No. 25-

IN THE

Supreme Court of the United States

ADRIANNA KONDILIS, *et al.*,

Petitioners,

v.

CITY OF CHICAGO,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the First, Second, Third, and Tenth Circuits are correct that courts must permit discovery when public employees allege the government's stated justification is a pretext for religious discrimination under Title VII, or whether the Seventh Circuit is correct that courts may accept the government's stated rationale at face value and dismiss such claims at the pleading stage without any inquiry into pretext, motive, or discriminatory application.

2. Whether *Ja**c**obson v. Massachusetts*, 197 U.S. 11 (1905)—decided regarding a smallpox vaccine and five-dollar fine under the Fourteenth Amendment's Due Process Clause—should be limited or overturned in favor of a tiers-of-scrutiny approach in assessing First Amendment religious discrimination claims, with strict scrutiny to apply to government pandemic regulation as a pandemic wanes.

PARTIES TO THE PROCEEDING

Petitioners are Adrianna Kondilis (Chicago Police Officer), Branden Lisciandrello (Chicago Police Officer), Edward Garcia (Chicago Police Officer), Joseph Miranda (Chicago Police Officer), Julie Ortega (Chicago Police Officer), Marcin Kazarnowicz (Chicago Police Officer),Mike Bilina (Chicago Police Officer), Robert Hilliard (Chicago Police Officer), Stefanie Mingari (Chicago Police Officer), Stephanie Fox (Chicago Police Officer), Victor Sokolovski (Chicago Police Officer), Michelle Maxwell (Chicago Police Officer), Danielle Philp (Chicago Police Officer), Toni Shytell (Chicago Police Officer), Julie Hatfield (Chicago Police Officer), Melissa Schroeder (Chicago Police Officer), Stephanie Toney (Police Communication Operator II, Office of Emergency Management and Communications).

Respondent is the City of Chicago, Illinois, a municipal corporation.

CORPORATE DISCLOSURE STATEMENT

Petitioners are individuals and not nongovernmental corporations. Counsel for Petitioners, DISPARTI LAW GROUP, P.A., is not a publicly-traded corporation.

RELATED PROCEEDINGS

Adrianna Kondilis, et al. v. City of Chicago, No. 1:23-cv-02249, United States District Court for the Northern District of Illinois, Eastern Division. Judgment entered May 23, 2024.

Adrianna Kondilis, et al. v. City of Chicago, No. 24-2029, United States Court of Appeals for the Seventh Circuit. Judgment entered December 2, 2025.

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JURISDICTION

The judgment of the Court of Appeals was entered on December 2, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law . . . prohibiting the free exercise [of religion]."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), provides: "It shall be 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."

STATEMENT OF THE CASE

A. Factual Background

Petitioners are sixteen Chicago Police Officers and one Police Communication Operator II employed by the City of Chicago. Dkt. 49 at ¶¶4-20. Each holds sincerely held religious beliefs that preclude compliance with certain aspects of Respondent's COVID-19 Vaccination Policy, including religious objections to the connection between all three COVID-19 vaccines and aborted fetal cell lines. Dkt. 49 at ¶¶33-35.

In October 2021, the City implemented a COVID-19 Vaccination Policy requiring all employees to be vaccinated or undergo periodic testing and to report their vaccination status through an online Portal. Dkt. 49 at ¶¶40-44. The Policy allowed for religious accommodations. Dkt. 49 at ¶43.

Petitioners submitted exemption requests and, after supplemental submissions, received approval of their exemptions from the vaccination requirement. Dkt. 49 at ¶¶48, 55, 97, 136, 161, 191, 197, 230, 252, 274, 305, 343, 359, 395, 419, 453, 466, 488, 501. Despite these approvals, Respondent continued to require Petitioners to report their vaccination status in the Portal and threatened adverse actions for non-compliance—including non-disciplinary no-pay status, stripping of police powers, loss of health insurance, and threats of termination. *See*, *e.g.*, Dkt. 49 at ¶¶48, 50-52.

Petitioners allege that: the reporting requirement itself burdens their religious exercise by requiring reliance on "human-imposed mandates" rather than faith in God's immune system (Dkt. 49 at ¶¶528(e), 554(b), and 590(b)); the City's true motive was religious discrimination, evidenced by requiring reporting of information it already possessed through the approved exemptions, and the Portal rationale was a pretext to punish their religious beliefs (Dkt. 49 at ¶¶84, 180, 82-83, 528(b), 524, 539-541); and, the Policy was not generally applicable, as other non-exempt employees who failed to report faced no adverse actions (Dkt. 49 at ¶¶94, 528(c), 554(a), 559, 590(a), and 48).

As the pandemic waned in late 2021-2022, when the City ended its masking requirement and COVID risk was low, the adverse actions became arbitrary and unjustified. *See* Dkt. 49 at ¶¶89, 182, 90-91, 183, 572(e); Dkt. 44 at 1,13, 30-31 (City notices suspending masking and testing).

B. Proceedings Below

The District Court dismissed Petitioners' Third Amended Complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6) without allowing discovery. Dkt. 60. The District Court held that Petitioners' religious exemption applied only to the vaccination requirement, not to reporting or testing requirements. Dkt. 60 at 8. The District Court applied rational basis review and found the Policy constitutional. Dkt. 60 at 9-10.

The Seventh Circuit affirmed, applying rational basis review to Petitioners' Free Exercise and Equal Protection claims. The Court held the Policy was neutral and generally applicable, and that Petitioners failed to show

how mere reporting burdened their religious exercise. 160 F.4th 866, 871-873. The Seventh Circuit rejected Petitioners' argument that strict scrutiny should apply as the pandemic waned, stating "[e]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Id.* at 873.

REASONS FOR GRANTING THE WRIT

This Petition presents questions of exceptional importance regarding the proper constitutional protections for religious liberty in public health emergencies and the deeply divided approaches among the Circuit Courts of Appeals. The case warrants this Court's review under Supreme Court Rule 10(a) and (c) because it involves acknowledged conflicts among the Courts of Appeals on fundamental questions of federal constitutional law that directly impact the religious rights of public employees nationwide, including law enforcement officers serving their communities.

I. THE CIRCUITS ARE SHARPLY SPLIT ON THE METHOD FOR ANALYZING RELIGIOUS DISCRIMINATION CLAIMS ARISING FROM COVID-19 VACCINATION POLICIES

A. The Seventh Circuit's Approach Conflicts Directly With The First, Second, Third, and Tenth Circuits

The Seventh Circuit's approach in this case conflicts directly with that of the First, Second, Third, and Tenth Circuits concerning whether dismissal is appropriate at the pleading stage or whether discovery and factual

development are required to assess the government's true rationale for adverse actions against religious objectors. The circuits also disagree on the level of scrutiny to be applied.

