No. 23-3188

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DANIEL SNYDER,
Plaintiff-Appellant,

v.

ARCONIC, CORP. and ARCONIC DAVENPORT, LLC,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Iowa
No. 3:22-cv-00027

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLEES AND IN FAVOR OF AFFIRMANCE

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (EEOC) with administering and enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"). Because this appeal raises important questions about the proper legal framework for analyzing Title VII religious-accommodation claims, EEOC offers its views. *See* Fed. R. App. P. 29(a)(2).

STATEMENT OF ISSUES[1]

1. After the Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015), must plaintiffs still establish the prima facie elements of a religious-accommodation claim?

- *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015)
- 42 U.S.C. §§ 2000e(j), 2000e-2(a)(1)

2. Did the district court correctly conclude that Plaintiff failed to identify a religious practice that conflicts with a workplace requirement, as necessary to establish his prima facie case?

- *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015)

[1] EEOC takes no position on any other issues.

- *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337 (8th Cir. 1995)
- *Brown v. Polk Cnty.*, 61 F.3d 650 (8th Cir. 1995) (en banc)
- 42 U.S.C. § 2000e(j)

3. Where an employee requests an accommodation to engage in or receive leniency for religious expression that violates a company's anti-harassment policy, can the impact on coworkers establish undue hardship after the Supreme Court's decision in *Groff v. DeJoy*, 600 U.S. 447 (2023)?

- *Groff v. DeJoy*, 600 U.S. 447 (2023)
- *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337 (8th Cir. 1995)
- 42 U.S.C. § 2000e(j)

STATEMENT OF THE CASE

A. Statutory Background

Title VII prohibits workplace discrimination "because of . . . religion," among other protected characteristics. 42 U.S.C. § 2000e-2(a)(1). The statute defines "religion" to "include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate" an employee's "religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* § 2000e(j).

Thus, a failure to accommodate an employee's religious observance or practice is a form of religious discrimination. *See, e.g.*, *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68-69 (1986). To establish a religious-accommodation claim, plaintiffs bear the initial burden to establish a prima facie case. *See, e.g.*, *Johnson v. Angelica Uniform Grp., Inc.*, 762 F.2d 671, 673 (8th Cir. 1985). This generally requires a plaintiff to show: (1) a bona fide belief that compliance with an employment requirement is contrary to his religious faith; (2) the employer has reason to be aware of the conflict; and (3) the plaintiff was disciplined because of refusal to comply with the requirement. *See id.*; *see also EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773-74 (2015).

If the plaintiff makes this showing, the burden shifts to the employer to demonstrate that reasonable accommodation would result in undue hardship. *Seaworth v. Pearson*, 203 F.3d 1056, 1057 (8th Cir. 2000). To do so, "an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Groff v. DeJoy*, 600 U.S. 447, 470 (2023).

B. Statement of the Facts

Daniel Snyder worked as a "lead operator" at an Iowa plant of Arconic, Corp. ("Arconic"), an aluminum supply-chain company that employs tens of thousands of people worldwide. R. Doc. 24-1, at 2-3 ¶¶ 4-5; App.331-32. Snyder is Christian, and Arconic previously granted him a religious accommodation allowing him Sundays off to preach at a local church. Snyder-Br.-18[2]; R. Doc. 24-1, at 12 ¶ 29; App.341. Snyder believes it is "sacrilegious" to "use . . . the rainbow to promote 'Pride Month' and relationships and ideologies that he believes violate God's law." Snyder-Br.-18.

On June 1, 2021, Arconic's CEO sent an email inviting employees to respond to an anonymous "Engagement Survey" seeking feedback on areas for company improvement. R. Doc. 24-1, at 3 ¶ 6; App.332. Arconic also posted an article with identical substance to this email on the company intranet with the headline "We'd like your input on building a great future together." R. Doc. 23-3, at 46-47; App.209-10; R. Doc. 24-1, at 3 ¶ 7; App.332. The article appeared next to two unrelated "tiles," one stating "Arconic

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[2] Citations to "Snyder-Br.-_" refer to Snyder's opening brief and use ECF pagination.

