No. 25A

In the Supreme Court of the United States

SHERRY DETWILER,

APPLICANT,

v.

MID-COLUMBIA MEDICAL CENTER; CHERI MCCALL, AN INDIVIDUAL; DOES 1 THROUGH 50,

RESPONDENTS.

On Application for Extension of Time to File Petition for Writ of Certiorari

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Application for Extension of Time to File a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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To the Honorable Elena R. Kagan, Associate Justice of the U.S. Supreme Court and Circuit Justice for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Sherry Detwiler respectfully requests that her time to file a petition for a writ of certiorari be extended thirty days from July 14 to August 13, 2026.

Jurisdiction

The Court has jurisdiction over this application and forthcoming petition under 28 U.S.C. § 2101(c). The Ninth Circuit had jurisdiction over dismissal of Detwiler's federal claims brought under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., and supplemental state law claims, all of which had been dismissed by the district court on an FRCP 12(b)(6) motion. Following the Ninth Circuit's denial of rehearing and rehearing en banc on April 15, 2026, the petition for certiorari is currently due on July 14. The application is timely, filed more than ten days in advance of the current deadline, in accordance with Sup. Ct. R. 13.5.

Factual Background

The following facts are summarized from the decision below, reported as *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886 (9th Cir. 2025), and included herewith in the Appendix. Sherry Detwiler worked as a Privacy Officer and Director of Health Information for a hospital in Oregon, Respondent Mid-Columbia Medical Center (MCMC). *Id.* at 890 (Appendix at 6a). In the late summer and early fall of 2021, MCMC began requiring COVID-19 vaccination of its employees, with options for seeking exemption and accommodation. *Id.* (App. at 7a). Detwiler is a practicing Christian who seeks daily guidance from God through prayer and believes that she

has a religious duty to avoid sinning by defiling her body as the temple of the Holy Spirit. *Id.* (App. at 6a). In the COVID-19 context, she told MCMC that she had prayed and sought God's guidance and received Divine direction, in conjunction with her understanding of Scripture, not to defile her temple with the vaccine or nasal swabs that could be potentially harmful. Among other things, she believed that the vaccines were developed using fetal cell lines and the nasal swabs contained carcinogens and other harmful substances. *Id.* at 890-91 (App. at 7a). Detwiler cited Scripture passages in support of her body-as-temple belief. MCMC accepted this expressed belief and granted Detwiler an accommodation to the vaccines, but conditioned it on her submission to weekly nasal swab testing. *Id.* at 891 (App. at 7a). Detwiler submitted a further request for accommodation, seeking saliva testing or remote work; this time, MCMC denied an accommodation based on asserted impracticality and hardship. *Id.* (App. at 8a–9a). *Detwiler* stood fast in her beliefs and was terminated in December 2021. *Id.* at 892 (App. at 9a).

Procedural History

Detwiler's First Amended Complaint asserted Title VII and related state law claims. It was dismissed without prejudice, with the district court accepting MCMC's argument that Detwiler's objection to testing stemmed from secular, medical judgment rather than a bona fide religious belief. *Id.* at 892 (App. at 9a–10a).

Detwiler filed her Second Amended Complaint (SAC) on July 19, 2023. The SAC clarified that, while her declination of nasal swab testing was due in part to scientific judgment, her declination was also rooted in her belief in her body being the

temple of the Holy Spirit, derived from I Corinthians, and prayer. *Id.* (App. at 10a). MCMC filed another motion to dismiss, and this time it was granted with prejudice. The district court held that Detwiler's "specific determination of what is harmful . . . was not, in this case, premised on the Bible or any other religious tenet or teaching, but rather on her research-based scientific medical judgments." *Id.* (App. at 10a–11a). Judgement was entered against Detwiler on November 2, 2023.

Following a timely appeal, briefing, and oral argument, the Ninth Circuit issued a divided panel decision on September 23, 2025, affirming dismissal with reasoning substantially similar to the district court. Detwiler timely submitted combined petitions for rehearing and rehearing en banc. MCMC filed a response agreeing with Detwiler that the panel decision should be reheard, expressing concern about its implications for other believers, while urging the Court to reach the same conclusion in a narrower, fact-specific decision. The Ninth Circuit ultimately denied the combined petitions on April 15, 2026 (App. at 41a). *Detwiler v. MCMC*, 2026 U.S. App. LEXIS 10694 (9th Cir. Apr. 15, 2026). A total of eight judges of the Ninth Circuit joined dissents to the denial of rehearing en banc.

Reasons for Granting an Extension

I. The forthcoming petition will examine conflict among eight different Circuits over application of pleading standards to Title VII religious claimants.

The first reason for granting an extension is that the Circuit split cemented by the decision below is of a scope that warrants a wider lens of research than might

ordinarily be required. Counsel for Petitioner has diligently pursued the contours of the Circuit decisions involved and has made substantial progress drafting the petition. At the same time, the rift is deeper and more nuanced than first supposed and indeed has grown while this case has been on appeal.

The petition will explain a Circuit conflict that now involves eight of the Circuits. In the decision below, the Ninth Circuit has joined the Third Circuit in narrowing the Title VII religious claims which will survive the pleading stage. In so doing, the decision below explicitly criticizes contrary decisions of the Sixth, Seventh, and Eighth Circuits as "far too permissive." *Id.* at 899 (App. at 24a). Meanwhile, three other Circuits—the First, Fourth, and Fifth—have lined up behind the Sixth, Seventh, and Eighth Circuits in holding to a wider access point for Title VII claimants.

A brief overview of the leading Circuit authority which conflicts with the decision below follows; it is offered here only to illustrate that the underpinnings of each Circuit authority will need to be thoroughly examined in order to accurately explain the conflict in the forthcoming petition:

- **First Circuit**. *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9 (1st Cir. 2024) (reversing dismissal of former employee's COVID-19 mandate-related Title VII claim, agreeing with Eighth and Seventh Circuits that overlap between religious and political views does not negate claim at pleading stage). *Accord*, *Thornton v. Ipsen Biopharmaceuticals., Inc.*, 126 F.4th 76 (1st Cir. 2025) (following *Bazinet*, reversing dismissal of COVID-19-related Title

VII claims and noting additional agreement with Fourth and Sixth Circuits as well as Seventh and Eighth Circuits).

- **Fourth Circuit**. *Barnett v. Inova Health Care Servs.*, 125 F.4th 465 (4th Cir. 2025) (reversing dismissal of COVID-19 mandate-related dismissal of Title VII claims, agreeing with Sixth, Seventh, and Eighth Circuits). *Accord*, *Chinnery v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, No. 24-1697, 2025 U.S. App. LEXIS 15383 (4th Cir. June 23, 2025) (applying *Barnett* and reversing dismissal of plaintiff's claim based on body-as-temple objection to nasal swab testing). *Accord, Finn v. Humane Soc'y of United States*, 160 F.4th 92 (4th Cir. 2025) (reversing dismissal of Title VII claims, holding that plaintiffs' vaccine objections based on fetal cell objections and Catholic teachings on conscience were sufficient). *See also, Jenkins v. Valley Health Sys.*, 2026 U.S. App. LEXIS 9257 (4th Cir. March 31, 2026) (following *Barnett* and reversing dismissal of nurse's Title VII claims when he had asserted both religious and non-religious objections to vaccine).
- **Fifth Circuit**. *Wright v. Honeywell Int'l, Inc.*, 148 F.4th 779 (5th Cir. 2025) (reversing summary judgment in favor of employer in COVID-19 vaccine mandate case, emphasizing caution when approaching asserted religious beliefs).
- **Sixth Circuit**. *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024) (reversing dismissal of Title VII claim by terminated employee who sought God's guidance through prayer and believed her body was temple

that would be defiled by vaccine). *Accord*, *Sturgill v. Am. Red Cross*, 114 F.4th 803 (6th Cir. 2024) (reversing district court's finding that plaintiff's vaccine objections were medical rather than religious).

- **Seventh Circuit**. *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1019-1020 (7th Cir. 2024) (rejecting district court's "parsing" approach that had found vaccine objections sounded in personal autonomy and safety concerns rather than religion; holding that plaintiffs' requests were based "at least in part" on aspects of their religious beliefs and therefore sufficed). *Accord*, *Passarella v. Aspirus, Inc.*, 108 F.4th 1005 (7th Cir. 2024) (agreeing with Eighth Circuit, reversing dismissal of Title VII religious claims and emphasizing non-binary nature of Title VII and that "any aspect" of the request could be religious at pleading stage).
- **Eighth Circuit**. *Ringhofer v. Mayo Clinic Amb.*, 102 F.4th 894 (8th Cir. 2024) (reversing dismissal of Title VII claims which involved both testing and nasal swabs and asserted both medical and religious beliefs). *Accord*, *Brokken v. Hennepin Cnty.*, 140 F.4th 445 (8th Cir. 2025) (reversing dismissal of Title VII claim where vaccine accommodation had been conditioned on nasal swab testing).

The foregoing are the most relevant, though certainly not all, of the Circuit decisions at odds with the decision below. Several of these Circuit decisions have also sparked one or more dissents advancing the views of the contrary sister Circuits.

The earlier of these several Circuit decisions precipitating the conflict have in turn been cited dozens of times by other courts. For instance, as of this writing the *Ringhofer* decision from the Eighth Circuit lists ninety-three subsequent citing decisions according to Lexis. *Passarella* from the Seventh Circuit has already been cited eighty-one times, and so on with the similar decisions of the other Circuits.

Nor are dissents confined to the decision below; in the other Circuits which have addressed very similar cases, dissents or partial dissents have been filed in at least the Third, Fifth, Seventh, and Eighth Circuits. Diligent and thorough accounting for these many additional opinions and analyses inside and outside the eight Circuits is expected to carry past the current July deadline.

II. The decision and dissents below explore a wide range of legislative intent and religious traditions.

In addition to encompassing most of the Circuits, the conflict occasioned by the decision below invokes a wide range of statutory history, agency guidance, and religious tradition extending back many centuries. The majority and dissents spar, for instance, over the legislative intent and scope of Title VII. *Compare*, *Detwiler,* at 890 (Maj. Op.) (App. at 5a) with *id.* at 901 (VanDyke, J., discussing EEOC guidelines) (App. at 26a).

The dissents also express concerns over the ramifications of the decision for a range of religious traditions, from Christian Scientists to Buddhists, *id.* at 904 (VanDyke, J., dissenting) (App. at 35a). Judge Forrest contrasts the majority's

minimization of prayer in the life of a believer with a panorama of history from Abraham to Mohammed, Joan of Arc to Desmond Tutu. *Detwiler*, 2026 U.S. App. LEXIS 10694 at *16 (App. at 54a–55a). She then noted contrasting teachings on the interaction of reason and belief from John Calvin and Thomas Aquinas. *Id.* at *18 (App. at 55a–56a). The range of such sources in the decisions and dissents below present interdisciplinary facets not within counsel's ordinary purview. It is anticipated that additional time will permit amici to weigh in with relevant religious perspectives that will benefit the Court. Indeed, counsel has been contacted by potential amici, including governmental entities, who have indicated that additional time will facilitate their participation. Because the decision below is written broadly to affect many litigants beyond this Petitioner, there is good cause to ensure wide participation by amici.

III. The decision and dissents below, and across the Circuits, offer conflicting views of this Court's many Free Exercise and related precedents which will benefit from additional time to explicate.

The Circuits are divided not only over textual interpretation of Title VII as it relates to religious claimants, but also as to this Court's precedents on underlying Free Exercise principles. The decision below, and the Third Circuit which holds similarly, rely chiefly on *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and this Court's general pleadings standards as set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

The dissenters and other Circuits meanwhile invoke a bevy of Free Exercise and related precedents. Judge VanDyke, for instance, invokes *Groff v. DeJoy*, 600 U.S. 447 (2023); *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989); *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707 (1981); *Frazee v. Ill. Dept. of Emp. Sec.*, 489 U.S. 829 (1989); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); and *Ballard v. United States*, 329 U.S. 187 (1946).

In her separate dissent to denial of rehearing en banc, Judge Forrest goes back even further, beginning with *Watson v. Jones*, 80 U.S. (13 Wall) 679 (1871), and proceeding to guidance from *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015); *United States v. Seeger*, 380 U.S. 163, 176 (1965); *Welsh v. United States*, 398 U.S. 333, 339 (1970); *Burwell*; *Ballard*; *Thomas*; *Presbyt. Ch. v. Mary Elizabeth Bluehall Mem. Presbyt. Ch.*, 393 U.S. 440 (1969); and *Fowler v. Rhode Island*, 345 U.S. 67 (1953). These precedents were cited not for incidental or procedural points but substantively and doctrinally.

Thorough exploration and succinct presentation of these weighty precedential implications is likewise expected to be fully completed by early August.

Lastly, while overscheduling will not here be offered as an independent reason for granting an extension, since counsel will prioritize the Petition, he would be remiss not to mention one deadline in particular which nearly coincides with and thus spurs this application. Counsel of Record for Detwiler is co-counsel in *Olympus Spa v. Armstrong*, 169 F.4th 817 (9th Cir. 2026), for which a petition for certiorari is being

prepared and will be submitted to this Court. That petition is now due July 10, less than a week before the instant petition would be due at the current ninety-day mark. Counsel of Record for Olympus Spa is also the primary co-counsel in the instant petition. A modest amount of additional time between the filing of these two petitions would benefit both. Although of lesser concern, counsel of record is also coaching two junior colleagues with their first Ninth Circuit arguments in June and July. He will also be traveling for family vacations June 18-23 and July 1-5, but will of course work through vacation as needed to ensure a fulsome Petition.

Conclusion

For all the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended by thirty days, to August 13, 2026. In the alternative, Petitioner would be grateful for an extension of any length of time that may be deemed appropriate.

Respectfully submitted this 28th day of May 2026,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHERRY H. DETWILER, *Plaintiff - Appellant*, v. MID-COLUMBIA MEDICAL CENTER; CHERI MCCALL, an individual; DOES, 1 through 50, *Defendants - Appellees*.	No. 23-3710 D.C. No. 3:22-cv-01306-JR OPINION

Appeal from the United States District Court
for the District of Oregon
Karin J. Immergut, District Judge, Presiding

Argued and Submitted June 13, 2025
Portland, Oregon

Filed September 23, 2025

Before: John B. Owens and Lawrence VanDyke, Circuit Judges, and Richard Seeborg, Chief District Judge.[*]

[*] The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

Opinion by Judge Seeborg;
Dissent by Judge VanDyke

SUMMARY**

Employment Discrimination / Religious Accommodation

Affirming the district court's dismissal, for failure to state a claim, of an employment discrimination action under Title VII and the parallel Oregon state statute, the panel held that the plaintiff failed sufficiently to plead a bona fide religious belief that conflicted with her employer's policy implementing the Oregon Health Authority's administrative rule requiring healthcare workers to be vaccinated against COVID-19, absent an approved exemption.

