IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-836

WEST VIRGINIA BOARD OF EDUCATION, NANCY J. WHITE, in her official capacity as President of the Board of Education; VICTOR GABRIEL, F. SCOTT ROTRUCK, L. PAUL HARDESTY, ROBERT W. DUNLEVY, CHRISTOPHER STANSBURY, DEBORAH SULLIVAN, GREGORY WOOTEN, SARAH ARMSTRONG TUCKER, and CATHY JUSTICE, all in their official capacities as members of the West Virginia Board of Education; MICHELE BLATT, in her official capacity as State Superintendent of Schools; RALEIGH COUNTY BOARD OF EDUCATION; LARRY FORD, RICHARD SNUFFER, CHARLOTTE HUTCHENS, MARIE HAMRICK, and MARSHA SMITH, all in their official capacities as members of the Raleigh County Board of Education; and SERENA L. STARCHER, in her official capacity as Superintendent, and RALEIGH COUNTY BOARD OF EDUCATION,

Petitioners,

v.

MIRANDA GUZMAN, individually and on behalf of her minor child A.G., and CARLEY H., individually and on behalf of her minor child E.G.,

Respondents.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF U.S. NAVY SEALS AND OTHER SIMILARLY SITUATED U.S. MILITARY SERVICEMEMBERS IN SUPPORT OF RESPONDENTS

Pursuant to Rule 30 of the West Virginia Rules of Appellate Procedure, First Liberty Institute moves for leave to file an *amicus curiae* brief in support of Respondents on behalf of U.S. Navy Seals and other military servicemembers whose rights were violated by the U.S. Military during the COVID-19 pandemic. In further support of said motion, the *amici* state:

1. **First Liberty Institute** ("First Liberty") is a nonprofit, public interest law firm dedicated to defending religious liberty for all Americans through pro bono legal representation of individuals and entities of diverse faiths—Catholic, Protestant, Islamic, Jewish, the Falun Gong, Native American religious practitioners, and others. First Liberty has won several religious freedom cases at the U.S. Supreme Court, including *Groff v. DeJoy*, 600 U.S. 447 (2023); *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022); *Carson v. Makin*, 596 U.S. 767 (2022); and *American Legion v. American Humanist Association*, 588 U.S. 29 (2019). As part of its mission, First Liberty represents numerous individuals and organizations in lawsuits and other challenges to unlawful government action that restricted religious liberty.

2. Respondents seek to exempt their children from vaccinations mandated by the State of West Virginia. The Circuit Court of Raleigh, West Virginia, granted Respondents' request to enjoin Petitioners from enforcing W. Va. Code § 16-3-4 against their school-age children because the statute substantially burdens their sincerely held religious beliefs and violates the West Virginia Equal Protection for Religion Act (EPRA) codified at W. Va. Code § 35-1A-1.

3. This proposed brief is submitted on behalf of current and former U.S. Navy SEALs and other U.S. military servicemembers whose sincerely held religious beliefs were violated by the Biden Administration's unlawful COVID-19 vaccination order. These servicemembers have experienced religious discrimination first-hand and seek to protect the rights of school-age children and their parents to live according to their religious convictions.

4. These servicemembers argue that the State's generalized interest in public health does not withstand strict scrutiny as required by the U.S. Constitution or the EPRA. Specifically, the State cannot demonstrate that W. Va. Code § 16-3-4 uses the least restrictive means necessary to implement its vaccine mandate. Additionally, multiple Federal Courts have found that when

government agents provide for secular accommodations (e.g. medical waivers) but not religious accommodations, then the government cannot establish a compelling interest in substantially burdening religious exercise. Finally, the Department of War's interest in military readiness is far more compelling than the State's generalized interest in public health, yet multiple federal courts have found this interest did not justify substantially burdening the sincerely held religious beliefs of U.S. servicemembers.

5. There is no evidence that if Court grants this Motion for Leave to File *Amicus Curiae* Brief in Support of Respondents that it will cause delay or prejudice to any party.

Accordingly, First Liberty requests this Court grant this Motion for leave to file an *amicus curiae* brief in support of Respondents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of May, 2026, I electronically filed the foregoing "**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF U.S. NAVY SEALS AND OTHER SIMILARLY SITUATED U.S. MILITARY SERVICEMEMBERS IN SUPPORT OF RESPONDENTS**," along with a copy of the Brief itself with the Clerk of Court by using the Court's online filing system and by emailing the same to all counsel of record.

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INTEREST OF AMICUS CURIAE

First Liberty Institute files this *Amicus Curiae* Brief in Support of Respondents.[1] The *amici* are a group of current and former U.S. Navy Seals and other similarly situated military servicemembers.

During the COVID-19 pandemic, the Biden Administration, through the then Department of Defense, issued an illegal order that all servicemembers had to receive the COVID-19 vaccine. All three branches of the military implemented the COVID-19 vaccine mandate and systematically denied almost all requests for religious exemptions. The Department of Defense denied these requests despite granting exemptions for medical reasons and purely administrative reasons. This resulted in substantial harm to thousands of religious servicemembers, which included reprimands and less-than-honorable discharges.

A group of U.S. Navy SEALs led the way for other servicemembers by requesting that the federal courts enjoin the Department of Defense from implementing its vaccine mandate. Ultimately, federal courts enjoined the Biden Administration and the Department of Defense from enforcing its illegal and unconstitutional vaccine mandate, which protected religious servicemembers in the U.S. Navy-Marine Corps, Air Force, and Army.

