

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

GREGORY SERAFIN, on behalf of
himself and on behalf of all others similarly situated;
AZIMA RASIWALA, D.O., on behalf of
herself and on behalf of all others similarly situated;
KATHLEEN MCGOWAN, on behalf of
herself and on behalf of all others similarly situated;
DEBORAH CONRAD, on behalf of
herself and on behalf of all others similarly situated;
RENEE ROGERS, on behalf of
herself and on behalf of all others similarly situated;
and DAVID DIPIETRO, MEMBER OF THE
ASSEMBLY FOR NEW YORK’S 147TH ASSEMBLY
DISTRICT, on his own behalf in his official capacity
and on behalf of all similarly situated members of the
New York State Legislature,

**PETITION
AND
COMPLAINT**

Petitioners/Plaintiffs,

For Judgment Pursuant to
Article 78 of the CPLR
And The New York Constitution, Art. I, § 6

Index No. _____

v.

NEW YORK STATE DEPARTMENT OF HEALTH;
NEW YORK STATE PUBLIC HEALTH AND HEALTH
PLANNING COUNCIL; HOWARD ZUCKER, NEW
YORK STATE COMMISSIONER OF HEALTH,

Respondents/Defendants.

Petitioners/Plaintiffs GREGORY SERAFIN, on behalf of himself and on behalf of all
others similarly situated; AZIMA RASIWALA, D.O., on behalf of herself and on behalf of all
others similarly situated; KATHLEEN MCGOWAN, on behalf of herself and on behalf of all
others similarly situated; DEBORAH CONRAD, on behalf of herself and on behalf of all others
similarly situated; RENEE ROGERS, on behalf of herself and on behalf of all others similarly

situated; and DAVID DIPIETRO, MEMBER OF THE ASSEMBLY FOR NEW YORK'S 147TH ASSEMBLY DISTRICT, on his own behalf in his official capacity and on behalf of all similarly situated members of the New York State Legislature, by and through their attorney, TODD J. ALDINGER, ESQ., for their Petition and Complaint against the Respondents/Defendants, allege as follows:

PARTIES

1. Petitioner/Plaintiff GREGORY SERAFIN ("Serafin") at all times herein mentioned, was and still is a resident of New York who resides at 5160 William Street, Lancaster, New York 14086. Serafin is a registered nurse employed at Erie County Medical Center.

2. Petitioner/Plaintiff AZIMA RASIWALA, D.O. ("Rasiwala") at all times herein mentioned, was and still is a resident of New York who resides at 133 Whitney Place, Buffalo, New York 14201. Rasiwala is an independent contractor who works at Sisters of Charity Hospital in Buffalo, New York as an Emergency Room Physician.

3. Petitioner/Plaintiff KATHLEEN MCGOWAN ("McGowan") at all times herein mentioned, was and still is a resident of New York who resides at 4706 Morgan Parkway, Hamburg, New York 14075. McGowan is employed as a Physician Practice Coordinator at Erie County Medical Center.

4. Petitioner/Plaintiff DEBORAH CONRAD ("Conrad") at all times herein mentioned, was and still is a resident of New York who resides at 2638 Pearl Street Road, Corfu, New York 14036. Conrad is employed as a Hospitalist Physician Assistant at Rochester Regional Health, United Memorial Medical Center.

5. Petitioner/Plaintiff RENEE ROGERS ("Rogers") at all times herein mentioned, was and still is a resident of New York who resides at 36 Adams Street, Silver Creek, New York

14136. Rogers is Licensed Nursing Home Administrator and is employed by Absolut Care nursing home.

6. Petitioners/Plaintiffs Serafin, Rasiwala, McGowan, Conrad, and Rogers will be jointly referred to herein as “Petitioners”.

7. DAVID DIPIETRO, MEMBER OF THE ASSEMBLY FOR NEW YORK’S 147TH ASSEMBLY DISTRICT (the “Legislative Plaintiff”) is a duly elected member of the New York State Assembly.

8. At all times relevant hereto, Respondent/Defendant NEW YORK STATE DEPARTMENT OF HEALTH (“NYSDOH”) was, and is, the department of the New York state government responsible for public health.

9. At all times relevant hereto, Respondent/Defendant NEW YORK STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL (the “Council”) was, and is, an agency of New York State with the power to promulgate regulations as part of the sanitary code.

10. At all times relevant hereto, Respondent/Defendant HOWARD ZUCKER, NEW YORK STATE COMMISSIONER OF HEALTH (the “Commissioner”) was, and is, the lawfully appointed Commissioner of the NYSDOH.

