

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CHERYL FERRELLI, JEANMARIE TROJAN,
EILEEN CREIGHTON, LINDA RUKAVINA
and JOSETTE ALTOBELLI,

Plaintiffs,

-v.-

STATE OF NEW YORK UNIFIED COURT
SYSTEM, NANCY J. BARRY and
JUSTIN A BARRY,

Defendants.
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**VERIFIED COMPLAINT AND
JURY DEMAND**

Case No.: 1:22-CV-0068 (LEK/DJS)

Plaintiffs CHERYL FERRELLI, JEANMARIE TROJAN, EILEEN CREIGHTON,
LINDA RUKAVINA and JOSETTE ALTOBELLI, by their attorneys, The Law Offices of
Sheldon Karasik, P.C., as and for their Complaint against Defendants STATE OF NEW YORK
UNIFIED COURT SYSTEM, NANCY J. BARRY and JUSTIN A. BARRY state as follows:

THE PARTIES

1. Plaintiff CHERYL FERRELLI is an individual residing in Suffolk County, New York.
2. Plaintiff JEANMARIE TROJAN is an individual residing in Suffolk County, New York.
3. Plaintiff EILEEN CREIGHTON is an individual residing in Suffolk County, New York.
4. Plaintiff LINDA RUKAVINA is an individual residing in Suffolk County, New York.

5. Plaintiff JOSETTE ALTOBELLI is an individual residing in Albany County, New York.

6. Defendant UNIFIED COURT SYSTEM (“NYUCS”) is an administrative subdivision of the STATE OF NEW YORK responsible for supervision and management of the State’s trial and appellate court system, and maintains its headquarters in the capital of New York at 4 ESP, Suite 2001, Empire State Plaza, Albany, NY, 12223.

7. Defendant NANCY J. BARRY is Chief of Operations for Defendant NYUCS, an officer of the State of New York acting under color of State law, and upon information and belief is based in Albany, New York and resides in the State of New York.

8. Defendant JUSTIN A. BARRY is Chief of Administration for Defendant NYUCS, Unified Court System, an officer of the State of New York acting under color of State law, and upon information and belief is based in Albany, New York and resides in the State of New York.

JURISDICTION AND VENUE

9. Jurisdiction in this Court is based upon the litigation of a federal question pursuant to 28 U.S.C. §1331, as Plaintiffs allege that their right to freedom of religious expression guaranteed by the First Amendment of the U.S. Constitution was violated by Defendants as prohibited by federal statute, including but not limited to 42 U.S.C. §1983.

10. Venue is proper because Defendants’ headquarters are located in Albany, New York, in this federal district. Venue is also proper because Plaintiff Altobelli resides in Albany County.

BACKGROUND

11. Plaintiffs are four court reporters and one senior law reporting assistant employed by NYUCS in the State of New York.

12. Plaintiffs were informed by NYUCS that they had to be vaccinated for COVID-19 in order to keep their jobs.

13. Plaintiffs informed NYUCS with appropriate documentation that their religious beliefs prohibited them from being vaccinated. They agreed to all necessary masking, social distancing and testing measures that would eliminate all but *de minimus* risk that they could transmit COVID-19. In addition, Defendants well knew that Plaintiff could carry out their duties via videoconferencing, entirely eliminating the risk of virus transmission.

14. In response, Defendants disparaged and rejected the religious beliefs of Plaintiffs and forced them to accept vaccination or give up their employment and careers.

Facts Relating to Plaintiff Ferrelli

15. Plaintiff Ferrelli is a certified court reporter who began her employment with NYUCS on or about November 3, 1993.

16. On or about September 10, 2021, NYUCS informed her that it would require her to be vaccinated for COVID-19 in order to continue to receive work assignments. The persons who informed Plaintiff about this requirement were Nancy J. Barry, Chief of Operations, and Justin A. Barry, Chief of Administration.

17. On or about October 18, 2021, Plaintiff Ferrelli provided Plaintiff with an application for a religious exemption from vaccination, including documentation that her religious beliefs did not permit vaccination. She used the form for applying for a religious exemption provided to her by NYUCS pursuant to its announced policy that such exemptions

could be granted. Plaintiff Ferrelli is a devout Christian, and she submitted a five-page signed written statement to NYUCS affirming her sincerely held religious belief that vaccination is inconsistent with the tenets of the Christian Bible, citing numerous specific provisions of the scripture which forbid vaccination.

18. Plaintiff Ferrelli informed NYUCS that she would maintain necessary social distancing and wear an appropriate face mask at any time that her duties required her to be in the presence of others. Moreover, Plaintiff informed NYUCS that she was fully able to carry out her duties via videoconferencing, which would likewise eliminate the risk of COVID-19 exposure.

