

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST CIRCUIT  
KANKAKEE COUNTY, ILLINOIS**

NEELIE PANOZZO, VALERIE KIETZMAN, JUDY BUSATO,  
KATHRYN HAMBLIN, CARMEN WYMORE, AND AMY  
MEMENGA,

Plaintiffs,

v.

RIVERSIDE HEALTHCARE; an Illinois not-for-profit  
corporation; and PHILIP M. KAMBIC, in his capacity as  
President of Riverside Healthcare,

Defendants.

Case No. 2021 L 108

**EMERGENCY MOTION TO JOIN ADDITIONAL PLAINTIFFS, TO  
VOLUNTARILY DISMISS PLAINTIFF WYMORE, TO AMEND THE  
COMPLAINT *INSTANTER*, AND FOR A TEMPORARY RESTRAINING  
ORDER ON BEHALF OF ADDITIONAL PLAINTIFFS**

**Introduction**

On Monday, October 25, this Court granted Plaintiffs a temporary restraining order finding that they had raised a fair question as to their right to relief, that they would suffer irreparable harm if forced to choose between their vocation and their deeply held beliefs, and that the balance of harms favored their request for a freeze on any termination or discipline in advance of a preliminary injunction hearing on November 19. See *Order*, October 25, 2021.

After the hearing, numerous other employees of Riverside whose religious exemption requests were included in Riverside's blanket denial policy approached Plaintiffs' counsel inquiring whether they were protected by the order. Plaintiffs' counsel asked Riverside's counsel after the hearing if the Defendants would adopt a system-wide freeze as to these few dozen employees because the Court's order did not

depend on any particular facts about the four nurses. However, on the afternoon of Tuesday, October 26, Riverside sent out a systemwide email informing employees that only the four Plaintiffs would be protected from termination, and reiterating the deadline for all other employees of October 31: vaccination or termination. A declaration from a plaintiff-Riverside employee, Ms. Panozzo, attesting to and attaching a copy of the October 26 email is included as Exhibit 57 to this motion.

Riverside's decision to take a hard, perhaps even heartless, line and limit relief to the initial nurses forces Plaintiffs to return to this Court on an emergency basis seeking to add to the case the numerous Riverside employees who have reached out to Plaintiffs' counsel since the hearing. In less than 24 hours, 56 additional Riverside employees signed client agreements and submitted declarations to join this case. Because nothing about their individual factual situations is different from the facts of the original four TRO plaintiffs, the Court should grant the motion and accompanying motion for a temporary restraining order.

### **Argument**

Two provisions of Illinois' Code of Civil Procedure permit the addition of plaintiffs to a case. A specific provision of Illinois law permits the joinder of plaintiffs, saying: "All persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, whenever if those persons had brought separate actions any common question of law or fact would arise." 735 ILCS 5/2-404.

Separately, the section on amending complaints states, “At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant . . . .” 735 ILCS 5/2-616(a).

**I. Plaintiffs should be allowed to join additional plaintiffs.**

Courts should construe the joinder statute “with a view toward permitting the liberal joinder of plaintiffs.” *Rodriguez v. Credit Sys. Specialists, Inc.*, 17 Ill. App. 3d 606, 612 (1974). “The objective of joinder is the economy of actions and trial convenience.” *Boyd v. Travelers Ins. Co.*, 166 Ill. 2d 188, 199 (1995).

This liberal attitude is limited by two requirements: “(1) that the various actions arise out of the same transaction or series of transactions, and (2) that common questions of law or fact must be involved.” *Rodriguez*, 17 Ill. App. 3d at 612. *See Prime Leasing v. Kendig*, 332 Ill. App. 3d 300, 308 (1st Dist. 2002) (similar); *Boyd*, 166 Ill. 2d at 199 (similar). Additionally, the statute itself requires, “If upon the application of any party it shall appear that joinder may embarrass or delay the trial of the action, the court may order separate trials or enter any other order that may be expedient.” 735 ILCS 5/2-404.

