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VIA STAFF ONLINE FORM

December 1, 2023

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

RE: Johnson & Johnson – 2024 Annual Meeting
Omission of Shareholder Proposal of
National Legal and Policy Center

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Johnson & Johnson, a New Jersey corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Johnson & Johnson’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by the National Legal and Policy Center (the “Proponent”) from the proxy materials to be distributed by Johnson & Johnson in connection with its 2024 annual meeting of shareholders (the “2024 proxy materials”).

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Johnson & Johnson’s intent to omit the Proposal from the 2024 proxy materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Johnson & Johnson.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

RESOLVED: Shareholders request the board of directors issue a report by March 31, 2025 about compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information, and should be published on the Company's website.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Johnson & Johnson's view that it may exclude the Proposal from the 2024 proxy materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to Johnson & Johnson's ordinary business operations.

III. Background

On October 17, 2023, Johnson & Johnson received the Proposal, accompanied by a cover letter dated October 13, 2023. On October 24, 2023, Johnson & Johnson sent a letter to the Proponent requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of Johnson & Johnson common stock continuously for at least the requisite period preceding and including the date of submission of the Proposal, to which the Proponent satisfactorily responded. Copies of the Proposal, cover letter and related correspondence are attached hereto as Exhibit A.¹

¹ Exhibit A omits correspondence between Johnson & Johnson and the Proponent that is irrelevant to this request, such as the aforementioned deficiency letter and subsequent response. See the Staff's "Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to Johnson & Johnson’s Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with matters relating to the company’s ordinary business operations.” In Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”). In addition, in Staff Legal Bulletin 14E (Oct. 27, 2009) (“SLB 14E”), the Staff noted that if a proposal relates to management of risks or liabilities that a company faces as a result of its operations, the Staff will focus on the “subject matter to which the risk pertains or that gives rise to the risk” in making a decision regarding whether a proposal can be properly excluded pursuant to Rule 14a-8(i)(7). Pursuant to SLB 14E, the Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report “describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making,” noting that the proposal related to the ordinary business matter of the “nature, presentation and content of programming and film production”).

The Staff has consistently permitted companies to exclude shareholder proposals under Rule 14a-8(i)(7) when, viewed in their entirety, those proposals focused primarily

Submissions and Related Materials” (Dec. 17, 2021), available at <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217>.

on management of a company's workforce. *See* 1998 Release (excludable matters "include the management of the workforce, such as the hiring, promotion, and termination of employees"); *see also, e.g., Apple Inc.* (Jan. 3, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the effects of the company's return-to-office policy on employee retention and the company's competitiveness); *Intel Corp.* (Mar. 18, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on the impact of the company's public display of the pride flag on current, past and prospective employees' view of the company as a desirable place to work); *Walmart, Inc.* (Apr. 8, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the company's board prepare a report evaluating discrimination risk from the company's policies and practices for hourly workers taking absences from work for personal or family illness, noting that the proposal "relates generally to the [c]ompany's management of its workforce").

More specifically, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of proposals that relate to general employee benefits. For example, in *Exelon Corp.* (Feb. 21, 2007), the Staff permitted the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company implement rules and regulations forbidding executives from establishing incentive bonuses that would require a reduction to employee retiree benefits. The company argued in part that "issues involving general employee and retiree benefits are perhaps one of the most fundamental employee issues companies . . . deal with on a day-to-day basis" and that "to the extent that the [p]roposal can be characterized as a request that [the company] and its subsidiaries provide a specified level of benefits to their respective retirees, this is exactly the sort of intrusion into the day-to-day authority of the [b]oard that is properly excluded under Rule 14a-8(i)(7)." In permitting the exclusion of the proposal, the Staff noted that "the thrust and focus of the proposal is on the ordinary business matter of general employee benefits." *See also, e.g., Dollar Tree, Inc.* (May 2, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "analyze and report on risks to its business strategy in the face of increasing labor market pressure," including, among other things, "how the [c]ompany's forward-looking strategy and incentives will enable competitive employment standards, including wages, benefits, and employee safety"); *McDonald's Corp.* (Feb. 19, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the "feasibility of extending the paid sick leave policy adopted in response to COVID19 [sic] . . . as a standard employee benefit"); *Walmart Inc.* (Mar. 12, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the company to study the "feasibility of providing two weeks of paid sick leave" as a standard employee benefit not limited to COVID-19); *ConocoPhillips* (Feb. 2, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal to eliminate pension plan offsets as "relating to [the company's] ordinary business operations (i.e., employee benefits)"); *International Business Machines Corp.* (Jan. 13, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a

