APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED OCTOBER 11, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

File Name: 24a0233p.06

No. 23-5890

LAURIE ANN DEVORE,

Plaintiff-Appellant,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Defendant-Appellee.

June 25, 2024, Argued;
October 11, 2024, Decided;
October 11, 2024, Filed

Appeal from the United States District Court for the Eastern District of Kentucky at Lexington. No. 5:22-cv-00186—Gregory F. Van Tatenhove, District Judge.

Before: WHITE, STRANCH, and DAVIS, Circuit Judges.

Appendix A

OPINION

JANE B. STRANCH, Circuit Judge. Laurie DeVore retired from her post at the University of Kentucky rather than comply with its COVID-19 test-or-vaccinate policy. She then filed this lawsuit, alleging that the Policy conflicted with her sincerely held religious beliefs and that the University's failure to accommodate those beliefs violated Title VII of the Civil Rights Act of 1964. The district court granted summary judgment for the University. We **AFFIRM**.

I. BACKGROUND

Laurie DeVore worked for the University of Kentucky from 1999 to 2022. She started as a part-time employee and ultimately became a department manager in the Office for Policy Studies on Violence Against Women, or "the Office." DeVore performed successfully throughout her tenure at the University, but began clashing with the school over return-to-campus policies it implemented in the wake of the COVID-19 pandemic. The University transitioned to remote operations at the onset of the pandemic, functioning remotely for over a year. It then announced in June 2021 that classes would return to campus for the 2021-2022 academic year. This announcement, and the policies and procedures the University would later implement alongside it, prompted DeVore to submit a series of requests seeking to be excused from the University's return-to-campus protocols.

Appendix A

A. DeVore's Hybrid Work Request

On June 21, 2021, the University informed employees that it would be "returning to normal operations" with "health, safety and well-being" serving as a "governing priority." It directed employees with "a disability or a documented health risk" to file a "Request for Reasonable Accommodation" with the University's Office of Institutional Equity and Equal Opportunity. It also invited employees to submit requests for hybrid or remote work schedules that would be evaluated case-by-case.

DeVore requested a hybrid work arrangement in response to this announcement, asking for a weekly schedule of three days in-office and two days at-home. The request explained that DeVore's job involved "times of high stress and long hours" and that a "hybrid work format would ensure a considerable reduction of that stress as well as peace of mind." It added that a "hybrid work arrangement" would also "be beneficial" for her and the Office because it would offer her "uninterrupted time to focus" on the detail-oriented elements of her job. The University denied DeVore's request, determining that all department managers would be expected "on campus full-time and in-person beginning in August" 2021, subject to "specific health and safety concerns."

B. DeVore's Religious Exemption Requests

The University supplemented its return-to-campus announcement with an August notice laying out the safety protocols that would accompany its return to on-campus

operations. The University adopted a test-or-vaccinate policy—"the Policy"—mandating weekly COVID testing for unvaccinated faculty, staff, and students. The Policy required unvaccinated campus patrons to undergo testing "on a weekly basis" but excused those who were "fully vaccinated" from regular testing.

DeVore submitted a series of requests seeking a religious exemption from the test-or-vaccinate policy. She emailed her first exemption request to the University on October 1, 2021. The email explained that DeVore was unvaccinated and that to comply with the Policy she would have to "obtain weekly COVID-19 PCR testing until I accept the vaccination." She represented that, "My sincere religious beliefs require that I refuse to accept the vaccine which would mean subjecting myself to regular, repeated medical interventions against my will, that are not without risks to my person, in order to coerce me into doing something I simply cannot do." She concluded by stating, "I am sending this email to request a religious exemption." The University denied the request.

DeVore sent a second request on October 4, 2021, reiterating her appeal for a religious exemption and attaching a memorandum explaining her objection to the Policy. The memo articulated DeVore's belief that the testing requirement was designed to coerce unvaccinated employees into accepting the vaccine, relayed medical data from the Centers for Disease Control and Prevention and the Food and Drug Administration on vaccine efficacy, and explained that she would not provide informed consent to participate in COVID testing. DeVore emphasized that

COVID testing imposed "potential" health and safety risks, and protested that the University had not disclosed whether PCR testing caused "shortness of breath, headaches, nausea, respiratory irritation, perforation of the thin membrane that separates the sinus cavity from the brain cavity, and wounds and inflammation of the nasal passage which would compromise a person's first line of defense against viruses, bacteria, fungi, etc." The University again denied DeVore's request.

DeVore emailed a third exemption request on October 8, 2021, once more supported by a memorandum discussing her position on the Policy. This memo focused on the Policy's failure to adequately solicit informed consent from campus patrons subject to the University's testing requirements. It described COVID testing as "medical experimentation," characterizing it as conscripting human research subjects into participating in a medical experiment without consent. It referenced a variety of University, federal, and international standards that, in DeVore's view, mandatory COVID testing violated. The University denied DeVore's request for a third time.

C. DeVore's Religious Accommodation Request

Following the University's categorical denial of her religious exemption requests, DeVore submitted a religious accommodation request and filed a complaint of religious discrimination. DeVore's accommodation request sought an "accommodation due to a conflict between" her "religious beliefs" and her "work." It explained that "God expects me to honor Him by taking care of my person to

the best of my ability" and that the "COVID-19 vaccines and the repeated testing medical procedures, go against my sincerely held beliefs." It requested a fully remote work schedule to accommodate this conflict. The corresponding complaint asserted that denying her relief from the test-or-vaccinate policy amounted to religious discrimination.

The University's Office of Institutional Equity and Equal Opportunity opened a case to assess DeVore's accommodation request and accompanying discrimination complaint. The investigation included interviews conducted by one of the University's Title IX coordinators with an assistant dean at the University, DeVore's supervisor in the Office, and DeVore herself. DeVore also provided a supplemental memorandum as part of the investigation that aggregated her prior objections to the Policy. The University concluded its investigation by denying DeVore's request and issuing a letter directing DeVore to begin complying with the Policy. The letter also clarified that DeVore could comply with the Policy through oral swab or saliva testing in lieu of the nasal swab tests to which she had previously objected.

DeVore responded with an email explaining that the alternative testing methods would not resolve her religious conflicts with the Policy. She asserted that oral swab and saliva testing were "not reasonable in light of my religious concerns." The University replied, explaining that it had understood DeVore's testing objections to be specific to the invasive nature of the nasal swab test and that it had offered the alternative testing options to remedy that objection. It concluded that, nonetheless, the University

could not accommodate DeVore's request and again instructed DeVore to comply with the Policy.

The University's characterization of DeVore's COVID testing objection prompted another response from DeVore. DeVore accused the University of deliberately misconstruing her requests and reiterated her position that the Policy was a form of coercion. The University responded again, thanking DeVore for offering clarification but confirming that it did not change the University's conclusion that her request could not be accommodated. The University invited DeVore to "apply for a remote work position with the University" if she continued to object to its on-campus requirements.

D. Procedural History

DeVore did not apply for another position with the University but instead continued working in the Office while violating the Policy. Over the following weeks, the University issued DeVore four notices of noncompliance. The fourth notice informed DeVore that she would be placed on a period of unpaid administrative leave until she adhered to the Policy. DeVore declined to comply with the Policy during the leave period, and the University ultimately notified her that she would be terminated as a result. The notification also informed DeVore that she met the criteria for retiring from the University and that, should she do so, she would "be separated in good standing" and eligible to receive any corresponding benefits. DeVore elected this option and retired in January 2022.

Six months after retiring, DeVore filed this lawsuit, charging the University with failing to accommodate her religious beliefs in violation of Title VII of the Civil Rights Act. After a period of discovery, the parties cross-moved for summary judgment. DeVore attached no sworn testimony of her own to support her motion for summary judgment or oppose the University's, relying exclusively on the testimony of others and on her previous correspondence with the school. The district court granted the University's motion and denied DeVore's. DeVore appeals the portion of the court's order granting the University's motion.

II. LEGAL STANDARD

A district court's grant of a motion for summary judgment is reviewed de novo. *Tepper v. Potter*, 505 F.3d 508, 513 (6th Cir. 2007). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists if, taking the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in that party's favor, "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Parties must go "beyond the pleadings" in advancing, or defending against, a summary judgment motion. 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2721 (4th ed. June 2024 Update). Movant

and opponent alike "must support their factual positions either by directing the court's attention to materials in the record or by showing that the cited materials do not establish the presence or absence of a genuine dispute or that the opposing party cannot produce any admissible evidence to support the fact." *Id.*; *see Viet v. Le*, 951 F.3d 818, 822-23 (6th Cir. 2020). "Conclusory statements unadorned with supporting facts" will not do. *Viet*, 951 F.3d at 823 (quoting *Alexander v. CareSource*, 576 F.3d 551, 560 (6th Cir. 2009)). "Just as a plaintiff may not rely on conclusory allegations to proceed past the pleading stage, so too a plaintiff may not rely on conclusory evidence to proceed past the summary-judgment stage." *Id.* (citations omitted). Ultimately, the court must "examine the pleadings to ascertain what issues of fact they present and then consider the affidavits, depositions, admissions, interrogatory answers and similar material to determine whether any of those issues are real and genuine." Wright & Miller, *supra*, § 2721.

