



Written by [Veronika Kyrylenko](#) on December 14, 2021

Justice Gorsuch Torches SCOTUS for Rejecting Challenge to NY Vax Mandate for Healthcare Workers

The U.S. Supreme Court just left in place New York's COVID-19 vaccine mandate for healthcare workers that allows for no religious exemptions.

On Monday, the nation's highest court [rejected](#), by a 6-3 vote, a request by 20 anonymous doctors and nurses, nearly all of whom are Catholic, to grant an injunction against the arguably unlawful mandate. Only Justices Clarence Thomas, Samuel Alito, and Neil Gorsuch voted to grant the injunction. Typical of emergency injunction cases, none of the judges in the majority provided an explanation for their vote, but Gorsuch, joined by Alito, took them to task in a 14-page [dissenting opinion](#).



AP Images
Neil Gorsuch

"The doctors and nurses who filed this suit and a companion case have gone to great lengths to serve their patients during the COVID-19 pandemic," Gorsuch wrote. Yet, these people are now facing "the loss of their jobs and eligibility for unemployment benefits" because their sincerely held religious beliefs do not allow them to take the shots while the state authorities claim those beliefs are invalid and irrelevant.

The opinion reads,

These applicants are not "anti-vaxxers" who object to all vaccines.... Instead, the applicants explain, they cannot receive a COVID-19 vaccine because their religion teaches them to oppose abortion in any form, and because each of the currently available vaccines has depended upon abortion-derived fetal cell lines in its production or testing.

Yet New York Governor Kathy Hochul says that these people are not "listening to God" and admits that the decision to eliminate the exemption was "intentiona[l]" and justified because no "organized religion" discourages COVID vaccinations. "How can you believe that God would give a vaccine that would cause you harm? That is not truth. Those are just lies out there on social media," she claimed.

Speaking at the Christian Cultural Center in September, she said, "All of you, yes, I know you're vaccinated, you're the smart ones, but you know there's people out there who aren't listening to God and what God wants. You know who they are."

Hochul [decided](#) to strip those who "aren't listening to God" of unemployment benefits if they are terminated because of refusal to be vaccinated against COVID.

"In this case, no one seriously disputes that, absent relief, the applicants will suffer an irreparable injury," wrote Justice Gorsuch. "Not only does New York threaten to have them fired and strip them of



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unemployment benefits. This Court has held that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”

Gorsuch continued by stating that the Free Exercise Clause of the First Amendment protects not only the right to hold unpopular religious beliefs inwardly and secretly but grants the right to live out those beliefs publicly in “the performance of (or abstention from) physical acts.”

Gorsuch also noted that under the Free Exercise Clause, government “cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices,” and if there is even a “slight suspicion” that the government prevents people from exercising their religion, such actions should be “set aside,” including those of the state of New York.

After describing how the vaccine mandate violates the principles of [neutrality](#) or [general applicability](#), Gorsuch went on to slam his fellow Justices who rejected the application, writing, “Today, we do not just fail the applicants. We fail ourselves.” He continued:

It is among our Nation’s proudest boasts that, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in [matters of] religion.”... Millions have fled to this country to escape persecution for their unpopular or unorthodox religious beliefs, attracted by America’s promise that “[e]very citizen here is in his own country.”

As today’s case shows, however, sometimes our promises outrun our actions. Sometimes dissenting religious beliefs can seem strange and bewildering. In times of crisis, this puzzlement can evolve into fear and anger. It seems Governor Hochul’s thinking has followed this trajectory, and I suspect she is far from alone.

Indeed, with the majority of Americans, including religious people, being vaccinated and with religious leaders, including the Pope, encouraging others to take the shot, for many, it becomes “tempting enough to ask: What can be so wrong with coercing the few who are not?” wrote Gorsuch.

The Court must not remain silent when “majorities invade the constitutional rights of the unpopular and unorthodox,” Gorsuch insisted, while reminding that the First Amendment to the Constitution was designed to protect people against “coercive elimination of dissent.”

The nation’s highest court’s “failure to defend the Constitution’s promises” always leads to “this Court’s greatest regrets,” Gorsuch continued, as he referred to the Court previously allowing states to shutter houses of worship while letting “favored businesses” remain open.

Still, while the Court later recognized that “the Constitution is not to be put away in challenging times,” it continues to allow for its violation in other cases, such as in New York.

“One can only hope today’s ruling will not be the final chapter in this grim story,” Judge Gorsuch concluded.

The legal challenge, filed by two groups of healthcare providers, [argued](#) that the state mandate violates protections provided under the Title VII of the Civil Rights Act of 1964, New York State’s Human Rights Law, the Constitution’s Supremacy Clause, and the First and 14th Amendments to the U.S. Constitution.

In October, a federal appellate court in Brooklyn [ruled for](#) the state of New York, but another federal



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judge [ruled against](#) the state in a second case. In a consolidated appeal of the two cases, an appeals court [refused](#) to freeze the state mandate, prompting the healthcare workers to file an emergency appeal to the Supreme Court to block the order.

In late October, the Supreme Court [rejected](#) a similar request from Maine healthcare workers who were seeking to block the state's vaccine mandate, which did not offer workers the option for religious exemptions.

New York, Maine, and Rhode Island are the only states in the nation that disregard healthcare workers' sincerely held religious beliefs that prevent them from being inoculated with COVID shots.





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