

No. _____

In the
Supreme Court of the United States

JACQUELINE COLSON,
Petitioner,

v.

HENNEPIN COUNTY, MINNESOTA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

An employer granted an employee an exemption from the COVID vaccine because of her sincerely held religious beliefs but denied the same employee an exemption from weekly testing based on the same expressed beliefs. Failure to comply with the employer's testing mandate could result in discipline, including termination. The question presented is:

Whether an employer's threat of discipline or termination for failing to do weekly testing for COVID, and forcing an employee to choose between following her religious beliefs or losing her job, is considered an adverse employment action sufficient to state a claim under Title VII's failure to accommodate provisions.

PARTIES TO THE PROCEEDINGS

The Petitioner is Jacqueline Colson. She is an individual formerly employed by the Respondent Hennepin County.

The Respondent, Hennepin County, is a governmental entity of the State of Minnesota.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Jacqueline Colson is an individual. Therefore, she is not an entity and has no affiliation with any corporate entity of any kind.

STATEMENT OF RELATED PROCEEDINGS

Colson v. Hennepin Cnty., No. 25-1095 (8th Cir. Mar. 11, 2026), affirming judgment.

Colson v. Hennepin Cnty., No. 22-CV-2041 (D. Minn. Dec. 12, 2023), granting motion to dismiss for failing to establish a *prima facie* case against Hennepin County for failure to accommodate under Title VII provisions for religious accommodations.

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PETITION FOR WRIT OF CERTIORARI**OPINIONS BELOW**

The U.S. Court of Appeals for the Eighth Circuit opinion is reported at *Colson v. Hennepin Cnty.*, 169 F.4th 773 (8th Cir. 2026) and is included as APPENDIX A, at 1a-10a.

The U.S. District Court for the District of Minnesota Order is reported at *Colson v. Hennepin Cnty.*, No. 22-CV-2041 (WMW/LIB), 2023 WL 8603125, (D. Minn. Dec. 12, 2023) and is included as APPENDIX E, at 15a-23a.

JURISDICTION

The U.S. Court of Appeals for the Eighth Circuit issued its opinion and judgment on March 11, 2026. The Petition is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

It is “an unlawful employment practice for an employer . . . 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 individual’s . . . religion.” Title VII, 42 U.S.C. § 2000e-2(a)(1).

INTRODUCTION

This case presents an ideal vehicle to resolve a Title VII issue relating to threats of employers of discipline or termination against employees as an adverse employment action or change in the condition of employment when the employee must submit to a weekly testing mandate for COVID in which she must choose employment over her sincerely held religious beliefs. Indeed, had the employee been disciplined or terminated choosing her religion over her job, being disciplined or terminated would have been a “disadvantageous change in an employment term or condition.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 354 (2024) (citation omitted). Having previously been granted an exemption by the employer from COVID vaccines based upon the same religious beliefs the employer denied the employee’s exemption request from testing.

The injury as expressed in her federal complaint, at least at the motion to dismiss stage, reveals “some harm” as she saw the testing as “extractions from her body” violating her religious beliefs that her body is a “Temple of God.” See *Muldrow*, 601 U.S. at 354–56. When employer threats dissuade an employee from engaging in a protected activity, here, exercising her religious beliefs, then the threat should be considered as a change in the condition of employment violating Title VII.

Courts have found that with formal reprimands or admonitions without some additional disciplinary action, such as a change in salary or

benefits, a reprimand does not constitute an adverse employment action. *See Holmes v. Washington Metro. Area Transit Auth.*, 723 F. Supp. 3d 1, 17 (D.D.C. 2024); *Rupard v. Mayorkas*, No. 22-cv-1806, 2023 WL 5650083, at *5 (D.D.C. Aug. 31, 2023) (“Run-of the mill letters of reprimand are generally not adverse employment actions,’ at least when they are not ‘abusive and do not lead to disciplinary action.’” (citation omitted)); *Mitchell v. Planned Parenthood of Greater New York, Inc.*, No. 23-cv-01932, 2024 WL 3849192, at *10 (S.D.N.Y. Aug. 16, 2024) (“[A] ‘mere admonition by a supervisor without any formal consequences is not an adverse employment action because it does not represent any disadvantageous change in the terms or conditions of employment.”). However, at the motion to dismiss stage, a question arises as to how much a complainant must plead to demonstrate that the employer’s threat is the conditional catalyst to essentially abandon her religious beliefs to remain employed under threat of discipline or termination. The employer’s threat under the mandate for weekly COVID testing is an order to violate the employee’s religious beliefs, as a protected activity, constitutes an adverse action.

