No. 24-

IN THE

# Supreme Court of the United States

DANIEL SNYDER,

*Petitioner,*

*v.*

ARCONIC, CORP., A DELAWARE CORPORATION;
ARCONIC DAVENPORT, LLC,
A DELAWARE CORPORATION,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

Title VII of the Civil Rights Act of 1964 broadly prohibits firing an employee because of any "aspect[] of religious observance and practice," unless the employer shows that reasonably accommodating that practice would impose an "undue hardship." *See* 42 U.S.C. §§ 2000e-2(a)(1), 2000e(j). That means "[a]n employer may not make an [individual's] religious practice, confirmed or otherwise, a factor in employment decisions," without showing undue hardship. *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015).

In this case, the court of appeals and district court held that Daniel Snyder failed to establish a prima facie case as a matter of law where he was fired for making a single statement the employer "concede[d] . . . was religiously motivated." App.21a. Both courts held that Mr. Snyder failed to *additionally* show he had a "religious belief that conflicts with an employment requirement," and the district court held he failed to provide *a priori* notice of his religious expression. The courts reached these conclusions by applying a pre-*Abercrombie* a-textual judicial test for adjudicating claims of failure to accommodate religious practice.

The question presented is:

Whether firing an employee because of expression the employer understands is religiously motivated suffices to constitute a prima facie case under *Abercrombie*.

## PARTIES TO THE PROCEEDINGS BELOW

Petitioner Daniel Snyder was the plaintiff in the district court and the appellant in the court of appeals.

Respondents, Arconic, Corp., and Arconic Davenport, LLC, were the defendants in the district court and the appellees in the court of appeals.

## RELATED PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit, No. 23-3188, *Daniel Snyder v. Arconic Corp., et al.*, judgment entered August 14, 2024, and petition for rehearing and rehearing en banc denied October 10, 2024.

U.S. District Court for the Southern District of Iowa, No. 3:22-cv-00027-SHL-SBJ, *Daniel Snyder v. Arconic Corp., et al.*, judgment entered August 31, 2023.

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## OPINIONS BELOW

The opinions of the court of appeals and district court are unreported. The court of appeals' opinion is reprinted at App.3a-13a. The district court's opinion is reprinted at App.16a-50a.

## STATEMENT OF JURISDICTION

The judgment of the court of appeals was issued on August 14, 2024. *See* App.1a-2a. Petitioner timely filed a petition for rehearing and rehearing en banc, which was denied on October 10, 2024. App.51a-52a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

42 U.S.C. § 2000e-2(a)(1) provides in relevant part:

> It shall be an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * religion * * *.

42 U.S.C. § 2000e(j) provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

## PRELIMINARY STATEMENT

This case arose when Arconic, a multi-national aluminum manufacturing company, fired the petitioner, Daniel Snyder, for posting a single, religiously motivated comment, expressly referring to "God," on Arconic's employee "intranet" page objecting to the way it promoted "Pride Month." While Mr. Snyder explained he had been attempting to comment in a private company survey (rather than posting it online), Arconic still deemed the comment "offensive" and a violation of its diversity and anti-harassment policies. Arconic admits it believed Mr. Snyder's overtly religious comment was likely religiously motivated, but it fired him anyway, without any attempt to reasonably accommodate him.

The lower courts awarded summary judgment to Arconic, holding that Mr. Snyder failed to establish a prima facie case and Arconic need not show undue hardship. The district court ruled that Mr. Snyder failed to establish a "conflict" between his "bona fide religious belief" and an "employment requirement," alleging he needed to show his religion *required* him to post the comment to Arconic's website. App.27a-35a. It also held he needed to provide Arconic with *advance notice* of his religious beliefs (thus, his overtly religious comment itself and his explanations in pre-termination meetings were "too late"). App.36a-41a. On appeal, the Eighth Circuit likewise held Snyder failed to establish a cognizable "conflict" between his "religious belief" and company policy, but for the alternative reason that Mr. Snyder explained he did not *intend* to post the comment in violation of company policies. App.8a. This, despite Arconic's admission it fired Mr. Snyder because his comment allegedly *violated its policies*, Dkt.24-1 at

13, ¶ 31, and despite understanding that his *motive* for making the comment was religious, Dkt. 24-1 at 11, ¶ 26.

The Eighth Circuit's decision exacerbates a circuit split over whether firing an employee for sincerely motivated religious speech, without more, triggers an employer's duty to reasonably accommodate, absent undue hardship. At least the Fifth, Sixth, and Seventh Circuits have recognized that it does: "If the employee's conduct is religiously motivated, his employer must tolerate it unless doing so would cause an undue hardship to the conduct of his business." *Cooper v. Gen. Dynamics, Convair Aerospace Div., Ft. Worth Operation*, 533 F.2d 163, 168 (5th Cir. 1976); *accord Jones v. First Kentucky Nat'l Corp.*, No. 84-5067, 1986 WL 398289, at *4 (6th Cir. July 17, 1986) (unpublished); *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470 (7th Cir. 2001).

But decisions in the Fourth, Eighth, and Ninth Circuits have held (or otherwise opined) that a plaintiff must show her relevant conduct was religiously motivated ***plus more***—i.e., *plus intent* to speak in a manner that violates company policy, *see* App.6a;[1] or *plus* a religious *requirement* to engage in such speech, *see Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004); *Tiano v. Dillard Dep't Stores*, 139 F.3d 679 (9th Cir. 1998)); or *plus* advance notice to the employer before speaking, *see Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1020 (4th Cir. 1996)).

1. An "intent" requirement beyond religious "motive" ignores the "elementary distinction between *intent* and *motive*." *See Rosemond v. United States*, 572 U.S. 65, 88 (2014) (Alito, J., concurring in part and dissenting in part) (emphasis added).

Moreover, at least the Eighth and Ninth Circuits have internally conflicting precedents on the matter. *Cf. Brown v. Polk Cnty., Iowa*, 61 F.3d 650 (8th Cir. 1995) (en banc) (recognizing prima facie case where plaintiff's "spontaneous" religious expression, without more, was "a factor" in employment decision); *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006) (similar); *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 745 n.9 (9th Cir. 2004) (similar). And Judge Niemeyer rightly dissented from the Fourth Circuit's decision in *Chalmers*, *see* 101 F.3d at 1022-27 (Niemeyer, J., dissenting), as did Judge Fletcher from the Ninth Circuit's decision in *Tiano*, *see* 139 F.3d at 683 (Fletcher, J., dissenting). Unsurprisingly, district courts across the country are likewise divided. *See infra*.

The Eighth Circuit's decision below is on the wrong side of this split. It squarely violates Title VII's "straightforward" rule that "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, *a factor* in employment decisions," unless the employer can "establish an 'undue hardship' defense." *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773, 771 n.2 (2015) (emphasis added). As Professor Volokh has recognized, "Title VII's 'religious accommodation' requirement [] protects *religiously motivated speech*, as part of its protection for religiously motivated practice." Eugene Volokh, Should the Law Limit Private-Employer-Imposed Speech Restrictions?, 2 *Journal of Free Speech Law* 269, 275 (2022) (emphasis added).[2]

Rather than apply this "straightforward" rule, the courts below invoked a judge-made framework requiring

2. https://www.journaloffreespeechlaw.org/volokh2.pdf.

Mr. Snyder to show a conflict between his "religious beliefs" and Arconic policies. *See* App.6a, 24a. But as the Seventh Circuit has recognized, the actual question is whether "the *observance or practice* conflicting with the employment requirement is *religious in nature*." *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 449 (7th Cir. 2013) (emphasis added). Arconic conceded that it was here. Dkt. 24-1 at 11, ¶ 26. The lower courts' rulings to the contrary effectively "add[ed] words to the law" that simply are not there, *Abercrombie*, 575 U.S. 744—a recent habit of the Eighth Circuit in Title VII cases, *see Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 355 (2024). Instead, these courts transformed Title VII into a game of legal "gotchas" based on a pre-*Abercrombie* judge-made test, when "[o]nly the written word is the law, and all persons are entitled to its benefit." *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 653 (2020).

This Court's intervention is now urgently needed to clarify that Title VII protects employees' sincerely motivated religious expression, without more, unless it would be an undue hardship to reasonably accommodate. Indeed, after this Court's recent clarification that "undue hardship" does *not* include co-worker "bias or hostility to a religious practice" or to "the mere fact [of] a religious accommodation," *Groff v. DeJoy*, 600 U.S. 447, 472 (2023) (original alteration), a spate of lower-court rulings have artificially raised the bar on plaintiffs' burden to establish a prima facie case after being fired for religiously motivated speech that others deem "offensive" or harassing. *See, e.g.*, *Brown v. Alaska Airlines, Inc.*, No. 2:22-cv-668, 2024 WL 2325058, at *14 (W.D. Wash. May 22, 2024) (relying on *Arconic v. Snyder*, No. 3:22-cv-0027-SHL-SBJ, 2023 WL 6370785, at *6 (S.D. Iowa Aug. 31, 2023)).

This problem is not going away. Scholars observe that a "perceived or actual" "secularization of culture" has led to "renewed efforts . . . from people of faith to take a decisive stand in the secular workplace," particularly on "moral or ethical issues." Matthew Etherington, "Religion as a Workplace Issue," SAGE Open (2019).[3] It is thus no surprise that an increase in "charges of religion-based discrimination in the workplace . . . dwarfs changes in other sources of discrimination." Ali Aslan Gümüsay, et al., "Creating Space for Religious Diversity at Work," Harvard Business Review, Dec. 10, 2020 (emphasis added).[4] But lower courts' confusion in this area will remain absent this Court's intervention.

Notably, the "religious motivation *plus*" decisions contradict the very goal of Title VII's reasonable accommodation requirement—i.e., to facilitate "bilateral cooperation" and "reconciliation" with an "employee's religion." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986). They instead effectively tell working people of faith like Mr. Snyder to hide the deepest core of their beings while at work—at a time when scholars are emphasizing the importance of respecting employees' religious identities. *See* Diane Taylor, "Accommodating Religious Diversity in the Workplace: Fostering Inclusion & Cultural Understanding," InclusionHub, Oct. 19, 2023 (quoting Professor Laycock).[5]

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3. https://journals.sagepub.com/doi/epub/10.1177/2158244019862729.

4. https://hbr.org/2020/12/creating-space-for-religious-diversity-at-work.

5. https://www.inclusionhub.com/articles/accommodating-religious-diversity-in-the-workplace-fostering-inclusion-cultural-understanding.

In reality, Title VII's actual text requires allowing employees at least *some* breathing space for sincerely motivated religious expression, contrary to the Eighth Circuit's decision below. This Court should grant the petition.

## STATEMENT OF THE CASE

### I. BACKGROUND

In June 2021, Mr. Snyder, a then-62-year-old factory worker at Arconic, received an email from the CEO titled "We'd like your input on building a great future together," and inviting employees to complete a first-ever "Engagement Survey." Dkt. 23-3 at 48.[6] The email said responses would be anonymous. *Id.* On the same day, Arconic posted a nearly identical article on its employee "intranet" page with a hyperlink stating: "We'd like your input on building a great future together (sharepoint.com)." *Id.* at 46-47. The article appeared directly adjacent to an article promoting an LBGTQ employee support group with a rainbow symbol. Dkt. 25-3 at 3. No parallel religious groups existed at Mr. Snyder's workplace. Dkt. 23-3 at 152. At the same time, an electronic sign in the employee parking lot began promoting "Pride Month" with a rainbow, followed by an invitation to answer the survey. Dkt. 24-1 at 4, ¶10.

Mr. Snyder is a former pastor who believes that using the rainbow (a Biblical symbol of God's covenant with mankind) to promote same-sex marriage is sacrilegious.

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6. All references to "Dkt. [number]" in this petition are to the respective docket number in the district court.

Dkt. 23-3 at 16. During his night shift, he attempted to respond to the survey by "click[ing] on a link" and typing in a comment box. Dkt. 24-1 at 5, ¶11. He wrote:

> Its a [sic] abomination to God. Rainbow is not meant to be displayed as a sign for sexual gender. Dkt. 23-3 at 49 .

However, the statement actually appeared as a comment to the article *about* the survey rather than in the survey itself. *Id.* A screenshot of the comment shows that the URL at the top of the page is materially identical to the *article*'s "We'd like your input" link. *Id.*; Dkt. 24-1 at 5, ¶12.

Arconic quickly removed the comment (Dkt. 23-3 at 144)—which it admits had caused no disruption in the workplace (Dkt. 24-1 at 10, ¶24)[7]—and then suspended Mr. Snyder for allegedly violating its diversity and anti-harassment policies. Dkt. 24-1 at 16, ¶43; Dkt. 25-1, at 8-9, ¶¶17-24. In two pre-termination meetings, Mr. Snyder repeatedly explained that he made the statement because of his religious beliefs in an attempt to answer the survey. Dkt. 24-1 at 8, ¶18 and 11, ¶26; Dkt. 25-1 at 7, ¶16. Mr. Snyder's manager concededly became aware in the first meeting that Snyder made the comment for religious reasons. Dkt. 24-1 at 11, ¶16. Arconic's decisionmakers also admitted they were not sure whether Mr. Snyder's post was intentional or unintentional. *See* Dkt. 22-3 at 47, 69. Nonetheless, Arconic terminated Mr. Snyder in

7. The article itself (not necessarily Mr. Snyder's comment) had only 240 views, Dt. 25-1 at 4 ¶8, a small fraction of the company's 13,000+ employees, Dkt. 25-1 at 3 ¶7.

essential part for his concededly religious comment. Dkt. 24-1 at 13, ¶31.

Arconic admits it did not consider a reasonable accommodation, because it believed "an accommodation to state offensive comments to others would not be reasonable." Dkt. 24-1, at 14 ¶¶34-35. Arconic's 30(b)(6) witness testified that "it was concluded that Mr. Snyder and everybody has a right to their own religious beliefs as long as they don't impinge on the rights of others." Dkt. 24-1 at 11-12, ¶27. For his part, Mr. Snyder wrote to his union representative that "I will never take place [sic] in one of their surveys or give my opinion to their solicitations" again. Dkt. 23-3 at 60.