Inclusion and Diversity Efforts Highlighted by The Manufacturing Institute" and the other stating "SPECTRUM: Arconic Employees for LGBTQ+ Equality" next to a rainbow-colored heart. R. Doc. 24-1, at 3-4 ¶ 8; App.332-33. Spectrum is a support group for employees who identify as LGBTQ+. *Id.*

On June 3, while working an overnight shift, Snyder posted a comment to the intranet article about the company survey stating that "Its a abomination to God. Rainbow is not meant to be displayed as a sign for sexual gender." R. Doc. 23-3, at 49; App.212. Snyder maintains he meant to respond privately to the survey, but it is undisputed that he posted a public comment on the company intranet, which is accessible by more than 13,000 employees. R. Doc. 25-1, at 2-3 ¶¶ 5, 7; App.380-82. A management-level employee saw Snyder's post and informed the plant's HR Lead, who had it removed that same morning. R. Doc. 23-3, at 5, 144; App.168, 307. The parties dispute how long the comment remained up; Snyder says "no more" than eight hours, while Arconic says "at least" eight hours. R. Doc. 24-1, at 9 ¶ 21; App.338. It is undisputed that approximately 240 employees viewed the intranet page during this time, but Snyder asserts it is

impossible to tell whether all 240 read his comment. R. Doc. 25-1, at 4 ¶ 8; App.382.

Arconic has a "Diversity Policy" and several other policies aimed at combating workplace harassment. R. Doc. 25-1, at 8 ¶¶ 17-21; App.386. These policies define harassment to include written material that "denigrates or shows hostility or aversion toward a person or group because of any protected characteristic" and "sharing unsolicited opinions about a person's sexual orientation or gender identity and expression." R. Doc. 25-1, at 8 ¶ 19; App.386.

Arconic began an investigation. R. Doc. 25-1, at 7 ¶ 16; App.385. During the investigation, Snyder made statements connecting his post to his religion, including that Arconic "was not considering his feelings and religious beliefs in using the rainbow to promote 'Gay Pride Month.'" *Id.* Snyder never previously voiced objection to Arconic's use of the rainbow symbol. R. Doc. 25-1, at 7 ¶ 15; App.385. Snyder maintained throughout the investigation that he did not mean to make a public comment but instead meant to respond confidentially to the company survey. R. Doc. 24-1, at 8 ¶ 18; App.337. He did not request permission to repost his comment or to post similar comments in the future. R. Doc. 24-1, at 13 ¶ 33; App.342.

Arconic determined that Snyder's post violated its anti-harassment policies. R. Doc. 25-1, at 8 ¶ 22; App.386. Arconic had twice disciplined Snyder during the prior year for violating Arconic's Diversity Policy by "yell[ing] at a nurse" during a COVID temperature screening and "yell[ing] and scream[ing] at his supervisor." R. Doc. 23-3, at 56, 58-59; App.219, 221-22. Pursuant to its progressive discipline policy, Arconic imposed a one-day suspension for Snyder's first infraction and a three-day suspension for the second and warned that any further infractions could result in additional progressive discipline, up to and including termination. *Id.* Snyder does not claim any religious motivation for those infractions. R. Doc. 36, at 15-16; App.468-69; Snyder-Br.-75.

Arconic ultimately terminated Snyder. R. Doc. 24-1, at 11 ¶ 25; App.340. Gerald McNamara, a Senior Labor Relations Specialist, explained that the company's decision rested in part on concerns that "there would be future violations of the policy based upon his behavior. He had violated the policy three times, and he . . . hadn't shown me that he understood what he did was wrong and why he should not do it going forward . . . ." R. Doc. 22-3, at 72; App.117; Snyder-Br.-75.

C. District Court's Decision

Snyder brought this Title VII suit asserting, *inter alia*, that Arconic failed to accommodate his religion. The district court granted Arconic's motion for summary judgment and denied Snyder's motion for partial summary judgment. R. Doc. 30; App.431-50. The court began by clarifying the nature of Snyder's claim. Because Snyder provided no "evidence that Arconic employees who made comments expressing hostility toward protected groups for non-religious reasons were punished less severely," he was not bringing "a 'traditional' disparate treatment claim" but instead "a disparate-treatment claim[] based on a failure to accommodate a religious practice." R. Doc. 30, at 6; App.436 (internal quotation marks omitted). The court thus turned to the prima facie elements of a religious-accommodation claim, namely, that: "(1) the employee has a bona fide religious belief that conflicts with an employment requirement; (2) the employee informed the employer of this belief; [and] (3) the employee was disciplined for failing to comply with the conflicting employment requirement." R. Doc. 30, at 5; App.435 (quoting *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1340 (8th Cir. 1995)).