Hence, when a protected activity of an employee is involved, an employer’s threat of discipline or termination for the employee to exercise that protected activity, should be sufficient to constitute a claim under a Title VII action.

STATEMENT OF THE CASE

I. Petitioner received an exemption from COVID vaccine but is denied an exemption from weekly testing and alleges violation of religious beliefs relating to extractions from her body as a “Temple of God.”

1. The Petitioner Jacqueline Colson sued her employer Hennepin County for failure to accommodate her sincerely held religious beliefs to the County’s COVID-19 weekly testing policy. 2a. During the COVID epidemic, Hennepin County issued a mandate requiring all employees to take the COVID vaccine and provided a process to request a medical or religious exemption. 16a. If the exemption for the vaccine was granted, the County mandated that the employee be tested weekly for COVID. *Id.* The County’s vaccine mandate stated that if an employee failed to comply with the weekly testing, she would be subject to discipline, up to and including termination. *Id.*

The County granted Ms. Colson’s exemption from the policy’s vaccine mandate based upon her expressed religious beliefs. *Id.* However, Hennepin County denied Ms. Colson’s requested exemption from weekly testing based upon the same expressed religious beliefs as her previously granted vaccine exemption request. While Ms. Colson was exempted from weekly testing from nasal swab testing, she nevertheless was subjected to saliva testing. 3a.

In her complaint, Ms. Colson alleged that as a Christian she believes that “each person has the God

given right to choose what he or she will put into their body, or take out of her body, based on free will.” *Id.* She alleged that complying with the vaccine option would also violate her religious beliefs because “available vaccines were produced with, or tested with cells from aborted babies.” *Id.* Ms. Colson also alleged that she believes “in the sanctity of human life” and that “she must treat her body as Temple of the Holy Spirit.” *Id.* Related to saliva testing, the “involuntary weekly testing also violate[d] [Colson’s] religious beliefs, because it involve[d] an involuntary intrusion into her body and extractions from her body, a Temple of God.” Compl. ¶25, Appellate Jt. App. at 15.

II. The district court found Colson did not allege any disciplinary action for failing to comply with weekly testing and dismisses her Title VII claim.

2. The district court granted the County’s motion to dismiss. 15a-23a. The court expressed the stated test for dismissing Ms. Colson’s Title VII, as her obligation to establish a *prima facie* showing that she “(1) have a bona fide religious belief that conflicts with an employment requirement, (2) informed [her] employer of this belief, and (3) [was] disciplined for failing to comply with the conflicting requirement.” 18a (citations omitted). The court concluded that “Colson does not allege that she was disciplined for failing to comply with the weekly testing requirement. Colson, therefore, fails to establish a *prima facie* case against Hennepin County for failure to accommodate under Title VII. Accordingly, dismissal of Colson’s Title VII claim is warranted.” *Id.* However, Ms. Colson also alleged a claim for

discrimination.6a. *See also*, Compl. ¶¶61-70 (asserting religious discrimination).

III. In a 2-1 split, while the majority found Ms. Colson had not pled sufficient facts to show she was fired, suspended, demoted, or otherwise “disciplined”, the dissent finds she had to violate her religious beliefs when tested, constituting an adverse action.

