No. 26-____

In the
Supreme Court of the United States

KRISTEN GRACE, ET AL.,
Petitioners,
v.
RTX CORPORATION F/K/A RAYTHEON TECHNOLOGIES CORPORATION,
Respondents
.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the tolling that this Court acknowledged in *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) tolling last through appeal?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

Each of the following individually and on behalf of all others similarly situated

- Kristen Grace
- Rossana Hernandez
- J. Michael Heyser
- Lisa Leake
- Christopher Stein
- Christopher Sublett
- Leslie Zepeda

Respondents and Defendants-Appellees Below

- RTX Corporation f/k/a Raytheon Technologies Corporation

CORPORATE DISCLOSURE STATEMENT

The petitioners are all individuals. There are no corporate petitioners.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Grace, et al., v. Raytheon Corporation*, No. 25-2022 (4th Cir.) (opinion issued May 5, 2026; *en banc* denied June 2, 2026).

- *Grace, et al., v. Raytheon Corporation*, No. 1:24-cv-2083-CMH-WBP (E.D. Virginia) (opinion issued July 22, 2025).

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Kristen Grace, Rossana Hernandez, Michael Heyser, Lisa Leake, Christopher Stein, Christopher Sublett, and Leslie Zepeda respectfully request a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

On July 22, 2025, the United States Court for the Eastern District of Virginia at Alexandria, granted Respondent's motion to dismiss. Pet.App.1a. On May 5, 2026, the Fourth Circuit affirmed the District Court's decision in an unpublished opinion. Pet.App.11a.

JURISDICTION

The judgment of the Court of Appeals was entered on May 5, 2026. Pet.App.11a. The Court of Appeals further entered an order denying petition for rehearing *en banc* on June 6, 2026. App.29a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 23 and 42 U.S. Code § 2000e *et seq*.

STATEMENT OF THE CASE

A. Factual Background

Petitioners Kristen Grace, Rossana Hernandez, Michael Heyser, Lisa Leake, Christopher Stein, Christopher Sublett, and Leslie Zepeda were all employees of Raytheon Corporation which was formerly known as Raytheon Technologies Corporation ("Raytheon" or the "Company"). Pet.App.2a-3a.

Responded RTX Corporation ("RTX") imposed a vaccine requirement on its workforce in the summer of 2021. Petitioner Kristen Grace was employed at the time as a Senior Design Engineer for RTX. Ms. Grace had a sincerely-held religious belief against its masking policy and requested a religious accommodation which it refused. RTX terminated Ms. Grace's employment. *Id*.

Rossana Hernandez, also an RTX employee, requested a religious accommodation from Raytheon's vaccine mandate but could not in good conscience agree to the testing that it imposed on her as a condition of her employment. Because she would not violate her conscience, Raytheon terminated her. *Id*.

J. Michael Heyser, an RTX employee since 2008, requested religious accommodations to the vaccine mandate and the testing, masking, and travel restrictions RTX imposed. RTX denied the accommodations and constructively discharged Mr. Heyser. *Id*.

Lisa Leake was a RTX Senior Systems Engineer. She requested a religious accommodation to Raytheon's COVID vaccine mandate. In lieu of the vaccine mandate, RTX imposed a testing mandate that also violated her religious beliefs. She was unwilling to violate her religious beliefs to keep her job, so RTX fired her. *Id*.

Christopher Stein worked for RTX for over 20 years. Despite repeated efforts to work to find a mutually agreeable alternative to COVID testing, RTX fired him for refusing to violate his religious beliefs. *Id*.

Christopher Sublett was a long-term employee for RTX. When he realized that his work would require him to violate his religious beliefs, he refused, and RTX constructively discharged him. *Id*.

Leslie Zepeda was a Principal Specialist, Engineering Services for RTX. She could not in good conscience submit her testing results in the manner that RTX prescribed, so RTX terminated her. *Id*.

B. Procedural History

Petitioners Grace, Heyser, Leake, Stein, and Zepeda were named putative class members, and Rossana Hernandez and Christopher Sublett unnamed putative class members in a class action complaint against RTX in the District of Arizona. There they alleged Discrimination, Wrongful Termination, and Retaliation in violation of Title VII. The District Court dismissed the complaint with prejudice, the Ninth Circuit affirmed, and this Court denied certiorari on October 24, 2024. Pet.App.2a-3a.

After receiving the petition decision from the Supreme Court, Petitioners then brought this present suit in their individual capacities against RTX for failure to make reasonable accommodation for their religious beliefs in violation of their rights under Title VII. Defendants filed a motion to dismiss arguing in relevant part that *res judicata* barred Petitioners' new claims and that their claims were time-barred. Petitioners argued that this Court in *Cooper v. Federal Reserve Bank*, 467 U.S. 867 (1984) provided an exception to *res judicata* where individual plaintiffs bring suit after their claims fail as part of a putative class. Pet.App.1a-10a.

As for the timeliness argument under Title VII, Petitioners argued that *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) tolled the statute of limitations during the pendency of the class action through appeal. The District Court, citing *Bridges v. Dep't of Md. State Police*, 441 F.3d 197, 210 (4th Cir. 2006), found that *American Pipe* tolling does not last through appeal, but rather, "any tolling of the statute of limitations ended when class certification was denied as moot in the trial court." *Id.*

Petitioners filed a Notice of Appeal with the District Court on August 22, 2025. Petitioners brought two issues up on appeal: 1) whether the doctrine of *res judicata* barred the individual claims they brought in their subsequent suit, and 2) whether their individual claims were tolled during the pendency of the appeal of their class action claims under *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756 (1974), making their claims timely under Title VII of the Civil Rights Act of 1964.

