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LAW BULLETIN MEDIA

U.S. Supreme Court rejects attack on vaccine mandates in Maine case

The U.S. Supreme Court, without opinion, denied a group of Maine health care workers a preliminary injunction Oct. 29 to block enforcement of a state COVID-19 vaccination mandate that contains no religious exemptions. Justice Neil Gorsuch dissented, joined by Justices Clarence Thomas and Samuel Alito.

This is the third ruling in which the high court refused to enjoin enforcement of a vaccine mandate. Justice Amy Coney Barrett denied a request from Indiana University students, and Justice Sonia Sotomayor denied a petition to halt a New York City mandate for public school teachers.

In *John Does 1-6 v. Janet Mills, et al.*, nine health care workers asked the court to block a requirement that they be vaccinated in order to continue their employment. Appellants labeled Maine an “extreme outlier” in allowing only a medical exemption for refusing the vaccine.

The U.S. District Court denied the plaintiffs’ motion for a temporary restraining order and preliminary injunction. A panel of the U.S. Court of Appeals for the 1st Circuit then affirmed the decision of the district court.

The 1st Circuit found that Maine never “singled out religious objections to the vaccine ‘because of their reli-

gious nature.’” Maine elected to create the safest possible environment for its patients, its health care workers and its residents. Contrary to the appellants’ allegations, Maine required vaccinations against measles, mumps, rubella, chickenpox, hepatitis II and influenza, without religious or philosophical exemptions for its health care workers since 1989 — long before the COVID-19 pandemic killed more than 700,000 Americans.

The presence of a narrow medical exemption does not automatically preclude denial of a religious exemption in either Title VII or free exercise clause cases. Health care employees with medical exemptions and those with religious objections are not necessarily in the same legal position. Unlike religious objectors, employees with medical contraindications who are required to receive the vaccine might end up as patients in an already overburdened health system. Religious objectors may also vastly outnumber those claiming a narrow medical exemption, thereby creating a greater health threat while undermining hospital goals of keeping health care workers and patients COVID-19 free.

Religious discrimination pursuant to Title VII

Title VII of the Civil Rights Act of 1964 prohibits

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employers from discriminating against any employee on the basis of religion. “Religion” includes “all aspects of religious observance and practice,” unless an employer demonstrates it cannot accommodate an employee’s religious beliefs without undue hardship on the conduct of the employer’s business. 42 U.S.C. Sec. 2000e(j).

Any reasonable accommodation is sufficient and not necessarily the one demanded by the employee. “To hold otherwise would give the employee every incentive to hold out for the most beneficial accommodation.” *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986).

In recent Title VII cases, plaintiffs have staggered from Title VII to First Amendment arguments with little

notice of their different analyses and jurisprudence. In many cases, a political gesture or ideological aversion dressed up as a religious conviction will not survive evidence of undue hardship, which in a Title VII context (as opposed to a case involving the Americans with Disability Act) is a de minimus standard. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977).

Undue hardship may include not only monetary costs but also the employer’s burden in conducting its business. *Beadle v. City of Tampa*, 42 F.3d 633, 636 (11th Cir.1995). Undue hardship can exist if the accommodation would increase safety risks or the risk of legal liability for the employer: “Title VII does not require that safety be subordinated to the religious beliefs of an employee.” *Draper v. United States Pipe & Foundry Co.*, 527 F.2d 515, 521 (6th Cir. 1975).

The complexity of Title VII’s religious discrimination jurisprudence is singular among the anti-discrimination statutes. Interpreting what qualifies as a religious belief the 7th Circuit has identified the test as whether a given belief that is sincere and “occupies a place in the life of its possessor parallel to that filled by orthodox belief in God.” *Adeyeye v.*

Heartland Sweeteners, LLC, 721 F.3d 444 (2013).

Religious conviction is defined as something parallel to traditional religious observances. In other words, Title VII can confer religious status on belief systems that find theological conviction irrelevant. A “religious belief” could be atheism or pure existential despair. Under the EEOC Compli-

ance Manual, an employee can claim to belong to a religion of one.

In some cases, employers have been drawn into an abyss of theological speculation. Plaintiffs have alleged that the amount of Bible verses cited is direct evidence of sincerity. Incredibly, some employers have followed them down the rabbit hole. In one case the 4th Cir-

cuit had to address an employer’s defense that the plaintiffs were misinterpreting the Book of Revelations. *U.S. Equal Emp’t Opportunity Comm’n v. Consol Energy, Inc.*, 860 F.3d 131 (4th Cir. 2017).

In *Does*, Maine faced a crisis in its health care facilities when the delta variant struck. But as the 1st Circuit noted, Maine remained faith-

ful to its goals and in the science underlying its methodology. Maine attempted other alternatives such as vaccine prioritization and worksite vaccine administration. In the final analysis, the 1st Circuit held that Maine had “no alternative to meet its goal other than mandating healthcare workers to be vaccinated.” *Does*, 2021 WL 4860328(c).