IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DR. STEPHEN T. SKOLY, Jr., *Plaintiff*, v. **DANIEL J. MCKEE, in his official capacity as the Governor of the State of Rhode Island; and JAMES McDONALD, in his official capacity as the Interim Director of the Rhode Island Department of Health,** *Defendants*.	**Civil Case No.** ___1:22-cv-58_____

MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIONAND MEMORANDUM OF LAW IN SUPPORT

Upon the Verified Complaint and Exhibits, and attached Memorandum of Law, Plaintiff Dr. Stephen T. Skoly, Jr., by and through undersigned counsel, moves pursuant to Federal Rule of Civil Procedure 65 for a Temporary Restraining Order and Preliminary Injunction against the Defendants Daniel J. McKee, Governor of Rhode Island, and James McDonald, Interim Director of the Rhode Island Department of Health. This motion seeks to enjoin the enforcement of an October 1, 2021 Compliance Order directing Dr. Skoly to cease practicing medicine unless he receives a COVID-19 vaccination.

Dr. Skoly makes this motion for two reasons: 1) to prevent the violation of his rights to Equal Protection and Due Process of the law under the Fourteenth Amendment of the U.S. Constitution; and 2) to end the suffering that Defendants have imposed on Dr. Skoly's hundreds of patients, including the most vulnerable Rhode Islanders (residents of the State's psychiatric

hospital and prison). These patients have been made to suffer, and continue daily to suffer, from the lack of necessary dental surgeries that Defendants have prevented Dr. Skoly from performing.

As set forth in this Motion and the accompanying Memorandum of Law in Support, Dr. Skoly has met his burden of showing that a TRO, followed by a Preliminary Injunction, should issue.

First, Dr. Skoly has established a likelihood of success on the merits.

The sole justification of the health worker vaccine mandate is the protection of the vulnerable patient—so that the health care worker does not infect the patient. Yet the Defendants have granted 365 vaccine exemptions to health care workers allowing unvaccinated workers to work in the immediate physical proximity of vulnerable patients with the only safety requirement being that the worker is N95 masked. The Defendants have apparently determined that, in terms of patient safety, N95 masking is a substitute for vaccination.

Dr. Skoly is willing to wear an N95 mask (which, as part of his heightened safety precautions, he has been wearing since the 2020 onset of COVID). It is an indefensible and irrational denial of Dr. Skoly's right to the Equal Protection of the Law that Defendants allow 365 workers to continue in their livelihoods, so long as they are N95 masked, while ending Dr. Skoly's professional career even though he is willing to be N95 masked.

It is also likely that Dr. Skoly will succeed in establishing that Defendants have violated his rights to Due Process. Dr. Skoly is not an anti-vaxxer. He has a valid medical reason to forgo this vaccine. Dr. Skoly has a history of Bell's Palsy—the affliction is dormant in his body. Unlike the general population, Dr. Skoly runs the specific, known risk that the COVID-19 vaccination will re-awaken what could, for him, be permanent facial paralysis.

Under these circumstances, it is a violation of Due Process to require Dr. Skoly to choose between vaccination (and potential paralysis) and his livelihood, particularly when, in terms of patient protection, the accepted substitute of N95 masking is available.

In addition, Dr. Skoly is COVID-19 recovered. Dr. Skoly has natural immunity which, as the federal government has finally acknowledged, is as good if not better than vaccination in terms of lowering the risk of infecting third parties. *See* 86 FR 61555, at 61604 (The naturally immune are "no longer sources of future infection"); "COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis," *CDC* (Jan. 19, 2022), *available at* https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm?s_cid=mm7104e1_w (last visited Jan. 20, 2022); *see also* Marty Makary, *The High Cost of Disparaging Natural Immunity to COVID*, THE WALL STREET JOURNAL (Jan. 26, 2022) https://www.wsj.com/articles/the-high-cost-of-disparaging-natural-immunity-to-covid-vaccine-mandates-protests-fire-rehire-employment-11643214336?mod=hp_opin_pos_2#cxrecs_s (last visited Jan. 27, 2022).

Second, Dr. Skoly has shown that, absent an injunction or a TRO, he will suffer irreparable harm because of the ongoing violations of his Constitutional rights. The Defendants have prevented Dr. Skoly from earning a living in his chosen profession. Such a deprivation of a constitutional right, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Third, the ongoing and continuing injury to Dr. Skoly outweighs any damage the proposed TRO may cause Defendants. The potential damage to Defendants is nothing.

Lastly, the issuance of a TRO will immediately and enormously benefit the public. As well as suspending Dr. Skoly's distinguished medical practice, Defendants' irrational conduct has denied, and is continuing to deny, urgent medical care to hundreds of Rhode Islanders. There are

lists of patients, both in Dr. Skoly's private practice and in the State's institutions (Eleanor Slater and the penitentiary) who are suffering from the lack of medical attention that Dr. Skoly and his staff are ready and willing to provide, but for Defendants' unlawful Compliance Order.

For these reasons, the Court should issue a TRO for 14 days and follow with a preliminary injunction thereafter enjoining Defendants from enforcing the Compliance Order.

Should the TRO issue, Dr. Skoly is confident that he can re-assemble a skeleton staff and begin performing the most necessary surgeries (for all patients, including those at Eleanor Slater and the penitentiary), with 48 hours of the issuance of a TRO. He will prioritize treatment to the most needy.

INTRODUCTION

Dr. Stephen T. Skoly, Jr., is one of Rhode Island's handful of oral and maxillofacial surgeons. Since October 1, 2021, the State of Rhode Island has prevented Dr. Skoly from practicing medicine, forcing him to shut down his 11-person medical facility.

While incurring no benefit whatsoever to the health or well-being of the residents of Rhode Island, the State's termination of Dr. Skoly's career has caused hardship and suffering to hundreds of Rhode Islanders. A dozen of Dr. Skoly's staff have been made unemployed. Dr. Skoly's patients have suffered from an absence or shortage of critical surgery and other services. These patients are hundreds of Rhode Island residents—eight hundred a month before October 2021 (excluding the emergency walk-ins, and the hundreds of residents of the State's mental facilities and prisons, where Dr. Skoly was contracted to work).