The court found the first element unsatisfied, explaining there was "no 'conflict' in the legally relevant sense between [Snyder's] religious practices and Arconic's anti-harassment policy" because Snyder did not "argue[]—much less submit[] evidence—that his religion requires him to send messages objecting to the use of rainbow imagery." R. Doc. 30, at 10; App.440. The court rejected Snyder's argument that "Title VII protections also apply" where "an employee does something that is not *per se* 'required' by religion but nonetheless is motivated by religious beliefs," explaining that such protections apply only to religious practices or observances the employee believes his religion requires. R. Doc. 30, at 9-10; App.439-40. And Snyder, the court observed, had not sought any accommodation directed at alleviating any purported conflict between his religion and Arconic's work requirements but instead sought "one free pass" for his violation because it "was motivated by sincere religious beliefs." R. Doc. 30, at 8; App.438.

The court also found the second prima facie element unmet, explaining that Arconic was unaware of any purported conflict because "Snyder did not express concern about Arconic's anti-harassment policy or

use of the rainbow symbol prior to posting his message, much less ask for an accommodation." R. Doc. 30, at 12; App.442.

Although Arconic raised an undue-hardship defense, the court did not reach this issue because Snyder failed to establish a prima facie case. R. Doc. 30, at 19; App.449. The court underscored, however, the difficulty of analyzing undue hardship when it was unclear "what accommodation Snyder even wants." R. Doc. 30, at 19-20; App.449-50. In the court's view, Snyder was requesting not an accommodation but instead a determination that "he was punished too harshly for his conduct." R. Doc. 30, at 20; App.450. But Title VII, the court explained, does not grant courts "the authority to make this sort of judgment." R. Doc. 30, at 20; App.450.

SUMMARY OF ARGUMENT

The district court did not err by requiring Snyder to establish the prima facie elements of a religious-accommodation claim. Contrary to Snyder's argument, the Supreme Court's decision in *Abercrombie* did not eliminate the prima facie framework in favor of a rule that all discipline of religious expression amounts to discipline "because of" an employee's religion. Instead, where the employer's motivation for the discipline stems from the fact that the expression violated a religiously neutral workplace

policy—rather than from any objection to the religious character of the expression—the employer's action is only "because of . . . religion" if the prima facie elements are satisfied. *Abercrombie* thus left these prima facie elements intact, including the element that a plaintiff identify a religious practice or observance that conflicts with a workplace requirement.

The district court correctly concluded that Snyder failed to satisfy this conflict element. Snyder never identified any religious practice or observance obliging him to object to use of the rainbow symbol publicly or in a manner Arconic's policies prohibited. To the contrary, he repeatedly said his post was accidental and disclaimed any intent to make similar future posts. And Snyder's argument that he need only point to conduct or expression with some connection to religion is contrary to the statute's text, *Abercrombie*, and precedent from this Court and other circuits, which all require a plaintiff to establish a religious *observance* or *practice* to trigger Title VII's religious-accommodation mandate.

Because Snyder failed to establish a prima facie case, this Court need not reach undue hardship. But if it does, it should focus on the accommodation Snyder sought: leniency for his past violation of Arconic's anti-harassment policies. EEOC takes no position on whether requiring

leniency would establish undue hardship here. We note, however, that, even after *Groff*, an employer may be able to show that such an accommodation would substantially burden the conduct of the business by sending the message to employees that it is permissible to violate anti-harassment rules, or by exposing the employer to potential liability arising from coworker harassment claims.

ARGUMENT

I. *Abercrombie* did not eliminate the prima facie framework for religious-accommodation claims.

Snyder contends that the district court should have abandoned the "more complex prima facie framework" in favor of a rule that all discipline responding to religious expression in the workplace amounts to discipline "because of" religion. Snyder-Br.-38. He grounds this argument in *Abercrombie*, which he says articulated a "straightforward" rule that "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions." Snyder-Br.-40 (emphasis omitted) (quoting *Abercrombie*, 575 U.S. at 773). Equating any religious expression with "religious practice," Snyder asserts that an employer makes "religious practice . . . a factor" in its employment decision

whenever it disciplines an employee for religiously motivated statements, even if it does so solely because the statements violated religiously neutral workplace policies. Snyder-Br.-38, 40 (quoting *Abercrombie*, 575 U.S. at 773).

Snyder misreads *Abercrombie*. *Abercrombie* addressed a claim that the employer acted with an unlawful motive when it refused to hire Samantha Elauf—a practicing Muslim who wore a headscarf for religious reasons—"in order to avoid accommodating [her] religious practice" by granting an exception to the store's Look Policy prohibiting headwear. 575 U.S. at 770. The employer claimed it could not have harbored this motive because it lacked "'actual knowledge'" of Elauf's "need for an accommodation." *Id.* at 772. The Supreme Court rejected this argument, clarifying that an employer can "act[] with the motive of avoiding accommodation . . . even if he has no more than an unsubstantiated suspicion that accommodation would be needed." *Id.* at 773. *Abercrombie*'s "straightforward" rule that "[a]n employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions" thus stands for the unremarkable proposition that where an "employer's desire to avoid [a] prospective accommodation is a motivating factor in [its employment]

decision, the employer violates Title VII," even if it lacks "actual knowledge" that an accommodation is required. *Id.* at 773-74.