The Fourth Circuit denied Petitioners' appeal on May 5, 2026, finding that the timeliness issue was dispositive and declining to address the question of *res judicata*.

The Fourth Circuit denied the Petitioners' petition for rehearing *en banc* on June 2, 2026. Pet.App.11a-30a.

REASONS FOR GRANTING THE PETITION

***American Pipe*, according to its internal logic, should last through appeal, but Courts have been reluctant to apply it in this way. This Court should correct that tendency.**

"*American Pipe* established that the commencement of [an] original class suit tolls the running of the statute [of limitations] for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." *China Agritech, Inc. v. Resh*, 584 U.S. 732, 739 (2018).

In *American Pipe*, this Court did not state outright whether this tolling continues while the parties appeal their class claims and if so, whether tolling during appeal ought to occur only when the trial court has granted class certification.

This Court did, however, provided its underlying rationale for the tolling rule, which Petitioners argue clarifies the issue sufficiently so that Courts below would know what to do on both accounts.

The purpose of the rule was to avoid depriving class actions under Federal Rule of Civil Procedure 23 of the "efficiency and economy of litigation which is a principal purpose of the [Rule 23] procedure," *Am. Pipe*, 414 U.S. at 553 (1974).

In *Crown, Cork, & Seal Co. v. Parker*, 462 U.S. 345 (1983) this Court further elaborated: "Failure to extend the *American Pipe* rule 'to class members filing separate actions,' in addition to those who move to intervene, would result in 'a needless multiplicity of actions' filed by class members preserving their individual claims—'precisely the situation that Federal Rule of Civil Procedure 23 and the tolling rule of *American Pipe* were designed to avoid.'" *China Agritech*, 584 U.S. at 739 (2018).

If these stated rationales are the underpinnings of the rule, the answers to the critical questions critical to this case are clear. If the purpose of the rule is to avoid depriving litigants of the efficiency and economy inherent in Rule 23 and to avoid a needless multiplicity of actions, it follows that *American Pipe* tolling would last through appeal.

Lower courts—including the Fourth Circuit in this case— have been unwilling, however, to follow this Court's rationale to its logical conclusion. In the process, they have insisted on framework(s) that produce "precisely the situation that Federal Rule of Civil Procedure 23 and the tolling rule of *American Pipe* were designed to avoid." *Id.*

The Fourth Circuit panel below characterized the idea that *American Pipe* tolling would last through appeal—in this case, thorough the denial of a petition for writ of *certiorari*—as "unpersuasive" and "not a close issue." Pet.App.22a, 27a.

On its way to this conclusion, the panel mischaracterized Petitioners' citations to cases from the Kansas (*Seaboard Corp. v. Marsh Inc.*, 295 Kan. 384, 409 (S. Ct. Kan. 2012)) and Utah (*Am. Tierra*

Corp. v. W. Jordan, 840 P.2d 757, 762 (Utah 1992)) Supreme Courts. The panel waved these away as being of "no precedential value," and asserted that the federal authority in those cases arose in circumstances where the district court granted the motions for class certification.

Petitioners did not, however, cite these cases either as controlling precedent or as perfect factual analogies to their own. Instead, they cited these cases as examples of courts—both state and federal—acknowledging the rationale in *American Pipe* and its progeny and applying it in a manner that avoided the need for individual plaintiffs to file unnecessary and resource-intensive individual cases to preserve their rights. Limiting the discussion to federal courts, these cases include the following:

- *Griffin v. Singletary*, 17 F.3d 356, 360-61 (11th Cir. 1994). Here, regarding *American Pipe* tolling, the Court ruled that, "[i]nsofar as the individual claims are concerned, putative class members should be entitled to rely on a class action as long as it is pending." The Court continued that, "[t]hat reliance is particularly justified in this case, in which the district court certified a plaintiff class." The use of the term "particularly" indicates that it does not foreclose the possibility where the class was not certified.
- *Edwards v. Boeing Vertol Co.*, 717 F.2d 761, 766 (3d Cir. 1983), cert. granted, judgment vacated on other grounds by 468 U.S. 1201, 104 S. Ct. 3566, 82 L. Ed. 2d 867 (1984) In *Edwards,* the Third Circuit stated that, under *American Pipe*

and *Crown, Cork & Seal*, an individual plaintiff "entitled to rely on the pendency of [class] action so long as it was pending. Any other rule would needlessly proliferate separate lawsuits." In that case, there had been an appeal in the class action that proceeded it that concluded on September 30, 1981. *See*, *Croker v. Boeing Co. (Vertol Div.)*, 662 F.2d 975 (3d Cir. 1981). The plaintiff commenced his suit on December 28, 1981.

- *Jimenez v. Weinberger*, 523 F.2d 689, 696 (7th Cir. 1975). There the Court speculated that if the district court had, "expressly refused to certify the case as a class action, we think the tolling would have continued if the plaintiffs had appealed from such a ruling[.]"
- *West Haven School Dist. v. Owens-Corning Fiberglas Corp.*, 721 F. Supp. 1547, 1555 (D. Conn. 1988). The Court (in a context where there had been a class certification) stated that, "there was a "definitive determination" of the class certification no earlier than when the appeals on that issue ran their course."
- *Davis v. Bethlehem Steel Corp.*, 600 F. Supp. 1312, 1316 (D. Md. 1985). There the plaintiffs intervened to appeal the denial of a class certification in a discrimination case under Title VII. The district court granted the motion to intervene, and in the meantime, the plaintiffs filed a suit that would be untimely if the statute had not been tolled through the pendency of the appeal, which was later denied. The Court ruled the second suit timely, acknowledging "analytical framework" set out in *American Pipe* and its

progeny "protecting . . . the vitality of the class action suit from a needless multiplicity of activity[.]" (citations omitted).