The employer approved the plaintiff's request for a religious exemption from vaccination. As part of that accommodation, it required the plaintiff to wear personal protective equipment while in the office and to submit to weekly antigen testing for COVID-19. The plaintiff sought a further accommodation of exemption from the weekly antigen testing on the basis that because her research showed that the testing swab was carcinogenic, its use would conflict with her Christian belief in protecting her body as the temple of the Holy Spirit. The employer, however, denied the

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

plaintiff's requested accommodations of saliva testing or full-time remote work and later terminated her employment.

The panel held that for a claim of religious discrimination, the plaintiff must first plead a prima facie case of failure to accommodate her religion. If she meets her burden, then the employer must show that it was nonetheless justified in refusing to accommodate. A plaintiff can meet her prima facie burden by demonstrating that she had a bona fide religious belief, the practice of which conflicted with an employment duty; she informed her employer of the belief and conflict; and the employer threatened her with or subjected her to discriminatory treatment, including discharge, because of her inability to fulfill the job requirements. Where an employee seeks an accommodation, she must plead facts sufficient to show that the accommodation request also springs from a bona fide religious belief. Looking to First Amendment doctrine, the panel held that the district court does not examine the sincerity or the reasonableness of a belief. Instead, the court need only determine if a plaintiff has pled enough facts to plausibly show that her belief is religious, rather than purely secular.

The panel concluded that the plaintiff's complaint did not sufficiently articulate a bona fide religious belief in conflict with her former employer's testing requirement because her belief that the antigen testing swab was carcinogenic was personal and secular, premised on her interpretation of medical research. Disagreeing with other circuits, the panel declined to adopt a lenient approach allowing a complaint to survive with merely conclusory statements about the religious nature of a belief. The panel concluded that the plaintiff, by asserting a general religious principle and linking that principle to her personal, medical

judgment via prayer alone, did not state a claim for religious accommodation.

Dissenting, Judge VanDyke wrote that the majority adopted a flawed mode of analysis purporting to distinguish a category of purely secular claims incidentally linked to a general religious principle from a category of truly religious claims. Judge VanDyke wrote that he would follow other circuits and assume as true the plaintiff's allegation that she requested a religious exemption from the COVID-19 testing requirement, her employer rejected that request, and she was fired because she declined to be tested. As pled, her religious beliefs plainly constituted a fundamental element of her objection to antigen testing.

COUNSEL

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William G. Lockwood (argued), Diane Lenkowsky, and Julie B. Haddon, Gordon Rees Scully Mansukhani LLP, Portland, Oregon; for Defendants-Appellees.

OPINION

SEEBORG, Chief District Judge:

Some sacrifice of total autonomy is a natural consequence of gainful employment. Even in the best of times, job obligations may conflict with one's personal preferences. That said, an employment contract does not terminate the right to exercise one's religion. Federal and state legislatures protect workers from discrimination, harassment, and harms that rise above mere conflict with an employee's predilections.

In response to the COVID-19 pandemic, employers across the country instituted vaccine and testing requirements to comply with government mandates. These policies have surfaced the tension between individual beliefs and the demands of the workplace. Employees across the country have filed suits challenging these relatively new obligations, and many assert these policies amount to religious discrimination. Courts must tread carefully in evaluating these claims. On the one hand, courts have long safeguarded the rights of religious believers, even when their beliefs are not mainstream, traditional, or even internally

consistent. On the other hand, legislatures crafted religious discrimination statutes of limited scope, striking a balance between individual entitlements and the reality of the workplace. Accordingly, lower courts must consistently enforce pleading requirements to respect this legislative intent.

This appeal from the dismissal of a religious discrimination claim asks what is sufficient to plead a bona fide religious belief under Title VII and the parallel Oregon state statute. To be sure, assertions of religious belief are entitled to deference, particularly at the pleading stage. However, courts have not uniformly agreed on a standard for evaluating the nature of a belief. Supreme Court guidance in the First Amendment context, considered alongside the requirements of federal pleading, reflects that references to generic religious principles cannot transform a specific secular preference into a basis for a religious discrimination claim. Broad invocations of religion cannot shield employees from any unwanted job obligation. Accordingly, we affirm the trial court's dismissal of this action for failure to state a claim.

I.

Sherry M. Detwiler worked as a Privacy Officer and the Director of Health Information for Defendant-Appellee Mid-Columbia Medical Center ("MCMC"), a hospital in The Dalles, Oregon, from September 14, 2020, through December 20, 2021. In her own words, Detwiler is a practicing Christian who believes her body is a temple of the Holy Spirit and sincerely believes she has a "religious duty to avoid defiling her 'temple' by taking in substances that the Bible explicitly condemns or which could potentially cause physical harm to her body."

On September 28, 2021, Detwiler sought a religious exemption from MCMC's policy implementing the Oregon Health Authority's ("OHA") administrative rule. The OHA required healthcare workers to be vaccinated against COVID-19, absent an approved exemption. Detwiler, relying on sources she found online, determined that COVID-19 vaccines were created from fetal cell lines and contained "neurotoxins, attenuated viruses, carcinogens, chemical wastes, and other potentially harmful substances." She then informed MCMC that her Christian beliefs against abortion and the introduction of harmful substances into her body conflicted with the vaccine requirement.

MCMC approved Detwiler's request for a religious exemption from vaccination on October 1, 2021.

As part of that accommodation, MCMC required Detwiler to wear personal protective equipment while in the office and to submit to weekly antigen testing for COVID-19. MCMC's test required a participant to insert a cotton swab dipped in ethylene oxide ("EtO") into one's nostril, swirl the swab against the skin to collect a sample from the nasal tissue, and then submit the swab to a lab for analysis.

Detwiler requested a further accommodation, this time seeking an exemption from the weekly antigen testing. Detwiler informed MCMC that she found "multiple sources indicating that EtO is a carcinogenic substance." In her second accommodation request, Detwiler cited to her belief that her body is a "temple of God," stating:

> It is against my faith and my conscience to commit sin. Sin is anything that violates the will of God, as set forth in the Bible, and as impressed upon the heart of the believer by

> the Holy Spirit. In order to keep myself from sin, and receive God's direction in my life, I pray and ask God for wisdom and direction daily. As part of my prayers, I have asked God for direction regarding the current COVID testing requirement. As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm. If I were to go against the moving of the Holy Spirit, I would be sinning and jeopardizing my relationship with God and violating my conscience . . .
>
> Ethylene Oxide (EtO) is carcinogenic to humans. There is clear evidence that EtO is genotoxic and evidence supports a mutagenic mode of action, key precursor events are anticipated to occur in humans and progress to tumors, including evidence of chromosome damage in humans exposed to EtO . . .
>
> . . . As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any testing which would alter my DNA and has been proven to cause cancer. I find testing with carcinogens and chemical waste to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit.

Detwiler proposed MCMC allow her either to submit to saliva testing for COVID-19 or to work remotely full-time. She believed the latter accommodation to be reasonable

because she had previously attended and conducted meetings via videoconference, and expected most of her other duties would not require her physical presence at the MCMC facility.

On October 19, 2021, Cheri McCall, MCMC's Chief Human Resources Officer, informed Detwiler that MCMC had granted her request for an exemption from the vaccine requirement but denied her requested accommodations of saliva testing or full-time remote work. McCall explained saliva testing would be impractical because test results would take 24 to 36 hours, and MCMC might ask Detwiler to appear for same-day in-person work. McCall further explained full-time remote work would create "a hardship on [Detwiler's] department and team," citing increased complaints and dissatisfaction with Detwiler's work during remote periods in the height of the pandemic. Finally, McCall informed Detwiler MCMC was placing her on unpaid leave until October 30, 2021, or until she complied with the vaccine mandate or the terms of her approved religious exemption.

MCMC later extended this deadline and offered Detwiler the alternative option to accept reassignment to a different role. Detwiler had until December 20, 2021, to agree to antigen testing or to be reassigned. Because she did neither, MCMC terminated Detwiler's employment on December 20, 2021.

Detwiler filed her First Amended Complaint ("FAC") on November 4, 2022, against MCMC and Cheri McCall, as well as unnamed Doe defendants. Detwiler sought damages for Defendants' averred religious discrimination in violation of Title VII of the Civil Rights Act of 1964 and Oregon's parallel anti-discrimination statute, Or. Rev. Stat.

§ 659A.030. She sued the individual Defendants for aiding and abetting MCMC's alleged discrimination.

On November 18, 2022, Defendants filed a motion to dismiss the FAC for failure to state a claim. Defendants argued Detwiler's objection to antigen testing stemmed from her secular, medical judgment rather than a bona fide religious belief. On December 20, 2022, the assigned magistrate judge issued her findings and recommendations ("F&R"), concluding the district court should grant Defendants' motion to dismiss. The magistrate judge held that although Detwiler's complaint was "couche[d] in religious terms," the FAC demonstrated her request for accommodation was based on her "secular, non-religious belief that nasal swab testing contains hazardous materials." She then determined that because Detwiler's underlying claim of religious discrimination failed, her claims against the individual Defendants were similarly insufficient. The district judge adopted the F&R in full and dismissed the FAC without prejudice.

Detwiler filed her Second Amended Complaint ("SAC") on July 19, 2023. The SAC clarified: "[w]hile [Detwiler] declined to submit to nasal swab testing, at least in part, due to medical and/or scientific judgment, she also exercised religious judgment" and her belief "that her body is a temple of the Holy Spirit [is] rooted in religion, as it is based on a biblical passage namely, 1 Corinthians 6:19-20." Detwiler also asserted she confirmed this opposition to testing via personal prayer.

Defendants filed another motion to dismiss, and the magistrate judge again recommended dismissal, this time with prejudice. The court "readily accept[ed]" Detwiler's bona fide religious belief that her body is a temple of the

Holy Spirit but noted Detwiler's "specific determination of what is harmful . . . was not, in this case, premised on the Bible or any other religious tenet or teaching, but rather on her research-based scientific medical judgments." Again, because Detwiler failed to plead the underlying claim, the court also recommended dismissal of the aiding and abetting claims.

The magistrate judge further recommended denying leave to amend because Detwiler had not set forth any new facts that cured the FAC's deficiencies. Because Detwiler had the opportunity to plead additional facts and failed to do so, the magistrate judge concluded no such facts existed.

On November 2, 2023, the district court adopted the magistrate judge's recommendation in full and dismissed the case with prejudice. The district court entered its final judgment on the same day. Detwiler timely appealed.

II.

The Ninth Circuit has not yet endorsed a test for determining the nature, whether religious or secular, of a belief underlying a Title VII claim. That said, cases from the First Amendment context, guidance from the Equal Employment Opportunity Commission ("EEOC"), and a slew of district court cases offer a logical approach. While Detwiler would embrace a standard by which a pleading passes muster whenever a practice is labeled "religious," a complaint must do more than rest on an unadorned conclusion.

Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679

(2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, a court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Detwiler brought her claims under Title VII of the Civil Rights Act of 1964 and Oregon's parallel state law. Both statutes make it unlawful for an employer to discriminate against an individual based on their religion. 42 U.S.C. § 2000e-2; Or. Rev. Stat. § 659A.030(1)(a). Employers are required to accommodate employees' religious beliefs unless doing so would impose an undue hardship. 42 U.S.C. § 2000e(j); Or. Rev. Stat. § 659A.030(1)(a).

Claims of failure to accommodate a religious objection are analyzed under a burden-shifting framework. *See Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023); *Dawson v. Entek Intern.*, 630 F.3d 928, 935 (9th Cir. 2011) (holding federal framework also applies to discrimination claims brought under Or. Rev. Stat. § 659A.030). The plaintiff must first plead a prima facie case of failure to accommodate her religion. *Bolden-Hardge*, 63 F.4th at 1222. If the plaintiff meets her burden, the employer must show it was nonetheless justified in refusing to accommodate. *See id*. A plaintiff can meet her prima facie burden by demonstrating "(1) [s]he had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) [s]he informed [her] employer of the belief and conflict; and (3) the employer threatened [her]

with or subjected [her] to discriminatory treatment, including discharge, because of [her] inability to fulfill the job requirements." *Heller v. EBB Auto Co*., 8 F.3d 1433, 1438 (9th Cir. 1993). Where an employee seeks an accommodation, she must plead facts sufficient to show the accommodation request also springs from a bona fide religious belief. *See Tiano v. Dillard Dep't Stores, Inc.*, 139 F.3d 679, 682–83 (9th Cir. 1998).

Evaluating the first factor of the prima facie case is a delicate inquiry. Title VII defines religion to include all aspects of observance and practice, as well as belief. *Id.* at 681 (citing 42 U.S.C. § 2000e(j)). However, this protection is not limitless and does not encompass secular preferences. *Id.* at 682.

The EEOC interprets Title VII and existing caselaw to conclude an employee's request for an exemption from a COVID-19 vaccination mandate can be denied if "the employee's objection . . . is not religious in nature." *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. Equal Emp. Opportunity Comm'n (Mar. 1, 2022), https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws ("EEOC Guidelines");[1] *see also Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1180 (9th Cir. 2021) (citing same EEOC guidelines). Accordingly, a plaintiff fails to state a

[1] At some point between May 7, 2025, and May 16, 2025, the EEOC archived this webpage. It now begins with the disclaimer: "This is archived content from the U.S. Equal Employment Opportunity Commission. The information here may be outdated and links may no longer function." The EEOC has not since updated its guidelines, and therefore this opinion treats the available information as merely persuasive.

prima facie case if the belief motivating her accommodation request is not, in fact, religious.

While as previously noted, the Ninth Circuit has not yet endorsed a test for determining whether a belief is religious or secular, this court regularly looks to First Amendment doctrine for guiding principles to assess a plaintiff's assertions of religious belief. *See, e.g.*, *Keene v. City and Cnty. of San Francisco*, No. 22-16567, 2023 WL 3451687, at *2 (9th Cir. May 15, 2023) (relying on *Thomas v. Review Bd.*, 450 U.S. 707, 714 (1981)); *Bolden-Hardge*, 63 F.4th at 1223.

Courts need not accept entirely conclusory assertions of religious belief. *See Bolden-Hardge*, 63 F.4th at 1223 (relying on *Oklevueha Native Am. Church of Haw., Inc. v. Lynch*, 828 F.3d 1012, 1016–17 (9th Cir. 2016) (holding the same in a free exercise matter)); *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972) (noting "purely secular considerations" do not merit constitutional protections for religion)). Indeed, some inquiry into the religious or secular nature of a belief is necessary to prevent religious labels from becoming carte blanche to ignore any obligation. *See, e.g.*, *Yoder*, 406 U.S. at 215–16. Yet courts have struggled to draw a line between the religious and the secular. *See Callahan v. Woods*, 658 F.2d 679, 687 (9th Cir. 1981) (noting for First Amendment purposes that "[a] secular experience can stimulate a spiritual response; lives are not so compartmentalized that one can readily keep the two separate.").