1. The Seventh Circuit: Dismissal at Pleading Stage Without Discovery

The Seventh Circuit dismissed Petitioners' claims at the motion-to-dismiss stage, applying rational basis review without factual development. The Seventh Circuit accepted the City's stated rationale, controlling COVID-19, without permitting discovery into whether this justification was pretextual or whether the reporting requirement was a sham for religious discrimination. The Seventh Circuit refused to consider temporal factors, holding that courts may not "judge the wisdom, fairness, or logic of legislative choices" regarding when a waning pandemic requires policy changes. 160 F.4th 866 at 873.

2. The First Circuit: Factual Development Required

The First Circuit has repeatedly vacated dismissals and required factual development before resolution of COVID-19 religious discrimination claims.

In *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9 (1st Cir. 2024), the First Circuit vacated dismissal of religious discrimination claims, holding that sincerity of religious belief and undue hardship "cannot be resolved at this early stage" and are "proper subject[s] for discovery." *Id.* at 17. The court emphasized that dismissal

was premature without factual development regarding whether the employer would suffer undue hardship.

Similarly, in *Lowe v. Mills*, 68 F.4th 706 (1st Cir. 2023), the First Circuit reversed dismissal, holding that "absent factual development, dismissal is unwarranted." *Id.* at 716. The court explained that determining whether medical and religious exemptions pose comparable risks requires factual development, and that "there are several significant gaps in the State's argument" that cannot be resolved on the pleadings. *Id.* at 717. The court held that even on issues like whether a policy survives strict scrutiny, "it does not establish that the Mandate satisfies strict scrutiny and, thus, that dismissal is appropriate" without discovery. *Id.* at 718.

3. The Tenth Circuit: Strict Scrutiny and Undue Hardship Require Discovery

The Tenth Circuit in *Does 1-11* reversed the district court's application of rational basis review, holding that when a policy is hostile to the religious beliefs of citizens, courts must conduct the highest form of scrutiny as to whether a policy involves pretext for religious animus. 100 F.4th 1251 at 1269. The court held that "factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and contemporaneous statements made by members of the decisionmaking body." *Id.* at 1276 (quoting *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S.Ct. 1719, 1731). The district court "abused its discretion because it failed to conduct this meticulous review" of pretext. *Id.* at 1276.

In *Bolonchuk v. Cherry Creek Nursing Center*, D.C. No. 1:22-CV-02590-RMR-KAS, 2024 WL 4892128 (10th Cir. 2024), the Tenth Circuit reversed dismissal, holding that "more factual development was necessary to determine whether the employer would have suffered an undue hardship from granting a religious accommodation." *Id.* at *2 (citing Bazinet at *7-8).

4. The Third Circuit: Jury Must Resolve Material Fact Disputes

The Third Circuit in *Spivack* vacated summary judgment and remanded for trial, holding that a jury must resolve material factual disputes regarding: (1) whether the decisionmaker's statements evinced anti-religious bias; (2) whether the employer applied an individualized discretionary policy or a categorical denial policy; and (3) whether the accommodation process was neutral. *Id.* at 161, 166, 168, 170.

The court explained that assessing neutrality is context specific and fact-intensive, requiring examination of the entire record to determine whether adverse actions reflected intolerance of religious beliefs or legitimate public health concerns. *Id.* at 472. The court held: "A jury must determine whether [the employer] has cleared this high bar" under strict scrutiny, including whether "less restrictive mitigation measures" could have achieved the office's objectives. *Id.* at 178.

5. The Second Circuit: Individualized Assessment

The Second Circuit in *Kane v. De Blasio*, 19 F.4th 152 (2d Cir. 2021), applied strict scrutiny where

accommodation standards allowed substantial discretion and were applied inconsistently. *Id.* at 169. The court held that denying religious accommodations based on criteria such as whether a religious leader supports vaccination is "not narrowly tailored" because "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Id.* at 168 (quoting *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989)). The Second Circuit emphasized that narrow tailoring requires the government to demonstrate a policy is the "least restrictive means" of achieving its objective. *Id.* at 169.

6. Consequences of the Circuit Split

This circuit split creates intolerable geographic disparities in the protection of religious liberty. Public employees alleging religious discrimination face vastly different procedural protections depending solely on where they work: those in the First, Second, Third, and Tenth Circuits can develop a factual record to prove pretext and discriminatory motive, while those in the Seventh Circuit—like Petitioners here—are denied any opportunity to test the government's self-serving explanations through discovery. This permits government employers in the Seventh Circuit to insulate religious animus from judicial scrutiny by offering facially neutral justifications, no matter how pretextual or contradictory the evidence may be. The split is particularly pernicious because it strips religious discrimination plaintiffs of the very tool—discovery—needed to uncover hidden motives and discriminatory application that governments have every incentive to conceal. The result is that

constitutional protections for religious exercise and equal protection become contingent on geography rather than merit, encouraging discriminatory conduct in circuits that accept government rationales at face value while properly protecting religious liberty elsewhere. Left unresolved, this split undermines the uniformity of First and Fourteenth Amendment protections and signals that public employees' religious exercise rights depend on the accident of their employer's location.

B. The Seventh Circuit's Maximum Deference Approach Is Allowed By *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)

This Circuit split emerges from this Court's primary pandemic-related decision, *Jacobson*, which imposed a maximum-government deference approach.

The Seventh Circuit's rigidly approximated *Jacobson*'s maximum government deference approach under the guise of tiers-of-scrutiny. It applied rational basis review uniformly throughout 2021-2022 despite the waning pandemic, and that it made no sense to harm these officers for failure to report as the pandemic waned. It refused to consider whether the policy remained justified as circumstances changed, including that the masking and testing requirements themselves were ended by the City while it continued to punish these Plaintiffs. Nonetheless, following the maximum deference approach promulgated by this Court in *Jacobson*, the Seventh Circuit affirmed dismissal of these officers' claims at the pleading stage without permitting discovery into the City's evolving rationale.