3. On appeal to the Court of Appeals for the Eight Circuit, in a 2-1 split the three-judge panel court would affirm the district court’s decision.¹ However, as it related to the panel’s majority decision regarding the allegations asserted by Ms. Colson, Judge Strass dissented. The court applied its test to state a claim for an employer’s failure to accommodate religious beliefs (the same test as the district court): “the employee[] must show that (1) ‘they have a bona fide religious belief that conflicts with an employment requirement’; (2) ‘they informed [their employer] of this belief’; and (3) ‘[she] were disciplined for failing to comply with the conflicting requirement of employment.’ *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 900 (8th Cir. 2024) (quoting *Jones v. TEK Indus., Inc.*, 319 F.3d 355, 359 (8th Cir. 2003)).” 4a-5a. The panel also noted that “[a]t the pleadings stage, ... Colson [is] not required to establish a *prima facie* case, but they must plead

¹ The original complaint and appeal involved a second party, Carrie Borgheiinck. Ms. Borgheiinck choose not to be a party to this Petition. However, in Judge Strass’s dissent, while he agreed with the panel’s decision regarding Ms. Borgheiinck, he did not agree with the panel’s conclusion related to Ms. Colson.

sufficient factual allegations to plausibly support each of these three elements.” 5a.

The majority of the appellate panel concluded that Ms. Colson failed to meet the third prong of the Title VII test, having failed to “alleged facts sufficient to establish that she was fired, suspended, demoted, or otherwise “disciplined for failing to comply with the conflicting requirement of employment.” 6a, quoting *Ringhofer v. Mayo Clinic, Ambul.*, 102 F.4th 894, 900 (8th Cir. 2024) (citation omitted). The majority also concluded Ms. Colson failed to identify “any other ‘adverse employment action’—that is, any ‘disadvantageous change to the compensation, terms, conditions, or privileges of employment’—as we’ve elsewhere articulated this requirement.” *Id.*, quoting *Cole v. Grp. Health Plan, Inc.*, 105 F.4th 1110, 1113 (8th Cir. 2024) (citing *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024)).

The majority further concluded that any inference that could be drawn from Ms. Colson’s complaint that she was not compensated for the weekly testing is dispelled by the County’s policy documents that allow for paid testing time.² As the majority stated, “It was her burden to plead a facially plausible claim for relief.” *Id.* ³

² The original complaint mistakenly asserted Colson did not get paid for the weekly testing.

³ In a footnote, the majority also cited that Ms. Colson’s argument on appeal relating to any abandonment of her religious beliefs to keep her job, declining to consider it, as an argument made for the first time.^{7a, n.4.} However, as found in Judge Stass’s dissent, Ms. Colson sufficiently alleged that she had to take actions in the weekly testing adverse to her religious beliefs. This shows how, in order to keep employed,

4. Judge Strass dissented.⁴ 8a-10a. Judge Strass explained Ms. Colson’s Title VII complaint looked much like other complaints that alleged enough to survive a motion to dismiss. 8a. Her complaint alleged that Ms. Colson’s objections were based upon her religious beliefs because of the production and testing of developers who used the cells of aborted babies. The dissent recognized Hennepin County’s response as two choices: “test weekly or termination.” *Id.*

The dissent also noted the difference between this case and others like it; if Ms. Colson choose to pick her religion over her job, “getting fired would have been a “disadvantageous change in an employment term or condition.” 9a, quoting *Muldrow v. City of St. Louis*, 601 U.S. 346, 354 (2024) (citation omitted). But Ms. Colson choose her job over her religious beliefs although “testing also violated her religious convictions by requiring “extractions from her body,” which she views as ‘a Temple of God.’” 9a (citation omitted). The dissent found “a weekly testing requirement is, for someone like Colson, just as much of an injury as having to clean coworkers’ offices or work the night shift.” *Id.*, citing *Muldrow*, 601 U.S. at 354–56. The dissent also found how the complaint explained how Ms. Colson she had to spit into a tube weekly” while others watched her complete a test that violated her religious beliefs, a

Ms. Colson taking actions adverse to sincerely held beliefs as mandated by the County, reveals a reasonable inference of abandonment to keep her job.

⁴ Judge Stass affirmed the majority’s holding regarding the appellant Carrie Borgheiinck. His dissent pertained to Ms. Colson only.

process she described as ‘humiliating, degrading[,] and time[-]consuming.’” 9a-10a, citing *Muldrow*, 601 U.S. at 354. The dissent concluded that its allegations “[s]ound[] like a ‘disadvantageous change’ to me.” 10a, citing *id.*

With the 2-1 split regarding Ms. Colson’s appeal, the majority affirmed the district court’s dismissal of Ms. Colson’s Title VII claim.