Arconic's 30(b)(6) representative also admitted his disdain for Mr. Snyder's message:

> I don't see it as religious. I think [Mr. Snyder's] expression was one of hatred. I have my personal beliefs about what it is to be religious. . . . I am an admirer, for example . . . of Mother Teresa. I don't know that Mother Teresa ever called anybody an abomination to God. . . . To me, that's not religious. Dkt. 23-3 at 150-51.[8]

The 30(b)(6) witness also admitted that "[i]f Mr. Snyder wanted to form a Christian ERG [Employee Resource Group]" similar to the one already in existence for LGBTQ employees, "we would take a look at that as

8. Of course, Mr. Snyder repeatedly explained his comment was directed at the *company*'s use of the rainbow symbol in an attempt to answer a private survey. Dkt. 24-1 at 8, ¶18.

long as it abides by . . . all relevant policies, but he did not step forward and ask for that." *Id.* at 152. Yet, the witness admitted he had previously suggested starting a different ERG to another employee at Arconic. *Id.* at 153.

Mr. Snyder sued for religious discrimination and retaliation under Title VII and the Iowa Civil Rights Act. Dkt. 3 at 10-15, ¶¶46-72. The parties filed cross-motions for summary judgment on Mr. Snyder's discrimination claims, and Arconic moved for summary judgment on his retaliation claims. *See* Dkts. 22 & 23.

## II. PROCEEDINGS BELOW

### A. Proceedings in the district court.

The district court granted summary judgment for Arconic on all claims. It held that Mr. Snyder was merely seeking a "free pass," App.29a, and failed to establish a prima facie case of failure-to-accommodate religion for two reasons:

First, Mr. Snyder allegedly failed to establish a "conflict" between his religious "belief" and Arconic's policies because he didn't show "his religion *requires* him to send messages objecting to the use of the rainbow imagery," and thus there was "no 'conflict' in the legally relevant sense between his religious practices and Arconic's anti-harassment policy." App.27a-36a. The district court also noted "Arconic did not require Snyder to do anything," but "simply *forbade* Snyder (and all other employees) from making statements expressing hostility to others." App.28a (original emphasis).

Alternatively, the district court ruled Mr. Snyder needed to provide Arconic notice of his religious objection *before* making his comment; his religious practice itself and pre-termination explanations were "too late." App.36a. The court (wrongly) opined that *Abercrombie* merely held an employee need not *expressly request* a religious accommodation, and that notice must still exist *before* the employee engages in the prohibited conduct. App.39a-40a.

The district court abstained from evaluating undue hardship, App.48a-49a, and also held "the Court's analysis above applies with equal force to Snyder's Title VII retaliation claim," App.47a.

### B. Proceedings in the court of appeals.

The Eighth Circuit affirmed and left all of the district court's analysis intact. As noted, however, the Eighth Circuit found no "conflict" between Mr. Snyder's religious "belief" and Arconic's policies for the alternative reason that Mr. Snyder did not *intend* to post the comment on Arconic's intranet page. App.8a. The panel wrongly stated "Snyder focuses solely on the content of the statement to the exclusion of the action he took in posting the statement." App.7a. On the contrary (as the district court acknowledged), Mr. Snyder focused on Arconic's awareness of his *religious motivation* for making (and thus accidentally posting) the comment. *See*, *e.g.*, Opening Brief of Appellant Daniel Snyder, Entry ID 5447491, at 14-17, 19, 27, 33, 36, 37, 46, 48, 51, Nov. 21, 2023, No. 23-3188 (8th Cir.).

Additionally, the panel affirmed the district court on Mr. Snyder's retaliation claims, holding that his comment

was not protected conduct because it was not objectively reasonable to believe Arconic's pervasive use of the rainbow to promote Pride Month was discriminatory. App.10a. It also held that Mr. Snyder failed to point to evidence of pretext. App.11a.[9]

The Eighth Circuit then denied Mr. Snyder's petition for rehearing and rehearing en banc. App.52a. Judge Grasz would have granted the petition for rehearing en banc. *Id.*

## REASONS FOR GRANTING THE PETITION

The Eighth Circuit's ruling deepens a circuit-, intra-circuit, and district-court split over whether firings for sincerely motivated religious expression, without more, constitute a prima facie case of disparate treatment for failure-to-accommodate religious practice. It also squarely violates *Abercrombie*'s "straightforward" rule that an employer may not make an employee's "religious practice"—including religious expression—a "factor" in employment decisions, even when that expression allegedly violates "otherwise-neutral policies." *Abercrombie*, 575 U.S. at 775.

By requiring Mr. Snyder to show that he also had a particular "intent"—despite Arconic's awareness it was firing him for a religiously *motivated* comment—the Eighth Circuit effectively amended Title VII's plain text and flouted *Abercrombie*. According to the Eighth

9. While Mr. Snyder disagrees with the affirmance of summary judgment on his retaliation claims, this petition is not seeking review of that portion of the Eighth Circuit's decision.

Circuit's side of the split, being fired for expression the employer knows or suspects is religiously *motivated* is not enough: plaintiffs must show additional intent, *a priori* notice, or a religious mandate. That is not the law.

Too many courts are missing the mark by applying a judicially created tripartite test divorced from Title VII's "straightforward" rule. The tripartite test requires that plaintiffs show (1) a conflict between their "religious beliefs" and an employer requirement, (2) the employer had notice of the conflict, and (3) the employer took adverse action against the plaintiff as a result. *See* App.6a.[10] But this Court never mentioned such a test in *Abercrombie*, even while reversing the Tenth Circuit's misapplication of the second element of the same test. *See Abercrombie*, 575 U.S. at 771, reversing *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106, 1131 (10th Cir. 2013). Unfortunately, the decisions below confirm that great confusion remains nearly a decade after *Abercrombie*—and at a time when complaints about religious discrimination are more frequent than ever.

This Court should grant the petition and clarify that courts must not apply the tripartite test inconsistently with Title VII's "straightforward" rule. If the employer takes adverse action against an employee *because of* expression the employer at least suspects is religiously *motivated*, that is enough to establish a prima facie case

10. One district court recently observed that the Eighth Circuit has "articulated two slightly different versions" of this test over the years, both of which require a "conflict" between a "bona fide religious belief " and an "employment requirement." *E.E.O.C. v. Kroger Ltd. P'Ship I*, 608 F. Supp. 3d 757, 776 n.125 (E.D. Ark. 2022).

under Title VII's plain text, as Judge Niemeyer wisely explained years ago. *See Chalmers*, 101 F.3d at 1025 (Niemeyer, J., dissenting). Otherwise, Title VII's express protection for sincerely motivated religious exercise is often not worth the paper it is written on for much of the country.

## I. The Eighth Circuit decision exacerbates a three-level split over whether firing an employee for sincerely motivated religious expression, without more, establishes a prima facie case.

### A. Circuit split.

The Eighth Circuit's decision firmly joins the side of a circuit split requiring plaintiffs to show *more* than adverse action based on their sincerely motivated religious expression to establish a prima facie case. Indeed, as the district court acknowledged, "Arconic concede[d] that Snyder's message on the intranet page was religiously motivated." App.21a (citing Dkt. 24-1 at 11, ¶26.) Arconic also admitted it "understood" as much *before* firing Mr. Snyder for making that comment. Dkt. 24-1 at 11, ¶26. Yet the Eighth Circuit still insisted Mr. Snyder failed to show his religious expression "conflicted" with Arconic's policies simply because he explained he did not *intend* to post the comment publicly.

But "[i]t is well established that the 'motives' that prompt one's conduct are not the same as the mental state associated with that conduct." *Havens v. James*, 76 F.4th 103, 114 n.12 (2d Cir. 2023). This distinction between motive and intent is "elementary." *Rosemond v. United States*, 572 U.S. 65, 88 (2014) (Alito, J., concurring

in part and dissenting in part). That's because motive, unlike intent, signifies "the cause or reason that induces a person" to act, *Havens*, 76 F.4th at 114 n.12 (internal quotes omitted), whereas the law generally punishes *intentional* misconduct, regardless of motive. *Id.*

Title VII's protections for religious practice are the opposite: religious motive, not intent, is the touchstone. As *Abercrombie* explained, the issue is whether the employer "at least suspected" the plaintiff engaged in the conduct "for religious *reasons*." 575 U.S. at 774 n.3 (emphasis added). If so, and if the employer makes that conduct "a factor" in the employment decision, the plaintiff has a prima facie case. *Id.* at 773. The Equal Employment Opportunity Commission ("EEOC") also has made clear that Title VII's definition of "religion" reflects the meaning of the First Amendment's Free Exercise Clause. *See* 29 C.F.R. § 1605.1; *see also* EEOC, Compliance Manual on Religious Discrimination, Directive 915.063 (Jan. 15, 2021), Sec. 12-I.A.1.[11] But the Free Exercise Clause protects "sincerely *motivated* religious exercise." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022) (emphasis added); *see also Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 881 (1990) ("religiously motivated action" triggers First Amendment). Accordingly, by adding an "intent" requirement, the Eighth Circuit obliged Mr. Snyder to show *more* than adverse action based on his religiously *motivated* expression. The fact Mr. Snyder did not intend to post publicly does not negate the religious motive that caused him to act in the first place.

11. https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination.

Decisions in the Fourth and Ninth Circuits have also insisted Title VII requires more than *Abercrombie*'s "straightforward" rule. In *Chalmers v. Tulon Co. of Richmond*, the Fourth Circuit affirmed summary judgment for an employer that fired the plaintiff for sending overtly religious letters to two co-workers, because she did not inform her employer *beforehand* that "her religion required her to write [such] letters." 101 F.3d 1012, 1019 (4th Cir. 1996). Judge Niemeyer dissented, explaining that overtly religious conduct itself can plainly establish adequate notice—i.e., awareness on the employer's part that the relevant conduct is religiously motivated and is thus covered by Title VII. *Id.* at 1025-26 (Niemeyer, J., dissenting); *accord Abercrombie*, 575 U.S. at 773 (holding Title VII applies if employer is aware of religious motive before the "employment decision"); *accord* 42 U.S.C. §§ 2000e-2(a)(1), 2000e(j) (prohibiting "discharge," among other things, based on a "religious practice"). Judge Niemeyer further observed—ominously—that "[t]he majority's rule would mean that *as a matter of law* a Jew could not make out a *prima facie* case under Title VII if, on the first day of work, he was fired for wearing a yarmulke that, unknown to him, violated his company's dress code." *Id.* at 1026 (emphasis in original).

Judge Niemeyer's hypothetical effectively spawned to life in Mr. Snyder's case, where the Eighth Circuit and district court below immunized Arconic *as a matter of law* for terminating Mr. Snyder based on a concededly religious comment, simply because Mr. Snyder's spontaneous religious expression *unintentionally* violated company policies. Although *Abercrombie* ostensibly superseded *Chalmers*, *see Abercrombie*, 575 U.S at 772 n.2, 774 n.3 (holding religious conduct itself can provide adequate

notice), the district court nonetheless distinguished *Abercrombie* and deemed *Chalmers* "particularly instructive" in ruling against Mr. Snyder. *See* App.37a-38a, 39a-40a.

At least two Ninth Circuit decisions have also required more. In *Peterson v. Hewlett-Packard Co.*, the Ninth Circuit opined in dicta that an employee must show a religious *mandate* to engage in the conduct at issue, beyond mere religious motive, in order to establish a prima facie case. 358 F.3d 599, 606 (9th Cir. 2004). The court expressed "serious[] doubt that the doctrines to which [the plaintiff] professes allegiance *compel* [him] to engage in" the activity he did—i.e., posting Bible quotes in his office opposing homosexual acts in response to his company's diversity campaign. *Id.* at 606 (emphasis added). The court thus refused to hold the plaintiff had established a prima facie case, but instead merely assumed, "with considerable reservations," that he did so, before ruling against him on "undue hardship" grounds. *Id.*; *see also id.* at 606-608. While *Peterson*'s religious-mandate instruction was technically dicta, the district court here expressly invoked it in ruling against Mr. Snyder, *see* App.31, and the Eighth Circuit expressly abstained from weighing in on that analysis, *see* App. 8a n.3.

The Ninth Circuit adopted a similar requirement as part of its holding in *Tiano v. Dillard Dep't Stores, Inc.*, 139 F.3d 679 (9th Cir. 1998). In a split decision, the majority held that a "devout Roman Catholic" plaintiff who was terminated for attending a religious pilgrimage to Medjugorje failed to establish a prima facie case, given her inability to show her religious beliefs *required* her to attend the pilgrimage at that time. *Id.* at 682-83. Thus,

the majority held she failed to show any "conflict" with her employer's policies. *Id.* But Judge Fletcher dissented on the grounds that "[n]othing in the record suggests that Tiano's belief that she had to make her pilgrimage 'at that time' was in any way *insincere*." *Id.* at 683 (Fletcher, J., dissenting) (emphasis added)).

However, several other circuits recognize that terminating an employee for sincerely motivated religious expression, without more, constitutes a prima facie case and triggers the employer's duty to reasonably accommodate, unless doing so would be an undue hardship.

As noted, the Fifth Circuit has observed that Title VII requires "tolerat[ing]" an employee's conduct if it "is religiously motivated," unless the employer shows requisite hardship. *Cooper*, 533 F.2d at 168. The Seventh Circuit has recognized the same. *See Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978) (Title VII protects "conduct which is 'religiously motivated,' i.e., 'all forms and aspects of religion, however eccentric'") (quoting *Cooper*, 533 F.2d at 168)). In *Redmond*, the Seventh Circuit observed that Title VII's broadly worded protections are not limited to "practices specifically mandated or prohibited by a tenet of the plaintiff's religion"; further, such a limit would require unconstitutional religious trolling by the judiciary. *Id.* at 900;[12] *see also id.* at 902 (finding adequate notice where

12. Indeed, this Court has repeatedly warned that courts must not "[j]udg[e] the centrality of different religious practices" to a person's faith. *Smith*, 494 U.S. at 887; *accord Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 713 (1981) (religious exercise characterized by subjective religious motives); *see also* Christopher C. Lund, *In Defense of the Ministerial Exception*, 90 N.C. L. Rev. 1, 37 (2011) (explaining perils of religious-requirement test).

employer became fully aware before firing plaintiff, but after plaintiff began engaging in the relevant practice).