To be sure, courts may not substitute their own judgment for that of the believer's. *See Heller*, 8 F.3d at 1438 ("[I]t is no business of courts to say . . . what is a religious practice or activity."). Nor can they adjudge the reasonableness of a

belief under the guise of a purely legal assessment of the sufficiency of the claim. *See id.* Whether a belief is religious should not "turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas*, 450 U.S. at 714. So too with Title VII protections. *See Bolden-Hardge*, 63 F.4th at 1223 (relying on *Thomas* in the Title VII context); *Keene*, 2023 WL 3451687, at *2 (same).

Overlap between secular and religious bases for a belief poses a particular problem. A belief grounded in overlapping secular and religious considerations is "presumably protected" in the constitutional context. *Callahan*, 658 F.2d at 684. The EEOC guidelines echo this principle, stating "overlap between a religious and political view does not place it outside the scope of Title VII's religious protections, as long as the view is part of a comprehensive religious belief system and is not simply an isolated teaching." EEOC Guidelines. The challenge lies in distinguishing purely secular concerns from preferences that overlap with a bona fide religious belief.

III.

A plaintiff seeking a religious exemption must plead a sufficient nexus between her religion and the specific belief in conflict with the work requirement. To survive a motion to dismiss, a plaintiff need not establish her belief is consistent, widely held, or even rational. However, a complaint must connect the requested exemption with a truly religious principle. Invocations of broad, religious tenets cannot, on their own, convert a secular preference into a religious conviction. To hold otherwise would destroy the pleading standard for religious discrimination claims,

allowing complainants to invoke magic words and survive a dismissal without stating a prima facie case.

This standard does not direct lower courts to examine the sincerity or the reasonableness of a belief. Instead, courts need only determine if a plaintiff has pled enough facts to show her belief is religious, rather than purely secular. This analysis, while respecting plaintiffs' well-pled assertions of religious conviction, requires claims of religious discrimination to meet the same level of plausibility as any other prayer for relief.

Applying the typical plausibility standard here, Detwiler's SAC does not sufficiently articulate a bona fide religious belief in conflict with her former employer's testing requirement. The deference owed to Detwiler's claims, both in procedural posture and due to their averred religious nature, cannot cure the deficiencies in her complaint.

The district court dismissed Detwiler's SAC for failure to state a prima facie case. Detwiler asserts the lower court erred on multiple fronts. She primarily urges this panel to adopt an extremely permissive standard for assessing the nature of a Title VII claimant's beliefs. In support of such a standard, she relies on comments in First Amendment cases, where this circuit and others have emphasized the significant deference courts should give to a plaintiff's professed belief or belief system. Some Circuits have adopted this approach in the employment discrimination context, allowing a complaint to survive with merely conclusory statements about the religious nature of a belief. However, such a standard contravenes federal pleading requirements and elevates claims of religious discrimination over all other prayers for relief.

Detwiler also obfuscates the belief at issue. The District Court acknowledged the sincerity and religiosity of Detwiler's belief in her body as a temple and even the implied prohibition on ingesting harmful substances. Therefore, at issue is Detwiler's belief that the testing swab is harmful, and specifically that EtO is a carcinogen. This belief is personal and secular, premised on her interpretation of medical research. In essence, Detwiler labels a personal judgment based on science as a direct product of her general religious tenet. Yet, her alarm about the test swab is far too attenuated from the broad principle to treat the two as part of a single belief. Moreover, Detwiler does not present a case where a religious belief overlaps with a medical one. Without Detwiler's opinion that EtO is carcinogenic and therefore harmful, she has no conflict with MCMC's COVID-19 testing requirement—her secular judgment offers the sole basis of her objection. This concern about the harmful nature of EtO has no relationship with her religious beliefs.

Identifying Detwiler's operative belief makes clear that she has not plead a prima facie case. Detwiler's other arguments also fall short. She next avers that the district court erred in examining at all whether her objection was religious or secular. This overstates the law: a district court must make a determination about the source of a belief to examine a plaintiff's prima facie case. *See, Bolden-Hardge,* 63 F.4th at 1223 ("[Deference to assertions of religious belief] does not mean that courts must take plaintiffs' conclusory assertions of violations of their religious beliefs at face value."); *Tiano*, 139 F.3d at 682 ("Title VII does not protect secular preferences."); *Mason v. Gen. Brown Cent. Sch. Dist*., 851 F.2d 47, 51 (2d Cir. 1988) ("[A] threshold inquiry into the 'religious' aspect of particular beliefs and

practices cannot be avoided if we are to determine what is in fact based on religious belief, and what is based on secular or scientific principles." (citations and quotations omitted)).

Detwiler then claims the district court improperly determined her belief was secular, in contravention of this court's recent opinion in *Bolden-Hardge*, 63 F.4th at 1223. However, *Bolden-Hardge* examined whether the plaintiff's religious belief conflicted with her employment duty, rather than religious nature of the objection itself. *Id.* The *Bolden-Hardge* court opined that the lower court's role was "to determine whether the line drawn represents an honest conviction" and reiterated that, particularly at the motion to dismiss phase, "the burden to allege a conflict with religious beliefs is fairly minimal. *Id.* (relying on *Thomas*, 450 U.S. at 716). The district court here acted in accordance with *Bolden-Hardge*, examining Plaintiff's prima facie case for a religious belief in conflict with her employment duties. Detwiler has not met that minimal burden here.[2]

[2] Detwiler also relies on this Court's unpublished opinion in *Keene*, in which this court reversed the lower court's decision to deny a preliminary injunction to COVID-19 vaccine objectors. 2023 WL 3451687 at *1. Without explaining its reasoning, the district court concluded plaintiffs did not demonstrate sincere religious beliefs in conflict with receiving the vaccine. *Id.* The panel interpreted this silence as the district court "erroneously [holding] that Appellants had not asserted sincere religious beliefs because their beliefs were not scientifically accurate." *Id.*

Keene provides no help to Detwiler because there the lower court did not actually examine the religious nature of the plaintiffs' opposition to the COVID-19 vaccine and provided no reasoning as to why plaintiffs failed to plead a prima facie case. *See id* at *2. The district court here, by contrast, clearly outlined Detwiler's complaint's deficiency. More importantly, the claimants in *Keene* pled a specific religious belief in opposition to receiving the vaccination—their opposition to the use of

Beyond *Bolden-Hardge*, Detwiler relies on cases outside the employment arena, as well as decisions from other circuits, in support of her lenient standard. In particular, she relies on this circuit's reasoning in *Callahan*, a First Amendment case, which held "[s]o long as one's faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible." 658 F.2d at 687.

Of more relevance here, however, are the numerous district courts—many within this circuit—that have held when the religious principles are too broad, and the connection to personal, medical judgments are too tenuous, plaintiffs have not pled a religious belief. Plaintiffs in those actions regularly invoke the same Christian belief as does Detwiler—that their bodies are temples of the Holy Spirit. Many then explain they reached their opposition to vaccination or testing by conducting their own research and individual prayer. Because these exemption requests are fundamentally predicated on concerns about health consequences, district courts have generally dismissed these Title VII claims.

Lower courts have held plaintiffs cannot "couch" their personal, secular beliefs in religious terms to claim Title VII protections. *See, e.g.*, *Medrano v. Kaiser Permanente*, No. 8:23-cv-02501-DOC-ADSX, 2024 WL 3383704, at *4

fetal cells used in developing the available vaccines— and identified the religious basis for their objection to vaccination as their Christian faith's opposition to abortion. *Id.*

(C.D. Cal. July 10, 2024)[3]; *Trinh v. Shriners Hosps. for Child.*, No. 3:22-cv-01999-SB, 2023 WL 7525228, at *7 (D. Or. Oct. 23, 2023). Courts have expressed concerns with a professed religious belief so broad as "to cover anything [plaintiffs] train[] it on." *Ulrich v. Lancaster Gen. Health*, No. 22-cv-4945, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023) (quoting *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022)). In the words of one court, "it takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, No. 21-cv-4024, 2021 WL 4399672, at *7 (E.D. Pa. Sept. 27, 2021); *see also Kather v. Asante Health Sys.*, No. 1:22-cv-01842-MC, 2023 WL 4865533, at *1, *5 (D. Or. July 28, 2023) (distinguishing plaintiffs who sufficiently tied vaccine objections to religion from those who made only secular legal and economic objections to a vaccine mandate).

Invocation of prayer, without more, is still insufficient to elevate personal medical judgments to the level of religious significance. *See, e.g.*, *Coates v. Legacy Health*, No. 3:23-cv-00931-JR, 2024 WL 1181827, at *5–6 (D. Or. Jan 8, 2024). Indeed, crediting every secular objection bolstered by a minimal reference to prayer as religious "would amount to a blanket privilege and a limitless excuse for avoiding all unwanted obligations." *Finkbeiner*, 623 F. Supp. 3d at 465 (internal citations and quotations omitted); *see also Ledezma v. Optum Servs., Inc.*, No. 23-cv-06691-VC, 2025 WL 327743, at *1 (N.D. Cal. Jan. 29, 2025) (reaching the same conclusion at summary judgment); *Hand v. Bayhealth Med.*

[3] The plaintiff in this case has appealed the dismissal of the complaint, but that panel has not yet heard argument or issued a decision. *See* 9th Cir. Docket No. 24-6278.

Ctr., Inc., No. 22-cv-1548-RGA, 2024 WL 359245, at *5 (D. Del. Jan. 31, 2024), *aff'd sub nom. McDowell v. Bayhealth Med. Ctr., Inc.,* No. 24-1157, 2024 WL 4799870, at *1 (3d Cir. Nov. 15, 2024), *cert. denied sub nom. Harvey v. Bayhealth Med. Ctr., Inc.*, No. 24-996, 2025 WL 1787737, at *1 (U.S. June 30, 2025).

Concern over this limitless expansion also appears in First Amendment precedents. In *Wisconsin v. Yoder*, the Supreme Court observed "the 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." 406 U.S. at 215–16. The Ninth Circuit has endorsed this necessary limiting principle. *See Callahan*, 658 F.2d at 683 ("It is of course imaginable that in some circumstances a person might assert a First Amendment claim and attempt to justify it with a religious belief which, though sincerely held, was simply irrelevant to the claim.") (relying on *Yoder*, 406 U.S. at 215–16).

Other circuits have been similarly wary of allowing plaintiffs to anoint their claims with a divine mandate. *See, e.g.*, *Africa v. Pennsylvania*, 662 F.2d 1025, 1030–31 (3d Cir. 1981). Beginning with *Africa*, the Third Circuit has regularly declined to accept assertions of religious belief wholesale. *See, e.g., Gatto v. Johnson & Johnson Servs., Inc*., No. 24-1992, 2025 WL 816732, at *2 (3d Cir. Mar. 14, 2025); *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa*., 877 F.3d 487, 490–91 (3d Cir. 2017); *McDowell*, 2024 WL 4799870, at *2 (affirming dismissal of pleadings that failed to "provide facts from which we can plausibly infer that Plaintiffs'

objections . . . are based on religious beliefs and not on their personal, secular, and medical beliefs").[4]

Gatto is strikingly similar to this case. *See Gatto*, 2025 WL 816732, at *2. Gatto objected to her employer's testing requirement based on her views that her body is a temple of the Holy Spirit which would be violated by nasal swab tests. *Id.* The Third Circuit concluded her objections were not religious in nature and affirmed the dismissal of her complaint. *See id.* (relying on *Fallon* 877 F.3d at 488, 492 and *Africa*, 662 F.2d at 1033–34). Like the plaintiffs in *Fallon* and *Africa*, Gatto had secular beliefs about what was or was not healthy. *See id*. These ideas were not entitled to Title VII protections because her belief that her body is a temple lacked a sufficient nexus to her health concerns with testing. *See, e.g., id.* (relying on *Yoder*, 406 U.S. at 216, to observe that a "subjective evaluation and rejection of the

[4] Recently, district courts in this Circuit have looked to the Third Circuit's *Africa* test as a starting point to determine the nature of a belief. *See, e.g.*, *Medrano*, 2024 WL 3383704, at *3; *Stephens v. Legacy-GoHealth Urgent Care*, No. 3:23-cv-00206-SB, 2023 WL 7612395, at *4 (D. Or. Oct. 23, 2023). In *Africa*, the Third Circuit formulated three indicia of a religion: whether a plaintiff's claimed religion 1) addresses "fundamental and ultimate questions having to do with deep and imponderable matters"; 2) is comprehensive in nature; and 3) has certain recognizable formal and external signs. 662 F.2d at 1032; *see also Alvarado v. City of San Jose*, 94 F.3d 1223, 1230 (9th Cir. 1996) (endorsing the *Africa* test in the First Amendment context).

To be sure, the *Africa* factors are of limited applicability here. That test was designed to evaluate objections based on less well-established religions. *Africa*, 662 F.2d at 1032. The religiosity of Detwiler's underlying Christian belief system is not at issue. The *Africa* cases are instead helpful in articulating a concern with the ballooning religious discrimination claims. *See id.* at 1031 (relying on *Yoder*, 406 U.S. at 215–16).

contemporary secular [and medical] values accepted by the majority" are claims that "would not rest on a religious basis"). Such bare allegations give rise to, at most, the "mere possibility" that religious beliefs informed objections to the vaccine and to testing. *McDowell*, 2024 WL 4799870, at *2 (relying on *Iqbal*, 556 U.S. at 678–79).

Expanding Title VII claims runs the risk of stretching these statutory protections far beyond their intended use. To allow such claimants to go forward without limits would "impermissibly cloak with religious significance [plaintiff's] fundamentally secular objections . . . and thereby create a blanket privilege whenever an employee invokes scripture." *Gatto*, 2025 WL 816732, at *3 (internal quotations and citations omitted).