This maximum deference approach that the Seventh Circuit utilized ala *Jacobson* is at odds with the other Circuits, including in *Heights Apartments, LLC*, where the Eighth Circuit held that as the crisis surrounding the pandemic evolved and time is available for more reasoned and less immediate decision-making by public health officials, heightened scrutiny is justified, and in the Eastern District of Missouri, in *Brandon*, where the court held that whether *Jacobson* deference applies or whether tiers of scrutiny apply is a factual determination for the Court that depends on whether the policy was done during a period of a public health crisis necessitating emergency public health initiatives. The court endorsed strict scrutiny for policies enforced in the waning pandemic.

In the First Circuit, it has been held that factual development is necessary to determine comparability of exemptions and whether policies satisfy strict scrutiny. *See Lowe v. Mills*, 68 F.4th 706, 718 (1st Cir. 2023). The court explained: "We do not determine what standard of scrutiny should ultimately apply to the free exercise claim. Nor do we decide whether the Mandate survives the applicable level of scrutiny. Those questions are not before us." *Id.* Discovery is required first.

And in the Tenth Circuit, strict scrutiny analysis is required with a "least restrictive means" inquiry, examining whether alternative measures (social distancing, masking, testing for religious objectors only, remote work) could achieve governmental interests. *Bacon v. Woodward*, 100 F.4th 744, 751 (10th Cir. 2024); *Does 1-11* at 1269 (2024) (applying categorial super-scrutiny to government action with discriminatory animus).

This split leaves public employees—particularly law enforcement officers like Petitioners—with no predictable framework for asserting their religious rights. Beyond that, a review of the growth of First Amendment jurisprudence since Jacobson shows that the framework for analyzing religious discrimination claims is overdue for simplification at the root—Jacobson should be overturned or limited.

II. THIS COURT SHOULD CLARIFY AND IMPOSE NECESSARY LIMITATIONS ON *JACOBSON v. MASSACHUSETTS* TO PROTECT FIRST AMENDMENT RELIGIOUS RIGHTS

Jacobson v. Massachusetts, 197 U.S. 11 (1905), decided 120 years ago regarding a smallpox vaccine and a five-dollar fine, has been interpreted by lower courts to permit sweeping governmental authority over religious exercise during public health emergencies. The circuits are irreconcilably divided on *Jacobson*'s scope, application, and interaction with modern First Amendment protections. Here, *Jacobson* manifested in the courts below when the District Court and the Seventh Circuit applied it under the guise of a rational basis review that was so deferential to the City it was tantamount to a "took your word for it" approach, despite that the Plaintiffs pleaded "pretext" throughout the proceedings. It is time for *Jacobson*'s stranglehold to end, and for this Court to clarify that pandemic regulation must be examined through a tiers-of-scrutiny approach, with strict scrutiny to apply as a pandemic diminishes.

A. This Court Has Signaled *Jacobson* Requires Limitations

In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 67 (2020), this Court held that even during the pandemic, restrictions on religious exercise are subject to strict scrutiny when they are not neutral and generally applicable. Justice Gorsuch's concurrence explained: "Although Jacobson pre-dated the modern tiers of scrutiny, this Court essentially applied rational basis review." *Id.* at 70.

Critically, Justice Gorsuch warned: "[In the pandemic's early stages], COVID had been with us, in earnest, for just three months. Now, as we round out 2020 and face the prospect of entering a second calendar year living in the pandemic's shadow, that rationale has expired according to its own terms. Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical." *Id.* at 70.

The Plaintiffs, here, cited a waning pandemic rationale in the courts below as precisely a reason for strict scrutiny to apply to their claims, just like Justice Gorsuch intimated in *Cuomo* that *time* should play a role in pandemic deference. *See* Dkt. 49 at ¶¶89, 182, 90-91, 183, 572(e); Dkt. 44 at 1,13, 30-31 (City notices suspending masking and testing). The Plaintiffs, here, also pleaded that the City's Vaccination Policy was not generally applicable, as other non-exempt employees who failed to report their vaccination status faced no adverse actions (Dkt. 49 at ¶¶94, 528(c), 554(a), 559, 590(a), and 48), and that the Portal rationale was a pretext to punish their religious beliefs. (Dkt. 49 at ¶¶84, 180, 82-83, 528(b), 524, 539-541). Despite

this, and despite that this Court applied strict scrutiny in *Roman Catholic Diocese*, the Courts below applied rational basis scrutiny.

B. The Circuits Diverge Fundamentally on *Jacobson*'s Scope

The Eighth Circuit in *Heights Apartments, LLC v. Walz*, 30 F. 4th 720, 726-727 (8th Cir. 2022) and the Eastern District of Missouri in *Brandon v. Bd. of Educ. of City of St. Louis*, No. 4:22-cv-00635-SRC, 2023 WL 4104293, *5-6 (E.D. Mo. 2023), use exactly such time-based limitations anticipated by Justice Gorsuch. *Jacobson* deference diminishes as the pandemic evolves; heightened scrutiny is justified when time is available for more reasoned and less immediate decision-making.

The Seventh Circuit approach, meanwhile, cloaks *Jacobson*'s maximum deference as rational basis review, applied uniformly, regardless of pandemic phase, and further cautions that the Court "will not superimpose on the City our view of when the waning pandemic required a change in its Policy." *Kondilis* at 873. Under this approach, the Court leaves the First Amendment's religious protections to be superimposed by elected government officials without any time limitation and with a "take your word for it" approach.

Still other Circuits allow procedural protections. The Third Circuit in *Spivack v. City of Philadelphia*, 109 F.4th 158 (3d Cir. 2024), suggests that, even under *Jacobson*-informed analysis, material fact disputes about neutrality, discretion, and pretext require jury resolution. The Tenth Circuit, in *Does 1-11 v. Board of Regents of University of*

Colorado, 100 F.4th 1251 (10th Cir. 2024), does this, too, by implying that *Jacobson* does not eliminate requirements for individualized assessment, non-discrimination among religions, or pretext analysis.

But the Seventh Circuit, here, took the approach of maximum deference *ala Jacobson*, but masquerading as the lowest tier of scrutiny: accept the government's stated rationale without question. This cannot be the way.

C. A Proposed Uniform Test Justified By History: Tiers-of Scrutiny Apply, With Higher Scrutiny As A Pandemic Wanes.

This Court should adopt the analytical framework from the Eighth Circuit and *Brandon* to replace the outdated, maximum deference approach of *Jacobson*. This test permits emergency public health measures during genuine crises, while requiring individualized assessments rather than categorical ones. It prohibits government from judging theological validity of beliefs and mandates discovery surrounding the government's actions when pretext is alleged, as these Plaintiffs have asserted from the beginning. This test also acknowledges the vital importance of religion enshrined in our Constitution's very First Amendment by demanding least restrictive means analysis and strict scrutiny as a pandemic diminishes, and puts religion on the same footing as other protected classifications under Title VII. It protects religious minorities and individual religious conscience, and prevents abuse of emergency authority as a pretext for discrimination against religious belief.

