

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MICHAEL CORRIN STRONG, Plaintiff

vs.

HOWARD ZUCKER, MD, in his official capacity as Commissioner of the New York
State Department of Health, Defendant

Case No. 21-CV-6532

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER
AND PRELIMINARY INJUNCTION

Plaintiff pursuant to Rule 65 of the Federal Rules of Civil Procedure moves the Court for entry of a Temporary Restraining Order and Preliminary Injunction enjoining Defendant, the Commissioner of the New York State Health Department, from enforcement of new mask regulations issued on December 10, 2021.

The motion is made on the following grounds: Plaintiff re-affirms all of the allegations made in his amended complaint filed on October 13, 2021 and further alleges the following:

1. Plaintiff filed his original complaint against the Commissioner of the New York State Health Department in this court on August 10, 2021 seeking to have the emergency state regulations published on July 14, 2021, adding a new sub-part 10 NYCRR 66-3, containing different masking rules for vaccinated and unvaccinated persons enjoined as a violation of Equal Protection under the 14th Amendment.

2. After service of process on both the Health Commissioner and the NYS Attorney General's office, Plaintiff was notified in September of 2021 by an attorney from the Attorney General's office that the complained of regulations had been repealed by the Health Department on Aug. 27, 2021 and in part replaced by a new regulation 10NYCRR§2.60.

3. As a result, Plaintiff was granted leave to file an amended complaint which he did on Oct. 13, 2021. Under the agreement with the Attorney General's office, the state was granted a 60-day period after filing of the amended complaint to answer.

4. On Thursday, December 9, 2021, just a few days before the deadline to answer the complaint, Plaintiff was again contacted by the Attorney General's office requesting an additional 30 days to respond. Initially thinking that the status quo in the regulations would extend through the Holiday season, Plaintiff agreed to the extension until January 12, 2022.

5. On the very next day, Friday Dec. 10, 2021, the Governor and Health Department announced sweeping new regulations under the amended 10NYCRR§ 2.60 which are even more draconian than the original regulations issued back in July. The new regulations took effect on just 3-days notice on Monday, Dec. 13, 2021.

6. Included in Paragraph 7 of the new regulations are a new state-wide mask requirement for all "indoor public places," which is defined as, "any indoor space that is not a private residence." Under sub-paragraph 7b, this new mandate, however, "shall not apply to any indoor public area that requires proof of vaccination as a condition of entry."

7. This new rule once again sets up a discriminatory "two classes of citizen" system in violation of the Equal Protection rights that Plaintiff challenged in his initial complaint.

8. Since the filing of his original and amended complaints, more and more scientific evidence has emerged proving the contentions made in Plaintiff's original complaints that Vaccinated people are just as likely, or more likely, to become infect with and spread the Covid virus as the Unvaccinated.

9. In addition, many new studies have confirmed that "Natural Immunity" enjoyed by Covid survivors, such as the Plaintiff, is superior and longer lasting than the

limited and waning immunity given by the Covid 19 vaccines. In fact, many people are now being encouraged to get “booster” shots because the previous shot’s effect had significantly decreased after just 6 months.

10. These new regulations drastically impact the freedom of the Plaintiff and millions of others across the state to pursue their daily lives. Grocery stores, restaurants, gyms and all other businesses are being required to choose between requiring all patrons to mask up or require proof of vaccination prior to entry.

11. Whichever way the business decides to react, it will create an unfair burden on Plaintiff. If the business chooses to require all patrons to wear masks, Plaintiff will be barred from entry because he has a medical condition that makes it impossible for him to tolerate a mask.

12. If the business requires proof of vaccination, Plaintiff will be barred because he has exercised his medical freedom of choice not to get vaccinated.

13. As outlined in Plaintiff’s amended complaint in greater detail, there are many legitimate medical or religious reasons why a person may choose not to get the Covid 19 vaccination, including “Natural Immunity” acquired from a previous Covid infection

14. Also as outlined in the amended complaint, it is clear that the state is engaged in an illegal scheme to try to coerce unvaccinated citizens of the state into getting an experimental vaccination, by making their life as difficult as possible. This type of coercion is clearly unlawful under the Nuremberg Code and many other international, federal and state laws and regulations as outlined in the amended complaint.

15. All of the vaccinations currently available are still being given under an Emergency Use Authorization (EUA), and as such, are considered experimental despite any press releases from the FDA claiming they are “fully approved.”