report “examining the competitive impact of rising health insurance costs” including, among other things, “steps or policy options the [b]oard has adopted, or is currently considering” to reduce employee healthcare costs paid by the company, noting that the proposal relates to “[the company’s] ordinary business operations (i.e., employee benefits)”; *International Business Machines Corp.* (Jan. 2, 2001) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting cost of living allowances to the company’s retiree pensions as “relating to [the company’s] ordinary business operations (i.e., employee benefits)”). As demonstrated in these letters, a proposal focused primarily on general employee benefits is excludable under Rule 14a-8(i)(7).

In this instance, the Proposal, viewed in its entirety with the supporting statement, focuses on Johnson & Johnson’s management of its workforce along with general employee benefits, both of which are ordinary business matters. Specifically, the Proposal’s resolution requests a report about alleged gaps in Johnson & Johnson’s employee health benefits relating to gender reassignment surgery. The supporting statement claims that Johnson & Johnson “provides health benefits to employees who suffer gender dysphoria/confusion,” citing Johnson & Johnson’s provision of employee benefits that cover “surgery to change the sex of any employee diagnosed with gender identity disorder,” but that “appears to offer no . . . insurance coverage in its employee benefits” for “detransitioners” or “restorative health care.” Moreover, the resolution asks a report addressing, among other things, “risks related to recruiting and retaining diverse talent” based on Johnson & Johnson’s employee health benefits policy. The Proposal thus focuses on how Johnson & Johnson manages its workforce and, specifically, the types of health benefits and aspects of coverage within those benefits that are available to Johnson & Johnson employees.

The Proposal’s supporting statement contains assertions related to transgender care generally, but these statements relate only to the Proposal’s focus on general employee benefits. Decisions with respect to Johnson & Johnson’s policies for managing its sizable and global workforce are at the heart of Johnson & Johnson’s business as a global healthcare products company and are so fundamental to Johnson & Johnson’s day-to-day operations that they cannot, as a practical matter, be subject to shareholder oversight. In this regard, specific employee benefits and coverage considerations for Johnson & Johnson’s large global workforce, which the Proposal focuses on, are precisely the types of employee management decisions that are fundamental to Johnson & Johnson’s ordinary business operations. Therefore, consistent with the precedent described above, the Proposal is excludable under Rule 14a-8(i)(7).

We note that a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue. The fact that a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the proposal focuses primarily on a

matter of broad public policy versus matters related to the company's ordinary business operations. *See* 1998 Release; SLB 14E. The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. As discussed above, in *Walmart Inc.* (Apr. 8, 2019), the excluded proposal requested that the board prepare a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related generally to the company's management of its workforce and "[did] not focus on an issue that transcends ordinary business matters." *See also, e.g., Amazon.com, Inc.* (Apr. 8, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's workforce turnover rates and the effects of labor market changes that have resulted from the COVID-19 pandemic, noting that the proposal "relates to ordinary business matters and does not focus on significant social policy issues"); *JPMorgan Chase & Co.* (Mar. 25, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on pay and total estimated compensation for each role with certain specific break-downs and ranges, noting that the proposal "relates to ordinary business matters and does not focus on sufficiently significant social policy issues"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

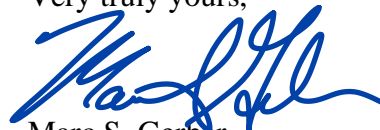
Here, the Proposal's overwhelming concern with Johnson & Johnson's management of its workforce and general employee benefits demonstrates that the Proposal's focus is on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

Accordingly, the Proposal should be excluded from Johnson & Johnson's 2024 proxy materials pursuant to Rule 14a-8(i)(7) as relating to Johnson & Johnson's ordinary business operations.

V. Conclusion

Based upon the foregoing analysis, Johnson & Johnson respectfully requests that the Staff concur that it will take no action if Johnson & Johnson excludes the Proposal from its 2024 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Johnson & Johnson's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Marc Larkins
Worldwide Vice President, Corporate Governance & Corporate Secretary
Johnson & Johnson

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center

EXHIBIT A

(see attached)



NATIONAL LEGAL AND POLICY CENTER

October 13, 2023

Office of the Corporate Secretary
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

VIA UPS:

Dear Corporate Secretary:

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in Johnson & Johnson’s (“Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission’s proxy regulations.

