

Defendants have waived it; the Religious Freedom Restoration Act and the First Amendment claims (Counts I and II) do not require exhaustion; this AFBCMR argument is yet another delay tactic; applicable regulations, procedures, and policies do not require that Plaintiffs apply to the AFBCMR; even if application to the AFBCMR were in some sense required (which it is not), it would be futile to do so; the caselaw does not support Defendants' position; and Defendants do not and cannot claim Plaintiffs failed to exhaust as to their Administrative Procedure Act (APA) natural-immunity claim (Count III).

In accordance with Local Rule 7.3.1(C), the proposed surreply does not accompany this motion, but Plaintiffs are prepared to file the surreply promptly if the Court grants the motion.¹

WHEREFORE, Plaintiffs request that the Court grant them permission to file their proposed surreply pursuant to Local Rule 7.3.1(C).

¹ The full text of Local Rule 7.3.1(C) is: "A party desiring to file a surreply brief must move in writing for permission to do so within fourteen (14) days of the filing of the brief to which reply is desired, succinctly specifying the reasons why additional briefing is necessary. The proposed surreply brief shall not accompany the motion and no response to the motion by the opposing party shall be allowed."

Dated: April 27, 2022

Respectfully submitted,

/s/ Adam S. Hochschild

Stephen Crampton, *pro hac vice*
THOMAS MORE SOCIETY – Senior Counsel
PO Box 4506
Tupelo, MS 38803
(662)255-9439
scrampton@thomasmoresociety.org

Michael R. Hirsh, GA #357220
Hirsh Law Office, LLC
2295 Towne Lake Parkway
Suite 116-181
Woodstock, GA 30189
(678)653-9907
michael@hirsh.law

Adam S. Hochschild, *pro hac vice*
Hochschild Law Firm
THOMAS MORE SOCIETY – Special Counsel
PO Box 401
Plainfield, VT 05667
(314)503-0326
adam@hochschildlaw.com

Mary Catherine Hodes, *pro hac vice*
THOMAS MORE SOCIETY – Special Counsel
112 S. Hanley Rd., Second Floor
Clayton, MO 63105
(314)825-5725
mchodes@thomasmoresociety.org

Michael McHale, *pro hac vice*
THOMAS MORE SOCIETY – Counsel
10506 Burt Circle, Ste. 110
Omaha, NE 68114
(402)501-8586
mmchale@thomasmoresociety.org

Paul M. Jonna, *pro hac vice*
LiMandri & Jonna LLP
THOMAS MORE SOCIETY – Special Counsel
P.O. Box 9520
Rancho Santa Fe, CA 92067
(858)759-994
pjonna@limandri.com

Counsel for Plaintiffs