



Written by [Michael Tennant](#) on February 18, 2024

## Federal Judge Permits Navy SEALs' Religious Discrimination Suit to Continue Despite Vax-mandate Repeal

A federal judge on Wednesday allowed a class-action lawsuit challenging the Navy's religious-accommodations process to proceed even though the Defense Department's Covid-19 vaccine mandate, which occasioned the suit, has since been rescinded.

"While the mandate may be gone, the effects of that mandate and the discriminatory treatment the class members were subject to because of the mandate still linger," U.S. District Judge Reed O'Connor [wrote](#), quoting the supplemental briefing of the plaintiffs, a group of Navy SEALs and other Naval Special Warfare personnel who had been denied religious exemptions from the mandate.



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O'Connor, of the Fort Worth Division of the U.S. District Court for the Northern District of Texas, issued a [preliminary injunction](#) against the vaccine mandate's application to the 35 original plaintiffs in January 2022. He later [expanded it](#) to cover all sailors who had objected to being vaccinated on religious grounds, observing: "Each has submitted a religious accommodation request, and each has had his request denied, delayed, or dismissed on appeal. Exactly zero requests have been granted. And while defendants encourage this court to disregard the data, it is hard to imagine a more consistent display of discrimination."

The 5th Circuit Court of Appeals upheld O'Connor's injunction on appeal, and the Supreme Court partially upheld it.

After Congress, with the consent of President Joe Biden, put an end to the mandate in January 2023, most related cases were declared moot. However, the 5th Circuit left it up to O'Connor to determine whether there were any issues in the Navy case that still needed to be adjudicated.

O'Connor decided that there were. The other cases, he noted, had simply challenged the mandate. But in this one, the plaintiffs "actually asserted — prior to rescission of the mandate — that their underlying harms derive from the lack of a proper religious accommodation process, rather than exclusively from the mandate itself."

"This allegedly 'sham' process is what enabled the coercive and discriminatory treatment of the class members while their accommodation requests sat unadjudicated," penned the judge. "The mandate simply served as the catalyst that unveiled the problems with this broader process during the pandemic."



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Among the problems O'Connor identified:

(1) indefinitely sitting on requests for religious accommodation; (2) [forgoing] the required individualized assessments, citing standardized policy memos (even if outdated) to satisfy the compelling interest requirement, and using boilerplate statements to suffice for demonstrating that the Navy's action is the least restrictive means; (3) permitting discrimination and coercive tactics to pressure servicemembers to [forgo] their religious beliefs; (4) authorizing Navy leadership to dictate denial of all requests without considering the individual circumstances of the requests and current conditions or facts; (5) permitting coercion and retaliation against commanding officers who recommend approval of religious accommodations despite the chain of command's desire that requests be denied; and (6) prohibiting resubmission of denied requests and updates to pending requests due to a change of job, location, or other relevant circumstances.

While the Navy summarily denied all requests for religious exemptions from vaccines — not just the Covid-19 ones — over the past seven years, it did grant certain secular exemptions, suggesting that religious discrimination is de facto Navy policy.

The plaintiffs are thus hesitant to use the religious-accommodations process in the future and are faced with what O'Connor described as "the Hobson's choice of [forgoing] their religious beliefs to avoid discrimination or suffering adverse actions from the Navy."

The Navy, of course, denies that such is the case, "stating that the absence of involuntary separation means there is no adverse action" against religious believers, O'Connor wrote. However, the Navy had a litany of potential adverse actions that could befall those violating the now-defunct vaccine mandate, including court-martial, removal from leadership, recoupment of money spent on training the individual, and loss of leave and travel privileges. It is not unreasonable to assume that those seeking religious accommodations in the future could suffer similar punishments.

O'Connor, in fact, was not impressed with most of the Navy's arguments:

As the party asserting mootness, the Navy did not "bear[] [its] burden to establish that a once-live case has become moot" once the plaintiffs made an initial showing of live harm. Although the Navy points to the subsequent events by Congress and the President that materially changed the mandate, they did not point to even [one] subsequent event that materially changed the broader policy so as to entirely terminate the controversy. Instead, the Navy incorrectly emphasizes plaintiff's initial burden and spends more time attacking this initial showing rather than making their own showing upon the burden shifting to them.

Ultimately, he found, "plaintiffs should have their day in court." He ordered the parties to the lawsuit to "submit a report with their proposal for how this case should proceed to a final resolution" by February 28.

Danielle Runyan, senior counsel at First Liberty Institute, which is representing the plaintiffs, praised O'Connor's decision.

"This has been a long and difficult journey, but our Navy SEALs don't quit," Runyan said in a Thursday [press release](#). "While some may believe the case ended after Congress forced the Navy to repeal the



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mandate, nothing could be further from the truth. Rescinding the mandate was just the first step, but the real harm to these brave warriors continues because there is still no valid process for religious accommodation. First Liberty has stood arm-in-arm with our nation's sailors, and we will continue to do so for as long as it takes to win."



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