11. Hereinafter, the Council, the Commissioner, and NYSDOH will be referred to herein, jointly, as the “Respondents.”

NATURE OF THIS ACTION

12. This is a special proceeding brought under Article 78 of the CPLR and/or a declaratory action brought under CPLR § 3001 seeking injunctive relief to enjoin Respondents from imposing a vaccination requirement for employment in certain healthcare setting (i.e. “Covered Entities”).

13. Respondents have purported to promulgate this vaccine requirement under 10 NYCRR § 2.61. A copy of the notice of emergency rule making promulgating 10 NYCRR § 2.61 is attached hereto as **Exhibit A**.

14. Petitioners are in need of immediate injunctive relief from this vaccination requirement because this requirement takes effect on Monday, September 27, 2021.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this proceeding under Article 78 of the CPLR, CPLR § 3001, the New York State Constitution Article 6, § 7, and the common law of the State of New York.

16. Albany County is a proper venue for this proceeding because a substantial part of the events giving rise to Petitioners' claims occurred in Albany County, because Respondents are located in Albany County.

GENERAL FACTUAL BACKGROUND

17. On or about August 26, 2021, Respondents adopted 10 NYCRR § 2.61, which provides that "Covered entities"—which includes the hospitals and nursing homes where Petitioners work—"shall continuously require personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021 for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities." 10 NYCRR § 2.61(c).

18. Covered Entities are defined under 10 NYCRR § 2.61(a).

19. 10 NYCRR § 2.61 purports to be authorized by Public Health Law Sections 225(5), 2800, 2803(2), 3612, and 4010(4), as well as Social Services Law Sections 461 and 461-e.

20. 10 NYCRR § 2.61 is an emergency rule adopted under New York State Administrative Procedure Act Law ("NYSAPA") § 202(6).

21. 10 NYCRR § 2.61 does not provide for a religious exemption to this vaccination requirement.

22. 10 NYCRR § 2.61 does not provide an exemption to this vaccination requirement for individuals that were previously infected with COVID-19 and who have natural immunity.

23. Upon information and belief, such natural immunity is at least as effective as vaccination at preventing future COVID-19 infections.

24. Upon information and belief, anyone who gets vaccinated in order to keep their employment under 10 NYCRR § 2.61 and then has an adverse reaction to such vaccination will be without any legal recourse to for any such injuries or damages they suffer as a result of vaccination.

25. The Vaccine Adverse Event Reporting System (“VAERS”) is a national early warning system to detect possible safety problems in U.S.-licensed vaccines. VAERS is co-managed by the Centers for Disease Control and Prevention (“CDC”) and the U.S. Food and Drug Administration (“FDA”).

26. On or about September 17, 2021, an advisory panel to the FDA held a meeting to vote on whether or not to recommend booster shots for a COVID-19 vaccine. At this meeting, the FDA advisory panel recommended against requiring booster shots for people under 65. At this meeting of the FDA advisory panel, a slide was shown that evidenced a 1000% increase in VAERS reports in 2021. A copy of this slide is attached hereto as **Exhibit B**.

FIRST CAUSE OF ACTION

(Declaring 10 NYCRR § 2.61 Void Because This Regulation Lacks A Statutory Basis)

27. Petitioners and the Legislative Plaintiff repeat and reallege each and every paragraph above with the same force and effect as if fully set forth herein.

28. Petitioners and the Legislative Plaintiff have commenced this proceeding pursuant to CPLR § 3001 and Article 78.

29. NYSAPA § 202(6)(d)(i) requires that: “A notice of emergency adoption shall ... cite the statutory authority, including particular sections and subdivisions, under which the rule is adopted.”

30. The only subsections cited to in the notice of emergency adoption of 10 NYCRR § 2.61 are Public Health Law §§ 225(5), 2803(2), and 4010(4).

31. There is no valid statutory or legal authority for the Respondents to issue or enforce 10 NYCRR § 2.61.

32. On or about June 24, 2021, the former Governor ended the declaration of state disaster emergency related to the COVID-19 pandemic.

33. Previously, during the pendency of this state disaster emergency, there arguably was a statutory basis (i.e. under Chapter 23 of the Laws of 2020) for New York State to impose a vaccination requirement. Chapter 23 of the Laws of 2020 (“Chapter 23”) authorized the Governor of New York to issue directives related to controlling the spread of COVID-19. A copy of Chapter 23 is attached hereto as **Exhibit C**.