Now, the *amici* seek to protect the rights of school-age children and their parents from being forced to violate their sincerely held religious beliefs to receive public education in the State of West Virginia. The *amici* raised their hands to defend the U.S. Constitution and personally

[1] Pursuant to West Virgina Rule of Appellate Procedure 30(e)(5), *amici*, by counsel, represents that no counsel for a party to this action authored this Brief in whole or in part. Moreover, no such counsel or party made a monetary contribution specifically intended to fund the preparation or submission of this Brief. Finally, no other person who would need to be identified under Rule 30(e)(5) made a monetary contribution toward this Brief.

sacrificed to fulfill their oaths. Having personally experienced the effects of religious discrimination, the *amici* seek to defend West Virginia school-age children from the same

SOURCE OF AUTHORITY TO FILE

Pursuant to Rule 30(c) of the West Virginia Rules of Appellate Procedure, counsel for *amici* provided notice to all counsel of record of its intention to file this *amicus curiae* brief, and it has so filed along with this Brief, its Motion for Leave to File *Amicus Curiae* Brief in Support of Respondents.

SUMMARY OF ARGUMENT

The Religious Freedom Restoration Act (RFRA) and the Equal Protection for Religion Act (EPRA) protect religious exercise unless the government can demonstrate that the law serves a compelling interest and is the least restrictive means necessary. *See* 42 U.S.C. § 2000bb; W. Va. Code § 35-1A-1.

Numerous federal courts have held the Department of War could not enforce COVID-19 vaccine mandates that substantially burdened the religious exercise of military servicemembers despite the compelling interest of military readiness. During the COVID-19 pandemic, all three major branches of the military were ultimately enjoined from implementing its COVID-19 vaccine mandate because the Department of Defense's mandate violated RFRA.

Similarly, the EPRA affords the same protection on the State level. Like RFRA on the federal level, the State of West Virginia cannot substantially burden a person's religious exercise unless there is a compelling State interest and the State uses the least restrictive means necessary. Here, the Department of War's specific interest in military readiness far outweighs the generalized interest of the State of West in public health. As such, if the sincerely held religious beliefs of

military servicemembers can be protected during a pandemic then the sincerely held religious beliefs of school-age children and their parents can be protected today.

The *amici* also desire to share their personal stories with the Court. Religious discrimination is not an abstract theoretical injury. Rather, the *amici* demonstrate through their stories that religious discrimination has real-world impacts on actual human beings. Although governmental policy begins with good intentions in the laboratory of legislatures and agencies, the unintended, or sometimes intended, discriminatory effects are borne by real people. Here, the *amici* share their stories to help the Court understand the effects of such discrimination.

ARGUMENT

In 1993, Congress passed RFRA, codified at 42 U.S.C. § 2000bb. RFRA prohibits the federal government from substantially burdening "a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that the application of the burden to the person—(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1.

"Once a plaintiff demonstrates a substantial burden on his exercise of religion, RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of religion is being substantially burdened." *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 350 (5th Cir. 2022 (internal quotations omitted) "In order to show that it has a compelling interest within the meaning of RFRA, the Government must clear a high bar. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 696, 140 S. Ct. 2367, 2392 (2020) (Alito. J., concurring).

I. Federal Courts Applied RFRA To Protect The Sincerely Held Religious Beliefs Of Servicemembers From Government-Mandated COVID-19 Vaccination.

Federal Courts have held the government cannot demonstrate a compelling interest in multiple vaccine cases. In *U.S. Navy Seals 1-26*, the Fifth Circuit Court of Appeals upheld a Federal District Court injunction against the President and the Department of Defense from enforcing its COVID-19 vaccine mandate against the plaintiffs. The Fifth Circuit explained that the "general interest" of the Navy in vaccinating servicemembers was "insufficient under RFRA." *Id*. at 351. Rather, the Fifth Circuit explained, "The question, then, is not whether the Navy has a compelling interest in enforcing its vaccination policies generally, but whether it has such an interest in denying an exception to each Plaintiff." *Id*. (cleaned up) (quoting *Fulton v. City of Phila.*, 593 U.S. 522, 541, 141 S. Ct. 1868, 1881 (2021) (holding the City of Philadelphia burdened a plaintiff's religious exercise by refusing to contract with a religious foster care agency that refused to certify same-sex couples as foster parents).

The Fifth Circuit explained the Navy was "extraordinarily successful in vaccinating service members, as at least 99.4% of whom are vaccinated." *U.S. Navy Seals 1-26* at 351. Yet, the Navy argued that "given the small units and remote locations in which special-operations forces typically operate, military commanders have determined that unvaccinated service members are at significantly higher risk of becoming severely ill from COVID-19 and are therefore medically unqualified to deploy." *Id*. However, the Court noted, "routine Naval Special Warfare mission risks include everything from gunshot wounds, blast injuries, parachute accidents, dive injuries, aircraft emergencies, and vehicle rollovers to animal bites, swimming or diving in polluted waters, and breathing toxic chemical fumes." *Id*. (cleaned up). Moreover, the Fifth Circuit noted, "There is no evidence that the Navy has evacuated anyone from such missions due to COVID-19 since it instituted the vaccine mandate, but Plaintiffs engage in life-threatening actions that may create

risks of equal or greater magnitude than the virus." *Id*. As a result, the Fifth Circuit concluded, the Defendants could not "demonstrate 'paramount interests' that justify vaccinating these 35 Plaintiffs against COVID-19 in violation of their religious beliefs." *Id*.

Similarly, the Sixth Circuit Court of Appeals upheld a class-based injunction against the Secretary of the Air Force, preventing the Air Force from enforcing its COVID-19 mandate. *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022) (vacated later for mootness). In *Doster*, the Department of the Air Force "ordered all of its over 500,000 service members to get vaccinated against COVID-19." *Id*. at 405. Following the order, "Some 10,000 members with a wide array of duties have requested religious exemptions from this mandate." *Id*. Alarmingly, "The Air Force has granted only about 135 of these requests and only to those already planning to leave the service." *Id*. At the same time, the Department of the Air Force "granted thousands of other exemptions for medical reasons (such as a pregnancy or allergy) or administrative reasons (such as a looming retirement). *Id*. The Sixth Circuit thus held, "Under RFRA, the Air Force wrongly relied on its 'broadly formulated' reasons for the vaccine mandate to deny specific exemptions to the Plaintiffs, especially since it has granted secular exemptions to their colleagues." *Id*.