STATEMENT OF FACTS

I. DR. SKOLY'S DENTAL AND SURGICAL PRACTICE

Prior to October 1, 2021, Dr. Skoly ran a robust dental and surgical practice, "Associates in Oral and Maxillofacial Surgery," in Cranston, Rhode Island. Dr. Skoly and his five surgical assistants treated forty patients a day, excluding emergencies, five days a week. 1/20/2022 Declaration of Rosemarie Xifaras ("Xifaras Decl."), Exhibit A.[1]

Dr. Skoly's 800 or so monthly patients were representative of Rhode Island's vibrant and diverse community: Young and old, those with insurance (private or government) and those without. The procedures Dr. Skoly provided ranged from simple dental extractions to highly skilled and complex surgical procedures. Dr. Skoly never charged patients in need and was (and is) known in the community as a doctor who provided *pro bono* care. Declaration of Matt McLaren ("McLaren Decl."), Exhibit B.

Rhode Island also retained Dr. Skoly to provide surgical services to those institutionalized by the State. Beginning around 1990, and continuing until October 1, 2021, Dr. Skoly was a dental surgeon—and for the past decade, the only dental surgeon—for the Eleanor Slater Hospital, the State's psychiatric rehabilitative hospital operated by BHDDH (the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals). Declaration of Dr. Ibrahim Shihadeh ("Shihadeh Decl."), Exhibit C.

[1] The exhibits are attached to the Verified Complaint.

Eleanor Slater is an institutional facility for patients with acute and long-term medical illnesses, as well as patients with mental health conditions. Eleanor Slater also has a unit that houses psychiatric inmates confined under the authority of the Rhode Island Department of Corrections. Dr. Skoly provided surgical dental care to the residents of that unit as well.

In addition to Eleanor Slater, since 1998, Dr. Skoly was retained as the only dental surgeon by the Adult Correctional Institute ("ACI"), the State's penitentiary complex in Cranston. Dr. Skoly visited ACI once a week, performing 10 to 20 procedures.

Dr. Skoly visited Eleanor Slater (Regan) and ACI to treat patients for simple procedures. Complex surgeries, and all procedures performed on Eleanor Slater and Zambarano residents, required inmates of the psychiatric hospital or ACI to be transported to the more sophisticated operating theatre at Dr. Skoly's Cranston medical facility. Dr. Skoly saw an ACI patient in his Cranston office about every day.

The institutionalized patients could not travel to the Cranston office by themselves. Rather, they needed to be accompanied, and, in the case of prisoners, accompanied by armed guards. Dr. Skoly designed his Cranston medical facility to include a large elevator so that it could accommodate the type of gurney transported in an ambulance.

In treating the residents of Eleanor Slater and ACI, Dr. Skoly worked and came into prolonged and close physical contact with the institutions' health care workers and other employees. The institutions' employees who worked in close physical proximity to Dr. Skoly and the patients are members of Rhode Island Council 94, AFSCME, AFL-CIO.

II. DURING THE PANDEMIC, DR. SKOLY AND HIS STAFF CONTINUED TO SERVE

After the COVID-19 lockdowns began in March 2020, Dr. Skoly and his staff continued to treat patients in person—the only way that surgical procedures can be performed.

As a dental surgeon, Dr. Skoly engaged in scrupulous masking and other hygienic requirements. He supplemented these procedures with safety precautions and guidelines recommended by the RIDOH Provider Advisory, the CDC Health Advisory, the American Dental Association and the American Association of Oral and Maxillofacial Surgeons.

The precautions taken by Dr. Skoly and his staff appear to have successfully protected the eight hundred patients being served monthly. Dr. Skoly is not aware of a single patient testing positive for COVID-19 as a consequence of his treatment at Dr. Skoly's medical facility. Xifaras Decl. ¶ 21.

Dr. Skoly himself was not so fortunate. During the pandemic, Dr. Skoly continued to treat the inmates at the psychiatric hospital and the prisons. Apparently during one of those visits, Dr. Skoly contracted COVID-19 in December 2020. After the required quarantine period, he returned to work.

III. THE OCTOBER 1, 2021 COMPLIANCE ORDER

On August 17, 2021, pursuant to the general authority granted by R.I. Gen. Laws § 23-1-1 and R. I. Gen. Laws § 23-11-17, the Governor, through the RIDOH, promulgated a regulation that "all health care workers and health care providers be vaccinated against COVID-19 by October 1, 2021." REQUIREMENT FOR IMMUNIZATION AGAINST COVID-19 FOR ALL WORKERS IN LICENSED HEALTH CARE FACILITIES AND OTHER PRACTICING HEALTH CARE PROVIDERS, 216-RICR-20-15-8 (the "Regulation"), Exhibit D.

The justification for the vaccine mandate is the protection of "vulnerable populations": "Health care workers and providers interact with Rhode Island's most vulnerable populations: individuals who are immunocompromised and individuals with co-morbidities. These vulnerable populations are at risk for adverse health outcomes from COVID-19. As COVID-19 positive individuals are often asymptomatic or presymptomatic, health care workers and health care providers may unintentionally spread infection to these vulnerable patients." *See* https://rules.sos.ri.gov/regulations/part/216-20-15-8 (last visited Jan. 20, 2022).

The narrow justification for the Regulation—the protection of "vulnerable populations"—is based upon science and Rhode Island's experience: COVID-19 is a disease of institutionalized sick people, particularly the elderly.

"[COVID-19] is a very discriminatory virus. Some people are much more at risk from it than others. People over seventy-five are an astonishingly 10,000 times more at risk than those who are under 15." Robin McKie, *Britain got it wrong on Covid: long lockdown did more harm than good*, MANCHESTER GUARDIAN, THE OBSERVER (Jan. 2, 2022) (quoting immunologist Professor Mark Woolhouse), *available at* https://tinyurl.com/3f87pet9 (last visited Jan. 20, 2022).

In the United States, COVID-19 is particularly a disease of the elderly sick: "The overwhelming number of [COVID] deaths, over 75%, occurred in people who had at least four comorbidities. So really these are people who were unwell to begin with …;" the task of health care services is to protect "those at highest risk … those w/ chronic health conditions, disabilities & older adults." James Freeman, "So Now She Tells Us," THE WALL STREET JOURNAL (Jan. 10, 2022) (quoting CDC Director Dr. Rochelle Walensky, *available* at https://www.wsj.com/articles/now-she-tells-us-11641843802 (last visited Jan. 20, 2022).