34. Chapter 23 was repealed by Chapter 71 of the Laws of 2021 (“Chapter 71”). A copy of Chapter 71 is attached hereto as **Exhibit D**.

35. Chapter 71 continued some of the powers delegated to the Governor by Chapter 23, but only during a state of emergency.

36. With Chapter 23 repealed, and Chapter 71 ineffective due to the end of the state of emergency, there is no longer any statute that New York’s Executive Branch can even argue provides a statutory basis for 10 NYCRR § 2.61.

37. Specifically, no provision of Public Health Law Sections 225(5), 2800, 2803(2), 3612, and 4010(4), or Social Services Law Sections 461 and 461-e provide a basis for the vaccine requirement of 10 NYCRR § 2.61.

38. Petitioners have a clear legal right to pursue their professions and seek employment at “Covered Entities” without reference to the mask mandate contained in 10 NYCRR § 2.61 due to the lack of any statutory authority for this regulation.

39. Petitioners are suffering a per se irreparable injury and is threatened with irreparable injury in the future by reason of 10 NYCRR § 2.61 purporting to force their employer to terminate them if they are not vaccinated by a certain date.

40. Petitioners are unvaccinated and unwilling to get vaccinated for various religious, medical, and health reasons.

41. Petitioners have witnessed potential adverse side effects of vaccinations through the course of their employment, as well as the ineffectiveness of vaccination to prevent COVID-19.

42. Petitioners’ objections to vaccination are more fully set forth in their Affidavits which accompany this Petition and are hereby incorporated by reference. These objections include religious, medical, and health reasons.

43. Petitioners are nurses, doctors, and other health care professionals who have chosen to practice their profession in hospitals and nursing homes subject to 10 NYCRR § 2.61.

44. Because Petitioners are unwilling to get vaccinated, on September 27, 2021, Petitioners face being terminated when their employers are forced to comply with 10 NYCRR § 2.61.

45. After this date, Petitioners will not merely be unemployed, they will be unemployable in any “Covered Entity” under 10 NYCRR § 2.61.

46. 10 NYCRR § 2.61 thus infringes on both (i) Petitioners’ property rights to their current employment; and (ii) Petitioners’ liberty rights to pursue their chosen professions.

47. Upon information and belief, Petitioners have no legal recourse to seek reinstatement or back pay from their employers if they are terminated as a result of their employers seeking to comply with 10 NYCRR § 2.61.

48. Absent an injunction, the harm to Petitioners in the loss of their employment and their legal rights to practice their profession exceeds any conceivable harm Respondents or the public would suffer if this Court found 10 NYCRR § 2.61 was promulgated in excess of Respondents’ statutory authority.

49. Respondents cannot demonstrate any harm because the federal government is developing similar vaccine or testing regulations that overlap with 10 NYCRR § 2.61, but do not completely barring Petitioners from practicing their profession. A copy of the White House’s “Path out of the Pandemic,” setting forth these regulations that are under development is attached hereto as **Exhibit E**.

50. Petitioners are therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 is illegal and/or without statutory authority, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation as set forth in 10 NYCRR § 2.61(c), and such relief would not be contrary to the public interest.

51. Respondents' actions have also harmed the Legislative Plaintiff because 10 NYCRR § 2.61 exceeds the scope of authority the Legislature has delegated to Respondents.

52. 10 NYCRR § 2.61 thus usurps the Legislative Plaintiff's constitutional right to vote on laws before they take effect. *See* N.Y. Const. Art. III, § 13 ("The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," *and no law shall be enacted except by bill*") (emphasis added).

53. The Legislative Plaintiff has been irreparable harmed by being deprived of his constitutional powers, which were endowed on him when he was elected.

54. Respondent cannot demonstrate that they would be harmed in anyway if 10 NYCRR § 2.61 was found to be an unconstitutional infringement on the Legislative Plaintiff's rights as an elected New York State legislator.

55. The Legislative Plaintiff is therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 is illegal and/or without statutory authority, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation as set forth in 10 NYCRR § 2.61(c), and such relief would not be contrary to the public interest.

SECOND CAUSE OF ACTION

(Declaring 10 NYCRR § 2.61 Unconstitutional Because It Violates The Separation Of Powers Inherent In The New York State Constitution)

56. Petitioners and the Legislative Plaintiff repeat and reallege each and every paragraph above with the same force and effect as if fully set forth herein.

