No. 24-733

IN THE

Supreme Court of the United States

DANIEL SNYDER,

Petitioner,

v.

ARCONIC, CORP., A DELAWARE CORPORATION, ET AL.,

Respondents.

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

BRIEF OF *AMICUS CURIAE* JEWISH COALITION FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONER

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February 12, 2025

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INTEREST OF *AMICUS CURIAE*[1]

The Jewish Coalition for Religious Liberty is a nonprofit organization—a group of lawyers, rabbis, and other professionals who practice Judaism and defend religious liberty. Representing members of the legal profession and adherents of a minority religion, the Coalition has a unique interest in ensuring the flourishing of diverse religious viewpoints and practices. The Coalition advocates for the right of religious adherents to practice their faith in every aspect of their public and private lives.

JCRL is interested in preserving the ability of religious individuals to participate in all aspects of public life—including their workplace—without facing discrimination for expressing their sincerely held religious beliefs. This is particularly pertinent to Jewish Americans given the historic difficulty that they had maintaining employment and observing the Sabbath. JCRL thus has an important interest in this case.

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus* curiae or its counsel has made a monetary contribution to the preparation or submission of this brief. Parties received timely notice of the intent to file this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Title VII protects religious employees' ability to believe and act in accordance with their faith in the workplace. In 1972, Congress amended the Civil Rights Act of 1964, adding a new definition of "religion" that included "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). That amendment broadened protections for religious employees in the workplace. Its goal was to safeguard "the same concepts as are included in the First Amendment—not merely belief, but also conduct; the freedom to believe, and also the freedom to act." 118 Cong. Rec. 705 (1972) (statement of Sen. Jennings Randolph). Title VII's "straightforward" rule is that "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015). Thus, to establish a prima facie case of employment discrimination, a religious employee need only show that his or her religious practice was a "motivating factor" in an adverse employment decision.

The history of Jewish immigrants to America provides a poignant example of why such protection is vital and must not be watered down. The once common Monday-through-Saturday work week had a devastating effect on the lives of newly arrived American Jews. Jonathan D. Sarna, American Judaism: A History 162 (2004). "[U]nsympathetic employers" told their Jewish employees, "if you don't come in on Saturday, don't bother coming in on Monday." *Id.* at 162-

63; *see also* Jason Despain, *A Peculiar Clause of Political Compromise for California's Religious Minorities*, 21 Rutgers J. L. & Religion 390, 393-94 (2021) (describing how one rabbi's pleas to secure accommodations for Russian Jewish immigrants in West Hollywood "often fell on deaf ears"); *Jews in America: Shabbat as Social Reform (1925)*, Jewish Virtual Library, available at perma.cc/89KY-QJ7Y ("Almost no employers—even Jewish employers—honored Saturday as a day of rest.").

Though some Jewish workers "preserve[d] their Sabbath at all costs," many more succumbed to the need "to feed themselves and their families." Sarna, *supra*, at 163. "[T]he decline of Sabbath observance" indicated "spiritual collapse within the Jewish immigrant community." *Id.* at 162. Thankfully, Title VII's robust protections help ensure that such dark days are a thing of distant memory.

The courts below misconstrued Title VII in a way that threatens to undermine its protection. The district court held, and the Eighth Circuit affirmed, that Daniel Snyder "failed as a matter of law to establish a prima facie case for religious discrimination" after his employer, Arconic Inc., fired him for making a statement on the company's intranet site raising a religious objection to the company's use of a rainbow to celebrate pride month. In doing so, the lower courts grafted a new requirement onto Title VII: they required Snyder to show "that his religion require[d] him to send messages objecting to the use of rainbow imagery." Pet. App. 32a. Title VII imposes no such religious-mandate requirement. Nor is such a religious-

mandate requirement workable. And such a rule undermines discrimination claims stemming from the very kind of religiously motivated expression that Title VII plainly protects. Title VII unequivocally protects religious employees from discrimination based on religiously motivated expression whether such expression is "required" or not.

The Eighth Circuit's rule would harm Jewish employees. As explained below, in many instances, a Jewish employee might engage in a religiously motivated action that goes beyond the strict letter of the law to follow its spirit. Such actions are considered praiseworthy and important for righteous individuals. The image of eight candles blazing during Chanukah is one of the best-known symbols of American Jewish life to outsiders. But the technical obligation is only to light a single candle each night. Lighting one additional candle each night for eight nights is an example of going beyond the minimum that is religiously required. In passing Title VII, the United States Congress did not endeavor to cut off its protections at the very borders of the 613 biblical commandments, or even requirements that come from rabbinic pronouncements. Title VII protects employees who engage in behaviors that are sincerely religiously motivated—even when they are doing more than the minimum that the law requires.