The Texas Northern District Court also enjoined the U.S. Army from enforcing its COVID-19 mandate. *Schelske v. Austin*, 649 F. Supp. 3d 254 (N.D. Tex. 2022) (later dismissed in part for mootness). In *Schelske*, the District Court noted, "The Army has a valid interest in vaccinating its soldiers, and it has made the COVID-19 vaccine mandatory. But its soldiers have a right to religious freedom, which in this case includes a sincere religious objection to the COVID-19 vaccine." *Id*. at 259. How are these two interests balanced? The District Court explained, "The answer lies in the Religious Freedom Restoration Act, which applies to the military: The Army

must accommodate religious freedom unless it can prove that the vaccine mandate furthers a compelling interest in the least restrictive means." *Id*.

The District Court noted several issues that were not in dispute. The Army did not dispute whether the plaintiffs' religious beliefs were sincerely held, whether the Army's COVID-19 mandate substantially burdened the plaintiffs' religious beliefs, whether the Army was subject to RFRA, the fact that "97% of active-duty soldiers are vaccinated against COVID-19, and thousands of soldiers have operated unvaccinated for the past year or so based on temporary, non-religious exemptions," or whether the Army can later rescind a religious exemption if circumstances change. *Id*. at 260. The central dispute in *Schelske* was "whether the Army can prove that application of the vaccine mandate to these plaintiffs furthers a compelling government interest through the least restrictive means possible." *Id*.

The District Court concluded, "At every turn, however, the evidence before the Court weighs against the Army and in favor of the plaintiffs." *Id*. The District Court detailed multiple examples of how the Army failed to meet its compelling interest burden:

> • The Army has continued to operate successfully despite thousands of secular exemptions being granted and despite booster shots not being required for those that were previously vaccinated;
>
> • The plaintiffs have fulfilled their job duties and not caused a single mission failure while unvaccinated;
>
> • Seven plaintiffs received the support of their immediate commanding officers in seeking a religious exemption;
>
> • The defendants' asserted interest in the plaintiffs' ability to quickly deploy is undermined by the fact that seven of the ten plaintiffs serve in non-deployable roles;
>
> • The Army's high vaccination rate—coupled with the plaintiffs' compliance with safety protocols and low health risk—lessens the asserted, generalized interest in the Army's health and safety;

> • The generic, nearly identical letters denying religious exemptions—which include errors, inaccuracies, and, in one instance, the wrong name—make clear that the Army did not conduct the necessary individualized analysis;
>
> • The Army based its 2021 mandate on CDC data and guidance, but circumstances have changed, including the Army's near-perfect vaccination rate, the weakening strain of the virus, and the decline in COVID-19-related casualties; and
>
> • Less restrictive means, including temporary exemptions and safety protocols, have been employed successfully for an extended period of time, but the Army provides no evidence why the more restrictive burden—vaccination—is required.

Id. The District Court therefore held the plaintiffs in *Schelske* were likely to prevail because the plaintiffs "met their burden of demonstrating the sincerity of their religious beliefs and the substantial burden imposed by the vaccine mandate on their religious exercise. But the defendants have not met their burden of demonstrating a compelling governmental interest in burdening the plaintiffs' religious exercise or that the vaccine mandate is the least restrictive means to achieve that interest." *Id*. at 281.

II. West Virginia's Equal Protection For Religion Act Confers The Same Protections Afforded Through RFRA.

Although RFRA does not apply to state law or regulations, West Virginia passed its EPRA, codified at W. Va. Code § 35-1A-1, in 2023; *see City of Boerne v. Flores*, 521 U.S. 507, 511, 117 S. Ct. 2157, 2160 (1997) (holding that Supreme Court precedent, not RFFA, applied to state and local law because Congress exceeded its authority in enacting RFRA.). The EPRA states

> Notwithstanding any other provision of law, no state action may:
>
> (1) Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor
>
> (2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; nor
>
> (3) Treat religious conduct more restrictively than comparable conduct because of alleged economic need or benefit.

Id. The EPRA applies the same standard as RFRA. Specifically, the State of West Virginia cannot substantially burden a person's religious exercise unless there is a compelling State interest and the State uses the least restrictive means necessary. Additionally, the EPRA standard of individual particularity is the same standard applied through RFRA. See, *U.S. Navy Seals 1-26*, 27 F.4th at 351 ("The question, then, is not whether the Navy has a compelling interest in enforcing its vaccination policies generally, but whether it has such an interest in denying an exception to each Plaintiff.").

In this case, the interests of the military in maintaining military readiness are far more compelling than West Virginia's generalized interest in public health. Like the military cases above, the State of West Virginia "has about a 98% vaccination coverage rate for measles and pertussis, exceeding the national average and rates in surrounding states and achieving herd immunity." Opening Br. at 18. Also, similarly to the military COVID-19 cases, "The Circuit Court further found that Appellants permitted other circumstances that it characterized as creating comparable risks of disease transmission, including medical exemptions authorized by statute, unvaccinated students participating in homeschooling or microschools, and the absence of vaccination requirements for many adults working in schools and for attendance at school events." *Id*. at 21.

Comparatively, the Federal Courts concluded that the Department of War could not satisfy its burden of strict scrutiny against military servicemembers during a pandemic. Here, not only is West Virginia's interest less compelling, but the factual circumstances are also less compelling. Appellants do not assert there is any type of crisis at all, much less one comparable to a nationwide pandemic. Simply put, if the rights of servicemembers can be protected during a time of pandemic then the rights of children can be protected now.