These observations are supported by the death statistics in Rhode Island. No Rhode Islander younger than twenty-four has died from COVID-19. The bulk of Rhode Island's 3,000 deaths are among those older than 60: 60 to 69 (415 deaths), 70 to 79 (713 deaths), and above 80 (1701 deaths). https://ri-department-of-health-covid-19-fatality-data-rihealth.hub.arcgis.com/ (last visited January 20, 2022).

The vaccine mandate—directed to these vulnerable populations—nonetheless provided for medical exemptions. Exemptions are allowed where there is a history of severe or immediate allergic reactions to the vaccine, or a component of the vaccine, or a history of myocarditis or pericarditis. Medical Immunization Exemption Certificate, Exhibit E.

No other medical exemptions are permitted. RIDOH Vaccination Requirement, FAQ, Exhibit F ("A medical exemption form with reasons other than those listed is not considered valid under the regulation").

Those "health care workers" and "health care providers" who received a medical exemption are, as a condition of continued employment, "required to wear a procedure mask or higher-grade mask (e.g., KN95 or N95) in the course of their employment." Regulation, section 8.3(a)(2) and (d), Exhibit D.

Other than masking, the Regulation places no restriction on the physical interaction between the vulnerable patient and the unvaccinated, exempt health care worker. The unvaccinated worker may interact with the patient just as a vaccinated worker would. Regulation, section 8.3(a)(2) and (d), Exhibit D.

The Defendants have designated 365 Rhode Island health care workers to be medically exempt from the vaccine mandate.

After promulgation of the vaccine mandate, Dr. Skoly conferred with his personal physician regarding the potential dangers of vaccination.

In 2006, Dr. Skoly had contracted Lyme disease, which caused two attacks of Bell's Palsy. The palsy paralyzed the muscles around Dr. Skoly's left eye, and, subsequently, his right eye. The muscles around his right eye still display a mild residual droopiness. 1/19/2022 Declaration of Dr. Sam Pappas ("Pappas Decl."), ¶¶ 3 to 5, Exhibit G, and 1/20/22 Declaration of Dr. Stephen T. Skoly, Jr. ("Skoly Decl."), ¶¶ 5 to 6, Exhibit H.

Dr. Skoly was aware of medical literature showing an association between receiving a COVID-19 vaccine and the onset of Bell's Palsy. The literature does not indicate whether the onset of paralysis would be more likely to occur were one a prior Bell's Palsy victim (as was Dr. Skoly). Nor does the literature address whether, where there has been prior paralysis, a vaccine-induced recurrence is of similar or greater duration than the prior paralysis.

Due to the uncertainties regarding the risk of onset, or duration, of a palsy recurrence, and his naturally acquired immunity, Dr. Skoly made the medical decision not to be vaccinated.

Ever cognizant of the necessity of protecting his vulnerable patients from infection, Dr. Skoly was confident that he could practice medicine and continue to protect his patients. The basis of this confidence was two-fold.

First, Dr. Skoly continued to maintain the scrupulous masking and sanitation procedures that had been in effect in his medical facility since 1988, which procedures he supplemented in 2020 and 2021.

Dr. Skoly's masking procedures were at least equivalent to the masking requirement for "health care providers" to whom Defendants had given a medical exemption from the vaccine

mandate. The masking requirement for the exempt worker—the condition of the exempt worker's continued employment—is wearing an N95 mask. Regulation section 8.3(a)(2) and (d), Exhibit D.

Second, in September 2021, Dr. Skoly had his blood tested for IgG COVID-19 antibodies. The test result (Skoly Decl. ¶ 4 and attachment) shows a positive level of IgG COVID-19 antibodies.

Dr. Skoly did not apply for a medical exemption from the Covid-19 vaccine. He understood that the Exemption Certificate did not accept the risk of Bell's Palsy recurrence as a basis for a medical exemption.

On September 30, 2021, Dr. Skoly discussed his decision to not be vaccinated, and his concern about a Bell's Palsy relapse, with a journalist, who reported the conversation in a news article.

On October 1, 2021, having learned of Dr. Skoly's decision, the RIDOH issued the Compliance Order at issue. The Order directed Dr. Skoly to cease acting as a "health care provider" until he had complied with the Regulation. Compliance Order, Exhibit I.

IV. THE DECISION TO SUSPEND DR. SKOLY'S MEDICAL PRACTICE IS ARBITRARY AND IRRATIONAL

After October 1, 2021, Dr. Skoly, directly and through counsel, asked the Defendants to rescind the Compliance Order. Dr. Skoly requested that he qualify for a medical exemption based on his history of Bell's Palsy, and the association of the vaccine with the onset of Bell's Palsy paralysis.

Defendants denied the request, declining to recognize the danger of recurrence of Bell's Palsy as a risk that qualified for a medical exemption. RIDOH Vaccination Requirement, FAQ, Exhibit F.

To substantiate his position that he did not present a danger of infection to vulnerable patients, Dr. Skoly asked Defendants to review two points. Because the masking and safety precautions he had practiced in the past had fully protected vulnerable patients from infection, masking (and other precautions) could be relied upon to protect vulnerable patients in the future. And, because he had a positive level of IgG Covid-19 antibodies, the risk he posed to vulnerable patients was no different from the risk posed by a doctor who had been vaccinated.

Defendants rejected both arguments, explaining that, to protect vulnerable patients, Rhode Island does not accept masking as a substitute for being vaccinated. As for natural immunity, Defendants explained that, in their view, a vulnerable patient was more likely to be infected with COVID-19 by a health care provider who had recovered from COVID-19 than by a health care provider who had been vaccinated.

The Defendants' reasons for imposing the Compliance Order on Dr. Skoly, and refusing to rescind it, are arbitrary and capricious, and contrary to science.

A. Ninety-nine Percent of the Adult Rhode Island Population Has Been Vaccinated

The justification for the vaccine mandate is the protection of "vulnerable populations."

As of January 15, 2022, 99.0% of Rhode Island's adult population (18 years old and above) are at least partially vaccinated, and 87.9% "have completed primary vaccine series." https://ri-department-of-health-covid-19-vaccine-data-rihealth.hub.arcgis.com/

The percent of fully vaccinated Rhode Islanders above the age of sixty-five is 95%. https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Rhode+Island&data-type=Risk (last visited January 20, 2022).