The district court alternatively held (and the Eighth Circuit did not disturb) that Snyder failed to establish a prima facie case for religious discrimination because he did not provide Arconic with advance notice of his religious beliefs. Pet. App. 17a. That advance notice requirement conflicts with Title VII and

this Court's decision in *Abercrombie,* 575 U.S. 768. Such a requirement would mandate religious employees to ask their employers for permission before taking any step to become more religious, even if the step was something as minor and unobtrusive as a Jewish man starting to wear a kippah on his head. Those conversations are personal and potentially embarrassing, as they require admitting that one was previously failing in his religious obligations. Such a religious permission slip requirement could create stumbling blocks in the way of religious growth. This would transform Title VII from a statute meant to protect religious expression into one that might freeze it in place. And it undermines religious plaintiffs' ability to bring Title VII claims for religious discrimination.

The Court should grant the petition and restore the full protection of Title VII by reversing the decision below.

ARGUMENT

I. If left uncorrected, the Eighth Circuit's decision will undermine discrimination claims for religiously motivated expression that Title VII plainly protects and will risk punishing Jewish employees for the very common practice of going beyond the bare minimum required by the Jewish law.

Congress passed Title VII of the Civil Rights Act of 1964 to remove "artificial, arbitrary, and unnecessary barriers" to employment "on the basis of" certain characteristics. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973) (quoting *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 430-31 (1971)). The text of Title VII "makes plain" that purpose. *Id.* Among other things, it forbids employers from discharging an employee because of any "aspect[] of religious observance and practice" unless the employer can show that providing a reasonable accommodation would impose an "undue hardship." *See* 42 U.S.C. §§2000e-2(a), 2000e(j). To bring a claim under this provision, a plaintiff "need only show that his need for an accommodation was a motivating factor in the employer's decision." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 772 (2015).

This requirement is "straightforward." *Id.* at 773. Yet the Eighth Circuit—joined by at least two other circuits—grafts an additional requirement onto the statutory text. To demonstrate a "conflict between a religious belief, observance, or practice" and a "job-related requirement" in these circuits, an employee

must show that a religious belief *requires* that he engage in a certain religious practice. Pet. App. 17a, 30a; *see also Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004). Both the district court and the Eighth Circuit found this element dispositive here. *See* Pet. App. 17a ("As Snyder has not identified any religious belief or practice that required him to post his message … he has failed as a matter of law to establish a prima facie case for religious discrimination."). Though the courts below acknowledged Snyder's religious beliefs were sincere, they found no conflict existed because "his religion did not cause him to act as he did ... by *compelling him* to post his comment about the rainbow." Pet. App. 8a (emphasis added).

Title VII imposes no such religious-mandate requirement. To establish a prima facie case, an employee need only show that his or her religious observance was a "motivating factor" in the adverse employment action. 42 U.S.C. §2000e-2(m). This is true even if "other factors also motivated" the termination. *Id.* And Title VII's definition of religion includes "*all* aspects of religious observance and practice," not merely *essential* or *required* ones. *Id.* §2000e(j) (emphasis added). Simply put, Title VII does not require a plaintiff to show that his religion *requires* the religiously motivated expression to state a claim of religious discrimination.

Nor is such a religious-mandate requirement workable. For example, adherents of Orthodox Judaism have an exacting set of commandments that they

must follow in everyday life. Yet there is sincere debate about the contours of some of those rules. As a result, a religious-mandate requirement could remove protection from a wide variety of sincerely motivated and important religious activity that may not be technically religious mandatory.

Consider a Jewish employee who wears a button or otherwise expresses support for Israel. Jewish scholars point to the biblical story of the spies who delivered a negative report regarding the land of Israel to the Jews in the desert to conclude that slandering the land of Israel or its people is forbidden. *See* Yitzchok A. Silber, Mishpatei HaShalom 220 (2007); Rashi, Pentateuch with Rashi's Commentary on Numbers 13:2 (M. Rosenbaum and A. M. Silbermann, trans., 1929). Those scholars suggest that laxity in defending Israel from the spies' slander might be the reason the Jews were required to wander in the desert for forty years before entering Israel. A Jewish employee might not be able to testify that he is commanded to wear a particular button or ribbon in support of Israel on any given day, in the same way that he is required to abstain from work on the Sabbath, keep kosher, or eat matzah on the first night of Passover. But his desire to defend Israel would still be tangibly motivated by his faith and a direct lesson from the Bible. Under the Eight Circuit's rule, such an employee could not make out a prima facie case if his employer punished him for expressing a pro-Israel message.

