/ARTICULATED
REASONS:**

According to R, CP was hired on September 25, 1989, as a Unit Secretary. R asserts in 2016 CP was promoted to Registrar. R contends they developed policies related to COVID-19 and began mandating the yearly flu shot and

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the new policy was announced to all employees in October 2020 (RFI pg. 123-124). R states an exemption to the policy was granted for employees who had health conditions or sincerely held religious beliefs that prevented them from receiving the flu vaccine. R asserts the deadline to turn in exemption paperwork was November 15, 2020.

According to R, on November 4, 2020, they received a note from CP's doctor requesting an exemption (PS Ex. D). R asserts CP was informed that the note was not sufficient to establish the need for an exemption. R contends CP informed them that she had Lupus. R states CP was told to provide the legitimate reason to be considered for an exemption. R asserts on November 11, 2020, CP informed them that she was not going to take the flu vaccine. R contends on November 13, 2020, CP ended her day and never reported to work again.

According to R, on November 19, 2020, they received a note from CP's health care provider requesting a religious exemption (PS Ex. E). R asserts they contacted the health care provider and informed her that the religious exemption request needed to come from CP. R contends CP never completed the religious exemption form. R states on November 19, 2020, HR sent CP a letter asking her to contact them prior to November 24, 2020, to discuss her non-compliance with the flu vaccination policy (PS Ex. F). R asserts after failing to reach CP multiple times, she was discharged on November 25, 2020.

*Appendix D***E. SUMMARY OF THE EVIDENCE:**

The investigation revealed that R was aware that CP had Lupus prior to 2020. According to the evidence, CP requested and received a medical exemption from the flu vaccine in 2015, 2016, 2017, 2018, and 2019 (RFI pg. 473-478). According to R, in November 2020, employees were not required to submit a specific form, but instead submit a letter from a physician indicating the medical contraindication to support the exempt request (RFI pg. 2, #2). Evidence provided by CP showed that she submitted two medical exemption requests dated November 4, 2020, and November 11, 2020 (CP's Response Ex. A). Evidence showed that CP received an email from R on Friday, November 13, 2020, stating that her medical exemption was not approved (RFI pg. 496). Evidence also showed that CP worked on Monday, November 16, 2020, and she asked R about the email she received on Friday, November 13, 2020, regarding flu compliance. CP was informed by Rachel Posey that she couldn't allow her to work (RFI pg. 62). Finally, the evidence showed CP's health care provider re nested a religious exemption for her on November 19, 2020 (PS Ex. E). This request was also denied. [Redacted] Based on the evidence, the investigation revealed that CP was discriminated against based on her disability when she was denied a reasonable accommodation and discharged.

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F. DISCRIMINATORY ANIMUS:

CP was treated differently when she was denied a reasonable accommodation and discharged.

G. CONCLUSION:

Based on the information above. I believe that CP was discriminated against as alleged.

H. RECOMMENDATION:

Reasonable Cause – Discharge – ADA

No Cause – Discharge – Title VII/Race African American

I. SUPERVISOR APPROVAL

I concur with the Investigator's recommendation.

Sheri Guenster
Enforcement Supervisor

Date

J. MANAGER'S APPROVAL

Eless Brown
Enforcement Manager

Date

K. DIRECTOR'S APPROVAL

Bradley A. Anderson
District Director

Date

**APPENDIX E — EXCERPTS OF DEPOSITION OF:
TONIA WILLIAMS (TAKEN SEPTEMBER 16, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

CIVIL ACTION NO.: 7:23-CV-01037-LSC

DEBRA NEVINS,

Plaintiff,

vs.

DCH HEALTH SYSTEMS, THE DCH HEALTH
CARE AUTHORITY; REBECCA BOUTWELL;
FELICIA ELLISON & COURTNEY WINGO,

Defendants.

VIDEOTAPED DEPOSITION OF:
TONIA WILLIAMS

SEPTEMBER 16, 2024
1:20 P.M.