The panel below sets this against its precedent in *Bridges v. Dep't of Md. State Police*, 441 F.3d 197, 211 (4th Cir. 2006). There, the Fourth Circuit stated, "the *American Pipe* rule provides a narrow exception to the fixed statutes of limitations, suspending their running from the date a class action is filed until the date it is denied, for whatever reason."

This passage, however, is the conclusion of an analysis that addresses the question of whether tolling depends on the basis for dismissal of the class action.

The paragraph before starts,

> As we have noted, [t]he *Crown, Cork & Seal* Court appears to have untethered this tolling rule from any necessary connection to the reasons for denying certification. […] In untethering the rule, the Supreme Court signaled that American Pipe tolling extends as far as is justified by the objectively reasonable reliance interests of the absent class members. If courts were to toll statutes of limitations only when class certification was denied for lack of numerosity, the rule, which would turn on the substantive reason for the denial, would not discourage

> premature intervention because class members could not know or predict at the time of filing why class certification might eventually be denied. *Id.* (citations omitted).

The Cout's addition of "for whatever reason," it is dicta clarifying that the tolling concludes until denial of the class certification whether the denial is because of numerosity, commonality, typicality, or adequacy of representation. To cite *Bridges* as authority that states whether *American Pipe* tolling extends through appeal is to take *Bridges* too far. The reality is that there is not a clear rule in the Fourth Circuit on this point.

The panel goes on to cite precedent from the Seventh, Eleventh, and Federal Circuits and, ignoring the precedent from the Eleventh, Third, and Seventh Circuits cited above, states incorrectly that, "[e]very circuit court to take up this question has held that *American Pipe* tolls a statute of limitations only until class status is denied, either by the district court or on appeal." Pet.App.27a. (citing *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1382 (11th Cir. 1998); *Collins v. Village of Palatine*, 875 F.3d 839, 843 (7th Cir. 2017); *Stone Container Corp. v. U.S.*, 229 F.3d 1345, 1356 (Fed. Cir. 2000)).

Persuasive as this precedent may be, conflicting rulings in the Seventh and Eleventh circuits undercut their value and do make *Bridges* controlling precedent.

Rather than bolstering the panel's argument, this precedent instead bolsters the case for review by this Court. There is a circuit split between the Third Circuit and the Federal Circuit, while the Seventh and Eleventh Circuits seem to be in conflict with themselves[1] and the Third Circuit, depending on which case is in question.

We have, then, a circumstance in which federal courts—including several circuit courts—throughout the years have arrived at different conclusions regarding *American Pipe* tolling on appeal, leading to conflicting results and unclear direction for the Fourth Circuit to follow in this case.

[1] The precedent from these circuits that the panel below cited does not substantively address the precedent in the same circuits that the Petitioners have cited above.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 31, 2026

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APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Filed 07/22/2025]

No. 1:24-cv-02083-CMH-WBP

KRISTEN GRACE, *et al.*,

Plaintiffs,

v.

RTX CORPORATION F/K/A

RAYTHEON TECHNOLOGIES CORPORATION,

Defendant.

ORDER

THIS MATTER comes before the Court on Defendant RTX Corporation f/k/a Raytheon Technologies Corporation's ("Raytheon") Motion to Dismiss Plaintiffs' Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiffs, eight former employees of Raytheon, filed an Amended Complaint on February 14, 2025 alleging that Raytheon failed to accommodate their religious beliefs under Title VII of the Civil Rights Act of 1964 ("Title VII"). See 42 U.S.C. §§ 2000e(j}, 2000e-2. Raytheon moves to dismiss Plaintiffs' Amended Complaint arguing that some of Plaintiffs' claims are barred by res judicata, all Plaintiffs' claims are time-barred, and the Amended Complaint fails to state a claim.

Plaintiffs allege that while employed by Raytheon and during the COVID-19 pandemic they requested religious accommodations to Raytheon's COVID-19 vaccine mandate. Raytheon granted Plaintiffs' religious accommodation requests as to the vaccine itself and exempted all Plaintiffs from receiving the COVID-19 vaccine but imposed "testing, masking, and travel restriction policies" that Plaintiffs allege also violated Plaintiffs' religious beliefs. For these "testing, masking, and travel restriction policies," Plaintiffs allege Raytheon did not offer any accommodations, and "constructively discharged" or terminated Plaintiffs' employment.