The Eighth Circuit's religious-mandate requirement would also undermine discrimination claims for all kinds of religiously motivated expression that Title

VII plainly protects. Examples abound of non-mandated religious expression that may conflict with employment requirements. For example, a Jewish employee might choose to wear a four-cornered garment—a practice associated with being god-fearing. If he does, halachic authority mandates that fringes—*tzitzit*—be attached to that garment to remind him of the Lord's commandments. *See* Yisroel Dovid Klein, *"You Shall Make for Yourself Twisted Threads" – The Commandment of Tzitzit*, Chabad.org, perma.cc/DMK9-RA6T ("The Torah does not state that one must wear a four-cornered garment with *tzitzit* attached. Rather, if one wants to wear a four-cornered garment, *tzitzit* must be attached. If one has no four-cornered garment, there is no obligation to obtain one to be able to attach *tzitzit*."). But even though "there is no actual legal obligation" to wear a four-cornered garment, halachic authorities nonetheless encourage Jews "to obtain a four-cornered garment in order to wear *tzitzit* and utilize this important sign" and to honor the "spirit of the mitzvah." *Id.* Yet under the Eighth Circuit's interpretation of Title VII, a Jewish employee fired for wearing *tzitzit* in violation of a workplace dress code could not establish a prima facie case of discrimination because Judaism does not *compel* a believer to wear a four-cornered garment.

Similarly, many Jewish men believe that they are allowed to tuck the fringes of their *tzitzit* into their pants. However, they may also believe that it is praiseworthy, and in keeping with the spirit of the commandment, to display the fringes on the outside of their clothing to publicize God's commandments. The Eight Circuit's rule would allow an employer to fire an

employee for following the spirit of the law as well as its letter.

Take another example. Jewish men must cover their head at certain times—if not all the time. Kippahs—traditional Jewish head coverings—come in many different shapes, sizes, designs, and materials. *See* Shraga Simmons, *Kippah: A Blessing On Your Head*, aish.com, perma.cc/5YJS-QZM5. "The style of kippah worn can reflect an interesting sociological phenomena, often denoting a person's group affiliation." *Id.* For example, "yeshivah-style Jews wear a black velvet kippah" while "[m]odern Orthodox Jews often wear a knitted, colored kippah." *Id.* Similarly, some men prefer to wear larger head coverings—not because they think the size of the head covering is religiously required, but because they prefer the message that is sent by wearing a larger and more obvious head covering. Historically, "[i]n certain communities, it was customary to wear large, tall kippahs that covered the head completely." Yehuda Altein, *11 Kippah Facts Every Jewish Guy Should Know,* Chabad.org, shorturl.at/QRn84. But under the Eighth Circuit's rule, most Jewish employees would have no case for discrimination if they were fired for wearing a kippah their employer considered to be too large or too colorful.

Similarly, married women in certain branches of Judaism "are required to cover their hair." *See* Adin Steinsaltz, *Kippot, Hats and Head Coverings: A Traditionalist View*, perma.cc/GEW4-NAVR; Babylonian Talmud, Ketubot 72a. This is a "sign of her special status." Steinsaltz, *supra*. Some married Jewish women may opt to cover their hair with a wig. Others choose

to wear a scarf or other more noticeable head covering to make it clear that they are fulfilling the head covering requirement. *See* Aron Moss, *Why Do Jewish Women Cover Their Hair?*, Chabad.org, shorturl.at/UndDk. But under the Eighth Circuit's test, a Jewish woman could not establish a prima facie case of discrimination if she was fired for wearing a wig rather than head scarf or vice versa because no authoritative doctrine of Judaism mandates any particular head covering.

II. Imposing an advance notice requirement conflicts with Title VII and this Court's decision in *Abercrombie* and threatens to punish Jewish employees for increasing their religious observance without asking their employer for permission.

