No. 24-931

IN THE

Supreme Court of the United States

LAURIE ANN DEVORE,

Petitioner,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964 makes it illegal for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals ***religion." 42 U.S.C. § 2000e-2(a)(1).

"Religion" includes "all aspects of religious observance and practice" unless "an employer demonstrates that he is unable to reasonably accommodate" a religious observance or practice "without undue hardship on the conduct of the employer's business. 42 U.S.C. § 2000e(j).

The questions presented are:

1. Whether the dispute of sincerely held religious beliefs should be evaluated under a Totality of Circumstances test that resolves the dispute, not by inquiring into the extent of adherence to religious doctrine but by resolving the disputed facts in favor of sincerity?

2. Whether lack of due diligence in the accommodation process resulting in unsubstantiated claims of undue hardship is a violation for purposes of a Title VII religious discrimination claim?

3. If a neutral regulation of general applicability is applied and at any time during the same, a formal mechanism for granting medical and/or religious exemptions was available was the general applicability standard violated?

4. Whether a compelling interest can survive strict scrutiny when sincerely held religious beliefs are substantially burdened and less restrictive means to further that interest are available and not permitted to be used?

PARTIES TO THE PROCEEDING

Petitioner Laurie Ann DeVore was the Plaintiff in the district court proceedings and the Plaintiff - Appellant in the court of appeals proceedings. Respondent University of Kentucky Board of Trustees, was the Defendant in the district court proceedings and Defendant - Appellee in the court of appeals proceedings.

RULE 29.6 STATEMENT

Because the Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

Laurie Ann DeVore v. University of Kentucky Board of Trustees, No. 23-5890 (6th Cir. Decided and Filed October 11, 2024).

Laurie Ann DeVore v. University of Kentucky Board of Trustees, No. 23-5890 (6th Cir. petition for rehearing en banc denied October 24, 2024).

Laurie Ann DeVore v. University of Kentucky Board of Trustees, No. 5:22-cv-00186-GFVT-EBA (District Court, Eastern District of Kentucky, Central Division, Lexington decision filed September 20, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Laurie Ann De Vore respectfully petitions for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit and to vacate, reverse and remand this case back to the district court for jury trial.

OPINIONS AND ORDERS BELOW

The Sixth Circuit's published opinion is reported at *Laurie Ann DeVore v. University of Kentucky Board of Trustees,* No. 23-5890 (6th Cir. 2024), and is reproduced at App. A, 1a-16a. The Sixth Circuit's denial of petitioner's motion for reconsideration and rehearing en banc is reproduced at App. D, 34a. The order allowing limited supplemental briefing re Groff v. DeJoy, 600 U.S.- (2023) of the District Court, Eastern District of Kentucky, Central Division, Lexington is reproduced at App. C, 34a-35a. The opinion and order of the District Court, Eastern District of Kentucky, Central Division, Lexington is reproduced at App. B, 17a-33a.

JURISDICTION

The Court of Appeals entered judgment on October 11, 2024. App. A, 1a-16a. The Court of Appeals denied a timely petition for rehearing *en banc* on November 25, 2024. App. D, 36a-37a. This petition is timely under Supreme Court Rules 13.1 & 13.3 because it is being filed within 90 days after the judgment of the Appeals Court. This Court has jurisdiction to review the judgement of the U.S. Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTES

Title VII of the Civil Rights Act of 1964 makes it illegal for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals ***religion." 42 U.S.C. § 2000e-2(a)(1).

42 U.S.C 2000e(j):

> "Religion" includes "all aspects of religious observance and practice" unless "an employer demonstrates that he is unable to reasonably accommodate" a religious observance or practice "without undue hardship on the conduct of the employer's business.

29 C.F.R. § 1605.1 Defines religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.

29 C.F.R. § 1605.2(c)(1):

> After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each

> available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

29 C.F.R. § 1605.2(d)(iii):

> When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

KRS § 446.350:

> Government shall not substantially burden a person's freedom of religion. The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. A "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities.

KRS § 344.030(7):

> "Religion" means 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."

KRS § 411.182 Allocation of fault in tort actions.

42 U.S.C. Code 42 Title 42 of the United States Code covers public health, social welfare, and civil rights. It includes laws that prohibit discrimination based on race, color, or national origin. It also includes laws that protect equal rights under the law.

U.S. Code Title 42 Public Health and Welfare § 1981 Section 1981 of the U.S. Code, Title 42, The Public Health and Welfare, protects equal rights under the law. It states that all people in the United States have the same rights as white citizens.

Equal Rights Under the Law § C.F.R Title 29 Title 29 of the Code of Federal Regulations (CFR) includes parts that address equal employment opportunity and nondiscrimination in employment.

U.S Equal Employment Opportunity Commission Enforces laws that make discrimination illegal in the workplace. The commission oversees all types of work situations including hiring, firing, promotions, harassment, training, wages, and benefits.

STATEMENT OF THE CASE

I. INTRODUCTION

August 26, 2021, President Capilouto of the University of Kentucky implemented a protocol for everyone on campus who was unvaccinated. That protocol violates all of the following Federal, State and Case Law and the Constitutional Laws of the United States of America: Title VII of the Civil Rights Act of 1964; KRS § 344.030(7), 411.182, 446.350; Federal codes 42 U.S.C.; U.S. Code Title 42 Public Health and Welfare § 1981; Equal Rights Under the Law § C.F. R Title 29 against Laurie Ann DeVore and any American citizen of the United States of America. I request you fully search out this Case Law for my cause and how I petition this Court to review this case under the Federal and State Statutes and the Constitution of the United States of America. I humbly request due process in this matter.

II. PROCEDURAL HISTORY

A. Charge of discrimination filed

On May 13, 2022, and within 300 days of her termination, plaintiff filed a charge of discrimination with the Kentucky Commission on Human Rights asserting discrimination based on religion. On May 25, 2002, the EEOC issued plaintiff a right to sue letter.