At the same time, the maximum deference rule from *Jacobson* made sense in 1905 when the country lacked

the advancements in epidemiology, medical science, and mass communication that we have today. Only maximum deference would work in 1905. But our advancements today enable us to use a scalpel approach that better balances the interests of pandemic control, with religious liberty enshrined in the Free Exercise Clause.

CONCLUSION

This Court should grant the petition, reverse the Seventh Circuit's judgment, and hold that: (1) courts must permit discovery and factual development before dismissing religious discrimination claims when public employees allege their employer's stated justification is pretextual, rather than accepting the government's rationale at face value at the pleading stage, and, (2) *Jacobson v. Massachusetts* must be limited or overturned in favor of a tiers-of-scrutiny framework that applies strict scrutiny to pandemic regulations affecting religious exercise, particularly as a public health emergency wanes. The case should be remanded for proceedings consistent with these holdings.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DECIDED DECEMBER 2, 2025

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 24-2029

ADRIANNA KONDILIS, *et al.*,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

Argued May 15, 2025
|
Decided December 2, 2025

OPINION

KOLAR, *Circuit Judge.*

Plaintiffs are current or former employees of the City of Chicago who allege that the City's COVID-19 vaccination policy violated their constitutional and statutory rights. One might think this case is about the City's failure to grant a religious exemption to a vaccine mandate, a situation that can raise serious First Amendment concerns. It is not. All of the plaintiffs who submitted the

requisite paperwork were granted a religious exemption and were not required to take the vaccine. Plaintiffs' complaint, rather, is that they were required to input their vaccination status into a database and enter COVID-19 testing results, a claim with no legal merit. The district court dismissed Plaintiffs' Third Amended Complaint for failure to state a claim. We affirm.

I. Background

At the pleading stage, we take as true all facts in Plaintiffs' complaint. We do the same for any documents that are referenced in the complaint and central to the claim. *Dean v. Nat'l Prod. Workers Union Severance Tr. Plan*, 46 F.4th 535, 543 (7th Cir. 2022). We construe these facts in the light most favorable to Plaintiffs and draw all reasonable inferences in their favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

A. The City's COVID-19 Policy

In March 2020, the World Health Organization declared COVID-19, the disease caused by SARS-CoV-2, a pandemic.[1] In October 2021, the City of Chicago issued a COVID-19 vaccination policy (the Policy) to help protect

1. Tedros Adhanom Ghebreyesus, World Health Org. Director General, *Opening Remarks at the Media Briefing on COVID-19* (Mar. 11, 2020), https://www.who.int/news-room/speeches/item/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 [https://perma.cc/55PV-3KDN] ("We have therefore made the assessment that COVID-19 can be characterized as a pandemic.").

its workforce and curb the spread of COVID-19 amongst its employees and the public. The Policy required "City employees, as a condition of employment . . . [to] either be fully vaccinated against COVID-19 or undergo COVID-19 testing[.]" But it allowed employees to request medical, religious, and other exemptions. The Policy also required employees to report their vaccination status and, if not vaccinated, weekly COVID-19 test results, in an employee portal. Failure to follow these testing and reporting requirements would result in employees being placed in a non-disciplinary, no-pay status until they reported their results.

B. Plaintiffs' Exemptions from the Policy

Plaintiffs are sixteen former or current Chicago police officers and an officer from the City's Office of Emergency Management. All worked for the City during the COVID-19 pandemic. Based upon their religious beliefs, Plaintiffs sought exemptions under the Policy from the vaccination requirement. With a few initial issues, they eventually made those exemption requests in compliance with the Policy, which set forth the exemption procedures. The plaintiffs' properly filed exemptions were granted.[2] No Plaintiff articulated any specific religious objection to merely reporting their vaccination and testing status in the employee portal set up in accordance with the Policy.

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2. Plaintiff Toney alleged that the City denied her religious exemption request because her exemption form did not contain a signature from a religious leader. We need not address whether Toney should be considered differently from the other plaintiffs, however, because she did not raise the denial of her accommodation request as a separate issue on appeal.

Nevertheless, Plaintiffs initially refused to report their vaccination status in the employee portal. Direct orders to comply from Plaintiffs' supervisors followed, and many of them still did not enter their information into the portal. Those who failed to abide by direct orders were placed on non-disciplinary, no-pay status pursuant to the Policy. Employees who eventually complied returned to work for the City. The plaintiffs who refused to comply did not return.

This lawsuit followed. Three Plaintiffs (Adrianna Kondilis, Marcin Kazarnowicz, and Stephanie Toney) alleged that the City had discriminated against them based on their religion in violation of Title VII of the Civil Rights Act of 1964. And all Plaintiffs brought constitutional claims under 42 U.S.C. § 1983 alleging violations of the First Amendment right to free exercise of religion and the Fourteenth Amendment's guarantee of equal protection, as well as state-law claims under the Illinois Religious Freedom Restoration Act ("IRFRA"), 775 ILCS 35/1 *et seq.*[3] The City moved to dismiss, alleging Plaintiffs failed to state a claim upon which relief may be granted.

The district court granted the motion and entered final judgment against Plaintiffs. It held that Plaintiffs Kondilis and Kazarnowicz's Title VII claims failed because their theory was factually implausible and they did not allege a religious practice that conflicted with the City's testing

3. Plaintiffs also brought claims for violation of substantive due process under the Fourteenth Amendment and state-law indemnification. Plaintiffs did not address these claims on appeal.

and reporting requirements. *Kondilis v. City of Chicago*, 2024 U.S. Dist. LEXIS 92502, 2024 WL 2370204, at *3–4 (N.D. Ill. May 23, 2024). And the court found that Plaintiff Toney's Title VII claim—though technically not ripe because she had not yet received her right to sue letter from the Equal Employment Opportunity Commission—failed on the merits for the same reasons. 2024 U.S. Dist. LEXIS 92502, [WL] at *4 n.1.

As to Plaintiffs' other claims, the district court concluded that Plaintiffs had only requested exemption from the vaccination itself; since that exemption was granted, Plaintiffs could not succeed on claims based on their noncompliance with the mandatory-reporting aspects of the Policy. 2024 U.S. Dist. LEXIS 92502, [WL] at *3–4. Plaintiffs timely appealed.