III. The *Amici* Have An Interest In Protecting The Sincerely Held Religious Beliefs Of Children.

The Navy Seals and similarly situated servicemembers for whom this amicus brief is submitted have an interest in ensuring that children can freely exercise their religious beliefs in West Virginia. These servicemembers raised their hands and took an oath to protect and defend the Constitution of the United States of America. All of them have sacrificed to protect the rights of American citizens, including the children of West Virginia. Moreover, these servicemembers know the personal impact that occurs when governments violate an individual's sincerely held religious beliefs.

Chief Warrant Officer 3 (W-3) (Ret.) James Berry Bragaw III, USN, was one of the 26 SEALs who challenged the Biden administration's illegal COVID-19 order. W-3 Bragaw served as a U.S. Navy SEAL in Pearl Harbor, Hawaii. Ex. 1. In 2021, after 25 years in the military, W-3 Bragaw began the process of medically retiring. *Id*. When the Navy ordered all Sailors to receive the COVID-19 vaccine, W-3 Bragaw submitted a religious accommodation request (RAR) because the vaccine was "antithetical to [his] Christian faith and caused [him] extreme moral and emotional distress." *Id*. Despite having already had COVID, the Navy denied both W-3 Bragaw's RAR and appeal. *Id*. As a result, he was treated as a "pariah" and "ostracized" from his unit. *Id*. In fact, all of the SEALs who requested accommodations "were treated as obstacles to training and mission readiness due to the hyper-restrictive travel and isolation rules for the unvaxxed." *Id*. Additionally, "Military leadership threatened [them] with dishonorable discharge, loss of retirement benefits and that [they] would need to repay the government for our training, estimated to be one million dollars." *Id*.

W-4 (Ret.) Paul Drew Forsberg, USN, another U.S. Navy SEAL plaintiff, served on the Teams for approximately 19.5 years when he submitted his RAR. *Id.*. Despite nearly two decades

of honorable service, W-4 Forsberg's chain of command refused to endorse his request and instead attempted to repeatedly "pressure and coerce [him] into compliance." *Id*. Moreover, "Leadership claimed they could not fulfill mission requirements with unvaccinated personnel, yet shortly after denying [his] request, [he] was told [he] could not take leave because [he] was essential to ongoing operations." *Id*.

Although the injunction allowed W-4 Fosberg to retire and promote from W-3 to W-4, "the environment created by the Navy's handling of [his] religious accommodation request fundamentally altered [his] career." *Id*. "Given the demonstrated hostility toward my request and the lack of good faith engagement by senior leadership, [W-4 Fosberg] reasonably believed that continuing [his] career would expose [he] and [his] family to unnecessary risk." *Id*. Because of this, W-4 Fosberg retired earlier than he originally planned.

Chief Special Warfare Operator (SOC) (E-7) Shawn Harnish, USN, was also a plaintiff in the U.S. Navy SEALs case. *Id.*. Because of his outstanding performance on the Teams, SOC Harnish was selected as a Platoon Chief for SEAL Team Seven and was encouraged by his leadership to submit a Warrant Officer Packet. *Id*. After submitting his RAR from the COVID-19 vaccine order, SOC Harnish was removed as Platoon Chief and relieved from his position. *Id*. This also resulted in him not being selected for Warrant Officer. *Id*. After returning to his old position, a "senior leader expressed that it was a disgrace for [SOC Harnish] to work alongside others who had complied, and made a threatening remark about what he would do if he were allowed." *Id*. The overall environment for SEALs who submitted RARs became "hostile and degrading." The denial of SOC Harnish's RAR "fundamentally disrupted the career I had dedicated myself to building and caused lasting personal and professional harm." *Id*.

SOC Jordan Ailie, another plaintiff in the U.S. Navy Seals case, served 16 years on the SEAL Teams when the COVID-19 vaccine order was issued. *Id.* SOC Ailie also submitted an RAR, which was subsequently denied along with his appeal. *Id*. Because of submitting the RAR, SOC Ailie "experienced repeated efforts to pressure and coerce me into compliance." *Id*. This included "overarching threat was a dishonorable discharge that would result in loss of security clearance, loss of GI Bill that I had earned twice with honorable discharges and had transferred to my children for use in the future when attending college, and loss of employment opportunity with a dreaded dishonorable discharge claim on job applications." *Id*. Moreover, the threat of separation included the threat of SOC Ailie losing his retirement pension. *Id*. Although the injunction saved SOC Ailie's career and allowed him to reach retirement, he and his family "were put under an incredible and undue amount of pressure throughout the process." *Id*.

Jeffrey Aquino, another U.S. Navy SEAL plaintiff, had over a decade of honorable service as a Navy SEAL, including multiple deployments in support of combat and contingency operations" when he submitted his RAR from the COVID-19 vaccination order. *Id*. The denial of Aquino's RAR "placed [him] in an untenable position—forcing [him] to choose between [his] faith and family, and [his] profession." *Id*. According to Aquino, "This was not a hypothetical dilemma. It was an illegal order that conflicted with my religious convictions, medical instincts, and common sense which carried the threat of career-ending consequences." *Id*.

After the denial of his RAR, Acquino "I was removed from operational and positional authority" and not allowed to fully participate in the unit's mission. *Id.* These restrictions were imposed not because of his "performance or conduct" but merely because he submitted a RAR. *Id*. Before submitting the RAR, Aquino was on track to make Master Chief (E-9). *Id*. Following the RAR, Acquino's career was stalled at Chief (E-7). *Id*. The denial also resulted in significant stress

to Acquino's family and placed them in the position of Acquino "losing [his] career while [his] wife was pregnant with [their] third child—not because of misconduct or failure, but because of adherence to [his] faith." *Id*.