REPORTED BY:
CINDY C. JENKINS, CCR

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[12]Are you involved in any civic organizations in the community?

A. No.

Q. Are you a member of any sorority?

A. No.

Q. Are you a pastor?

A. Am a pastor?

Q. Yes, ma'am.

A. No.

Q. Are you reverend?

A. No.

Q. Evangelist?

A. No.

Q. Priest?

A. No.

Q. Nunn?

A. No.

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Q. Where do you currently work?

A. I currently work at DCH.

Q. Do you believe America is a Christian nation?

A. I believe it should be.

MS. GEISLER: Object to form.

Q. (By Ms. Hollie) I'm sorry. I didn't hear you.

[13]A. I believe it should be.

Q. Okay. How long have you worked at DCH?

A. Since 2019.

Q. What was the position -- what position did you start at?

A. Registrar.

Q. Registrar. Is that still your current position?

A. Yes, I'm a registrar now.

Q. What -- I know you started at DCH did you have any experience as a registrar?

A. No.

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Q. Have you ever been offered a position -- have you ever applied for a position as a cook at DCH?

A. No.

Q. Have you ever been offered a position as a cook at DCH?

A. No.

Q. Will you tell me what your -- what are your current responsibilities as a registrar?

A. Currently I get authorizations for patients that have imaging done.

* * *

[21]Q. When did you last take the flu vaccine?

A. This past year.

Q. So 2024 or 2023?

A. It was 2023, but it was for the 2024 year.

Q. Did you take the flu vaccine in 2022?

A. Yes.

Q. How about 2021?

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A. Yes.

Q. 2020?

A. Yes.

Q. And 2019?

A. 2019, I took it in October of 2019.

Q. Okay. Have you ever taken the COVID vaccine?

A. No.

Q. In 2020, when COVID became rampant throughout the country, did you request an exemption from the COVID vaccine?

A. Yes, I did.

Q. And which one did you -- which exemption did you request, the medical or the [22]religious?

A. The religious.

Q. What information were you told -- were you told the information that was needed to obtain an exemption?

A. We were just told that we could get either a medical or a religious exemption.

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Q. Did they tell you what needed to be in the religious exemption?

A. No.

Q. Did you get -- did you submit any forms in 2020 for the religious exemption for COVID?

MS. GEISLER: I don't think it was in place in 2020. They didn't have the vaccine.

THE WITNESS: I'm not sure what year it was. Whenever they come out with the vaccine and the requirement for the vaccine, that's when I applied for it.

Q. (By Ms. Hollie) Okay.

Did you show your religious exemption to Rachel Posey?

A. Yes.

[23]Q. I'm going to show you what your attorney gave us. Is this what --

MS. GEISLER: I have a copy for her.

MS. HOLLIE: Thank you.

Q. Is that what you gave to Ms. Posey at that time?

A. Yes. This is my handwriting.

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Q. And this is for 2021?

A. Yes.

Q. I'm looking at November 2021?

A. 2021, uh-huh.

Q. And you submitted this on November 22, 2021; correct?

A. Yes.

Q. Did you -- did anyone ever tell you about getting in trouble if you did not submit it by the November 15th deadline?

A. Well, that was policy.

Q. It was policy?

A. It was policy that we had a deadline. Just as for the flu, we had a deadline for COVID. And we had to either have our vaccinations or have our exemptions by that deadline.

[24]Q. Okay. And you submitted this seven days after?

MS. GEISLER: Read the bottom of it. That's the deadline on page 1.

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Q. (By Ms. Hollie) You submitted this on November 27, 2021?

A. Yes.

Q. Do you know anyone who has been terminated for noncompliance with the COVID vaccine policy?

A. No, I do not.

Q. Do you know anyone who has been terminated for violation of the flu vaccine policy?

A. No, I do not.

Q. Now, who -- you have on the second page, it has a listing of some information. Who helped you complete that?

A. My husband helped me.

Q. And is your husband a pastor?

A. No, he is not.

Q. Okay. Is he any kind of --

A. He's an ordained minister.

Q. Thank you.

A. But he is not a pastor. There's [25]a difference.

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Q. Okay. Thank you. Yeah, there is.