Despite this concern, several circuits have adopted Detwiler's proposed lenient standard. In *Ringhofer v. Mayo Clinic, Ambulance*, the Eighth Circuit considered religious exemption requests advanced by two plaintiffs who objected to their employer's vaccine mandate and testing alternative. 102 F.4th 894 (8th Cir. 2024). One employee explained that because "her body is a temple for the Holy Spirit that she is duty bound to honor," "[s]he does not believe in putting unnecessary vaccines or medications into her body," and the other that "[s]hifting my faith from my Creator to medicine is the equivalent of committing idolatry." *Id.* at 902. The Eighth Circuit reversed the dismissal of these plaintiffs' Title VII claims, concluding, "[b]y connecting their objection to testing to specific religious principles," the plaintiffs satisfied their burden at the pleading stage. *Id.*

The Sixth Circuit has also concluded a plaintiff stated a claim when she refused vaccination "as a result of her beliefs" and personal prayer. *Lucky v. Landmark Med. of*

Mich., 103 F.4th 1241, 1243 (6th Cir. 2024). The court emphasized that Title VII's language did not, contrary to the district court's conclusion, require the plaintiff to explain in more depth how any particular tenet of her religion prohibited vaccination. *See id.* The panel determined that Title VII, when read against the federal pleading requirements, required only that the plaintiff allege facts "supporting an inference that her refusal to be vaccinated . . . was an 'aspect' of her 'religious observance' or 'practice' or 'belief.'" *Id.* (quoting 42 U.S.C. § 2000e(j)).

Similarly, a divided panel of the Seventh Circuit determined that "[c]ourts should not undertake to dissect religious beliefs . . . because [they] are not articulated with the clarity and precision that a more sophisticated person might employ." *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1011 (7th Cir. 2024) (quoting *Thomas*, 450 U.S. at 715). Accordingly, the majority concluded the plaintiff's use of religious vocabulary was sufficient to connect her medical judgment to a religious belief. *See id.* at 1011.

These decisions—though less pervasive in the federal circuits than the dissent portrays—offer Title VII protections to the secular implementation of high-level, religiously inspired goals.[5] *See id.* at 1014 (Rovner, J., dissenting) (expressing this concern with the majority's reasoning). This threshold is far too permissive. Take, for example, a

[5] The cases from the First, Fifth, Sixth, and Seventh Circuits—cited by the dissent for the proposition that today's decision departs from a national consensus—adjudicate challenges to vaccine mandates, not testing requirements. *See Bazinet v. Beth Isr. Lahey Health, Inc.*, 113 F.4th 9, 13 (1st Cir. 2024); *Wright v. Honeywell Int'l, Inc.*, No. 24-30667, 2025 WL 2218131, at *1 (5th Cir. Aug. 5, 2025); *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1242 (6th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1007 (7th Cir. 2024).

claimant who believes her body is a temple. She then interprets that belief as a requirement to exercise daily and finds evidence suggesting that such exercise is most effective when done in the morning. While the generic principle and the claimant's chosen implementation are both understandable, they are not equivalent. She may prefer to exercise in the mornings, but she is not entitled to an exemption from attendance at early meetings. Nothing in her religion conflicts with morning work requirements. Instead, such a plaintiff relies on personal and practical preferences rather than a religious mandate. Even though her belief in her body as a temple is religious, the rationale for her specific exemption request is not.

The same is true here. To allow Detwiler's claim to go forward would open the door to unlimited religious discrimination claims. Such a deluge would certainly generate negative consequences. Employers incur costs in the administration of religious accommodation requests and the early stages of litigation. Courts would face greater numbers of these claims, allocating further judicial resources to complaints with no merit whatsoever. Detwiler offers no limiting principle within her proposed standard. Therefore, courts in this circuit must hold assertions of religious belief to the routine plausibility standard and examine whether there is any nexus between religion and a plaintiff's viewpoint.

Ultimately, Detwiler's objection to testing is grounded in the secular belief that the nasal swabs in antigen tests are carcinogenic. She failed to plead facts demonstrating her belief in the harmfulness of the swabs was related to her Christian faith. Detwiler's references to prayer and a broad belief that her body is a temple do not render her medical

evaluation of the swabs religious. Such personal preferences are not entitled to Title VII protections.

IV.

Detwiler, by asserting a general religious principle and linking that principle to her personal, medical judgment via prayer alone, did not state a claim for religious accommodation. Detwiler's proposed standard would result in an unmanageable expansion of Title VII protections. If Detwiler's assertions were sufficient to state a prima facie claim for a religious exemption, there would be no bounds on otherwise-secular preferences that an employee could characterize as religious and therefore demand an employer accommodate. The District Court properly determined Detwiler's objection was based on her secular belief, not a religious one. Accordingly, the dismissal of Detwiler's complaint for failure to state a claim is hereby affirmed.

AFFIRMED.

VANDYKE, Circuit Judge, dissenting:

Plaintiff Sherry Detwiler alleges that Mid-Columbia Medical Center ("MCMC") discriminated against her religious beliefs in violation of Title VII by denying her an exemption from MCMC's policy requiring her to undergo a nasal-swab test for COVID-19. The district court dismissed the complaint with prejudice for failure to state a claim. But Detwiler pled with sufficient specificity to show her claim has facial plausibility, satisfying her minimal burden. The majority errs by concluding otherwise.

The majority adopts a flawed mode of analysis that purports to distinguish a category of "purely secular" claims

incidentally "link[ed]" to "a general religious principle" (which are not cognizable) from "truly religious" claims (which are cognizable). That approach is unworkable and will necessarily embroil courts in resolving intractable questions about how much of a claimant's religiously motivated objection is "truly religious," versus how much of the objection derives from an erroneous "personal judgment based on science." Effectively all religiously motivated actions could be characterized as based on some "general religious principle" combined with some view of how the world factually (or "scientifically," or "medically," or "actually"—pick your preferred adverb) works. Because of this, the majority's new test ultimately allows judges to divine what is "really doing the work" in someone's sincere religious objection. Is it the claimant's "truly religious" belief, or is it just a merely "*general* religious principle" combined with the claimant's wrongheaded view of reality?

While I'm sure my colleagues in the majority don't intend this result, it should be clear that such a test is just a pathway for right-thinking judges to decide which religious claims merit protection, and which are too benighted to qualify. I would avoid that path. Following instead the majority of other circuits that have evaluated claims indistinguishable from Detwiler's, I would reverse the district court's order dismissing her complaint and allow her claim to proceed.

I.

On a motion to dismiss, "[w]e accept the plaintiff's allegations as true and view them in the light most favorable to her." *Soo Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017). A complaint survives a motion to dismiss if it alleges "enough facts to state a claim to relief that is plausible on its

face." *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Dismissal is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Id.* (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)).

Title VII "requires employers to accommodate the religious practice of their employees." *Groff v. DeJoy*, 600 U.S. 447, 453 (2023). To establish a prima facie claim for religious discrimination based on a failure to accommodate, an employee must show that (1) she had a bona fide religious belief that conflicted with an employment duty, (2) she informed her employer of the conflict, and (3) the employer subjected her to an adverse employment action because she could not fulfill the employment duty. *See Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004).

Detwiler alleges, and therefore we must assume as true, that she requested a religious exemption from the COVID-19 testing requirement, MCMC rejected that request, and Detwiler was fired because she declined to be tested. All that is left for us to determine is whether Detwiler pled sufficient facts to support an inference that her opposition to the testing was an aspect of "religious observance and practice" or "belief." 42 U.S.C. § 2000e(j). In my view, as pled, Detwiler's religious beliefs plainly constitute a fundamental element of her objection.

Both the text of Title VII and EEOC guidance applying the statute confirm that an employee can object on a mixture of religious and nonreligious grounds—a partially secular objection can still survive a motion to dismiss if some element of the objection is plausibly connected to religion. Title VII defines "religion" to include "all aspects of

religious observance and practice, as well as belief." *Id.* We have noted the breadth of this definition: "[t]he very words of the statute ('*all aspects* of religious observance and practice . . . .') leave little room for . . . a limited interpretation." *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993) (first ellipsis in original) (quoting *Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978)). The EEOC has interpreted the definition accordingly: religious exemptions from workplace policies may consist of both religious and secular elements. *See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EEOC (Mar. 1, 2022), https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws ("[O]verlap between a religious and political view does not place it outside the scope of Title VII's religious protections, as long as the view is part of a comprehensive religious belief system and is not simply an isolated teaching."). There is nothing improper under Title VII about an employee objecting to an employer's mandate on the grounds that it both violates her religious beliefs *and* is unhealthy. What is improper is for a court to parse a sincere religious objection into separate "religious" and "secular" elements and then dismiss the complaint because the secular part is not religious.

The district court found that Detwiler's "specific determination of what is harmful . . . was not, in this case, premised on the Bible or any other religious tenet or teaching." In making this determination, the district court erred by artificially segregating Detwiler's "religious" and "secular" beliefs. As a result, the district court ruled on the religiosity of Detwiler's belief that the chemical on the nasal swabs is carcinogenic. But the relevant question in this case

is whether Detwiler's belief *that she cannot be swabbed* is religious. If the district court had considered the correct question in this case (examining Detwiler's failure-to-accommodate claim as a whole), it would have concluded that the facts as alleged "allow[] the court to draw the reasonable inference" that the beliefs in question were sufficiently religious. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Detwiler made clear that she believed her religion forbade her from being tested by nasal swab, a belief reached through careful study and prayer. "It 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." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989). And "a judge's disbelief of a complaint's factual allegations" may not affect his decision on a motion to dismiss. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). The district court ignored such admonitions, instead determining that Detwiler's "request for alternate accommodations stems from her belief that nasal swab testing contains hazardous materials" and that her belief was "secular" and "non-religious." The court granted that Detwiler's belief is the result of her own religious experience (prayer), but concluded that it could not plausibly be considered a religious belief. In doing so, the district court disregarded the explicitly religious elements of Detwiler's claim, precedent forbidding courts from determining the validity of a party's interpretation of his own religious experience, *see W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force

citizens to confess by word or act their faith therein."), and federal pleading standards, *Iqbal*, 556 U.S. at 678 ("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.'" (quoting *Twombly*, 550 U.S. at 570)).

Furthermore, in concluding that Detwiler's beliefs are not "premised on the Bible or any other religious tenet or teaching," the district court engaged in analysis that the Supreme Court has repeatedly rejected. Detwiler presented scriptural support that she interpreted as forbidding her from undergoing a nasal swab. In concluding that Detwiler's beliefs are not premised on the Bible, the district court necessarily rejected her interpretation of Scripture. Supreme Court precedent bars such a heavy-handed judicial intrusion into the legitimacy of religious beliefs. *See, e.g.*, *Thomas v. Rev. Bd. of the Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) ("[I]t is not within the judicial function and judicial competence to inquire whether" a party "correctly perceived the commands of their . . . faith. Courts are not arbiters of scriptural interpretation."); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (emphasizing that "federal courts have no business addressing []whether the religious belief asserted . . . is reasonable"); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 833 (1989) (warning that the orthodoxy of a claimant's belief is "irrelevant"); *United States v. Ballard*, 322 U.S. 78, 86 (1944) ("Religious experiences which are as real as life to some may be incomprehensible to others.").

By affirming the district court, the majority creates a circuit split. When faced with the question of whether religious objections to COVID-19 policies mirroring Detwiler's objection were sufficiently pled, our sister

circuits have consistently answered in the affirmative. *See Bazinet v. Beth Isr. Lahey Health, Inc.*, 113 F.4th 9, 15–17 (1st Cir. 2024); *Wright v. Honeywell Int'l, Inc.*, No. 24-30667, 2025 WL 2218131, at *3 (5th Cir. Aug. 5, 2025); *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243–44 (6th Cir. 2024); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901–02 (8th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024); *Brokken v. Hennepin Cnty.*, 140 F.4th 445, 451–52 (8th Cir. 2025). While many of these cases dealt with requested exemptions to vaccine mandates as opposed to testing requirements, they are not distinguishable. In *Ringhofer v. Mayo Clinic, Ambulance*, for instance, plaintiffs' exemption request cited concerns that COVID vaccines were created using fetal cells and argued that "[plaintiffs'] anti-abortion beliefs, rooted in religion, prevent using [the resulting] product." 102 F.4th at 898. The majority attempts to distinguish such claims, calling "opposition to the use of fetal cells" a "specific religious belief." But so is Detwiler's Scripture-based belief that her body is a temple. The objection in *Ringhofer* and cases involving objections to COVID vaccines based on the belief that they were developed using fetal cells takes the exact same form as Detwiler's: a factual belief about the world (vaccines are made with fetal cells; nasal swab chemicals cause cancer) that puts an employment requirement (vaccine mandates; required swab testing) in tension with an underlying religious belief (the Bible forbids abortion; the Bible requires Christians to safeguard their bodies). When faced with this parallel objection, the Eighth Circuit found that the *Ringhofer* plaintiffs "adequately connect[ed] their refusal of the vaccine with their religious beliefs." *Id.* at 901; *see also, e.g.*, *Bazinet*, 113 F.4th at 16 (finding that an

employee who believed COVID vaccines were developed with fetal cells lines had "sufficiently pleaded a religious belief that conflicts with receiving the COVID-19 vaccine"); *Passarella*, 108 F.4th at 1009 (holding that employees' vaccination exemption requests were connected to their "Christian beliefs regarding the sanctity of the human body"); *Wright*, 2025 WL 2218131, at *1, *3 (concluding that "a reasonable jury could find that [the plaintiff] held at least a mixed motive for his vaccine refusal" based on his belief that "[the] creator gave [him the] gift to choose" what to put in his body).[1]

Implicitly recognizing that these cases are not meaningfully distinguishable from Detwiler's, the majority simply criticizes them as "far too permissive." But that criticism puts our court at odds with every published circuit court decision on this issue, an action we should avoid absent a compelling reason. *See United States v. Cuevas-Lopez*, 934 F.3d 1056, 1067 (9th Cir. 2019) ("[A]bsent a strong reason to do so, we will not create a direct conflict with other circuits." (alteration in original) (quoting *United States v. Chavez-Vernaza*, 844 F.2d 1368, 1374 (9th Cir. 1987))). This court long ago recognized that we (and other circuits) have interpreted Title VII generously because that is what the statute's broad text requires. *See EBB Auto Co.*, 8 F.3d at 1438 (emphasizing that "the very words of the statute . . . leave little room for . . . a limited interpretation" (quoting *Redmond*, 574 F.2d at 900)). The text being too "permissive" for the majority's preferences is not the sort of

[1] The Third Circuit is the only federal court of appeals other than ours to reject a claim like this, but it reached its conclusion in an unpublished decision. *See McDowell v. Bayhealth Med. Ctr., Inc.*, No. 24-1157, 2024 WL 4799870 (3d Cir. Nov. 15, 2024).

"strong reason" that justifies creating a lop-sided circuit split.

II.