As mentioned, the Seventh has thus explained the question is whether "the *observance or practice* conflicting with an employment requirement *is religious in nature*." *Adeyeye*, 721 F.3d at 449 (emphasis added).[13] Accordingly, it recognized a prima facie case without more in *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470 (7th Cir. 2001). The plaintiff there was reprimanded for sporadically sending emails to clients and co-workers with the phrase, "Have a blessed day," even after her company forbade employees from making religious, personal, or political statements to customers or fellow employees. *Id.* at 473-74. The Seventh Circuit held the employer reasonably accommodated the plaintiff by nonetheless allowing her to use the phrase with co-workers, but not clients, precisely because her "religious practice did not require her to use the 'Blessed Day' phrase with everyone." *Id.* at 476; *see also id.* at 475 (stating the district court "probably would have erred" if it had held plaintiff "was entitled to a lesser 'reasonable accommodation'" because her "sincere religious practice was not a requirement of her religion"). The Seventh Circuit again recognized as much in *Matthews v. Wal-Mart Stores*, 417 F. App'x 552 (7th Cir. 2011) (unpublished). The court had no doubts Title VII covered the plaintiff's religiously hostile comments directed at a specific co-worker. *Id.* at 553. Instead, it observed "employers need not relieve workers from

13. *Accord Kroger*, 608 F. Supp. 3d at 776 ("Speaking metaphysically, a belief cannot conflict with a workplace rule. Instead, it is the religious observance or practice—i.e., doing something or refraining from doing something based on a religious belief—that can conflict with a workplace rule.").

complying with neutral workplace rules as a religious accommodation *if* it would create an undue hardship," before holding the comments indeed imposed an undue hardship there. *Id.* at 554 (emphasis added).

The Sixth Circuit, too, has applied a similar standard. In holding that Title VII may require reasonably accommodating a plaintiff's religiously motivated participation in a *pro*-homosexual advocacy group, the Sixth Circuit stated that "[t]he question" under Title VII "is not one of compulsion, but of motivation"; "[p]ut another way, [the plaintiff's] sincerely held religious beliefs may *motivate* his activity even though they do not require it," thus triggering Title VII's protections. *Jones v. First Kentucky Nat'l Corp.*, No. 84-5067, 1986 WL 398289, at *4 (6th Cir. July 17, 1986) (unpublished); *accord MacDaniel v. Essex Int'l, Inc.*, 571 F.2d 338, 342 (6th Cir. 1978) (Title VII "applies to all religious observances and is not limited to claims of discrimination based on requirements of Sabbath work") (emphasis added).

Thus, in the Fifth, Sixth, and Seventh Circuits, sincerely motivated religious expression alone triggers Title VII's protections, contrary to decisions in the Fourth, Eighth, and Ninth Circuits.

**B. Intra-circuit split.**

At least two of these circuits are in conflict within *themselves* on this question. As noted, the Eighth Circuit previously recognized a prima facie case where the employee's "reprimand related directly to religious activities" at work—including for "spontaneous" and "isolated" religious statements. *See Brown*, 61 F.3d

at 652, 654, 656. The Eighth Circuit there specifically agreed with the district court's finding of a prima facie case, *id.* at 654, including its observation that the "elements of proof in employment discrimination cases were not meant to be 'rigid, mechanized or ritualistic.'" *Brown v. Polk Cnty., Iowa*, 832 F. Supp. 1305, 1313 n.17 (S.D. Iowa 1993).

*Brown* squarely conflicts with the Eighth Circuit's decision in this case. Arconic likewise terminated Mr. Snyder for "religious activit[y]" at work—i.e., a "spontaneous" and "isolated" religious statement. Yet the Eighth Circuit mechanistically applied a separate test to hold that Mr. Snyder was somehow required to show more, contrary to *Brown*.

The Ninth Circuit is also internally conflicted. In *Heller v. EBB Auto Co.*, a Ninth Circuit panel observed that Title VII's protections are not limited to "practices which are mandated or prohibited by a tenet of the [person's] religion." 8 F.3d 1433, 1438 (9th Cir. 1993) (quoting *Redmond*, 574 F.2d at 900). The court held Title VII's protections extended to the plaintiff's one-time attendance of his wife's Jewish conversion ceremony, given that "he attached the utmost religious significance to" it. *Id.* at 1439. In yet another decision, the Ninth Circuit found a prima facie case where a plaintiff was reprimanded for spontaneous displays of religious items in his office and barred from acting on a religious desire to discuss his faith with clients "when appropriate." *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006). There, it was enough the plaintiff religiously "believe[d] in sharing his faith with others" and was reprimanded for acting on that belief. *Id.*; *accord Bodett v. CoxCom,*

*Inc.*, 366 F.3d 736, 745 n.9 (9th Cir. 2004) (termination for ad hoc religious statements against homosexual activity in violation of anti-harassment policy "would have been better suited to a failure to accommodate claim which [plaintiff] failed to make"). The broader understanding of protected religious activity in these decisions is squarely at odds with the "religious motivation *plus*" standard of *Peterson* and *Tiano*, discussed above.

### C. District-court divide.

District courts are likewise split on this question. In *Brown v. Alaska Airlines*, the Western District of Washington held that plaintiffs failed to establish a prima facie case after being fired for posting religiously motivated comments on Alaska Airline's company intranet page in response to the airline's promotion of the federal Equality Act on the same page. *See* 2024 WL 2325058, at *14-*15. The court ruled the plaintiffs failed to show a cognizable "conflict" because they did "not allege[] that their religion *compelled* them to respond to Alaska's article about the Equality Act, or that doing so . . . was an 'observance or practice' required by their faith." *Id.* at *14 (emphasis added). Notably, the court derived that standard from the district court's decision here granting summary judgment to Arconic. *See id.* (citing *Snyder*, 2023 WL 6370785, at *6). *Alaska Airlines* also relied on *Tiano* in holding the plaintiffs additionally needed to show "their religion compelled them to express [their] opposition *in the specific manner they chose to do so*." *Id.* at 15 (emphasis in original) (citing *Tiano*, 139 F.3d 679).

But the Northern District of Texas reached a nearly opposite conclusion in *Carter v. Transp. Workers Union of*

*Am. Loc. 556*, 353 F. Supp. 3d 556 (N.D. Tex. 2019). There, the court found an adequately pled prima facie case where Southwest Airlines fired the plaintiff for sending discrete religiously motivated Facebook messages and emails to her union boss protesting the local union's participation in the 2017 Women's March. *Id.* at 563-66, 577-78. The plaintiff alleged she acted based on her *general* religious obligation to share her pro-life beliefs, and she explained as much to her employer in a pre-termination meeting. *Id.* at 577. These allegations plausibly established "that her religious beliefs and practice were *a factor* in Southwest's decision to terminate her," triggering Southwest's duty to show undue hardship. *Id.* at 577-78 (emphasis added). Professor Eugene Volokh recently observed that *Carter* correctly reflects "that religiously motivated speech . . . is treated more favorably" and "is *well within the mainstream of currently existing Title VII law*." Eugene Volokh, "May a Judge Sanction Lawyers . . . ," Reason.com, Sept. 5, 2023 (emphasis added).[14]

Still, confusion among the district courts abounds. *Compare, e.g.*, *Averett v. Honda of America Mfg., Inc.*, No. 2:07-cv-1167, 2010 WL 522826, at *10 (S.D. Ohio Feb. 9, 2010) (plaintiff failed to show "her religious principles *required* her to" engage in the expression at issue), *and Rose v. Midwest Express Airlines, Inc.*, No. 801CV473, 2002 WL 31095361, at *3 (D. Neb. Sept. 19, 2002) (similar), *with Mial v. Foxhoven*, 305 F. Supp. 3d 984, 992 (N.D. Iowa 2018) (employer required to reasonably accommodate ad hoc speech "sincerely connected to religion").

14. https://reason.com/volokh/2023/09/05/may-a-judge-sanction-lawyers-by-requiring-them-to-get-remedial-training-from-a-particular-ideological-organization/.

The need for this Court's clarification is long overdue. And it is especially urgent now that errors in the district court's decision below are spreading to other courts across the country.

## II. The Eighth Circuit's decision is wrong.

By adding an extra requirement to Title VII's plain text—i.e., that Mr. Snyder needed to show an *intent* to speak in manner that violated company rules, even though Arconic conceded its awareness of Mr. Snyder's religious *motivation* for speaking—the Eighth Circuit decided a critical question of federal law in direct violation of this Court's precedents. The decision flatly contradicts Title VII's broad protection for "all aspects" of religious practice, even from otherwise neutral rules. It ignores Title VII's "broadly inclusive" coverage. And it violates the canon of constitutional avoidance by irrationally treating similarly situated religiously motivated expression differently. The Court should grant review to ensure once again that the Eighth Circuit does not "add words to the law" when interpreting Title VII. *See Muldrow*, 601 U.S. at 358; *cf. Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (correcting the Ninth Circuit's application of the Free Exercise Clause to California's COVID restrictions "for the fifth time" in less than a year).

### A. The Eighth Circuit elided Title VII's prima facie protection for ad hoc religious expression at work.

As explained above, this Court has articulated a "straightforward" rule for "disparate-treatment claims based on a failure to accommodate a religious practice

. . . : An employer may not make an applicant's religious practice, confirmed or otherwise, *a factor* in employment decisions." *Abercrombie*, 575 U.S. at 773 (emphasis added). Because Title VII covers "*all aspects* of religious observance and practice," 42 U.S.C. § 2000e(j) (emphasis added), the employer's duty to reasonably accommodate arises where it even "suspects that the practice in question" was motivated by "religious reasons." *Id.* at 774 n.3. "[I]t is no response that" the employer's action "was due to an otherwise-neutral policy," because Title VII accords "*favored treatment*" "to religious practices" and "requires otherwise-neutral policies to give way to the need for an accommodation." *Id.* at 775 (emphasis added).

The Eighth Circuit openly flouted these rules. By holding that the *manner* in which Mr. Snyder spoke "had no religious *intent* behind it," App.8a (emphasis added), the Eighth Circuit ignored Arconic's own concession that it was aware Mr. Snyder typed and submitted the comment *for religious reasons*. *See* Dkt. 24-1 at 11, ¶ 26. Thus, Mr. Snyder's comment was squarely protected religious practice under *Abercrombie*. 575 U.S. at 774 n.3. And, by holding "there [was] no conflict" with an employment requirement, App.8a, the Eighth Circuit ignored Arconic's admission that it fired Mr. Snyder because it believed his religiously motivated expression *violated its policies*, Dkt.24-1 at 13, ¶ 31, "*regardless of his intent*," Response Brief of Appellee Arconic, at 22, Entry ID 5347302, Dec. 22, 2023, No. 23-3188 (8th Cir.) (emphasis added); *see also* Dkt. 22-3 at 47, 67 (testimony of Arconic representatives that Mr. Snyder's intent didn't matter). Thus, Mr. Snyder's religiously motivated comment was plainly "a factor" in Arconic's employment decision, establishing his prima facie case. *See Abercrombie*, 575 U.S. at 773.

The Eighth Circuit simply ignored *Abercrombie*'s "straightforward" rule in holding to the contrary. In turn, that rule accurately reflects Title VII's express prohibition on "discharg[ing]" an employee "*because of*" his or her "religious practice." *See* 42 U.S.C. §§2000e-2(a)(1), 2000e(j) (emphasis added); *see also Bostock*, 140 U.S. at 680 (Title VII's "because of" test "is written in starkly broad terms"); *Groff*, 600 U.S. at 473 (Title VII protects "religious practice and expression in the workplace"). Indeed, even the EEOC recognizes that "Title VII requires employers to accommodate . . . religious expression (e.g., proselytizing) in the workplace," so long as it does not cause "undue hardship." EEOC Compliance Manual, at Sec. 12-III.D.[15] It also acknowledges that "determining whether a practice is religious turns not on the nature of the activity, but the employee's *motivation*." *Id.* at Sec. 12-I.A.1., n.30 and accompanying text (emphasis added).

The Eighth Circuit also opined that Mr. Snyder failed to show "the *posting* of the comment was motivated by . . . his religious beliefs," or that "his religion [] cause[d] him to act as he did." App.8a (original emphasis). But again, that assertion plainly conflated the "well established" distinction between motive and intent. *See Havens*, 76 F.4th at 114 n.12. Indeed, *every* voluntary act has some motive. *See* "motive," Black's Law Dictionary (3d Pocket ed., 1996) ("Something, esp. willful desire, that leads one to act"); *see also* St. Thomas Aquinas, *Summa Theologica*, part I, question 82, Art. 1 (Answer) ("[T]he very movement of the will is an inclination to something.").[16] Mr. Snyder

15. https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination.

16. https://www.newadvent.org/summa/1082.htm#article1.

repeatedly told company representatives that the *reason* he typed and submitted the comment was because of his religious objection to Arconic's use of the rainbow in promoting Pride Month. Dkt. 24-1 at 11, ¶26; Dkt.25-1 at 7, ¶16. While he explained that his *intent* was to answer a private survey, he made clear that his *motive for acting* was religious, as Arconic conceded. Dkt. 24-1 at 11, ¶26 The fact Mr. Snyder mistakenly believed he was answering the survey only further confirms the sincerity of his religious expression.

This Court has "stressed over and over again in recent years" that "statutory interpretation must begin with, and ultimately heed, what a statute actually says." *Groff*, 600 U.S. at 468 (cleaned up). The Eighth Circuit's rigid application of an alternative "conflict" element steered far wide of Title VII's plain text. If anything, the conflict element should be read to ensure the employee's religious *practice* (i.e., an act motivated by religion) was actually "a factor" in the "employment decision." *Abercrombie*, 575 U.S. at 773. Because Arconic concedes that was the case here, Mr. Snyder established his prima facie case.

### B. The Eighth Circuit ignored Title VII's "broadly inclusive" coverage.

This Court has made clear that Title VII's coverage is "intended to be broadly inclusive," *Washington Cnty. v. Gunther*, 452 U.S. 161, 170 (1981), and also that courts "cannot interpret federal statutes to negate their own stated purposes," *King v. Burwell*, 576 U.S. 473, 493 (2015). But the Eighth Circuit did exactly that here. If Mr. Snyder had intentionally posted his comment to the employee intranet page in disregard for Arconic's

diversity and anti-harassment policies, *then* he would have established a cognizable conflict according to the Eighth Circuit's logic. That makes no sense given this Court's recognition that Title VII's religious accommodation requirement is designed to achieve "bilateral cooperation" and "reconciliation" between an employer's rules and an "employee's religion." *Ansonia*, 479 U.S. at 69. Especially since Mr. Snyder was indeed willing to cooperate by telling his union representative that he would never attempt to answer a company survey again. Dkt. 23-3 at 60.