What is the difference between a pastor and an ordained minister?

A. A pastor is over a church. An ordained minister preaches at various churches depending on where he's invited.

Q. Okay. So do you-all have a -- what's considered like a church home, one church that you-all are specific -- that you're a member of?

A. That's personal information. I don't feel I need to divulge that.

Q. I think your counsel may explain to you that you are required to answer the questions even over their objections.

MS. GEISLER: You can say where you go to church. They're not going to use it --

MS. HOLLIE: I didn't ask her --

MS. GEISLER: They're not going to use it outside of this.

THE WITNESS: I currently do not have a church home.

Q. (By Ms. Hollie) Okay.

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[26]Just to be clear, I wasn't asking which church. I was just asking like if you had what's considered like a church home on that. And you said currently right now you-all are not --

A. We're not in a church.

Q. Okay. And did you your husband look up these scriptures and -- for this exemption request?

A. He helped me look them up, yes.

Q. Okay. Now, you see say something on here -- well, there's something in here on the second page. I'd like to make that an exhibit. I'm going to -- let's swap if you don't mind. If I can use yours since I've already -- this is going to be Plaintiff's Exhibit 3.

(Whereupon, Plaintiff's Exhibit 3 was marked for identification.)

Q. (By Ms. Hollie) On the second page when it's talking about the description, it -- the first sentence says, It alters the DNA and makes up your cells in the immune system; is that correct?

[27]A. Uh-huh.

Q. Now, the word "DNA" is not in the Bible, is it?

A. No.

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Q. Now, when you received the exemption, you are required to follow the mask mandate in terms of wearing a mask since you did not want to be vaccinated for COVID?

A. Yes.

Q. But you've actually had COVID before?

A. I have had COVID, yes.

Q. And did you wear the mask all the time as required?

A. Yes.

Q. Do you believe in natural immunity?

A. What do you mean?

Q. That you have a natural immunity to any -- anything that's out there, a disease, infections.

A. I think you can have a natural immunity, I mean, some people. It depends on the person.

Q. Okay. And this is 2021. Did you [28]submit a COVID exemption request for 2022?

A. No.

Q. May I ask why not?

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A. Because I had already submitted this. It was not a requirement for each year.

Q. You submitted this request to Rachel Posey, this exemption request?

A. I submitted it to employee health.

Q. Did you show it to Rachel Posey?

A. Yes, I did show it to her. She was my manager. She advised me to turn it into employee health because I wasn't sure where it needed to be turned into.

Q. When you -- were you required to show the exemption request to Ms. Posey?

A. Was I required to?

Q. Yes, ma'am.

A. No.

Q. When the mask mandate -- well, you said you wore the mask in 2021?

A. Uh-huh.

Q. When the mask mandate was rescinded in 2020, you continued to wear your

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[42]A. -- that we had to abide by during that time.

Q. Okay. But afterwards in 2022, when they stopped the COVID vaccine policy, you didn't have to wear your mask?

A. Once they did away with the masking requirements for it, yes.

Q. Okay. Let's go back to your religious exemption for 2021. Do you still have that in front you?

A. Yes.

Q. I want to ask you -- something has been bothering me about that page 2 when you said your husband helped you with the scriptures.

A. Uh-huh.

Q. Where it says -- you're quoting Genesis 1 and 26.

A. Yes.

Q. Which -- is that an exact quote from the Bible?

A. No.

Q. Is that paraphrased?

A. That's paraphrased. That's when He created us, He -- when He created man.

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[43]Q. Okay. Now, but it does not say in the Bible that He created us not to age or die, does it, when He created Adam?