B. The district court decision granting summary judgement

Plaintiff filed a suit against the University's Board of Trustees July 22, 2022, stating she had been discriminated against on the basis of her religion in violation of Title VII and the Kentucky Civil Rights Act (KCRA) when the University failed to grant her a religious accommodation. After discovery, the parties filed cross-motions for summary judgement. Shortly after the University filed its reply, this Court issued the reevaluation of *Groff* v. *DeJoy*, 143 S. Ct. 2279 (2023). The district court ordered supplemental briefing to address *Groff's* impact on this case.

On September 20, 2023, the District Court held the University's Motion for Summary Judgment and denied plaintiff's Partial Motion for Summary Judgment. App. B, 17a-18a.

1. Plaintiff failed to establish a prima facie religious accommodation claim because she could not show she held a religious belief that conflicted with an employment requirement. App. B, 21a-26a. "For a plaintiff to hold a sincere religious belief that conflicts with an employment requirement, she must "show that it was the religious aspect of her conduct that motivated her employer's actions."" Also a "request for an accommodation must be based on a religious belief and not some other motivation." App. B, 24a.

2. Even if plaintiff established a prima facie case, the University could not accommodate her request without suffering an undue hardship. Once an employee

has established a prima facie case of discrimination, the burden shifts to the employer to show that the religious practice would cause an "undue hardship on the conduct of the employer's business. When determining a substantial burden the courts "should consider "all relevant factors," including "the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer." Temporary payment of premium wages for a substitute, voluntary or occasional shift swapping, nor administrative costs involved in reworking schedules "in all likelihood" would not be an undue hardship. App. B, 27a-29a.

3. It was an essential function of plaintiff's position to be in person to handle the office's administrative and operational needs and be the face of the office to students, faculty, and visitors. As plaintiff was OPSVAW's only administrative employee, there was no one else in the office to fulfill those tasks by shift-swapping or reworking schedules. Plaintiff had offered two ideas: allow her to work remotely full-time or hire another employee. The court stated "the accommodation would leave one of the Office's two employees not performing a function that the University deemed essential. Any reasonable jury would find that this would impose a substantial burden to the University's business." App. B, 31a. "In addition, paying a part-time employee would create an undue hardship." App. B, 32a.

C. The sixth circuit decision regarding the appeal

Plaintiff appealed the portion of the court's order granting the University's motion for summary judgement and requested the matter be remanded to the trial court

for a trial on the merits. The case was argued by the Sixth Circuit on June 25, 2024. Defendant requested oral argument to assist the court due to the fact that it had not addressed the issue of Title VII religious accommodation after this Court's decision in *Groff* v. *DeJoy*, 143 S. Ct. 2279 (2023).

1. The Sixth Circuit stated claims at the summary judgment stage are analyzed by first establishing a prima facie case of religious discrimination. That is done by demonstrating that (1) the employee has "a sincere religious belief that conflicts with an employment requirement;" (2) the employer was on notice "about the conflicts;" and (3) the employee "was discharged or disciplined for failing to comply with the conflicting employment requirement." Second step requires the employer to show that accommodating the employee's religion would impose an undue hardship. This is done by demonstrating that the accommodation would impose a "substantial" burden "in the context of [the] employer's business." The only element of the prima facie case at issue here was whether plaintiff had been able to establish that the Policy conflicted with her sincere religious beliefs. App. A, 10a.

2. Title VII only covers practices rooted in "religious principle," but not purely secular beliefs, such as those that are "essentially political, sociological, or philosophical," "personal preference", or "a merely personal moral code." A religious belief "need not be acceptable, logical, consistent, or comprehensible to others in order to merit" protection, neither must the belief or practice be deemed "reasonable." Courts must ensure the asserted conflict is "sincerely based on a religious belief," rather than "some other motivation." App. A, 10a-11a.

3. Asserted plaintiff had a conflict between her sincerely held religious beliefs and the University's requirement that on-campus employees who are not vaccinated for COVID must submit to weekly mandatory Covid testing. The University's default testing protocol was the nasal swab test, but due to her religious complaints, to comply with the Policy she could use an oral swab or saliva test. A "prima facie case must therefore establish a religious conflict with each of the testing options the University offered—nasal, oral swab, and saliva." App. A, 11a-12a.

4. Plaintiff relied almost exclusively on email communications with the University to make her case. It noted two emails did, however, respond to the University's clarification with objections to the oral swab and saliva tests. The Title ["IX"] memorandum, the source of [plaintiff's] religious objections to oral swab and saliva testing, raised three distinct conflicts between [plaintiff's] religion and the Policy: The Policy was (1) invasive, (2) manipulative, and (3) coercive." App. A, 12a-13a.

5. Summarized plaintiff's objections to the Policy: 1. The invasiveness of the University's testing procedures interfered with her religious obligation to treat her body as a temple; 2. The Policy was manipulative; and 3. It was being used as a form of coercion in order to: 1. get vaccinated which does not "alone establish a conflict between her religion and the Policy" because she has not proved it actually coerced her into taking the vaccine rather than test; and 2. The Policy was used "to coerce [her] to get tested." because she "would lose [her] job" unless she complied. This also applied to oral swab and saliva testing, but "it turns only on [plaintiff's] view that mandatory testing is inequitable and unfair. [plaintiff]

drew no connection between her fairness conclusion and any "religious principle" she follows, leaving it simply to reflect her "personal moral code." "[Plaintiff] has, in fact, throughout this litigation never identified in the record what her religion is. "App. A, 13a-16a.

6. Plaintiff's religious opposition to the Policy resulted almost entirely from her objections to nasal testing and vaccination. Those objections came before she was informed that she could comply with the Policy by oral swab or saliva tests, and she was unable to explain why. "Her invasiveness objection responds only to nasal swab testing, her manipulation objection ignores testing as a bona fide substitute for vaccinating, and her coercion objection doubles down on her manipulation objection, supplementing it with only her "personal" characterization of mandatory testing as inequitable and unfair. These objections may have been enough to satisfy Title VII's pleading requirements. But they fail at summary judgment to establish a conflict between [plaintiff's] religion and the Policy. [plaintiff's] Title VII claim fails with them." App. A, 16a.