Brandon Hubbard, another U.S. Navy SEAL plaintiff, "had completed 18 years of honorable service and was serving in a key leadership position—one that represented both a milestone in [his] career and a stepping stone to senior enlisted advancement" when the COVID-19 vaccination order was issued. *Id.* After submitting a RAR, Hubbard "experienced a rapid and severe shift in [his] professional standing." *Id*. Hubbard was involuntarily removed from a training program, relieved of his leadership duties, reassigned to duties below his grade, and recommended for administrative separation. *Id*. Despite regulatory safeguards under RFRA, Hubbard "was subjected to sustained coercion, adverse treatment, and professional marginalization by both superiors and peers." *Id*. Despite the mandate ultimately being rescinded, Hubbard's "reputation, leadership trajectory, and sense of dignity as a service member were significantly undermined." *Id*. This included the loss of promotion opportunities, which resulted in long-term financial loss in his retirement. *Id*.

Hunter Doster, the lead plaintiff in *Doster*, graduated from the U.S. Air Force Academy. *Id.* Doster felt "called by God to serve in the military." *Id*. Yet, "When the COVID-19 vaccine mandate was issued, [Doster] was deeply convicted by [his] faith not to comply." *Id*. After his RAR was denied, Doster faced the possibility of separation and the threat of "$500,000 in debt, a dishonorable discharge, and potential criminal consequences for disobeying a direct order if I held to my convictions." *Id*. At the time, Doster was "married, soon to become a father of two, and the sole source of income for my family." *Id*. Importantly, "A dishonorable discharge would have stripped our livelihood and permanently marked my record." *Id*. The stress of the years of litigation

not only impacted Doster but took "a physical toll" on his wife's health. *Id*. The successful litigation, led by Doster, resulted in "over 10,000 careers" in the Air Force being preserved.

One of those 10,000 careers that were saved was Lieutenant Colonel (Lt Col) (Ret.) Davis Younts. Lt Col Younts, Senior Partner at Younts Law, "served honorably in the United States military for nearly two decades and deployed in support of the Global War on Terror." *Id.* Lt Col Younts was eligible for retirement on 20 December 2022. However, in "late 2021, the Department of Defense imposed a COVID-19 vaccine mandate that directly conflicted with [his] sincerely held religious beliefs." Lt Col Younts promptly submitted a RAR, which was "reviewed and deemed sincere." *Id*. Both Lt Col Younts's RAR and appeal were denied and he "faced involuntary separation with only 19 ½ years of service – mere months short of the 20-year mark that would have entitled [him] to a military retirement." *Id*.

The only reason Lt Col Younts reached military retirement was because the federal court in *Doster* issued an "injunction that temporarily halted the enforcement of the mandate." *Id*. Although Lt Col Younts's career was saved by the injunction, "the very act of submitting the RAR triggered immediate and disparate treatment." *Id*. For example, Lt Col Younts was "barred from participating in orders, deployments, or any duty status that would have been routinely available to similarly situated service members who had not sought a religious accommodation." *Id*. Unfortunately, "This exclusion continued even after the injunction was issued." Additionally, Lt Col Younts's retirement "was stripped of every traditional recognition. There was no retirement ceremony. There was no formal recognition of two decades of honorable service. There was no end-of-tour award." *Id*. Rather, Lt Col Younts was unceremoniously processed out of the Air Force. According to Lt Col Younts, "This experience left me with a profound sense of betrayal after two decades of sacrifice. The mandate and the handling of my accommodation request turned

what should have been a moment of pride into one of quiet exclusion and lasting disappointment." *Id*.

These personal testimonies serve as cautionary tales demonstrating the true cost of allowing the government to discriminate against sincerely held religious beliefs. These are not hypotheticals. Like the schoolchildren and their parents in West Virginia, these are real people who experienced real discrimination and faced real consequences.

We therefore respectfully request this Court to rule in favor of the Respondents and protect the religious freedom of school-age children and parents in West Virginia.

CONCLUSION

Considering the foregoing, U.S. Navy SEALs and other similarly situated U.S. military servicemembers join the Respondents in urging affirmance of the Circuit Court Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of May 2026, I electronically filed the foregoing "***AMICUS CURIAE* BRIEF OF U.S. NAVY SEALS AND OTHER SIMILARLY SITUATED U.S. MILITARY SERVICEMEMBERS IN SUPPORT OF RESPONDENTS**," along with a copy of the Brief itself with the Clerk of Court by using the Court's online filing system and by emailing the same to all counsel of record.

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Exhibit 1

I am one of the plaintiffs in Navy SEALs 1-26 v. Joseph R. Biden.

In 2021 I was serving as a US Navy SEAL at the rank of Chief Warrant Officer 3 at a SEAL unit in Pearl Harbor, HI. Due to injuries sustained through numerous deployments over my 25 year career I was beginning the medical retirement process which normally allows a service member to retain full benefits and an honorable discharge.

When the COVID-19 "vaccine" mandate was ordered, I submitted a Religious Accommodation Request (RAR) detailing the ways in which the "vaccine" was antithetical to my Christian faith and caused me extreme moral and emotional distress. I was the only person at my Unit to actually have my RAR recommended by my Commander due to my unique circumstances yet I received the same blanket format denial letter from higher in direct violation of regulations which state that each RAR must be considered on its merits.

I immediately appealed citing numerous preexisting Navy policies which could also be used for accommodation to assist the leadership in finding a solution to my particular situation. For example, I was set to retire in six months, which had previously allowed a member accommodation from other vaccines. Additionally, I had already had COVID-19, which was a superior form of immunity and had been excepted for other diseases prior to the COVID-19 mandate. My appeal was denied with no explanation or retort to any of my points. There were more iterations of appeals and denials until a preliminary injunction by the court allowed me to medically retire.