For the "vulnerable" who contract COVID-19, there is available in Rhode Island monoclonal antibody treatment which has been proven to be 90% effective in reducing hospitalization and death. https://covid.ri.gov/covid-19-prevention/treatment (last visited January 20, 2022).

In discussing vaccination and the dangers of transmission, it must be noted that even CDC Director Rochelle Walensky has acknowledged that the vaccines do not stop transmission, especially in the era of the Omicron variant. *See CDC Director: Covid vaccines cannot prevent transmission anymore*, MSN HEALTH (Jan. 10, 2022), *available at* https://www.msn.com/en-us/health/medical/cdc-director-covid-vaccines-cant-prevent-transmission-anymore/ar-AASDndg (last visited Jan. 20, 2022). Thus, the premise upon which the Rhode Island vaccine mandate is based—vaccines prevent transmission—is a faulty one.

In any event, vulnerable people have had access to the vaccine for a year, and anyone who wants to get the vaccine may do so. There is no need to force the vaccine upon Dr. Skoly, *particularly* in light of his naturally acquired immunity.

B. Masking Protects the Vulnerable Patient

In terms of protecting vulnerable patients, despite what Defendants say in the context of Dr. Skoly, Rhode Island unqualifiedly accepts N95 masking as a substitute for vaccination.

Defendants permit medically exempt health care workers to treat vulnerable patients so long as the worker is N95 masked "in the course of their employment." Regulation section 8.3(a)(2) and (d), Exhibit D.

If patient safety is the issue, the protection provided by an N95 mask is the same whether the mask is worn by one of the 365 unvaccinated (but medically exempt) health care workers or the unvaccinated Dr. Skoly. There is no rational basis on which to distinguish between the two, unless it would be in Dr. Skoly's favor based on his naturally acquired immunity.

While continuing to irrationally prohibit Dr. Skoly from practicing his profession, the Defendants have expanded the category of unvaccinated medical workers who may continue to work in the close physical presence of vulnerable patients.

On November 12, 2021, the Defendants negotiated a new contract with the Rhode Island Council 94, AFSCME, AFL-CIO, the unionized health care workers at Rhode Island's state-run facilities. These facilities include the Eleanor Slater Hospital—where, per his contract, Dr. Skoly had provided dental and surgical services. Memorandum of Tentative Agreement, Exhibit J.

The union contract creates a vaccine mandate exemption based on religious objections. As with the 365 medical exemptions that Defendants have already granted, the employment of the religiously exempt is conditioned on the exempt worker wearing a mask. Memorandum of Tentative Agreement, paragraph 19, Exhibit J.

After the November 2021 Eleanor Slater union contract, defendant Governor McKee promised to include a religious exemption from the vaccine mandate in all future contracts between a union and the State of Rhode Island.

Tying the religious exemption to an N95 mask requirement is consistent with the Regulation's purpose—protection of vulnerable patients from exposure to infection. Tying the religious exemption to an N95 masking requirement is a further statement by the Defendants that N95 masking is an acceptable substitute for vaccination.

Dr. Skoly is willing to wear the N95 mask, just like the exempt Eleanor Slater workers who would be standing next to him in the patient's presence. In fact, he is not only willing, but would do so if not required by the State, as he has been wearing a mask while treating patients for the past 30 years.

Under these circumstances, barring Dr. Skoly from his profession is an irrational and unfair application of the Regulation.

Defendants have even further acknowledged that N95 masking is an acceptable protection of the vulnerable patient.

In RIDOH's updated (December 31, 2021) health worker guidelines, astonishingly, Defendants revised the Regulation to allow health care workers *infected with COVID-19* to work in close proximity to vulnerable patients so long as the worker wears an N95 mask.

The condition of employing the infected worker is that the infected worker is vaccinated and N95 masked. The only restriction on assigning an infected worker to work in the presence of a vulnerable patient is that the infected worker who is "asymptomatic or mildly symptomatic" is to be given priority over the worker with a raging infection. COVID-19 Quarantine and Isolation Guidance by Population, "Work Restrictions for HCP with COVID-19 infection," at page 2, column 4, "Crisis: No restrictions with prioritization considerations (e.g., asymptomatic or mildly symptomatic)". Exhibit K.

Among the hospitals using this new authorization to allow COVID-19 infected workers to work with vulnerable patients is the Eleanor Slater Hospital, where Dr. Skoly has been prevented from attending to patients desperately in need of surgery since October 1, 2021. "COVID positive employees can work after Eleanor Slater Hospital declares staffing 'crisis,'" THE PROVIDENCE

JOURNAL, January 3, 2022, Exhibit L (As for the infected workers, the RIDOH spokesman noted "and of course masks are required").

The reason for this remarkable Regulation that permits someone with an active COVID-19 infection to treat vulnerable patients is Rhode Island's shortage of essential health care workers. This shortage is the creation of the Defendants. They created the shortage by firing healthy health care workers who refused to get the vaccine, including those who, like Dr. Skoly, possess naturally acquired immunity.

To sum up, the State's desire to punish someone like Dr. Skoly for noncompliance with its arbitrary regulation is so great that it chooses to expose vulnerable patients to infection by having them be treated by someone with an active COVID-19 infection who is also vaccinated, rather than be treated by the naturally immune and COVID-19 negative Dr. Skoly.

C. Dr. Skoly's History of Bell's Palsy Risk Warrants a Medical Exemption

The onset of Bell's Palsy paralysis is a known risk of COVID-19 vaccination. This risk has been documented in the scientific literature identified in Dr. Pappas's Declaration, Exhibit G, ¶¶ 6 to 17; *see also* Rana Shibli, *et al*., *Association between vaccination with BNT162b2 mRNA COVD-19 vaccination and Bell's palsy: a population-based study*, LANCET REG HEALTH EUR, (Nov. 4 2021), *available at* https://pubmed.ncbi.nlm.nih.gov/34751262/ (last visited Jan. 20, 2022).

The risk is also proven by Rhode Island's medical data. In Rhode Island in 2021, there were sixteen reports of an onset of facial paralysis following COVID-19 vaccination. VAERS (Vaccine Adverse Events Report), Exhibit M.

Although real, the risk of Bell's Palsy paralysis does not justify a general medical exemption for everyone in the population, and such a generalized exemption is not what Dr. Skoly requested.