A. He created man to be perfect as though He was until the fall.

Q. Okay. But it does not state in the Bible that He created us to not age? It doesn't specifically say that, does it?

A. Not, it does not specifically say to not age, but that's when He created us to be perfect.

Q. Okay. So you -- it was a paraphrase --

A. Yes.

Q. -- of the Bible?

A. Yes.

Q. Now, you have on here, I believe, this says it alters our DNA, that it's saying that God created us and did not -- and did -- was not -- hold on a second. It says, when God created and did was not sufficient enough and changes us into something different than what He created?

A. Yes.

Q. That's sentence is not in the [44]Bible, is it?

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A. No.

Q. Okay. This is what you and -- you with the help of your husband, interpret --

A. Yes.

Q. -- that to be?

Okay. Now, 1 Corinthians 3:16 and 17 is something else you quoted --

A. Uh-huh.

Q. -- and you have in here. With the temple of God, we should not partake in anything that would harm the body or alter our body. Those exact words are not in the Bible under any translation, is it?

A. We are the temple of God is in there.

Q. Which translation are you using?

A. Translate -- we use the King James version.

Q. Well --

A. But he talks about -- this is basically paraphrasing.

Q. Okay. I just want to make sure. So you're basically putting it in your own words to make it understandable?

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[45]A. To make it understandable, yes.

Q. Now, Corinthians 6:19 and 20 -- I'm sorry. I just said that. You're quoting the same thing?

A. Right.

Q. So you are the temple of God, your -- we are supposed to glorify God in our body and spirit?

A. Yes.

Q. Does that have -- does that say that you can't get a vaccine in that particular scripture?

A. It does not state you cannot get a vaccine. But we are supposed to glorify God with our body and our spirit. And that does have a lot to do with what we put into our body and what we do to our body.

Q. Okay. But it does not state that you cannot get a vaccine in that scripture does it?

A. No.

Q. In Corinthians -- back to Corinthians 3:16 and 17, it does not say that you cannot get a vaccine, does it?

A. No, vaccine is not in the Bible.

* * *

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[48]should not go in the body. Did you just not testify to that?

A. Yes.

Q. Okay. Now, other things have not been researched enough -- you would agree that there are other things in this world that have not been researched enough?

A. Of course.

Q. And you agree that vaccine is nowhere in the Bible; correct?

A. I've not seen it in the Bible, no.

Q. Would you agree that there are some cooking oils that are not good for the body in excess?

A. Well, anything is not good for the body in excess.

Q. Now, there are some, for instance, cooking oils; correct?

A. Uh-huh.

Q. Okay. And -- but we use those -- some cooking oils for cooking our foods, do you agree?

A. I agree.

Q. Olive oil is one? You would agree

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**APPENDIX F — EXCERPTS OF DEPOSITION OF:
PERTRECE WILSON (TAKEN SEPTEMBER 16, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

CIVIL ACTION NO.: 7:23-CV-01037-LSC

DEBRA NEVINS,

Plaintiff,

vs.

DCH HEALTH SYSTEMS, THE DCH HEALTH
CARE AUTHORITY; REBECCA BOUTWELL;
FELICIA ELLISON & COURTNEY WINGO,

Defendants.

VIDEOTAPED DEPOSITION OF:
PERTRECE WILSON

SEPTEMBER 16, 2024
10:22 A.M.

REPORTED BY:
CINDY C. JENKINS, CCR

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[42]A. Well, we were all there, so I knew I had to include them in it.

Q. And to the best of your knowledge or recollection, do you know if anybody from HR, Ms. Wingo or anyone else, came to talk to any one of those witnesses?

A. Oh, no, sir. They would have mentioned it. I mean, we all were very close. We worked back there. We were friends and coworkers. So they would have said it, and nobody did.

Q. About either one of those incidents?

A. No, sir.

Q. I want to next move to this incident that has been highly contested from DCH. And, in fact, Ms. Rebecca Boutwell testified that that -- before I say this, let me set a proper foundation, Ms. Wilson. Do you know what Blackface is?