III. ANALYSIS

Title VII of the Civil Rights Act makes it "an unlawful employment practice for an employer" to "discriminate against" a covered employee because of the employee's religion. 42 U.S.C. § 2000e-2(a). To comply with the Act, an employer must "reasonably accommodate" an employee's "religious observance" and "practice" unless doing so would impose an "undue hardship on the conduct of the employer's business." *Id.* § 2000e(j).

Claims under these provisions are, at the summary judgment stage, analyzed in two steps. At the first step,

the employee must establish a prima facie case of religious discrimination. *Tepper*, 505 F.3d at 514. The employee does so 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." *Id.* At the second step, the employer must show that accommodating the employee's religion would impose an undue hardship. *Id.* The employer does so by demonstrating that the accommodation would impose a "substantial" burden "in the context of [the] employer's business." *Groff v. DeJoy*, 600 U.S. 447, 471, 143 S. Ct. 2279, 216 L. Ed. 2d 1041 (2023). The only element of the prima facie case at issue here is whether DeVore has established that the Policy conflicts with her sincere religious beliefs.

Title VII protects "all aspects of religious observance and practice[.]" *Lucky v. Landmark Med. of Michigan, P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024) (quoting *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771-72, 135 S. Ct. 2028, 192 L. Ed. 2d 35 (2015)). Its coverage attaches to practices rooted in "religious principle," but not to purely secular beliefs, such as those that are "essentially political, sociological, or philosophical," a matter of personal preference, or the product of "a merely personal moral code." *Welsh v. United States*, 398 U.S. 333, 342-43, 90 S. Ct. 1792, 26 L. Ed. 2d 308 (1970) (plurality opinion) (quoting *United States v. Seeger*, 380 U.S. 163, 172, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965)) (Universal Military Training and Service Act); *see Holt v. Hobbs*, 574

U.S. 352, 360-61, 135 S. Ct. 853, 190 L. Ed. 2d 747 (2015) (Religious Land Use and Institutionalized Persons Act of 2000); *Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972) (First Amendment); *New Doe Child #1 v. Cong. of U.S.*, 891 F.3d 578, 587 (6th Cir. 2018) (Religious Freedom Restoration Act).[1] A religious belief "need not be acceptable, logical, consistent, or comprehensible to others in order to merit" protection, and Title VII is agnostic to the reasonableness "of the particular belief or practice in question." *See Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981). The judicial task in assessing evidence of a religious conflict is narrow, but courts must nevertheless ensure the asserted conflict is "sincerely based on a religious belief," rather than "some other motivation," *Holt*, 574 U.S. at 360-61, and that the belief actually conflicts with a workplace policy, *New Doe Child #1*, 891 F.3d at 587.

DeVore asserts a conflict between her sincerely held religious beliefs and the University's "requirement that on-campus employees either get the Covid vaccine or submit to weekly mandatory Covid testing." The University's

1. *See also* U.S. E.E.O.C., *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* § L.2 (last updated May 15, 2023) ("Title VII does not protect social, political, or economic views or personal preferences. Thus, objections to a COVID-19 vaccination requirement that are purely based on social, political, or economic views or personal preferences, or any other nonreligious concerns (including about the possible effects of the vaccine), do not qualify as religious beliefs, practices, or observances under Title VII."); *accord Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 492 (3d Cir. 2017).

default testing protocol used nasal polymerase chain reaction, or nasal "PCR," COVID tests. DeVore's religious discrimination complaint, however, prompted the University to clarify that DeVore could comply with the Policy using "an oral swab test or a saliva test." DeVore's prima facie case must therefore establish a religious conflict with each of the testing options the University offered—nasal, oral swab, and saliva.

DeVore relies almost exclusively on email communications with the University to make her case. Most of DeVore's emails relay objections to the nasal test and were sent before the University explained that DeVore could comply with the Policy through other testing mechanisms. *See* R. 22-11, 10/4/21 Email, PageID 369 (highlighting risk of "inflammation of the nasal passage"); R. 22-13, 10/8/21 Email, PageID 373 (objecting to "screening for COVID-19 through a nasopharyngeal swab"); R. 22-16, 10/15/21 Email, PageID 382 (incorporating previous objections); R. 22-20, Title IX Memo, PageID 398 (asserting that "repeated testing can damage the first line of defense God created mankind with").

Two of DeVore's emails did, however, respond to the University's clarification with objections to the oral swab and saliva tests. The first referred the University to the objections DeVore had provided in her Title IX memorandum, objections she maintained still applied, and the second quoted the same objections—neither email introduced any new source of religious conflict. *See* R. 22-20, PageID 398 (summarizing objections to Policy); R. 22-

23, DeVore 11/4/21 Email, PageID 407 (referring to prior objections); R. 22-27, DeVore 11/15/21 Email, PageID 418 (quoting prior objections). The Title IX memorandum, now serving as the source of DeVore's religious objections to oral swab and saliva testing, raised three distinct conflicts between DeVore's religion and the Policy: the Policy was (1) invasive, (2) manipulative, and (3) coercive.

DeVore's first objection to the Policy was that the invasiveness of the University's testing procedures interfered with her religious obligation to treat her body as a "temple." She explained that "repeated testing can damage the first line of defense God created mankind with and could provoke immediate or long-term health issues, putting a healthy person without symptoms at risk. That probability increases every time it is performed." DeVore later acknowledged in her deposition, however, that there "was no invasiveness regarding the saliva test" and that she did not "know what was entailed in . . . the oral swab" test, admitting that she did not "research what the oral swab test entailed." Given these concessions, DeVore has established no conflict between the Policy and any religious objections she may have to invasive medical procedures.

DeVore also objected to the Policy on the alternative basis that it was manipulative. The Policy, she maintained, was "being used to manipulate me into taking the 'vaccine.'" It "is not," in fact, "a vaccine," she continued, but rather "gene therapy that contains harmful and wrong substances" she could not ingest consistent with her religious beliefs. Yet the University consistently and

repeatedly invited DeVore to undertake a testing regimen that would permit her to remain unvaccinated, and DeVore has offered no evidence to support the proposition that the Policy denied her a bona fide choice between testing and vaccination. DeVore therefore cannot demonstrate a conflict between her religion and the Policy solely by bootstrapping her testing objections to her vaccine objections.

DeVore's final objection to the Policy was that it was "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 University explored the nature of DeVore's coercion objection with her at her deposition, where she broke it out across two dimensions. The first dimension she identified was the Policy's attempt to "coerce [her] to get vaccinated," an effort she said would "coerce me into doing something I simply cannot do." Such coercion, she explained, was "wrong" because "[t]rying to manipulate somebody into doing something to attain a result that you want by holding something over them" is "not right behavior." DeVore's explanation of this dimension of the

coercion objection repackages her manipulation concern. Again, however, that cannot alone establish a conflict between her religion and the Policy because DeVore has adduced no evidence supporting her claim that the Policy had the practical effect of coercing her to vaccinate rather than test.

The second dimension of coercion DeVore raised was the Policy's design "to coerce [her] to get tested." DeVore reasoned that mandatory employment requirements, like the Policy, are inherently coercive because she "would lose [her] job" unless she complied. She acknowledged that employers routinely maintain a range of compulsory employment requirements, a general practice to which she did not object, but she drew the line at policies that were not "equitable" or "fair." This second dimension of DeVore's coercion objection applies to oral swab and saliva testing, but it turns only on DeVore's view that mandatory testing is inequitable and unfair. DeVore drew no connection between her fairness conclusion and any "religious principle" she follows, leaving it simply to reflect her "personal moral code." *Welsh*, 398 U.S. at 342-43 (quoting *Seeger*, 380 U.S. at 172). DeVore's "subjective evaluation" of the Policy against this rubric of "secular values" does not establish a religious conflict with the Policy. *Yoder*, 406 U.S. at 216.

DeVore offers no other evidence to show a conflict between her religion and the Policy. She supplied no affidavit or declaration articulating how complying with the Policy conflicts with her religious beliefs or practices. She entered none of her own deposition testimony in

the record to add color to the excerpts the University provides. She filed a six-page complaint, which in any event is unverified, that included only the conclusory statement that "due to her deeply held religious beliefs," she "objected to mandatory Covid testing." DeVore has, in fact, throughout this litigation never identified in the record what her religion is.