57. Petitioners and the Legislative Plaintiff have commenced this proceeding pursuant to CPLR § 3001 and Article 78.

58. The vaccination requirement contained in 10 NYCRR § 2.61 constitutes a critical policy decision and/or legislation/law-making by the Executive Branch.

59. Only the New York State Legislature is empowered to make critical policy decisions and/or engage in legislation/law-making, not the Executive Branch.

60. It is a critical policy decision to exclude a significant subpopulation of New Yorkers (i.e. the unvaccinated) from entire sectors of the economy (i.e. hospitals, nursing homes, and other “Covered Entities”).

61. It is a critical policy decision to not provide a religious exemption to a vaccination requirement such as the vaccination requirement in 10 NYCRR § 2.61.

62. Critical policy decisions can only be made by the Legislature voting on, and passing, a bill. *See* New York Const. Art. III, § 1.

63. Accordingly, 10 NYCRR § 2.61 violates Article III, § 1 of the New York Constitution.

64. Petitioners have a clear legal right to pursue their professions and seek employment at “Covered Entities” without reference to the mask mandate contained in 10 NYCRR § 2.61 because of the absence of any statutory authority for this regulation.

65. Petitioners are suffering a per se irreparable injury and is threatened with irreparable injury in the future by reason of 10 NYCRR § 2.61 purporting to force their employer to terminate them if they are not vaccinated by a certain date.

66. Petitioners are unvaccinated and unwilling to get vaccinated, for various religions, medical, and health reasons.

67. Specifically, Petitioners have witnessed potential adverse side effects of vaccinations through the course of their employment, as well as the ineffectiveness of vaccination to prevent COVID-19.

68. Petitioners' objections to vaccination are more fully set forth in their Affidavits which accompany this Petition and are hereby incorporated by reference. These objections include religious, medical, and health reasons.

69. Petitioners are nurses, doctors, and other health care professionals who have chosen to practice their profession in hospitals and nursing homes subject to 10 NYCRR § 2.61.

70. Because Petitioners are unwilling to get vaccinated, on September 27, 2021, Petitioners face being terminated because their employers are being forced to comply with 10 NYCRR § 2.61.

71. After this date, Petitioners will not merely be unemployed, they will be unemployable in any "Covered Entity" under 10 NYCRR § 2.61.

72. 10 NYCRR § 2.61 thus infringes on both (i) Petitioners' property rights to their employment; and (ii) Petitioners' liberty rights to pursue their chosen professions.

73. Upon information and belief, Petitioners have no legal recourse to seek reinstatement or back pay from their employers if they are terminated as a result of their employers seeking to comply with 10 NYCRR § 2.61.

74. Absent an injunction, the harm to Petitioners in the loss of their employment and their legal rights to practice their profession exceeds any conceivable harm Respondents or the public would suffer if this Court found 10 NYCRR § 2.61 was promulgated in excess of the Respondents' statutory authority.

75. Respondents cannot demonstrate any harm because the federal government is developing similar vaccine or testing regulations that overlap with 10 NYCRR § 2.61, but without completely barring Petitioners from practicing their professions. *See Ex. E.*

76. Petitioners are therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 is unconstitutional under the separation of powers inherent in the New York State Constitution, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation as set forth in 10 NYCRR § 2.61(c) and such relief would not be contrary to the public interest.

77. Respondents' actions have also harmed the Legislative Plaintiff because 10 NYCRR § 2.61 exceeds the scope of authority the legislature has delegated to Respondents.

78. 10 NYCRR § 2.61 thus usurps the Legislative Plaintiff's constitutional right to vote on laws before they take effect. *See* N.Y. Const. Art. III, § 13 ("The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," *and no law shall be enacted except by bill*") (emphasis added).

79. The Legislative Plaintiff has been irreparable harmed by being deprived of his constitutional powers, which were endowed on him when he was elected.

80. Respondent cannot demonstrate that they would be harmed in anyway if 10 NYCRR § 2.61 was found to be an unconstitutional infringement on the Legislative Plaintiff's rights as an elected New York State legislator.

81. The Legislative Plaintiff is therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 is unconstitutional, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the

Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation as set forth in 10 NYCRR § 2.61(c), and such relief would not be contrary to the public interest.

THIRD CAUSE OF ACTION

(Substantive Due Process Under the New York State Constitution Art. 1, § 6)

82. Petitioners repeat and reallege each and every paragraph above with the same force and effect as if fully set forth herein.

83. Petitioners have commenced this proceeding pursuant to CPLR § 3001 and Article 78.

84. Article 1, § 6 of the New York Constitution provides: “No person shall be deprived of life, liberty or property without due process of law.”