The opinion affirming was decided and filed on October 11, 2024.

D. Sixth Circuit denies en banc request.

Plaintiff requested a review en banc. App. E. Original panel reviewed and concluded all issues raised had been "fully considered upon the original submission and decision of the case." No other judge requested a vote. The petition was denied and filed November 25, 2024.

III. BACKGROUND

Ms. DeVore (DeVore) began working for the University of Kentucky (University) in 1999 as a temporary employee and subsequently became a permanent employee. In November 2004, DeVore began working as an Administrative Staff Officer in the Center for Research on Violence Against Women (CRVAW), reporting to the Director, Carol Jordan (Jordan).

In 2014, the CRVAW split into two separate offices, with the remaining CRVAW focusing on research, while the newly created Office for Policy Studies on Violence Against Women (OPSVAW) became part of the College of Arts and Sciences (A&S) and focused on policy development. Jordan served as the Director, while DeVore's job title became, Department Academic Administration Senior (Department Manager). OPSVAW also had a temporary, part-time employee (STEPS) who worked remotely and provided legal research ten hours per week. A contract person was hired as needed.

March 2020, employees across campus, were instructed to work from home due to COVID. Most department managers were placed on furlough in the summer of 2020, but Jordan successfully advocated for DeVore to be able to continue to work.

IV. RETURN TO CAMPUS

A. The Sixth Circuit's "series" narrative sets the stage.

In August 2021, after a year and a half of shutdown, remote work came to an end. The Sixth Circuit began setting the stage with the comment DeVore began "clashing" with the University due to the announcement of its return-to-campus policies. The court continued to foster the idea of discontent when it went on to say the announcement was the catalyst that prompted her to submit a "series of requests" in order to be excused from those protocols, the first of which it identified as a request for a hybrid work arrangement. DeVore did not independently seek out a request for a hybrid work arrangement. Because productivity levels had been maintained during the time the stay-at-home policy had been implemented, the Interim Dean of A&S invited department managers to submit requests for hybrid work schedules that would be evaluated *case-by-case*. They were instructed to provide justifications that would permit working remotely up to two days per week and many did so. DeVore submitted hers for consideration on July 1, 2021. Because the initial offer for *all* managers was reduced *to one day per week and* subsequently retracted with an email sent by A&S on July 26, 2021, many department managers, although unhappy with how the process had played out, returned to campus. Jordan received an accommodation to continue to work from home because of a medical diagnosis given to her in the Fall of 2020.

On August 26, 2021, President Capilouto, issued a protocol which included required weekly testing for the

unvaccinated. The University's standard for when an individual was considered "fully vaccinated" aligned with the protocols established by the CDC. The compelling interest in mandating testing was to protect the community. On September 16, 2021, Capilouto announced the consequences for non-compliance. Regular full-time employees who did not test for 3 consecutive weeks would be ineligible for a merit raise and those who did not test for 4 consecutive weeks would be placed on unpaid administrative leave until they tested. Implementation of the mandate began the week of September 20, 2021.

The Sixth Circuit may have been skeptical of DeVore's motives, nevertheless it departed from truth when it embarked on the "series" narrative, the next in line being a religious exemption request. The court's interpretation of events led it to over-reach when its statements steered one to conclude her religious exemption request was suspect because it followed on the heels of a similar secular attempt made in close proximity. *EEOC, Compliance Manual: Religious Discrimination* § 12-1. The fact that both occurred within the time frame of return-to-campus policies does not mean they should have been taken out of context and forced to be associated. She was not, as implied, a disgruntled employee who shifted her focus onto a religious exemption as a means of securing her goal to work remotely regardless. The court continued to foster this "series" narrative by stressing the accommodation request that followed was for fully remote work even though granting full remote work was appropriate under those circumstances. Misrepresentation of facts here and moving forward, has had the effect of diminishing DeVore's religious motives to the point of obscurity. She had worked for the University for 22 years without

"clashing." Her performance evaluations were excellent. When instructed to return to campus she did so. It was well known DeVore was a person who lived a life intricately tied to her religious convictions as evidenced by years of requested time off for Sabbath, feast days, etc. Her sincere religious beliefs were the driving force in approaching the University in good faith, utilizing the legitimate administrative avenues available to seek relief. Those beliefs are what have brought her to this point. If her religious beliefs had not been sincere, she would have desisted. Her duty to those beliefs requires she press on.

B. The court's flawed representation as to the reason why petitioner's request for religious exemption was denied.

The testing mandate took effect beginning the week of September 20, 2021. The University's testing website had active links to request medical or religious exemptions and on October 1, 2021, after returning from an approved extended vacation, DeVore submitted a request for religious exemption. The University's Legal Counsel representative, William Thro, responded that, "because the University is no longer exempting unvaccinated faculty, staff, [and students], the testing policy is now a neutral regulation of general applicability. Therefore, the University will not be granting additional religious exemptions to the testing requirements." The petitioner's request was denied. The link that had been available through October 1st was not honored. It had been at least two weeks from the time the testing policy had become a "neutral regulation of general applicability" until the link was removed. As seen in *Fulton* v. *City of Philadelphia*, 593 U.S.__ (2021) "if a formal mechanism for granting

religious exemptions is available then it is not generally applicable."

DeVore reached out to Capilouto, Jordan and ADA Coordinator & Technical Compliance Officer, Heather Roop in the office of Institutional Equity and Equal Opportunity (EEO) on October 4th and 8th asking for reconsideration. No one during the exemption process ever asked questions regarding her religious beliefs. It was not necessary in light of their stance that the policy was a neutral regulation of general applicability. No one mentioned an accommodation.

The Sixth Circuit states DeVore sent three requests for religious exemption and all three were "categorically" denied. The court does not take it upon itself to qualify and thereby correct the deceptive implication they were denied because petitioner had no religious grounds. The denials were not based on whether or not her religious beliefs were sincere but in fact were denied because the University's stance was the policy was a "neutral regulation of general applicability" meaning "no additional religious exemptions" were to be given (it has yet to be verified if any religious or medical exemptions were given), therefore none need be reviewed. The court erred not only when it failed to clarify but also when it promoted a misconception that proved critical in undermining the context. The exemption request was ***not*** denied because no one at the University believed DeVore had valid religious beliefs.