The majority's idiosyncratic approach relies heavily on a court's dubious ability to separate "purely secular" beliefs from "truly religious" beliefs from mixtures of religious and secular beliefs. For the category of "mixed beliefs"—which I suspect is how so-called "secular" beliefs could essentially always be characterized—the majority's approach requires the even more dubious ability to judicially ascertain *how much* of a given belief is "truly religious" (and not merely a "broad, religious tenet[]," which per the majority is apparently not religious enough) versus how much of a claimed belief is "secular." And then the majority's approach requires judges to draw a line for when the "secular" portion of a religious belief becomes too significant, such that it defeats a Title VII claim. To work well, the majority's mode of analysis must be capable of objective, impartial, and consistent application. If not, such analysis opens wide the door to the discriminatory treatment of religious beliefs. Those beliefs christened by a judge as "truly religious" will be protected, and those condemned as too mixed with "secular" beliefs will be left unprotected. The majority's approach requires the impossible—we are judges, not theologians or philosophers. Judges are ill-equipped to parse mixed claims into the "truly religious" and "purely secular" silos that the majority purports to discern.

First, many philosophers would tell us that our scientific views depend on more fundamental beliefs—philosophical or religious—about the nature of reality. *See, e.g.*, Alister E. McGrath, *Re-Imagining Nature: The Promise of a Christian Natural Theology* 56 (2016) (arguing that religion provides

"a framework or lens through which we may 'see' the world" in explaining how religion shapes Christians' scientific views). Disentangling the "purely secular" from this religious backdrop is far more difficult than the majority appears to assume. Consider Christian Scientists, who believe that "human experiences show the falsity of all material things" and that "error, sin, sickness, disease, [and] death … [are] the false testimony of false material sense." Mary Baker Eddy, *Science and Health with Key to the Scriptures* 108 (Christian Sci. Bd. of Dirs. 2015) (1875). Under this arguably *Matrix*-like view of reality, where everything bad is merely an illusion of "false material sense," foundational religious beliefs will inevitably shape beliefs that the majority would deem "purely secular." Or take certain Buddhist schools of thought, which question humans' ability to accurately perceive reality and which view many physical phenomena (like disease) as stemming from different causes than what the mainstream scientific perspective would discern. Chogyal Namkhai Norbu, *The Crystal and the Way of Light: Sutra, Tantra, and Dzogchen* 99–100 (2000) ("[We] are utterly unaware of our own true condition, so that we experience a radical separation between our person . . . and that which we take for an external world."); *id.* at 32 ("Certain illnesses, such as cancer, are caused by disturbances of the energy, and cannot be cured simply by surgery or medication. Similarly, many mental illnesses . . . are caused by poor circulation of energy."). Alternatively, imagine a traditional Christian who believes that the existence of a rational God means that the world is governed by rational, scientifically discernable laws. When she accepts scientific findings, she is doing so partly because her religious presuppositions guide her to trust scientific findings. *See generally* Nancy R. Pearcey &

Charles B. Thaxton, *The Soul of Science: Christian Faith and Natural Philosophy* (1994). The religious beliefs of the individuals in these examples shape the weight that they afford to any given "secular" scientific view.

In the same way, discerning "purely religious" beliefs may not be as easy as the majority apparently thinks. Knowledge of science may shape a person's religious views. Consider a Christian's opposition to abortion, which stems not only from Scripture but from a scientific understanding of fetal development. The majority's "truly religious" category seems to capture only rare cases like where a religious adherent claims her deity spoke directly to her. Outside of that type of scenario, scientific and religious views feed into each other in innumerable, nonobvious ways. Pinning our analysis on the hope of cleanly delineating "purely secular" and "truly religious" views is unrealistic.

Recognizing that many (if not all) so-called "secular" beliefs involve religious and non-religious components, what the majority's analysis must account for is not whether a claim is "purely secular," but instead how to distinguish between claims that are "sufficiently secular" versus "sufficiently religious." The majority fails to provide a workable distinction. The majority's reasoning boils down to this: if a nonreligious conclusion is the but-for cause of the ultimate belief, the ultimate belief is not religious and therefore not protected by Title VII. Because Detwiler's "secular" conclusion that nasal swabs are carcinogenic is the but-for cause of refusing to be swabbed, her refusal must be secular too. But the majority can't consistently apply its approach. When distinguishing vaccine exemption cases involving objections to the alleged use of fetal cells in the vaccines, the majority ignores the fact that those vaccine objections, too, depend on disputed factual claims. The

Bible says nothing about the hotly disputed factual question of whether fetal cells are used in COVID vaccines. Only "secular" sources can answer that question, which under the majority's framework would make those "secular" beliefs the but-for cause of the ultimate refusal to take the vaccine—just like Detwiler's "secular" beliefs about nasal swabs being carcinogenic. Yet the majority inexplicably characterizes opposition to COVID vaccines based on their development using fetal cells as a "religious belief" properly protected under Title VII. The majority's inconsistent application of its own analysis illustrates that cases will end up turning on judges' personal assessments of whether a claim is or is not "religious," embroiling courts in unprincipled line-drawing to decide when a belief is "'primarily' or 'mostly' or 'minimally' or 'tangentially'" religious. *Passarella*, 108 F.4th at 1010. That's a dangerous development, particularly in an area that the Supreme Court has warned is beyond "the judicial ken to question." *Hernandez*, 490 U.S. at 699.

The majority's approach has other undesirable results, too. Apart from the judicial manipulability of the approach, it inherently discriminates against more traditional religious claims while privileging more exotic ones. If an employee requests an exemption by claiming that God spoke directly to him, the majority's analysis would apparently allow it: such a request would be "truly religious" in the majority's analysis. Yet someone with a sincere religious belief coupled with an arguably incorrect "secular" view of how the world works, as in this case, gets no protection. The majority's analysis also allows secular components of a religious objection to effectively trump the undisputedly religious aspects. The majority makes the religiosity of mixed beliefs turn on a judge's view of the correctness of the scientific, nonreligious part of the belief. Because

Detwiler's belief that nasal swab chemicals can cause cancer is not the mainstream view, the majority ignores the religious components of her objection. So if there is ever a component of a religious objection that a court considers factually suspect, that will trump whatever elements of the objection are religious. But if scientific research suddenly discovered that nasal swabs *do*, in fact, cause cancer, for example, suddenly Detwiler's objection would ripen into a cognizable religious claim. The fact that, under the majority's approach, the cognizability of many Title VII religious claims will turn entirely on whether they comport with mainstream "secular" beliefs should give us pause. Instead of protecting religious beliefs that depart from secular orthodoxy, the majority's approach makes the latter the judge of the former.

The majority is not shy about why it prefers a less "permissive" reading of Title VII, notwithstanding the statute's capacious definition of "religion." Underlying the majority's parsimonious reading of Title VII is a fear of "open[ing] the door to unlimited religious discrimination claims." But there is good reason to prefer the approach in other circuits over the majority's. First, and most importantly, the more permissive interpretation of "religion" applied by our sister circuits simply gives effect to the broad language of Title VII. *EBB Auto Co.*, 8 F.3d at 1438; *Passarella*, 108 F.4th at 1009. The statute's broad definition of religion—"all aspects of religious observance and practice, as well as belief," 42 U.S.C. § 2000e(j)—easily encompasses even "mixed" beliefs with more attenuated links to religion. And of course, if the majority is in fact correct that the broad definition of "religion" in Title VII is "too permissive" and thus leads to overprotection of religious liberty with disastrous results, Congress is free to address the problem by amending Title VII. We should not

judicially constrict the statute just because we think Congress struck the wrong balance.

Second, the majority's attempt to judicially cabin Title VII's supposedly too-permissive protection of religious objections does not even fix the problem the majority is concerned about. The majority worries that allowing a claim like Detwiler's would allow anyone to "transform a specific secular preference into a basis for a religious discrimination claim." But the majority's approach does not eliminate that concern—all a claimant needs to do is say that "God directly told me not to do the thing I also have a specific secular objection against." *See, e.g.*, *Lucky*, 103 F.4th at 1243 (reversing the district court's dismissal of a plaintiff's claim when the plaintiff pled that "God spoke to [her] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine" (alteration in original)). The concern that allowing religious exemptions from generally applicable laws will lead to abuses of that protection is neither new nor unfounded. *See Emp. Div. v. Smith*, 494 U.S. 872, 879 (1990) (expressing concerns about "mak[ing] the professed doctrines of religious belief superior to the law of the land" (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1878))). But courts must respect the balance struck by Congress, and it is up to Congress—not us—to fix Title VII if its broad definition of "religion," properly applied, results in an unmanageable "deluge" of requests for a religious accommodation.

Third, applying Title VII's broad definition of religion properly respects the Supreme Court's repeated admonitions that courts are ill-suited to be religious arbiters. *See Hobby Lobby*, 573 U.S. at 724 (warning against assessing the reasonableness of religious beliefs); *Frazee*, 489 U.S. at 833 (warning against assessing the orthodoxy of religious

beliefs). As explained, the majority's parsing of religious claims into "truly religious" and "secular" components is impossible—or at least practically unadministrable—and will inevitably lead to discriminatory treatment of religious claims. If Congress asked us to engage in such fine grading of religious claims, we would do our best consistent with our constitutional obligations. But Congress defined "religion" broadly in Title VII. It is the majority that seeks to artificially limit that definition, and in doing so pits secular orthodoxy against the religious beliefs of Title VII claimants.

* * *

Detwiler pled that her religion teaches that her body is a temple and that a nasal swab would violate the religious principles that govern how she treats that temple. Her objection is grounded in Scripture, prayer, and religious experience. Those grounds directly connect Detwiler's rejection of the nasal swab to religious principles and support a plausible inference of religious beliefs protected under Title VII—the only conclusion consistent with the published decisions of other federal courts of appeals. Detwiler pled with sufficient specificity to show her claim has facial plausibility, making dismissal improper. The majority's artificial parsing of Detwiler's beliefs into religious and "purely secular" components, and then its reliance on the "secular" component to reject her Title VII claim, suffers from a host of problems ranging from the philosophical to the practical. But the biggest shortcoming with the majority's approach is textual: Title VII's generous and inclusive definition of "religion" cannot be reconciled with the majority's miserly approach. Accordingly, I respectfully dissent.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHERRY H. DETWILER, *Plaintiff - Appellant*, v. MID-COLUMBIA MEDICAL CENTER; CHERI MCCALL, an individual; DOES, 1 through 50, *Defendants - Appellees*.	No. 23-3710 D.C. No. 3:22-cv-01306-JR District of Oregon, Portland ORDER

Filed April 15, 2026

Before: John B. Owens and Lawrence VanDyke, Circuit Judges, and Richard Seeborg, Chief District Judge.[*]

Order;
Dissent by Judge Forrest;
Dissent by Judge Tung

[*] The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

SUMMARY*

Employment Discrimination / Religious Accommodation

The panel denied a petition for panel rehearing and a petition for rehearing en banc in a case in which the panel majority affirmed the district court's dismissal of a Title VII action alleging discrimination on the basis of religion by plaintiff's employer in connection with a COVID-19 vaccine requirement.

In its opinion, the panel majority held that the plaintiff failed sufficiently to plead a bona fide religious belief that conflicted with her employer's policy requiring healthcare workers to be vaccinated against COVID-19, absent an approved exception, and she therefore failed to state a failure-to-accommodate claim.

Dissenting from the denial of rehearing en banc, Judge Forrest, joined by Judges R. Nelson, Bress, Bumatay, VanDyke, and Tung, wrote that, in an effort to prevent religion from being used as an insincere excuse for avoiding general public-health measures implemented to address the COVID-19 pandemic, the court held that plaintiffs claiming religious discrimination must show a clear nexus between their religious convictions and their choice not to comply with those measures that does not involve "secular" knowledge. The court also held that in establishing such nexus, plaintiffs may not rely on the invocation of prayer, without more. But this standard necessarily requires judging

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

religious belief, and it is a significant misstep that risks reducing the freedom of belief to the freedom of accepted belief.

Dissenting from the denial of rehearing en banc, Judge Tung, joined by Judges R. Nelson, Collins, Lee, Bress, Bumatay, and VanDyke, wrote that the panel majority legally erred by recharacterizing the plaintiff's clearly religious objection to a company policy as "purely secular" merely because the objection turned in part on a secular consideration.

ORDER

Judges Owens and Seeborg have voted to deny the petition for panel rehearing. Judge Owens has voted to deny the petition for rehearing en banc, and Judge Seeborg so recommends. Judge VanDyke has voted to grant the petition for panel rehearing and rehearing en banc.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40.

The petition for panel rehearing and the petition for rehearing en banc are denied.

Judge Forrest's and Judge Tung's dissents from the denial of rehearing en banc are filed concurrently herewith.

FORREST, Circuit Judge, joined by R. NELSON, BRESS, BUMATAY, VANDYKE, and TUNG, Circuit Judges, dissenting from the denial of rehearing en banc:

Religion claims can be vexing for judges. Where an individual's belief is at issue, we must set aside many of our usual skills and tools. We are generally called upon to interpret and apply text using reason and logic. And reason and logic suggest these competencies are as effective in assessing religion as law. After all, religion is, in the eyes of some, just a collection of principles or beliefs around which people order their lives—like law. And morality infuses both realms. But for over 150 years, it has been black-letter law that judges lack competence in matters of religion. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729, 20 L.Ed. 666 (1871).

Why? The answer is two-fold. First, we don't necessarily know anything about the spiritual or divine. These aren't required subjects in our curriculum. Second, our constitutional order preserves the right of each individual to live according to their own conscience. Thus, while courts usually test the veracity and reasonableness of parties' assertions, this exercise largely yields in matters of belief. As the Supreme Court put it: "It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith . . . as the ablest men . . . are in reference to their own." *Id.* This is not an easy ask, and we judges don't always recognize the limits of our competence.

This case is an example. In an effort to prevent religion from being used as an insincere excuse for avoiding general public-health measures implemented to address the COVID-19 pandemic, the court held that plaintiffs claiming religious

discrimination must show a clear nexus between their religious convictions and their choice not to comply with those measures that does not involve "secular" knowledge. The court also held that in establishing such nexus, plaintiffs may not rely on the "[i]nvocation of prayer, without more." *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886, 897 (9th Cir. 2025). This standard necessarily requires judging religious belief, and it is a significant misstep that risks reducing the freedom of belief to the freedom of accepted belief, which is not freedom at all.

JUDGING RELIGIOUS BELIEF

This case is presented under Title VII of the Civil Rights Act of 1964. Title VII prohibits employers from "discharg[ing] any individual, or otherwise [] discriminat[ing] against any individual . . . because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). To establish a prima facie case of religious discrimination, a plaintiff must demonstrate "that (1) he had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) he informed his employer of the belief and conflict; and (3) the employer threatened him with or subjected him to discriminatory treatment, including discharge, because of his inability to fulfill the job requirement[]." *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993).