A. Yes, sir, I do.

Q. And would you say that Blackface at any time is inappropriate?

A. Absolutely, it is inappropriate.

Q. And on one occasion in particular, [43]this became a problem inside the registration office; correct?

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A. Yes, sir.

Q. And do you recall whether or not this doll that was in Blackface, was it in -- what color is Blackface?

A. Black.

Q. Does Blackface have any multicolors; red, blue, green, yellow, orange? Can Blackface be a rainbow of colors?

A. No. Blackface is black. Now, I will say this, sometimes they may have the lips highlighted in red. But the face is black.

Q. And you know the difference between an elephant and a Blackface doll; correct?

A. Absolutely, I do.

Q. On that day in question, did you see a Blackface doll, or did you see a multicolored rainbow faced elephant?

A. No, sir. I saw a Blackface doll hanging -- we have these little sticky pins that we can stick in boards. The doll had like a rope like on it, like a little [44]noose-type thing, and it was hanging on the sticky pin, the tip of it. Debra screamed out so loud, I got up out of my seat. I was in back lab. She sat in front lab. And I didn't know what was going on. So I went to the desk, and she was just like, What is this? What does it mean? I looked at it. And I always -- I don't know what happened that day that I did

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not think to take out my cell phone and take a picture of it. I don't even know. I guess -- I don't know. It was just like she was so upset, and, I mean, I didn't know what to do. She went in and got -- Rebecca came out of the office, you know.

Q. And to your recollection, does -- did Rebecca see the Blackface doll?

A. She did.

Q. If Rebecca testified that she did not see a Blackface doll --

A. Oh, she saw it.

Q. -- is she lying?

A. Yes, she is.

MS. GEISLER: Object to form.

Q. (By Mr. Lowe) Thank you.

[45]Rebecca also -- well, DCH -- strike that, please. DCH has testified in this 30(b)(b) deposition that they recall seeing, again, a multicolored elephant face?

A. No. I know the difference between an elephant -- baby, we're Bama fans here.

Q. Roll Tide.

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A. Right. This is an elephant. But anyways, that was a doll. The doll had a face. It was -- how do I describe this? I want to say -- I don't know. I've seen something similar like these things you would see like these tall wooden poles like with faces. I don't know if they're like these Hawaiian-type things. That's how I want to describe it. But this was black like a black doll.

Q. You said it had a noose around its neck?

A. Yes. Yes. And it was not there -- I don't know what day that was. I cannot tell you. But it wasn't there before because Debra sits there. I know that she had complained about one of the employees [46]that had that desk still having all of their things there, you know. She was like, I don't -- why do I have to come here and have her son's picture here and all of her flowers, all of her stuff? She did not sit there anymore. She would not even come in that office. This lady would go directly to front lab. Front lab is where the blood is drawn and the registrars work over there. So the lady that use to sit there still had all of her things there, and they allowed her to have it there.

Q. And what was that lady African American or Caucasian?

A. No, she was Caucasian.

Q. And it's your testimony today that the registration department had given that desk area to Ms. Nevins now?

A. Yes, sir, they had.

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Q. But that young lady still kept a lot of her personal contents at that desk still?

A. Yes, sir.

Q. And that Ms. Nevins, the plaintiff, had complained about that?

A. Yes, sir.

Q. And then subsequent to the plaintiff's complaint, here we go with this Blackface doll?

MS. GEISLER: Object to form.

THE WITNESS: Yes, sir.

Q. (By Mr. Lowe) And again,

Ms. Nevins screamed so much and with so much dispassion that you came in to observe --

A. Uh-huh.

Q. -- what it was that caused her to scream like that?

A. She said, What is this? What does it mean? She just kept saying, What does this mean? And Rebecca came out of her office. And she was like, What does this mean? What does this mean? And Rebecca said, Just throw it away. We were not thinking. I mean, like -- I don't know. I guess we were just caught up in the moment. And it was

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a garbage can right outside Rebecca's door, and Debra just threw it in there.

Q. And again, for the record, if Ms. Boutwell testified that that did not

* * * *