C. Protecting the compelling interest could have been achieved without a loss of livelihood.

Is it to be assumed there was no need to justify a burden on religious practice that was qualified by saying it was a neutral regulation of general applicability? Many would say yes and point to the *Employment Division* v. *Smith*, 494 U.S. 872, 879 (1990). That standard, however, was rejected by Congress and later by 33 states, including Kentucky, when they enacted their own version of the Religious Freedom Restoration Act.

"Government shall not substantially burden a person's freedom of religion. The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. KRS § 446.350.

KRS § 344.030(7) states, "Religion" means 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."

Burwell v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) clearly demonstrates that each burden should be evaluated on the basis of the individual's own sincerely held religious beliefs and then, if there is a less restrictive means, that must be used. Also *Holt* v. *Hobbs*, 574 U. S. 352, 361, 365 (2015). There was a less burdensome way that would not have obligated DeVore to choose between

her livelihood and her religious convictions. *Abdulhaseeb* v. *Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010) states "a religious exercise is substantially burdened under [RFRA] when a government ... requires participation in an activity prohibited by a sincerely held religious belief..." (Hobson's choice). Remote work would have permitted her to honor her religious beliefs and, being off campus, the University's alleged goal would also have been protected. The University's insistence in keeping the community safe failed when it refused to act on the CDC's warning that the vaccinated were also able to transmit and yet were not required to test. "[A] law cannot be regarded as protecting an interest 'of the highest order' ... when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 547 (1993). If there is compelling evidence a compelling interest is not equitable, is a person's sincerely held religious belief allowed to be substantially burdened? It was announced that those who were unable to vaccinate for medical or religious reasons should reach out to EEO regarding potential accommodations, "which may include remote work." At least one was given.[1] *Id.* at 546. Why were the religious requests denied?

D. How the accommodation process was viewed by the court versus the more complete picture.

After having pointed out the "categorical" denials of religious exemption, the Sixth Circuit moves on to outline petitioner's religious accommodation request.

1. Petitioner had first-hand knowledge the University Director of Unemployment was allowed to work remotely because she was unable to vaccinate for medical reasons.

The court's presentation was rife with omissions which slanted the view once again towards the negative. It is to be understood that brevity may be of the essence but surely not at the expense of veracity.

1. Court acknowledges failure to "particularize."

The court does provide that the basic components of an accommodation process were performed: 1. request is made; 2. opening of a case; 3. interviews obtained; 4. determination made. These points are secure as far as they go, but that is not to be equated with completeness. The Sixth Circuit found the University's insistence that accommodations had been thoroughly investigated to be lacking when at the oral argument phase the court noted the accommodation process had not been "particularized." The court brought attention to DeVore's claims that OPSVAW was not like other departments and no one was going to the office. The court fell short when it only noted and did not pursue clear obstacles to justice.

The reality of the accommodation process can be observed with a more complete look at how it unfolded:

2. Lack of due diligence regarding "items pertaining to her office."

After denial of religious exemption, DeVore reached out to the University's EEO office seeking an advocate to alleviate her religious burden. Having had no response back from Roop, or anyone from the EEO office, on October 11, she saw and completed a form for discrimination on their website. She contacted Capilouto and Roop directly requesting assistance. Roop forwarded

the email to Executive Director and Title IX Coordinator, Martha Alexander, stating Alexander was the person indicated to handle religious accommodations. Roop stated Alexander would reach out to discuss "items pertaining to the charge of her office." Alexander responded to DeVore saying all concerns related to religious exemption were handled by the office of Legal Counsel. She did not volunteer information regarding religious accommodation. Neither Capilouto nor Alexander provided relief. DeVore replied she had requested a religious exemption but the documents Roop had forwarded to her addressed points mentioned on the EEO website: respect for individual differences, personal integrity, and accountability. She asked if there was another department that could address her concerns. Alexander reiterated the response about Legal Counsel and said there was no other office. From the very beginning she did not perform her due diligence. She did not volunteer nor discuss "items pertaining to her office." The EEOC manual, the very guidebook that informs her duties states even if an employee does not specifically request a religious accommodation, the employer should know by the nature of the situation that one "is or could be needed." *E.E.O.C.* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015). See also *Brown* v. *Polk Cnty.*, 61 F.3d 650, 654 (8th Cir. 1995) (en banc).

3. Unpacking the accommodation process.

Because of Roop's response, DeVore realized she needed to research religious accommodation and thereby discovered another recourse. October 15, 2021, she contacted Capilouto, Thro, Jordan, and Alexander citing Title VII and petitioning reasonable accommodation.

The University could not now hide behind neutrality and general applicability. They had to address the religious beliefs. Alexander scheduled a meeting for October 26, 2021, and there she asked about her job history and the job duties of her current position. DeVore requested to work from home while the testing mandate was in place. DeVore explained working from home would not create an undue hardship for the University. Alexander did not seek clarification of her religious beliefs but DeVore felt it important to summarize her religious beliefs for the purpose of the accommodation process where finally they would be addressed. Her religious beliefs were a focal point and reason for the request, were they not? She included that summary in a document she sent to Alexander after their meeting on October 26, with copies of her performance evaluations and an example of a typical OPSVAW workday.

No indication was given Alexander doubted DeVore's religious beliefs were sincere. In fact, she acknowledged later in her deposition, "Ms. DeVore was very clear in what her religious beliefs were and the basis for the accommodation." The next step was to assess the reasonableness of the accommodation and, absent undue hardship, accommodate those religious beliefs. Title VII requires an employee's practice of religion be reasonably accommodated. Not only had Alexander shown a lack of due diligence when initially she failed to "perform the duties of her office" by not mentioning accommodation, but it was again demonstrated when contradictions were pointed out during the process but not investigated.

