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NCLA Amicus Brief Urges Supreme Court to Confront Religious Inequality in Admin. Policymaking

Dr. A, et al. v. Kathy Hochul, Governor of New York, et al.

Washington, DC (March 18, 2022) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in *Dr. A, et al. v. Kathy Hochul, et al.*, encouraging the U.S. Supreme Court to grant review and hold that New York’s administrative Covid-19 vaccine mandate for healthcare workers denies the free exercise of religion to the Petitioners by allowing secular exemptions while denying religious ones. New York’s policy is inherently unequal, prejudiced, and violative of the Free Exercise Clause of the First Amendment. Although the discriminatory administrative policy at issue in this case came with blatantly prejudicial attitudes expressed by Governor Hochul, the case provides a vehicle for the Court to address the inherent inequality of all administrative rulemaking for many religious Americans.

On August 18, 2021, the New York Department of Health proposed an emergency Covid-19 vaccination mandate for healthcare workers. The original proposal included mandatory exemptions for those with either religious or medical reasons for not taking the vaccine. In a shocking reversal, three days later, the State’s Public Health and Health Planning Council—an advisory committee headed by the Commissioner of the Department of Health—proposed a revised mandate, this time with no religious exemption.

Governor Hochul explained that a religious exemption is not needed because true believers would get vaccinated. She [acknowledged](#) that “we left off [the religious exemption] in our regulations intentionally.” She provided no scientific or legal basis for this intentional omission, explaining instead that there was no “sanctioned religious exemption from any organized religion” and that organized religions are “encouraging the opposite.”

An essential element of republican government is to have policies adopted via laws made by a representative legislature that is elected by, and thus responsive to, the people, including religious minorities. Instead, New York imposed its healthcare worker vaccine policy through an administrative body that is unelected and thus unresponsive, and even institutionally prejudiced against orthodox or traditional religion—in this case led by a governor expressly prejudiced against petitioners’ religious views.

New York’s health bureaucrats have already deemed it reasonable and risk-justified to allow unvaccinated healthcare workers with non-religious, medical objections to the vaccine to work in person and treat patients, provided such workers follow certain test-and-mask requirements. But they forbid the same test-and-mask accommodation for healthcare workers with religious objections to the vaccine. There is no compelling reason for this unequal treatment because tested and masked unvaccinated workers present the same (low) risk of carrying and transmitting Covid-19 regardless of why they are unvaccinated. New York’s Department of Health even allows healthcare workers who are infected with Covid-19 and actively exhibiting symptoms to return to work in person and treat patients, provided such infected workers are vaccinated and wear N95 or KN95 masks.

The Supreme Court should grant the petition for *certiorari* and confront the religious inequality present in administrative policymaking. The ubiquity of discriminatory administrative edicts and the magnitude of the civil liberties they violate compels the Court to act.

NCLA released the following statements:

“Governor Hochul said the quiet part out loud when she condemned religious objectors for not adhering to dogma she deems acceptable. Countless unelected bureaucrats across the country silently share her disdain for non-mainstream religious views. That silence, however, neither prevents nor excuses systematic administrative discrimination against religious Americans. The only way to restore religious liberty and equality is for the courts to set aside such prejudiced policies, thereby taking lawmaking power away from unelected bureaucrats and handing it back to elected legislators.”

— **Sheng Li, Litigation Counsel, NCLA**

“This case exemplifies a fundamental problem with the administrative state. Those who make policy through the administrative process often look down on those impacted by their policies. That contrasts with legislatures, comprised of elected officials who are accountable to, and representative of, the public.”

— **Jenin Younes, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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