Prior to filing a lawsuit in this Court, five of the eight named Plaintiffs, Kristen Grace, J. Michael Heyser, Lisa Leake, Christopher Stein, and Leslie Zepeda (collectively, the "Arizona Plaintiffs"), filed a class action complaint in the United States District Court for Arizona against Raytheon alleging discrimination and wrongful termination under Title VII, 42 U.S.C. § 2000e-

2(a)(1) and retaliation in violation of § 2000e-3. See Lisa Leake et al., v. Raytheon Techs. Corp., Case No. 22-cv-436-TUC-RM (the "Arizona Action"). In the Arizona Action, the Arizona Plaintiffs alleged religious discrimination, wrongful termination, and retaliation under Title VII in connection with Raytheon's COVID-19 vaccine policy, including its masking and testing policies. On February 27, 2023, the Arizona District Court dismissed the Arizona Plaintiffs' individual claims with prejudice and found that any amendment to the complaint would be futile. The Arizona District Court also denied Raytheon's motion to strike class allegations as moot. On April 29, 2024, the Arizona District Court's order was unanimously affirmed by the Ninth Circuit. The Arizona Plaintiffs sought review in the U.S. Supreme Court, but the Supreme Court denied their petition for a writ of certiorari in October 2024. Approximately one month later Plaintiffs filed suit in this Court.

A motion to dismiss tests the sufficiency of the complaint. See Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). On a Rule 12(b)(6) motion to dismiss, a court must accept all well-pleaded facts as true and construe those facts in the light most favorable to the plaintiff. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Reyes v. Waples Mobile Home Park Ltd. P'ship, 903 F.3d

415, 423 (4th Cir. 2018). The complaint must provide a short and plain statement showing that the pleader is entitled to relief, Fed. R. Civ. P. 8(a)(2), and it must state a plausible claim for relief to survive a motion to dismiss. Iqbal, 556 U.S. at 679; Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

"Res judicata, also known as claim preclusion, bars a party from relitigating a claim that was decided or could have been decided in an original suit." Laurel Sand & Gravel, Inc. v. Wilson, 519 F.3d 156, 161 (4th Cir. 2008) (emphasis added). The defense of res judicata may be properly raised and ruled upon in a motion to dismiss. Thomas v. Consolidation Coal Co., 380 F.2d 69, 75 (4th Cir. 1967). For res judicata to apply, a court of competent jurisdiction must issue a final judgment on the merits; a subsequent case must be filed involving the same parties or parties in privity with each other; and the subsequent case is based on the same cause of action as the prior action. Pittston Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999). "The test for deciding whether the causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation arises out of the same transaction or series of transactions as the claim resolved by the prior judgment." Laurel Sand & Gravel, Inc., 519 F.3d at

162 (internal quotation marks omitted). Accordingly, "[n]ewly articulated claims based on the same [transactional] nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action." Id. "When entertaining a motion to dismiss on the ground of res judicata, a court may take notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact." Q Int'l Courier, Inc. v. Smoak, 441 F.3d 214, 216 (4th Cir. 2006).

Here, the Arizona Plaintiffs claims are barred based on res judicata. Each of the res judicata elements are satisfied in this case. First, there was a final judgment on the merits in the Arizona Plaintiffs' prior suit. The Arizona Plaintiffs' Title VII claims, consisting of disparate treatment, hostile work environment, and retaliation, were dismissed with prejudice in the District Court of Arizona, which was subsequently affirmed by the Ninth Circuit. Second, the parties in the prior suit and the present suit are the same. The same five Plaintiffs-the Arizona Plaintiffs-in addition to three other individual Plaintiffs have brought a Title VII claim against the same Defendant in the instant action.

And finally, the causes of action in the Arizona Plaintiffs' prior suit and the present suit are the same. Under Fourth Circuit precedent, a cause of action is identical for claim preclusion purposes if the claim presented in the new litigation "arises out of the same transaction or series of transactions as the claim resolved by the prior judgment." Laurel Sand & Gravel, Inc., 519 F.3d at 162. Plaintiffs' Title VII claim arises out of Raytheon's COVID-19 vaccine mandate, including their refusal to comply with the safety procedures, i.e. testing, masking, social distancing.

Moreover, res judicata prohibits "not only issues that were raised, but also issues that could have been raised in the earlier action." United States v. Tatum, 943 F.2d 370, 381 (4th Cir. 1991). While the prior action did not specifically include a Title VII failure to accommodate claim-as asserted in the present matter-this claim could have been raised in the earlier action as it was based on the same factual circumstances.

In their opposition, Plaintiffs rely on Cooper v. Federal Reserve Bank to argue that the District Court's dismissal of the class action suit in the Arizona Action does not foreclose the Arizona Plaintiffs in this matter from proceeding with their individual claims. 467 U.S. 867 (1984). In Cooper, the Supreme Court held that the failure of a plaintiff to prove a classwide pattern and practice of discrimination does not automatically foreclose a subsequent attempt by that plaintiff or a fellow class member to prove an individual claim of discrimination. 467 U.S. at 880 (holding that the plaintiff's subsequent discrimination claim was not barred by the prior class action because there might be individual discrimination despite the lack of a "pattern and practice of discrimination" as concluded in the class action).

Unlike in Cooper, no class was ever certified in the Arizona Action, and no decision was made as to the class claim. Instead, the Arizona District Court dismissed the individual claims of the Arizona Plaintiffs with prejudice for failure to state a claim as to the disparate treatment, hostile work environment, and retaliation claims. The court also found that any amendment to the complaint would be futile and declined to address class allegations. Therefore, res judicata applies to the Arizona Plaintiffs because their individual claims were previously dismissed.