In the end, DeVore's religious opposition to the Policy flows almost entirely from her objections to nasal PCR testing and vaccination, objections she raised before the University informed her that she could comply with the Policy via oral swab or saliva tests, and she fails to account for these alternatives. 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. *Yoder*, 406 U.S. at 216. These objections may have been enough to satisfy Title VII's pleading requirements. *See Lucky*, 103 F.4th at 1242-44; *Savel v. MetroHealth Sys.*, 96 F.4th 932, 942-44 (6th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1008-12 (7th Cir. 2024); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 900-02 (8th Cir. 2024). But they fail at summary judgment to establish a conflict between DeVore's religion and the Policy. DeVore's Title VII claim fails with them.

IV. CONCLUSION

For these reasons, we **AFFIRM**.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY, CENTRAL DIVISION, LEXINGTON, FILED SEPTEMBER 20, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

Case No. 5:22-cv-00186-GFVT-EBA

LAURIE ANN DeVORE,

Plaintiff,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Defendant.

Signed: September 18, 2023
Filed: September 20, 2023

OPINION & ORDER

Plaintiff Laurie DeVore told her employer, the University of Kentucky, that she had a religious objection to its requirement that she either receive a COVID vaccine or submit to COVID testing. [R. 19-8.] Instead, she suggested that the University should let her work remotely

or hire an additional staff member. [R. 31.] However, her objection was not based on a religious belief. And even if it was, the University could not accommodate her beliefs without suffering an undue hardship. Accordingly, Ms. DeVore's motion for summary judgment [R. 19] is **DENIED** and the University's cross motion [R. 22] is **GRANTED.**

I

In 2014, Ms. DeVore began working in the Office for Policy Studies on Violence Against Women, a department within the University's College of Arts & Sciences that focused on helping graduate students with research development. [R. 22-2 at 14.] The Office consisted of a director, a department manager, and a part-time researcher. *Id.* at 9-10. As the Office's department manager, Ms. DeVore was primarily responsible for clerical and logistical support. [R. 24-1 at 5.]

As the all too familiar story goes, COVID forced a change in March of 2020. [R. 19-5 at 11.] The University mandated remote work due to safety concerns. *Id.* About a year and a half later, the University advised that all advisors and department managers must return to work in person. [R. 19-7.] The University also took safety precautions to facilitate in-person work. It required weekly COVID testing for all unvaccinated faculty, staff, and students. [R. 19-8 at 1.] If someone received a vaccine, they would no longer be required to submit to testing. *Id.* However, the University required employees to wear face-masks regardless of their vaccination status. [R. 19-9 at 3.]

Those who did not get a COVID vaccine or submit to testing were disciplined. If an employee did not comply, the University could place a letter in the employee's record, reduce their pay, put the employee on unpaid leave, or terminate their employment. *Id.* at 2. Ms. DeVore fell out of compliance with the University's COVID requirements. [*See, e.g.*, R. 22-30 (notices of non-compliance).] She requested an exemption from the policy, but the University denied her request. [R. 22-9 at 2-3.] The University placed Ms. DeVore on unpaid administrative leave after her fourth period of noncompliance. [R. 19-23 at 4.] Then, faced with the threat that the University would fire her for violating the policy, Ms. DeVore voluntarily retired. [R. 19-24.]

Ms. DeVore now brings this action against the University for failing to accommodate her religious beliefs. [R. 1.] She alleges that her sincerely held religious beliefs prevented her from taking the COVID vaccine or submit to testing, and the University failed to reasonably accommodate this conflict. *Id.*

II

Summary judgment is appropriate when "the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). The moving party has the initial burden of demonstrating the basis for its motion and identifying those parts of the record that establish the absence of a genuine issue of material fact.

See Chao v. Hall Holding Co., 285 F.3d 415, 424 (6th Cir. 2002). The movant satisfies its burden by showing "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Once the movant satisfies this burden, the non-moving party must present specific facts to demonstrate that there is a genuine issue of a material fact. *Hall Holding*, 285 F.3d at 424 (citing *Celotex Corp.*, 477 U.S. at 324, 106 S.Ct. 2548). The party must "direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact." *Poss v. Morris (In re Morris)*, 260 F.3d 654, 665 (6th Cir. 2001) (internal quotations omitted). The Court then must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1310 (6th Cir. 1989) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202). When reviewing cross-motions for summary judgment, "the court must evaluate each motion on its own merits and view all facts and inferences in the light most favorable to the nonmoving party." *Wiley v. United States*, 20 F.3d 222, 224 (6th Cir. 1994) (citing *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991)).

Ms. DeVore alleges that the University failed to accommodate her religious beliefs in violation of both federal and state law. [R. 1 at 2.] A plaintiff must prove

the same elements for a discrimination claim under either Title VII or the Kentucky Civil Rights Act. *See Bd. of Regents v. Weickgenannt*, 485 S.W.3d 299, 306 n.6 (Ky. 2016). Indeed, Kentucky enacted the KCRA to implement federal religious protections. *Louisville & Jefferson Cnty. Metro. Sewer Dist. v. Hill*, 607 S.W.3d 549, 555 (Ky. 2020). Therefore, the Court will not separate the analyses for Ms. DeVore's religious accommodation claims.

Any religious accommodation case "begins with the question of whether the employee has established a prima facie case of religious discrimination." *Tepper v. Potter*, 505 F.3d 508, 514 (6th Cir. 2007) (quoting *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987)). Once an employee has established a prima facie case, the employer has the burden to show that this could not reasonably accommodate the employee without undue hardship. *Virts v. Consol. Freightways Corp.*, 285 F.3d 508, 516 (6th Cir. 2002). Here, Ms. DeVore fails to show a prima facie case of discrimination. And even if she can show a prima facie case, the University shows that her requested accommodation would cause it undue hardship.

A

To establish a prima facie case, a plaintiff must show that (1) she holds a sincere religious belief that conflicts with an employment requirement, (2) she has informed the employer about the conflict, and (3) she was discharged or disciplined for failing to comply with the conflicting employment requirement. *Tepper*, 505 F.3d at 514. The University does not dispute that Ms. DeVore informed it

about her concerns with the University's COVID policy or that it discharged her for failing to comply with the policy. [R. 22 at 14.] The University argues that Ms. DeVore does not establish a prima facie case because Ms. DeVore's objection to COVID testing is not religious.[1] *Id.* at 14-15.

Ms. DeVore claims that she holds a religious belief that conflicts with the University's COVID testing requirement because "it would be an affront to God for her to involuntarily subject herself to medical testing without informed consent." [R. 24 at 4.] Essentially, Ms. DeVore submits that a COVID testing policy conflicts with her religious beliefs because the policy uses coercion in two ways: it forces her to take the COVID vaccine and it takes away her ability "to choose what shall or shall not happen to my person." [R. 22-20 at 4.]

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1. Initially, Ms. DeVore objected to the University's testing policy in part because the University intended to conduct testing by nasal swab. Ms. DeVore argued that the nasal swab test conflicted with her religious beliefs because it is "invasive" and "can damage the first line of defense God created mankind with and could provoke immediate or long-term health issues." [*See, e.g.*, R. 22-20 at 4.] Even if this is a religious belief, Ms. DeVore does not show that this objection conflicted with an employment requirement. The University offered Ms. DeVore the options to submit COVID tests conducted by oral swab or saliva submission. [R. 22-24 at 2.] Ms. DeVore later testified that she believed "[t]here was no invasiveness regarding the saliva test." [R. 22-1 at 5.] Therefore, by not articulating an objection to the oral swab or saliva methods, Ms. DeVore fails to show that she held a religious belief that conflicts with the particular method of COVID testing.

Appendix B

1

First, Ms. DeVore objects to the University's COVID policy because she believes that the University uses testing to "manipulate [her] into taking the 'vaccine,'" which is harmful. *Id.* She alleges that the University manipulates her into taking the vaccine by using the prospect of weekly testing as a penalty for not taking the vaccine. [R. 19-19 at 1.]

This fails to show a religious conflict with a work requirement. Ms. DeVore may have believed that the University was manipulating her to take the vaccine, but it was not. Like in *Egelkrout v. Aspirus, Inc.*, it is undisputed that the University did not mandate employees to get vaccinated against COVID because it allowed employees to test instead. No. 22-cv-118-bbc, 2022 WL 2833961, at *3, 2022 U.S. Dist. LEXIS 128519, at *9 (W.D. Wis. July 20, 2022); [R. 1 at 4.] Indeed, the University required employees *either* to get vaccinated or submit to testing. And Ms. DeVore did not face any adverse action for not getting vaccinated. Ms. DeVore may—and does—separately object to COVID testing, but the University offered a true choice between vaccination or testing. Because Ms. DeVore does not show that the University required vaccination in practice, she does not show that the option to receive a vaccination conflicts with her religious beliefs.