Throughout this time there was immense pressure within the SEAL Teams to take the "vaccine." Members who requested accommodation were viewed as pariahs and ostracized. We were treated as obstacles to training and mission readiness due to the hyper-restrictive travel and isolation rules for the unvaxxed. Military leadership threatened us with dishonorable discharge, loss of retirement benefits and that we would need to repay the government for our training, estimated to be one million dollars.

I was fortunate to have been defended by First Liberty Institute all the way to the Supreme Court, however getting the government to stop violating my rights is far from getting accountability and ensuring this never happens again. Prior to this event, I naively believed that the black letter laws and regulations put in place to protect religious freedom and rights would remain in effect and deter infringement during the offense they were envisioned to protect, but I was clearly mistaken. The only defense we have is that the courts hold the government accountable for the laws they created regardless of the current, popular political opinion.

James Berry Bragaw III, Chief Warrant Officer 3, SEAL (Ret)

I am one of the plaintiffs in the U.S. Navy SEALs 1–26 versus Joe Biden.

At the time of the COVID-19 vaccine mandate in 2021, I was serving as a Chief Warrant Officer (W-3) in the United States Navy SEAL Teams and had approximately 19.5 years of service. My pension would vest at 20 years, and as part of my commission as a chief warrant officer, I was obligated to serve 21 years. I fully intended to continue my career to 30 years or more and was competitively positioned for advancement to W-5. I had a strong record and a diverse operational background across SEAL teams, special reconnaissance, and training commands, which are all key factors for continued advancement in the warrant officer community.

After submitting my religious accommodation request, it was not endorsed by my chain of command and was ultimately denied. I appealed, but my appeal was also not endorsed. Throughout this process, senior leadership demonstrated no meaningful interest in understanding or evaluating my sincerely held religious beliefs. Instead, I experienced repeated efforts to pressure and coerce me into compliance.

At the same time, the rationale provided for denying my request was inconsistent with reality. Leadership claimed they could not fulfill mission requirements with unvaccinated personnel, yet shortly after denying my request, I was told I could not take leave because I was essential to ongoing operations. This contradiction made it clear that the stated justification was not genuine.

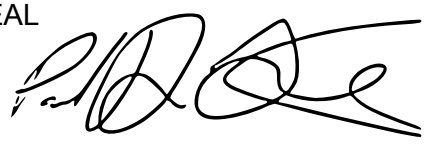
The preliminary injunction issued by the court allowed me to reach my 20-year mark and secure retirement eligibility. It also enabled me to request and receive approval for a two-year extension, allowing me to retire at 22 years of service with an honorable discharge. I was even selected for promotion to W-4 during this time.

However, despite these outcomes, the environment created by the Navy's handling of my religious accommodation request fundamentally altered my career. It became clear to me that if I remained in service longer or accepted promotion, I could face retaliatory or adverse assignments under the broad authority of "needs of the Navy." Given the demonstrated hostility toward my request and the lack of good faith engagement by senior leadership, I reasonably believed that continuing my career would expose me and my family to unnecessary risk.

As a result, I made the decision to retire earlier than I had planned, despite being on a trajectory for continued advancement and long-term service. This decision was not voluntary in the true sense. It was made under pressure and in response to a credible risk of professional retaliation and personal hardship.

The Navy's refusal to grant my religious accommodation forced me to put my career on hold, abandon my long-term plans, and separate from service earlier than intended, despite a strong record and clear path forward.

Paul Drew Forsberg, Chief Warrant Officer 3, retired Navy SEAL



I am one of the plaintiffs in U.S. Navy SEALs 1-26 v. Joe Biden.

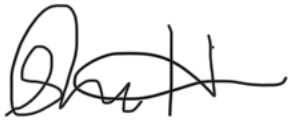
The Navy's refusal to grant my Religious Accommodation Request (RAR) has had a significant and lasting impact on both my career and my personal well-being. Prior to this, I had built a strong reputation as a high-performing service member, earning multiple combat and leadership awards, including Sailor of the Quarter and Sailor of the Year while serving as Leading Petty Officer for SEAL Team Seven. Based on this record, I was encouraged by my leadership to submit a Warrant Officer package and was told I ranked among the top candidates and was highly likely to be selected. Despite this, I was ultimately passed over. I was informed that leadership did not want to "waste" a Warrant Officer seat on someone they believed would soon be separated from the military due to my vaccination status. This decision directly resulted from the denial of my RAR and abruptly altered the trajectory of my career.

At the same time, I had been selected to serve as a platoon chief for SEAL Team Seven. I was placed on temporary duty (TAD) in this role specifically to maintain eligibility for my pending Warrant Officer package, as a permanent transfer would have required me to resubmit it. I performed the duties of platoon chief throughout a 6 months ProDev block and was preparing to assume the position permanently upon receiving an official Warrant Officer position. However, I was told that unless I became vaccinated, I would be removed as a Platoon Chief regardless of my pending RAR. I was subsequently relieved from my position. I was ordered back to my previous command without formal documentation of my removal, being told informally that "on record, you're not being fired—you're just not being hired" since technically I was still TAD.

Upon returning to Tradet-1, I experienced further professional and personal harm. A senior leader expressed that it was a disgrace for me to work alongside others who had complied, and made a threatening remark about what he would do if he were allowed. The environment for members that submitted a RAR hostile and degrading.

As a result of these actions, I lost my position as platoon chief, delaying my advancement by approximately three years. I also lost the opportunity to become a Warrant Officer, a role I had worked toward and for which I was well qualified. This not only impacted my career progression, but also diminished my long-term professional fulfillment and retirement prospects. The denial of my RAR fundamentally disrupted the career I had dedicated myself to building and caused lasting personal and professional harm.

SOC Shawn Harnish, USN.



I am one of the plaintiffs in the U.S. Navy SEALs 1–26 versus Joe Biden.