Dr. Skoly has a history of Bell's Palsy facial paralysis. Pappas Decl. ¶¶ 3 to 5; Skoly Decl.¶¶ 5 to 6. "Most scientists" believe that Bell's Palsy paralysis results from the re-activation of a virus that is "dormant" in a person's body. Pappas Decl. ¶ 10. Dr. Skoly has the paralysis virus dormant in his system. Thus, Dr. Skoly does not have a general fear of paralysis or a fear that he will suffer Bell's Palsy for a first time. Dr. Skoly has a specific fear that vaccination will re-activate the paralysis that is dormant in his body.

The current scientific literature gives him no assurance. The literature does not address whether, or the extent to which, if vaccinated, paralysis would be more likely to occur were one a prior Bell's Palsy victim, such as Dr. Skoly. Nor does the literature address whether, where the paralysis is dormant (as with Dr. Skoly), a vaccine-induced recurrence will be of a similar or a greater duration than the prior paralysis, or possibly even permanent.

Bell's Palsy paralysis, as Dr. Pappas explains, may be permanent. Pappas Decl. ¶ 10, citing the research of the National Institute of Neurological Disorders and Strokes ("NIH"), https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Bells-Palsy-Fact-Sheet (last visited January 20, 2022).

Dr. Skoly's fear that vaccination may reactivate his dormant paralysis is based on science: "In light of [Dr. Skoly's] history of Bell's Palsy, and his age, the COVID-19 vaccination creates the risk of a re-occurrence of his facial paralysis and the danger of a delayed resolution, in effect, a possible paralysis of unknown duration. Dr. Skoly's fear is well-grounded in the existing science." Pappas Decl. ¶¶ 12 to 13.

As Dr. Pappas opines, in light of Dr. Skoly's medical history, a medical exemption from vaccination is warranted: "In view of Dr. Skoly's known history of Bell's Palsy, his confirmed natural immunity from prior COVID-19 infection and known protection it provides, the potential

debilitating effect a recurrent Bell's Palsy incidence can produce, and the recently observed increased incidences of Bell's Palsy related to COVID-19 vaccines, it is my medical opinion that Dr. Skoly should not get a COVID-19 vaccine." Pappas Decl. ¶ 14.

"The potential significant harm to Dr. Skoly outweighs any benefit vaccination would incur to him or any patient he treats, particularly if he adheres to the strict masking protocols of dental surgery." Pappas Decl. ¶ 14.

The serious and specific danger (permanent facial paralysis) the vaccine presents to Dr. Skoly is no less serious or specific than the dangers for which the Defendants have granted 365 medical exemptions. Medical Immunization Exemption Certificate, attached as Exhibit E.

Under these circumstances, the Defendants have acted irrationally by refusing to give Dr. Skoly the medical exemption granted to others. The Defendants have acted irrationally by giving Dr. Skoly only two choices: Be vaccinated (and assume the risk of permanent facial paralysis) or cease practicing your profession.

Defendants' insistence that Dr. Skoly make this choice is particularly capricious since N95 masking—an alternative to the vaccine—is accepted by Defendants as a protective measure to be used by health care workers who are (for medical or religious reasons) exempt from the vaccine mandate.

D. Natural Immunity Provides No Less Protection to the Vulnerable Patient than Immunity Acquired by Vaccination

Dr. Skoly has a positive level of IgG Covid-19 antibodies. The risk that he will be re-infected with COVID-19, and then infect a vulnerable patient, is no greater than the risk that a vaccinated doctor will become infected and transmit the virus to a vulnerable patient.

The effectiveness of natural immunity is recognized by most of the world's democracies.

To allow for the safe and free movement among nations, the European Union ("EU") has created a COVID certificate to identify persons who, according to the present science, are at reduced risk of transmitting COVID-19. https://tinyurl.com/3cb8rsm4 (last visited January 20, 2022).

A person qualifies for the Certificate by having been vaccinated against COVID-19, having received a negative test or by having "recovered from COVID." Recovery from COVID-19 is proven by having had a positive PCR test, such as the positive PCR test of Dr. Skoly. The European Union Certificate is accepted by the nations of the EU (e.g., France, Germany, Italy, Poland, Holland) and thirty-three other countries, including Great Britain, Israel, Switzerland, and Singapore.

It is increasingly acceptable among democracies to treat similarly the two types of immunity, recovered (natural) and vaccine-induced.

As the Israeli tourist website explains, "IF YOU HAVE RECOVERED: Recovered people can enter Israel, provided they carry a digital certificate of recovery that can be digitally verified by the Israeli Ministry of Health, based on a positive result in a NAAT test (PCR and similar molecular tests}." https://tinyurl.com/3b9km5ej (last visited January 20, 2022).

The predicate of the EU Certificate is solid science: Naturally acquired immunity developed after recovery from COVID-19 provides robust protection from subsequent SARS-CoV-2 infection. Declaration of Drs. Jayanta Bhattacharya and Martin Kulldorff, ("Joint Decl.") ¶¶ 15-24, Exhibit N; 12/20/2021 Declaration of Dr. Jayanta Bhattacharya ("Bhattacharya Decl.") ¶¶ 12-31, Exhibit O.

Naturally acquired immunity is at least as effective as immunity acquired through vaccination. A study from Israel released several months ago found that *vaccinated* individuals

had 13.1 times greater risk of testing positive, twenty-seven times greater risk of symptomatic disease, and around 8.1 times greater risk of hospitalization than unvaccinated individuals who possess naturally acquired immunity. Joint Decl. ¶ 20.

Other Israeli data has found that those who had received the BioNTech vaccine were 6.72 times *more likely* to suffer a subsequent infection than those with natural immunity. David Rosenberg, *Natural Infection vs Vaccination: Which Gives More Protection*? ISRAELNATIONALNEWS.COM (Jul. 13, 2021), available at https://www.israelnationalnews.com/News/News.aspx/309762 (last visited January 20, 2022).

These findings of highly durable natural immunity should not be surprising, as they hold for SARS-CoV-1 and other respiratory viruses. According to a paper published in *Nature* in August 2020, 23 patients who had recovered from SARS-CoV-1 still possess CD4 and CD8 T cells, 17 years after infection during the 2003 epidemic.[2] A *Nature* paper from 2008 found that 32 people born in 1915 or earlier still retained some level of immunity against the 1918 flu strain—some 90 years later.[3] Bhattacharya Decl. ¶ 20.