2

Second, Ms. DeVore objects to COVID testing because "mandatory testing violates established precepts that

are upheld in the laws of our nation and my God-given rights to be able to choose what shall or shall not happen to my person." [R. 22-20 at 4.] Said another way, Ms. DeVore objects to COVID testing because it "goes against justice, righteousness, [and] all that is honorable and true, therefore it goes against all that God is and how He would have me live." *Id.* Ms. DeVore does not specify how COVID testing goes against her religious beliefs in justice or righteousness. Thus, she argues only that University policy conflicts with her religious beliefs by requiring her to do something that she would not otherwise do. This is not a conflict with a religious belief.

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." *Lawhead v. Brookwood Mgmt. Co., LLC*, No. 5:22-cv-00886-JRA, 2023 WL 2691718, at *3, 2023 U.S. Dist. LEXIS 54355, at *7 (N.D. Ohio Mar. 29, 2023) (quoting *Pedreira v. Ky. Baptist Homes for Child., Inc.*, 579 F.3d 722, 728 (6th Cir. 2009)); *see also Holt v. Hobbs*, 574 U.S. 352, 360, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015) (holding that a "request for an accommodation must be sincerely based on a religious belief and not some other motivation"). Though courts should not inquire into validity or plausibility of a belief, court should decide whether the beliefs are truly held and whether they are religious. *Id.* Courts differentiate between views that are religious in nature from those views that are "essentially political, sociological, or philosophical." *Fallon v. Mercy Catholic Med. Ctr.*, 877 F.3d 487, 490 (3d Cir. 2017) (quoting *United States v.*

Seeger, 380 U.S. 163, 165, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965)). Moreover, "the very concept of ordered liberty" precludes courts from granting a person "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interest.'" *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)). Allowing such a privilege would turn the First Amendment into "a limitless excuse for avoiding all unwanted legal obligations." *Id.* at 1030.

The facts in *Finkbeiner v. Geisinger Clinic* are nearly identical to those here. 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022). In *Finkbeiner*, an employer required employees to be vaccinated for COVID or to submit to regular testing. 623 F. Supp. 3d at 463. The plaintiff asserted that she held a conflicting religious belief because she had "a God given right to make [her] own choices regarding what is good or bad" for her. *Id.* The court held that the plaintiff's objection was not religious. *Id.* at 465-66. Rather, the plaintiff's asserted right to make her own choices was merely an "isolated moral teaching" that would amount to a limitless excuse for avoiding all unwanted obligations. *Id.* (internal quotation marks omitted). Indeed, her asserted right to make her own choices only furthered her purely medical objections to COVID vaccines and testing. *Id.* at 466.

Courts agree that similarly broad objections do not constitute protected religious beliefs. *See, e.g.*, *Friend v. AstraZeneca Pharm. LP*, No. SAG-22-03308, 2023 WL 3390820, at *3, 2023 U.S. Dist. LEXIS 83749, at *7-8 (D. Md. May 11, 2023) (holding that assertions that "are

little more than a declaration that Plaintiff has the right to make his own decisions[] do not constitute religious beliefs, even where religion is more expressly invoked"); *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 200 F. Supp. 3d 553, 560-61 (E.D. Pa. 2016), *aff'd*, 877 F.3d 487 (3d Cir. 2017) (holding that a plaintiff's assertion that consenting to vaccination would violate his conscience about right and wrong was not a religious objection); *Ellison v. Inova Health Care Servs.*, No. 1:23-cv-00132 (MSN/LRV), 2023 WL 4627437, at *5, 2023 U.S. Dist. LEXIS 124861, at *11 (E.D. Va. July 19, 2023) (holding that the plaintiff's belief that a COVID vaccine would be "antithetical to [his] desire to honor God" was not a religious objection).

Here, Ms. DeVore claims a religious belief that she must be "able to choose what shall or shall not happen" to her and must live as God "would have [her] live." [R. 22-20 at 4.] Simply, this seeks a religious objection to any requirement with which she disagrees. This is not a religious belief but rather an isolated moral teaching. *See Finkbeiner*, 623 F. Supp. 3d at 465-66. Granting Ms. DeVore's request would amount to a blanket privilege and a limitless exclude for avoiding all unwanted obligations. *See Finkbeiner*, 623 F. Supp. 3d at 463. And such a blanket privilege would denigrate "the very concept of ordered liberty." *Africa*, 662 F.2d at 1031. Therefore, Ms. DeVore fails to establish a prima facie religious accommodation claim because she does not show that she holds a religious belief that conflicts with an employment requirement. *Tepper*, 505 F.3d at 514.

B

Ms. DeVore's claims also fail because the University shows that it cannot accommodate her beliefs 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." 42 U.S.C.S. § 2000e(j); *Virts*, 285 F.3d at 516. Title VII requires an employer to reasonably accommodate religious beliefs, not merely assess the reasonableness of an accommodation that an employee proffers. *Groff v. DeJoy*, 600 U.S. 447, 143 S. Ct. 2279, 2296, 216 L.Ed.2d 1041 (2023). Accordingly, the University must show that any accommodation of Ms. DeVore's religious beliefs would have imposed an undue hardship.[2] *See Adeyeye*, 721 F.3d at 455. The University meets this burden.

For nearly 50 years, *Hardison* guided the undue hardship inquiry. In *Hardison*, the plaintiff was hired to a department that provided spare parts needed to repair and maintain aircraft. *Hardison v. Trans World Airlines*, 375 F. Supp. 877, 889 (W.D. Mo. 1974). As part of

2. The University suggests at times that it offered Ms. DeVore a reasonable accommodation by inviting her to apply to a different position with the University that allowed remote work. [*See* R. 27 at 5.] But 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) (holding that an option of voluntary termination with the right to ask for one's old job later is not a reasonable accommodation).

his religion, the plaintiff sought to refrain from working from sunset on Fridays until sunset on Saturdays. *Trans World Airlines v. Hardison*, 432 U.S. 63, 67, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977). However, the employer had a seniority system where the most senior employees had first choice for shift assignments. *Id.* The plaintiff did not have sufficient seniority to have Saturdays off. *Id.* at 68, 97 S.Ct. 2264. The Supreme Court held that "to bear more than a de minimis cost" is an undue hardship. *Id.* at 84, 97 S.Ct. 2264. And because not enough co-workers were willing to take the plaintiff's shift voluntarily, the employer would have to compel them to do so or leave the department short-handed and adversely affect its mission. *Groff*, 143 S. Ct. at 2291 (citing *Hardison*, 432 U.S. at 68, 80, 97 S.Ct. 2264). The Court determined that these options amounted to an undue hardship. *Id.*

Since *Hardison*, lower courts generally have held that an undue hardship was anything more than a de minimis cost. *See, e.g., Creusere v. Bd. of Educ. of the Cty. Sch. Dist. of Cincinnati*, 88 Fed. App'x 813, 819 (6th Cir. 2003) ("[A]n undue burden or undue hardship is defined as more than a *de minimis* cost to the employer."). Under this standard, the Sixth Circuit has determined an undue hardship was met by: The prospect of paying overtime wages. *See id.* The hiring of an additional worker or risking the loss of production. *See Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1380 (6th Cir. 1994). And the "mere possibility of an adverse impact on coworkers." *Virts*, 285 F.3d at 520 (quoting *Weber v. Roadway Express, Inc.*, 199 F.3d 270, 274 (5th Cir. 2000)).

The lower courts' interpretation of *Hardison*, however, was inconsistent with the text of Title VII. So, the Supreme Court returned to the original public meaning of undue hardship in *Groff v. DeJoy*, 600 U.S. 447, 143 S. Ct. 2279, 216 L.Ed.2d 1041 (2023). To return to the meaning of undue hardship, the Court defined the terms. It noted that the common meaning of "hardship" was, "at a minimum, 'something hard to bear'" around the time that Congress enacted Title VII. *Id.* at 2294 (quoting Random House Dictionary of the English Language 646 (1966) (Random House)). A hardship was thus "more than a mere burden." *Id.* The modifier "undue" indicates that the requisite burden "must rise to an 'excessive' or 'unjustifiable' level." *Id.* (citing Random House 1547). On the other hand, de minimis describes something only "very small or trifling." *Id.* at 2295. (internal quotation omitted). Therefore, the Court held that showing "more than a de minimis cost" does not establish an undue hardship. *Id.* at 2294.

The court instead provided that an employer can show an undue hardship by showing that an accommodation would substantially burden the employer's overall business. *Id.* When determining whether an accommodation would impose a substantial burden, 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." *Id.* at 2295 (alterations and internal quotation omitted). But impacts on coworkers are relevant only to the extent that they affect the employer's overall business, and coworker animosity to a religious practice cannot amount to an undue hardship. *Id.* at 2296.