19. On or about November 18, 2021, Defendants followed up by interrogating Plaintiff as to the legitimacy and sincerity of her religious beliefs. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person.

20. On December 1, 2021, Plaintiff responded to the request for supplemental information presented to her by NYUCS.

21. Plaintiff was embarrassed, humiliated and intimidated by NYUCS' aggressive actions challenging the validity of her religious beliefs, which demonstrated clear hostility to and bias against her because of her deeply and sincerely held religious beliefs.

22. On or about January 6, 2022, NYUCS denied Plaintiff Ferrelli's application for a religious exemption without providing a statement of reasons. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person. The decision to refuse to provide Plaintiff Ferrelli with further work assignments until she obtained proof of vaccination was made and/or approved and ratified by

Defendants Nancy Barry and Justin Barry. The notification permitted Plaintiff to continue working until date of vaccination as long as she was tested weekly for COVID-19 in the interim.

23. NYUCS granted other applications for a religious exemption submitted by oyhrt similarly situated, the tenets of whose belief systems the defendants did not challenge.

24. In the January 6th denial of accommodation, NYUCS informed Plaintiff Ferrelli that if she was not vaccinated by January 18, 2022, she would be terminated thereafter, even though the September 10th policy announcement required vaccination within 17 days. In other words, despite contending that vaccination was urgent, NYUCS permitted Plaintiff to continue working for four months without vaccination.

Facts Relating to Plaintiff Trojan

25. Plaintiff Trojan is a certified court reporter who began her employment with NYUCS on or about May 11, 2000.

26. On or about September 10, 2021, NYUCS informed her that it would require her to be vaccinated for COVID-19 in order to continue to receive work assignments. The persons who informed Plaintiff about this requirement were Nancy J. Barry, Chief of Operations, and Justin A. Barry, Chief of Administration.

27. On or about October 18, 2021, Plaintiff Trojan provided Plaintiff with an application for a religious exemption from vaccination, including documentation that her religious beliefs did not permit vaccination. She used the form for applying for a religious exemption provided to her by NYUCS pursuant to its announced policy that such exemptions could be granted. Plaintiff Trojan is a devout Christian, and she submitted an eleven-page signed written statement to NYUCS affirming her sincerely held religious belief that vaccination is

inconsistent with the tenets of the Christian Bible, citing numerous specific provisions of the scripture which forbid vaccination.

28. Plaintiff Trojan informed NYUCS that she would maintain necessary social distancing and wear an appropriate face mask at any time that her duties required her to be in the presence of others. Moreover, Plaintiff informed NYUCS that she was fully able to carry out her duties via videoconferencing, which would likewise eliminate the risk of COVID-19 exposure.

29. On or about November 18, 2021, Defendants followed up by interrogating Plaintiff as to the legitimacy and sincerity of her religious beliefs. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person.

30. On December 1, 2021, Plaintiff responded to the request for supplemental information presented to her by NYUCS.

31. Plaintiff was embarrassed, humiliated and intimidated by NYUCS' aggressive actions challenging the validity of her religious beliefs, which demonstrated clear hostility to and bias against her because of her deeply and sincerely held religious beliefs.

32. On or about January 6, 2022, NYUCS denied Plaintiff Trojan's application for a religious exemption without providing a statement of reasons. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person. The decision to refuse to provide Plaintiff Trojan with further work assignments until she obtained proof of vaccination was made and/or approved and ratified by Defendants Nancy Barry and Justin Barry. The notification permitted Plaintiff to continue working until date of vaccination as long as she was tested weekly for COVID-19 in the interim.

33. NYUCS granted other applications for a religious exemption submitted by others similarly situated, the tenets of whose belief systems the defendants did not challenge.

34. In the January 6th denial of accommodation, NYUCS informed Plaintiff Trojan that if she was not vaccinated by January 18, 2022, she would be terminated thereafter, even though the September 10th policy announcement required vaccination within 17 days. In other words, despite contending that vaccination was urgent, NYUCS permitted Plaintiff to continue working for four months without vaccination.

Facts Relating to Plaintiff Creighton

35. Plaintiff Creighton is a certified court reporter who began her employment with NYUCS on or about July 11, 1996.

36. On or about September 10, 2021, NYUCS informed her that it would require her to be vaccinated for COVID-19 in order to continue to receive work assignments. The persons who informed Plaintiff about this requirement were Nancy J. Barry, Chief of Operations, and Justin A. Barry, Chief of Administration.