Similarly, "interpretations of a statute which would produce absurd results are to be avoided" if possible. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Again, here the panel's interpretation would have allowed protection only if Mr. Snyder had intentionally disregarded Arconic's policies because of his religion—an absurd result given Title VII's goal of "cooperation." *Ansonia*, 579 U.S. at 69.

While the Eighth Circuit noted that courts "do not sit as a super-personnel department," App.8a, that rule ends where civil rights protections begin. *See Abercrombie*, 575 U.S. at 775 (Title VII accords "favored treatment" to "religious practices"); *see also Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 660, 669, 680 (2020) (courts are duty-bound to apply Title VII's "simple," "starkly broad" rule).

### C. The Eighth Circuit violated the canon of constitutional avoidance.

The constitutional avoidance canon provides "that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Gonzales*

*v. Carhart*, 550 U.S. 124, 153 (2007) (internal quotes omitted). But here the Eighth Circuit interpreted Title VII in a manner that violated Mr. Snyder's constitutional right to equal protection, contrary to the text's broad protection for "all aspects of religious observance and practice." 42 U.S.C. § 2000e(j).

Specifically, the Fifth Amendment requires that federal statutes provide equal protection. *Johnson v. Robison*, 415 U.S. 361, 366 (1974). And this Court has recognized that equal protection applies even to a "class of one." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 568 (2000) But in this case, there is no "reasonable, not arbitrary" reason for denying prima facie coverage to Mr. Snyder's *concededly* religiously motivated expression solely because he did not *intend* its public dissemination, while allowing protection for religious expression that an employee *intentionally* posts online in violation of policy—where (as here) Arconic was aware of Mr. Snyder's religious motive for speaking. *See Johnson*, 415 U.S. at 374-75. Regardless of one's *intent*, religiously *motivated* actions are "similarly situated" within Title VII's "broadly inclusive" protection for religious practice. *Id.* (similar-situation based on "the object of the legislation"). This Court should correct the Eighth Circuit's constitutional violation.

## III. This case is of national importance and is an ideal vehicle for certiorari.

Finally, as discussed above, this case is part of a national tide of Title VII litigation involving terminations for religiously motivated online speech by employees protesting company practices. This tide includes the

aforementioned *Carter* case in the Northern District of Texas, where the jury ultimately decided that Southwest Airlines failed to reasonably accommodate the plaintiff after she sent her spontaneous religious Facebook messages and emails. *See Carter v. Transp. Workers Union of Am., Local. 556, et al.*, 644 F. Supp. 3d 315 (N.D. Tex. 2022), appeal pending at Nos. 23-10008, 23-10536, 23-10836 (5th Cir.). It also includes the *Alaska Airlines* case in the Western District of Washington, where the district court awarded summary judgment for the airline against two flight attendants terminated for posting religiously motivated objections to the company's online post supporting the Equality Act. *See Alaska Airlines, Inc.*, 2024 WL 2325058 appeal pending at No. 24-3789 (9th Cir.). As noted, *Alaska Airlines* expressly relied on the district court decision from which Mr. Snyder has appealed here. *See id.*, at *14 (quoting *Snyder*, 2023 WL 6370785). The fact *Carter* and *Alaska Airlines* are in manifest conflict—and that the latter relied on the district court's decision in Mr. Snyder's case—reveals an especially malignant confusion in the lower courts calling for this Court's intervention.

This case's national importance was solidified by the EEOC's submission of an amicus brief in *opposition* to Mr. Snyder in the Eighth Circuit and by its participation in oral argument. *See* Amicus Brief of EEOC, Entry ID 5348542, Dec. 12, 2023, No. 23-3188 (8th Cir.); *see also* Order granting EEOC's motion to participate in oral argument, Entry ID 5375067, March 20, 2024, No. 23-3188 (8th Cir.). The EEOC insisted Mr. Snyder had no prima facie case precisely because he claimed no religious requirement to harass his co-workers. *See* EEOC Br. at 17-26. It is not clear, to put it mildly, how

that position accorded with the EEOC's role as "a public advocate for *employee* rights," *Groff*, 600 U.S. at 471 (emphasis added), or with its own guidance saying Title VII protects even "proselytizing" "in the workplace," EEOC Compliance Manual, at Sec. 12-III.D. Regardless, the EEOC's astonishing public stance *against* Mr. Snyder highlights the unique importance of this case. Certiorari is warranted to resolve the critical issues it raises.

As also mentioned, the tide of Title VII litigation reflects that increasing numbers of religious employees are speaking up on moral issues in secularized workplaces, *see* Etherington, "Religion as a Workplace Issue," *supra* n.3, especially in the face of diversity, equity, and inclusion initiatives that often promote contrary values to their own. As the Harvard Business Review observes, "[f]or many religious people, their faith is associated with deeply held values that inform their actions and behaviors *at work* as well as in their personal lives." Ali Aslan Gümüsay, et al., "Creating Space for Religious Diversity at Work," *supra* n.4 (emphasis added). It is no surprise many of these employees speak up when their companies promote values they believe "with utmost sincere conviction . . . by divine precepts . . . should not be condoned." *Obergefell v. Hodges*, 576 U.S. 644, 679 (2015). These beliefs are held "in good faith by reasonable and sincere people here and throughout the world." *Id.* at 657. While corporations certainly have free speech rights, *see Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010), there is no evidence that providing at least a modicum of space for employees' differing religious views (consistent with Title VII) is a cognizable burden on those rights. *See* Ali Aslan Gümüsay, et al., *supra* n.4 (emphasis added) ("We believe that actively accommodating highly diverse beliefs and

practices within an organization is possible."); *see also* Bill Peel, "Faith-Based Employee Resource Groups on the Rise," Center for Faith & Work St. Louis.[17]

The need for legal guardrails in this area is all the more salient after *Groff*. While *Groff* contemplated legitimate protection for "religious . . . expression in the workplace" notwithstanding others' "dislike" or "bias" towards such expression, 600 U.S. at 472, that protection evaporates when courts a-textually increase plaintiffs' prima facie burden—which is supposed to be "not onerous." *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981). The Eighth Circuit's ruling is only one of several recent decisions effectively creating an escape path for employers seeking to avoid *Groff*'s heightened burden for demonstrating "undue hardship." This Court hardly invited such an evasion. The time to put a stop to it is now.

This case presents the right vehicle for doing so. By shielding Arconic from having to show "undue hardship," the decisions below include no alternative rulings that would prevent Mr. Snyder from obtaining relief should this Court reverse. And it squarely presents a long-overdue opportunity to resolve the tri-level split deepened by the Eighth Circuit's decision. Too many courts have lost their bearings in applying a judge-made framework to require that plaintiffs show *more* than adverse action based on their sincerely *motivated* religious expression

17. https://www.faithandworkstl.org/blog/faith-based-employee-resource-groups-on-the-rise; *see also* Dkt. 23-3 at 153 (admission of Arconic's 30(b)(6) witness that it could have considered starting a Christian Employee Resource Group as a way to provide space for Mr. Snyder's religious identity).

in order to establish a prima facie case. The Court should resolve this split and reverse the Eighth Circuit's decision, thus ensuring that Title VII's express protections for religiously motivated expression really mean what they say for working people of faith like Mr. Snyder.

## CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED AUGUST 14, 2024**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3188

DANIEL SNYDER,

*Plaintiff-Appellant,*

v.

ARCONIC, CORP., A DELAWARE CORPORATION; ARCONIC DAVENPORT, LLC, A DELAWARE CORPORATION,

*Defendants-Appellees.*

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; LAMBDA LEGAL DEFENSE AND EDUCATION FUND,

*Amici on Behalf of Appellee(s).*

Appeal from U.S. District Court for the
Southern District of Iowa - Eastern
(3:22-cv-00027-SHL)

**JUDGMENT**

Before GRUENDER, MELLOY, and KELLY, Circuit Judges.

*Appendix A*

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

August 14, 2024

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

**APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED AUGUST 14, 2024**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-3188

DANIEL SNYDER,

*Plaintiff-Appellant.*

v.

ARCONIC, CORP., A DELAWARE CORPORATION; ARCONIC DAVENPORT, LLC, A DELAWARE CORPORATION,

*Defendants-Appellees.*

---

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; LAMBDA LEGAL DEFENSE AND EDUCATION FUND,

*Amici on Behalf of Appellee(s).*

Appeal from United States District Court
for the Southern District of Iowa - Eastern.

Submitted April 9, 2024
Filed August 14, 2024
[Unpublished]

*Appendix B*

Before GRUENDER, MELLOY, and KELLY, Circuit Judges.

PER CURIAM.

Daniel Snyder is a former employee of Arconic Davenport LLC, the Iowa outpost of Arconic Corporation, an aluminum company with tens of thousands of employees worldwide (collectively Arconic). Snyder was fired after he made a statement about the rainbow on the company's intranet site. He then sued Arconic for religious discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17, and the Iowa Civil Rights Act, Iowa Code § 216.6. The parties filed cross-motions for summary judgment, and the district court[1] granted Arconic's motion and denied Snyder's. Snyder appeals, and we affirm.

**I.**

"It's a abomination to God. Rainbow is not meant to be displayed as a sign for sexual gender." Snyder wrote this statement while employed at Arconic, believing that he was responding to an anonymous survey Arconic emailed to its employees, and that it "would be seen only by the sender of that survey." But he was mistaken. Although Snyder "did not intend for [his statement] to be public," he had posted it "publicly to a message board on the Arconic company-wide 'intranet.'"

1. The Honorable Stephen H. Locher, United States District Judge for the Southern District of Iowa.

After Snyder made the post, Arconic suspended him for "making an offensive comment on the company intranet." Arconic's Diversity Policy prohibits employee "'conduct that denigrates or shows hostility or aversion towards someone because of' a protected characteristic, which includes conduct that creates an intimidating, hostile, or offensive work environment." Arconic also has an antiharassment policy, and its policies define "harassment [to] include[] circulating on social media outlets connected to the workplace written material that 'denigrates or shows hostility or aversion toward a person or group because of any characteristic protected by law.'" After an investigation, Arconic determined the post "was offensive and violated its policies." It fired Snyder, citing the post and noting his history of disciplinary issues.

Snyder sued for religious discrimination and retaliation. He moved for summary judgment on his discrimination claims and Arconic cross-motioned for summary judgment on all claims. The district court denied Snyder's motion after determining that he failed to establish his prima facie case. It also granted Arconic's motion and entered judgment for Arconic. Snyder appeals.

## II.

"We . . . review de novo the district court's resolution of cross-motions for summary judgment viewing the evidence in the light most favorable to the nonmoving party and giving the nonmoving party the benefit of all reasonable inferences." *Fed. Ins. Co. v. Great Am. Ins. Co.*, 893 F.3d 1098, 1102 (8th Cir. 2018) (quoting *LaCurtis*

*v. Express Med. Transporters, Inc.*, 856 F.3d 571, 576 (8th Cir. 2017)). "Summary judgment is required 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *LaCurtis*, 856 F.3d at 576-77 (quoting Fed. R. Civ. P. 56(a)).

**A.**

As relevant here, Title VII makes it unlawful for an employer to discharge or otherwise discriminate against an employee because of their religion. *See E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771, 135 S. Ct. 2028, 192 L. Ed. 2d 35 (2015) (quoting § 2000e-2(a)). "'[R]eligion' is defined to 'includ[e] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to' a 'religious observance or practice without undue hardship on the conduct of the employer's business.'" *Id.* at 771-72 (quoting § 2000e(j)). "An employee establishes a prima facie case of religious discrimination by showing that: (1) the employee has a bona fide religious belief that conflicts with an employment requirement; (2) the employee informed the employer of this belief; (3) the employee was disciplined for failing to comply with the conflicting employment requirement." *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1340 (8th Cir. 1995) (citation omitted); *see also Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 900 (8th Cir. 2024) (explaining three-part prima facie test for Title VII claims based on failure to accommodate religious beliefs). Because it is dispositive in this case, we only consider the first prima facie element.

There is no dispute that Snyder's religious beliefs about the rainbow are bona fide and sincerely held. And the parties agree that Arconic fired Snyder at least in part for making the post on the company intranet. According to Snyder, this suffices to make out his prima facie case because he only needs to show he had a bona fide religious belief, that his belief was reflected in a statement he made, and that the statement was "'a factor' in Arconic's 'decision' to fire him." But Snyder focuses solely on the content of the statement to the exclusion of the action he took in posting that statement on the company's intranet.[2] Snyder posted a comment that was broadcast, if only temporarily, to all Arconic employees. And Arconic believed that *conduct* violated its facially-neutral company policies.

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2. On appeal Snyder does not argue he was fired for merely possessing his belief about the rainbow, and the record would not support such a finding. *See Wilson*, 58 F.3d at 1340-41 (observing, where Roman Catholic woman made religious vow reflecting her sincerely held religious beliefs to wear anti-abortion button that "showed a color photograph of an eighteen to twenty-week old fetus," that employer who fired her for wearing it uncovered at work had not "oppose[d her] religious beliefs, but rather, was concerned with the photograph. The record demonstrate[d] that [her employer] did not object to various other religious articles that [she] had in her work cubicle or to another employee's anti-abortion button"). Here, the relevant employment requirement does not regulate employee beliefs but prohibits "employee conduct . . . includ[ing] conduct that creates an intimidating, hostile, or offensive work environment." Further, an Arconic Human Resources official who investigated the post testified that Snyder was fired not for his religious beliefs but for his "[v]iolation of company policy." Arconic did not object to Snyder's other religion-related requests, and Snyder acknowledges it had previously "granted him a religious accommodation to not work on Sundays so he could preach at a local church and work with homeless men in his capacity as a part-time pastor."