A CDC/IDSA clinician call on July 17, 2021, summarized the then-current state of the knowledge regarding the comparative efficacy of natural and vaccine immunity. The presentation reviewed three studies that directly compared the efficacy of prior infection versus mRNA vaccine treatment and concluded "the protective effect of prior infection was similar to 2 doses of a COVID-19 vaccine."

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[2] Le Bert, N., Tan, A. T., Kunasegaran, K., Tham, C. Y. L., Hafezi, M., Chia, A., Chng, M. H. Y., Lin, M., Tan, N., Linster, M., Chia, W. N., Chen, M. I. C., Wang, L. F., Ooi, E. E., Kalimuddin, S., Tambyah, P. A., Low, J. G. H., Tan, Y. J. & Bertoletti, A. (2020). SARS-CoV-2-specific T cell immunity in cases of COVID-19 and SARS, and uninfected control. *Nature*, 584, 457-462. doi: 10.1038/s41586-020-2550-z (last visited January 20, 2022).

[3] Yu, X., Tsibane, T., McGraw, P. A., House, F. S., Keefer, C. J., Hicar, M. D., Tumpey, T. M., Pappas, C., Perrone, L. A., Martinez, O., Stevens, J., Wilson, I. A., Aguilar, P. V., Altschuler, E. L., Basler, C. F., & Crowe Jr., J. E. (2008). Neutralizing antibodies derived from the B cells of 1918 influenza pandemic survivors. *Nature*, 455, 532-536. doi: 10.1038/nature07231(last visited January 20, 2022).

New variants of COVID-19 resulting from the virus's mutation do not escape the natural immunity developed by prior infection from the original strain of the virus. Joint Decl. ¶¶ 29-33; Bhattacharya Decl. ¶ 17.

When creating the Regulation, RIDOH relied on a study from Kentucky to downplay the value of natural immunity. The study suggested that those with naturally acquired immunity should still get vaccinated.

The RIDOH's reliance on the Kentucky study is misdirected. As Drs. Bhattacharya and Kulldorff explain, although individuals with naturally acquired immunity who received a vaccine showed somewhat increased antibody levels, "[t]his does not mean that the vaccine increases protection against symptomatic disease, hospitalizations or deaths." Joint Decl. ¶ 37. Higher antibody levels do not necessarily translate into a clinical benefit. Nor does any study demonstrate that boosting a naturally immune person's antibody levels via vaccination reduces transmission.

The Kentucky study is also problematic because it appears to be cherry-picked. The CDC gathered data on this subject from all fifty states but seems to have chosen to draw attention to the one state that yielded data that it could represent as supporting its position. *See* Marty Makary, *Covid Confusion at the CDC*, THE WALL STREET JOURNAL (Sept. 13, 2021), available at 14 https://www.wsj.com/articles/covid-19-coronavirus-breakthrough-vaccine-natural-immunitycdc-fauci-biden-failure-11631548306 (last visited January 20, 2022).

More recently, and accurately, the CDC has noted that: "[a] systematic review and meta-analysis including data from three vaccine efficacy trials and four observational studies from the US, Israel, and the United Kingdom, found no significant difference in the overall level of protection provided by infection as compared with protection provided by vaccination; this included studies from both prior to and during the period in which Delta was the predominant

variant." "Science Brief: SARS-CoV-2 Infection-induced and Vaccine-induced Immunity," *CDC* (Oct. 29, 2021), *available at* https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/vaccine-induced-immunity.html (last visited January 20, 2022).

Current research continues to confirm that protection is conferred by immunization, whether from prior infection or vaccination.

In a January 12, 2022 research paper posted from South Africa—the source of the current Omicron wave—South African epidemiologists concluded that "In the Omicron-driven wave, severe COVID-19 outcomes were reduced mostly due to protection conferred by prior infection and/or vaccination …" Outcomes of laboratory-confirmed SARS-CoV-2 infection in the Omicron-driven fourth wave compared with previous waves in the Western Cape Province, South Africa medRxiv, https://www.medrxiv.org/content/10.1101/2022.01.12.22269148v1.full.pdf at page 4 (last visited January 20, 2022).

In its November 5, 2021, Interim Rule on COVID-19 vaccination, the Centers for Medicare & Medicaid Services (CMS) acknowledged the effectiveness of naturally acquired immunity. Referring to the "100,000 a day [who] have recovered from infection," CMS described these naturally immune people as "no longer sources of future infection." 86 FR 61555, at 61604.

The context of the CMS statement was its understanding that herd immunity would be achieved through a combination of two types of immunity—that of the COVID recovered (natural immunity) and that of the vaccinated. 86 FR 61555, at 61604.

CMS's acknowledgement that natural immunity is at least as effective as vaccination is a correct statement of the present status of scientific knowledge. The CDC has no documentation of even a single case of a COVID-19-recovered, unvaccinated individual spreading the virus to another person. *See* 11/5/21 Letter of Roger Andoh in Response to FOIA Request, Exhibit P.

In fact, mere days ago, CDC acknowledged that naturally acquired immunity provides greater protection than vaccination against reinfection. This constitutes a reversal of its previous position, refusing to recognize natural immunity and insisting (in the face of all the evidence to the contrary) that vaccination confers superior protection. *See* "COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis," *CDC* (Jan. 19, 2022), *available at* https://tinyurl.com/348anr53 (last visited Jan. 20, 2022), and Makary Marty, "The High Cost of Disparaging Natural Immunity to COVID," THE WALL STREET JOURNAL (Jan. 26, 2022) https://tinyurl.com/2fmdsurc (last visited Jan. 27, 2022).

When Dr. Skoly asked the RIDOH whether there was any evidence in Rhode Island of a COVID-recovered person who was re-infected and then infected a third person, RIDOH refused to answer. Rhode Island Department of Health Response to Request for Production of Documents, No. 4, Exhibit Q. The RIDOH reports all its data to the CDC. Therefore, it may be inferred that there is no evidence in Rhode Island of a COVID-recovered person who was re-infected and then infected a third person.

As the current Omicron wave has shown, the vaccinated do contract COVID and transmit COVID to third parties.

Based on the currently available science, Dr. Skoly—because of his naturally acquired immunity—poses no greater infection risk to a vulnerable patient than that posed by a vaccinated doctor. In fact, if the vaccinated doctor in question received the Janssen vaccine (or one of the inferior WHO-approved foreign vaccines), Dr. Skoly presents significantly less risk.

