No. 24- _____

In the

Supreme Court of the United States

Tammy M. Harvey, Shariti A. Lane, Janelle B. Caruano, Donna L. Maher, Sean McCarthy, Cheryl L. Hand, Andrea L. Maloney, and Beth A. McDowell,
Petitioners,

v.

Bayhealth Medical Center, Inc.,
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Gary E. Junge
Counsel of Record
William D. Fletcher, Jr.
Schmittinger & Rodriguez, P.A.
414 South State Street
Dover, Delaware 19901
gjunge@schmittrod.com
(302) 674-0140
Counsel for Petitioners

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

Questions Presented

Title VII of the Civil Rights Act of 1964 generally prohibits an employer from discharging an individual "because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). In *Africa v. The Commonwealth of Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981), the Third Circuit stated, "the very concept of ordered liberty precludes allowing [an individual] a blanket privilege to make his own standards on matters of conduct in which society as a whole has important interests." This Court's holdings dictate broad protections for religious beliefs. However, in many cases, district courts have used this "blanket privilege" theory to constrict this Court's broad protections and hold that some avowed religious beliefs are too broad to be afforded protection, or are personal or medical beliefs rather than religious beliefs.

The questions presented are:

1. Under Title VII, is an employee's religious belief left unprotected if a court determines such a belief would create a "blanket privilege" because the belief might apply broadly to other employment situations, or is an employee's religious belief broadly protected in the employment setting as found by six other circuits?

2. Are lower courts permitted to make a factual determination as to whether a professed religious belief supported by citations to religious materials is a personal or medical belief as opposed to an avowed religious belief on a motion to dismiss under FRCP 12(b)(6)?

Parties to the Proceeding

Petitioners were plaintiffs in separate but related cases that were filed in the District Court and were appellants in separate appeals filed in the Third Circuit. A consolidated brief was filed on appeal in the Third Circuit. The Petitioners are Beth A. McDowell, Cheryl L. Hand, Andrea L. Maloney, Donna L. Maher, Sean McCarthy, Janelle B. Caruano, Shariti A. Lane, and Tammy M. Harvey.

Respondent Bayhealth Medical Center, Inc. was the defendant in the District Court and was the appellee in the Third Circuit.

Related Proceedings

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii).

- *Beth A. McDowell v. Bayhealth Medical Center, Inc.*, No. 24-1157 (3d Cir.), judgment entered on November 15, 2024;
- *Beth A. McDowell v. Bayhealth Medical Center, Inc.*, No. 1:22-cv-01392-RGA (D. Del.), judgment entered on January 25, 2024;
- *Cheryl L. Hand v. Bayhealth Medical Center, Inc.*, No. 24-1252 (3d Cir.), judgment entered on November 15, 2024;
- *Cheryl L. Hand v. Bayhealth Medical Center, Inc.*, No. 1:22-cv-01548-RGA (D. Del.), judgment entered on January 31, 2024;
- *Andrea L. Maloney v. Bayhealth Medical Center, Inc.*, No. 24-1253 (3d Cir.), judgment entered on November 15, 2024;
- *Andrea L. Maloney v. Bayhealth Medical Center, Inc.*, No. 1:23-cv-00078-RGA (D. Del.), judgment entered on January 31, 2024;
- *Donna L. Maher v. Bayhealth Medical Center, Inc.*, No. 24-1249 (3d Cir.), judgment entered on November 15, 2024;
- *Donna L. Maher v. Bayhealth Medical Center, Inc.*, No. 1:22-cv-01551-RGA (D. Del.), judgment entered on February 2, 2024;
- *Sean McCarthy v. Bayhealth Medical Center, Inc.*, No. 24-1250 (3d Cir.), judgment entered on November 15, 2024;

- *Sean McCarthy v. Bayhealth Medical Center, Inc.*, No. 1:22-cv-01336-RGA (D. Del.), judgment entered on February 2, 2024;
- *Janelle B. Caruano v. Bayhealth Medical Center, Inc.*, No. 24-1251 (3d Cir.), judgment entered on November 15, 2024;
- *Janelle B. Caruano v. Bayhealth Medical Center, Inc.*, No. 1:22-cv-01284-RGA (D. Del.), judgment entered on February 2, 2024;
- *Shariti A. Lane v. Bayhealth Medical Center, Inc.*, No. 24-1248 (3d Cir.), judgment entered on November 15, 2024;
- *Shariti A. Lane v. Bayhealth Medical Center, Inc.*, No. 1:23-cv-00102-RGA (D. Del.), judgment entered on February 5, 2024;
- *Tammy M. Harvey v. Bayhealth Medical Center, Inc.*, No. 24-1254 (3d Cir.), judgment entered on November 15, 2024;
- *Tammy M. Harvey v. Bayhealth Medical Center, Inc.*, No. 1:23-cv-00092-RGA (D. Del.), judgment entered on February 5, 2024.
- *Beth McDowell et al. v. Bayhealth Medical Center, Inc., Nos. 24-1157, 24-1248, 24-1249, 24-1250, 24-1251, 24-1252, 24-1253, 24-1254* (3d Cir.) denial of the petition for rehearing by the panel and the Court en banc entered on December 17, 2024.