II. Analysis

We review a district court's grant of a motion to dismiss *de novo*. *Word v. City of Chicago*, 946 F.3d 391, 393 (7th Cir. 2020). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ind. Land Tr. #3082 v. Hammond Redevelopment Comm'n*, 107 F.4th 693, 698 (7th Cir. 2024) (quoting *Gonzalez v. McHenry County*, 40 F.4th 824, 827 (7th Cir. 2022)). "A claim has facial plausibility when the allegations allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal quotation marks omitted).

Appendix A

All Plaintiffs contend that the district court erred in dismissing their First Amendment, equal protection, and IRFRA claims, and Plaintiffs Kondilis, Kazarnowicz, and Toney argue that the district court erred in dismissing their Title VII claims. We address each in turn.

A. Free Exercise of Religion

Plaintiffs contend that the City violated their First Amendment free-exercise rights by burdening their religious beliefs and subjecting them to adverse actions for violating the Policy. The First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. CONST. amend I. The Free Exercise Clause applies equally to the federal government and to the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940).

We previously held the Policy is constitutional on its face. *Lukaszczyk v. Cook County*, 47 F.4th 587, 607 (7th Cir. 2022). In *Lukaszczyk*, we affirmed the denial of a preliminary injunction against the Policy after finding the plaintiffs' free-exercise and other constitutional claims unlikely to succeed on the merits. *Id.* Key to our analysis was the fact that the Policy allowed for religious exemptions, foreclosing a facial challenge "without evidence of how the religious exemption is applied in practice." *Id.*

But here, Plaintiffs allege that the Policy is unconstitutional as applied to them, so *Lukaszczyk* does not foreclose their claim. Although Plaintiffs refer to the

Policy generally as unconstitutional, they only take specific issue with two sections of it. Namely, they argue that the Policy's requirements of entering their vaccination status and COVID-19 test results into the employee portal burden their free exercise of religion.

When a plaintiff seeks to challenge the constitutionality of a policy, law, or ordinance, we first consider the requisite level of scrutiny for evaluating the challenge. Plaintiffs urge us to apply strict scrutiny, while the City contends that rational-basis review is appropriate.

To determine which level of scrutiny we should apply to a free-exercise challenge, we typically ask whether the challenged policy burdens religion at all, and if so, whether the policy is "neutral and generally applicable." *Mahmoud v. Taylor*, 606 U.S. 522, 145 S. Ct. 2332, 2360, 222 L. Ed. 2d 695 (2025).[4] A government policy is not neutral "if it is specifically directed at a religious practice." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 526, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022) (cleaned up). And a policy is not generally applicable if it "prohibits religious

4. The Supreme Court decided *Mahmoud* between oral argument and publication in this case. We have considered whether the "character of the burden" at issue in this case warrants a departure from the "neutral and generally applicable" test as in *Mahmoud*, 145 S. Ct. at 2361 (citing *Wisconsin v. Yoder*, 406 U.S. 205, 220–21, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)). We find the test appropriate here. The character of the burden alleged here is not like *Yoder* or *Mahmoud*, both of which involved compulsory school programs that infringed on parents' fundamental right to direct the education of their children.

conduct while permitting secular conduct that undermines the government's asserted interests in a similar way" or provides "a mechanism for individualized exemptions." *Kennedy*, 597 U.S. at 526 (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34, 141 S. Ct. 1868, 210 L. Ed. 2d 137 (2021)). "Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny." *Id.*

As an initial matter, Plaintiffs do not elaborate on *how* mere reporting requirements burden their free exercise of religion—even incidentally. Their complaint summarily alleges that "enter[ing] their status into the Portal conflicts with Plaintiffs' religious beliefs," but does not explain the nature of this conflict for any specific Plaintiff. But even assuming the Policy's reporting requirements burden Plaintiffs' religious exercise, they have failed to show that these requirements were not neutral and generally applicable.

To start, Plaintiffs have never meaningfully contested religious neutrality, either in their complaint or on appeal. And for good reason. Section V of the Policy, which requires employees to report their vaccination status in the employee portal, states that "all employees . . . who are covered" by the Policy must report their vaccination status or be subject to discipline. This section plainly does not distinguish among religions, nor does it distinguish between religious and nonreligious employees. Section VII, which addresses the COVID-19 testing reporting requirements for the portal, similarly draws no distinction based on religion: it applies to all "[e]mployees . . . who are covered by this policy" and are "not fully vaccinated by

October 15, 2021," without further distinction. And neither section reflects any religious animus at all. Both sections "are neutral: They do not target religion or religious institutions." *Ill. Bible Colleges Ass'n v. Anderson*, 870 F.3d 631, 639 (7th Cir.), *as amended* (Oct. 5, 2017).

That said, Plaintiffs contend that the sections were not generally applicable because the City applied the Policy inconsistently. They allege that not all employees had to comply with the portal reporting requirements, making them "selectively burdened" for being forced to do so. In support, they cite a chart in their complaint showing allegedly inconsistent application of the Policy among different Plaintiffs, as well as allegations that other employees who had not requested religious exemptions refused to report their status on the Portal but were not similarly disciplined.

But this argument fails. It is not enough for Plaintiffs—all of whom profess sincere religious beliefs—to show that the Policy was inconsistently applied across their own personal circumstances; they must plausibly show that this inconsistency bore upon religion in some way. *Listecki v. Off. Comm. of Unsecured Creditors*, 780 F.3d 731, 743 (7th Cir. 2015). Yet the complaint does not do so. And the chart does not identify any trend singling out a particular religion or set of religions for differential treatment within the plaintiff group. Indeed, the chart itself belies Plaintiffs' theory that the City treated them differently based on their religious exemptions. It shows that some Plaintiffs had not even requested exemptions at the time they were disciplined for failing to input their information into the portal. Based on Plaintiffs' allegations

and the Policy's language itself, we find Sections V and VII generally applicable.

Thus, we apply only rational-basis review to Plaintiffs' claims. A rational-basis analysis requires us to strike down a policy only if it bears no rational relationship to some legitimate government purpose. *Ill. Bible Colleges Ass'n*, 870 F.3d at 639. This is an exceedingly light burden for the City to carry, and a correspondingly heavy burden for Plaintiffs.

We need not spill much ink in holding that the City had a rational basis for its Policy's reporting requirements and disciplinary procedures during a global pandemic. It was perfectly rational for the City to track who was vaccinated and who had tested positive for COVID-19 in order to protect the safety of its employees and the public from COVID-19 itself. Doing so equipped the City to identify potential hotspots and prevent immunocompromised or other at-risk individuals from coming into close contact with those who had or were more likely to have the virus.