All three considerations are met in this instance. Each individual plaintiff has an action under the Illinois Health Care Rights of Conscience Act arising out of Riverside’s all-employee policies issued in September and October 2021 and the blanket, form denials of requests and appeals issued during those two months. *See Exhibits G and R to the First Motion for TRO*. All employees were classified as

patient-facing and received the same denials based on the same policy. *See declarations accompanying the Second Motion for TRO*, attached hereto. And all come to this Court seeking relief based on the same Rights of Conscience Act. 745 ILCS 70/5. Finally, there is no concern that joinder could delay trial, as we are in the earliest stages of the case, but instead joinder facilitates judicial economy because it allows this case to remain the sole vehicle for resolving these claims. If the Court denies the motion for joinder and to amend, then the proposed plaintiffs would be forced to file a separate lawsuit and motion for a temporary restraining order, and then two judges would have to hear separate cases and counsel for the parties would be forced to brief the two cases on different timelines. Joinder promotes judicial efficiency by channeling all claims against Riverside under the HCRCA into one case, especially at this stage when Riverside is implementing a blanket policy and not conducting individualized assessments.

## **II. Plaintiff Carmen Wymore should be voluntarily dismissed.**

Because this motion seeks to amend the complaint, Plaintiffs also move to voluntarily dismiss Plaintiff Carmen Wymore under 735 ILCS 5/2-1009. Ms. Wymore, who was *not* one of the Plaintiffs for whom this Court granted the TRO, seeks to voluntarily dismiss her claim against Riverside Healthcare and Philip M. Kambic because she has found alternate employment and has resigned from Riverside effective October 31, 2021. Because this motion to voluntarily dismiss is filed before trial, notice has been given to all parties, no costs are outstanding, and no motion is pending that could result in a final disposition of Ms. Wymore's claims, this Court

does not have the discretion to deny the motion to voluntarily dismiss Ms. Wymore. *Farrar v. Jacobazzi*, 245 Ill. App. 3d 26, 30 (1st Dist. 1993).

**III. Plaintiffs should be allowed to amend their complaint *instanter*.**

Illinois' code of civil procedure permits plaintiffs to amend their complaint "at any time before final judgment . . . on just and reasonable terms" including for the purpose of "introducing any party who ought to have been joined as plaintiff." 735 ILCS 5/2-616(a). Leave to amend, like joinder, should be "liberally granted." *Dickens v. Fifth Third Mortg. Co.*, 2020 IL App (1st) 190943-U, ¶ 11; *Islamic Ctr. of Chi. W. Suburbs v. Fahmy*, 2020 IL App (2d) 190249-U, ¶ 87. *Accord Avila v. Chi. Transit Auth.*, 2021 IL App (1st) 190636, ¶ 56 ("leave to amend should generally be granted freely").

In applying its discretion on leave to amend, a trial court considers four factors: "whether the proposed amendment would cure a defect in the pleadings, whether the defendant would be prejudiced by the amendment, whether the proposed amendment is timely, and whether the plaintiff had previous opportunities to amend her pleadings." *Dickens*, 2020 IL App (1st) 190943-U, ¶ 11.

The Plaintiffs meet all four factors. The complaint is not defective, but its initial scope did not include all persons entitled to relief who are identically situated on the relevant facts. Permitting amendment with additional parties promotes judicial economy and efficiency by keeping similarly situated plaintiffs all in one case.

Second, Defendants will not be prejudiced by the amendment. In fact, it is the Defendants' unreasonable choice that forces us here in an emergency posture. Nothing about the Court's decision was specific to the individual nurses who were the

original plaintiffs. Riverside adopted a blanket policy that covered all “patient-facing” employees. It sent out form denials of all initial requests. *See Exhibit G to TRO Motion*. It sent out identically worded copies of all appeal denials. *See Exhibit R to TRO Motion*. It has not been shy in local media or its filings in this Court about its blanket policy towards all patient-facing employees. *See* Lee Provost, “Riverside denies religious exemptions for COVID vaccinations,” Daily Journal (Sept. 20, 2021)<sup>1</sup>; *Defendants’ Response to Motion for TRO*. Moreover, all of the information in the declarations accompanying the Second Motion for TRO is already known to Riverside; the facts of its employees, their religious or ethical beliefs, their requests for exemption, and Riverside’s response to those requests, are all easily verifiable in Riverside’s own files.