Snyder makes no claim that the *posting* of the comment was motivated by, or a part of, his religious beliefs. Indeed, Snyder asserts that he posted the comment on the intranet in error, that he "believed his expression had been in response to [an] anonymous survey and would be seen only be the sender of that survey[,]" and that he made it available for all employees only mistakenly. Accepting Snyder's own assertions, his religion did not cause him to act as he did—either by compelling him to post his comment about the rainbow broadly, or by merely suggesting, encouraging, or inspiring him to do so[3]—because, as he has consistently represented, the posting was an unfortunate mistake. In assessing Snyder's argument, we defer to Snyder's own description of his beliefs and his actions. *See Ben-Levi v. Brown*, 577 U.S. 1169, 136 S. Ct. 930, 934, 194 L. Ed. 2d 231 (2016) (Alito, J., dissenting from denial of certiorari) (observing Supreme Court's repeated warning that it is neither court's nor government's role to "define the scope of personal religious beliefs"). Doing so, we find that by Snyder's own description of events, the action of posting the statement on Arconic's intranet had no religious intent behind it, thus there is no conflict.

Whether a mistake such as the one Snyder made should be a basis for a termination decision is beyond the scope of our review. *Banford v. Bd. of Regents of Univ. of Minn.*, 43 F.4th 896, 900 (8th Cir. 2022) ("Federal courts do not sit as a super-personnel department that reexamines an entity's business decisions." (quoting

3. Accordingly, we need not address whether "compulsion" is required to create a conflict for the purposes of a prima facie case of religious discrimination.

*Canning v. Creighton Univ.*, 995 F.3d 603, 612 (8th Cir. 2021))). Arconic believed Snyder had engaged in conduct justifying his firing. *Huber v. Westar Foods, Inc.*, 106 F.4th 725, 736-37 (8th Cir. 2024) ("The relevant inquiry is whether the [employer] *believed* [the employee] was guilty of the conduct justifying discharge." (quoting *Richey v. City of Indep.*, 540 F.3d 779, 784 (8th Cir. 2008) (alterations in original))). More specifically, Arconic fired Snyder because it believed he violated company policy by making his statement in a post on the company's intranet. *See id.* ("[Where an] employer takes an adverse action based on a good faith belief that an employee engaged in misconduct, then the employer has acted because of perceived misconduct, not because of protected status or activity." (quoting *Richey*, 540 F.3d at 784)). Because there is nothing in the record to show a conflict between Snyder's religious belief, practice, or observance and Arconic's facially-neutral employment requirements, his discrimination claim fails.

**B.**

Snyder also appeals the district court's grant of summary judgment to Arconic on his retaliation claim. To establish his prima facie case of retaliation, Snyder must show "that (1) []he engaged in protected conduct, (2) []he suffered an adverse employment action, and (3) the adverse action was causally linked to the protected conduct." *Gibson v. Concrete Equip. Co.*, 960 F.3d 1057, 1064 (8th Cir. 2020) (citation omitted). Protected activity "mean[s] 'opposition to employment practices prohibited under Title VII.'" *Id.* (quoting *Bakhtiari v. Lutz*, 507

F.3d 1132, 1137 (8th Cir. 2007)). "An individual making a complaint must have an objectively reasonable belief [in light of the applicable substantive law] that an actionable Title VII violation has occurred for the complaint to qualify as a protected activity." *Id.* at 1064 (citation omitted).

Snyder first asserts that a reasonable jury could find he had an objectively reasonable belief that Arconic's use of the rainbow created a Title VII-violating "abusive working environment" and that he was opposing it with his post. He summarizes Arconic's working environment as including approximately three depictions of the rainbow in connection with LGBTQ+ equality or Pride Month. This falls short of this Circuit's standard for "abusive working environment." *Singletary v. Mo. Dep't of Corr.*, 423 F.3d 886, 892 (8th Cir. 2005) (observing such an environment is created where "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment" (citation omitted)). Because it was not objectively reasonable to believe Arconic's use of the rainbow violated Title VII, Snyder's post was not protected activity for the purposes of his retaliation claim.

Alternatively, Snyder asserts that Arconic fired him in retaliation for comments he made in the pre-termination disciplinary meetings about his intranet post, and he argues that those comments were protected conduct. At the district court he characterized his protected conduct during those meetings as his "opposi[tion to] Arconic's suspension and termination of his employment based

on his religious comment."[4] Even if we assume that this was protected conduct, and that his firing was "causally linked" to it, Arconic offered a legitimate reason for terminating his employment. Snyder bears the burden of showing that Arconic's proffered reason—the intranet post and his past policy violations—was pretextual. *See Gibson*, 960 F.3d at 1064 (applying *McDonnell Douglas* framework when there is no direct evidence of retaliation and observing that once legitimate reason for adverse action is proffered "the burden then returns to [employee] to present evidence that (1) creates a question of fact as to whether [employer]'s reason was pretextual and (2) creates a reasonable inference that [employer] acted in retaliation" (internal quotation omitted)); *Rossley v. Drake Univ.*, 979 F.3d 1184, 1186 (8th Cir. 2020) (allowing affirmance of "grant of summary judgment on any ground supported by the record" (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986))).

Snyder has not carried his burden. He refers us to two things that, in his view, reflect pretext: a Hearing Letter from Arconic, which answered the grievance he filed about his discharge and which he says contains an "admission that Snyder's intra-hearing comments were a basis for his termination," and what he describes as "Arconic's

4. To the extent he now seeks to broaden his argument or raise new issues beyond what he asserted to the district court and in his opening brief on appeal, he has waived the pursuit of such avenues. *See Heuton v. Ford Motor Co.*, 930 F.3d 1015, 1022 (8th Cir. 2019); *Hallquist v. United Home Loans, Inc.*, 715 F.3d 1040, 1046 (8th Cir. 2013) (citation omitted).

admitted hostility towards [his] religious beliefs."[5] Snyder asserts "[t]hat is more than sufficient evidence to get to a jury."

As to the latter, Snyder declines to specify which facts within his over seventy-page brief show "Arconic's admitted hostility," and instead simply relies on a "*See supra*" citation. "This will not do. . . . 'Judges are not like pigs, hunting for truffles buried in briefs.'" *See Bloodworth v. Kan. City Bd. of Police Comm'rs*, 89 F.4th 614, 624 (8th Cir. 2023) (quoting *Brown v. City of Jacksonville*, 711 F.3d 883, 888 n.5 (8th Cir. 2013)); *Rodgers v. City of Des Moines*, 435 F.3d 904, 908 (8th Cir. 2006) ("[Plaintiff] fails to direct us to specific record locations supporting [their] challenge. Without some guidance, we will not mine a summary judgment record searching for nuggets of factual disputes to gild a party's arguments.").

As to the Hearing Letter, it expressly states that Snyder "was disciplined because, while logged into a Company computer, he left a public comment . . . that violated the Company's diversity policy." After this explanation, it also notes that Snyder's comments in the post about the rainbow "and at the hearing demean persons who identify as LGBTQ+ and violate the Company's Diversity Policy." But the Letter does not identify Snyder's comments at the hearing as a reason that he was disciplined, and the language Snyder identifies is insufficient on its own to create a question of fact

5. Elsewhere he also references the fact that he was terminated days after the meetings, but he does so as evidence supporting his prima facie case, not pretext.

regarding pretext. *See Kempf v. Hennepin Cnty.*, 987 F.3d 1192, 1196 (8th Cir. 2021); *Wierman v. Casey's Gen. Stores*, 638 F.3d 984, 995 (8th Cir. 2011) ("To rebut the legitimate, nondiscriminatory reasons set forth by [the employer], [the employee] must point to 'enough admissible evidence to raise genuine doubt as to the legitimacy of the defendant's motive, even if that evidence [does] not directly contradict or disprove [the] defendant's articulated reasons for its actions.'" (quoting *Strate v. Midwest Bankcentre, Inc.*, 398 F.3d 1011, 1021 (8th Cir. 2005))). Snyder has failed to identify a genuine factual dispute as to whether Arconic's reasons for firing him were pretextual.

**III.**

We affirm the judgment of the district court.

## APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA, FILED AUGUST 31, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CIVIL NUMBER: 3:22-cv-00027-SHL-SBJ

DANIEL SNYDER,

*Plaintiff(s),*

v.

ARCONIC, CORP. AND ARCONIC DAVENPORT LLC,

*Defendant(s),*

### JUDGMENT IN A CIVIL CASE

☐ **JURY VERDICT.** This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **DECISION BY COURT.** This action came before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED:**

Defendants' Motion for Summary Judgment granted (See ECF #30). Judgment entered in favor of Defendants and against Plaintiff.

*Appendix C*

Date: August 31, 2023

CLERK, U.S. DISTRICT COURT

/s/ M. Mast

By: Deputy Clerk

## APPENDIX D — ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA, EASTERN DIVISION, FILED AUGUST 31, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

No. 3:22-cv-0027-SHL-SBJ

DANIEL SNYDER,

*Plaintiff,*

vs.

ARCONIC CORP., A DELAWARE CORPORATION, AND ARCONIC DAVENPORT LLC, A DELAWARE CORPORATION,

*Defendants.*

### ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

When a conflict exists between an employee's religious practices and an employer's policies, state and federal law require the employer to make an accommodation unless it would cause undue hardship. In the absence of a conflict, however, the law does not require the employer to give preferential treatment to an employee who violates a religiously neutral policy even if the violation is motivated by religious beliefs, particularly if the employer has no reason to believe, in advance, that an

accommodation is needed. Here, Plaintiff Daniel Snyder's employer concluded that he violated a religiously neutral anti-harassment policy by posting a message on a widely accessible intranet page stating that it is an "abomination to God" to use a rainbow symbol in connection with diversity initiatives. As Snyder has not identified any religious belief or practice that required him to post his message, and as there is no evidence that he placed his employer on notice that he needed an accommodation from company policy prior to violating it, he has failed as a matter of law to establish a prima facie case for religious discrimination. The Court therefore DENIES Snyder's Motion for Partial Summary Judgment and GRANTS Defendants' Motion for Summary Judgment.

## I. Statement of Facts.[1]

Defendant Arconic Corp. ("Arconic") is an aluminum supply chain company that employs tens of thousands of people worldwide and approximately 2,500 people at its plant in Davenport, Iowa. (ECF 24-1, ¶ 5.) Plaintiff Daniel Snyder ("Snyder") worked for Arconic in Davenport for approximately ten years, rising to the level of "lead operator" by age 62. (Id., ¶ 4.) During his employment, Arconic granted Snyder a religious accommodation

1. When cross-motions for summary judgment are filed, the Court must view the facts in the light most favorable to the plaintiff on the defendant's motion and in the light most favorable to the defendant on the plaintiff's motion. *See Thompson-Harbach v. USAA Fed. Sav. Bank*, 359 F. Supp. 3d 606, 614 (N.D. Iowa 2019). Consistent with this dichotomous standard, this section deals with genuine factual disputes by separately stating what each of Snyder and Arconic allege. Undisputed facts are stated without attribution to either side.

allowing him not to work on Sundays so he could preach at a local church. (ECF 25-1, ¶ 2.)

On June 1, 2021, Arconic CEO Tim Myers sent an email to many Arconic employees, including Snyder, with the subject line, "We'd like your input...." (ECF 24-1, ¶ 6.) The email invited employees to respond to an "Engagement Survey," which sought employee feedback on "identifying areas where we can improve." (Id.) The email stated that "responses would be anonymous." (Id.) The email said the survey would launch on June 2, when employees with email addresses would receive a link from the survey administrator. (Id.)

The same day, an article with identical substance to Myers's email was posted to Arconic's intranet page. (Id., ¶ 7.) The article included a large bold headline stating, "We'd like you[r] input on building a great future together" and stating that responses would be anonymous. (Id.) The article included a hyperlink at the bottom. (Id.) Employees accessed the article by clicking on a "tile" on the company homepage with CEO Myers's image next to the words, "We'd like your input on building a great future together." (Id., ¶ 8.) Immediately next to that tile were two additional tiles: one stating "Arconic Inclusion and Diversity Efforts 4 Highlighted by the Manufacturing Institute," and the other stating, "SPECTRUM: Arconic Employees for LGTBQ+ Equality" next to a rainbow-colored heart. (Id.) Spectrum is a support group for Arconic employees who identify as LGBTQ+. (Id.)

While working an overnight shift on June 2 and 3, 2021, Snyder posted the following statement to Arconic's intranet: "Its a (sic.) abomination to God. Rainbow is not

meant to be displayed as a sign for sexual gender." (ECF 25-1, ¶ 5.) The parties dispute his intent, with Arconic alleging that Snyder was objecting to the LGBTQ+ community's use of the rainbow symbol, whereas Snyder asserts that he was objecting to *Arconic*'s use of the rainbow symbol. (Id.) The parties also dispute Snyder's belief as to who would be able to read his statement. Snyder asserts that he thought he was making an anonymous and private response to the Arconic survey. (ECF 23-2, ¶ 11.) By contrast, Arconic asserts that Snyder made the post to a page that "contained no link, no survey questions, he did not have to enter his employee ID, and there was nothing on the page to suggest it was seeking input about Pride Month or the LGBTQ community or anything of the sort." (ECF 22-2, ¶ 6.) Regardless, it is undisputed that Snyder's message was not anonymous or private and instead was posted to the company intranet, which is accessible globally by over 13,000 employees. (ECF 25-1, ¶¶ 5, 7.) Prior to posting the message, Snyder had never expressed concern about the use of the rainbow symbol to Arconic. (Id., ¶ 15.)

Snyder's message remained on the Arconic intranet for hours, although the parties disagree on how many: Snyder says it was "eight hours, at most" (ECF 23-2, ¶ 21), while Arconic says it was "at least eight hours" (ECF 24-1, ¶ 21). Either way, it appears to be undisputed that Arconic removed the message sometime around 7 or 8 a.m. on June 3. (Id.)[2] It was removed because a management-

2. Arconic's Response to Snyder's Statement of Undisputed Facts did not specifically admit or deny the factual assertion that the statement was removed around 7 or 8 a.m., and thus the Court treats it as undisputed. *See* Fed. R. Civ. P. 56(e). The Court likewise

level employee brought it to the attention of Arconic's Human Resources Director, "who had it removed within minutes." (Id.) Arconic contends that Snyder's message had approximately 240 views before it was removed. (ECF 25-1, ¶ 8.) Snyder asserts that there were approximately 240 views of the *intranet page*, but this does not mean all 240 people read his message. (Id.) He further submits that it is unclear when these views occurred—i.e., whether they were before or after the message. (Id.) In Snyder's view, it is "impossible to determine" whether anyone saw his message. (Id.)