Additionally, the Court finds that Plaintiffs' claims are time-barred. "Title VII requires that an aggrieved person file a civil action within 90 days of receiving a right-to-sue letter from the EEOC." Quinn v. Copart of Conn., Inc., 791 F. App'x 393, 395 (4th Cir. 2019). "It is well settled that a Title VII claimant who fails to file a complaint within the 90-day period generally forfeits his right to pursue his claims." Id.; see also Davis v. Navy Fed. Credit Union, 2012 U.S. Dist. LEXIS 2649, at *7-8, 14-16 (E.D. Va. Jan. 10, 2012) (dismissing complaint, with prejudice, where plaintiff failed to bring claims within 90 days of receiving right-to-sue letter). On a Rule 12(b)(6) motion, a court can consider EEOC right-to-sue letters, even if they are not referenced in the plaintiff's complaint, because the letters are "integral to the Complaint's administrative history" and are "public documents of which the Court may take judicial notice." Davis, 2012 U.S. Dist. LEXIS 2649, at *7-8.

Most of the Plaintiffs received their right-to-sue letters more than two years ago, in late 2022. Mr. Garza was the first, on October 3, 2022, followed by Ms. Grace on October 13, 2022; Ms. Leake on October 24, 2022; Mr. Stein on October 26, 2022; Ms. Zepeda on December 13, 2022; Mr. Sublett on April 13, 2023; Ms. Hernandez on January 2, 2024; and Mr. Heyser on August 5, 2024. The most recent right-to-sue letter was issued to Heyser on August 5, 2024, which required him to file suit no later than November 4, 2024. This action was filed on November 20, 2024.

In response, Plaintiffs contend that their claims were tolled by the Arizona Action but do not identify when the tolling period purportedly ended, or when they were required to bring suit once the tolling period ended. But Plaintiffs' position that the Arizona Action tolled the statute of limitations through appeal in accordance with the limited tolling rule set forth in American Pipe is unpersuasive. The Supreme Court in American Pipe held "that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." 414 U.S. 538, 554 (1974). However, "the American Pipe rule provides a narrow exception to the fixed statutes of limitations, suspending their running from the date a class action is filed until the date it is denied, for whatever reason." Bridges v. Dep't of Md. State Police, 441 F.3d 197, 210 (4th Cir. 2006).

Here, the class action was denied when the Arizona Court dismissed the matter for failure to state a claim and denied the defendant's motion to strike class certification as moot. Thus, any tolling of the statute of limitations ended when class certification was denied as moot in the trial court. Therefore, assuming tolling ended in February 2023, all Plaintiffs' claims in this action are untimely, including the Arizona Plaintiffs and the additional Plaintiffs, who received their EEOC right-to-sue letters after the Arizona Action was dismissed, and still did not file suit within 90 days.

For the foregoing reasons, it is hereby

ORDERED that Defendant's Motion to Dismiss is GRANTED, and this matter is DISMISSED.

/s/ Claude M. Hilton______
CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
July 22, 2025

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed 05/05/2026]

No. 25-2022

KRISTEN GRACE; ROSSANA HERNANDEZL MICHAEL HEYSER; LISA LEAKE; CHRISTOPHER STEIN; CHRISTOPHER SUBLETT; LESLIE ZEPEDA,

Plaintiffs – Appellants,

and

FRANCISCO GARZA,

Plaintiff,

v.

RTX CORPORATION F/K/A

RAYTHEON TECHNOLOGIES CORPORATION,

Defendant – Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:24-cv-02083-CMH-WBP)

Submitted: February 23, 2026

Decided: May 5, 2026

Before WYNN, THACKER, and BERNER, Circuit Judges

Affirmed by unpublished per cuiram opinion.

ON BRIEF: E. Scott Lloyd, LLOYD LAW GROUP, PLLC. Front Royal, Virginia, for Appellant. Dawn R. Solowey, Boston, Massachusetts, Samantha L. Brooks, Washington, D.C., Owen R. Wolfe, SEYFARTH SHAW LLP, New York, New York, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In September 2022, RTX Corporation, commonly known as Raytheon ("Appellee"), was sued by several former employees in the District Court for the District of Arizona on behalf of themselves and a purported class of similarly situated persons. The former employees (the

"Arizona Appellants") claimed that Appellee had discriminated against them based on their religious objections to wearing face masks as required by Appellee's pandemic-era workplace safety policy. The District of Arizona court dismissed the individual claims as facially implausible and denied the motion for class certification as moot.

Undeterred, in November 2024, the Arizona Appellants sued Appellee again, this time in the District Court for the Eastern District of Virigina. And this time, they were joined by three additional plaintiffs (together with the Arizona Appellants, "Appellants"). In addressing this second suit, the Eastern District of Virginia held that some of the claims were barred by res judicata, but in any event, none of the claims were filed within the applicable statute of limitations. So, this action, too, was dismissed.

Appellants appealed. Although Appellants concede that their claims are outside the ordinary statute of limitations, they argue that the rule from *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), saves their case. Briefly, the *American Pipe* rule tolls the applicable statute of limitations as to any individual cause of action during the pendency of a class action lawsuit for any individual who was or would have been a member of the purported class.

For the reasons detailed below, we disagree with Appellants and affirm the dismissal of the case as untimely.

I.

In September 2021, during the COVID-19 pandemic, Appellee issued a new internal workplace safety policy. Pursuant to that policy, all employees were required to be vaccinated against COVID-19 and to remain current on those vaccinations. But the policy also offered an accommodation for any employee who declined to be vaccinated out of medical necessity or religious objection. In lieu of vaccination, those employees could opt to wear a mask at work, test weekly for COVID-19, and practice social distancing. Later the same month, Appellee lifted its company-wide masking and social distancing requirement for any employee who was current on his or her vaccinations. But those requirements remained in effect for unvaccinated employees.