The disciplinary regime was also rational. Without an enforcement mechanism, the City's Policy would be nothing more than a suggestion. The City could rationally conclude that Plaintiffs' refusal to comply with the Policy's reporting requirements threatened workplace and public safety, and that discipline was thus necessary to stop the spread of COVID-19 and encourage other employees to comply with the Policy. Accordingly, the City's Policy satisfies rational-basis review, and Plaintiffs' free-exercise challenge fails.

B. Equal Protection

Plaintiffs also urge us to hold that the Policy as applied to them violated the Equal Protection Clause by subjecting them to adverse actions for failing to comply with the portal reporting requirements.

The Fourteenth Amendment provides, in relevant part, that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. "This is essentially a direction that all persons similarly situated should be treated alike." *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1008 (7th Cir. 2019) (quoting *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985)) (internal quotation marks omitted).

Plaintiffs do not meaningfully contest on appeal that their equal-protection claims are subject to rational-basis review. As discussed above, the Policy satisfies rational-basis review if "it bears a rational relationship to a legitimate government interest." *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 653 (7th Cir. 2013). To survive a motion to dismiss for failure to state an equal-protection claim, Plaintiffs "must allege facts sufficient to overcome the presumption of rationality that applies to government classifications." *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 639 (7th Cir. 2007) (quoting *Wroblewski v. City of Washburn*, 965 F.2d 452, 460 (7th Cir. 1992)).

Again, Plaintiffs argue that the Policy (as applied) treated unvaccinated and religiously accommodated employees differently from both vaccinated and unvaccinated, unaccommodated employees. But as our analysis in the context of the First Amendment shows, the City's Policy survives rational-basis review. The City rationally treated Plaintiffs differently from other employees in order to stop the spread of COVID-19 among its employees and the public.

Plaintiffs contend, however, that even if these distinctions were warranted in the early stages of the pandemic, they became unjustified as the pandemic "waned" in late 2021 and 2022. But this is precisely the type of legislative policy judgment that we must shy away from on rational-basis review. "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993). We will not superimpose on the City our view of when the waning pandemic required a change in its Policy. Thus, we find that the City's Policy also satisfies constitutional scrutiny under the Equal Protection Clause.

C. State and Federal Statutory Claims

We conclude with Plaintiffs' statutory arguments under IRFRA and Title VII.

Plaintiffs concede that our review of the district court's dismissal of their IRFRA claims rises and falls with their constitutional claims. Indeed, they devote only

four sentences to these claims in their brief on appeal. And those four sentences merely restate the arguments made in support of their constitutional claims. Because (as we have held) those claims fail, so too do Plaintiffs' state-law claims.

Similarly, Plaintiffs Kondilis, Kazarnowicz, and Toney ask us in their statement of issues to reverse the dismissal of their Title VII claims, but they do not address how (if at all) this analysis differs from their other claims. We have repeatedly said that "[a]rguments that are underdeveloped, cursory, and lack supporting authority are waived." *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1063 (7th Cir. 2020); *Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023) (same). We thus find these Title VII claims waived and do not address them.

III. Conclusion

For the reasons discussed above, we AFFIRM.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT, N.D. ILLINOIS, EASTERN DIVISION, SIGNED MAY 23, 2024

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Case No. 23 C 2249

ADRIANNA KONDILIS, BRANDEN LISCIANDRELLO, EDWARD GARCIA, JOSEPH MIRANDA, JULIE ORTEGA, MARCIN KAZARNOWICZ, MIKE BILINA, ROBERT HILLIARD, STEFANIE MINGARI, STEPHANIE FOX, VICTOR SOKOLOVSKI, MICHELLE MAXWELL, DANIELLE PHILP, TONI SHYTELL, JULIE HATFIELD, MELISSA SCHROEDER, AND STEPHANIE TONEY,

Plaintiffs,

v.

CITY OF CHICAGO, ILLINOIS,

Defendant.

Signed May 23, 2024

Appendix B

MEMORANDUM OPINION AND ORDER

Robert W. Gettleman, United States District Judge.

Plaintiffs, Adrianna Kondilis, Branden Lisciandrello, Edward Garcia, Joseph Miranda, Julie Ortega, Marcin Kazarnowicz, Mike Bilina, Robert Hilliard, Stefanie Mingari, Stephanie Fox, Victor Sokolovski, Michelle Maxwell, Danielle Philp, Toni Shytell, Julie Hatfield, Melissa Schroeder, and Stephanie Toney, have brought a six count third amended complaint ("complaint") against their employer, defendant City of Chicago. Count 1, brought on behalf of plaintiffs Kondilis, Kazarnowicz, and Toney, is a claim for religious discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"). Count 2, brought by all plaintiffs, asserts a claim for deprivation of plaintiffs' First Amendment right to the free exercise of religion. Count 3 alleges a violation of all plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment. Count 4 alleges a substantive due process deprivation of plaintiffs' right to nondisclosure of private medical information. Count 5 asserts a claim under Illinois' Religious Freedom Restoration Act ("IRFRA"), 775 ILCS 35/1, et seq. Finally, Count 6 asserts a claim for indemnification under 745 ILCS §§ 10/1-202, 2-302, and 10/9-102. Defendant has moved under Fed. R. Civ. P. 12(b)(6) to dismiss all counts for failure to state a claim. For the reasons described below, the motion is granted.

BACKGROUND

Plaintiffs are all Chicago Police Department Officers except plaintiff Toney, who is employed as a

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Police Communication Officer II with Chicago's Office Emergency Management and Communications. In October 2021 defendant instituted a Vaccination Policy requiring all employees to obtain a COVID-19 vaccination. The Vaccination Policy also required employees who were not vaccinated for any reason to undergo periodic testing and to report that testing through the COVID-19 Vaccination Portal. The Vaccination Policy permitted accommodations for disability/medical conditions and religion. Specifically, the Vaccination Policy in Section VI. B. provides:

> Religious Accommodations
>
> 1. The City provides religious accommodations to employees with sincerely held religious beliefs unless such accommodation would create an undue hardship. Requests for accommodations will be made on a case-by-case basis consistent with existing procedures for reasonable accommodation requests.
>
> 2. Employees who believe they need an accommodation regarding this policy because of a sincerely held religious belief may request a reasonable accommodation through the Department of Human Resources. A form for requesting such an accommodation is attached to this policy as Exhibit B.