REASONS FOR GRANTING THE PETITION

There is little doubt that when an employee picks her religion over her job and gets fired, that action constitutes “a disadvantageous change in an employment term or condition.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 354 (2024) (citation omitted). But the circumstances in which an employee picks her job that forces the employee to violate her religious convictions under threat of termination (or discipline) should be considered a “disadvantageous change in an employment term or condition.” In other words, when a threat dissuades a reasonable employee from engaging in *protected activity* it should be considered as a change in an employment term or condition. The fact an employee must violate her religious beliefs to maintain her job is the “change” in her condition of employment. This should constitute “some harm” under *Muldrow* without requiring more as an allegation in a complaint,

The Eighth Circuit does not agree that the threat of termination (or discipline), without further action by the employer, is sufficient despite allegations, at the motion to dismiss stage, reveal the

employee violating her religious convictions to keep her job as a change of employment.

Under Title VII, it is “an unlawful employment practice for an employer . . . 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 individual’s . . . religion.” 42 U.S.C. § 2000e-2(a)(1). Religious beliefs do not need to be “acceptable, logical, consistent, or comprehensible to others.” *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981). “[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.” *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972).

For Title VII claim based on a failure to accommodate religious beliefs, the Eighth Circuit uses the same three-part test this Court expressed over 20 years ago:

To establish a *prima facie* case of religious discrimination under Title VII, [employees] must show [1] that they have a bona fide religious belief that conflicts with an employment requirement; [2] that they informed [employer] of this belief; and [3] that they were disciplined for failing to comply with the conflicting requirement of employment.

Ringhofer v. Mayo Clinic, Ambulance, 102 F.4th 894, 900 (8th Cir. 2024); *Jones v. TEK Indus., Inc.*, 319 F.3d 355, 359 (8th Cir. 2003); *see, Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 65–66 (1986).

The stated third prong prevents claims for the failure to accommodate when the conditions of employment have changed and the threat of termination exists. To begin, Title VII generally forbids employers not only from discharging or refusing to hire employees for discriminatory reasons, but also from “*otherwise ... discriminat[ing]* against any individual with respect to his compensation, *terms, conditions*, or privileges of *employment*, because of such individual's ... religion.” 42 U.S.C. § 2000e-2(a)(1) (emphasis added). This means that because the statute defines “religion” as including a failure to accommodate, an employer who unreasonably fails to accommodate religious practices absent undue hardship discriminates based on religion in setting the terms of employment. But the Eighth Circuit requires an employee to allege more than just the “threat.” 6a. The court failed to explain how employees must wait for further adverse action before they can take steps to protect their protectable activities. Instead, the court asserted that an employee must identify “any other adverse employment action” or “disadvantageous change to ...conditions, or privileges of employment....” *Id.* But when a change in the condition of employment is alleged, the underlying claim, must survive at the motion to dismiss stage of district court proceedings.

Moreover, Title VII provides no basis for the circuit court’s view. Nor does the statute mandate that employees’ risk financial hardship or negative employment histories or even the anxiety of discipline or termination before vindicating their statutory right to accommodation. *See EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 614 n. 5

(9th Cir.1988) (“An employee does not cease to be discriminated against because he temporarily gives up his religious practice and submits to the employment policy.”) (citing *Am. Postal Workers Union v. Postmaster General*, 781 F.2d 772, 774-75 (9th Cir.1986)). To require employees to wait for *other* unfavorable employment actions before they can take steps to protect their interests has no basis in the statute. An employer’s mandate to violate an employee’s religious convictions is disciplinary action. Under Title VII, employees should not have to choose between their religious beliefs and employment. Rather, an employee whose employer refuses accommodation has a cause of action, without more, for prospective relief requiring accommodation or damages for past failure to accommodate. The *threat* of discharge (or of other adverse employment practices) is a sufficient penalty.