The infection risk that Dr. Skoly presents is smaller than that presented by the unvaccinated worker (exempt for medical or religious reasons), and smaller than that presented by COVID-19 infected health care workers now working in the close physical presence of patients.

Under these circumstances, it is arbitrary and capricious to prevent Dr. Skoly from practicing medicine while N95 masked.

V. THE STATE'S CONDUCT HAS CAUSED SIGNIFICANT HARM AND THREATENS FURTHER DAMAGE

That Rhode Island has barred Dr. Skoly from treating patients has significantly and adversely affected the people of Rhode Island. In a State with a desperate shortage of medical services, Dr. Skoly's distinguished medical career has been suspended, and his facility shuttered. His ten employees have been rendered unemployed.

In fact, the Defendants have gone so far in their mission to punish people like Dr. Skoly, who decline the vaccine even though they are naturally immune, that Defendants are endangering vulnerable patients by permitting individuals with active COVID-19 infections to treat vulnerable patients.

Defendants' policy of letting the infected treat the vulnerable is the direct result of a shortage of healthcare workers resulting from Defendants' termination of unvaccinated employees. "COVID positive employees can work after Eleanor Slater Hospital declares staffing 'crisis,'" THE PROVIDENCE JOURNAL, January 3, 2022, Exhibit L.

Dr. Skoly's patients have suffered from an absence of needed medical services. The patients are numerous: Eight hundred private patients a month and dozens of State patients (the residents of Eleanor Slater Hospital and ACI).

Dr. Skoly's medical practice has a backlog of hundreds of private patients suffering due to lack of treatment. In addition, Eleanor Slater and ACI have a list of twenty institutionalized patients

needing immediate dental surgery. There are also charity patients whom Dr. Skoly has been prohibited from treating. Xifaras Decl. ¶¶ 23-24; McLaren Decl.; Shihadeh Decl. ¶11.

The harm to these patients is the direct consequence of the Defendants not allowing Dr. Skoly to practice medicine under the same conditions as unvaccinated health care workers exempt for medical or religious reasons.

ARGUMENT

Rule 65(a) of the Federal Rules of Civil Procedure allows a court to issue a preliminary injunction after notice has been provided to an adverse party. A preliminary injunction is appropriate if: (1) there is a substantial likelihood of success on the merits; (2) it is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) the preliminary injunction would not be averse to the public interest. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 190-91 (4th Cir. 2013); *MicroStrategy, Inc., v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc*. 102 F.3d 12, 15 (1st Cir. 1996).

I. PLAINTIFF HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. The Compliance Order Violates Plaintiff's Right to Equal Protection of the Law

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the laws."

Under the Equal Protection Clause, state and local governments and government officials may not arbitrarily discriminate among citizens, denying without justification rights or benefits to

some citizens that are made available to other similarly situated citizens. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 472 U.S. 432 (1985).

Defendants have violated and are violating Dr. Skoly's rights under the Equal Protection Clause by preventing Dr. Skoly from practicing medicine while allowing identically situated health care workers to be in the presence of patients.

Patient protection is the exclusive stated justification of the Regulation mandating vaccines for health care workers. As far as patient protection is concerned, the Defendants have acknowledged that a strict N95 masking mandate is an acceptable substitute for a vaccine. The Defendants' acknowledgement of this fact is why unvaccinated health care workers—with medical or religious exemptions—may treat vulnerable patients.

The N95 mask is such a surety of patient protection that the Defendants even allow a health care worker (vaccinated) with an active COVID-19 infection to work in the close presence of vulnerable patients so long as the infected worker wears a mask.

The determinative factor by which Defendants have decided to allow a health care worker to be in close proximity to a patient is not whether the worker is vaccinated or unvaccinated, or healthy or infected with COVID-19. Except for Dr. Skoly, the Defendants' determinative factor in allowing the worker to practice his profession is whether the worker is N95 masked.

There is no rational basis for treating the masked, unvaccinated Dr. Skoly worse than the masked, unvaccinated health care worker with a medical or religious exemption, or the masked worker with an active infection. If the Defendants have determined that the N95 mask protects the patient when the worker is healthy or infected, there is no rational basis for Defendants to act as if the N95 mask when worn by Dr. Skoly will not similarly protect the patient.

Punishing someone for noncompliance with an arbitrary, irrational rule is not a valid justification for that rule.

Yet, the Defendants allow the masked exempt worker, and the masked infected worker, to retain their livelihoods while imposing on Dr. Skoly a bar from practicing his profession. This arbitrary, irrational, and discriminatory treatment violates Dr. Skoly's fundamental right to equal protection of the law under the Fourteenth Amendment of the Constitution.

B. The Compliance Order Violates Dr. Skoly's Right to Due Process of Law

The Due Process Clause of the Fourteenth Amendment provides that no State "shall deprive any person of life, liberty, or property, without due process of law." The "touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). Dr. Skoly has a liberty interest in pursuing the profession in which he was trained, and that he has practiced, for forty years.

The oft-cited Supreme Court case that acknowledges state police power to require vaccination also observes that the requirement may be "so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression." *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 38 (1905). The "judiciary is always competent to interfere and protect the health and life of the individual concerned," to determine if a person "is not at the time a fit subject of vaccination." *Id*., at 39.

This case warrants judicial intervention.

The onset of Bell's Palsy paralysis is a known risk of COVID-19 vaccination. Pappas Decl. ¶¶ 6 to 17; VAERS (Vaccine Adverse Events Report), Exhibit M (In Rhode Island in 2021, sixteen reports of an onset of facial paralysis after being vaccinated). For Dr. Skoly, paralysis is not a general risk but a specific risk. He has a history of Bell's Palsy facial paralysis. Pappas Decl. ¶¶ 3

to 5; Skoly Decl. ¶¶ 5 to 6. This means that Dr. Skoly has the paralysis virus dormant in his body. Pappas Decl. ¶ 10 ("Most scientists" believe that Bell's Palsy paralysis results from the re-activation of a virus that is "dormant" in a person's body).