The Sixth Circuit was quick to point out the 'requisite' interviews had been conducted by Alexander. The court states she had spoken with an assistant dean but left out

a very significant detail that impacts this case. Alexander indicated in her deposition that she had spoken with Jennifer Bradshaw, Assistant Dean for Finance and Administration at the University's College of A&S, regarding the policy that the departments needed to have someone physically present in the office. Alexander stated Bradshaw was, "simply referring me to the college-wide policy related to student-facing positions. They were not indicating in any sense what was relevant for that particular area." The court made mention DeVore's supervisor was also interviewed and had indicated someone needed to be present to greet and assist anyone who might come to the office. Alexander had also stated, "...when we're looking at accommodations, we typically assume the supervisor knows what their department needs."

Another notable omission of the court was that Jordan had stated, "... the decisions about Covid policy, personnel policy, etc., exemptions and the like, were being made at the level of colleges and above." Jordan felt a presence in the office was important (and in normal times, when health was not an issue for her it very well would have been), but she qualified stating permitting DeVore to work remotely while the testing mandate was in place was a decision "beyond her purview and pay grade." Jordan confirmed the reason DeVore could not work from home was because of the A&S policy, "It was not specific to our unit." Jordan felt constrained by the policy.

DeVore had challenged the claim a presence was needed in the office at that time and Alexander later confirmed in her deposition she had made no effort to independently assess OPSVAW's alleged need for one at the time in question. The across-the-board pronouncement

requiring all department managers to be present in the office was intended for those departments who directly supported faculty and had student-facing positions. OPSVAW was not an academic unit and DeVore's job duties were different than other department managers. *Rorrer* v. *City of Stow*, 743 F. 3d 1025, 1039-1040 (6th Cir. 2014) ("holding that written job descriptions are not dispositive of whether duties are essential job functions"). DeVore's position was only at times "student-facing" when Jordan was teaching classes. OPSVAW did not have a student nor faculty base. It provided financial support to students that were housed in other departments. Due to health issues, Jordan was not teaching, nor was planning to teach in the near future. Furthermore, due to Jordan's health issues, there would be no in-person fundraising events. No one was coming to the office, nor would they be, until she was able to resume normal duties (hence Jordan's deposition claim that OPSVAW was also hampered by her not being there[2]). DeVore's excellent work ethic, would have enabled her to perform the administrative and clerical duties remotely. All of this was verifiable and would have been if Alexander had performed her due diligence.

E. The religious beliefs were disregarded when the accommodation process resulted in merely a restatement of policy.

On November 2, 2021, after there had been no good faith interactive process, Alexander notified DeVore

2. To harken back to the district court's reference to granting an accommodation to the petitioner, "the accommodation would leave one of the Office's two employees not performing a function that the University deemed essential. Any reasonable jury would find that this would impose a substantial burden to the University's business." [App. B, 31a.]. Did that not apply to Jordan's essential functions of teaching and fundraising as well?

that her request for full remote work was denied. She reiterated the need for her to be on site to assist students and staff who might visit the office. Alexander provided that the only accommodation available was the use of an oral or saliva test as an alternate form of testing. DeVore would be required to begin testing that week.

DeVore replied on November 4, 2021, that the solution given was not reasonable because it did not address all her concerns in that the conflict with her religious beliefs was not only towards a testing method. She reminded her it is not reasonable if an accommodation merely lessens but does not eliminate the conflict provided there is no undue hardship. She asked Alexander to supply her with information sustaining undue hardship.

Alexander responded on November 9, 2021, that her understanding had been that the invasive nature of the testing method was what violated her religious beliefs. She also restated that her supervisor expected her "position" to be on site and reminded her the testing requirements had begun the previous week.

In her response sent November 16, 2021, DeVore described the denial of an appropriate accommodation as incomplete, untruthful and deceptive. Alexander had selected the part she had been willing to address and ignored the rest. DeVore re-stated her religious beliefs. The court, casting itself in the role of conductor, represented it as "reiterat[ing] that the Policy was a form of coercion." DeVore had also pointed out that, when questioned, her supervisor said she had not been the person who had designed or implemented the remote work policy. She requested Alexander address the discrepancies. DeVore offered options for accommodations (Alexander

had not proffered any) and asked if other options had been discussed. DeVore's protestations notwithstanding, she stated the decision regarding her request had not changed. Regarding Alexander's reply on November 23, 2021, the Sixth Circuit stated Alexander thanked her for the clarification but confirmed the request could not be accommodated. The court chose to gloss over the egregious failure to supply relief when it failed to include the rest of the very telling statement: "***Regardless of how your religious beliefs are described*** (emphasis added), your supervisor has conveyed to me that you are needed to be physically on campus to complete portions of your position. How could such a declaration be overlooked by the court?

The fact that the requested accommodation was denied simply by restating the policy is absurd especially when not backed up with evidence. An accommodation by definition is a request for an exemption from a standing policy. *Abercrombie*, 575 U.S. 768, 775 (2015). With respect to an employee's religious beliefs and practices, "Title VII requires otherwise-neutral [employment] policies to give way to the need for an accommodation." Realizing an interactive process was not in the plans, in an attempt to open up an avenue of discussion, DeVore had offered ideas for accommodations App. B, 31a. Her contention still remained, however, that it was unnecessary to have someone in the office.

Alexander had sent DeVore three separate responses regarding denial of remote work as an accommodation. None stated it was because she thought she did not have sincerely held religious beliefs. Rather, Alexander stated, "the request is not reasonable and constitutes an undue hardship to hire additional staff to perform those duties

as an accommodation nor is it reasonable to change your job duties or job title as an accommodation." She never substantiated why those, or other accommodations could not be implemented. She told DeVore she could ***apply*** for a remote work position with the University." Title VII "does not contemplate asking employees to sacrifice their jobs to observe their religious practices." *Adeyeye* v. *Heartland Sweeteners, LLC*, 721 F.3d 444, 456 (7th Cir. 2013). The suggestion that DeVore apply for a remote work position at the University is a perversion of the EEOC guidelines. An employer should try to accommodate the employee in their current position, and if not possible, consider a *lateral transfer.* "Transfer" indicates *placing in another position* where that transfer does not cause harm. See *Muldrow* v. *City of St. Louis*, 144 S. Ct. 967 (2024). It does not mean that encouraging DeVore to apply for a different job that would offer remote duties, which she may or may not secure, and may potentially constitute a demotion, would fulfill the University's obligation to accommodate.