National Legal and Policy Center (NLPC) is the beneficial owner of 27 shares of the Company’s common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company’s next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to produce a report on Gender-Based Compensation Gaps and Associated Risks. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal any business day Monday through Friday between October 23 and November 14, between the hours of 9:00 a.m. and 5:00 p.m. in the Eastern Time Zone (U.S.). I can be reached at [REDACTED] or at [REDACTED].

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me at [REDACTED].

Nat’l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "Paul Chesser". The signature is written in a cursive style with a large, looping initial "P".

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Gender-Based Compensation Gaps and
Associated Risks" proposal

Gender-Based Compensation Gaps and Associated Risks

WHEREAS: Compensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at large.

The United States Department of Labor states that “equal pay” is required if persons of different genders “perform equal work in the same workplace,” and that “all forms of compensation are covered, meaning not only pay, but also benefits.”¹ The U.S. Equal Employment Opportunity Commission adds:²

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.

SUPPORTING STATEMENT: Johnson & Johnson (“Company”) provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments, offering “coverage for surgery to change the sex of any employee diagnosed with gender identity disorder.”³ The Company boasts about its 100 percent score on the Human Rights Campaign’s Corporate Equality Index (“CEI”) and HRC’s designation as a “Best Places to Work for LGBTQ+ Equality.”⁴

Company policy *affirms* it is possible for dysphoria sufferers to transition to a different sex. Yet an increasing body of scientific evidence shows no benefits result from such treatments.⁵ In the United States and Europe, the medical community is increasingly cautious about transitioning therapies and surgeries.^{6 7}

Victims report transition treatments and surgeries are harmful. Examples include long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss or hair gain, menstrual irregularities, urinary problems, and other complications.⁸ Rather than resolve health problems, “gender affirming” therapies often exacerbate them.⁹ In such instances, those who

¹ <https://www.employer.gov/EmploymentIssues/pay-and-benefits/Equal-pay/>

² <https://www.eeoc.gov/prohibited-employment-policiespractices>

³ <https://www.careers.jnj.com/careers/what-makes-johnson-johnson-a-global-leader-in-diversity-inclusion>.

⁴ <https://belong.jnj.com/2022/>

⁵ <https://www.foxnews.com/politics/crenshaw-grills-dem-witness-failure-name-one-study-citing-benefits-surgeries-trans-kids>

⁶ <https://www.wsj.com/articles/second-thoughts-on-gender-affirming-care-american-academy-pediatrics-doctors-review-medicine-a7173276>

⁷ <https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0>

⁸ <https://www.dailymail.co.uk/health/article-11629421/Half-trans-surgery-patients-suffer-extreme-pain-sexual-issues-years-later.html>

⁹ <https://www.dailymail.co.uk/femail/article-12250695/I-trans-surgery-woman-19-four-years-later-Im-man.html>

desire to “detransition” cannot find medical care or insurance coverage, and are permanently mutilated.¹⁰ Many of these sufferers litigate against those who misled or harmed them.^{11 12}

HRC contemplates no accommodations for detransitioners or restorative health care for such individuals – instead, it denies there is need for such care.¹³ Hence, the CEI-perfect Company appears to offer no such insurance coverage in its employee benefits – only for so-called “gender-affirming care,” which includes a medical travel benefit.¹⁴ Detransitioners are protected under “gender identity” and “sexual orientation” EEOC categories and therefore cannot be discriminated against.

RESOLVED: Shareholders request the board of directors issue a report by March 31, 2025 about compensation and health benefit *gaps*, which should include how they address dysphoria and detransitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information, and should be published on the Company’s website.

¹⁰ <https://thefederalist.com/2023/02/10/detransitioners-are-being-abandoned-by-medical-professionals-who-devastated-their-bodies-and-minds/>

¹¹ <https://public.substack.com/p/why-this-detransitioner-is-suing>.

¹² <https://www.dailymail.co.uk/news/article-12310887/Young-North-Carolina-woman-sues-doctors-testosterone-age-17-saying-needed-therapy-not-double-mastectomy-latest-blockbuster-detransition-lawsuit.html>

¹³ <https://www.hrc.org/resources/myths-and-facts-battling-disinformation-about-transgender-rights>

¹⁴ <https://www.jnj.com/innovation/employee-benefits-that-help-make-johnson-johnson-a-great-company>