37. On or about October 18, 2021, Plaintiff Creighton provided Plaintiff with an application for a religious exemption from vaccination, including documentation that her religious beliefs did not permit vaccination. She used the form for applying for a religious exemption provided to her by NYUCS pursuant to its announced policy that such exemptions could be granted. Plaintiff Creighton is a devout Christian, and she submitted a ten-page signed written statement to NYUCS affirming her sincerely held religious belief that vaccination is inconsistent with the tenets of the Christian Bible, citing numerous specific provisions of the scripture which forbid vaccination.

38. Plaintiff Creighton informed NYUCS that she would maintain necessary social distancing and wear an appropriate face mask at any time that her duties required her to be in the presence of others. Moreover, Plaintiff informed NYUCS that she was fully able to carry out her duties via videoconferencing, which would likewise eliminate the risk of COVID-19 exposure.

39. On or about November 18, 2021, Defendants followed up by interrogating Plaintiff as to the legitimacy and sincerity of her religious beliefs. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person.

40. On December 1, 2021, Plaintiff responded to the request for supplemental information presented to her by NYUCS.

41. Plaintiff was embarrassed, humiliated and intimidated by NYUCS' aggressive actions challenging the validity of her religious beliefs, which demonstrated clear hostility to and bias against her because of her deeply and sincerely held religious beliefs.

42. On or about January 6, 2022, NYUCS denied Plaintiff Creighton's application for a religious exemption without providing a statement of reasons. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person. The decision to refuse to provide Plaintiff Creighton with further work assignments until she obtained proof of vaccination was made and/or approved and ratified by Defendants Nancy Barry and Justin Barry. The notification permitted Plaintiff to continue working until date of vaccination as long as she was tested weekly for COVID-19 in the interim.

43. NYUCS granted other applications for a religious exemption submitted by others similarly situated, the tenets of whose belief systems the defendants did not challenge.

44. In the January 6th denial of accommodation, NYUCS informed Plaintiff Creighton that if she was not vaccinated by January 18, 2022, she would be terminated thereafter, even though the September 10th policy announcement required vaccination within 17 days. In other words, despite contending that vaccination was urgent, NYUCS permitted Plaintiff to continue working for four months without vaccination.

Facts Relating to Plaintiff Rukavina

45. Plaintiff Rukavina is a certified court reporter who began her employment with NYUCS in or about June 1994.

46. On or about September 10, 2021, NYUCS informed her that it would require her to be vaccinated for COVID-19 in order to continue to receive work assignments. The persons who informed Plaintiff about this requirement were Nancy J. Barry, Chief of Operations, and Justin A. Barry, Chief of Administration.

47. On or about October 18, 2021, Plaintiff Rukavina provided Plaintiff with an application for a religious exemption from vaccination, including documentation that her religious beliefs did not permit vaccination. She used the form for applying for a religious exemption provided to her by NYUCS pursuant to its announced policy that such exemptions could be granted. Plaintiff Rukavina is a devout Christian, and she submitted a seven-page signed written statement to NYUCS affirming her sincerely held religious belief that vaccination is inconsistent with the tenets of the Christian Bible, citing numerous specific provisions of the scripture which forbid vaccination.

48. Plaintiff Rukavina informed NYUCS that she would maintain necessary social distancing and wear an appropriate face mask at any time that her duties required her to be in the presence of others. Moreover, Plaintiff informed NYUCS that she was fully able to carry out

her duties via videoconferencing, which would likewise eliminate the risk of COVID-19 exposure.

49. On or about November 18, 2021, Defendants followed up by interrogating Plaintiff as to the legitimacy and sincerity of her religious beliefs. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person.

50. On December 1, 2021, Plaintiff responded to the request for supplemental information presented to her by NYUCS.

51. Plaintiff was embarrassed, humiliated and intimidated by NYUCS' aggressive actions challenging the validity of her religious beliefs, which demonstrated clear hostility to and bias against her because of her deeply and sincerely held religious beliefs.

52. On or about January 6, 2022, NYUCS denied Plaintiff Rukavina's application for a religious exemption without providing a statement of reasons. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person. The decision to refuse to provide Plaintiff Rukavina with further work assignments until she obtained proof of vaccination was made and/or approved and ratified by Defendants Nancy Barry and Justin Barry. The notification permitted Plaintiff to continue working until date of vaccination as long as she was tested weekly for COVID-19 in the interim.

53. NYUCS granted other applications for a religious exemption submitted by others similarly situated, the tenets of whose belief systems the defendants did not challenge.