Yes, Riverside will have to respond on an emergency basis to this motion, but responding on an expedited basis is not prejudice. Not only is it often necessary in litigation, but here it is the natural consequence of Riverside’s decision to limit relief when it knew full well that dozens of other denied employees were desperate not to lose their jobs on October 31.

The proposed amendment is timely. Plaintiffs’ counsel told Defendants’ counsel after the hearing that resolving this question around the scope of Defendants’ response would be a key priority. When Plaintiffs saw the email from Riverside about its intention to continue implementation of its vaccinate-or-terminate plan, Plaintiffs moved expeditiously to alert the Court and opposing counsel about their plan to file

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<sup>1</sup> [https://www.daily-journal.com/news/local/riverside-denies-religious-exemptions-for-covid-vaccinations/article\\_388feeb0-19a0-11ec-84ac-23aaa5bcad69.html](https://www.daily-journal.com/news/local/riverside-denies-religious-exemptions-for-covid-vaccinations/article_388feeb0-19a0-11ec-84ac-23aaa5bcad69.html)

additional emergency motions. And Plaintiffs have worked diligently to file these emergency papers within one day of Riverside's decision becoming public, collecting and collating requests for relief from 56 Riverside employees.

Finally, this is Plaintiffs' first request to amend. Plaintiffs have acted with diligence. They brought this case on behalf of the six nurses who participated in the original demand letter to Riverside. Monday's TRO ruling brought numerous other employees out of the woodwork, and Plaintiffs seek to protect as many of their friends and coworkers as possible from being irreparably harmed by Defendants' coercion.

**IV. The Court should grant a TRO to additional plaintiffs for the same reasons it granted a TRO to the original four plaintiffs.**

Pursuant to 735 ILCS 5/11-101 and 11-102, Plaintiffs move for a temporary restraining order directing Defendants Riverside Healthcare and Phillip Kambic not to terminate, place on unpaid leave, or otherwise discipline the 56 Riverside employees that seek to join this action until this Court can hear and decide a motion for preliminary injunction.

**A. Statement of Facts in Support of the TRO**

1. Riverside Healthcare is a private, not-for-profit corporation registered in the State of Illinois.
2. Phillip Kambic is president of Riverside and its day-to-day leader, manager, and decision-maker.
3. Allison Berard is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 1.

4. Alyse Hodgins is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. See Declaration, attached as Exhibit 2.
5. Amber Denton is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 3.
6. Amber Marcotte is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 4.
7. Angela Burge is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 5.
8. Anne Bridges is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 6.
9. Ashley Goodman is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 7.
10. Beth Norwick is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 8.



11. Bobbie Rogers is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 9.
12. Bonnie Gross is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 10.
13. Bonnie Rykiel is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 11.
14. Brittany Pommier is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 12.
15. Cassidy Gerdes requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 13.
16. Chris Foster is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 14.
17. Dakota Gable is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 15.

18. Desneiges Hansen is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 16.
19. Dianne Carr is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 17.
20. Gary Hall is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 18.
21. Holly Gade is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 19.
22. Jamie Cockream is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 20.
23. Janet Clifford is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 21.
24. Janet Stryzik is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 22.

25. Jeanne James is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 23.
26. Joanna Brychta is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 24.
27. Julia Stramaglia is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 25.
28. Kathryn Vana is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 26.
29. Katlyn Scheiber is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 27.
30. Kegan Wagner is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 28.
31. Kelsey Tobey is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 29.

32. Kelsey Tolmer is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 30.
33. Kendra Outsen is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 31.
34. Kimberly Cooper is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 32.
35. Kristen Zigtema is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 33.
36. Laura Wendt is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 34.
37. Lauren Coash is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 35.
38. Leo Hoaglund is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 36.

39. Linda Kendziorek is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 37.
40. Madigan Spenard is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 38.
41. Malia Kollmann is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 39.
42. Margaret Wehrle is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 40.
43. Max Memenga is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 41.
44. Melissa Hennessy is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 42.
45. Merissa Hubert is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 43.

46. Michael Raef is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 44.
47. Molly Snyder is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 45.
48. Monalisa Keele is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 46.
49. Nadya Payne is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 47.
50. Nicole Brewer is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 48.
51. Phylicia Labriola is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 49.
52. Rebecca O'Connor is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 50.