Arconic began an investigation into Snyder's message on either June 6, 7, or 8, 2021. (ECF 24-1, ¶ 17.) Arconic asserts that at least three employees saw Snyder's message and found it offensive before it was taken down. (Id., ¶¶ 21, 22.) Arconic further asserts that other employees also considered the message offensive when it was shared with them during the investigation. (Id., ¶¶ 22, 23.) Arconic's investigators did not interview employees en masse about the message, although investigators "were aware others had expressed concern about the offensive comment, and all testified the comment was offensive to them." (Id., ¶ 23.) Arconic was not aware of any work disruption resulting from Snyder's message, although its investigators "found

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treats facts as "undisputed" in other places where one side or the other purported to "deny" an entire paragraph but only provided support for the denial as to some *portion* of the paragraph. *See id.* In these circumstances, the correct nomenclature would have been that the statement is "admitted in part and denied in part." Consistent with Rule 56(e), the Court will treat the unaddressed portions of these paragraphs as undisputed.

the comment offensive and a comment which could subject the company to liability." (Id., ¶ 24.)

Snyder communicated to investigators that his message was based on his religious beliefs. (Id., ¶ 26.) Specifically, Snyder told Human Resources that Arconic "was not considering his feelings and religious beliefs in using the rainbow to promote 'Gay Pride Month.'" (ECF 25-1, ¶ 16.) He added: "If any one of you in this meeting believes in God, you know that my statement is true." (Id.) Snyder also asserts that he said, "what about my beliefs and opinions?" during one of his meetings with investigators. (ECF 24-1, ¶ 39.) Arconic concedes that Snyder's message on the intranet page was religiously motivated (id., ¶ 26), although Arconic's corporate representative deponent, Jorge Rodriguez, testified: "I don't see [Snyder's statement] as religious. I think Mr. – Mr. Snyder – Mr. Snyder's expression was of hatred. I have my personal beliefs about what it is to be religious" (id., ¶ 28). Rodriguez also testified that, in his view, it is not religious to make a hateful comment or call a person an abomination. (Id.)

Arconic has a People Value and Policy on Diversity in the Workplace policy, as well as a Guide to Business Conduct, Arconic Code of Conduct, and anti-harassment policy. (ECF 25-1, ¶ 17.) Employees are to "set an example by fostering a fair, respectful, and inclusive work environment" and promote "an inclusive environment of respect, honesty, transparency, and accountability." (Id., ¶ 18.) Arconic defines harassment, in part, as written material that "denigrates or shows hostility or aversion

toward a person or group because of any protected characteristic" and "sharing unsolicited opinions about a person's sexual orientation or gender identity and expression." (Id., ¶ 19.) Arconic's policy notes that harassment includes circulating written material in the workplace that "denigrates or shows hostility or aversion toward a person or group because of any characteristic protected by law." (Id., ¶ 20.) Arconic does not tolerate "conduct that denigrates or shows hostility or aversion towards someone because of" a protected characteristic, such as conduct that creates an intimidating, hostile, or offensive work environment. (Id., ¶ 21.) Arconic believes that "an accommodation to state offensive comments to others would not be reasonable" but admits there is no evidence that it considered other alternatives after Snyder's message on the company intranet. (ECF 24-1, ¶ 35.)

Snyder never asked for his message to be put back on the company intranet after it was removed, but he also testified that he stands by it and would never take it back. (Id., 33; ECF 25-1, 13.) In an email to the union representative on June 10, Snyder said: "I will never take place [sic.] in any of their surveys or give my opinion to their solicitations" again. (ECF 24-1, ¶ 32.) At the end of Arconic's investigation into Snyder's message, the company terminated him. (Id., ¶ 20.) The parties agree that Snyder was fired because of the message, although they disagree about how this should be characterized: Snyder says he was terminated because he made a religiously motivated statement (id., ¶ 1), while Arconic says he was terminated for violating company policy (ECF 25-1, ¶ 24.) Snyder had

been disciplined on two other occasions for violating the same company policy in the year immediately preceding his termination. (Id., ¶ 25.)

## II. Legal Analysis.

### A. Motion for Summary Judgment Standard.

Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Smith v. Ashland, Inc.*, 250 F.3d 1167, 1171 (8th Cir. 2001). "When cross-motions for summary judgment are presented to the Court, the standard summary judgment principles apply with equal force." *Wright v. Keokuk Cnty. Health Ctr.*, 399 F. Supp. 2d 938, 945-46 (S.D. Iowa 2005). "[T]he court views the record in the light most favorable to plaintiff when considering defendant's motion, and the court views the record in the light most favorable to defendant when considering plaintiff's motion." *Thompson-Harbach*, 359 F. Supp. 3d at 614.

### B. Legal Standards and Principles: Title VII and Iowa Civil Rights Act.

Title VII of the Civil Rights Act of 1964 prohibits an employer from discharging, adversely affecting, or otherwise discriminating against an employee "because of" the employee's religion. 42 U.S.C. § 2000e-2(a). Under Eighth Circuit precedent, "[a]n employee establishes a

prima facie case of religious discrimination by showing that: (1) the employee has a bona fide religious belief that conflicts with an employment requirement; (2) the employee informed the employer of this belief; (3) the employee was disciplined for failing to comply with the conflicting employment requirement." *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1340 (8th Cir. 1995).[3] "If the plaintiff establishes a prima facie case, then 'the burden shifts to the employer to produce evidence showing that it cannot reasonably accommodate the employee without incurring undue hardship.'" *Mial v. Foxhoven*, 305 F. Supp. 3d 984, 990 (N.D. Iowa 2018) (quoting *Cook v. Chrysler Corp.*, 779 F. Supp. 1016, 1022 (E.D. Mo. 1991)). An "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." *Groff v. DeJoy*, 600 U.S. 447, 143 S. Ct. 2279, 2294, 216 L. Ed. 2d 1041 (2023). This is a "fact-specific inquiry." *Id.*

"Undue hardship requires more than proof of some fellow-worker's grumbling . . . An employer. . . . would have to show . . . actual imposition on co-workers or disruption of the work routine." *Brown v. Polk Cnty., Iowa*, 61 F.3d 650, 655 (8th Cir. 1995) (quoting *Burns v. S. Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978)). "Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse

3. In *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, the Supreme Court clarified that an employer need not know with certainty that the conflict arises out of a religious belief; some lesser showing is sufficient so long as the employer takes action "with the *motive* of avoiding the need for accommodating a religious practice." 575 U.S. 768, 774, 135 S. Ct. 2028, 192 L. Ed. 2d 35 (2015).

than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not to fail or refuse to hire or discharge any individual . . . because of such individual's religious observance and practice." *Abercrombie & Fitch*, 575 U.S. at 775 (internal punctuation omitted).

Like Title VII, the Iowa Civil Rights Act ("ICRA") prohibits an employer from discharging or discriminating against an employee "because of" religion. Iowa Code § 216.6(1)(a). The Iowa Supreme Court follows the same burden-shifting approach in religious discrimination cases under the ICRA as federal courts follow under Title VII. *King v. Iowa Civ. Rts. Comm'n*, 334 N.W.2d 598, 601 (Iowa 1983). For simplicity, this Order will use "Title VII" to refer to both Snyder's federal and state law claims, as they rise and fall together.

Snyder has not provided any evidence that Arconic employees who made comments expressing hostility toward protected groups for non-religious reasons were punished less severely than him. He is therefore not bringing what some courts characterize as a "traditional" disparate treatment claim. *Bailey v. Metro Ambulance Servs., Inc.*, 992 F.3d 1265, 1272 (11th Cir. 2021). Instead, his religious discrimination claim is based on what the Supreme Court has called a "disparate-treatment claim[] based on a failure to accommodate a religious practice." *Abercrombie & Fitch*, 575 U.S. at 773.

Although he gives it relatively little attention in his briefs, Snyder also asserts a claim for retaliation in

violation of 42 U.S.C. § 2000e-3(a). To prove a prima facie case of retaliation, Snyder must prove: (1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) a causal connection between the two. *Shirrell v. St. Francis Med. Ctr.*, 793 F.3d 881, 888 (8th Cir. 2015). "To show a causal connection, [Snyder] must show that [his] protected activity was a but-for cause of [his] employer's adverse action." *Id.*

### C. The Court Denies Snyder's Motion for Partial Summary Judgment Because Snyder Has Failed to Prove Two of the Elements of a Prima Facie Case Under Title VII.

The two sides approach the relevant legal question from starkly different positions. Arconic focuses on the elements of a prima facie case for religious discrimination, which it argues Snyder has not satisfied. Snyder views the case through a simpler lens: he argues that Arconic terminated him for posting a religiously motivated message on the company intranet, and thus this is a straightforward case of termination "because of" religion. The Court concludes that Arconic's approach aligns with binding Eighth Circuit precedent. It further concludes that the facial simplicity of Snyder's position breaks down under scrutiny, as he simply has not satisfied the elements of a prima facie case under Title VII.

*Appendix D*

**1. Snyder Has Not Established a "Conflict" Between His Religious Practices and Arconic's Requirements.**

Under well-established Eighth Circuit precedent, an employee must show, *inter alia*, "a bona fide religious belief that conflicts with an employment requirement." *Wilson*, 58 F.3d at 1340. "[T]he word 'belief' here is really a shorthand for religious observances and practices that are manifestations of the employee's religious belief." *Equal Emp. Opportunity Comm'n v. Kroger Ltd. P'ship I*, 608 F. Supp. 3d 757, 776 (E.D. Ark. 2022). "Speaking metaphysically, a belief cannot conflict with a workplace rule. Instead, it is the religious observance or practice—i.e., doing something or refraining from doing something based on a religious belief—that can conflict with a workplace rule." *Id.*

In most reported cases, employees satisfy the "conflict" requirement by showing that their religion compels them to do one thing (like wear a headscarf or rest on the Sabbath) but their employer requires them to do something else (like working without headwear or on Sundays). *See, e.g., Groff*, 143 S. Ct. at 2286; *Abercrombie & Fitch*, 575 U.S. at 770. Here, however, Arconic did not require Snyder to do anything. It did not, for example, compel him to wear a rainbow pin, march in a Gay Pride parade, or take any other action that he considered incompatible with his religious beliefs. *See, e.g., Ollis v. HearthStone Homes, Inc.*, 495 F.3d 570, 575 (8th Cir. 2007) (employee established *prima facie* case because employer required him to engage in non-Christian religious activity

during "Mind Body Energy" sessions, in conflict with his Christian faith). To the contrary, Arconic accommodated Snyder's religious beliefs by allowing him not to work on Sundays. At most, Arconic simply *forbade* Snyder (and all other employees) from making statements expressing hostility toward others, particularly those in protected groups.

Against this factual backdrop, Snyder struggles to articulate his position in a way that satisfies the elements of a prima facie claim. He seems to acknowledge, correctly, that Arconic does not run afoul of Title VII by having a policy that prohibits employees from making statements in the workplace that express hostility toward the LGBTQ+ community or any other person or group. *See Wilson*, 58 F.3d at 1342 ("Title VII does not require an employer to allow an employee to impose his religious views on others.") He also appears to admit that he did not request an accommodation from this policy in advance of violating it. And while he argues that Arconic made no effort to accommodate him, his briefs are vague on what, exactly, he claims the company should have done. He merely cites his statement to the union representative that he would never again participate in an employment survey or provide his opinion. (ECF 23-1, p. 12.) Perhaps this means he believes Arconic should have accommodated him by allowing him to continue to work but taking away his right to respond to surveys or post on the company intranet. Alternatively, as his counsel suggested at the hearing on the cross-motions for summary judgment, perhaps the appropriate accommodation was to send Snyder home for the day and tell him to reflect on his

statements. All the Court can tell for sure is that Snyder believes he should not have been terminated for what he characterizes as an "isolated" statement that he thought would be confidential. In essence, his position is that Title VII requires an employer to give at least "one free pass" to an employee who makes a statement that violates the employer's anti-harassment policy if the statement was motivated by sincere religious beliefs.

Snyder rests his "one free pass"[4] argument on the Supreme Court's admonition that "Title VII does not demand mere neutrality with regard to religious practices . . . . Rather, it gives them favored treatment, affirmatively obligating employers not to fail or refuse to hire or discharge any individual . . . because of such individual's religious observance and practice." *Abercrombie & Fitch*, 575 U.S. at 775 (internal punctuation omitted). Snyder is taking this language out of context. Title VII mandates "favored treatment" when there is a conflict between religious practices and employment requirements. So, for example, in the absence of undue hardship, an employer must accommodate an employee's request for religious reasons not to work on Sundays even if the employer would not accommodate the same request by a different employee for non-religious reasons. *See Groff*, 143 S.Ct. at 2286. By contrast, Snyder has not cited—and the Court

4. Snyder does not agree with the characterization of his position as a "one free pass" or "second chance" rule. The Court believes, however, that it is a fair characterization in a scenario where Snyder is not arguing that he should be *permitted* to post messages on the company intranet expressing hostility to the rainbow symbol, but rather that he should not have been *terminated* for doing so.

is not independently able to locate—a case holding that Title VII requires "favored treatment" in the absence of a conflict between a religious practice and an employment requirement.

The law instead establishes the opposite: "[a]n employer's duty to accommodate cannot arise until an actual conflict between a religious belief, observance or practice and a job-related requirement is actually presented." *Prise v. Alderwoods Grp., Inc.*, 657 F. Supp. 2d 564, 603 (W.D. Pa. 2009). In *Rose v. Midwest Express Airlines, Inc.*, for example, the District of Nebraska granted summary judgment for an employer who terminated an employee because it believed she was sleeping on the job. No. 8:01-CV-473, 2002 U.S. Dist. LEXIS 17665, 2002 WL 31095361, at *3 (D. Neb. Sept. 19, 2002). The employee asserted that she was actually *praying* and therefore argued she had a viable Title VII claim for religious discrimination; i.e., she was terminated "because of" religion. *Id.* The District of Nebraska disagreed because, *inter alia*, the employee "offered no evidence that her religion required her to pray in a specific manner, at specific times, at specific places, or in specific circumstances." *Id.* In other words, there was no conflict between her religious practices and the employer's requirements. *Id.*

Similarly, in *O'Connor v. Lampo Grp., LLC*, the Middle District of Tennessee dismissed a Title VII case brought by an employee who was fired for having premarital sex, in violation of a company policy requiring behavior "consistent with traditional Judeo-Christian values or teaching." 3:20-CV-00628, 2021 U.S. Dist.