Congress defined "religion" to include "all aspects of religious observance and practice, as well as belief." 42 U.S.C. § 2000e(j); *see EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771–72 (2015). Implementing that broad definition, the Equal Employment Opportunity Commission's regulations explain that "[i]n most cases, whether or not a practice or belief is religious is not at issue."

29 C.F.R. § 1605.1 (2024). But when the nature of belief is at issue, "religious practices . . . include moral or ethical beliefs" that parallel traditional religious views. *Id.*; *see United States v. Seeger*, 380 U.S. 163, 176 (1965); *Welsh v. United States*, 398 U.S. 333, 339 (1970).

Our role in assessing whether a plaintiff has shown a bona fide religious belief is a "narrow function." *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)). Generally, we may determine only whether the religious conflict identified by the plaintiff "reflects an honest conviction." *Id.* (quoting *Burwell*, 573 U.S. at 725). This is because anything more extends beyond a judge's competence.[1] Accordingly, the list of questions that we may not undertake in this context is long and well-established.

First, we may not evaluate the veracity of religious belief. *See United States v. Ballard*, 322 U.S. 78, 86–87 (1944); *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981). Individuals "may believe what they cannot prove," and "[t]hey may not be put to the proof of their religious doctrines or beliefs." *Ballard*, 322 U.S. at 86. "The law knows no heresy." *Id.* (quoting *Watson*, 80 U.S. at 728).

Second, we may not assess the reasonableness of religious belief. *See Bolden-Hardge*, 63 F.4th at 1223. "[R]eligious beliefs need not be acceptable, logical,

[1] The Supreme Court has confirmed that First Amendment limitations apply in the employment context, acknowledging that the Religion Clauses in the Constitution set a ceiling on judicial inquiry. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 184–90 (2012); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020).

consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). The law accepts that "[r]eligious experiences which are as real as life to some may be incomprehensible to others." *Ballard*, 322 U.S. at 86.

Third, we may not judge the orthodoxy of religious belief or practice. *See Thomas*, 450 U.S. at 716; *Heller*, 8 F.3d at 1438. It is not within our competence to define a religion's tenets. *See Thomas*, 450 U.S. at 716 ("Courts are not arbiters of scriptural interpretation."); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969) ("[T]he First Amendment forbids civil courts from" interpreting "particular church doctrines and the importance of those doctrines to the religion."); *Heller*, 8 F.3d at 1438. Nor may we decree whether a particular practice or observance is required by a religion's tenets. *See Thomas*, 450 U.S. at 716 ("[I]t is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived [his faith's] commands."); *Heller*, 8 F.3d at 1438. To warrant protection, beliefs "need not be confined in either source or content to traditional or parochial concepts of religion." *Welsh*, 398 U.S. at 339.

Fourth, and relatedly, we may not impose orthodoxy. That is, we may not protect only those formally mandated religious practices or observances. *Heller*, 8 F.3d at 1438 (quoting *Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978)); *see Fowler v. Rhode Island*, 345 U.S. 67, 69–70 (1953). Or only those tied to scripture or other religious authority. *See Thomas*, 450 U.S. at 715; *Damiano v. Grants Pass Sch. Dist. No. 7*, 140 F.4th 1117, 1155–56 (9th Cir. 2025); *Callahan*, 658 F.2d at 686 ("[N]either widespread adherence nor scriptural support is a prerequisite to

constitutionally protected status for a purportedly religious claim."). Such would offend freedom of conscience twice over by discriminating against ways of forming belief and imposing an artificial hierarchy of protection. *See Heller*, 8 F.3d at 1438. A person of faith is not obligated to think or act perfectly in line with her claimed orthodoxy to obtain legal shelter. *See Thomas*, 450 U.S. at 715–16 ("[T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect."); *Damiano*, 140 F.4th at 1155–56; 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief.").

Fifth, we may not opine on what beliefs or practices are truly religious. *See Fowler*, 345 U.S. at 70 ("[I]t is no business of courts to say . . . what is a religious practice or activity."). "[T]he very words of [Title VII] ('*all aspects* of religious observance and practice . . . .') leave little room" for an interpretation that would restrict religious protections to those practices found to be sufficiently religious by a judicial authority. *Heller*, 8 F.3d at 1438 (first alteration in original) (quoting *Redmond*, 574 F.2d at 900). And by what measure would a court make this judgment anyway? "Some theologians . . . might be tempted to question the existence of the [individual]'s 'Supreme Being' or the truth of his concepts. But these are inquiries foreclosed to Government." *Seeger*, 380 U.S. at 184. It is enough that a belief or practice is religious in the individual's "own scheme of things."[2] *Id.*

[2] *Wisconsin v. Yoder*, 406 U.S. 205 (1972), is often cited for the principle that courts may investigate whether a belief is religious or secular. *See, e.g.*, *Detwiler*, 156 F.4th at 894; *Malik v. Brown*, 16 F.3d 330, 333 (9th

at 185; *Callahan*, 658 F.2d at 683 (explaining that the test for whether a belief is religious (not secular) under *Seeger* is "whether beliefs professed are sincerely held and, in claimant's scheme of things, religious").

Sixth, we may not dissect a believer's articulation of her religious belief. *Thomas*, 450 U.S. at 715. Those beliefs communicated with precision are no more deserving of protection than those held by an unwavering believer who struggles to articulate her beliefs. *See id.*; *Seeger*, 380 U.S. at 174 ("[I]n no field of human endeavor has the tool of language proved so inadequate in the communication of ideas as it has in dealing with the fundamental questions of man's predicament in life, in death[,] or in final judgment and retribution.").

Seventh, we may not tease apart an individual's reasons for adopting a religious practice so long as they are at least partially motivated by religious conviction. *See Callahan*, 658 F.2d at 687 ("So long as one's faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible."). A believer may have overlapping spiritual and secular motivations. *See id.* "A secular experience can stimulate a spiritual response; lives are not so compartmentalized that one can readily keep

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Cir. 1994). But *Yoder* did not overrule *Fowler* or *Seeger*. The religious character of the Amish's objection to the compulsory schooling at issue in *Yoder* was not challenged. 406 U.S. at 219. And in discussing the religious character of Amish belief, the Court did not identify what standard it was applying other than to say that the issue was "delicate" and that an objection to generally applicable law "based purely on secular considerations" is not protected by the Religion Clauses. *Id.* at 215.

the two separate." *Id.* Such coexistence is not inconsistent with religious motivation. *See id.* And in any event, courts are not well equipped to "distinguish between beliefs springing from religious and secular origin." *Id.*

In the end, in matters of religious belief, the proper judicial inquiry is limited to assessing the believer's sincerity. *Seeger*, 380 U.S. at 184–85; *Thomas*, 450 U.S. at 715–16. Both that the individual conceives her belief to be religious as broadly defined and that the asserted belief "is 'truly held.'" *Seeger*, 380 U.S. at 185.

BACKGROUND

This case was terminated on a motion to dismiss. Meaning, all we have to consider are Detwiler's complaint and attached documents, which we must accept as true and construe in her favor. *See Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1104 (9th Cir. 2020) (as amended).

Detwiler alleges that she is "a practicing Christian" and "believes her body is a 'temple of the Holy Spirit.'" She believes it is her "duty to avoid defiling her 'temple' by taking in substances that the Bible explicitly condemns or which could potentially cause physical harm to her body."

Approximately six months after the COVID-19 pandemic started, Detwiler was hired as a data-privacy executive by Mid-Columbia Medical Center (MCMC). Her job did not require contact with patients. She could, and at times did, perform her responsibilities remotely, and MCMC issued her equipment and a virtual private network to facilitate remote work.

Nearly a year after Detwiler was hired, the Oregon Health Authority implemented a vaccine mandate for healthcare workers that permitted religious exemptions.

"After much prayer and consideration," Detwiler applied for an exemption because she learned that the available vaccines were made using cells from aborted fetuses and "contained neurotoxins, attenuated viruses, carcinogens . . . , chemical wastes, and other potentially harmful substances." In her exemption request, she stated:

> I have asked God for direction regarding the current COVID shot requirement. As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not accept the COVID shot. If I were to go against the moving of the Holy Spirit, I would be sinning and jeopardizing my relationship with God and violating my conscience.

MCMC approved Detwiler's requested exemption—with conditions—without questioning the religious nature or sincerity of her beliefs. The conditions that MCMC imposed were that Detwiler wear personal protective equipment when in the office and "submit to weekly antigen testing."

The only testing option that MCMC offered Detwiler involved inserting into her nose "a cotton swab dipped in ethylene oxide." Detwiler also requested a religious exemption from this testing requirement. This time, she explained:

> I pray and ask God for wisdom and direction daily. As part of my prayers, I have asked God for direction regarding the current COVID testing requirement. As I have prayed about what I should do, the Holy

> Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm.

She then described her conclusion that the nasal testing was harmful, referencing the U.S. Environmental Protection Agency's finding that ethylene oxide is "carcinogenic to humans" and the National Institute of Health's finding that "[r]esidual levels of [ethylene oxide] recovered from cotton swabs have adverse effects on DNA profiles." She also presented evidence from her healthcare provider that nasal testing would exacerbate her existing medical conditions. She invoked a right to refuse the testing because to submit would "be in direct conflict with [her] Christian duty to protect [her] body as the temple of the Holy Spirit." As an alternative solution, Detwiler offered to submit to weekly saliva testing or to work fully remote while the vaccine/testing requirement was in effect. MCMC refused Detwiler's proposed alternatives and ultimately terminated her.

Detwiler sued for religious discrimination in employment under Title VII and Oregon law. The district court dismissed the case on the pleadings, concluding that Detwiler had not plausibly alleged the first element of the prima facie case: that she has a "bona fide religious belief, the practice of which conflict[ed] with an employment duty." *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004). The district court reasoned that Detwiler refused the testing "based on her personal preferences" because her belief that it was harmful was not premised "on the Bible or any other religious tenet or teaching, but rather on her research-based scientific/medical judgments."

The same theme animated this court's decision. While the panel acknowledged that beliefs can derive from a combination of spiritual and secular considerations and are "presumably protected" when they do, *Detwiler*, 156 F.4th at 894 (quoting *Callahan*, 658 F.2d at 684), it held that a plaintiff seeking a religious exemption "must connect the requested exemption with a truly religious principle," *id.* at 895. "Invocations of broad, religious tenets cannot, on their own, convert a secular preference into a religious conviction." *Id.* Recognizing that courts may not "examine . . . the reasonableness of a belief," *id.* at 894, the panel suggested that the necessary inquiry is limited to determining whether the "plaintiff has pled enough facts to show her belief *is* religious, rather than purely secular," *id.* at 895 (emphasis added).

Applying its new specification of the prima facie standard, the panel accused Detwiler of "obfuscat[ing] [her] belief at issue." *Id.* In its judgment, the relevant belief was not that her body is a temple, but that ethylene oxide nasal testing is dangerous, a point based entirely on Detwiler's understanding of secular information. *Id.* That is, the panel concluded that Detwiler did not have relevant overlapping religious and secular beliefs, only a secular belief. *Id.* The panel reasoned that the religious principles that Detwiler asserted were too broad and too tenuous from her actual motivation. It then went a step further and held that "prayer, without more, is [] insufficient to elevate personal medical judgments to the level of religious significance." *Id.* at 897.

ANALYSIS

There are multiple problems with the panel's decision. I agree with Judge VanDyke and Judge Tung that the effort to have courts divide religious and secular motivations is not

workable doctrinally or practically. I also agree that the court's new, more restrictive approach conflicts with the text of Title VII as well as constitutional principles. I focus primarily on a different problem—the court's rejection of individual communion with God as a basis for establishing bona fide religious belief.[3]

The court's concern about Detwiler's assertion of belief being "too broad" or "too tenuous" and its rejection of prayer as a sufficient explanation for a believer's actions is clear evidence of its inability to evaluate religious belief.[4] Belief in prayer and the ability to seek and obtain direction from a higher power is firmly rooted in many religious traditions. *See Ballard*, 322 U.S. at 87 ("[T]he power of prayer [is] deep in the religious convictions of many."). This belief has existed across time, geography, and culture, from prophets Abraham and Muhammad to figures Joan of Arc and

[3] My discussion focuses on the Judeo-Christian tradition of communion with God because that is Detwiler's tradition. But other religions believe in communication with a higher power in various forms, and I do not understand the strictures imposed by the court's decision in this case to apply only to Christians.

[4] The court began its rule crafting by recognizing that we have "not yet endorsed a test for determining the nature, whether religious or secular, of a belief underlying a Title VII claim." *Detwiler*, 156 F.4th at 892. That is true. But the rule for determining whether a belief is religious in the First Amendment context has long existed. *See Seeger*, 380 U.S. at 176; *United States v. Ward*, 989 F.2d 1015, 1017–18 (9th Cir. 1992). And we frequently look to First Amendment principles to inform the corollary Title VII analysis. *See, e.g.*, *Damiano*, 140 F.4th at 1155–56; *Bolden-Hardge*, 63 F.4th at 1223; *Spencer v. World Vision, Inc.*, 633 F.3d 723, 728–29 (9th Cir. 2011) (per curiam) (O'Scannlain, J., concurring); *Elvig v. Calvin Presbyterian Ch.*, 375 F.3d 951, 955–56 (9th Cir. 2004); *Heller*, 8 F.3d at 1438; *Hudson v. Western Airlines, Inc.*, 851 F.2d 261, 265 (9th Cir. 1988); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1370 (9th Cir. 1986). The panel was wrong not to do so here.

Desmond Tutu. And it is a fundamental feature of Christianity.

Detwiler informed MCMC: "I pray and ask God for wisdom and direction daily," and "the Holy Spirit has moved on my heart and conscience that I must not participate in COVID testing that causes harm." The court accuses Detwiler of "obfuscat[ing] [her] belief at issue." *Detwiler*, 156 F.4th at 895. As the court sees it, the relevant belief is Detwiler's narrow proposition "that the testing swab is harmful," which the court concludes she came to based solely on secular information. *Id.* And in the court's judgment, Detwiler's concern about the nasal antigen test was "far too attenuated" from her religious beliefs about her body. *Id.*

This is seriously reductive. The court's reasoning gives no credence to Detwiler's claim that she received revelation from God that informed her health choices. For those who believe that God can provide individualized guidance for daily living, whether that guidance relates to "secular" or "spiritual" matters is often a distinction without a difference—both emanate from beliefs about deity and its relationship with humanity. That is, many believers do not perceive that the spiritual and the secular are capable of neat separation as relates to matters of revelation.

