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October 20, 2023

Via Electronic Filing

Catherine O'Hagan Wolfe, Clerk of Court
U.S. Court of Appeals for Second Circuit
40 Foley Square New York, NY 20007

RE: *New Yorkers for Religious Liberty v. The City of New York*
Case No. 22-1801

Dear Ms. O'Hagan Wolfe:

If this Court considers Appellees' third unsolicited letter, dated October 17, 2023, then Appellants respectfully ask that this response be considered as well.

Appellees' assertions about the waiver keep changing. First, Appellees said there was no waiver for any class of employee at DOE anymore. [Doc. No. 213 at 2]. Now, they admit there *are* current waiver requirements but say that waivers are only required for teachers who "resigned" and for certain special classes of employees, but *not* for teachers who were "terminated" (which they say includes most of the *Kane/Keil* Appellants). [Doc No. 218 at 2]. Appellees suggest that the email from Beth Norton, General Counsel for the UFT, supports this position.

But Ms. Norton wrote unequivocally that terminated employees *would* be asked to sign the waiver; resigned and retired employees would not be asked to do so because they had *already* signed one: "I said that only those who were terminated will be asked to sign the waiver. Those who resigned/retired through the special provisions offered at the time have already signed a waiver." [email from Beth Norton, Doc No. 215-2 at 7].

Moreover, Ms. Norton confirmed to Appellant Kane that all unvaccinated teachers – including “terminated” teachers – must sign a waiver as a condition of rehire/return—and that the City refuses to negotiate this requirement. (*See Kane Declaration, Exhibit A*). In any event, DOE continues to retaliate against the named Appellants by refusing to reinstate them with or without a waiver.

Respectfully Submitted,

/s/ Sujata S. Gibson

Sujata S. Gibson

Co-Counsel for Plaintiffs-Appellants

cc: All counsel via ECF

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

NEW YORKERS FOR RELIGIOUS
LIBERTY, INC., et al.,

Plaintiffs,

vs.

THE CITY OF NEW YORK, et al.,

Defendants.

DECLARATION OF
MICHAEL KANE

Case No. 22-1801/22-1876

MICHAEL KANE declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a named Appellant in this case, as well as the leader of a group called “Teachers for Choice” and am fully familiar with the facts and circumstances of this case.

2. Many unvaccinated teachers reported that DOE was asking them to sign a waiver of their right to sue if they wanted to return to DOE.

3. I had a meeting with Beth Norton, General Counsel for the United Federation of Teachers (“UFT”) on September 12, 2023 to discuss this matter.

4. Ms. Norton informed me that the DOE requires a waiver for all returning employees. She said UFT opposed this when it was first discussed last February, but New York City refuses to negotiate on the waiver.

5. Contrary to Appellees' suggestion, Ms. Norton was very clear that terminated employees also had to sign a waiver.

6. The distinction between "terminated" employees and those who "resigned" is blurred by the DOE's shifting position on these terms.

7. DOE has repeatedly said that we "involuntarily resigned" and have opposed unemployment insurance compensation awards by calling our separations a "resignation." DOE has also attempted to get out of contractually mandated disciplinary hearings for tenured teachers by asserting that we were not "terminated" but rather "resigned."

8. Now that it is convenient to say we were "terminated" that is what they are saying to this court.

9. But either way, Ms. Norton clarified that we must waive our right to litigate the religious discrimination we faced if we want to return.

10. Ms. Norton apologized for calling me on September 12th, not the 11th, as planned. She said she delayed the call by one day to make sure she had thoroughly researched the information to ensure she was telling me all the facts correctly.

Dated: October 19, 2023
New York, NY

Respectfully Submitted,



Michael Kane