Finally, though the Court did not overrule *Hardison*, it limited the holding to seniority rights. *Id.* at 2292 ("Its guidance on 'undue hardship' in situations not involving seniority rights is much less clear."). The Court also advised that, "in all likelihood," no undue hardship is imposed by temporary payment of premium wages for a substitute, voluntary shift swapping, occasional shift swapping, or administrative costs involved in reworking schedules. *Id.* at 2293, 2296.

Here, the University's College of Arts and Sciences had an Office for Policy Studies on Violence Against Women. [R. 22-1 at 4.] The Office focused on graduate student support, including helping with policy research and development and working with practitioners in the state. [R. 22-2 at 5.] The Office consisted of three employees: a director, a department manager, and a part-time researcher. *Id.* at 9-10. One other person also provided part-time support on a contract basis. *Id.* Thus, Ms. DeVore and the director were the only full-time employees in the Office. *Id.*

Ms. DeVore, as the department manager, was to be the face of the Office. [R. 22-2 at 19.] The University's 2014 description for department managers stated that they manage the daily clerical and logistical tasks of their offices. [R. 24-1 at 5.] Department managers also serve as the "primary advocate" for faculty, students, and staff in navigating administrative needs. *Id.* Consequently, the description estimated daily interaction with faculty, staff, and students. *Id.* at 8. The University previously denied a request from Ms. DeVore to work from home two

days a week unrelated to her religious beliefs because a "fundamental aspect of the Department Manager job is to be present in the department to welcome students and visitors, support faculty, and answer questions as needed." [R. 22-5 at 2.] The University concluded that the position "requires a physical presence." *Id.* When Ms. DeVore left the Office, the University had a funding freeze for the program and another department manager was not hired. The Office was later eliminated. [R. 22-2 at 23-24.]

Because Ms. DeVore was the only administrative employee, the University could not accommodate her by shift-swapping or reworking schedules. *See Groff*, 143 S. Ct. at 2296. Ms. DeVore offered two ideas for accommodations: allowing her to work remotely full-time or hiring another employee. [R. 31 at 5-9.] The Court finds that these would cause the University an undue hardship.

The University previously estimated that department managers interact with faculty, staff, and students daily. [R. 24-1 at 8.] For this reason, a fundamental aspect of the job was to be physically present in the Office. [*See* R. 22-5.] So, allowing Ms. DeVore to work remotely would remove the Office's campus presence. These concerns even came to fruition. The Office's director later testified that the Office was hampered by not having a personal presence when Ms. DeVore left. [*See* R. 22-2 at 20.] Moreover, 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. *See Groff*, 143 S. Ct. at 2294.

In addition, paying a part-time employee would create an undue hardship. Ms. DeVore offers an estimate of $5,000 for this accommodation, based on hiring an employee at a pay of ten dollars per hour for four hours a week and for nineteen weeks. [R. 31 at 8.] Each of these inputs is curious. Even given Ms. DeVore's salary estimate, four hours a week would not replace her forty-hour per week presence. And though the University changed its policy after nineteen weeks, University officials at the time would have been hiring an extra employee for an indefinite period. Rather than a mere temporary payment of premium wages for a substitute, Ms. DeVore's second option would mean an indefinite payment of an entire salary for duplicative work. *See Groff*, 143 S. Ct. at 2293. Any reasonable jury would find that this too amounts to a substantial burden.

III

Ms. DeVore fails to establish a prima facie case because she does not show that she held a sincere religious belief that conflicted with an employment requirement. Yet even if she could, the University established that accommodating her beliefs would cause it an undue hardship. Accordingly, and the Court being sufficiently advised, it is hereby **ORDERED** as follows:

1. Plaintiff Laurie Ann DeVore's Motion for Partial Summary Judgment [**R. 19**] is **DENIED**;

2. Defendant University of Kentucky Board of Trustees's Motion for Summary Judgment [**R. 22**] is **GRANTED**; and

3. An appropriate judgment will be entered herewith.

This the 18th day of September, 2023.

/s/ Gregory F. Van Tatenhove

Gregory F. Van Tatenhove
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY, CENTRAL DIVISION, LEXINGTON, FILED JUNE 30, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

Case No. 5:22-cv-00186-GFVT-EBA

LAURIE ANN DeVORE,

Plaintiff,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Defendant.

Filed June 30, 2023

ORDER

*** *** *** ***

This matter is before the Court on the Court's own motion. Plaintiff Laurie DeVore brings this action against the University of Kentucky for failure to accommodate sincerely held religious beliefs. [R. 1 at 5.] She alleges

that she proposed a reasonable accommodation that UK rejected. *Id.* Both parties have filed a motion for summary judgment, in part arguing that Ms. DeVore's proposed accommodation would—or would not—have caused UK undue hardship. [R. 19-1 at 10; R. 22 at 21.] Both parties represent that an accommodation imposes an undue hardship if it requires the employer to bear more than a *de minimis* cost. [R. 19-1 at 11; R. 22 at 21.]

Yesterday, the Supreme Court decided *Groff v. DeJoy.* 600 U.S. — (2023). In *Groff*, the Supreme Court abandoned the *de minimis* standard and held that "showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII." *Id.* at 15. Instead, the Court ruled that undue hardship is shown "when a burden is substantial in the overall context of an employer's business." *Id.* at 15-16. Because *Groff* may have changed the context of Ms. DeVore's Title VII claim, the Court will allow limited supplemental briefing on any changes in the parties' arguments. Accordingly, and the Court being sufficiently advised, each party **shall have** up to and including **14 days** from the date of this Order to file supplemental briefing if they wish on the effect of Groff on this case. The supplemental briefing may be no longer than **15 pages** each.

This the 30th day of June, 2023.

/s/ Gregory F. Van Tatenhove
Gregory F. Van Tatenhove
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED NOVEMBER 25, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-5890

LAURIE ANN DEVORE,

Plaintiff-Appellant,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Defendant-Appellee.

November 25, 2024, Filed

BEFORE: WHITE, STRANCH, and DAVIS, Circuit Judges.

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX E — PLAINTIFF'S MOTION TO REVIEW DECISION EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, DATED OCTOBER 24, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CASE NO. 23-5890

LAURIE ANN DeVORE,

Plaintiff by Pro se,

v.

UNIVERSITY OF KENTUCKY
BOARD OF TRUSTEES,

Defendant.

Dated October 24, 2024

PLAINTIFF'S MOTION TO REVIEW DECISION EN BANC

I, Laurie Ann DeVore Pro Se, come before this Honorable Court to petition a reversal in the Opinion and Order decided and filed by this court on October 11, 2024. This case involves a matter of exceptional significance; therefore, I respectfully request that this court grant rehearing En Banc, vacate the summary judgement and remand this case back to the district court for jury trial.

Appendix E

I humbly come before this Honorable Court to plead that this En Banc motion be read in its entirety. Laurie Ann DeVore Pro Se

I. INTRODUCTION

We were all endowed by our Creator with certain inalienable rights. One of those rights is the right to religious freedom and protecting that freedom is a matter of exceptional significance. It was central to our Founders' vision for this nation, and it is essential it be preserved even in attempts to protect the public health during a global pandemic:

1) **[Congressional Record Volume 158, Number 22 (Thursday, February 9, 2012)]**

[Senate]

[Page S485]

From the Congressional Record Online through the Government Publishing Office [www.gpo.gov]

RELIGIOUS LIBERTY

Mr. McCONNELL. Mr. President, our country is unique in the world because it was established on the basis of an idea, an idea that we were all endowed by our Creator with certain unalienable rights—in other words, rights that were conferred not by a king or a President or a Congress, but by the Creator himself. The State protects these rights

but it does not grant them. What the State does not grant the State cannot take away.

2) **Protecting the Religious Freedom of All: Federal Laws Against Religious Discrimination GOVPUB-J-PURL-LPS74233** Religious liberty was central to the Founders' vision for America, and is the "first freedom" listed in the First Amendment of the Bill of Rights. A critical component of religious liberty is the right of people of all faiths to participate fully in the benefits and privileges of society without facing discrimination based on their religion.

3) **Memorandum on Religious Exercise and Religious Expression in the Federal Workplace August 14, 1997 / Administration of William J. Clinton, 1997 Memorandum for the Heads of Executive Departments and Agencies Subject: Religious Exercise and Religious Expression in the Federal Workplace**

Religious freedom is central to the American system of liberty. Our Nation's founders erected the twin pillars of this freedom, guaranteeing the free exercise of religion and prohibiting the establishment of religion by the state, in the very First Amendment to the Constitution. Throughout our history, men and women have come to this Nation to escape religious persecution and secure this precious freedom. They and others have built a Nation in which religious practices and religious institutions have thrived exactly because each individual has been able to choose for himself or herself whether and, if so, how to worship.