85. 10 NYCRR § 2.61 purports to force Petitioners’ employers to terminate them if they are not vaccinated.

86. 10 NYCRR § 2.61 purports to bar Petitioners from being employed in any “Covered Entity” if they remain unvaccinated.

87. 10 NYCRR § 2.61 thus constitutes an infringement on (i) Petitioners’ property rights in their employment; and (ii) Petitioners’ liberty right to practice their chosen profession.

88. 10 NYCRR § 2.61 is an unreasonable infringement on Petitioners’ property and liberty rights, violating their substantive due process rights.

89. 10 NYCRR § 2.61 does not cite to any study or data to justify this deprivation of Petitioners’ property and liberty rights as being reasonable.

90. 10 NYCRR § 2.61 is also an unreasonable infringement on Petitioners’ property and liberty rights because there is no religious exemption to the vaccination requirement nor any consideration for natural immunity.

91. Petitioners have a clear legal right to pursue their professions and seek employment at “Covered Entities” without reference to the mask mandate contained in 10 NYCRR § 2.61 in the absence of any statutory authority for this regulation or any in the absence of any reasonable justification for this regulation’s infringement on their property and liberty interests.

92. Petitioners are suffering a per se irreparable injury and are threatened with irreparable injury in the future by reason of 10 NYCRR § 2.61 purporting to force their employer to terminate them if they are not vaccinated by a certain date.

93. Petitioners are unvaccinated and unwilling to get vaccinated for various religious, medical, and health reasons.

94. Specifically, Petitioners have witnessed potential adverse side effects of vaccinations through the course of their employment, as well as the ineffectiveness of vaccination to prevent COVID-19.

95. Petitioners’ objections to vaccination are more fully set forth in their Affidavits which accompany this Petition and are hereby incorporated by reference. These objections include religious, medical, and health reasons.

96. Petitioners are nurses, doctors, and other health care professionals who have chosen to practice their profession in hospitals and nursing homes subject to 10 NYCRR § 2.61.

97. Because Petitioners are unwilling to get vaccinated, on September 27, 2021, Petitioners face being terminated because their employers are being forced to comply with 10 NYCRR § 2.61.

98. After this date, Petitioners will not merely be unemployed, they will be unemployable in any “Covered Entity” under 10 NYCRR § 2.61.

99. 10 NYCRR § 2.61 thus infringes on both (i) Petitioners' property rights to their employment; and (ii) Petitioners' liberty rights to pursue their chosen professions.

100. Upon information and belief, Petitioners have no legal recourse to seek reinstatement or back pay from their employers if they are terminated as a result of their employers seeking to comply with 10 NYCRR § 2.61.

101. Absent an injunction, the harm to Petitioners in the loss of their employment and their legal rights to practice their profession exceeds any conceivable harm Respondents or the public would suffer if this Court found 10 NYCRR § 2.61 was promulgated in violation of Petitioners substantive due process rights.

102. Respondents cannot demonstrate any harm because the federal government is developing similar vaccine or testing regulations that overlap with 10 NYCRR § 2.61, but without completely barring Petitioners from practicing their profession. *See Ex. E.*

103. Petitioners are therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 violates Petitioners substantive due process rights, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation set forth in 10 NYCRR § 2.61(c) and such relief would not be contrary to the public interest.

FOURTH CAUSE OF ACTION
(Procedural Due Process Under the New York State Constitution)

104. Petitioners repeat and reallege each and every paragraph above with the same force and effect as if fully set forth herein.

105. Petitioners have commenced this proceeding pursuant to CPLR § 3001 and Article 78.

106. Article 1, § 6 of the New York Constitution provides: “No person shall be deprived of life, liberty or property without due process of law.”

107. 10 NYCRR § 2.61 purports to force Petitioners’ employers to terminate them if they are not vaccinated.

108. 10 NYCRR § 2.61 purports to bar Petitioners from being employed in any “Covered Entity” if they remain unvaccinated.

109. 10 NYCRR § 2.61 thus constitutes an infringement on (i) Petitioners’ property rights in their employment; and (ii) Petitioners’ liberty right to practice their chosen profession.

110. Petitioners face a deprivation of their constitutional rights without any opportunity to be heard in a meaningful manner, violating their procedural due process rights.

111. 10 NYCRR § 2.61 was adopted as a 90-day emergency regulation on August 26, 2021.