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Section VII of the Vaccination Policy, titled Reporting Testing Results provides:

> A. Employees, volunteers, and contractors who are covered by this policy who are not fully vaccinated by October 15, 2021, for reasons including but not limited to verified medical conditions or restrictions or sincerely held religious beliefs (as discussed in Section VI), shall be required to undergo COVID-19 testing on a twice weekly basis with tests separated by 3-4 days. Employees shall be responsible for obtaining tests on their own time and at no cost to the City.
>
> B. Employees must report their test results through the COVID-19 Employee Testing Portal.
>
> Employees will be required to submit the following information:
>
> 1. The date of the test;
>
> 2. The type of test obtained;
>
> 3. The results of the test;
>
> 4. A declaration that the information provided is true and accurate; and,
>
> 5. A copy of their test results.

> C. In cases where the City has reason to believe that the testing information provided by the employee was not true or accurate, an employee may be required to provide additional information, including but not limited, a written statement describing the testing process.
>
> D. Employees who fail to report test results as required by this section will be placed in a non-disciplinary no-pay status until they report their test results.

On October 14, 2021, just one day before employees were to report their vaccination status in the Portal, plaintiff Kondilis submitted a request for a religious accommodation on the required form. The request was incomplete because it lacked a religious leader's signature. Defendant requested additional information about Kondilis' religious beliefs, including the signature of a religious leader. Kondilis provided the updated information, and specifically requested "a religious accommodation that will excuse me from having to receive a COVID-19 vaccine and further request that no adverse action be taken against me on account of my religious beliefs." That request was approved.

Despite making her initial request just one day before the reporting deadline, Kondilis did not enter her vaccination status into the Portal on October 15, 2021, as required of all employees. On November 21, 2021, she received a written direct order from Deputy Chief Ursitti to comply with the written Department Policy by entering her current vaccination status into the Portal as

required of all employees. She refused that direct order. As a result, she was placed on a nondisciplinary, no-pay status. Even after her request for an accommodation was approved, she continued to refuse to enter her vaccination status or testing reports into the Portal as required by the Vaccination Policy. Her refusal precluded her from returning to work.

Plaintiff Kazarnowicz also submitted a request for a religious exemption on October 14, 2021, just one day before the reporting requirement deadline. His request was also incomplete, lacking a religious leader's signature. He was asked to supply the missing information. Upon supplying the information his request for an accommodation was granted. Like Kondilis, Kazarnowicz did not enter his vaccination status into the Portal by October 15, 2021, claiming he was awaiting his exemption and that he had concerns about privacy and security. He too received a direct written order from Ursitti to comply with Department Policy by entering his vaccination status into the Portal. He refused to comply and was placed on a non-disciplinary no-pay status until he complied with the reporting requirement. He alleges that he was stripped of his status as a police officer because of refusing a second order and has never regained it even after entering his vaccination status into the Portal. He has returned to work at a 311-call center.

Plaintiff Toney also submitted her request for a religious accommodation in October 2021. She never submitted a signature from a religious leader as requested by defendant. As a result, her request was denied, and she was placed on a non-disciplinary, no-pay status. She did

not enter her vaccination status into the Portal by October 15, 2021, as required of all employees.

Each of the remaining plaintiffs are in similar situations. Each alleges that he or she submitted a request for a religious accommodation excusing each from being receiving a vaccination. Each request was either incomplete and/or more information was requested by defendant. Each plaintiff who provided the requested information alleges that the requested accommodation was approved. Each plaintiff refused to comply with the Vaccination Policy by submitting their vaccination status into the Portal by October 15, 2021, even after receiving direct orders to do so, resulting in adverse consequences. None of the requests for accommodations indicated that any plaintiff had a religious belief that precluded them from entering the required information into the Portal.

DISCUSSION

Defendant has moved to dismiss all six counts for failure to state a claim. "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must allege sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), *citing* Fed. R. Civ. Pro. 12(b)(6). For a claim to have "facial plausibility," a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the possibility of misconduct, the complaint has

alleged—but has not shown—that the pleader is entitled to relief." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

In Count 1, plaintiffs Kondilis, Kazarnowicz, and Toney allege that defendant violated Title VII's prohibition of discrimination based on religion by failing to provide them a reasonable accommodation from the Vaccination Policy. To state such a claim, they must allege an observance or practice conflicting with an employment requirement is religious in nature, that they called the observance or practice to defendant's attention, and that the observance or practice was the basis for the alleged discrimination. *Porter v. City of Chicago*, 700 F.3d 944, 951 (7th Cir. 2012).

Defendant argues that plaintiffs have not and cannot allege the required elements for their claim. Each plaintiff's exemption request articulated only that they had a religious objection to receiving the vaccination. None of their requests indicated a religious objection to reporting their vaccination status or test results into the Portal, and none of the requests sought an accommodation from doing so. Defendant granted both Kondilis' and Kazarnowicz's request to be exempt from receiving the vaccination. Toney never completed the necessary paperwork to receive the requested accommodation. Both Kondilis and Kazarnowicz admit that they were placed on no-pay status for refusing to enter their vaccination status into the Portal.

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Both Kondilis and Kazarnowicz argue that their approval of their accommodation requests exempted them from all aspects of the Vaccination Policy, including the reporting requirements. They base this argument on the wording of the approval. That approval indicated "Dear employee: Your request for a religious exemption from the City of Chicago's Mandatory COVID-19 Vaccination Policy has been: approved." The form determination notice also indicated that: "If your request has been approved, you may be required to follow additional health and safety measures while at work. Those measures are described below: The employee will be required to comply with masking, social distancing, and testing requirements until further notice."

Based on this wording, plaintiffs summarize their argument as: "(i) we got a religious exemption from the vaccination policy or were requesting one, (ii) we thought, reasonably, the exemption covered the Policy as a whole, and the Determination Notice even says that, (iii) the City took adverse actions against us under the Policy we thought we were exempted from, (iv) other policies, apart from this one, might have been applicable, but any such policies were not used as the basis for the adverse actions, it was the Vaccination Policy we thought we were exempted from, (v) the City's application of the Policy do [sic] us despite our religious exemptions is religious discrimination."