Abercrombie does not suggest that an employer acts with this unlawful motive whenever it disciplines an employee for religious expression that violates a workplace policy. And here Snyder identifies no evidence that Arconic fired him to avoid a (suspected or confirmed) need for future accommodation. Nor does he point to non-Christian employees who violated the company's anti-harassment policies and received less severe discipline. Instead, he appears to acknowledge that Arconic fired him because his religious expression violated the company's religiously neutral anti-harassment policies. This "does not suffice to imbue [Arconic's] action in discharging him with a religious animus." *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1286 (8th Cir. 1977) (employee discharged for "violation of company rules of conduct" did not establish that discharge was "the result of antagonism" towards his religion).

To be sure, a failure to accommodate need not stem from animus or antagonism towards religion to be actionable. When an employee "requires an accommodation as an aspect of religious practice, . . . Title VII requires otherwise-neutral policies to give way to the need for an accommodation."

Abercrombie, 575 U.S. at 775 (cleaned up). But where the claim rests on an employer's decision to apply a religiously neutral policy in a religiously neutral manner, as is the case here, then the employer's decision is only "because of . . . religion," 42 U.S.C. § 2000e-2(a)(1), where the prima facie elements are satisfied. *See* Snyder-Br.-42 (acknowledging that "the three prima facie criteria work together to ensure a plaintiff's religion was a factor in the defendant's employment decision") (internal quotation marks and alterations omitted). It is not correct that, irrespective of these prima facie elements, an employer's mere application of a neutral policy amounts to "direct evidence" of "illegal discrimination," Snyder-Br.-41 n.8 (internal quotation marks omitted), or proof that an employer "intentionally relie[d]" on the employee's religion in discharging him, Snyder-Br.-40-41 (emphasis omitted) (quoting *Bostock v. Clayton Cnty.*, 140 S Ct. 1731, 1741 (2020)).

Abercrombie gave no indication that it meant to upend this traditional prima facie framework. With respect to the first prima facie element, *Abercrombie* suggests that there must be a "conflict between [a] . . . religious practice and a work rule," and that the plaintiff must "actually require[] an accommodation of [his] religious practice" to alleviate this conflict. 575 U.S.

at 773-74; *see Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1222-24 (9th Cir. 2023) (applying conflict element after *Abercrombie*); *Tabura v. Kellogg USA*, 880 F.3d 544, 549 (10th Cir. 2018) (articulating conflict element after *Abercrombie*). And *Abercrombie* did not eliminate the requirement that an employer have some basis for awareness of the need for accommodation to trigger the affirmative duty to provide one.[3] *See* EEOC Compliance Manual on Religious Discrimination, Directive 915.063, § 12-IV-A-1 (Jan. 15, 2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination ("Compliance Manual") (explaining that "[t]he employer must have enough information to make the employer aware that there exists a conflict" between the employee's religious practice and a job requirement); *EEOC v. Kroger Ltd. P'ship I*, 608 F. Supp. 3d 757, 776 n.126 (E.D. Ark. 2022) (after *Abercrombie*, employer still must be "in some way aware of the employee's need for an accommodation"). Indeed, it is

[3] Snyder does not appear to dispute the general principle that employers must have some basis for awareness of the need for accommodation before they can be obligated to provide one. Instead, he says he made Arconic aware by making his intranet post and expressing a religious motivation for this post during Arconic's subsequent investigation. Snyder-Br.-56-62. Because Snyder did not identify a conflict between religious practice and a workplace rule, *infra* pp. 17-27, it is unnecessary to address his notice argument, and EEOC takes no position on it.

difficult to see how an employer who lacks any awareness of the need for accommodation could be liable for failing to provide one. Thus, contrary to Snyder's argument, the district court appropriately applied the "three-part prima facie framework" to his claim. Snyder-Br.-39.

II. Snyder failed to identify a religious practice that conflicted with Arconic's work requirements.

Turning to the first prima facie element, the district court correctly concluded that Snyder failed to identify any conflict between his religious practice and Arconic's anti-harassment policies because he did not "argue[]—much less submit[] evidence—that his religion requires him to send messages objecting to the use of rainbow imagery." R. Doc. 30, at 10; App.440.