Alexander claimed the only *accommodation* that could be given was that of a different form of testing, which in no way served to alleviate the burden. *Ansonia Bd. of Ed.* v. *Philbrook*, 479 U.S. 60, 68-69 (1986). It was not reasonable and did not meet its obligation under Title VII. Alexander was obligated to make other attempts to accommodate and if none were viable, to prove why that was so. The Sixth Circuit had noted elsewhere that an employer cannot just claim an accommodation would be bothersome or disruptive. *Draper v. U. S. Pipe Foundry Co.*, 527 F.2d 515, 520 (6th Cir. 1975) and EEOC, Compliance Manual § 12- IV(B). An employer may establish undue hardship without actually putting an accommodation into effect, but it must not rely on speculation. *Id.*. Also *Wilson v. U.S. W. Commc'ns, Inc.*, 860 F. Supp. 665, 674 (D. Neb. 1994).

Alexander did not establish there would be a true practical impact nor provide a cost analysis to back up her assertions of undue hardship. She stated she had not even looked into the cost. When she was asked if the undue burden would be on the Department, the College, or the University, she responded, they were all the same entity. She was the representative of the University designated to make the decision. She based her determination, albeit absent proof, on her supposition of hypothetical hardship. She understood it would have been the University that would suffer the undue burden if there had in fact been one. At oral argument the court confirmed that was its understanding as well. Larger businesses and institutions must bear a heavier burden in proving undue burden since this Court has clarified the undue standard in *Groff* v. *DeJoy*, 143 S. Ct. 2279 (2023).

If the lower courts had viewed the facts in the light most favorable to DeVore it would have found she could have and should have been accommodated. The Sixth Circuit did not rectify the error. Remote work could have been permitted on a trial basis. There would have been no cost required, only flexibility. Even if the facts had been taken in a light most favorable to the defendant, it would still have had no defense because there had been no fact-specific confirmation in the record pertaining to the undue hardship it claimed it would have suffered.

F. Letters of non-compliance resulting in termination clearly show "some harm."

Because DeVore felt she could not submit to the testing and be true to her religious beliefs, she received four letters of non-compliance. After the second period of non-compliance a letter was placed in her permanent personnel

record and after the third she became ineligible for a 2% merit raise. The fourth, received on November 30, 2021, advised her she would be placed on administrative leave no-pay status beginning December 4, 2021, until January 3, 2022. It also stated further non-compliance "may result in termination." A letter sent from the Provost's office on January 5, 2022, stated, due to continued non-compliance with the testing mandate, she would be terminated effective January 29, 2022, but she could separate in good standing by retiring prior to January 29. Faced with imminent termination she submitted her notice on January 28, 2022. It was not as the court stated, "DeVore elected this option and retired [ ]." In light of the recent unanimous decision of this Court in lowering the bar regarding the level of harm needed to claim "adverse employment action" clearly there is more than enough here showing "some harm." *Muldrow at.*

April 4, 2022, two months after she was forced to retire, the mandate regarding testing ended. DeVore had worked with Jordan for 17 years and specifically at OPSVAW since 2014. Jordan had stated she was an invaluable resource for the office. The district court, however, took liberties when it framed it that the office had been hampered "by not having a personal presence when DeVore left." [App. B, 31a]. The office was hampered by her having been forced to retire. That is not the same. OPSVAW did not hire anyone to fill her position. How important was an on-campus presence if no one had been hired for that position in 18 months? Jordan stated she was unable to hire because of budget shortfalls and an OPSVAW funding freeze. No details were ever provided to corroborate that statement. The decision was made to eliminate OPSVAW entirely at the end of the academic year 2023.

G. The "final objection" clarifies the moral code dispute.

The Sixth Circuit pointed out that DeVore attempted to explain her religious beliefs, having "...rel[ied] almost exclusively on email communications with the University to make her case." What better way than to have made one's case with concisely written documents, statements and communications, in black and white, dated, and chronologically traceable? Were those emails and documents to be considered invalid and inadmissible when they had been marked as exhibits and admitted into evidence and their admissibility had not been contested? Were depositions providing testimony clearly showing discrepancies, failures to accommodate, and admissions that petitioner indeed had sincere religious beliefs not to be recognized as evidence as well? It was enough.

Moving on. The Sixth Circuit stated DeVore's conflict resulted "almost entirely" from her objections to nasal swab testing but when an oral swab or saliva test was suggested as an alternative she could not explain why [App. A, 11a]. The court's conclusion was DeVore's "prima facie case must therefore establish a religious conflict with each of the testing options. Both the University and the courts concede DeVore had an objection to a particular method of testing but argued she could not have had one to the protocol as a whole. This form of reasoning reduced her beliefs down to a strictly physical level and negated the very nature of those beliefs that, in reality, entailed so much more; beliefs that entailed, "fundamental and ultimate questions having to do with deep and imponderable matters." *Africa* v. *Commonwealth of Pennsylvania*, 662 F.2d 1025, 1032 (3rd Cir 1981).

DeVore would, however, be remiss if she did not point out that the court did mention she had "aggregated" her religious beliefs in the supplemental memorandum sent to Alexander after their meeting [App. A, 6a &14a]. This raised a point of incongruence or perhaps one of willful blindness. The Sixth Circuit had access to the complete description of her religious beliefs as they related to the University's testing protocols and yet it focused on isolating physical aspects rather than viewing the totality. This relegated the spiritual to a courtesy nod which in turn trivialized those beliefs and unnaturally forced the court's conclusion. It is more coherent to view the spiritual as informing all else.

