

Maine Shot Mandate Case Races Through the Courts

Liberty Counsel filed the opening brief on the merits of the case at the First Circuit Court of Appeals on behalf of 2,000 health care workers against Governor Janet Mills, health officials of the Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention and five of Maine's largest hospital systems (MaineHealth; Genesis Healthcare of Maine, LLC; Genesis Healthcare, LLC; Northern Light Health Foundation and MaineGeneral Health) regarding the state's attempt to ignore federal law and remove religious exemptions and accommodations from unlawful COVID shot mandates.

The 1st Circuit ordered both parties to simultaneously file their merits briefs by 5:00 p.m. Monday. Even though the court denied the injunction pending appeal without stating any reason, the fact that the case is already fully briefed as of Monday, Oct. 18, is extraordinary. A final ruling will likely be issued next week.

Last Friday, Oct. 15, Liberty Counsel also filed an emergency injunction pending appeal with the U.S. Supreme Court. This case is now pending at both courts.

The order by Gov. Janet Mills directing employers to violate federal law is patently unconstitutional. Federal employment law (for all health care workers) and the First Amendment (for public health care workers) preempts state law. Gov. Mills is not above the law. New York Gov. Hochul released a similar executive order, but a federal court issued a statewide injunction finding that the order violated federal law.

Since COVID-19 first arrived in Maine, the plaintiffs have risen every morning, donned their personal protective

equipment and fearlessly marched into hospitals, doctors' offices, emergency rooms, operating rooms and examination rooms to provide quality health care to patients. Since all three of the currently available COVID-19 injections are developed and produced from, tested with, researched on or otherwise connected with aborted fetal cell lines, these plaintiffs' desire to continue to provide quality health care while still exercising their sincerely held religious beliefs by rejecting the shot.

However, Gov. Mills and health officials now think they can unlawfully override both Title VII employment law and the First Amendment Free Exercise clause and refuse health care workers' religious exemption claims.

On Aug. 17, 2021, MaineHealth denied Jane Doe 1's request for a religious exemption and accommodation. MaineHealth stated:

Please be advised that due to the addition of the COVID 19 vaccine to Maine's Healthcare Worker Immunization law announced by the governor in a press conference on 8/12/21, we are no longer able to consider religious exemptions for those who work in the state of Maine. This also includes those of you who submitting [sic] influenza exemptions as well. The State of Maine now requires all healthcare workers to be fully vaccinated by October 1st, which means you are two weeks beyond the completion of a COVID 19 vaccination series. (i.e., Both doses of the mRNA vaccine, or the single dose of J & J) as of that date.

You submitted a religious exemption; your request is unable to be evaluated due to a change in the law. Your options are to receive vaccination or provide documentation for a medical exemption to meet current requirements for continued employment.

On Aug. 20, 201, after receiving her first denial from MaineHealth, Jane Doe 1 responded to MaineHealth, stating:

My request for an exemption was made under federal law, including Title VII of the Civil Rights [Act] of 1964. The Constitution provides that federal law is supreme over state law, and Maine cannot abolish the protections of federal law. You may be interested in this press release from Liberty Counsel, and the demand letter they have sent to Governor Mills on this issue (which is linked in the press release). Regardless of what the Governor chooses to do, Franklin Memorial has a legal obligation under federal law to consider and grant my proper request for a religious exemption. Please let me know promptly if you will do so.

That same day, MaineHealth responded to Jane Doe 1 stating that federal law does not supersede state law or the governor's COVID-19 Vaccine Mandate and that MaineHealth would not be following federal law on the issue. Specifically, MaineHealth stated:

Although I cannot give legal guidance to employees, I can share MaineHealth's view that federal law does not supersede state law in this instance. The EEOC is clear in its guidance that employers need only provide religious accommodations when doing so does not impose an undue hardship on operations. Requiring MaineHealth to violate state law by granting unrecognized exemptions would impose such a hardship. As such, we are not able to grant a request for a religious exemption from the state mandated vaccine (emphasis added.)

In denying Jane Doe 5's religious exemption and accommodation request, MaineGeneral stated: "Allowing for a religious exemption would be a violation of the state mandate issued by Governor Mills. So, *unfortunately, that is not an option for us*" (emphasis added).

Liberty Counsel founder and Chairman Mat Staver said, "Maine does not have an option except to abide by federal law and

provide protections to employees who have sincerely held religious objections to the COVID shots. Governor Mills cannot override federal law and force health care workers to violate their sincerely held religious beliefs by forcing them to inject an experimental substance. All Maine health care workers have the legal right to request reasonable accommodation for their sincerely held religious beliefs, and forcing COVID shots without exemptions is unlawful. These superheroes should not be treated as villains.” {eo}

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