

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Kane, et al.

Plaintiffs,

vs.

de Blasio, et al.

Defendants.

DECLARATION OF
SUJATA S. GIBSON

Civil Action No. 1:21-cv-07863

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

SUJATA GIBSON, an attorney admitted *pro hac vice* to practice before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am the attorney for the Plaintiffs in the *Kane v. de Blasio* case and am fully familiar with the facts and circumstances of this case.
2. I make this declaration in support of Plaintiffs' joint motion with the *Keil v. City of New York* Plaintiffs to lift the stay imposed by the district court and for emergency injunctive relief pending resolution of this litigation.
3. On November 29, 2021, all Plaintiffs in the *Kane v de Blasio* case timely submitted their applications for "fresh review" from the "citywide panel" in accordance with the Second Circuit Court of Appeals' instructions.

4. Plaintiffs objected to this relief as inadequate to address the violations of their first amendment rights, as acknowledged by the Second Circuit.
5. The “fresh look” did not define any criteria or procedural safeguards to ensure that appropriate injunctive relief was afforded. Rather, it was a sham process conducted by a biased panel of Defendants’ employees and the lawyers who represent them in this case, who, as part of their ethical obligation to their client, *cannot* provide an unbiased review.
6. Plaintiffs clarified, through counsel, that they submit these applications under objection and do not waive any rights, remedies or other relief arising out of their constitutional claims litigated in this action.
7. On December 8, 2021, at 2:57pm, opposing counsel emailed me and counsel for *Keil v. The City of New York* a request for further information from each Plaintiff, to be submitted *to her* on or before December 10, 2021 for use in determining whether to grant religious accommodations to Plaintiffs. A true and accurate copy of this email is attached hereto as **Exhibit 1**.
8. Shortly before noon on December 10, 2021, *Keil* counsel and I timely submitted Plaintiffs’ supplemental materials.
9. Almost immediately, Plaintiffs began receiving their summary auto-generated denials. Attached hereto as **Exhibit 2** are the auto-generated responses.
10. As evidenced by the denials, no explanation was provided for why the Plaintiffs were denied, and no real thought went into the review.
11. All Plaintiffs have sincere religious objections to the vaccine mandate as defined by standards governing Title VII and the First Amendment to the United States Constitution, and all Plaintiffs can be easily and safely accommodated as

evidenced by the declarations of public health experts filed in their original motions for injunctive relief (ECF 18 and 19) and by the great weight of the scientific evidence, which shows that COVID-19 vaccines are for personal protection and cannot stop spread of COVID-19 in any meaningful way.

12. Attached hereto as **Exhibit 3** is a true and accurate copy of a recent Harvard study found that “there appears to be no discernable relationship between percentage of population fully vaccinated and new COVID-19 cases.” Subramanian S V and Akhil Kumar. “Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States.” *European Journal of Epidemiology*, 1-4. 30 Sep. 2021, doi: 10.1007/s10654-021-00808-07.
13. This study, and many others, affirm what the experts were and are prepared to testify about and what is consensus in the scientific community at this point: herd immunity cannot be achieved with the available COVID-19 vaccines, COVID-19 is going to be endemic, and everyone or substantially everyone is going to eventually get COVID-19, whether they are vaccinated or not, and allowing reasonable religious accommodation will not meaningfully impact the spread of COVID-19 in New York City schools.
14. As another example of studies supporting these well-established scientific conclusions, attached hereto is a letter published in the Lancet with citations to other recent studies confirming that vaccinated people still spread COVID-19 at substantially the same levels as unvaccinated. **Exhibit 4**. Günter Kampf, “The epidemiological relevance of the COVID-19-vaccinated population is increasing.”

The Lancet Regional Health - Europe, Volume 11, 2021, 100272, ISSN 2666-7762, <https://doi.org/10.1016/j.lanepe.2021.100272>.

15. Data from the New York City Department of Education website also confirms that the vaccine mandate has had no discernable impact on the percentage of teachers and staff actively infected with COVID-19.
16. Before the unvaccinated teachers and staff were excluded on October 4, 2021, there were approximately 55 staff members infected with COVID-19 among all DOE staff (vaccinated and unvaccinated). A true and accurate copy of an article reporting the numbers of infected staff before the vaccine mandate took effect is attached hereto as **Exhibit 5** (available at <https://gothamist.com/news/55-doe-employees-test-positive-for-coronavirus-as-city-announces-situation-room-for-schools>).
17. Today, there are 125 active infections among the fully vaccinated NYC DOE staff. Attached hereto as **Exhibit 6** is a true and accurate copy of the NYC DOE daily Covid case map, showing infection rates as broken up between students and staff as of December 10, 2021, available at <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/daily-covid-case-map>.
18. While the vaccine mandate has had no impact on infection rates in the NYC schools, exclusion of these teachers has had a significant impact on the children and has created a staffing crisis that harms the community.
19. Attached hereto as **Exhibit 7** is a true and accurate copy of the PIX11 News publication on October 6, 2021, by James Ford entitled *NYC DOE employees reassigned over vaccine mandates say students, schools are shortchanged*

available at <https://pix11.com/news/local-news/nyc-doe-employees-reassigned-over-vaccine-mandates-say-students-schools-are-shortchanged/>

20. Attached hereto as **Exhibit 8** is a true and accurate copy of an article published October 11, 2021 available at <https://newyorkschooltalk.org/2021/10/nyc-vaccine-mandate-doesnt-stop-teachers-protesting-or-parents-debating/>
21. Mayor de Blasio admitted that he was persuaded by Pope Francis that religious objection to vaccines are invalid, and unimportant. Attached hereto as **Exhibit 9** is a true and accurate copy of a transcript of Mayor de Blasio's statements to the press indicating an intention to discriminated against employees with personally held religious beliefs.
22. Mayor de Blasio has a history of "overstepping the lines of secular government" and "blurring the lines of church and state" in openly implementing the Pope's agenda in New York City. Attached hereto as **Exhibit 10** is a true and accurate copy of an article published in Gothamist, reporting on these concerns, available at, <https://www.gothamgazette.com/government/5903-in-pope-francis-de-blasio-finds-ultimate-validator.>
23. Mayor de Blasio also has a history of disregarding and failing to accommodate religious needs he does not agree with when making and implementing COVID-19 restrictions (or making exceptions for COVID-19 policies). Attached hereto as **Exhibit 11** is a true and accurate copy of an article published by the Catholic News Agency, available at, <https://www.catholicnewsagency.com/news/44753/nyc-mayor-de-blasio-protests-essential-but-not-religion.>
24. Upon information and belief, the source of the belief being information provided to me by potential class members who wish to join this suit, the Citywide panel

has issued summary denials to most if not all other similarly situated class members who have received decisions thus far.

25. Many proposed class members were not even allowed to apply at all.

26. Plaintiffs and similarly situated DOE employees are in a crisis. I receive a daily flood of calls, emails and inquiries from people who are being daily injured by having to choose between faith and job.

27. Universally, they express the same urgent plea – they are running out of time and cannot continue to avoid violating their faith much longer. They need urgent relief now.

Dated: December 11, 2021

Respectfully Submitted,

/s/ Sujata s. Gibson

Sujata Gibson

Attorney for the *Kane* Plaintiffs