To be sure, some employees "believe that they have a religious obligation to share their views and to try to persuade coworkers of the truth of their religious beliefs, i.e., to proselytize." Compliance Manual § 12-III-D. In those circumstances, such expression may well fall within the scope of Title VII's religious-accommodation mandate. *See infra* pp. 22-23. But Snyder has never asserted that his religious beliefs impose any such obligation. While he maintains a religious opposition to using "the rainbow

to promote 'Pride Month,'" Snyder-Br.-18, he makes no claim that his religious beliefs oblige him to voice this opposition publicly or in any manner that conflicts with Arconic's anti-harassment policies. To the contrary, he repeatedly told Arconic that he did not mean to make a public comment and has disavowed throughout this litigation any desire to continue posting similar public comments. R. Doc. 24-1, at 8 ¶ 18; App.337; Snyder-Br.-27, 74-75.

Snyder interprets the conflict element more broadly, arguing that any "religiously motivated expression" in the workplace triggers Title VII's religious-accommodation requirement. Snyder-Br.-44. This contention is contrary to Title VII's plain text, which speaks to the requirement to accommodate an employee's "religious *observance or practice*," 42 U.S.C. § 2000e(j) (emphasis added), not all expression of a religious nature. Nor did *Abercrombie* suggest that all religious expression falls within Title VII's religious-accommodation mandate. Instead, *Abercrombie* underscored the need to identify a religious *practice*; the Court repeatedly emphasized that it was the religious "practice" of wearing a headscarf that created the conflict with the employer's Look Policy and suggested that conduct amounts to a

"religious practice" only where the individual "sincerely believes that [his] religion . . . requires" it. 575 U.S. at 770-73, 775.

Case law from this Court and other circuits further undermines Snyder's argument that all religious expression is equivalent to a "religious observance or practice." 42 U.S.C. § 2000e(j). For example, in *Wilson v. U.S. West Communications*, 58 F.3d 1337 (8th Cir. 1995), this Court held that the employer reasonably accommodated the plaintiff by allowing her to wear at work an anti-abortion button displaying a picture of a fetus but requiring her to keep this button covered. *Id.* at 1341-42. Relying on the district court's findings that the plaintiff's "religious vow did not require her to be a living witness," this Court held that the employer had no obligation to further accommodate the plaintiff by allowing her to uncover the button. *Id.* In other words, because the plaintiff's religious practice required wearing (but not displaying) the button, Title VII's accommodation requirement extended only to wearing the button. *Id.*

This Court's Free Exercise case law is in accord, finding a substantial burden on religious exercise only where the plaintiffs in question understood their religion to require them to perform the activities being

curtailed.[4] For example, in *Brown v. Polk County*, 61 F.3d 650 (8th Cir. 1995) (en banc), this Court held that ordering Brown to "cease any activities that could be considered to be religious proselytizing, witnessing, or counseling" imposed a substantial burden, given his testimony that such activities were something "his God expects him to [do]." *Id.* at 658 (internal quotation marks omitted). But this Court held that prohibiting Brown from directing another employee to type Bible study notes did not impose a "substantial burden upon his religious practices" because it was doubtful that "directing a county employee to type Bible study notes is conduct mandated by religious belief." *Id.* at 656 (cleaned up). Similarly, in *Altman v. Minnesota Department of Corrections*, 251 F.3d 1199 (8th Cir. 2001), this Court held that reprimanding the plaintiffs for reading the Bible during mandatory training sessions imposed no substantial burden because they "d[id] not suggest that their religion requires them to read the Bible while working." *Id.* at 1204. Thus, in these cases, Free Exercise protections

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[4] Because the First Amendment "protects at least as much religious activity as Title VII does," *Brown v. Polk Cnty.*, 61 F.3d 650, 654 (8th Cir. 1995) (en banc), the Free Exercise analysis is relevant to the Title VII analysis.

extended only to those activities the plaintiffs believed their religious practice required.[5]

Precedent from other circuits confirms that not all religious conduct or expression amounts to a "religious observance or practice" within the scope of Title VII's religious-accommodation mandate. 42 U.S.C. § 2000e(j). For example, in *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470 (7th Cir. 2001), the Seventh Circuit held that an employer reasonably accommodated the plaintiff by allowing her to use the phrase "Have a Blessed Day" with some customers but not those who objected, relying on the district court's findings that the plaintiff's "religious practice" entailed only sporadic use of the phrase. *Id.* at 475-76. Because the plaintiff had not "made a religious commitment to use the phrase on every occasion," the