4) **https://www.govinfo.gov/content/pkg/CREC-2015-12-10/html/CREC-2015-12-10-pt1-PgS8586.htm**

[Congressional Record Volume 161, Number 179 (Thursday, December 10, 2015)]

[Senate]

[Pages S8586-S8588]

From the Congressional Record Online through the Government Publishing Office [www.gpo.gov]

We must decide whether we still believe what our Nation, our people, and our leaders have said and done. James Madison wrote that religious freedom is an inalienable right that takes precedence over the claims of civil society.

Thomas Jefferson said that religious freedom is "the most inalienable and sacred of all human rights.' Franklin Roosevelt said that religious freedom is fundamental and essential human freedom.

5) **Global Response to the Coronavirus: Impact on Religious Practice and Religious Freedom**

U.S. Commission on International Religious Freedom. 2020.

It is important for governments to account for religious freedom concerns in their responses to COVID-19, for reasons of both legality and policy effectiveness. From a

legal perspective, international law requires governments to preserve individual human rights, including religious freedom, when taking measures to protect public health even in times of crisis.

6) ***In Crowley v. Christensen,*** **137 U.S. 86, 89, 11 S.Ct. 13, 34 L.Ed. 620 (1890)** it is stated, The orders at issue do not simply restrict religious expression; they restrict religious expression in an attempt to protect the public health during a global pandemic. As a result, the Court is tasked with identifying precedent in unprecedented times.

In re Abbott, 954 F.3d 772, 784–85 (5th Cir. 2020) (internal citations omitted); see also Adams & Boyle, P.C. v. Slatery, 956 F.3d 913 (6th Cir. 2020) (applying the foregoing factors to the Governor of Tennessee's directive to "postpone surgical and invasive procedures that are elective and non-urgent" including abortions). The Jacobson test gives states considerable leeway in enacting measures during public health emergencies. However, "even under Jacobson, constitutional rights still exist." On Fire Christian Ctr., 453 F.Supp.3d at 912-13. And while courts should refrain from second-guessing the efficacy of a state's chosen protective measures, "an acknowledged power of a local community to protect itself against an epidemic ...might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere[.]" Jacobson, 197 U.S. at 28, 25 S.Ct. 358.

Federal Register/Vol. 86, No. 212/Friday, November 5, 2021/Rules and Regulations (61402-61555)

Appendix E

II. SUMMARY

The Appeals Court Opinion stated that I "began clashing with the school over return-to-campus policies it implemented in the wake of the COVID-19 pandemic." My request, and that of many of the other Department Managers, for a hybrid schedule was the result of the Dean's office communicating the possibility of switching to such a schedule in light of the fact that productivity levels had been maintained during the time that stay-at-home policies had been implemented. Justification had been requested from each manager that would permit working remotely up to 2 days per week. Because this offer was subsequently retracted, the department managers, myself included, returned to campus full time. The issue of a hybrid work arrangement was in no way connected to my later requests in seeking a religious exemption and accommodation regarding the testing protocol.

Once mandatory testing was implemented, I sought to relieve the burden this created due to my religious beliefs by requesting an exemption. The validity of my religious beliefs was never questioned. Had they been, I would have provided the following that would corroborate that my religious beliefs cannot be reduced to merely "an isolated moral teaching."

The earth is the Lord's and all it contains, the world and all those who dwell in it. (Psalm 24:1)

All things came into being by Him, and apart from Him nothing came into being that has come into being. (John 1:3)

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And now Israel, what does the Lord your God require from you but to fear the Lord your God, to walk in His ways and love Him, and to serve the Lord your God with all your heart and with all your soul, and to keep the Lord's commandments and His statutes which I am commanding you today for your good? Behold, to the Lord your God belong heaven and the highest heavens, the earth and all that is in it. (Deuteronomy 10:12)

Righteousness and justice are the foundation of Thy throne; lovingkindness and truth go before Thee. (Psalm 89:14)

...but let him who boasts boast of this, that he understands and knows Me, that I am the Lord who exercises lovingkindness, justice, and righteousness on earth; for I delight in these things declares the Lord. (Jeremiah 9:24)

...God is light and in Him there is no darkness at all. If we say that we have fellowship with Him yet walk in darkness, we lie and do not practice the truth... (1 John 1:5-6)

You, however, continue in the things you have learned and become convinced of, knowing from whom you have learned them; and that from childhood you have known the sacred writings which are able to give you wisdom that leads to salvation through faith which is in Christ Jesus. All scripture is inspired by God and profitable for teaching, for reproof, for correction, for training in righteousness; that the man of God may be adequate, equipped for every good work. (2 Timothy 3:14-17)

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...that He might make you understand that man does not live by bread alone, but man lives by everything that proceeds out of the mouth of the Lord. (Deuteronomy 8:3b)

The conclusion, when all has been heard is: fear God and keep His commandments, that is the whole duty of man. For God will bring every act to judgement...(Ecclesiastes 12:13-14)

He has told you O man what is good; and what does the Lord require of you but to do justice, to love kindness, and to walk humbly with your God? (Micah 6:8)

...the one who says he abides in Him ought himself to walk in the same manner as He walked. (1 John 2:6)

...so that you may walk in a manner worthy of the Lord, to please Him in all respects, bearing fruit in every good work and increasing in the knowledge of God. (Colossians 1:10)

And we proclaim Him, admonishing every man and teaching every man with all wisdom, that we may present every man complete in Christ. (Colossians 1:28)

Whoever is wise, let him understand these things; whoever is discerning, let him know them. For the ways or the Lord are right and the righteous will walk in them... (Hosea 14:9)

...anyone who does not practice righteousness is not of God... (1 John 3:10b)

Appendix E

And the one who keeps His commandments abides in Him, and He in him. And we know by this that He abides in us, by the Spirit whom He has given us. (1 John 3:24)

If we live by the Spirit, let us also walk by the Spirit. (Galatians 5:25)

Clean out the old leaven, that you may be a new lump, just as you are in fact unleavened. For Christ our Passover has also been sacrificed. Let us therefore celebrate the feast, not with the leaven of malice and wickedness but with the unleavened bread of sincerity and truth. (1 Corinthians 5:7-8)

And do not be conformed to this world, but be transformed by the renewing of your mind, that you may prove what the will of God is, that which is good and acceptable and perfect... but to think as to have sound judgement, as God has allotted to each a measure of faith. (Romans:12:2-3)

Anyone who goes too far and does not abide in the teaching of Christ, does not have God: the one who abides in the teaching, he has both the Father and the Son. If anyone comes to you and does not bring this teaching, do not receive him into your house, and do not give him a greeting; for the one who gives him a greeting participates in his evil deeds. (2 John: 9-11)

But the goal of our instruction is love from a pure heart and good conscience and a sincere faith. (1 Timothy 1:5)

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And now little children, abide in Him, so that when He appears, we may have confidence and not shrink away from Him in shame at His coming. (1 John 2:28)

...just as He chose us in Him before the foundation of the world that we should be holy and blameless before Him. (Ephesians 1:4)

so that He may establish your hearts unblameable in holiness before our God and Father at the coming of our Lord Jesus with all His saints. (1 Thessalonians 3:13)

Finally then, brethren we request and exhort you in the Lord Jesus, that, as you received from us instruction as to how you ought to walk and please God (just as you actually do walk), that you may excel still more. (1 Thessalonians 4:1)

...but that you may do what is right...(2 Corinthians 13:7)

If then you have been raised up with Christ, keep seeking the things above, where Christ is, seated at the right hand of God. Set your mind on the things above, not on the things that are on earth. For you have died and your life is hidden with Christ in God. (Colossians 3:1-3)

Beloved, I pray that in all respects you may prosper and be in good health, just as your soul prospers. For I was very glad when brethren came and bore witness to your truth, that is how you are walking in truth. I have no greater joy than this, to hear of my children walking in the truth. (3 John 2-4)

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And who is there to harm you if you prove zealous for what is good? But even if you should suffer for the sake of righteousness you are blessed. And do not fear their intimidation and do not be troubled, but sanctify Christ as Lord in your hearts, always being ready to make a defense to everyone who asks you to give an account for the hope that is in you, yet with gentleness and reverence; and to keep a good conscience so that in the thing in which you are slandered, those who revile your good behavior in Christ may be put to shame. For it is better, if God should will it so, that you suffer for doing what is right rather than for doing what is wrong. (1 Peter 3:13-17)

But prove yourselves doers of the word, and not merely hearers who delude themselves. (James 1:22)