The district court alternatively held (and the Eighth Circuit did not disturb) that Snyder failed to establish a prima facie case for religious discrimination because he did not provide Arconic with advance notice of his religious beliefs. Pet. App. 17a; 31a. In doing so, the district court "grafted a claim-defeating notice requirement onto the statutory requirements for establishing a prima facie case" for religious discrimination. *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1025 (4th Cir. 1996) (Niemeyer, J., dissenting). Such a requirement conflicts with Title VII and this Court's decision in *Abercrombie*. And it undermines religious plaintiffs' ability to bring Title VII claims.

To start, the advance notice requirement is inconsistent with the text of Title VII. As Judge Niemeyer

has explained, it is "legal error" to "construe Title VII to impose a burden on the employee of informing her employer in advance about each practice the employee will follow in furtherance of religious beliefs." *Chalmers*, 101 F.3d at 1025 (Niemeyer, J., dissenting). Title VII forbids employers from (1) "discharg[ing]" an employee (2) "because of" (3) "such individual's … religion," which "includes his religious practice." 42 U.S.C. §2000e; *Abercrombie*, 575 U.S. at 772.

This Court has made clear that to show disparate treatment under Title VII, a plaintiff "need only show that his need for an accommodation was a motivating factor in the employer's decision." *Abercrombie*, 575 U.S. at 772. This requirement is "straightforward." *Id.* at 773. It "does not impose a knowledge requirement." *Id.* Nor does it "impose an additional religious disclosure burden" on plaintiffs. *Chalmers*, 101 F.3d at 1025 (Niemeyer, J., dissenting). As long as the employer has some "knowledge that the conduct warranting discharge was religious in nature," it meets Title VII's "because of" requirement. *Id.*

An advance notice requirement would undermine many religious plaintiffs' ability to bring Title VII claims. Indeed, the notice requirement "would preclude liability for every adverse employment action taken because of a religious practice if the employer did not know *in advance* that the practice would take place, even though the employer recognized the practice as religious in nature." *Chalmers*, 101 F.3d at 1025 (Niemeyer, J., dissenting) (emphasis in original). Such a rule would pose an obstacle to employees of many religious backgrounds and would "automati-

cally … exonerate[]" employers from liability in countless situations. *Id.* As Judge Niemeyer explained, an advance notice requirement would mean that:

- "[A]s 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."
- A Catholic who arrived on her first day of work "on Ash Wednesday with a cross of ashes marked on her forehead" and was fired "because [she] violated a work rule against face paint" could not make out a prima facie case under Title VII.
- "[A] Muslim would have no case for being fired the first time mandatory company meetings conflicted with his prayer schedule."
- "[A] Jehovah's Witness would have none upon being fired for her disrespect in refusing to attend a company-wide celebration of the CEO's birthday."
- "[A] Mormon would have none for being fired the first time he refused to work late on church-wide family nights."
- "[A]n evangelical Baptist's case would fail as a matter of law if she is fired the first time she puts in writing the religious ideas that she has been permitted and encouraged to speak."

Id. at 1025-26.

These ramifications are not only "irrational," but undermine "the law of Title VII." *Id.* As this Court has made clear, an employer "may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." *Abercrombie*, 575 U.S. at 773. If an employer "knows that conduct is religious when it makes the discharge decision 'because of' that conduct," the prima facie "elements of a religious discrimination claim have been satisfied." *Chalmers*, 101 F.3d at 1026 (Niemeyer, J., dissenting). Title VII does not require more.

Moreover, an advance notice requirement would undermine religious discrimination claims brought by individuals who become more religious throughout their employment. Religion is not static, and people's religious habits change over time. Data "indicate that religious identity and commitment often change throughout the course of people's lives, as they leave their parents' homes, start families, advance in their careers and age through retirement." *The Age Gap in Religion Around the World*, Pew Research Ctr. (June 13, 2018); *see also* Zachary Zimmer, et al., *Spirituality, Religiosity, Aging, and Health in Global Perspective: A Review*, SSM Popul. Health. (May 2016) (noting there is "evidence to suggest that people become more involved with religion and their sense of spirituality magnifies with age"). Title VII does not mean—and should not be read to mean—that every time an individual decides to follow his conscience more than he did yesterday, that he must inform his employer about

the change or seek permission to engage in more developed religious expression. This Court should grant the petition and reverse the decision below.

CONCLUSION

For these reasons, the Court should grant the petition and reverse the decision below.

Respectfully submitted,

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