The court agrees with defendant that this is an implausible argument belied by both the Vaccination Policy and plaintiffs' accommodation requests. First, as

noted above, the Vaccination Policy specifically provided that all employees not vaccinated by October 15, 2021, for reasons including sincerely held religious beliefs, shall be required to undergo COVID-19 testing on a twice weekly basis and to report the results into the Portal. Thus, plaintiffs had no basis to "reasonably believe" that they did not need to report. Second, each plaintiff's request for an accommodation based on sincerely held religious beliefs specifically requested to be excused from receiving the vaccination, and nothing more. As noted above, Kondilis requested "a religious accommodation that will excuse me from having to receive a COVID-19 vaccine and further request that no adverse action be taken against me on account of my religious beliefs." It was that request that was granted, giving Kondilis no reason to believe that she was exempted from testing and reporting. The same is true for plaintiff Kazarnowicz. Finally, even if plaintiffs could have reasonably believed that they were exempted from the entire policy (they could not), they were specifically told that their belief was unfounded and were given direct orders to report on the Portal. They intentionally disobeyed those orders. Consequently, the court concludes that plaintiffs have failed to allege an observance or practice religious in nature that conflicted with the requirement to test and report. Count 1 is dismissed.[1]

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1. To date, Plaintiff Tony has not received a right to sue letter from the EEOC and consequently her claim is technically unripe. It is uncontested, however, that she never completed the paperwork required to receive an accommodation, and even if her request was pending, she failed to comply with the reporting requirements. Thus, her claim fails for the same reasons as those of the other plaintiffs.

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In Count 2, plaintiffs allege that by enforcing the Vaccination Policy defendant violated their right under the First Amendment to the free exercise of religion. The First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. "[L]aws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, __ U.S. __, 593 U.S. 522, 141 S. Ct. 1868, 1876, 210 L. Ed. 2d 137 (2021). Thus, courts sustain the law against constitutional challenge if it is rationally related to a legitimate government interest. *Id.* When, however, a law is not neutral or generally applicable, it will be sustained only if it is narrowly tailored to achieve a compelling state interest. *Id.* "The government 'fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.'" *Lukaszczyk v. Cook County*, 47 F.4th 587, 606 (7th Cir. 2022) (quoting *Fulton*, 141 S.Ct. at 1876). And, a law is not generally applicable if it provides "a mechanism for individual exemptions or prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.*

The Seventh Circuit has already reviewed the Vaccination Policy at issue and determined that it is constitutional on its face. *Id.* Recognizing this, plaintiffs attempt to bring an as-applied challenge, urging the court to apply strict scrutiny to their claim that the policy has not been generally and consistently applied. This position is again based on their already-rejected argument that they were exempted from the entire policy rather than

receiving their requested accommodation of exemption from receiving the vaccine. Again, they were disciplined for failing to report their status into the Portal after receiving a direct order to do so. None of the plaintiffs have identified any religious reason for failing to comply. And, while they have alleged that employees who received a religious accommodation and refused to report received differing discipline based on their situations, they have failed to allege that employees without accommodations who failed to report were treated more favorably. Consequently, the court rejects their argument that strict scrutiny should apply, and concludes that the Vaccination Policy survives rational basis review, because it is rationally related to a legitimate government interest, as *Lukaszczyk* held. Defendant's motion to dismiss Count 2 is granted.[2]

In Count 3, all plaintiffs allege that by disciplining them for failing to report, defendant violated the right to equal protection under the law. "When a free exercise challenge fails, any equal protection claims brought on the same grounds are subject only to rational-basis review." *Does 1-6 v. Mills*, 16 F.4th 20, 35 (1st Cir. 2021) (citing *Locke v. Davey*, 540 U.S. 712, 720 n.3, 124 S. Ct. 1307, 158 L. Ed. 2d 1 (2004)). Plaintiffs argue that the policy cannot survive rational-basis review because defendant's actions were not rationally related to controlling the pandemic. The Equal Protection Clause prohibits state

2. Plaintiffs argue strict scrutiny should apply because the pandemic has "waned." But plaintiffs' failure to comply and the resulting actions taken by defendant were in 2021-2022. *Lukaszczyk*, was decided on August 29, 2022, and thus addressed the situation during the relevant time period.

action that discriminates on the basis of membership in a protected class. *Reget v. City of La Crosse*, 595 F.3d 691, 695 (7th Cir. 2010). Protected classes include race, age and gender, but plaintiffs have alleged that they are members of a protected class. The Vaccination Policy required all unvaccinated employees to test and report, not just those employees granted an exemption for vaccination based on religious beliefs. Plaintiffs again argue that there was no rational basis to apply the policy in late 2021 and 2022 when the pandemic was waning, but the Seventh Circuit upheld the policy in that time period. Consequently, the court grants defendant's motion to dismiss Count 3.

In Count 4, plaintiff bring a substantive due process claim. "Unless a governmental practice encroaches on a fundamental right, substantive due process requires only that the practice be rationally related to a legitimate government interest, or alternatively phrased, that the practice be neither arbitrary nor irrational." *Lukaszczyk*, 47 F.4th at 602 (quoting *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003)). The Seventh Circuit has been hesitant to expand the scope of fundamental rights under substantive due process, specifically noting that employment-related rights are not fundamental. *Id.* Plaintiffs have failed to allege that the Vaccination Policy, or defendant's application of it to them, has abridged any fundamental right, arguing that they have a right to nondisclosure of private medical information. Thus, rational basis review applies, under which "a statutory classification comes to court bearing a strong presumption of validity, and the challenger must negative every conceivable basis which might support it." *Id.* Plaintiffs

have not and cannot allege that defendant lacks "a reasonably conceivable state of facts" to support its policy. *Id.* at 603. Consequently, the court grants defendant's motion to dismiss Count 4.

Count 5 is a claim under the IRFRA, under which the "[g]overnment may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that the application of the burden to the person (i) is in furtherance of a compelling governmental interest and (II) is the least restrictive means of furthering that compelling governmental interest." 775 ILCS 35/15.

Numerous courts have already held that controlling the spread of COVID-19 constitutes a compelling government interest. *Troogstad v. City of Chicago*, 576 F.Supp. 3d 578, 585 (N. D. Ill. (2021) (citing Roman Cath. *Diocese of Brooklyn v. Cuomo*, _U.S._, 592 U.S. 14, 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020) (holding that abating the COVID-19 pandemic satisfied the much stricter "compelling interest" test under the Free Exercise clause.)). In the instant case, plaintiffs cannot allege that application of the policy to them substantially burdened their exercise of religion because each was granted the requested exemption. None have claimed that testing and reporting conflicted with their religious beliefs in any way. Consequently, they cannot state a claim under the IRFRA. Count 5 is dismissed.

Count 6 is a claim for indemnification under Illinois law. Because none of their substantive claims have survived defendant's motion, Count 6 is dismissed.

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CONCLUSION

For the reasons described above, defendant's motion to dismiss the third amended complaint is granted with prejudice.