53. Sherrie Robertson is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 51.
54. Tara Kitchens is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 52.
55. Trishelle Hanson is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 53.
56. Valerie Bauer is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 54.
57. Yvonne Walls is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 55.
58. Tenise Irven is a Riverside employee who requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. See Declaration, attached as Exhibit 56.

## **B. Standard of Review**

The Illinois Supreme Court lists four factors for a temporary restraining order: (1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the

merits of the case. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006); *Beahringer v. Page*, 204 Ill. 2d 363, 379 (2003). Some Court of Appeals cases include a fifth factor, “the benefits of granting the preliminary injunction outweigh the injury to a defendant” or “the public interests.” *JL Props. Grp. B, LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶ 57.

On a motion for a TRO to preserve the status quo, which necessarily arises in a summary posture, Plaintiffs need not prove their case, or even their likelihood of success on the merits, but “need only demonstrate the existence of a fair question on the elements and persuade the trial court to preserve the status quo until the case can be decided on the merits.” *McHenry Cty. Sheriff v. McHenry Cty. Dep’t of Health*, 2020 IL App (2d) 200339, ¶ 27.

### **C. Argument in Support of Granting a TRO**

Plaintiffs have already demonstrated to this Court in its initial hearing on Monday, October 25, that they have met the standards necessary for a TRO. *See Order*, October 25, 2021.

The Court found that Plaintiffs had raised at least a fair question as to whether the Illinois Health Care Rights of Conscience Act, 745 ILCS 70/5, provided a clear right for them against discrimination in employment based on their sincerely held conscience beliefs (“The Court finds that Plaintiffs have shown a fair question about an existing right and the need to protect the status quo.” *Order*, October 25, 2021. “The Court finds that the Plaintiffs have raised a fair question as to their rights asserted as to show a likelihood of success under the HCRCA.” *Id.*).



HRCRA provides, in relevant part, that “[i]t shall be unlawful for any . . . private institution . . . to discriminate against any person in any manner . . . because of such person’s conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.” 745 ILCS 70/5. The HCRCA defines “conscience” as “a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths[.]” 745 ILCS § 70/3(e). HCRCA defines “health care” to include “any phase of patient care, including but not limited to . . . medication . . . or other care or treatment rendered by a physician or physicians, nurses, paraprofessionals or health care facility, intended for the physical, emotional, and mental well-being of persons.” 745 ILCS § 70/3(a). By its terms, the HCRCA “shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of [the HCRCA].” 74 ILCS 70/14.

Throughout, the Act uses incredibly, intentionally broad language: “against any person,” “in any manner,” “in any way,” “in any particular form.” To give it a more limiting construction would be to “depart from the plain language of the Right of Conscience Act by reading into it conditions that conflict with the express legislative intent or by adding provisions that are not found in the statute.” *Rojas v. Martell*, 2020 IL App (2d) 190215, ¶ 51.

The additional Plaintiffs, like the original Plaintiffs, are all employees of Riverside who have been denied religious exemptions from the COVID-19 vaccination mandate. (See Exhibits 1–56, which include declarations for each additional plaintiff). The additional Plaintiffs have all the same rights under the HCRCAs as the original Plaintiffs; they are persons who are about to be subject to discrimination based on their conscientious refusal to receive, accept, or obtain a form of health care.

Second, Plaintiffs demonstrated irreparable harm and lack of an adequate remedy at law (“The Court finds that having to choose between two deeply held moral obligations—her religious conscience and her employment—is enough to create irreparable harm and that Plaintiffs have no adequate remedy at law.” Order, October 25, 2021). The Illinois Supreme Court has observed that “courts routinely find not just harm, but *irreparable* harm, where a plaintiff asserts a chill on free exercise rights.” *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 494-95 (2008) (emphasis original). The additional Plaintiffs, like original Plaintiffs, face the same impossible choice: between their vocation to work, care for patients, and support their families and their beliefs about these vaccines. Such a Hobson’s choice is really no choice at all. See *People v. Rhodes*, 2021 IL App (1st) 190681-U, ¶ 27, n.4. The coercive pressure to compromise their beliefs, the inevitable, impossible choice between two evils, is the irreparable harm. And such coercion on religious beliefs, especially when tied to a timeline and preventable by preserving the status quo, cannot easily be remedied by monetary damages after the fact, because choosing the lesser of two evils

results in compromising a sincere belief, whichever belief it is that each employee feels forced to compromise.