54. In the January 6th denial of accommodation, NYUCS informed Plaintiff Rukavina that if she was not vaccinated by January 18, 2022, she would be terminated thereafter, even though the September 10th policy announcement required vaccination within 17 days. In

other words, despite contending that vaccination was urgent, NYUCS permitted Plaintiff to continue working for four months without vaccination.

Facts Relating to Plaintiff Altobelli

55. Plaintiff Altobelli is a senior law reporting assistant who began her employment with NYUCS on or about October 30, 1996.

56. On or about September 10, 2021, NYUCS informed her that it would require her to be vaccinated for COVID-19 in order to continue to receive work assignments. The persons who informed Plaintiff about this requirement were Nancy J. Barry, Chief of Operations, and Justin A. Barry, Chief of Administration.

57. On or about October 18, 2021, Plaintiff Altobelli provided Plaintiff with an application for a religious exemption from vaccination, including documentation that her religious beliefs did not permit vaccination. She used the form for applying for a religious exemption provided to her by NYUCS pursuant to its announced policy that such exemptions could be granted. Plaintiff Altobelli is a devout Christian, and she submitted a five-page signed written statement to NYUCS affirming her sincerely held religious belief that vaccination is inconsistent with the tenets of the Christian Bible, citing numerous specific provisions of the scripture which forbid vaccination.

58. Plaintiff Altobelli informed NYUCS that she would maintain necessary social distancing and wear an appropriate face mask at any time that her duties required her to be in the presence of others. Moreover, Plaintiff informed NYUCS that she was fully able to carry out her duties via videoconferencing, which would likewise eliminate the risk of COVID-19 exposure. Further, Plaintiff Altobelli worked in a separate office and could and did close her office door, thus eliminating any risk of viral transmission.

59. On or about November 18, 2021, Defendants followed up by interrogating Plaintiff as to the legitimacy and sincerity of her religious beliefs. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person.

60. On December 1, 2021, Plaintiff responded to the request for supplemental information presented to her by NYUCS.

61. Plaintiff was embarrassed, humiliated and intimidated by NYUCS' aggressive actions challenging the validity of her religious beliefs, which demonstrated clear hostility to and bias against her because of her deeply and sincerely held religious beliefs.

62. On or about January 6, 2022, NYUCS denied Plaintiff Altobelli's application for a religious exemption without providing a statement of reasons. The notification was delivered by the Unified Court System Vaccination Committee through an unsigned document attributed to no individual person. The decision to refuse to provide Plaintiff Altobelli with further work assignments until she obtained proof of vaccination was made and/or approved and ratified by Defendants Nancy Barry and Justin Barry. The notification permitted Plaintiff to continue working until date of vaccination as long as she was tested weekly for COVID-19 in the interim.

63. NYUCS granted other applications for a religious exemption submitted by others similarly situated, the tenets of whose belief systems the defendants did not challenge.

64. In the January 6th denial of accommodation, NYUCS informed Plaintiff Altobelli that if she was not vaccinated by January 18, 2022, she would be terminated thereafter, even though the September 10th policy announcement required vaccination within 17 days. In other words, despite contending that vaccination was urgent, NYUCS permitted Plaintiff to continue working for four months without vaccination..

AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of Constitutional Right to Religious Expression 42 USC §1983)

65. Plaintiffs repeat, reiterate and re-allege each and every allegation set forth in the foregoing paragraphs as if set forth more fully and at length herein.

66. NYUCS violated a right secured to Plaintiffs by the Constitution and the laws of the United States and that deprivation was committed by a person acting under the color of state law.

67. Specifically, NYUCS, acting through state officers Nancy Barry and Justin Barry, denied Plaintiffs the right to express their religion as guaranteed by the First Amendment to the U.S. Constitution.

68. Plaintiffs have sincerely held religious beliefs which are substantially burdened by Defendants' vaccination requirement, imposed without a compelling state interest or use of the least restrictive means to achieve it.

69. Plaintiffs are subject to loss of work assignments and termination if they do not violate their religious beliefs and submit to vaccination.

70. Defendants' vaccinate mandates are subject to exemptions. As applied, these exemptions fail to satisfy the constitutionally mandated strict scrutiny test or any less demanding one.

71. Defendants can accomplish their goals through less restrictive means such as masking, distancing and testing, to all of which Plaintiffs agree and with which they can fully comply. Importantly, per the directive of the Chief Administrative Judge, Plaintiffs' work can be performed virtually.

72. Because of the foregoing, Plaintiffs have suffered and continue to suffer irreparable harm. As such they are entitled to equitable relief.