When the Court listed the "aggregated" beliefs, it was prefaced as DeVore's final objection to the Policy:"

> "...being used as a form of coercion. She explained that coercion is "morally and ethically inappropriate by the laws of the land and, most importantly, in the sight of God," elaborating that "[c]oercion, incentives, guilt, penalties, being forced to participate in an experiment with no right to choose, no truly informed consent. It goes against justice, righteousness, all that is honorable and true, therefore it goes against all that God is and how He would have me live." She underscored that COVID testing was "wrong on so many levels" and that it "should not be forced on any individual who chooses not to participate."

The Court selected the above quote to represent the "final objection." In editing the quote in this fashion it

manipulated the wording to suggest the objection was to being forced to test and hid the truth. There remains another point of proof to be seen when the quote is viewed with a wider lens. It was not just the testing that was objectionable, it was all aspects of the protocols:

> "The mandatory testing places a burden on me of choosing between my job and my religious convictions. God expects me to take care of my health to the best of my ability because I am His temple, His Holy Spirit resides in me. This includes mitigating risks. It has been stated the weekly testing will be required until I get vaccinated which my sincere religious beliefs require that I refuse. This therefore [is] being used as a form of coercion which is morally and ethically inappropriate by the laws of the land and, most importantly, in the sight of God. Coercion, incentives, guilt, penalties, being forced to participate in an experiment with no right to choose, no truly informed consent. It goes against justice, righteousness, all that is honorable and true, therefore it goes against all that God is and how He would have me live. Permitting myself to take part in this would involve me as a participant in this that is wrong on so many levels."

DeVore holds the "final" objection, as presented in the complete quote, is to be properly identified as "the" objection.

And herein lies the crux of the matter. The courts could not overcome the perception that DeVore's system of belief was unacceptable, illogical, inconsistent, and

incomprehensible and therefore they deemed it secular rather than religious. *Thomas* v. *Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 714 (1981).

It is true that ordered liberty prevents every person from setting his own standards on matters of conduct in which society as a whole has important interests." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215-216 (1972). "The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task...However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question. *Thomas, Id.* at 714. Objective guidelines are important but there should not be a rigid "test" for defining a religion , *Love* v. *Reed*, 216 F.3d 682, 687 (8th Cir. 2000).

The Sixth Circuit declared DeVore's beliefs "reflect her '**personal** moral code' " and are merely a " '**subjective** evaluation' of the Policy against the **rubric** of '**secular values**' which does not establish a religious conflict with the Policy"(all emphasis added). DeVore on the other hand labels it an ***objective*** evaluation of the protocols based on truth. Truth is truth whether one chooses to believe it or not. The ***scoring tool*** that she used, and uses, in her life ***to provide a statement of purpose and evaluate performance*** is the Bible. It teaches principles of honesty, justice, equity, compassion, respect, forgiveness, fairness, love and on and on. It is therefore true that her religious beliefs reflect a ***moral code but not hers, God's.*** A person may exhibit moral and ethical qualities and be agnostic, but for a person with sincerely held religious beliefs, they are an intrinsic part of life and demonstrate belief in the one true God.

REASONS FOR GRANTING THE PETITION

This Court holds it is not the courts' place to question the correctness of where a believer draws the line between sinful and complicit. The distinction drawn is not as important as the fact it was based on one's religious beliefs. *Thomas,* 450 U.S. at 710. And merits protection. *Id.* at 714; *Vinning-El* v. *Evans*, 657 F.3d 5911 (7th Cir. 2011).

DeVore drew the line at not participating nor facilitating others' wrongdoing based on the Word of God. *United States* v. *Lee,* 455 U.S. 252 (1982). See also *Little Sisters of the Poor Home for the Aged* v. *Burwell,* 799 F.3d 1315, 1317 (10th Cir. 2015). Substantial pressure was applied to force her to violate her sincerely held religious beliefs and that was unacceptable. *Sharpe Holdings, Inc.* v. *U.S. Dep't of Health & Human Servs.*, 801 F.3d 927, 937 (8th Cir. 2015) (citing *Lyng* v. *Nw. Indian Cemetery Protective Ass'n,* 485 U.S. 439, 449 (1988).

The Sixth Circuit took it upon itself to judge DeVore's beliefs by isolating them rather than objectively looking at them as a whole. It was a short step from there to say she could not prove religious objections to all the forms of testing. The errors converged where the court declared she had not identified in the record what her religion was. Because the court could not identify with what her belief was, the court relabeled her religious beliefs as secular. *Burwell, Id.* Religious practices include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." 29 C.F.R. § 1605.1

The Sixth Circuit presented two other cases [App. A-10a.], in its attempt to limit DeVore's case to purely

moral and secular beliefs, but omitted to include the following: *Passarella* v. *Aspirus, Inc.*, 108 F.4th 1005, 1010-11 (7th Cir. 2024) (citing, *Welsh* v. *United States*, 398 U.S. 333, 342 (1970) (an objection ...need only be "based in part" upon religion to be considered "religious"); *id.* (observing that a religious objection may be based "to a substantial extent" upon other considerations, such as social, economic, philosophical, or public policy concerns); and *United States* v. *Seeger*, 380 U.S. 163 (1965) (excluding draft exemptions based on a "merely personal moral code"—one that is "not only personal but which is the *sole* basis for the registrant's belief and is in *no way* related to a Supreme Being"). What does the court's significant omission inform?

The district court erred when it failed to view the evidence in a light most favorable to DeVore. *Wheat* v. *Fifth Third Bank*, 785 F. 3d 230, 232 (6th Cir. 2015). The Sixth Circuit did not follow its own guidance when it did not correct the error. DeVore was disadvantaged by the courts substituting their own judgment for that of a jury because the court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of any matter in dispute. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The genuine disputes of material fact cannot be resolved at the summary judgement stage. *Murphy* v. *Missouri Dept. of Corrections*, 372 F.3d 979, 983 (8th Cir. 2004).

Several circuit courts have been consistently reversing district courts' decisions related to COVID claims.[3] *Ringhofer* v. *Mayo Clinic, Ambulance*, 102 F.4th

3. See, *Beuca* v. *Washington State University*, 2024 WL 3450989 (C.A.9 (Wash.), 2024); *Health Freedom Defense Fund, Inc.* v.