A few examples to illustrate the point. The New Testament teaches Christians that "[i]f any of you lack wisdom, let him ask of God, that giveth to all men liberally." *James* 1:5 (King James). There is no indication that God provides only spiritual wisdom. John Calvin described his view of God's influence on man this way: "that God . . . inclines and moves the wills of men even in external things, and that their choice is not so free, but that its liberty is

subject to the will of God. That your mind depends more on the influence of God, than on the liberty of your own choice." John Calvin, 1 *Institutes of the Christian Religion* 283 (John Allen trans., 6th ed. 1921). And Thomas Aquinas believed that divine revelation and human reason work in concert. *See, e.g.*, St. Thomas Aquinas, 1 *The* Summa Theologica *of Saint Thomas Aquinas* 2–3 (Fathers Eng. Dominican Province trans., 2d ed. 1920). These are matters on which there are divergent doctrines and opinions. The point is, imposing a concrete correlation between the immediate source of information and the source of motivation for action, as the court did here, misapprehends many beliefs and believers.

If there was an obfuscation of belief, it was the court's doing. Reading Detwiler's allegations in their entirety and in the light most favorable to her, the through line is both her conviction that God gives her direction and her commitment to follow that direction. That the revelation she claims to have received concerning the COVID nasal testing required her to employ a measure of her own reason or judgment, rather than simply follow a conclusive directive, does not categorically strip her conduct of religious significance. This is evidenced by her statement: "If I were to go against the moving of the Holy Spirit, I would be sinning and jeopardizing my relationship with God and violating my conscience." This belief may be foreign or irrational to some, but that does not change that many fervently believe in the possibility of a divine response to their private petitions, regardless of the underlying subject matter. *Cf. Ballard*, 322 U.S. at 87. Such beliefs deserve deference the same as any other sincere religious conviction. *Thomas*, 450 U.S. at 714. And accepting Detwiler's allegations as true, as the court was obligated to do, there is no way to parse the

religious and the secular without violating this principle and impermissibly opining on the veracity of her beliefs. *See Ballard*, 322 U.S. at 86–87.

In justifying its sidelining of prayer as a basis for establishing bona fide belief, the court suggests that Detwiler made only "minimal reference to prayer." *Detwiler*, 156 F.4th at 897. This is facially false and demonstrates that the court did not read Detwiler's allegations in her favor. Likewise, the court's demand for more specificity concerning Detwiler's religious beliefs and motivations is contrary to Supreme Court guidance. *See Thomas*, 450 U.S. at 716 ("Courts should not undertake to dissect religious beliefs because the . . . beliefs are not articulated with the clarity and precision that a more sophisticated person might employ."). The court's characterization of Detwiler's beliefs shows that, intentionally or not, it was making a qualitative judgment, not a descriptive one.

As has been pointed out by the other dissenters, the precedent on which the court relies is assailable. First, the court points to a series of Third Circuit decisions. Citing *Africa v. Pennsylvania*, 662 F.2d 1025, 1030–31 (3d Cir. 1981), and *Fallon v. Mercy Catholic Medical Center*, 877 F.3d 487, 490–91 (3d Cir. 2017), the court credits the Third Circuit as having "regularly declined to accept assertions of religious belief wholesale." *Detwiler*, 156 F.4th at 898. But neither of these decisions applies here. The test recognized in *Africa* and applied in *Fallon* answers "whether a particular set of ideas constitutes a religion." *Africa*, 662 F.2d at 1031; *see Fallon*, 877 F.3d at 491. The court here acknowledges that question "is not at issue"—there is no dispute that Detwiler's beliefs about God and the sacredness of her body are religious. *Detwiler*, 156 F.4th at 898 n.4. And describing the Third Circuit's decisions as cautioning against allowing

"plaintiffs to anoint their claims with a divine mandate" is inaccurate and risks conflating whether a belief is religious with whether it is legitimate. *Id.* at 897.

The court also discusses a recent unpublished Third Circuit decision, *Gatto v. Johnson & Johnson Services, Inc.*, No. 24-1992, 2025 WL 816732 (3d Cir. Apr. 21, 2025). *Id.* at 898. There, as here, an employer adopted a COVID-19 nasal-testing requirement, and the employee sought a religious exemption, asserting the testing violated her Christian beliefs because she is obligated to protect her body and the testing "require[d] the insertion of foreign matter into her body." *Gatto*, 2025 WL 816732, at *1. The Third Circuit stated that the relevant question was "whether [the employee]'s objections to nasal testing [we]re best classified as either personal, secular, or medical as opposed to religious." *Id.* at *2.

This qualitative framing and subsequent analysis are as replete with statutory and constitutional problems as the court's opinion here. Even if *Gatto*'s analysis were persuasive as to religiosity, this decision stands in alarming contrast to the broader pattern among the circuit courts respecting claims based on personal revelation. *See, e.g.*, *Thornton v. Ipsen Biopharmaceuticals, Inc.*, 126 F.4th 76, 82 (1st Cir. 2025) (recognizing a practitioner's belief that she can receive messages from God through prayer and the Holy Spirit); *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025) (recognizing a Christian's belief that she can receive personal instruction and direction from God through prayer and personal study); *Sturgill v. Am. Red Cross*, 114 F.4th 803, 808 (6th Cir. 2024) (recognizing a Christian's belief that she can receive guidance from God about daily decisions through prayer and personal study); *Lucky v. Landmark Med.*, 103 F.4th 1241, 1243 (6th Cir.

2024) (recognizing a Christian's belief that she can receive personal direction from God through prayer); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1007, 1009 (7th Cir. 2024) (recognizing a Christian's belief that God will impart wisdom and discernment through prayer and the Holy Spirit); *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1019–20 (7th Cir. 2024) (recognizing a Catholic's belief that she must follow her conscience as informed by God's intent for her).

The court also placed significant weight on numerous district court decisions, which it concluded had "more relevance" than First Amendment precedent. *Detwiler*, 156 F.4th at 896. Its discussion of these authorities suggests that a uniform view has emerged. *See id.* at 896–97. This is incorrect. For example, one learned district judge has noted that it "is a fool's errand" to parse the religious and secular aspects of a person's request for a religious exemption because "[i]t puts courts right in the middle of a fundamentally religious process." *Routsalainen v. Legacy Health*, No. 3:24-cv-01042-MO, 2025 WL 1135233, at *4 (D. Or. Apr. 17, 2025). Specifically addressing the view that general religious belief is attenuated from particular action, *Routsalainen* explained:

> This ignores what is really going on here, which is a believer struggling with how to live out her beliefs in her daily life. Maybe figuring out what a broad commandment requires of her will involve certain "factual" assertions; maybe she will even get some of those wrong. Or maybe she will be wrong on the factual assertions but still have the settled feeling that this is what God requires of her.

> However you slice it, this methodology enmeshes the courts into the heart of the life of a believer. And in the end, it does so insultingly, by telling a believer that her rationale for [her action] isn't really religious at all, but merely secular.

Id. In any event, even if there were a uniform view in the lower courts, that could not displace applicable doctrine established by the Supreme Court and this court. Stare decisis means little if a panel of this court can sidestep jurisprudential constraints by searching for validation in sources beyond those that properly govern its analysis.

To be clear, I do not dismiss the court's concern about allowing religion to become "a blanket privilege and a limitless excuse for avoiding all unwanted obligations." *Detwiler*, 156 F.4th at 897 (quoting *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022)). Nor do I dispute that the robust protections we afford religious beliefs can be misused to assert counterfeit excuses. But how we address this problem matters, and the court's chosen path is contrary to law and first principles. Policing whether a stated belief is "truly religious" in the name of staving off a "blanket privilege" will inevitably lead to policing belief itself. While courts need not accept "conclusory assertions of violations of their religious beliefs at face value," the proper inquiry cannot be as searching as the court suggests, particularly at the pleading stage. *Bolden-Hardge*, 63 F.4th at 1223; *see Thomas*, 450 U.S. at 714–16.

Employing the First Amendment's more deferential standard for identifying a bona fide religious belief in the Title VII context does not contravene the ability to root out meritless or abusive claims. An allegation may be facially

implausible. *See Thomas*, 450 U.S. at 715 ("One can . . . imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as to not be entitled to protection."). An alleged belief can be proven insincere as a matter of evidence. *E.g.*, *Moore v. Effectual Inc.*, No. 3:23-cv-05210-DGE, 2024 WL 1091689, at *9–10 (W.D. Wash. Mar. 13, 2024). And employers have the opportunity to demonstrate that yielding to an individual employee's religious practice will impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j); *e.g.*, *Peterson*, 358 F.3d at 606–09. Given the light touch government must take regarding religion, these are the proper mechanisms for addressing the court's concerns, not terminating more cases on the pleadings based on qualitative judgments about belief.

CONCLUSION

The Supreme Court has been clear: courts are unwelcome guests in matters of belief. Judges know law, not liturgy. Thus, when a case challenges our views of permissible belief, we must not succumb to the temptation to opine. The court failed to hold that line here, setting us on a course that inevitably runs headlong into any one of a variety of statutory problems and constitutional violations. We err by not correcting this misstep. For that reason, I respectfully dissent from the denial of rehearing en banc.

TUNG, Circuit Judge, joined by R. NELSON, COLLINS, LEE, BRESS, BUMATAY, and VANDYKE, Circuit Judges, dissenting from the denial of rehearing en banc:

Title VII protects an employee from religious discrimination. In denying an employee's claim of discrimination here, the panel majority recharacterized the employee's clearly *religious* objection to a company policy as "*purely secular*" merely because the objection turned in part on a secular consideration. That was legal error. The panel majority's approach disregards the definition of "religion" under Title VII and misconstrues the employee's well-articulated allegations. Its approach splits with several other circuits, too, as the panel majority admits. Respectfully, I dissent from this court's refusal to grant en banc review.

* * *

This case asks whether an employee adequately pleaded a bona fide religious belief that conflicted with company policy. Sherry Detwiler alleged that she was a practicing Christian who believed her body to be a temple of the Holy Spirit, and that complying with company policy—which required her to submit to weekly antigen testing for COVID-19—would contravene that belief. The testing would, according to Detwiler, put her in direct contact with a carcinogen that could alter her DNA, and would thus violate her religion's proscription against defiling her body. Under Title VII, she alleged, the company had to accommodate her so long as such accommodation would not impose undue hardship on the company.

The district court dismissed Detwiler's complaint with prejudice, and the panel majority affirmed, over Judge

VanDyke's dissent. Detwiler's belief, the panel majority held, was not "religious" at all and was thus entitled to no protection under Title VII. Rather, in its view, Detwiler's notion of "harm"—"specifically that [the chemical used on the testing swab] is a carcinogen"—was a purely "personal and secular" belief, "premised on her interpretation of medical research." *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886, 895 (9th Cir. 2025); *see also id.* (stating that Detwiler failed to plead "enough facts to show her belief is religious, rather than purely secular"). "Without Detwiler's opinion that [the chemical] is carcinogenic and therefore harmful," the panel majority said, "she has no conflict with [the company's] COVID-19 testing requirement—her secular judgment offers the sole basis of her objection." *Id.* The panel majority concluded that "[t]his concern about the harmful nature of [the chemical] has no relationship with her religious beliefs." *Id.*

The panel majority is wrong. Detwiler properly alleged the religious basis of her objection to testing—namely, that her religion forbade her from ingesting a carcinogen, which she viewed as a defilement upon the temple of her body. That her objection was based in part on a medical finding—that the testing is carcinogenic—did not negate her religious motivation in refusing to submit to such testing.

One can readily acknowledge facts of life that may carry no religious significance on their own—the prevalence of the poor, the suffering of the sick, the chemical makeup of certain substances. But religion tells an adherent *what to do* about those facts. For many Christians (and those of other faiths), their religion enjoins them to tend to the poor and the sick, not simply to recognize their existence. For Detwiler, her request for accommodation was based not on the mere fact that she risked exposure to a carcinogen; after all, others

complied with company policy despite that risk. What set her apart was her religion. For Detwiler, her religion dictated what she should do: refuse testing out of respect for God's law as she saw it rather than go along with company policy.

The panel majority thus grossly mischaracterized Detwiler's objection as "*purely* secular" when it rejected her complaint on that basis. *See id.* (emphasis added). In reaching that flawed conclusion, the panel majority misapplied Title VII's text and precedent interpreting "religion," misconstrued Detwiler's allegations, and split with the holdings of several other circuits (as the panel majority itself conceded). But perhaps most problematic, the panel majority's approach would recast as "purely secular" a person's religious practices whenever those practices turn also on secular considerations. It is hard to imagine, frankly, what religious practice would *not* turn on secular considerations to some degree. And so, just like that, with the wave of a gavel, a wide swath of religious beliefs or practices (no matter how sincerely alleged) might now be deemed purely secular and removed from Title VII's protections. This court should have corrected these defects en banc.

I.

Title VII bars an employer from discriminating against an employee because of the employee's "religion." 42 U.S.C. § 2000e-2(a)(1). It also requires the employer to accommodate an employee's religious belief "unless doing so would impose an undue hardship." *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023) (citing 42 U.S.C. § 2000e(j)). The term "religion," as defined in the statute, "includes *all* aspects of religious

observance and practice, as well as belief[.]" 42 U.S.C. § 2000e(j) (emphasis added). For a plaintiff employee to survive a motion to dismiss, she must at the very least plead that she "had a bona fide religious belief, the practice of which conflicted with an employment duty." *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Bolden-Hardge*, 63 F.4th at 1222.

Detwiler cleared that hurdle here. According to her complaint, she was an employee of Mid-Columbia Medical Center and was fired from her job in late 2021 "for refusing, on religious grounds, to receive a COVID-19 vaccine or, in the alternative, submit to weekly nasal swab tests to determine whether she had been infected with COVID-19." ER 73. Although the Medical Center granted her an exemption from the vaccine mandate, it still required her to submit to weekly testing. ER 77–78, 96.

Detwiler objected to that testing on religious grounds. Invoking Corinthians, she alleged she was "a practicing Christian who believes her body is a 'temple of the Holy Spirit[.]'" ER 76, 98. In accordance with that scriptural injunction, she alleged, "Plaintiff sincerely believes she has a religious duty to avoid defiling her 'temple' by taking in substances that the Bible explicitly condemns or which could potentially cause physical harm to her body." ER 76–77.

The weekly antigen testing, she alleged, would result in bodily defilement and thus compromise her religious beliefs. Pursuant to this test, a person administering it would "press" a "cotton swab dipped in ethylene oxide ('EtO')" "against the skin inside [the person's] nostrils multiple times, swirl the swab around in a circular motion to collect mucus from the person's nasal tissues, then submit the swab to a lab for testing." ER 78. Detwiler learned information "from

multiple sources indicating that EtO is a carcinogenic substance." ER 78. And "[n]ot wanting to take EtO into her body and run the risk of suffering from cancer, Plaintiff [] invoked her Christian beliefs concerning her body being a temple of God[.]" ER 78. Detwiler stated that she "prayed about" what to do and that "the Holy Spirit ha[d] moved on [her] heart and conscience that [she] must not participate in COVID testing that causes harm." ER 98. Detwiler said that "[i]f [she] were to go against the moving of the Holy Spirit, [she] would be sinning and jeopardizing [her] relationship with God and violating [her] conscience." ER 98.