[5] In *Brown*, this Court rejected the Title VII claim premised on typing Bible study notes on undue-hardship grounds, without deciding whether Brown established the conflict element. 61 F.3d at 655. And while Snyder is correct that *Altman* held the plaintiffs had triable Title VII claims, Snyder-Br.-46, those claims were straightforward disparate-treatment claims asserting that "other employees ha[d] been similarly inattentive" during trainings for non-religious reasons but had "[n]ever been disciplined," 251 F.3d at 1203. *Altman* thus merely found a triable issue as to whether the employer's true motive was "insubordination" or instead religion, *id.*, rather than finding that plaintiffs established a conflict between their religion and a work requirement that could sustain a religious-accommodation claim.

employer had no obligation to allow her to use the phrase with everyone. *Id.* at 476. Likewise, in *Tiano v. Dillard Department Stores, Inc.*, 139 F.3d 679 (9th Cir. 1998), the Ninth Circuit held that Title VII did not oblige the employer to excuse the employee from a "no-leave" policy for the month of October because the employee had no religious practice requiring her to take her religious pilgrimage during that specific month. *Id.* at 682-83; *see also Dachman v. Shalala*, 9 F. App'x 186, 192 (4th Cir. 2001) (employer had no obligation to grant orthodox Jewish employee additional leave on Fridays to pick up challah bread because she agreed that picking up challah on that day was not "a religious requirement").

Snyder next asserts that "[c]ourts have . . . had little trouble finding prima facie religious discrimination where an employer applied a neutral rule to forbid religious expression." Snyder-Br.-52 (emphases omitted). While Snyder is correct that a neutral rule that forbids religious expression can give rise to an actionable conflict, that is true only where the plaintiff has a religious practice or observance obliging him to engage in such expression. Indeed, in each case Snyder cites, Snyder-Br.-52-54, the plaintiffs claimed their religious beliefs required them to carry out the expression at issue. *See Brown*, 61 F.3d at 658 (plaintiff testified that

religious activities that employer prohibited were something "that his God expects him to" do and "something that's part of [his] being") (alteration in original); *Wilson*, 58 F.3d at 1339 (plaintiff "made a religious vow that she would wear an anti-abortion button" at all times); *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006) (plaintiff whose employer instructed him not to pray with or proselytize to clients "established a prima facie case by showing that . . . he is an evangelical Christian who believes in sharing his faith with others") (internal quotation marks omitted); *Anderson*, 274 F.3d at 476 (plaintiff had a "religious practice" to use "Blessed Day" phrase on sporadic basis); *Carter v. Transp. Workers Union of Am. Loc. 556*, 353 F. Supp. 3d 556, 577 (N.D. Tex. 2019) (plaintiff terminated for religious expression opposing abortion adequately pleaded religious-accommodation claim where she alleged that her "religious beliefs require her to share with others that abortion is the taking of a human life") (citation omitted); *EEOC v. Alamo Rent-A-Car LLC*, 432 F. Supp. 2d 1006, 1011-12 (D. Ariz. 2006) (plaintiff established a prima facie case where her religious practice "requir[ing] her to cover her head during Ramadan" conflicted with her job requirements). In contrast with these cases, Snyder

makes no attempt to show a religious practice or observance obliging him to engage in expression that violates Arconic's anti-harassment policies.

Snyder attempts to avoid this conclusion by insisting that the official "theology" of the religion need not mandate the practice or observance in question. Snyder-Br.-44. To be sure, the relevant question is whether the plaintiff sincerely *believes* "in [his] 'own scheme of things'" that his religion obligates the relevant practice or observance, not whether the practice or observance is in fact officially "mandated . . . by a tenet of the individual's faith." Compliance Manual § 12-I-A-1 (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)). Had Snyder said he understood his religion to oblige him to oppose publicly the use of the rainbow symbol, it would be inappropriate to seek "a judicial determination" that this "particular practice is or is not required by the tenets of [his] religion." *Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978); *see also* Compliance Manual § 12-I-A-1 ("An employee's belief, observance, or practice can be 'religious' under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief, observance, or practice . . . ."). But Snyder has never said that he believes his religion requires such public opposition.