LEXIS 188304, 2021 WL 4480482, at *2 (M.D. Tenn. Sept. 29, 2021), *reconsideration denied*, No. 3:20-CV-00628, 2021 U.S. Dist. LEXIS 204079, 2021 WL 4942869 (M.D. Tenn. Oct. 22, 2021). The employee argued that her religious beliefs did not prohibit premarital sex, and thus she was terminated "because of" religion in the sense that her beliefs conflicted with her employer's requirements. *O'Connor* held that this is not the type of "conflict" that gives rise to a Title VII claim. 2021 U.S. Dist. LEXIS 188304, [WL] at *7. Rather, Title VII comes into play only when an employee's religious beliefs "proactively require or encourage" the employee to *do something* that the employer forbids or *refrain from doing something* that the employer requires. *Id.* Because the plaintiff in *O'Connor* was not required or encouraged by her religion to have premarital sex, she did not have a viable Title VII claim. *Id.*; *see also Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004) ("[W]e seriously doubt that the doctrines to which Peterson professes allegiance compel any employee to engage in either expressive or physical activity designed to hurt or harass one's fellow employees."); *Prise*, 657 F. Supp. 2d at 603-04 (granting summary judgment for employer in Title VII claim despite employee's religiously motivated concerns for how the company was being operated; the employee's religion did not require her to raise those concerns).

Although the Court has not located an Eighth Circuit case squarely on point in the context of Title VII, First Amendment free exercise cases are highly instructive because the "first amendment protects at least as much religious activity as Title VII does." *Brown*, 61 F.3d at 654.

*Appendix D*

In *Altman v. Minnesota Department of Corrections*, the Eighth Circuit held that there must be an actual conflict between religious practices and employment requirements before an employee's free exercise rights have been violated. 251 F.3d 1199, 1204 (8th Cir. 2001). *Altman* held that an employer did not violate the free exercise clause by reprimanding the plaintiffs for reading their Bibles during a mandatory training session because the plaintiffs "do not suggest that their religion requires them to read the Bible while working. . . ." *Id. Altman* all but confirms that *Rose, O'Connor*, and similar cases correctly recognize the type of conflict that must exist under Title VII between religious practices and an employment requirement.

Here, Snyder has not argued—much less submitted evidence—that his religion requires him to send messages objecting to the use of rainbow imagery. It follows that there is no "conflict" in the legally relevant sense between his religious practices and Arconic's anti-harassment policy. Snyder appears to recognize as much, arguing that Title VII protections also apply in the case of indirect conflicts; i.e., when an employee does something that is not *per se* "required" by religion but nonetheless is motivated by religious beliefs. He has not, however, identified any authority for the proposition that the protections of Title VII extend to indirect religious conflicts in circumstances like those present here. Instead, *Altman* and the lower court cases identified above establish the opposite.

In arguing otherwise, Snyder relies heavily on the Eighth Circuit's decision in *Brown v. Polk County, Iowa*, arguing that it holds that Title VII prohibits an employer

from terminating an employee for "spontaneous prayers, occasional affirmations of Christianity, and isolated references to Bible passages" even if those acts might be offensive to other employees. 61 F.3d at 656. (*See also* ECF 23-1, pp. 10, 18-20.) Careful review of *Brown* shows why Snyder is mistaken.

*Brown* involved an unusual fact pattern in which the employer had no policy prohibiting the employee's religious practices until after those practices already occurred, at which point the employer decided it did not like them. *See Brown v. Polk Cnty., Iowa*, 832 F. Supp. 1305, 1314, n. 17 (S.D. Iowa 1993), *aff'd sub nom. Brown v. Polk Cnty.*, 37 F.3d 404 (8th Cir. 1994), *reh'g granted and opinion vacated* (Nov. 25, 1994), *on reh'g en banc sub nom. Brown v. Polk Cnty., Iowa*, 61 F.3d 650 (8th Cir. 1995), and *aff'd in part, rev'd in part*, 61 F.3d 650 (8th Cir. 1995). Because the employer later used the employee's religious conduct as a factor in terminating him, the district court concluded the employee had established a prima facie case of religious discrimination without applying the elements traditionally used in the Eighth Circuit. *See id.* The *en banc* Eighth Circuit followed suit, jumping almost immediately to the issues of accommodation and undue hardship without analyzing the elements of a prima facie case; indeed, the words "prima facie" are found nowhere in the opinion. *See Brown*, 61 F.3d at 653-54. In context, it was understandable why *Brown* did this: the employee's religious expressions consisted of isolated and spontaneous allusions to the Bible and Christianity that did not violate any established employer policies, yet the employer reprimanded and later fired him because of

those expressions. *Id.* at 656-57. The employer therefore fired him "because of" religion, as opposed to firing him because of a violation of a religiously neutral policy. *Id.* The Eighth Circuit also clearly was troubled by other evidence of the employer's religious animus, such as a supervisor forcing the employee to remove all religious items from his office and directing him to "cease any activity that *could be considered* to be religious" regardless of whether it disrupted the workplace. *Id.* at 658-59.

*Brown* has little in common with the instant case. Unlike the employer in *Brown*, Arconic did not wait until Snyder engaged in religious activity and then retroactively implement and enforce a policy against it; instead, Arconic enforced an unambiguous and religiously neutral policy that existed all along. *See, e.g., Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1135 (8th Cir. 1999) ("Our cases have repeatedly held that insubordination and violation of company policy are legitimate reasons for termination."); *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1286 (8th Cir. 1977) ("Blakely's discharge was caused by his violation of company rules of conduct. It was not the result of antagonism by Chrysler to his religious beliefs and did not violate Title VII."). Moreover, Arconic did not display other forms of religious animus. To the contrary, it accommodated Snyder's religious practices by not scheduling him to work on Sundays. It follows that, unlike *Brown*, there is no reason here to skip the traditional elements of a prima facie case, including the requirement that Snyder prove a conflict between his religious practices and Arconic's policy. *See Wilson*, 58 F.3d at 1340.

*Appendix D*

The Eighth Circuit has repeatedly required plaintiffs in post-*Brown* Title VII religious discrimination cases to establish the three elements of a prima facie case, including the conflict requirement. *See, e.g., Ollis*, 495 F.3d at 575; *Jones v. TEK Indus., Inc.*, 319 F.3d 355, 359 (8th Cir. 2003); *Vetter v. Farmland Indus., Inc.*, 120 F.3d 749, 751 (8th Cir. 1997). Indeed, *Brown* itself recognized that a conflict is required, holding that some of the employee's conduct did not give rise to a viable Title VII claim, such as his use of a subordinate's time to type Bible study notes and his desire to have prayers in his office before the start of the workday. 61 F.3d at 656. The Eighth Circuit held that it "would be surprised if directing a county employee to type Bible study notes is 'conduct mandated by religious belief' . . . [and] nothing in Title VII requires that an employer open its premises for use before the start of the workday." 61 F.3d at 656 (quoting *Thomas v. Rev. Bd.*, 450 U.S. 707, 718, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981)). The Court therefore does not interpret *Brown* as dispensing with the elements of a prima facie case under Title VII except in narrow circumstances where an employer retroactively creates and enforces a policy for the specific purpose of tamping down an employee's religious activity. Nothing of the sort occurred here. It follows that *Brown* does not require the Court to find a conflict between Snyder's religious practices and Arconic's employment requirements. Instead, Snyder bears the burden of establishing that element in some way beyond merely showing that his violation of Arconic's neutral policy was motivated by his religious beliefs. He has failed as a matter of law to do so.

**2. Snyder Did Not Provide Adequate Notice to Arconic of the Putative "Conflict" Between His Religious Practices and Arconic's Policies.**

Even if Snyder could establish a "conflict" between his religious practices and Arconic's employment requirements, his attempt to prove a prima facie case runs into a second problem: Arconic was not reasonably on notice of the conflict or his need for an accommodation. "Title VII imposes a duty on the employer but also a reciprocal duty on the employee to give fair warning of the employment practices that will interfere with his religion and that he therefore wants waived or adjusted." *Reed v. Great Lakes Cos., Inc.*, 330 F.3d 931, 935 (7th Cir. 2003); *see also Mann*, 561 F.2d at 1285 (describing an employee's duty under Title VII to cooperate with the employer to identify and address potential religious conflicts). It is undisputed that Snyder did not express concern about Arconic's anti-harassment policy or use of the rainbow symbol prior to posting his message, much less ask for an accommodation. Instead, Snyder's position is that he informed Arconic of the religious conflict as he was in the process of violating the policy by posting his message, and that he asked for an accommodation during the subsequent investigation.

Case law says Snyder was too late. In *Johnson v. Angelica Uniform Group, Inc.*, the Eighth Circuit affirmed judgment in favor of the employer in a Title VII claim because the employee did not say anything about his purported need to miss work for religious reasons until after his twelfth absence. 762 F.2d 671, 673 (8th Cir. 1985);

*see also Mann*, 561 F.2d at 1285-86 (similar). Similarly, in *Reed*, the Seventh Circuit affirmed summary judgment for an employer who fired an employee for storming out of a meeting even though the employee claimed he only did so because one of the attendees started praying. 330 F.3d at 933, 935-37. Title VII was not violated because the employee had done nothing to put the employer on notice that his religious beliefs might need to be accommodated. *Id.* at 935-36. In *Wilkerson v. New Media Technology Charter School Inc.*, the Third Circuit likewise affirmed the dismissal of a Title VII claim because the employee did nothing to notify the employer of a religious conflict until after her absence from a mandatory ceremony. 522 F.3d 315, 319 (3d Cir. 2008). Similar logic applies here. To the extent there is a conflict between Snyder's religious practices and Arconic's anti-harassment policy (or its use of the rainbow symbol), there is no evidence that Arconic knew or should have known in advance of this conflict or Snyder's need for an accommodation.

The Fourth Circuit's decision in *Chalmers v. Tulon Co. of Richmond* is particularly instructive. 101 F.3d 1012 (4th Cir. 1996). *Chalmers* involved a devout employee who was fired for writing private letters to two co-workers expressing concerns about what she perceived to be immoral conduct. *Id.* at 1015-16. The letters were overtly religious—e.g., "One thing the Lord wants you to do is get your life right with him"—and the employee's religious convictions were well known in the workplace before she sent them. *Id.* The Court held the employee had not established a prima facie claim of religious discrimination under Title VII because the employer had no notice "that her religious beliefs required her to write such letters"

and thus no reason to know an accommodation might be necessary. *Id.* at 1020. *Chalmers* considered and rejected arguments akin to those Snyder raises here, including that the letters themselves provided notice of the need for an accommodation. *Id.* The Fourth Circuit disagreed, holding that "giving notice to co-workers at the same time as an employee violates employment requirements is insufficient to provide adequate notice to the employer and to shield the employee's conduct." *Id.* The employee also argued that the employer "should have attempted to accommodate her by giving her a sanction less than a discharge, such as a warning." *Id.* Again, the Fourth Circuit disagreed: "[t]here is nothing in Title VII that requires employers to give lesser punishments to employees who claim, after they violate company rules (or at the same time), that their religion caused them to transgress the rules." *Id. Chalmers* is squarely on point and defeats Snyder's position.

*Chalmers* relied in part on two Eighth Circuit cases—*Johnson* and *Brown*—and therefore appears to be consistent with Eighth Circuit precedent. Notwithstanding, Snyder also relies heavily on *Brown*, arguing that it establishes that Arconic was sufficiently on notice of his religious beliefs and need for an accommodation. *See Brown*, 61 F.3d at 654 ("Because the first reprimand related directly to religious activities by Mr. Brown, we agree with the district court that the defendants were well aware of the potential for conflict between their expectations and Mr. Brown's religious activities.").

The Court explained above that *Brown* involved unique facts and did not free plaintiffs from having

to prove the existence of a conflict between religious practices and employment requirements except in narrow circumstances not present here. Those same unique facts show why *Brown* does not support Snyder's position that Arconic had adequate notice of his need for a religious accommodation from the anti-harassment policy. In *Brown*, the employer initially reprimanded the employee for his religious activities despite the absence of a policy against them. *Id.* at 652-53; *see also Brown*, 832 F. Supp. at 1314, n.17, *aff'd sub nom. Brown*, 37 F.3d 404, *reh'g granted and opinion vacated, on reh'g en banc sub nom. Brown*, 61 F.3d 650. Several months later, the employee was fired due, in part, to the same activities for which he already had been reprimanded. *Brown*, 61 F.3d at 654. There is nothing in the appellate or trial court opinions in *Brown* to suggest the employee engaged in any *new* religious activities; instead, he was reprimanded and terminated for the original incidents. Thus, when *Brown* held that the defendants were "well aware of the potential for conflict between their expectations and Mr. Brown's religious activities," *id.* at 654, it was simply recognizing the obvious fact that an employer who reprimands an employee for religious acts is already aware of a conflict before terminating him for those very same acts. Indeed, in those unique circumstances, the employer itself has created the conflict and then used it retroactively as a basis for termination. Nothing even remotely similar happened here.

*Brown* does, to be sure, also hold that an employee need not explicitly ask for an accommodation in order to establish a Title VII violation. *Id.* at 654. *Abercrombie & Fitch* reached essentially the same conclusion. 575 U.S. at

774. This is of no assistance to Snyder, however, because there is nothing in the record to suggest that Arconic suspected there might be a conflict between its anti-harassment policy (which, in relevant part, simply forbids employees from expressing hostility toward protected groups) and Snyder's religious practices. In fact, by his own account, Snyder only "informed" Arconic of the conflict when he was in the process of violating the policy. Neither *Brown, Abercrombie & Fitch*, nor any other case cited by Snyder (or located by the Court) holds that this is enough to establish a prima facie case of religious discrimination. Instead, the law requires Snyder to prove Arconic's awareness that he needed an accommodation *before* he violated the policy. *See Johnson*, 762 F.2d at 673; *Chalmers*, 101 F.3d at 1020; *Rose*, 2002 U.S. Dist. LEXIS 17665, 2002 WL 31095361, at *4. Snyder has failed as a matter of law to do so.