Third, the additional Plaintiffs demonstrated an entitlement to relief under the balancing test. These employees have shown up day-in and day-out for the last twenty months of this pandemic, delivering excellent care for their patients even while unvaccinated. They observe the proper safety protocols identified in Riverside's own policy specifying standards for unvaccinated workers (see *Exhibit D to the First Motion for TRO*), such as N95 masking. And, if the Court applies the same standard to the additional Plaintiffs as to original Plaintiffs, Riverside may transfer them to other shifts or duties with less patient interaction ("Nothing herein shall restrain Defendants from transferring any of Plaintiffs." Order, October 21, 2021).<sup>2</sup>

Moreover, Plaintiffs demonstrated initially three facts that undercut Riverside's argument: the exemption for pregnant workers in Riverside's own policy (*Exhibit D to the First Motion for TRO*), which goes against CDC recommendation<sup>3</sup>; the evolution of its policy over time, as its later blanket-denial approach conflicts with its earlier promise of religious exemptions and of suspended enforcement pending the Biden Administration rules (see *Exhibits D, E, and F to the First Motion for TRO*); and the fact that Riverside is an outlier in its industry with its zero-tolerance approach for

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<sup>2</sup> Plaintiffs note as an object for future consideration on the preliminary injunction that the list of prohibited forms of discrimination under the HCRCA includes transfers between positions: "It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, *transfer*, staff appointment, hospital, managed care entity, or any other privileges." Emphasis added. 745 ILCS 70/5.

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html>.

religious exemptions, which conflicts with the Governor's executive order<sup>4</sup> and the recommendation of the American Hospitals Association.<sup>5</sup> These arguments continue to cut against Defendants' supposed need for universal vaccination of its employees.

### **Conclusion**

Plaintiffs had hoped to spend this week writing their preliminary injunction brief. But Defendants' hardline approach to all of these other desperate employees forces Plaintiffs to return to this Court earlier than expected to again seek emergency relief. The purposes of the code of civil procedure are facilitated by the liberal granting of amendment and joinder, as is clear in this case.

The original Plaintiffs demonstrated their entitlement to a TRO on Monday, and the additional Plaintiffs incorporate original Plaintiffs' briefs and arguments in support of this motion. Nothing about the Court's conclusions on the initial TRO depended on the facts of the individual nurses; they were each exemplars of the blanket policy as to all patient-facing positions adopted and enforced by Riverside. The 56 additional Plaintiffs covered by this second motion for TRO are in the exact same situation.

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<sup>4</sup> Ill. Gov. Exec. Order 2021-20 (Aug. 26, 2021), 2(e) ("Individuals are exempt from the requirement to be fully vaccinated against COVID-19 if . . . vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance.").

<sup>5</sup> See, e.g., American Hospital Association, "AHA Policy Statement on Mandatory COVID-19 Vaccination of Health Care Personnel," July 21, 2021, <https://www.aha.org/public-comments/2021-07-21-aha-policy-statement-mandatory-covid-19-vaccination-health-care> ("The AHA encourages hospitals and health systems implementing mandatory COVID-19 vaccination policies to: Provide exemptions for medical reasons and accommodations consistent with Federal Equal Employment Opportunity Commission guidelines (e.g., a sincerely held religious belief, practice or observance").

Plaintiffs request that this Court enter an order permitting the additional 56 Riverside employees to join this action as plaintiffs, voluntarily dismiss Plaintiff Carmen Wymore, allow Plaintiffs to amend their complaint *instanter*, and grant the additional Plaintiffs' motion for TRO for the same reasons it granted the original Plaintiffs' motion.

Dated: October 27, 2021

Respectfully Submitted,

NEELIE PANOZZO, et al.

By: /s/ Jeffrey M. Schwab  
One of their attorneys

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