Appellants each opted against vaccination. Thus, pursuant to its policy, Appellee required each of them to mask and practice social distancing while at work. But because vaccinated employees were no longer required to mask, Appellants felt that the masking policy singled them out and made them "easily identifiable as person[s] who had a medical or religious objection" to vaccination. J.A. 56.[1] Further, they claimed that they "could not in good conscience agree to the testing that came as a result of [their] request[s] for accommodation." Opening Br. at 4. As a result, they refused to comply with the policy. Appellee fired most of the Appellants for their noncompliance. Others resigned.

In September 2022, the Arizona Appellants sued Appellee in the District of Arizona. They claimed that Appellee had discriminated and retaliated against them for their sincerely held religious beliefs in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-(2)(a)(1), 2000e(3). They each stated individual claims for damages but also moved to certify a class of similarly situated persons.

Appellee moved to dismiss. On February 27, 2023, the Arizona district court granted that motion and dismissed all the individual claims with prejudice. The court held that the Arizona Appellants' claims were facially implausible because they had failed to explain how Appellee

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[1] Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

had treated them differently than other employees. And having dismissed the individual claims, the court denied the motion for class certification as moot. On April 29, 2024, the Ninth Circuit affirmed that dismissal. *See Leake v. Raytheon Tech. Corp.*, No. 23-15320, 2024 WL 1854287 (9th Cir. Apr. 29, 2024). Important to the consideration of the timeliness of this case, the Supreme Court denied certiorari on October 21, 2024. *Leake v. Raytheon Tech. Corp.*, 142 S. Ct. 428 (Mem) (Oct. 21, 2024).

Thereafter, on November 20, 2024, the Arizona Appellants filed a nearly identical action in the Eastern District of Virginia, the only difference being that they added three new plaintiffs, together making up Appellants in the case at hand. The Virginia district court dismissed these new claims on July 22, 2025. Rather than dismissing on the merits, the court held that most of the Appellants' claims are barred by res judicata, as five of the eight plaintiffs had already made "the same" claims in the Arizona action. J.A. 258–59.

The court further held that the remaining claims are time barred. As explained more fully below, before a plaintiff may raise a Title VII claim on her own behalf in federal court, she must receive a right to sue letter from the Equal Employment and Opportunity Commission (the "EEOC"). *See Thomas v. EOTech, LLC*, 169 F.4th 259, 263–64

(4th Cir. 2026). Once a plaintiff receives a right to sue letter, she has 90 days to file her complaint. Id. at 264. Here, the district court found that each Appellant had received a right to sue letter no later than August 5, 2024. But Appellants did not file suit until November 20, 2024 -- 107 days later. Therefore, the district court dismissed the case as untimely.

This appeal followed.

II.

Appellants raise two issues on appeal. First, they argue that the district court erred in holding that res judicata bars the Arizona Appellants' claims. Second, they argue that the filing deadline for all of their claims was tolled, such that they are timely for the purposes of this action. Because the timeliness issue is dispositive of this appeal, we need not address the question of res judicata.

A.

We review the district court's legal conclusions de novo and its factual findings for clear error. *Cogdell v. Reliance Standard Life Ins. Co.*, 169 F.4th 238, 245–46 (4th Cir. 2026).

B.

In order to file a lawsuit, a Title VII plaintiff must first inform the EEOC of the basis of her complaint so that the agency has the opportunity to attempt mediation with the employer. *See Thomas v. EOTech, LLC*, 169 F.4th 259, 263 (4th Cir 2026). If that fails or the EEOC declines to act on the complaint, the plaintiff may request a "right to sue" letter from the EEOC. *Id.* at 263–64. The plaintiff may not sue her employer until she receives that letter and then must do so within 90 days. *Id.* at 264; 42 U.S.C. § 2000e-5(f).

The first of the Appellants to receive a right to sue letter here received it on October 3, 2022, and the last Appellant to receive a right to sue letter did so on August 5, 2024. Consequently, under the ordinary rule, the latest date that any of the Appellants could have sued was November 3, 2024 -- that is, 90 days after August 5, 2024, when the last Appellant received his right to sue letter. But the present action did not commence until 107 days later, on November 20, 2024.

No matter, Appellants argue, because according to them, the rule from *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), saves their case. That rule, as clarified in *Crown, Cork & Seal Co. v. Parker*, holds that:

> "[T]he commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." Once the statute of limitations has been tolled, it remains tolled for all members of the putative class until class certification is denied. At that point, class members may choose to file their own suits or to intervene as plaintiffs in the pending action.

Crown, Cork & Seal Co., 462 U.S. 345, 353–54 (1983) (quoting *American Pipe*, 414 U.S. at 554) (internal citations omitted). Appellants argue that the district court failed to apply the rule from *American Pipe* and thereby wrongly dismissed their claims as untimely. That is so, Appellants argue, because *American Pipe* tolling lasts through the pendency of appeal.

The district court acknowledged the *American Pipe* rule but nonetheless concluded that it did not save Appellants' claims because there is no rule in this circuit -- or in any other circuit -- that *American Pipe* tolling lasts through the pendency of appeal.

We agree with the district court. Although the Arizona Appellants moved for class certification, that motion was denied as moot on February 27, 2023. Therefore, *American Pipe* tolling could have given Appellants who received their right to sue letter before that date at most until May 28, 2023, to file suit in their individual capacities, but Appellants did not file this action until eighteen months later, on November 20, 2024.[2]

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[2] To be clear, Title VII imposes an *individual* filing requirement for each recipient of a right to sue letter. *American Pipe* tolls that individual requirement only if there is an ongoing class action in which the individual claimant could be a party and then only until class status is denied as to the individual or the class as a whole, for any reason.