894 (8th Cir. 2024); *Cole* v. *Grp. Health Plan, Inc.*,105 F.4th 1110, 1113 (8th Cir. 2024) (claims based on refusal to submit to mandatory COVID vaccination and/or refusal to submit to routine testing or masking, in lieu of vaccination). Courts are not to draw conclusions as a matter of law about the sincerity of religious objections to COVID vaccination or the nature of accommodation for those who refuse vaccination on religious grounds." *Christiansen* v. *Honeywell International Inc.*, 2024 WL 3443881, at *1 (D. Minn. Jul. 17, 2024).

Surprisingly in *Wheat*, Id. at 237, the **Sixth Circuit** stated that a plaintiff's burden of **establishing a prima facie case** is "a burden easily met." *Wrenn* v. *Gould*, 808 F.2d 493, 500 (6th Cir. 1987). Once that burden is met, accommodation of religious beliefs is required absent an undue burden. In *Groff* employers must consider "all relevant factors in the case at hand, including the particular accommodation at issue and their practical impact in light of the nature, size, and operating cost of an employer." "Hardship," suggests something more severe than a mere burden or additional costs. "Undue" means the burden must be "excessive" or "unjustifiable." This requires "fact specific" inquiry of the details and context of cases. See *Malone* v. *Legacy Health*, 2024 WL 3316167, at *4 (D. Or. July 5, 2024). And *Cole*, *Id.* at 1114.

In *EEOC.* v. *Texas Hydraulics, Inc.*, 583 F. Supp. 2d 904, (E.D. Tenn. 2008) both the reasonableness and effort

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Carvalho, 104 F.4th 715, 722 (C.A.9 (Cal.), 2024); *Bacon* v. *Woodward*, 104 F.4th 744 (C.A.9 (Wash.), 2024; *Bazinet* v. *Beth Israel Lahey Health, Inc.*, 2024 WL 3770708 (1st Cir. 2024); *Passarella* v. *Aspirus, Inc.*, 108 F.4th 1005 (7th Cir., 2024); and *Lucky* v. *Landmark Medical of Michigan, P.C.*, 103 F.4th 1241 (6th Cir. 2024).

put into determining an accommodation, are relevant for sustaining burden on summary judgment. See *Smith* v. *Pyro Mining Co.*, 827 F.2d 1081, 1086, 1088 (6th Cir. 1987). And *EEOC* v. *Arlington Transit Mix, Inc.*, 957 F.2d 219, 222 (6th Cir. 1991). Sixth Circuit stated skepticism of hypothetical hardships that have not been put into practice. However, not all accommodations considered need to be implemented. *Draper,* 527 F.2d 515 (6th Cir. 1975); *Depriest* v. *Dep't of Human Services of State of Tennessee*, 1987 WL 44454, *4 (6th Cir. Oct. 1, 1987). Job assignment change or lateral transfer could be considered." 29 C.F.R. § 1605.2(d)(iii). Lack of or conflicting evidence about what the employer was willing to do to attempt to accommodate the employee, renders summary judgment improper. *EEOC* v. *Robert Bosch Corp.*,169 Fed. App'x 942, 946 (6th Cir. 2006).

The University's non-efforts read like a classic textbook failure of the accommodation process. They mismanaged the duty they were tasked with and failed to prove they had performed their due diligence. Failure to accommodate is justified only when all options have been considered and rejected. *Stone* v. *West*, 133 F. Supp. 2d 972, 984 (E.D. Mich. 2001); *Ansonia*, 479 U.S. 60, 68-69 (1986). The courts erred when they did not step up to right the wrong.

The Sixth Circuit's decision warrants this Court's review. The supplemental document provided by DeVore during the accommodation process was more than enough to clear the bar in establishing a prima facie case, especially in light of the Sixth Circuit's claim that it is a "burden easily met." It appears the driving force was a suspicion of religious beliefs it could not understand

and therefore distrusted. Dismissing a sincere religious belief enabled the court to avoid addressing the egregious mishandling of the accommodation process. A process it had in the past proven to uphold. This led to its de facto disregard of this Court's recent clarification of *Groff's* de minimus standard. *Groff* requires a court make a "fact specific" inquiry into the circumstances. This cannot be accomplished at summary judgment. Many employment discrimination claims being stifled at summary judgment are being reevaluated resulting in claims being sent back for juries to navigate through the specific facts that are crucial in making just determinations.

The Court's recent decisions have set the tone for positive shifts among the courts. They bring meaningful relief for employees who suffered from discriminatory practices and were later as plaintiffs disadvantaged by the courts. They also serve as wake-up calls for employers and bring clear guidance to the courts.

A split in circuits is developing especially regarding COVID cases. This presents a non-uniformity of the law. There have been at least four circuits (1st, 6th, 7th, 8th) that have sent cases (*Bazinet; Passarella; Ringhofer; and Lucky*) back to district courts finding that plaintiffs' requests need only be based in part on some aspect of their religious belief or practice. This falls in line with this Court's admonishment for courts not to use judicial perceptions to try to discern if a particular belief or practice is "religious."

In times of public health crisis it is important to find a balance that preserves individual liberty and fundamental freedoms of this nation. Forcing individuals to choose between their sincerely held religious beliefs and their

livelihood is indeed a very heavy burden to bear. There is more to be done. Some of the circuits have stepped up to rectify the wrongs but this process can be slow unless this Court takes certiorari and lends its weight to ensure uniformity across the circuits is swift and sure.

It is disheartening to believe in something so strongly, to live in hope for a just solution, and then find no protector in a system you believed would be a champion for truth. This quest began because of a system of belief and a faith in a set of principles set forth in God's Word. It was propelled by a belief and a faith that the principles and freedoms this nation was founded upon would be upheld for one of its vulnerable citizens. That so far has been denied, therefore the refuge of this, the highest Court of this great nation, the Court of last resort, is being sought.

CONCLUSION

The Court should grant the petition and vacate, reverse, and remand this case back to the district court for jury trial.

Respectfully submitted,

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