16. The Pfizer vaccine “Comirnaty” which received an approval from the FDA on Aug. 23 to be produced under a “Biologics License Application” (BLA) is not currently available to citizens of the state. Under terms of the BLA, Pfizer is required to produce Comirnaty only at approved locations, subject to specific manufacturing, packaging and labeling requirements.

17. There is no evidence that any such approved Comirnaty vaccines have ever been produced. One reason may be that such a vaccine may not enjoy the same immunity to legal liability that EUA vaccines enjoy under the Public Readiness and Emergency Preparedness Act. (PREP Act)

18. The FDA tried to claim that the current Pfizer vaccine in use is “medically interchangeable” with Comirnaty, but was also forced to admit in court that it is “legally different” from it. See the order issued 11/12/21 in case of John Doe et. al. vs. Austin, (Case No: 3:21-ev-1211-AW-HTC) in the Northern District of Florida.

19. In that case, District Judge Allen Winsor ruled that, “FDA licensure does not retroactively apply to vials shipped before BLA approval...Thus as a legal matter, vaccines sent before Aug. 23—and vaccines produced after August 23 in unapproved facilities—remain “products authorized for emergency use under Section 564 of the Federal Food, Drug and Cosmetic Act.”

20. The newest NYS regulations, adopted Friday Dec. 10, 2021, are just the latest turning of the screw in the ongoing effort to coerce citizens into taking this still unapproved emergency and experimental drug. The regulations represent an immediate and severe threat to the liberty of Plaintiff and other unvaccinated citizens across the state to conduct their lives and businesses without undue discrimination that violates the right of Equal Protection.

21. Accordingly, Plaintiff asks the court for an immediate Temporary Restraining Order and a Preliminary Injunction enjoining the NYS Health Department from enforcing these new regulations, until this matter can be brought to an expedited hearing.

22. Specifically, Plaintiff asks the court to enjoin all parts of the new regulations that makes any distinction between vaccinated and unvaccinated citizens with respect to the wearing of masks and entry into businesses or other “open public spaces.”

23. The effect of these new regulations is to encourage business owners to require proof of vaccination for all patrons. Many business will in fact choose this option, because if they do, apparently patrons will not have to mask up after entry. This will result in unvaxxed citizens being treated as second class citizens unable to go to bars, restaurants, entertainment venues, gyms and many other places, in violation of their Equal Protection rights.

24. Again, as outlined more fully in the amended complaint, this makes no scientific sense, since proof of vaccination is absolutely no proof that people can not spread the disease. In fact, the vaccinated are much more likely to do so than those who have had Covid and have “natural immunity.” The CDC was forced to admit recently in response to a Freedom of Information request that it had no record of any Covid survivors spreading the virus.

25. Limiting the rights of people who are equally, or even less likely, to spread the virus more severely than others is the very essence of an Equal Protection violation.

26. Failure to issue such an TRO and/or Injunction would create immediate and irreparable harm to Plaintiff and many other citizens across the state. While the harm to just one individual, such as Plaintiff, may seem trivial, when it is multiplied by millions of people inconvenienced and denied basic rights to freely conduct their lives and businesses, there is a substantial public interest in having the court take up this matter at its earliest convenience.

27. In addition to the loss of freedom to many, these regulations are likely to cause substantial economic damage across the state, which is definitely unwonted, especially since local economies are barely recovering from the lockdowns and restrictions that were imposed by the state over the last 20 months since March of 2020.

28. Unvaccinated customers will be barred from patronizing businesses that require proof of vaccination, and those who can not medically tolerate masks will be discouraged from patronizing businesses that opt for full masking. The cumulative effects of this will cause substantial damage to the state economy, and especially to many small businesses in this Holiday season.

29. These new regulations should also be immediately temporarily restrained because they were issued in a very irregular way on very short notice. By issuing them on a Friday to take effect on the following Monday, the state left little time for businesses to get clarification on how local county health departments intend to regulate particular industries.

30. The reason for the haste appears to be a spurious claim of emergency because of two factors:

A. The so-called “threat” of the new Omicron variety of the Covid virus,

which although it spreads quickly appears to be very mild in its effects. No known deaths have occurred in the entire world from this new “deadly” variety.

B. A claim of a hospital bed shortage in various parts of the state. If there is such a shortage, it is more the result of hospitals closing beds because they lost staff due to state vaccination mandates, than to any surge in hospitalized Covid patients. This is a self-created problem which the state and hospitals could easily fix by changing the policy and re-hiring fired staff.