So then, my beloved, just as you have always obeyed, not as in my presence only, but now much more in my absence, work out your salvation with fear and trembling. (Philippians 2:12)

...however, let us keep living by that same standard to which we have attained. For our citizenship is in heaven... (Philippians 3:16, 20)

Finally brethren, whatever is true, whatever is honorable, whatever is right, whatever is pure, whatever is lovely, whatever is of good repute, if there is any excellence and if anything worthy of praise, let your mind dwell on these things. The things you have learned and received and heard and seen in me, practice these things; and the God of peace shall be with you. (Philippians 4:8-9)

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But examine everything; hold fast to that which is good; abstain from every form of evil. Now may the God of peace Himself sanctify you entirely, and may your spirit and soul and body be preserved complete, without blame at the coming of our Lord Jesus Christ. (1 Thessalonians 5:21-23)

And this I pray, that your love may abound still more and more in real knowledge and all discernment, so that you may approve the things that are excellent in order to be sincere and blameless until the day of Christ; having been filled with the fruit of righteousness which comes through Jesus Christ, to the glory and praise of God. (Philippians 1:9-11)

He who is faithful in a very little thing is faithful also in much; and he who is unrighteous in a very little thing is unrighteous also in much. (Luke 16:10)

His master said to him, Well done, good and faithful servant; you were faithful over a few things, I will put you in charge of many things, enter into the joy of your master. (Matthew 25:21)

Daniel was loyal to the ruler and the laws of the land. When a decree was handed down that conflicted with his walk with God, he had to choose whether he would follow that decree or remain faithful to God and His word. He chose to follow God even though it brought about grave consequences. (Book of Daniel)

Knowledge of who God is and how He would have me live do not come from man's "religions". They come from

His Word; a word He had written down and preserved throughout time because it is by His Word all mankind will be judged. My walk with God is, and should be, very personal and no one is able to judge a man's mind and heart except our Creator and perfect judge. The only way to see what is in a man's heart and mind is to examine the fruits produced.

The verses cited above give a very brief outline describing how I am to walk with God. That walk is a way of life based on justice, righteousness and truth. It is doing what is right to give honor to my creator and to His holy name. Upon repentance followed by baptism into the death of the Messiah, I became part of God's family (it is not baptism into a church). With this, and the laying on of hands, the Holy Spirit was given to me to teach me how to develop the mind of the Messiah in order to love God and serve Him. To be able to discern right from wrong and to convict me to choose to do what is right. I trust Him and I trust His Word.

The conviction within me to refuse the University of Kentucky's (UK) mandate stating I would need to be tested weekly until I received the COVID -19 vaccine was overwhelming. I could not be a participant in the wrongdoing that was being perpetrated because, if I did that knowingly, God would hold me accountable.

The UK position regarding testing was that unvaccinated employees would have to test only if they were working on campus. There was a way to be able to conform to the UK position without having to disregard my sincerely

held religious beliefs; a way that would not obligate me to choose between the two. In good faith I attempted to avail myself of the proper mechanisms, but there was no relief due to deceit, and the lack of transparency and good faith on the part of UK. Despite my 22 years of faithful service, and following established procedures, my petitions were denied. The determination given to me was not based upon the discovery and declaration that my beliefs were insincere. That assertion could not have been made because no one at UK involved in the process ever questioned me as to what my religious convictions were. UK refused to properly seek out the facts of the matter when inaccuracies and untruths were brought to their attention. The failure to perform their due diligence during the accommodation process resulted in justice not being served.

Why I could not choose to go along with the weekly testing and be true to my religious convictions that require me to uphold what is right, just, and true and abstain from participating in wrongdoing:

1) It is not a vaccine; it is gene therapy.

2) Both the vaccines and the testing mechanisms were part of an experiment and given emergency use authorization which require informed consent.

3) The CDC stated on their website on Jan 21, 2021 in an article entitled, "Workplace SARS-CoV2 Testing: Consent Elements and Disclosures" stated, "Workplace testing should not be conducted without the employee's

informed consent. Informed consent requires disclosure, understanding, and free choice, and is necessary for an employee to act independently and make choices according to their values, goals, and preferences...Explain any parts of the testing program an employee would consider especially important when deciding whether to participate...Encourage supervisors and co-workers to avoid pressuring employees to participate in testing." The CDC, in their Interim Guidance for SARS-CoV2 Testing In Non-Healthcare Workplaces Summary of Recent Changes dated October 6, 2021 it is stated that "... employers who demand testing for SARS-CoV2 infection should discuss further with employees who decline testing and consider providing alternatives as feasible and appropriate, such as reassignment to tasks that can be performed via telework. Notice that it doesn't suggest alternative means of testing but rather remote work to avoid testing altogether.

4) OSHA re weekly testing – "...However, if testing for COVID-19 conflicts with a worker's sincerely held religious belief, practice or observance, the worker may be entitled to a reasonable accommodation." (https://www.osha.gov/coronavirus/ets2/faqs)

5) UK is a renowned research institution that has always upheld rigorous standards regarding human subjects research/experiments and the right to truly informed consent, the right to choose or refuse to participate in an experiment, and the right not to be punished up to, and including, loss of livelihood for refusing. These values and ethical principles should remain inviolable and withstand

the test of time and circumstance. How then can my attempts to express these same values and principles, the same principles that are reinforced within my religious beliefs, be considered misconduct? The University's actions show they did not withstand the test.

6) An active link to request exemption from testing was available but not honored.

7) Many of my questions were left unanswered even after multiple attempts.

8) Vaccination had begun on Jan 19, 2021; Those vaccinated on that date were considered by the CDC to be fully vaccinated after the 2nd dose which would have been Mar 2, 2021; CDC/FDA acknowledged: 1. Vaccines may not protect all recipients; 2. Those vaccinated may become infected; 3. Those vaccinated have the potential to spread the virus to others; 3. Data showed some decline in the effectiveness of the vaccines overtime; 4. Recommended boosters at least 6 months after completing primary series; 6. Incidence of COVID- 19 was higher among those who completed the series earlier compared to those who had completed it later.

9) The CDC/FDA were cited when it benefited UK's narrative. Dr. Capilouto stated, "...as we continue to navigate in response to emerging data and evidence related to the pandemic." (Dr. Capilouto's email to the campus community, Aug 26, 2021) but that did not hold true regarding boosters and the then known fact that those vaccinated had the potential to spread the virus.

Appendix E

If UK's true compelling interest had been to protect the community, they would have either required that those vaccinated receive boosters by Sept 2, 2021, or mandated they be tested weekly. This did not happen.

10) And yet, regarding vaccination UK stated, "We are optimistic that our community will comply with this measure because it is the right thing to do. You care about the health, safety and well-being of your community." They played on the emotions of the community and used guilt as leverage; even if you do not agree, it is the right thing to do, you are expected to comply. (Dr. Capilouto's email to the campus community, Aug 26, 2021)

11) Dr. Capilouto's response to my request for answers to my questions/concerns was to say, "...We are doing our best to keep our community safe and will appreciate your understanding and cooperation." He never tried to understand my position by asking me questions.

12) Sept 7, 2021 Mandatory testing required until vaccinated: Dr. Capilouto stated, "The best way to ensure...is to vaccinate as many people as possible...As a result, we plan to test you until you take this important health measure..." (Dr. Capilouto's email to the campus community, Aug 26, 2021)

13) All forms of testing were unacceptable in that they were medical procedures being administered without the ability to choose whether or not to participate. It was not a question of being allowed to test but rather being forced to test.

Appendix E

14) Initial disciplinary measures for non-compliance did not mention termination for regular faculty and staff. Level 4, supposedly the last, stated: "After four testing periods of non-compliance (or beyond), employees will be placed on unpaid administrative leave until fully vaccinated or until they test consecutively over a four- week period". It wasn't until Nov 12th that I was informed the fourth period of non-compliance may result in termination.

15) The Director of the UK Office of Institutional Equity and Equal Opportunity (EEO) was informed of my request seeking help. The Equity and Equal Opportunity Manual states an employee need not spell out that an accommodation is needed, the office of EEO should realize, by the nature of the issue, that one is needed. The Director of this office at UK did not acknowledge that, even though the ADA Coordinator and Technical Compliance Officer did when I had mistakenly contacted her instead of the Director. The ADA Coordinator stated she only addressed accommodations regarding disabilities, not religious accommodations.

16) The EEO Manual clearly states an accommodation is appropriate to relieve the burden of choosing between a person's job and their religious convictions. The Director of UK EEO was not diligent with her duties.

17) Per the UK Retirement office, Health Corp was in charge of the stages of non-compliance and questions related to Administrative Leave, not UK Human Resources.