The specific, science-based danger confronting Dr. Skoly is that vaccination will re-awaken the paralysis dormant in his body. Were the dormant paralysis to recur, the re-activated paralysis could be permanent. Pappas Decl. ¶ 10, citing the research of the National Institute of Neurological Disorders and Strokes ("NIH"), https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Bells-Palsy-Fact-Sheet (last visited January 20, 2022). In effect, Defendants are telling Dr. Skoly that, to continue to be a doctor in Rhode Island, he must run the risk of permanent facial paralysis.

Given Dr. Skoly's history, the risk of the vaccine igniting a recurrence of his dormant facial paralysis makes Dr. Skoly not "a fit subject of vaccination." *Jacobson*, at 39. Under these circumstances, the Defendants have denied Due Process to Dr. Skoly by refusing to give him a medical exemption.

Defendants' refusal to allow Dr. Skoly a medical exemption is particularly capricious since N95 masking—an alternative to the vaccine—is accepted by Defendants as a protective measure to be used by health care workers who are (for medical or religious reasons) exempt from the vaccine mandate.

Defendants' refusal to grant an exemption also lacks a rational basis because it ignores Dr. Skoly's naturally acquired immunity.

Because of his naturally acquired immunity, the infection risk that Dr. Skoly presents to a vulnerable patient is no greater than that presented by a vaccinated doctor, certainly smaller than that presented by the unvaccinated worker (exempt for medical or religious reasons), and

drastically smaller than that presented by the COVID-19 infected health care workers now being permitted to work in close physical proximity of patients because people like Dr. Skoly are not permitted to practice medicine.

Not acknowledging Dr. Skoly's risk of a Bell's Palsy recurrence as a valid basis for a medical exemption, and forcing him to forfeit his medical practice on these grounds, denies him his fundamental right to Due Process under the Fourteenth Amendment.

The Defendants' conduct is so "arbitrary and oppressive" as to warrant, as the *Jacobson* court advised, the protective intervention of a court.

II. DR. SKOLY WILL SUFFER IRREPARABLE HARM ABSENT A TEMPORARY RESTRAINING ORDER

To satisfy the irreparable harm requirement, Plaintiff need only demonstrate that absent a preliminary injunction, he is "likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter v. NRDC*, 555 U.S. 7, 22 (2008) (citation omitted). "An injury is 'irreparable' only if it cannot be undone through monetary remedies." *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987). The deprivation of a constitutional right, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also Hernandez v. Sessions,* 872 F.3d 976, 994 (9th Cir. 2017) (holding "government's policies are likely unconstitutional," since "Plaintiffs have also carried their burden as to irreparable harm"); *Centro Tepeyac v. Montgomery County*, 722 F.3d at 190-91 (upholding grant of preliminary injunction, and finding irreparable harm based on county ordinance that infringed upon First Amendment rights); *Giovani Carandonola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) ("loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes

irreparable injury") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Greater Baltimore Bd. of Realtors v. Hughes*, 596 F.Supp. 906, 924 (D. Maryland 1984) ("court will follow the majority rule and hold that if plaintiffs are able to demonstrate a loss of constitutional rights, they will have met the irreparable injury requirement").

The Defendants have ended Dr. Skoly's medical career. *See Giovani*, 303 F.3d at 521 (upholding grant of preliminary injunction where plaintiff "faces threat of a substantial fine and temporary suspension of its license on the basis of past conduct, and prospectively [*sic*], the loss of valuable business opportunities"); *Jessen v. Village of Lyndon Station*, 519 F.Supp, 1183, 1189 (W.D. Wis. 1981) (finding irreparable injury where plaintiff stood to lose a property right without due process); *Central Alabama Paving, Inc. v. James*, 499 F.Supp. 629 (M.D. Ala. 1980) (deprivation of equal protection sufficient to sustain finding of irreparable injury).

Defendants' conduct constitutes a direct and unequivocal infringement upon Dr. Skoly's constitutional rights, and he need make no additional showing to establish irreparable injury.

III. THE BALANCE OF EQUITIES WEIGHS HEAVILY IN PLAINTIFF'S FAVOR

A preliminary injunction is proper when "the balance of equities tips in [a party's] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435.

"[T]here is a strong public interest in requiring that the plaintiffs' constitutional rights no longer be violated[.]" *Laube v. Haley*, 234 F.Supp. 2d 1227, 1252 (M.D. Ala. 2002); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."); *Republican Party of Minn. v. White*, 416 F.3d 738, 753 (8th Cir. 2005) ("It can hardly be argued that seeking to uphold a constitutional

protection ... is not per se a compelling state interest."); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) ("The vindication of constitutional rights ... serve[s] the public interest almost by definition.")

The ongoing and continuing injury to Dr. Skoly is the ending of his medical career. That injury outweighs any damage the proposed TRO may cause Defendants. The worst that will happen should the TRO be granted is that Dr. Skoly will provide necessary health care while wearing an N95 mask, just like the hundreds of unvaccinated workers whom Defendants have exempted from the vaccine mandate: Instead of 365 exempt masked workers, there will be 366. The potential damage to Defendants is nothing.

IV. GRANTING THE TEMPORARY RESTRAINING ORDER IS IN THE PUBLIC'S INTEREST

That Rhode Island has barred Dr. Skoly from treating patients has significantly and adversely affected the people of Rhode Island. In a State with a desperate shortage of medical services, Dr. Skoly's distinguished medical career has been ended, and his facility shuttered. His ten employees have been rendered unemployed.

Dr. Skoly's patients have suffered from an absence of needed medical services. The patients are numerous: Eight hundred private patients a month and dozens of State patients (the residents of Eleanor Slater Hospital and ACI).

Dr. Skoly's medical practice has a backlog of hundreds of private patients suffering due to lack of treatment. In addition, Eleanor Slater and ACI have a list of twenty institutionalized patients needing immediate dental surgery. There are also charity patients whom Dr. Skoly has been prohibited from treating. Xifaras Decl. ¶¶ 23-24; McLaren Decl.; Shihadeh Decl. ¶11.

Should the TRO issue, Dr. Skoly is confident that he can re-assemble a skeleton staff and begin performing the most necessary surgeries (for all patients, including those at Eleanor Slater and the penitentiary), with 48 hours of the issuance of a TRO. He will prioritize treatment to the most needy.

CONCLUSION

For the reasons set out above, the Court should enjoin the Defendants from barring Dr. Skoly from practice, beginning with a temporary restraining order.

February 3, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2022, I caused to be sent via email a true and accurate copy of the within Motion for a Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support to attorneys for the following parties:

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