Even if Snyder's religious expression could be equated with a religious practice, he did not request an accommodation aimed at "allowing [him] to engage in [that] religious practice despite [Arconic's] normal rules to the contrary." *Abercrombie*, 575 U.S. at 772 n.2; *see Ansonia Bd. of Educ.*, 479 U.S. at 70 (looking to whether accommodation "eliminates the conflict between employment requirements and religious practices"). In fact, Snyder rejects as a "strawman" the notion that he sought permission to engage in similar expression in the workplace in the future. Snyder-Br.-27. And, as the district court noted, to the extent Snyder's proposed accommodation was to *refrain* from making such statements in exchange for leniency for his violation, such an accommodation does nothing to address any alleged conflict arising from a religious "comp[ulsion] . . . to post . . . message[s] on the company intranet page." R. Doc. 30, at 20; App.450.

As the district court observed, Snyder appears to be seeking not an accommodation to alleviate a conflict between religious practice and a workplace rule but instead entitlement to "one free pass" for a past

workplace violation because that violation was religiously motivated.[6] R. Doc. 30, at 8; App.438. Indeed, on appeal, Snyder appears to argue that this Court need not consider whether or how his post fits within an accommodation framework but need consider only the post's religious character. Yet it is precisely the accommodation requirement that is at issue, given that Snyder has offered no evidence that non-Christian employees who violated Arconic's anti-harassment policies were treated more favorably, or any other evidence that Snyder's religion (rather than his violation of a workplace rule) motivated Arconic. Thus, Snyder must establish the elements of a prima facie case—including identifying a religious observance or practice that conflicts with a workplace rule—to

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[6] On appeal, Snyder mischaracterizes the district court's "one free pass" language as indicating that "employees who seek to violate a neutral company policy *every day* for religious reasons can establish a prima facie case" while "an employee whose religion violates company policy only *once* has no case." Snyder-Br.-43. But the court's "one free pass" concept has nothing to do with the infrequency of Snyder's actions but instead with the nature of the accommodation at issue, namely, that Snyder sought not a prospective accommodation requesting that he "be *permitted* to post messages on the company intranet" but instead retroactive leniency for a past violation because of its connection to religion. R. Doc. 30, at 8 n.4; App.438.

establish that Arconic's employment decision was taken "because of . . . religion" within the meaning of the statute. 42 U.S.C. § 2000e-2(a)(1).

III. Where an employee requests an accommodation to engage in or receive leniency for religious expression that violates a company's anti-harassment policy, the impact on coworkers can establish undue hardship after *Groff*.

Because Snyder did not establish a prima facie case, this Court need not reach the question of undue hardship. EEOC nonetheless offers its views regarding the proper framework for analyzing undue hardship here, in case this Court decides to address the issue.

As the district court noted, the undue-hardship analysis fits uncomfortably within the facts of this case, where it is unclear "what accommodation Snyder even wants." R.30 at 19-20. Snyder does not appear to be requesting an "accommodation to state offensive comments" about LGBTQ+ coworkers in the future. Snyder-Br.-27 (internal quotation marks omitted). Even if he were, in EEOC's view, Arconic need not grant such an accommodation because "it would be an undue hardship for an employer to accommodate religious expression that is unwelcome potential harassment" based on a protected characteristic or under the terms of "its own internal anti-harassment policy." Compliance Manual § 12-IV-B-4.

This principle applies with equal force after *Groff*. *See Groff*, 600 U.S. at 471 (expressing "no reservation[] in saying that a good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today"). To be sure, *Groff* clarified the undue-hardship standard by holding that an accommodation must "result in substantial increased costs in relation to the conduct of [the employer's] particular business" to constitute undue hardship. *Id.* at 470. But *Groff* made clear that "an accommodation's effect on co-workers" remains relevant to the analysis so long as it has "ramifications for the conduct of the employer's business" and is not founded on "bias or hostility to a religious practice or a religious accommodation." *Id.* at 472; *see also Bourdeaux v. Lions Gate Ent., Inc.*, -- F. Supp. 3d --, No. 22-cv-04244, 2023 WL 8108655, *9 (C.D. Cal. Nov. 21, 2023) (explaining that "[n]on-economic impacts on coworkers can be considered" after *Groff* "so long as those impacts are not the result of employee animosity" to religion).