Detwiler acknowledged that she relied on her scientific judgment in determining that the testing exposed her to a carcinogen. But as she explained, her decision in refusing to submit to testing was grounded in religious belief, not just empirical fact. Detwiler's religious conviction informed her how *she should act* in the face of potentially ingesting a carcinogenic substance. *See* ER 78 ("While Plaintiff declined to submit to nasal swab testing, at least in part, due to medical and/or scientific judgment, she also exercised religious judgment."); *see also* ER 98 ("As a Christian protecting my body from defilement according to God's law, I invoke my religious right to refuse any testing which would alter my DNA and has been proven to cause cancer. I find testing with carcinogens and chemical waste to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit."). While many might tolerate being exposed to a small amount of a carcinogen to comply with a company requirement, Detwiler could not. Her religion, as she understood it, told her to say "no."

That is more than sufficient to satisfy the "fairly minimal" requirement to plead a bona fide religious belief that conflicts with a company directive. *Bolden-Hardge*, 63

F.4th at 1223. There is no question here that, as alleged, her religious belief was sincere. Nor does anyone contend that she was using her religion as mere pretext to get around a company requirement. She genuinely believed what she said about her religious belief compelling her to refuse any substance that would defile her body—at least we must accept her "allegations as true and view them in the light most favorable to her" at the motion-to-dismiss stage. *Soo Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017); *see also Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations."). And it is equally clear that Detwiler's religious belief compelled her to refuse her company's testing because, in her view, that testing would cause the defilement that her religion forbade. Accordingly, she has pleaded (specifically and plausibly) a sincere religious belief, "the practice of which conflicted with an employment duty." *Heller*, 8 F.3d at 1438.

The broad definition of "religion" in the statute reinforces that conclusion. "Religion" includes "all aspects" of an employee's "religious observance and practice." 42 U.S.C. § 2000e(j); *see also Heller*, 8 F.3d at 1438 ("The very words of the statute . . . leave little room [] for a limited interpretation"). And here, Detwiler's "religious observance and practice" clearly encompassed refusing to take in anything that would defile the body of her temple, including any substance that her medical research concluded was carcinogenic. To be sure, and again, Detwiler's "religious observance and practice" might be said to have depended in part upon a "secular" assessment of the cancer-inducing effects of the testing. But that just means her assessment

there formed *an* "aspect" of her "religious observance and practice."

Another aspect of her "religious observance and practice" instructs her to *act* upon that assessment. A "religion" is not merely a matter of the mind; it is "practice[d]" and thus imposes "rules of conduct" about whether and when to act or abstain from an act. Black's Law Dictionary 1455 (4th ed. 1968); *see also* American Heritage Dictionary 1028 (1969) (defining "[p]ractice" as to "carry out in action"). Detwiler's religion compels her to resist ingesting a substance that she believes is a carcinogen. The facts upon which that religious belief operates may be described as "secular"—*e.g.*, the chemical used for COVID testing is carcinogenic. But the refusal to comply is based ultimately on a religious belief.

That "secular" features may interact with "religious" practice in this way does not make the practice any less religious; indeed, courts should "protect[]" that "overlap," just as they have in the free-exercise context. *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) ("[A] coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one. . . . The devout Seventh-Day Adventist may enjoy his Saturday leisure; the Orthodox Jew or Mohammedan may dislike the taste of pork[.]"). "A secular experience can stimulate a spiritual response," this court has observed; "lives are not so compartmentalized that one can readily keep the two separate." *Id.* at 687. And as another circuit has cogently explained in an analogous case, "the fact that an accommodation request also invokes or, as here, even turns upon secular considerations does not negate its religious nature." *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1008, 1010 (7th Cir. 2024) (holding that the plaintiff employees

sufficiently alleged, under Title VII, that their Christian beliefs—prohibiting defilement of the body as "a temple of the Holy Spirit"—conflicted with their employer's vaccine mandate). "To conclude otherwise," the court held, "fails to give effect to Congress's expansive definition of 'religion[.]'" *Id.*

II.

The panel majority erred in several ways. *First*, the panel majority disregarded Title VII's definition of "religion." Indeed, the panel majority offered no analysis of Title VII's text at all. No surprise then the panel majority failed to recognize that Detwiler's "religious" belief demanded she resist placing carcinogens in her body, and that this belief conflicted with the company's demands. Contrary to the panel majority, the mere fact that Detwiler thought that the testing swab was carcinogenic does not *alone* explain why Detwiler refused to submit to her company's testing regime. Rather, it is Detwiler's religion that in the end explains her refusal—clearly an "aspect[]" of her "religious observance and practice." *See supra* at 26–28. Had Detwiler harbored a different religion (or no religion at all), she could have decided that the degree of carcinogen ingested was too slight to warrant defying company policy. But because she viewed her body as a temple of the Holy Spirit, her religion required her to resist *any* defilement. Mandatory tests thus conflicted with Detwiler's "religious observance and practice," not merely with a "secular" preference.

Second, the panel majority disregarded Detwiler's harm as she has alleged it. According to the panel majority, Detwiler could find the testing "harmful" only in the scientific (non-religious) sense. *Detwiler*, 156 F.4th at 895.

But by so concluding, the panel majority refused to acknowledge that the "harm" (as alleged by Detwiler) was not only physical but also spiritual—a defilement of the Holy Spirit's temple in the form of her body. *Contrast id.* (describing as "personal and secular" Detwiler's allegation that ingesting EtO violates her faith), *with, e.g.*, ER 76–77 (describing Detwiler's "religious duty" to avoid ingesting substances "which could potentially cause physical harm to her body"); ER 78 ("Not wanting to take EtO into her body and run the risk of suffering from cancer, Plaintiff [] invoked her Christian beliefs concerning her body being a temple of God.").

Indeed, Detwiler's pleadings inform us that the nature of the harm she would suffer impinged on her conscience and relationship with God. *E.g.*, ER 98 (alleging that after "pray[ing] about what [she] should do, the Holy Spirit has moved on [her] heart and conscience that [she] must not participate in COVID testing that causes harm," and that "[i]f [she] were to go against the moving of the Holy Spirit, [she] would be sinning and jeopardizing [her] relationship with God and violating [her] conscience"). The harm had, in other words, a supernatural dimension. But the panel majority ignored that allegation—reducing Detwiler's clearly religious belief to a materialist base, like Cabanis's "secretion of thought by the brain" (Tocqueville, Democracy in America 356 (Bantam 1835)), and erasing, at the motion-to-dismiss stage, a well-pleaded religious element to her harm.

Third, the panel majority violated the basic rule that courts must accept a plaintiff's pleadings as true at the motion-to-dismiss stage. According to the panel majority, Detwiler's objection was "*purely* secular." *Detwiler*, 156 F.4th at 894 (emphasis added); *id.* at 895 ("her secular

judgment offers the *sole* basis of her objection") (emphasis added). Detwiler's "concern about the harmful nature of EtO," we are told by the panel majority, "has *no* relationship with her religious beliefs." *Id.* (emphasis added). But that plainly contradicts what Detwiler alleged. Detwiler alleged a "relationship" between the carcinogenic nature of EtO and her religious beliefs. *See* ER 98 (alleging that if she were to ingest EtO, "[she] would be sinning and jeopardizing [her] relationship with God and violating [her] conscience"). To say that her objection had *nothing* to do with her religious beliefs thus betrays a myopic secularism and badly distorts her pleadings. At the motion-to-dismiss stage, it is wholly inappropriate for a court to rewrite a plaintiff's allegations or deny the sincerity of a plaintiff's religious beliefs as she has so pleaded them. *See, e.g.*, *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (concluding that "it is not within the judicial function and judicial competence to inquire whether" plaintiffs "correctly perceived the commands of their common faith"); *cf. Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1296 (11th Cir. 2007) ("How do you [adequately] plead sincerity of belief? One way is to state that the belief is, in fact, your religious belief."). Yet the panel majority did just that.[1]

[1] The panel majority relies on *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972) for the proposition that courts need not accept what the panel majority describes as "entirely conclusory assertions of religious belief." *Detwiler*, 156 F.4th at 894. But its reliance is misplaced, as *Yoder* says nothing about pleading requirements. It involved an appeal from a trial on the merits. After examining the full factual record from "trial testimony" to "expert witnesses," the Court found sufficient evidence that the plaintiffs believed their objection to compulsory high-school attendance was based on religion. *Yoder*, 406 U.S. at 207, 209, 219; *see also Watts*, 495 F.3d at 1298 ("*Yoder* did not concern pleading requirements."). By contrast, the dispute in this case is not over the level

Fourth, the panel majority's test of whether an objection is based on "a *truly* religious principle" finds no basis in law or logic. *Detwiler*, 156 F.4th at 895 (emphasis added). It is not for a court to say, at the pleading stage, whether a plaintiff's claim of religious belief is "truly religious."[2] *Id.*; *see Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1020 (7th Cir. 2024) (concluding that "[s]crutinizing" exemption requests—"especially at the pleading stage—runs counter to not only the broad language of Title VII but also the Supreme Court's repeated warnings that the law requires a hands-off approach" to defining religion). The Supreme Court has disclaimed such scrutiny under laws ranging from RLUIPA to conscientious-objector statutes. *See Cutter v. Wilkinson,* 544 U.S. 709, 725 n.13 (2005). But whether religious exemptions arise in those statutes or Title VII, the conclusion is the same: "the 'truth' of a belief is not open to question." *Id.* (citation omitted).

A judge construes law not theology. In a passage free of any citation, the panel majority declared that "[i]nvocations of broad, religious tenets cannot, on their own, convert a secular preference into a religious conviction. To hold otherwise would destroy the pleading standard for religious

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of evidence needed to ultimately prevail but whether a court may dismiss that claim before such evidence can even be introduced.

[2] Indeed, even the employer in this case—a religious hospital affiliated with the Seventh-Day Adventist Church—agreed with Detwiler that the panel should not have "created a test which would permit it to evaluate whether a belief was 'truly religious.'" Dkt. 99 at 9. As it argued in its response to Detwiler's petition for rehearing en banc, such "[j]udicial inquiry into religious judgments would be harmful to religion and could deeply entangle federal courts in deciding religious questions." *Id.* at 5. The fact that both parties take issue with the panel's reasoning is yet another reason why we should have taken this case en banc.

discrimination claims, allowing complainants to invoke magic words and survive a dismissal without stating a prima facie case." *Detwiler*, 156 F.4th at 895; *see also id.* at 896 ("when the religious principles are *too broad*, and the connection to personal, medical judgments [is] *too tenuous*, plaintiffs have not pled a religious belief" (emphasis added)).

But, again, what place does a judge have, particularly at the motion-to-dismiss stage, to declare that a "religious tenet" is "too broad," or that its "connection" with a medical judgment is "too tenuous" as to render a plaintiff's claim of a sincere religious belief not "*truly*" religious? Here, Detwiler clearly pleaded a sincere religious belief that required her to refuse testing. That should be the end of the matter. Rather than accept the pleadings, however, the panel majority did the opposite, "convert[ing]" Detwiler's "religious conviction" into a "secular preference" to shut down her Title VII claim. That was wrong.

This court now stands in opposition to several other circuits, as the panel majority itself conceded. *See Detwiler*, 156 F.4th at 898–99 (describing cases from the Sixth, Seventh, and Eighth circuits as adopting a "far too permissive" standard). Whereas the panel majority would deem a plaintiff's religious objection "purely secular" where there is an overlap with secular considerations, several other circuits have arrived at the opposite conclusion. *See, e.g.*, *Passarella*, 108 F.4th at 1010 (concluding that the mere fact that a religious objection "also invokes or, as here, even turns upon secular considerations does not negate its religious nature"); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 902 (8th Cir. 2024) (holding that plaintiff adequately pleaded a religious conflict with COVID testing where she believed her "body is a temple"); *Lucky v. Landmark Med.*

of Michigan, P.C., 103 F.4th 1241, 1243 (6th Cir. 2024) (holding that plaintiff adequately pleaded a religious conflict where she believed her "body is a temple").

To be sure, the panel majority cited a pair of unpublished Third Circuit cases that have gone its way. *See McDowell v. Bay Health Med. Ctr., Inc.*, No. 24-1157, 2024 WL 4799870 (3d Cir. Nov. 15, 2024); *Gatto v. Johnson & Johnson Servs., Inc.*, No. 24-1992, 2025 WL 816732 (3d Cir. Mar. 14, 2025). But the Third Circuit's reasoning was just as flawed as the panel majority's—neither grappled with the plain text of Title VII, and both misconstrued what plaintiffs claimed their religious beliefs entailed. *See McDowell*, 2024 WL 4799870 at *1 (rejecting plaintiffs' allegation that company policy required them to violate their faith that their bodies are God's temples and "examin[ing] whether [the] belief *is* a religious one" (emphasis added)); *Gatto*, 2025 WL 816732 at *4 (same).

En banc should have been granted to bring our court in line with how every other circuit in precedential opinions has addressed this issue.

* * *

What explains the panel majority's extreme distortion of plain statutory text and the party's pleadings? The panel majority does not hide the ball (to its credit): it fears that allowing a plaintiff's religious claims to survive a motion to dismiss—when there is an overlapping secular basis for objecting to company policy—would "open the door to unlimited religious discrimination claims." *Detwiler*, 156 F.4th at 899; *see also id.* ("Such a deluge would certainly generate negative consequences."). What the panel majority does in response to that hypothesized fear, however, is to

slide the door shut on well-pleaded claims grounded in sincerely held religious beliefs.

Nor is the assumption of "unlimited" claims true. Not every religious-discrimination claim will prevail: a claim will fail if the religious accommodation to address the discrimination would impose an "undue hardship" on the employer; moreover, any suspicion that religion is being used as a mere pretext to evade a work requirement and that the asserted religious beliefs are not sincerely held could (and should) be tested at summary judgment or trial when evidence is presented. But even assuming some validity to the panel majority's doubtful claim of a "deluge," that is not a problem for the courts to solve. Congress sought to protect religious discrimination claims by defining "religion" broadly in Title VII. If one wished to limit such claims or mitigate the "negative consequences" from that choice, the solution lies with that body.

It is not our role to tell a plaintiff that her sincere religious belief is not "truly religious." Nor can we recast a religious claim as secular just because we think there are or will be too many claims like Detwiler's. Our job here is far more modest: to apply the text as written and to construe a plaintiff's allegations fairly. I dissent.