

Liberty Counsel Still in the Fight for Rights of Maine Health Care Workers

Following the Supreme Court's decision not to grant the extraordinary relief of an injunction pending appeal,, Liberty Counsel will file a petition for the Supreme Court to review the merits of the case on behalf of more than 2,000 Maine health care workers, some of whom were terminated today.

The Supreme Court needs to resolve the splits in the circuits and the lower courts. Only Maine, New York and Rhode Island have state executive orders banning employers from even considering the sincere religious beliefs of employees. Maine Gov. Janet Mills threatened to revoke the business license of any employer that granted an employee a religious exemption. Gov. Mills has ordered employers to disobey the federal law known as Title VII. However, states do not have the authority to order employers to disobey Title VII federal employment law that prohibits religious discrimination.

Liberty Counsel filed an emergency IPA on Oct. 18 asking the high court for immediate relief for these health care workers until it decides to review this case. Friday, the high court denied immediate relief from Maine Gov. Janet Mills' unconstitutional edict that mandates all health care workers to be fully "vaccinated" by today or be terminated.

In this decision, Justice Gorsuch dissented from the denial, along with Justice Thomas and Justice Alito. Gorsuch wrote, "Maine has adopted a new regulation requiring certain healthcare workers to receive COVID-19 vaccines if they wish to keep their jobs. Unlike comparable rules in most other states, Maine's rule contains no exemption for those whose sincerely held religious beliefs preclude them from accepting

the vaccination. The applicants before us are a physician who operates a medical practice and eight other healthcare workers. No one questions that these individuals have served patients on the front line of the COVID-19 pandemic with bravery and grace for 18 months now. Yet, with Maine's new rule coming into effect, one of the applicants has already lost her job for refusing to betray her faith; another risks the imminent loss of his medical practice. The applicants ask us to enjoin further enforcement of Maine's new rule as to them, at least until we can decide whether to accept their petition for certiorari. I would grant that relief."

"No one questions that protecting patients and healthcare workers from contracting COVID-19 is a laudable objective. But Maine does not suggest a worker who is unvaccinated for medical reasons is less likely to spread or contract the virus than someone who is unvaccinated for religious reasons. Nor may any government blithely assume those claiming a medical exemption will be more willing to wear protective gear, submit to testing, or take other precautions than someone seeking a religious exemption," wrote Gorsuch.

Gorsuch concluded his dissent: "This case presents an important constitutional question, a serious error, and an irreparable injury. Where many other states have adopted religious exemptions, Maine has charted a different course. There, healthcare workers who have served on the front line of a pandemic for the last 18 months are now being fired and their practices shuttered. All for adhering to their constitutionally protected religious beliefs. Their plight is worthy of our attention."

Justice Barrett, joined by Kavanaugh, concurred in the denial of injunctive relief, noting that the injunction pending a cert petition is an extraordinary request that would require the high court to rule on the merits before it had the opportunity for full briefing and argument.

Liberty Counsel founder and Chairman Mat Staver said, “This case is far from over. We will file a petition with the Supreme Court to review the merits of the case after full briefing and argument. The high court’s decision to not grant the emergency relief is not a ruling on the merits. Maine has no authority to order employers to disobey federal Title VII employment law. While we should ultimately prevail on the merits, the tragedy is that today many health care heroes are being terminated. Since 2019, Maine has suffered from a shortage of health care workers, and that shortage will increase as of today. The people who will suffer are not only the health care workers but patients who need care.” {eo}

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