Other circuits have taken the position for Title VII actions that mere threats are insufficient without more, notably in the context of retaliation claims. The district court in *Holmes v. Washington Metro. Area Transit Auth.*, 723 F. Supp. 3d 1, 17 (D.D.C. 2024) favorably cited the D.C. Circuit’s holding that “formal criticisms or reprimands, without additional disciplinary action such as a change in grade, salary, or other benefits, do not constitute adverse employment actions.’ A formal reprimand can be an adverse action, however, if it serves as ‘a building block’ that justifies an adverse action down the road.” (citations omitted) (first quoting *Stewart v. Evans*, 275 F.3d 1126, 1136 (D.C. Cir. 2002)); and then quoting *Robb v. Vilsack*, No. 20-cv-929, 2021 WL 3036796, at *13 (D.D.C. July 19, 2021)); *Rupard v. Mayorkas*, No. 22-cv-1806, 2023 WL 5650083, at *5

(D.D.C. Aug. 31, 2023) (“Run-of the mill letters of reprimand are generally not adverse employment actions,’ at least when they are not ‘abusive and do not lead to disciplinary action.’ ” (quoting *Bell v. Fudge*, No. 20-cv-2209, 2022 WL 4534603, at *6 (D.D.C. Sept. 28, 2022))); *Mitchell v. Planned Parenthood of Greater New York, Inc.*, No. 23-cv-01932, 2024 WL 3849192, at *10 (S.D.N.Y. Aug. 16, 2024) (“[A] ‘mere admonition by a supervisor without any formal consequences is not an adverse employment action because it does not represent any disadvantageous change in the terms or conditions of employment.’”). *Chang v. Safe Horizons*, 254 F. App'x 838, 839 (2d Cir. 2007) (“[O]ral and written warnings do not amount to materially adverse conduct” required in a retaliation claim.).

In the Seventh Circuit, courts have found that “unfulfilled threats that result in no material harm cannot be considered an adverse employment action under Title VII.” *Lewis v. Wilkie*, 909 F.3d 858, 869 (7th Cir. 2018) (internal quotation omitted). But, when a threat dissuades a reasonable employee from engaging in protected activity, that is of itself is a material harm, even if the threat is never carried out. *Lesiv v. Illinois C. R.R. Co.*, 39 F.4th 903, 911 (7th Cir. 2022) (defining adverse material action for a retaliation claim). The same logic should support a claim under an employer’s failure to accommodate.

However, whenever an employer essentially orders an employee to violate her religious beliefs it may itself constitute an adverse action. *Cole v. Grp. Health Plan, Inc.*, 105 F.4th 1110, 1114 (8th Cir. 2024). See *Equal Empl. Opportunity Comm'n v. N. Meml. Health Care*, 908 F.3d 1098, 1102 (8th Cir.

2018) (an employee whose religious accommodation request is denied may bring a disparate treatment claim under Title VII); *Storey v. Burns Int'l Sec. Servs.*, 390 F.3d 760, 764 (3d Cir. 2004); *Billings v. Murphy*, No. 22-2010-CV, 2024 WL 444727, at *3 (2d Cir. Feb. 6, 2024); *see also EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 614 n.5 (9th Cir. 1988).

When an employee alleges she has subjected herself to testing that violates her religious convictions related to the threat of termination, that in effect is a changed condition of employment. It applies to the allegations for an employer's failure to accommodate under Title VII. The mere fact the employee must violate her religious convictions is a disciplinary act of the employer. The employer is inflicting self-punishment upon the employee as a requirement of employment. And when a complaint allows for multiple plausible readings, it should not be dismissed if at least one plausible reading "allows the court to draw the reasonable inference that the defendant is liable." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) "Which inference will prove to be correct is not an issue to be determined by a motion to dismiss." *Hamilton v. Palm*, 621 F.3d 816, 818 (8th Cir. 2010) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Thus, as long as a complaint can plausibly be read to support an inference that an employee had to abandon her religious beliefs to keep employed under an employer's weekly COVID testing mandate—choosing employment over her religious beliefs the complaint should not be dismissed.

The short of the matter is that under Title VII, employees do not have to choose between their religious beliefs and employment. Nor should they

have to violate their religious beliefs to keep their employment under the threat of termination. Rather, an employee whose employer refuses accommodation has a cause of action, without more, for prospective relief requiring accommodation or damages for past failure to accommodate.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted,

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