Finally, although it does not appear to be a disputed issue, the Court concludes that Arconic did not act unreasonably or in bad faith in concluding that Snyder's message violated Arconic's anti-harassment policy. The record shows that Snyder characterized the use of the rainbow symbol as an "abomination" on a companywide intranet page accessible by more than 13,000 employees. It is well known that the rainbow symbol is affiliated with the LGBTQ+ community, and thus Arconic reasonably interpreted Snyder's message as hostile to that community. True, Snyder says he meant to object to *Arconic*'s use of the rainbow symbol, rather than the *LGBTQ+ community*'s use of it. But Arconic uses it *because* the LGBTQ+ community uses it. Thus, regardless

of Snyder's subjective intentions, Arconic could reasonably interpret his post as expressing hostility to a protected group in violation of company policy. *See McCullough v. Univ. of Arkansas for Med. Scis.*, 559 F.3d 855, 861-62 (8th Cir. 2009) (holding that the "critical inquiry" in an employment discrimination case is the employer's good faith belief about what occurred). It is equally immaterial that Snyder insists his message did not express hostility toward any particular person. Arconic could reasonably believe that some readers of Snyder's message would not appreciate the difference between referring to a *group of people* as an "abomination" versus referring to the *use of a symbol associated with that group* as an "abomination." Accordingly, again, Arconic could reasonably conclude that Snyder violated company policy.

The bottom line is that, unlike *Brown*, there is no reason in these circumstances to skip over the traditional elements of a prima facie religious discrimination case. Instead, Snyder must show, *inter alia*, a conflict between his religious practices and an employment policy and Arconic's awareness of that conflict before Snyder violated the policy. Snyder cannot satisfy these elements, particularly when the Court resolves factual disputes in Arconic's favor, as it must on Snyder's Motion for Partial Summary Judgment. In that scenario, the facts show that Snyder: (i) violated the company's anti-harassment policy by intentionally posting a message expressing hostility toward a protected group on a widely accessible intranet page, despite (ii) never identifying a religious belief or practice that conflicted with the anti-harassment policy or (iii) placing Arconic on notice, in advance, of his need

for an accommodation from that policy, and (iv) did so in a situation where he had already violated the same policy two other times in the preceding twelve months. These facts are more than enough to require denial of Snyder's Motion for Partial Summary Judgment. *See Johnson*, 762 F.2d at 673; *Chalmers*, 101 F.3d at 1020.

### D. The Court Grants Arconic's Motion for Summary Judgment.

The analysis is more complicated when factual disputes are resolved in Snyder's favor, as they must be on Arconic's Motion for Summary Judgment. In this scenario, a schism develops between what Snyder says he *thought* he was doing when he posted his message versus what he *actually did*. Snyder claims he thought he was submitting a confidential response to an anonymous workplace survey. If this was all he did, he might have a valid Title VII claim. An employer presumably cannot invite employee feedback on workplace issues but then terminate an employee for providing such feedback based on the employee's religious beliefs. In *Altman*, for example, the Eighth Circuit held that triable issues existed where the employer disciplined two employees for reading Bibles during a mandatory training but had never disciplined employees who engaged in non-religious activities like sleeping or reading magazines. 251 F.3d at 1202-03.

The undisputed fact, however, is that Snyder did *not* submit a confidential response to an anonymous workplace survey. Instead, he posted a message on an intranet page accessible by 13,000 employees characterizing the

use of the rainbow symbol in connection with sexual orientation or gender as an "abomination." Moreover, he has not presented evidence that other employees were disciplined less harshly (or not at all) for inadvertently posting messages on the companywide intranet in violation of company policy. Finally, as explained above, Arconic reasonably viewed Snyder's message as expressing hostility toward a protected group and therefore violating company policy regardless of his subjective intent. In these circumstances, the Court must decide whether Arconic was required to view Snyder's message from the standpoint of what he claims he was trying to do instead of what he actually did.

The Court is unable to find much case law directly on point, although the District of Nebraska's decision in *Rose* is highly similar in that a factual dispute existed between what the employer thought the employee was doing (sleeping) versus what the employee claimed she was doing (praying). 2002 U.S. Dist. LEXIS 17665, 2002 WL 31095361, at *3-4. *Rose* nonetheless concluded that summary judgment was appropriate on the employee's Title VII religious discrimination claims. *Id.* *Rose* explained that even if the employee truly was praying, she had not established a conflict between her religious practices and the employer's requirements, nor had she provided timely notice of her need for an accommodation. *See id.*

*Rose* is consistent with analogous and well established Eighth Circuit precedent holding that an employer does not violate federal anti-discrimination laws by making

decisions based on a reasonable *perception* of what happened even if that perception turns out to be incorrect. In *Mershon v. St. Louis University*, for example, the Eighth Circuit affirmed summary judgment in favor of a university that banned a disabled student from campus for making what was perceived as a threatening phone call. 442 F.3d 1069, 1074-75 (8th Cir. 2006). The student admitted to making the call but denied making any threats, so *Mershon* assumed for purposes of summary judgment that he never threatened anyone. *Id.* at 1075. Still, *Mershon* held that no triable issue existed because "the University reasonably believed and acted upon [the phone call recipient's] report and her perception that [the plaintiff] had made a threat against a faculty member." *Id.*

Similarly, in *Scarborough v. Federated Mutual Insurance Co.*, the employee was terminated for lying about his awareness of another employee's financial misconduct, as well as other conduct showing a lack of professionalism and integrity. 996 F.3d 499, 507 (8th Cir. 2021). The employee denied all allegations of misconduct and argued he was actually terminated in retaliation for *reporting* misconduct, in violation of state whistleblower laws. *Id.* The Eighth Circuit affirmed summary judgment for the employer, holding that it did not matter whether the employee lied or engaged in misconduct so long as the employer reasonably *believed* he had. *Id.* "[T]he key question is not whether the stated basis for termination actually occurred, but whether the defendant believed it to have occurred." *Id.* (quoting *Mervine v. Plant Eng'g Servs., LLC*, 859 F.3d 519, 527 (8th Cir. 2017)); *see also McCullough*, 559 F.3d at 861-62 ("The critical inquiry in discrimination cases like this one is not whether the

employee actually engaged in the conduct for which he was terminated, but whether the employer in good faith believed that the employee was guilty of the conduct justifying discharge.").

This case presents an interesting twist on *Mershon, Scarborough*, and similar cases because the only dispute is about what Snyder intended, not what actually happened. The Court concludes that this makes summary judgment even more appropriate here than it was in those cases. If an employer is permitted to make decisions based on its reasonable belief about what occurred even if that belief might be mistaken, surely an employer is likewise permitted to make decisions based on what unmistakably *did* occur, regardless of whether the employee intended something different. *See, e.g. McCullough*, 559 F.3d at 861-62. Regardless of his subjective intent, Snyder posted a companywide message accessible to 13,000+ employees that Arconic reasonably interpreted as an expression of hostility toward a protected group in violation of the company's anti-harassment policy. He did so without making Arconic aware that his religious beliefs conflicted with the policy or that he needed an accommodation. Even when the facts are interpreted in the light most favorable to Snyder, Arconic did not violate Title VII by choosing to terminate him for this violation because, again, Snyder cannot establish the elements of a prima facie case. *See Johnson*, 762 F.2d at 673; *Chalmers*, 101 F.3d at 1020; *Rose*, 2002 U.S. Dist. LEXIS 17665, 2002 WL 31095361, at *3-4.

It is important to keep in mind the Eighth Circuit's repeated admonition that it is not the Court's role in a Title VII case to "sit as a super-personnel department

that reexamines an entity's business decisions." *Wilking v. Cnty. of Ramsey*, 153 F.3d 869, 873 (8th Cir. 1998). The Court is therefore not evaluating whether it was a good idea for Arconic to terminate Snyder, whether some lesser punishment might have been more appropriate, or even whether Snyder's conduct actually violated the anti-harassment policy. *See Torlowei v. Target*, 401 F.3d 933, 935 (8th Cir. 2005) (affirming summary judgment for employer despite alleged unfairness of decision to fire employee for purportedly minor violation). Snyder is essentially asking the Court to disregard this well-established precedent, as his claims revolve almost entirely around what happened *after* he posted his message on the company intranet, with a particular focus on whether Arconic should have imposed some form of discipline short of termination. It is not the Court's prerogative to tell an employer how a violation of company policy should be addressed. *See id.*

Finally, although already embedded in the Court's discussion above, two other issues warrant attention. *First*, Snyder repeatedly argues that, in the aftermath of *Abercrombie & Fitch*, an employer cannot terminate or discipline an employee for violating a generally applicable policy if the violation is prompted by religious beliefs. (ECF 25, pp. 7-8; ECF 28, p. 2.) This is a misreading of the case. *Abercrombie & Fitch* does not purport to prohibit an employer from terminating someone for violating a religiously neutral policy if, *inter alia*: (i) the policy does not conflict with the requirements of the employee's religion; and/or (b) the employer did not have reason to believe there was a conflict and need for accommodation. The case does not, for example, suggest

that an employer who requires employees to treat people courteously cannot discipline someone who walks up to a co-worker or customer, sees them wearing a rainbow pin, and spontaneously says, "the use of that symbol is an abomination to God." Instead, the Supreme Court left intact the prima facie test applied by the Eighth Circuit and other courts of appeal except in the limited sense of clarifying that an employer need not have actual knowledge of the need for an accommodation before being obligated to provide one (which the Eighth Circuit already recognized in *Brown*). *Abercrombie & Fitch* therefore does not save Snyder's claims from summary judgment.

*Second*, the Court's analysis above applies with equal force to Snyder's Title VII retaliation claim, which requires him to prove a causal connection between an adverse employment action and protected religious conduct. *Shirrell*, 793 F.3d at 888. Snyder gives relatively little attention to the retaliation theory in his briefs, merely arguing that he was fired for engaging in two forms of protected conduct: (1) "expressly opposing Arconic's use of the rainbow to promote 'Pride Month' via his single religious comment on the company intranet;" and (2) "opposing Arconic's suspension and termination of his employment based on his religious comment." (ECF 25, p. 19.) Both parts of his argument are fatally flawed.

As to the first, Snyder is again approaching the situation from the perspective of what he says he *subjectively intended* instead of what he *actually did*. An employer is not required under Title VII to make employment decisions through such a lens. *See Scarborough*, 996 F.3d

at 507; *Mershon*, 442 F.3d at 1074-75; *McCullough*, 559 F.3d at 861-62; *Rose*, 2002 U.S. Dist. LEXIS 17665, 2002 WL 31095361, at *3-4. Rather, Arconic was allowed to terminate Snyder based on its reasonable belief that he violated company policy by posting a widely accessible message that the company interpreted as expressing hostility toward a protected group.

The second part of Snyder's retaliation argument is self-defeating. He argues that he engaged in protected conduct by opposing Arconic's decision to suspend and terminate him for his religiously motivated message. If so, this means his protected conduct was a *response* to an adverse employment action, rather than a but-for cause of it. He does not have a viable Title VII retaliation claim in these circumstances. *See Shirrell*, 793 F.3d at 888 (affirming summary judgment for employer where employee could not establish but-for causation). Instead, Snyder's Title VII claim rises or falls under his disparate treatment/failure to accommodate theory.

### E. The Court Need Not Reach the Issue of Undue Hardship.

Because Snyder has failed as a matter of law to establish a prima facie case under Title VII, the Court need not decide whether it would create an undue hardship for Arconic to provide an accommodation. It bears repeating, however, that the Court is not sure what accommodation Snyder even wants. He suggests the accommodation should involve a restriction on his ability to post messages on the company intranet page, but this

suggestion exposes his failure to prove a prima facie case. If Snyder felt compelled by his religious beliefs to post the message on the company intranet page (or, in his version of the facts, to submit the message in response to the anonymous survey), it would not make sense for him to propose, as an accommodation, that he no longer be permitted to post such messages (or respond to surveys). The requested accommodation would both (i) confirm the violation of company policy and (ii) show it was not caused by any religious requirement.

Snyder alternatively suggests that he should have been disciplined in some way short of termination, such as being sent home for reflection. This, too, confirms his failure to prove a prima facie case. Arconic could not have been on notice that he needed an accommodation for his religious beliefs—much less have *provided* the accommodation—in a situation where the accommodation, by definition, could not have existed until after the policy violation. *See Wilkerson*, 522 F.3d at 319 ("Although [the employee] told [the employer] after the fact, at that time there was nothing to accommodate."). In essence, Snyder is asking this Court to conclude he was punished too harshly for his conduct and should have received some lesser penalty. Title VII does not give the Court the authority to make this sort of judgment. *See Torlowei*, 401 F.3d at 935.

**III. Conclusion.**

Even when factual disputes are resolved in his favor, Snyder has failed to satisfy two of the elements of a prima

facie case for religious discrimination under Title VII of the Civil Rights Act of 1964 and the Iowa Civil Rights Act. The Court therefore DENIES Snyder's Motion for Partial Summary Judgment and GRANTS Arconic's Motion for Summary Judgment. The Clerk of Court is directed to enter judgment for Defendants.

**IT IS SO ORDERED**.

Dated: August 31, 2023

/s/ Stephen H. Locher
STEPHEN H. LOCHER
U.S. DISTRICT JUDGE

**APPENDIX E — DENIAL OF REHEARING AND REHEARING EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED OCTOBER 10, 2024**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3188

DANIEL SNYDER,

*Appellant,*

v.

ARCONIC, CORP., A DELAWARE CORPORATION AND ARCONIC DAVENPORT, LLC, A DELAWARE CORPORATION,

*Appellees.*

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FIRST LIBERTY INSTITUTE,

*Amicus on Behalf of Appellant(s),*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND,

*Amici on Behalf of Appellee(s).*

Appeal from U.S. District Court for the
Southern District of Iowa - Eastern
(3:22-cv-00027-SHL)

*Appendix E*

**ORDER**

The petition for rehearing en banc is denied. The petition for panel rehearing is also denied.

Judge Grasz would grant the petition for rehearing en banc.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik