February 8, 2022

VIA E-MAIL (REGSQNA@health.ny.gov)

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237


Dear Ms. Ceroalo:

New Yorkers for Constitutional Freedoms (NYCF) is New York’s statewide evangelical Christian advocacy organization. Please accept this correspondence as a public comment on the above-referenced proposed regulation.

We respectfully urge the Department to rescind the proposed regulation. Our objections to the proposed 10 NYCRR 2.60 are as follows:

1. The proposed 10 NYCRR 2.60(a) gives the Health Commissioner unilateral authority to implement various statewide mask mandates, including a statewide mask mandate for indoor public spaces where proof of vaccination is not required. We believe that this language exceeds the Department’s authority and is unconstitutional. It should be noted that one New York trial court has already held a mask mandate for indoor public spaces to be unconstitutional. The Department is not a legislative body.

2. The proposed regulation fails to place any limit on the duration of the mask mandates that it authorizes. This open-ended approach creates undue uncertainty and is, in itself, an abuse of authority.
3. As applied to houses of worship and religious schools, the proposed regulation is unconstitutional on First Amendment grounds. The State of New York does not have the authority to entangle itself in the operations of faith communities by dictating who may or may not enter their facilities.

4. The proposed regulation is unfair to county health departments. On the one hand, it allows the Commissioner to unilaterally impose a variety of mask mandates upon all 63 counties in the state with no input from those counties. On the other, it requires that already-overburdened county health departments enforce those very same mandates. As the reaction from various counties across the state has indicated, many counties find this approach untenable; it makes county health departments responsible for enforcing edicts that they did not make and that may, in some counties, be completely unnecessary.

5. The proposed regulation authorizes fines of up to $1,000 to be imposed for each violation of its provisions. This language could result in a house of worship or a small, family-owned business being fined $1,000 per day for violations. These fines are draconian and unnecessary.

With respect, we believe that the Department of Health should consider a guidance-based approach to COVID-19 prevention as opposed to a top-down, mandate-based approach. Such an approach would provide New Yorkers with needed information about COVID-19 while respecting personal and religious liberty.

Thank you for your consideration.

In His Service,

Jason J. McGuire
Executive Director