112. Within that 90-day window—on September 27 or October 7, 2021, depending on the type of healthcare facility—the vaccination requirement goes into effect, removing Petitioners from their employment and precluding them from seeking similar employment throughout the state.

113. By adopting 10 NYCRR § 2.61 as an emergency regulation, Respondents were able to avoid all of the public hearing and notice and comment requirements that ordinarily accompany rule making. *See* NYSAPA § 202(1).

114. Thus, Petitioners are without any opportunity to be heard before they are terminated from their employment and prohibited from pursuing similar employment until at least November 24, 2021, when the emergency regulation expires.

115. Forcing Petitioners to have their employment terminated—and then precluding them from seeking similar employment within New York for at least two months thereafter—is a grievous loss of Petitioners’ property rights in their employment and liberty rights to practice their profession.

116. Petitioners have a clear legal right to pursue their professions and seek employment at “Covered Entities” without reference to the vaccination requirement contained in 10 NYCRR § 2.61.

117. Petitioners are suffering a per se irreparable injury and is threatened with irreparable injury in the future by reason of 10 NYCRR § 2.61 purporting to force their employer to terminate them if they are not vaccinated by a certain date.

118. Petitioners are unvaccinated and unwilling to get vaccinated for various religious, medical, and health reasons.

119. Specifically, Petitioners have witnessed potential adverse side effects of vaccinations through the course of their employment, as well as the ineffectiveness of vaccination to prevent COVID-19.

120. Petitioners’ objections to vaccination are more fully set forth in their Affidavits which accompany this Petition and are hereby incorporated by reference. These objections include religious, medical, and health reasons.

121. Petitioners are nurses, doctors, and other health care professionals who have chosen to practice their profession in hospitals and nursing homes subject to 10 NYCRR § 2.61.

122. Because Petitioners are unwilling to get vaccinated, on September 27, 2021, Petitioners face being terminated because their employers are being forced to comply with 10 NYCRR § 2.61.

123. After this date, Petitioners will not merely be unemployed, they will be unemployable in any “Covered Entity” under 10 NYCRR § 2.61.

124. Upon information and belief, Petitioners have no legal recourse to seek reinstatement or back pay from their employers if they are terminated as a result of their employers seeking to comply with 10 NYCRR § 2.61.

125. Absent an injunction, the harm to Petitioners in the loss of their employment and their legal rights to practice their profession exceeds any conceivable harm Respondents or the public would suffer if this Court found 10 NYCRR § 2.61 was promulgated in excess of the Respondents’ statutory authority.

126. Respondents cannot demonstrate any harm because the federal government is developing similar vaccine or testing regulations that overlap with 10 NYCRR § 2.61, but without completely barring Petitioners. *See Ex. E.*

127. Petitioners are therefore entitled to a declaratory judgment declaring that the vaccine requirement contained in 10 NYCRR § 2.61 has been promulgated in violation of their rights to procedural due process, together with a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the Respondents from applying or enforcing 10 NYCRR § 2.61, and an Order staying the effective dates of this regulation set forth in 10 NYCRR § 2.61(c) and such relief would not be contrary to the public interest.

WHEREFORE, Petitioners and the Legislative Plaintiff demands judgment:

A. On their First Cause of Action, declaring that 10 NYCRR § 2.61 is void and a legal nullity not authorized by statute;

B. On their Second Cause of Action, declaring that 10 NYCRR § 2.61 is unconstitutional because it violates the separation of powers inherent in the New York Constitution;

C. On their Third Cause of Action, declaring that 10 NYCRR § 2.61 violates Petitioners' substantive due process rights;

D. On their Fourth Cause of Action, declaring that 10 NYCRR § 2.61 violates Petitioners' procedural due process rights;

E. Preliminarily during the pendency of this proceeding, and permanently thereafter, enjoining and restraining Respondents from enforcing or applying 10 NYCRR § 2.61;

F. Preliminarily during the pendency of this proceeding, and permanently thereafter, staying the effective dates of the vaccine requirement of 10 NYCRR § 2.61 as set forth in 10 NYCRR § 2.61(c);

G. Awarding Petitioners their costs and disbursements in this proceeding; and

H. Awarding such other and further relief as the Court deems just and proper.

Dated: September 21, 2021
Buffalo, New York

/s/ Todd J. Aldinger
TODD J. ALDINGER, ESQ.
Attorney for Petitioner/Plaintiff
441 Potomac Avenue, Lower
Buffalo, New York 14213
716.907.4076
toddaldinger@gmail.com