At the time of the COVID-19 vaccine mandate in 2021, I was serving as a Special Operator First Class in the United States Navy SEAL Teams and had approximately 16 years of service. My pension would vest at 20 years; I was obligated to serve 4 years. I fully intended to continue my career to 30 years or more and was competitively positioned for advancement to the Chief Warrant Officer program. I had a strong record and a diverse operational background across SEAL teams, training commands, and prior service as a Reconnaissance Marine, which are all key factors for continued advancement in the SEAL community. After submitting my religious accommodation request, it was promptly denied, and as we later found out, illegally denied based on a step-by-step guide disseminated by upper echelon Navy leadership to rubber stamp deny any and all religious accommodation requests without the legal mandate to review them thoroughly and on an individual basis. I appealed, but my appeal was also not endorsed. Throughout this process, senior leadership demonstrated no meaningful interest in understanding or evaluating my sincerely held religious beliefs. Instead, I experienced repeated efforts to pressure and coerce me into compliance. The overarching threat was a dishonorable discharge that would result in loss of security clearance, loss of GI Bill that I had earned twice with honorable discharges and had transferred to my children for use in the future when attending college, and loss of employment opportunity with a dreaded dishonorable discharge claim on job applications. Additionally, after serving honorably as a RECON MARINE and SEAL, I faced losing my nearing retirement pension. At the same time, the rationale provided for denying my request was inconsistent with reality. During this time, I was denied reschedule of reserve drills which were explicitly approvalable when loss of a family member was a reason, and told if I did not attend, I would be marked unauthorized absent, yet also told I was a threat to the vaccinated and needed to be masked at all times. This contradiction made it clear that the stated justification was not genuine.

The preliminary injunction issued by the court allowed me to reach my 20-year mark and secure retirement eligibility. It also enabled me to request and receive approval for a 24 month extension, allowing me to continue to serve until I retire at 22 years of service with an honorable discharge.

During this period of my career, myself and my family were put under an incredible and undue amount of pressure throughout the process. This led to mental, emotional, relational, and physical hardships based on what is now explicitly known to be an illegal mandate. This tried and tested our military, our nation and our Constitution. I'm proud to have stood in this fight and won for myself and ultimately for my fellow countrymen and women and religious liberty. I'm forever grateful to First Liberty for their hard work and help in this worthy cause.

Jordan Ray Ailie, Special Warfare Operator Chief (SOC) Navy SEAL

I am one of the plaintiffs in U.S. Navy SEALs 1-26 v. Joe Biden.

I submitted a Religious Accommodation Request (RAR) based on my sincerely held religious beliefs regarding the COVID-19 vaccine. My request was denied.

At the time of my request, I had over a decade of honorable service as a Navy SEAL, including multiple deployments in support of combat and contingency operations. Throughout my career, I consistently received strong performance evaluations, held positions of increasing responsibility, and was entrusted to lead and train other operators within my command to include screening positive for the platoon's lead petty officer (LPO) position which was a milestone for promotion.

The denial of my RAR placed me in an untenable position—forcing me to choose between my faith and family, and my profession. This was not a hypothetical dilemma. It was an illegal order that conflicted with my religious convictions, medical instincts, and common sense which carried the threat of career-ending consequences.

Following the denial, I experienced immediate and lasting professional impacts. I was removed from operational and positional authority. Certain duties and opportunities were now restricted. Specifically, my ability to fully participate in my unit's mission. These limitations were not based on performance or conduct. It was the guise of readiness, but solely because they dismissed my request for religious accommodation multiple times and without true case by case consideration. As a result, my ability to lead, contribute, and maintain credibility within my team was significantly affected.

This decision also disrupted my career trajectory. Prior to the denial, I was on a clear and competitive path toward advancement, with performance and leadership experience that positioned me for promotion to Master Chief (E-9) within a 20 year timeline. Since the denial of my RAR, that trajectory has been derailed. I have effectively been stalled at the Chief (E-7) level, with reduced opportunities to compete for advancement, diminished visibility for selection boards, and a loss of professional momentum built over years of service. I'm forced to serve at a joint command just to stay in Hawaii while others far less credible in their careers have never left the Group 8 command I was forced to leave.

The impact extended beyond my professional life and into my home. My career in the Navy is the foundation of my family's financial stability and long-term planning. The uncertainty created by the denial introduced significant stress, forcing my family and me to consider the possibility of losing my career while my wife was pregnant with our third child—not because of misconduct or failure, but because of adherence to my faith.

I have willingly accepted the risks and sacrifices inherent to serving as a Navy SEAL. However, being compelled to violate my religious beliefs under threat of separation or

career stagnation imposes a burden that goes beyond the oath I took. My request was not for preferential treatment, but for the protection of religious liberty consistent with longstanding military policy and American principles.

The denial of my RAR has had a direct and lasting impact on my career progression, my leadership role within the teams, my family's stability and my mental and physical health. It has prevented me from serving to my full potential while remaining faithful to my deeply held beliefs.

Respectfully,
Jeffrey Aquino

I am one of the plaintiffs in the U.S. Navy SEALs 1-26 versus Joe Biden.

I respectfully submit this statement as a friend of the court to describe the personal and professional impact I experienced as a result of the U.S. Navy's COVID-19 vaccine mandate.

At the time the mandate was implemented, I had completed 18 years of honorable service and was serving in a key leadership position—one that represented both a milestone in my career and a steppingstone to senior enlisted advancement. Concurrently, I had been selected for and was attending a highly competitive and prestigious training program. This program would have provided me with specialized qualifications directly applicable to Naval Special Warfare and would have significantly enhanced my opportunities for continued service and post-retirement government employment.

After submitting a request for religious accommodation, I experienced a rapid and severe shift in my professional standing. Despite having successfully completed more than half of the demanding training pipeline, I was involuntarily removed from the program. I was subsequently relieved of my leadership position and reassigned to perform menial duties, well below my experience and qualifications, while awaiting administrative separation.