Each of the Appellants received their respective right to sue letters at different times. And because *American Pipe* tolling only pauses the statutory clock, rather than resetting it, only Appellants who received their right to sue letter between September 24, 2022 -- when the Arizona Appellants moved for class certification -- and February 27, 2023 -- when that motion was denied -- had a full 90 days after February 27 in which to file their individual actions.

Appellants respond that although "there is not a clear rule in the Fourth Circuit" on this issue, "[o]ther courts have found that *American Pipe* tolling lasts through [the pendency of] appeal." Opening Br. at 13.

But even extending *American Pipe* through the pendency of appeal would not save Appellants' case. The Ninth Circuit affirmed dismissal of the Arizona action on April 29, 2024. Thus, even if

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No Appellant received a right to sue letter before the Arizona Appellants instituted the Arizona action in September 2022. Some Appellants received a right to sue letter during the pendency of that action. Because *American Pipe* tolled the statutes of limitation as to those Appellants' claims during the pendency of the class action, those Appellant had ninety days from February 27, 2023, when the district court dismissed the class action, in which to file their individual claims.

No Appellant who received their letter *after* February 27, 2023, benefited from *American Pipe* tolling. They each had 90 days from the date they received their respective letters to file their individual complaints.

American Pipe tolled the 90 day statute of limitations until that dismissal, any Appellant who received a letter before the dismissal would have had, at most, until July 28, 2024, to file their individual claim -- a deadline they clearly missed because Appellants did not file this lawsuit until November 20, 2024. And any Appellant who received their letter *after* July 28, 2024, would not benefit from *American Pipe* tolling at all. Instead, in order to prevail, Appellants would require a ruling that *American Pipe* tolls statutes of limitation until denial of a *writ of certiorari*, as the Supreme Court's denial of certiorari in this case -- which came on October 21, 2024 -- was the only appellate development in the Arizona action that occurred within 90 days of Appellants' filing in the Virginia action. Thus, such a rule would give them all until January 19, 2025, to file new claims, thereby making this lawsuit timely. But in any case, such a theory is unpersuasive.

In support of their position, Appellants cite opinions from the Kansas and Utah Supreme Courts. Not only are Appellants' cited cases of no precedential value in this Circuit, but they also do not support Appellants' position. Granted, the Kansas Supreme Court has held that *American Pipe* tolling may last through appeal. But it did so in a case construing that doctrine as applied to

Kansas law, and in doing so expressly distinguished *federal* law. *See Seaboard Corp. v. Marsh Inc.*, 284 P.3d 314, 408–12 (Kan. 2012) (construing K.S.A. 60-518 and explaining that "unlike [in certain] federal cases," Kansas law contemplated tolling a general state statute of limitations through the pendency of appeals). And the Utah Supreme Court acknowledged, "*American Pipe* and *Crown, Cork & Seal* left this issue unclear as a matter of federal law." *Am. Tierra Corp. v. City of West Jordan*, 840 P.2d 757, 762 (Utah 1992). Although that court ultimately adopted an appeals pendency rule, it did so only "as a matter of *Utah* law." *Id.* (emphasis supplied).

To be sure, as Appellants point out, *Seaboard Corp.* and *American Tierra Corp.* each relied on federal authorities for their respective holdings. But those federal authorities do not support Appellants' position either. Rather, each held that *American Pipe* tolling can continue through appeal, but only when the district court *grants* a motion for class certification.[3] Critically, in

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[3] *See* Opening Br. at 14 n.1 (citing *Griffin v. Singletary*, 17 F.3d 356 (11th Cir. 1994); *Edwards v. Boeing Vertol Co.*, 717 F.2d 761 (3d Cir. 1983), *vacated*, 104 S. Ct. 3566 (mem.); *In re Initial Public

those scenarios, *American Pipe* tolling ends if the appeals court reverses the district court's certification and denies class membership. *See, e.g., Griffin v. Singeltary*, 17 F.3d 356, 361 (11th Cir. 1994) ("[W]e hold that the charge-filing period for the individual claims asserted . . . was tolled . . . from the time the lawsuit was filed until this Court published its opinion vacating the order certifying the class."). That is, as the *Crown, Cork & Seal Co.* Court explained, tolling continues "until class certification is denied," either by the district court in the first instance, or when a district court initially grants certification but is reversed on appeal. 462 U.S. at 353–54.

Even the *American Pipe* Court itself indicated that the rule does not toll statutes of limitation pending appeal. In *American Pipe*, the plaintiffs moved for class certification with 11 days remaining in the relevant filing period. *American Pipe*, 414 U.S. at 561. The district court denied their motion. *Id.* Consequently, as the Supreme Court reasoned, the plaintiffs had 11 days from the district court's denial of their motion to intervene individually. *Id.* Because they had done so, their claims were timely. *Id.*; *see also Cal. Pub. Emps.*

Offering Secs., 617 F. Supp. 2d 195 (S.D.N.Y. 2007)).

Ret. Sys. v. ANZ Sec., Inc., 582 U.S. 497, 514–15 (2017) (explaining that the *American Pipe* court implied that tolling would run from the date of the district court's denial of class participation). In *Crown, Cork & Seal Co.*, too, the Court explained that because the "respondent did not receive his [right to sue letter] until after the [class action] was filed, he retained a full 90 days in which to bring suit after class certification was denied." 462 U.S. at 354. And because the respondent in *Crown, Cork & Seal* had filed his own action within 90 days of the district court's disposition on class certification, the Court reasoned that his claims were timely. *Id.* at 348, 354.