Appendix E

18) There were contradictions of facts between my supervisor, the UK EEO Director, and myself that were not investigated: False claims that our Office had a student/faculty base when it did not; My Office director was not teaching classes for other departments nor were we having in person fundraising events due to her health issues therefore no one was coming to the office.

19) Accommodations were given for medical reasons: at least 2 instances I have first-hand knowledge of - my supervisor and the UK Director of Unemployment. Were any given for religious reasons?

20) Wrong information was given to me by the UK Retirement office that could have been detrimental to me if followed.

21) I submitted several questions to UK Employee Relations. The answers conflicted with what UK Retirement had stated. UK Employee Relations gave incorrect info and, upon my request for a written copy of the COVID-19 testing policy, twice informed me, "There is no additional information to share at this time," even though 24 people had already been placed on Adminstrative Leave.

22) It cannot be said that this was new territory to use as an excuse to explain how UK handled the whole procedure. They had access to personnel from academics, business, as well as medical, to navigate through this. Their Post-Pandemic Recommendations for Staff- Return-to-Campus stated: greater authenticity; retain the best; take care of our people; staff who directly support faculty/student-facing positions [which was not my case] will be required

to work in person;we will utilize FY22 as a transition year, no long-term commitments on work location should be made until after FY22; work location and flexible work options are determined by the responsibilities of the position [not the title] and also, the university communicated that all decisions about remote or hybrid work would be considered based on the responsibilities of the position [which should have been evaluated on a case-by-case basis] and not preferences, except for ADA accommodations. If medical accommodations were given, and faculty and students were allowed to teach and take classes remotely, why were religious accommodations not granted; secular and religious conduct were treated in unequal ways.

Is it to be assumed there is no need to justify aburden if it is due to a policy that is qualified by saying it is a neutral regulation of general applicability? Many would say yes and point to the Employment Division v. Smith case. That standard, however, was rejected by Congress and later by 33 states, including Kentucky (KRFRA), when they all enacted their own version of the Religious Freedom Restoration Act. A person's freedom of religion shall not be substantially burdened unless it can be shown there is a compelling interest ***and*** the least restrictive means were used to further that interest. If not, strict scrutiny would be required. A law or policy may be found non-discriminatory if it does not intentionally target a religious belief but on the other hand, it would be discriminatory if it treats religious and secular conduct in unequal ways and other alternatives are available. The burden placed on my religious beliefs was not necessary to serve the

compelling interest. There was another way, a less burdensome way, to achieve the same goal. KRS 4446.350 also states a "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities.

23) In contrast: The City of Hampton, Virginia is a case in point regarding the formulation and implementation of a COVID-19 testing policy. The written policy was available, clear, and precise. It also unequivocally stated, *"all employees were asked to fill out the COVID-19 Certification of Testing Status form. Unless an employee is fully vaccinated or has applied and been approved for a medical* ***or religious*** *exemption, an employee must participate in weekly COVID-19 testing. Please note: This is a mandatory testing program; the City is not requiring vaccinations at this time.* (https://hampton.gov/DocumentCenter/View/33695/Covid-19-mandatory-testing-FAQs-PDF). "The Human Resources Department will engage in [an] interactive process to determine if a reasonable accommodation can be provided. Accommodations are normally approved so long as it or they do not create an undue hardship for the City of Hampton and/or does not pose a direct threat to the health or safety of others in the workplace and/or to the employee...Human Resources will review the request and accompanying documentation, **seek additional clarification if needed**, and engage in an interactive process with the employee to identify possible accommodations... ."

24) There were at least 24 other UK employees who had been put on Administrative Leave for refusing to be tested

weekly. One hundred forty-six students had not complied and Jay Blanton stated 90% of those students "are in large measure, not coming to campus." (Associated Press Nov 13, 2021) that means some are, so no equity.

25) UK Changes to COVID-19 Testing dated Apr 3, 2022, stated testing was no longer required. Dr. Capilouto also stated more than 90% of campus had been vaccinated. That means almost 10% were not. How many were terminated for non-compliance? How many were given an accommodation? What were the reasons for any accommodations given?

26) Arts and Sciences business office refused to even answer my 3 emails requesting help because I had been receiving conflicting information.

27) My Administrative Leave was from Dec 4, 2021 to Jan 3, 2022. I had to contact UK on Jan 4 because I had not received further instruction.

28) UK coronavirus re requesting remote or hybrid work: "We encourage employees who are advised against getting vaccinated for medical reasons **or choose not to get vaccinated for religious reasons to contact UK's Office of Institutional Equity and Equal Opportunity about potential accommodations, which may include the ability to work remotely.**" (printed from UK web 2/22/22)

Nothing throughout the whole process served to change my mind about not participating. On the contrary,

as more and more was revealed, the stronger my convictions became. I believed it then and I believe it now. I was obligated by my religious convictions to refuse to be complicit because if I had participated in what was mandated, I would have become victim and supporter of what was false. The fact that some may not agree with my beliefs, nor that they are indeed religious beliefs, does not invalidate them to me nor in the eyes of God (Please refer to the scriptures provided above).

What did all this very painful process benefit me? What did I gain? I gained the loss of my career and livelihood; I gained the loss of the UK 10% contribution of my salary for my retirement fund; I gained an increase in my healthcare costs; I gained not being able to contribute tithes at the level I had been giving; I gained having less funds to be able to save to go to God's commanded pilgrim appointed times; I gained not being able to do for my children and grandchildren in the manner I had been accustomed to; I gained strife and tension within my family; I gained suffering physically by lack of sleep, not eating, and headaches which made me more susceptible to mental anguish and emotional strain. But more than this, and most importantly, I gained a strengthening of faith that all things work together for good for those who love and serve our Heavenly Father; I gained security in my knowledge that He will never leave me nor forsake me; I gained an increase in my conviction that God is working out His plan for me in this life-long process of molding and shaping my character, but that I also have a part to play by continually searching out what is true in order to recognize what is false; I gained because in

spite of my doubts and fears, His perfect love was able to cast them out; I gained His peace in the knowledge that, for this moment in time, by His Spirit, I was able to resist the temptation to go against how He would have me be by not participating in what I knew to be wrong; I gained more of His Spirit working in me to lead me and guide me, knowing He who started a work in me is faithful to complete it so that one day I may stand before Him unashamed and hear Him say, "Well done, good and faithful servant."

III. CONCLUSION

Working at UK for 22 years I had established a record of being a person who lived a life intricately tied to my religious convictions. This was a known fact that can be corroborated by co-workers, supervisors, and years of requested time off for holy day observances, Sabbath keeping, etc.

Knowledge of who God is and how He would have me live do not come from man's "religions." They come from His Word; a word He had written down and preserved throughout time because it is by His Word all mankind will be judged. My walk with God is, and should be, very personal and no one is able to judge a man's mind and heart except our Creator and perfect judge. The only way to see what is in a man's heart and mind is to examine the fruits produced.

The University of Kentucky implemented a testing mandate that utilized methods covered under emergency

use authorization. They were experimental in nature which requires informed consent. The CDC warned against pressuring employees to participate in testing. Both the CDC and OSHA had *written statements that said* ***informed consent*** *was needed to administer the test and that both medical and* ***religious exemptions*** *could warrant accommodations.* The CDC, in their Interim Guidance for SARS-CoV2 Testing In Non-Healthcare Workplaces Summary of Recent Changes dated October 6, 2021, stated that "...employers who demand testing for SARS-CoV2 infection should discuss further with employees who decline testing and consider providing alternatives as feasible and appropriate, such as reassignment to tasks that can be performed via telework. Notice that it doesn't suggest alternative means of testing but rather remote work which wouldn't require testing at all. Dr. Capilouto said that he was following the guidance of the CDC. He was not.

According to UK, suggesting that I apply for another position that would allow me to work remote, was an option available to me. This is an erroneous application of the reasonable accommodation guidelines found in the EEOC manual which directs the employer to first try to accommodate the employee in his current position and if not possible, then consider transferring him/her to a lateral position.

Based on my religious beliefs I refused all testing. In good faith I went through all the proper channels to be able to obtain an accommodation so I wouldn't have to make a choice that would be wrong in the eyes of God as

established in the scriptures presented in the summary section of this document.

UK made an obvious shift in their focus pivoting from undue hardship to questioning sincere religious beliefs. When I asked for a reasonable accommodation they falsely claimed that they couldn't provide one because it would be too much of an imposition on the University. They are now trying to say that the real reason they denied it is because I was **untruthful about my religious beliefs.**

I, Laurie Ann DeVore Pro Se, come before this Honorable Court to petition a reversal in the Opinion and Order decided and filed by this court. This case involves a matter of exceptional significance; therefore, I respectfully request that this court grant rehearing En Banc, vacate the summary judgement and ultimately, remand this case back to the district court for jury trial.

Respectfully Submitted,

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