31. Finally, although the new regulations are promised to be reviewed in January 2022, the history of such promises does not justify much faith in the state. We all remember how “two weeks to slow the spread,” became over a year of lockdowns and harsh regulations.

32. The Plaintiff also renews the other demands made in his amended complaint, including that the court should order the closing down of the state’s Excelsior Pass program. It is noteworthy that information distributed by the Health Department about the new regulations touts the use of the Pass by businesses to verify vaccination.

33. As stated in the amended complaint, the implementation of such as Pass program is a pernicious development that is inimical to the basic American freedom to enjoy “Life, Liberty and the Pursuit of Happiness.”

34. Plaintiff understands that making the case for either a TRO or an Preliminary Injunction is a difficult hill to climb. Federal courts have generally held that to make such a case the Plaintiff must show:

A. The likelihood of irreparable harm to the Plaintiff

B. That Plaintiff is likely to ultimately prevail on the merits

35. Plaintiff anticipates that the state will challenge his standing and argue that any harm he may suffer from the imposition of these latest regulations will be minor and not irreparable.

36. It is true that this is not a class action case, and the inconvenience of one person may seem small in the overall scheme of things. When you multiply those small injustices by millions of people, you end up with a great injustice. It is literally the

“death by a thousand cuts” that is slowly killing our freedom.

37. It would be the ultimate tragedy that as our state and country slowly slips into totalitarianism, that no one has the legal standing to challenge it.

38. Obviously, Plaintiff feels he should have a good chance of success on the merits. He offers to supply expert testimony and evidence at trial of every scientific and medical claim he has made here and in his amended complaint.

39. Plaintiff also anticipates that the state will argue that their actions in alleged violation of Plaintiff’s right to Equal Protection should not be judged by a “strict scrutiny” standard, but only by whether these regulations have some rational basis to the state’s goal to decrease the spread of Covid.

40. While Plaintiff is prepared to argue that these regulations do not even have a rational basis, he maintains that state action that imposes such severe restrictions on the liberty of citizens with the goal of illegally coercing them to take part in a mass medical experiment, should be looked at with the highest level of scrutiny, as what is at stake here is the lives of many people and the constitutional health of our Republic.

41. As Justice Douglas observed, “The right to be let alone is indeed the beginning of all freedoms.” What could be a more fundamental than the right to follow your routine round of daily activities without being harassed at every door?

42. Under a strict standard, the court should look to whether these new regulations are “narrowly tailored” to achieve the state’s goal, and whether they are the “least restrictive means” available. These questions answers themselves.

42. If the true goal were to stop the spread of Covid, then these new regulations are a blunderbuss where a scalpel is needed. Sadly, if the true goal is to continue to illegally coerce people into taking an experimental vaccination, then these new regulations are perfectly tailored.

43. In conclusion, if the court applies the proper standard of “strict scrutiny” to this great intrusion on Plaintiff’s and many others Constitutional rights, Plaintiff should have no trouble prevailing in this case. Even under the lesser “rational basis” test, the science is so far against the state’s position as to render these new regulations irrational with respect to discrimination against the unvaccinated people, and

especially those with “natural immunity.”

44. Accordingly, Plaintiff asks for the issuance of a Temporary Restraining Order and a Preliminary Injunction against the enforcement of these new regulations and the continued operation of the Excelsior Pass program.

Respectfully Submitted,

CERTIFICATION

Under the Federal Rules of Civil Procedure¹¹, by signing below, I certify to the best of my knowledge, information and belief that this motion: (1) is not being presented for an improper purpose, such as to harass, cause delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the motion otherwise complies with the requirements of Rule 11

Michael Corrin Strong
Plaintiff, Pro se
P.O. Box 236
Geneseo, NY 14454
585-233-5338
corrin07@gmail.com

Dated: December 13, 2021

Note: I just received today the authorization to file electronically which was apparently issued by Judge Larimer on 9/23/2021. I have not had time to review the procedures to set that up, but will shortly.

Certificate of Service

I certify that a copy of this motion was served by mail to:

Michele Romance Crain
Assistant Attorney General
NYS Office of Attorney General
144 Exchange Blvd. Suite 200
Rochester, NY 14614

And electronically to:
Michele.Crain@ag.ny.gov

Michael Corrin Strong

Dated: December 13, 2021