

Constitution Under Fire; New York Faith-Based Nursing Home Threatened With Shutdown

Liberty Counsel filed an amicus brief at the U.S. Supreme Court in support of a request for emergency relief for health care workers in a lawsuit against New York Gov. Kathy Hochul, former New York State Department of Health Commissioner Dr. Howard A. Zucker and New York Attorney General Letitia James over the state's unlawful COVID-19 shot mandate.

The brief was filed on behalf of Liberty Counsel's client referred to as "John Doe 1." He is president of the board of a faith-based senior living facility in New York that has been in operation for 50 years and currently provides religious-based care to 15 residents. Doe and his employees are seeking religious exemptions from New York Gov. Hochul's COVID shot mandate on health care workers.

John Doe 1's nursing home has one employee who received the COVID shots, while the rest of the staff object to the shots based on their religious convictions. If John Doe 1 does not fire his employees who want religious exemptions by Monday, Nov. 22, 2021, he will be subject to fines under the New York mandate. If he fires his staff, however, the nursing home will have to close, but state law forbids nursing homes from closing without relocating the residents, a move that would uproot the lives of people who are accustomed to the consistent and familiar surroundings and care they receive at Doe's facility. *Doe and his employees will neither violate their sincerely held religious beliefs nor unlawfully and immorally abruptly abandon their residents. As of Monday, the nursing home will be subject to fines and prosecution no matter what action it undertakes.*

On Aug. 16, 2021, Gov. Hochul announced that the state will require health care workers to accept or receive one of the three COVID-19 injections to remain employed in the health care profession. The “Mandatory COVID-19 Vaccination Policy” applies to health care workers in all “hospitals, nursing homes, diagnostic and treatment centers, adult care facilities, certified home health agencies, hospices, long-term home health care programs, AIDS home care programs, licensed home care service agencies and limited licensed home care service agencies.”

Though Gov. Hochul’s announcement initially indicated there would be “limited exceptions for workers with religious or medical reasons,” the state’s Public Health and Health Planning Council eliminated the exemption and accommodation for religious reasons on Aug. 26. In fact, under the rule change, the only exemptions permitted in New York will be for medical reasons documented by a physician or certified nurse practitioner.

The mandate without religious exemptions means Doe and his employees face the threat of incurring penalties or taking a shot that directly conflicts with their religious beliefs.

The choice before Doe is unconscionable and unconstitutional.

In addition, New York state officials cannot override federal law or the U.S. Constitution. New York’s purported guidance and attempts to remove federal protections and even religious exemptions available under federal law are causing direct and irreparable harm. In addition, all health care workers are protected by Title VII of the Civil Rights Act, which does allow for religious exemptions and accommodations, and mandates that employers provide them.

Liberty Counsel founder and Chairman Mat Staver said, “This mandate is a gross violation of the religious freedom of health care workers in New York. There can be no dispute that

New York is required to abide by federal law and the U.S. Constitution and provide protections to employees who have sincerely held religious objections to the COVID shots. What's more, Gov. Hochul has put our client in an unconscionable position without thought for the well-being of the residents in our client's care. Absent relief from the Supreme Court, our client, along with the other health care workers in the state, will suffer irreparable injury." {eo}

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