Moreover, in *Bridges v. Department of Maryland State Police*, we explained that the *American Pipe* rule "equitably tolls the running of the statute of limitations for proposed class members' claims until the class action is denied." 441 F.3d 197, 210 (4th Cir. 2006). We characterized the rule as a "limited exception" that "extends as far as is justified by the objectively reasonable reliance interests of the absent class members." *Id.* at 211. Thus, we held in that case, "no absentee class member could reasonably have relied on the named plaintiffs, nor the district court, to protect their interests in the period following the *district court's* . . . certification denial . . . even though that certification denial was only for administrative purposes." *Id.* (emphasis supplied).

Other circuits have been more explicit. The Third Circuit squarely addressed this question in *Nelson v. County of Allegheny*, 60 F.3d 1010 (3d Cir. 1995), and concluded, "to permit tolling the statute of limitations until final resolution on appeal of all claims would disable the essential purpose of the statute and encourage plaintiffs to sleep on their rights." *Id.* at 1013. The Fifth Circuit, too, has held plainly, "the unsuccessful appeal of either a decertification or a denial of certification does not extend the [*American Pipe*] tolling period." *Hall v. Variable Annuity Life Ins. Co.*, 727 F.3d 372, 376 (5th Cir. 2013). And in *Giovanniello v. ALM Media, LLC*, the Second Circuit made clear that the *American Pipe* rule tolls statutes of limitation only until the district court denies class status. 726 F.3d 106, 115–16 (2d Cir. 2013) ("American Pipe tolling does not extend beyond the denial of class status."). Likewise, the Sixth Circuit recently concluded, "the courts of appeals that have considered this issue are unanimous that the dismissal of an uncertified class action [by a district court] terminates *American Pipe* tolling," and thus, "the pendency of [an] appeal [does] not suspend . . . time to file an individual action." *Potter v. Comm'n Soc. Sec.*, 9

F.4th 369, 380–81 (6th Cir. 2021). The Seventh, Eleventh, and Federal Circuits have all reached the same result.[4]

This is not a close issue. Every circuit court to take up this question has held that *American Pipe* tolls a statute of limitations only until class status is denied, either by the district court or on appeal.

Here, Appellants each had 90 days from receipt of their respective right to sue letters to file individual actions. The *American Pipe* rule tolled that statute of limitations while the Arizona Appellants' motion for class certification was before the district court in the Arizona action. The Arizona district court denied class certification on February

[4] *See Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1382 (11th Cir. 1998) ("The [Supreme] Court . . . clearly assumed that tolling should end when the district court denies class certification, not after the appeals process has run and some later final order is entered."); *Collins v. Village of Palatine*, 875 F.3d 839, 843 (7th Cir. 2017) ("As a general matter, the consensus view among the circuits is that once certification is denied, the limitations clock *immediately* starts ticking again."); *Stone Container Corp. v. U.S.*, 229 F.3d 1345, 1356 (Fed. Cir. 2000) ("[W]e hold that tolling ends when class certification is denied in the trial court.").

27, 2023. The *American Pipe* rule thus tolled the statute of limitations for prospective class members only until that date, at which time the statutory clock resumed for all Appellants. Consequently, each Appellant had to file their individual claims within 90 days of the later of (1) February 27, 2023, or (2) the day they received their own right to sue letter. And because every Appellant had received a right to sue letter by August 5, 2024, none of Appellants' individual claims could have been timely after November 3, 2024 -- 90 days later. This action commenced on November 20, 2024 -- 107 days later. The claims are therefore untimely, and the district court properly dismissed the action.

III.

The district court's dismissal is

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed 06/02/2026]

No. 25-2022

(1:24-CV-02083-CMH-WBP)

KRISTEN GRACE; ROSSANA HERNANDEZL MICHAEL HEYSER; LISA LEAKE; CHRISTOPHER STEIN; CHRISTOPHER SUBLETT; LESLIE ZEPEDA,

Plaintiffs – Appellants,

and

FRANCISCO GARZA,

Plaintiff,

v.

RTX CORPORATION F/K/A

RAYTHEON TECHNOLOGIES CORPORATION,

Defendant – Appellee.

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX D

Federal Rule of Civil Procedure 23

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) Information That Parties Must Provide to the Court. The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) Grounds for a Decision to Give Notice. The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) New Opportunity to Be Excluded. If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Class-Member Objections.

(A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) Procedure for Approval After an Appeal. If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

42 U.S.C. § 2000e

§2000e. Definitions

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, §701, July 2, 1964, 78 Stat. 253 ; Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 662 ; Pub. L. 92–261, §2, Mar. 24, 1972, 86 Stat. 103 ; Pub. L. 95–555, §1, Oct. 31, 1978, 92 Stat. 2076 ; Pub. L. 95–598, title III, §330, Nov. 6, 1978, 92 Stat. 2679 ; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 ; Pub. L. 102–166, title I, §§104, 109(a), Nov. 21, 1991, 105 Stat. 1074 , 1077.)

42 U.S.C. § 2000e-2

§2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment

practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

(Pub. L. 88–352, title VII, §703, July 2, 1964, 78 Stat. 255 ; Pub. L. 92–261, §8(a), (b), Mar. 24, 1972, 86 Stat. 109 ; Pub. L. 102–166, title I, §§105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074–1076 .)