Where an employee seeks an accommodation to engage in conduct that is harassing towards coworkers, that conduct may "go on to affect the conduct of the business," *Groff*, 600 U.S. at 472 (cleaned up), in a variety of ways. That conduct could, for example, create "adverse effects on

employee morale or workplace productivity" or "disrupt[] the work of other employees." Compliance Manual §§ 12-III-D, 12-IV-C-6(a); *see Wilson*, 58 F.3d at 1341-42 (looking to "substantial disruption" resulting from employee's conduct in finding that employer provided reasonable accommodation and noting that "Title VII does not require an employer to allow an employee to impose his religious views on others"). That conduct could also expose the employer to potential liability arising from harassment claims from other employees. Compliance Manual § 12-IV-C-6(a) ("Since an employer has a duty under Title VII to protect employees from harassment, it would be an undue hardship to accommodate expression that is harassing."); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1021 (4th Cir. 1996) (undue hardship may arise from accommodation that would subject employer to "possible [harassment] suits" from other employees); *Matthews v. Wal-Mart Stores, Inc.*, 417 F. App'x 552, 554 (7th Cir. 2011) (explaining that "it would create an undue hardship" to "permit [employee] to admonish gay[]" coworkers because "such an accommodation could place [company] on the 'razor's edge' of liability by exposing it to claims of permitting workplace harassment") (citation omitted); *see also Bolden-Hardge*, 63 F.4th at 1225 (discussing case law

"recognizing an undue hardship where an accommodation would have required the employer to risk liability for violating [the] law"); *Lowe v. Mills*, 68 F.4th 706, 721-22 (1st Cir. 2023) (similar). These are just some of "the burdens" that could "result from allowing actions that demean or degrade . . . members of [the] workforce"—burdens that an employer "need not accept." *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606-08 (9th Cir. 2004) (allowing employee to continue posting "anti-gay scriptural passages" would give rise to undue hardship).[7]

As noted, Snyder does not appear directly to contest this premise, i.e., that an accommodation requesting to engage in harassing conduct could give rise to undue hardship, nor does he say he sought such an accommodation. Instead, he argues that no undue hardship exists here because his post did not, in the end, have any "negative[] impact[] [on] the functioning of the company."[8] Snyder-Br.-68. But this argument loses sight

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[7] While much of the case law cited above pre-dates *Groff*, EEOC's Compliance Manual—which *Groff* described as "sensible," 600 U.S. at 471—cites many of these cases approvingly. Compliance Manual §§ 12-B-4, 12-C-6, nn. 263, 298, 300.

[8] Even if this were the proper framework, Snyder is mistaken in relying on *Brown* for the proposition that "a non-disruptive 'isolated' religious expression in the workplace is not an undue hardship as a matter of law."

of the relevant question, which is not what harm resulted from Snyder's *violation* but instead what harm is likely to result from the *accommodation* he says he requested: leniency for his violation of Arconic's anti-harassment policies.

EEOC takes no position as to whether requiring Arconic to grant such leniency would give rise to undue hardship here. But we note that an employer may be able to show that an accommodation requiring it to forgive violations of anti-harassment policies would substantially burden the conduct of the business by sending the message to employees that it is permissible to disregard such rules or by exposing the employer to disruption in the workplace or potential liability arising from coworker harassment claims. And, contrary to Snyder's argument, Snyder-Br.-73-75, this may still be true even where the conduct for which leniency is sought

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Snyder-Br.-14. *Brown* did not establish an across-the-board rule to this effect but instead reached a case-specific holding based on the "context" of the expression, including that it was not harassing or targeted at members of a protected group; it was at most "impolitic" but "inconsequential as a legal matter." 61 F.3d at 656. And Snyder is also mistaken to the extent he attempts to liken offense arising from expression targeted at a protected group with a "coworker's dislike of religious . . . expression in the workplace"; the two should not be equated. Snyder-Br.-68 (quoting *Groff*, 600 U.S. at 472).

has not yet crystallized into an actionable hostile work environment. An employer need not "wait[] until the unwelcome behavior becomes severe or pervasive" to discipline an employee for engaging in such conduct; instead, "it is permitted and advisable for employers to take action to stop alleged harassment *before* it becomes severe or pervasive, because while isolated incidents of harassment generally do not violate federal law, a pattern of such incidents may be unlawful." Compliance Manual § 12-IV-C-6(a); *see Ervington v. LTD Commodities, LLC*, 555 F. App'x 615, 618 (7th Cir. 2014) (employer could discharge employee for conduct that violated anti-harassment policy but did not amount to unlawful harassment; "Title VII does not prohibit employers from enforcing an antiharassment policy that defines harassment more broadly than does Title VII"). Thus, an accommodation requiring an employer to extend leniency for violations of anti-harassment policies—even violations that do not yet rise to the level of an actionable hostile work environment—could cause undue hardship in an appropriate case.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

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This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6,479 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7) & (f).

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CERTIFICATE OF SERVICE

I certify that on this 26th day of December, 2023, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

I further certify that, as required by Eighth Circuit Local Rule 28A(d), ten paper copies of the foregoing brief will be filed with the Court and one paper copy of the foregoing brief will be served on each party.

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