During this period, I observed that existing Navy policies and instructions—previously understood to provide procedural and substantive protections for service members submitting religious accommodation requests—were altered or applied in ways that effectively stripped those protections. In practice, the safeguards intended under the Religious Freedom Restoration Act were not meaningfully upheld in my case. Instead, I was subjected to sustained coercion, adverse treatment, and professional marginalization by both superiors and peers.

The cumulative effect of these actions was not only professionally damaging but personally distressing. My reputation, leadership trajectory, and sense of dignity as a service member were significantly undermined.

Although the mandate was ultimately rescinded following federal legal challenges, the consequences to my career were not reversed. My advancement timeline was delayed by approximately two years, and I was unable to compete for or attain promotion to Senior Chief Petty Officer. As a result, I retired at the rank of Chief Petty Officer rather than the higher rank I had been on track to achieve.

This outcome carries permanent financial implications. The difference in retirement pay between these ranks will affect me and my family for the remainder of my life, representing a substantial and enduring loss tied directly to the events described above. I offer this statement to provide the Court with a firsthand account of how the mandate and its implementation affected one service member's career, livelihood, and rights.

Personal Narrative of Hunter Doster *Doster v. Kendell*

On June 30, 2016, I joined the uniformed service at the United States Air Force Academy. My very first experience was running off a coach bus into the cadet area to stand on the "footprints," a tradition designed to mark the beginning of a complete transformation. In those first moments, surrounded by cadre pressing in from every direction, we were not yelled at. We were asked one question: *Why are you here?* Any answer beyond "to defend the U.S. Constitution" was met with immediate correction. The next six weeks were spent stripping everything away and rebuilding us on that single foundation: we fight for the Constitution, against all enemies foreign and domestic, so help us God.

Five years later, I faced my first real test of that oath.

The First Amendment, and specifically the Free Exercise Clause, has always been the part of the Constitution closest to my heart. I felt called by God to serve in the military, in part to protect that very freedom for myself and for others. When the COVID-19 vaccine mandate was issued, I was deeply convicted by my faith not to comply. I had come to understand that aborted fetal cell lines were used in the development of these vaccines, and my sincerely held religious beliefs would not allow me to participate. I submitted a formal request for a religious accommodation.

What followed appeared to be a systematic denial of First Amendment protections. While medical and administrative accommodations were granted broadly, religious accommodation requests, including my own, were denied en masse across the Air Force. I was facing $500,000 in debt, a dishonorable discharge, and potential criminal consequences for disobeying a direct order if I held to my convictions. I was being asked to choose between my faith and my career, between the oath I swore and the institution that administered it.

The decision to challenge the mandate in court was not made lightly. I was married, soon to become a father of two, and the sole source of income for my family. A dishonorable discharge would have stripped our livelihood and permanently marked my record. My wife, who sat in the courtroom during my cross-examination by the Department of Justice, was actually wearing a heart monitor that day. The stress of those years had taken a physical toll on her health. The uncertainty of not knowing whether we would lose everything, for standing on principle, is something neither of us has fully moved past.

But that is what I signed up for. The oath I took at the Academy was not conditional.

Our legal challenge ultimately succeeded. We obtained federal court protection for service members across the entire Air Force and Space Force. The official numbers indicate that over 10,000 careers were preserved, but I believe the true impact is far greater. I have spoken with countless airmen who, seeing no religious accommodations being approved, had quietly begun

pursuing other administrative pathways to separate from the military. Had the mandate not been challenged, many of them would have left. The Air Force and Space Force would look very different today.

Religious freedom is not a benefit the government may selectively extend. It is a constitutional guarantee. My story is one example of what happens when that guarantee is ignored within the institution sworn to defend it.

Personal Impact Statement: The COVID-19 Vaccine Mandate, Denial of My Religious Accommodation Request, and Its Lasting Effects on My 20-Year Military Career

I served honorably in the United States military for nearly two decades and deployed in support of the Global War on Terror, with my 20-year retirement eligibility date falling on 20 December 2022. In late 2021, the Department of Defense imposed a COVID-19 vaccine mandate that directly conflicted with my sincerely held religious beliefs. I promptly submitted a Religious Accommodation Request (RAR) in accordance with all service regulations and Department of Defense Instruction 1300.17.

My RAR was formally reviewed and deemed sincere. Despite this finding, the request was denied. I immediately filed a timely appeal. On 3 July 2022, I received official notice that my appeal had also been denied. At that moment I faced involuntary separation with only 19½ years of service—mere months short of the 20-year mark that would have entitled me to a military retirement.

The only reason I was able to reach my 20-year service date was a federal court injunction that temporarily halted the enforcement of the mandate against me. That injunction allowed me to remain in the active reserve long enough to cross the 20-year threshold. However, the very act of submitting the RAR triggered immediate and disparate treatment. I was barred from participating in orders, deployments, or any duty status that would have been routinely available to similarly situated service members who had not sought a religious accommodation. This exclusion continued even after the injunction was issued.

As a direct result, my transition from military service was stripped of every traditional recognition. There was no retirement ceremony. There was no formal recognition of two decades of honorable service. There was no end-of-tour award. I was simply administratively processed out—denied the dignity and closure that every other 20-year retiree receives.

The denial of my RAR and the subsequent discriminatory treatment did more than prevent a standard retirement; it erased the final chapter of my career. The military's own determination that my beliefs were sincere was overridden, and the price I paid was the loss of the very honors and benefits I had earned through 20 years of faithful service. The injunction saved my retirement pay, but it could not restore the ceremony, the recognition, or the sense of completion that should have marked the end of my military journey.

This experience left me with a profound sense of betrayal after two decades of sacrifice. The mandate and the handling of my accommodation request turned what should have been a moment of pride into one of quiet exclusion and lasting disappointment. I submit this statement so that the full human cost of these policies is not forgotten.