Table of Contents

Table of Authorities

Cases

Statutes

Codes of Federal Regulation

Federal Rules of Civil Procedure

Petition for Writ of Certiorari

Petitioners Beth A. McDowell, Cheryl L. Hand, Andrea L. Maloney, Donna L. Maher, Sean McCarthy, Janelle B. Caruano, Shariti A. Lane, and Tammy M. Harvey respectfully petition this Court for a writ of certiorari to review the judgment of the Third Circuit.

Opinions Below

The opinion of the Third Circuit (App. 1a- 16a) has not yet been published but is reported at 2024 U.S. App. LEXIS 29065. The opinions of the District Court are reported as follows: Tammy M. Harvey (App. 33a-47a), 715 F. Supp. 3d 594; Shariti A. Lane (App. 48a-65a), 2024 U.S. Dist. LEXIS 19470; Janelle B. Caruano (App. 66a-83a), 714 F. Supp. 3d 461; Donna L. Maher (App. 84a-99a), 2024 U.S. Dist. LEXIS 18536; Sean McCarthy (App. 100a-116a), 2024 U.S. Dist. LEXIS 18534; Cheryl L. Hand (App. 117a-133a), 2024 U.S. Dist. LEXIS 16787; Andrea L. Maloney (App. 134a-150a), 2024 U.S. Dist. LEXIS 17609; and Beth A. McDowell (App. 151a-166a), 2024 U.S. Dist. LEXIS 13290.

Jurisdiction

The Judgment of the Third Circuit was entered in each case on November 15, 2024. App. 17a-32a. The Third Circuit denied a timely petition for a panel rehearing and a rehearing en banc on December 17, 2024. App. 167a-169a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Statutory Provisions Involved

Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.* provides in relevant part that "it shall be an unlawful employment practice for an employer to . . . discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

Preliminary Statement

When the majority panel of the Third Circuit wrote its opinion, it acknowledged that the Sixth, Seventh, and Eighth Circuit decisions had addressed the same issue and reached different results. The majority attempted to differentiate its ruling from those in the other circuits by claiming Petitioners failed to connect their beliefs to the conduct underlying the discrimination. But, as the dissent observed, that is not the case. As discussed *infra* at section II, pages 27-31, the opinion created a 3-1 circuit split. Since the writing of the Third Circuit opinion, the First, Fourth, and Fifth Circuits have addressed the issue, and the split has widened to a 6-1 circuit split.

Through more than two centuries of jurisprudence, this Court has yet to clearly define what constitutes a religion. Nor has it clearly stated what types of religious beliefs are subject to constitutional protections. The Court has recognized that such definitions are amorphous and, therefore, difficult to define. However, the Court has provided opinions that assist in determining whether avowed beliefs are subject to protection. The primary inquiry

is whether the beliefs professed are (1) sincerely held and (2) whether the beliefs are, in the plaintiff's own scheme of things, religious. *United States v. Seeger*, 380 U.S. 163, 184-85 (1965).

In 1981, the Third Circuit adopted a test that addressed three "useful indicia" to determine the existence of a religion. *Africa v. the Commonwealth of Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981). The test asks whether a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters, whether it consists of a belief system as opposed to an isolated teaching, and whether the religion can be recognized by the presence of certain formal and external signs. *Id.* The opinion also referenced this Court's decision in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *dicta*, the *Africa* Court stated, "we recognize that 'the very concept of ordered liberty precludes allowing' Africa, or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Yoder*, 406 U.S. at 215-16). In doing so, the *Africa* Court introduced the term "blanket privilege" into the Third Circuit's Title VII lexicon.

Although the concept of blanket privilege was not thoroughly analyzed in *Africa*, district courts throughout the United States, most notably district courts in the Third Circuit, began using the blanket privilege theory to dismiss cases where the court believed the espoused religious belief was too broad. In many cases, the court would decide that a plaintiff's concern was related to the safety or efficacy

of the vaccine and conclude that such a personal conception of harm amounted to a blanket privilege.

These cases concern religious freedom and, therefore, present extremely compelling legal and social issues. "In our time, few pieces of federal legislation rank in significance with the Civil Rights Act of 1964." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 650 (2020). Although the opinion does not directly conflict with this Court's decision in *Seeger* (the majority opinion mentions *Seeger* twice in a footnote), the opinion is certainly tangential to a direct conflict. It is doubtful that Seeger would survive a motion to dismiss under the Third Circuit's current practice.

This Court has provided tools for determining whether a belief is entitled to protection. It provided the primary inquiry into religious beliefs, *Seeger*, 380 U.S. at 184-85, and has admonished courts not to second-guess the validity of an individual's beliefs or parse the language supporting those beliefs. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014); *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989); *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 715 (1981). This case presents an ideal opportunity for this Court to reinforce prior rulings and reset parameters that essentially allow for a broad range of religious beliefs and leave the determination of the sincerity of those beliefs to a finder of fact.

Statement of the Case

I. Background

A. Title VII prohibits employers from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of

employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). "The term 'religion' includes all aspects of religious observance and practice, as well as belief," unless an employer demonstrates an undue hardship. 42 U.S.C. § 2000e(j). Determining whether an espoused belief is religious as opposed to secular is a matter of law. *See Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972). Although the Third Circuit has developed a test to determine whether beliefs are religious, the test is narrow and has not been adopted by other circuits. *See, e.g.*, *Patrick v. Le Fevre*, 745 F.2d 153, 156 (2d Cir. 1984) (overturning summary judgment where the trial court relied on a narrow definition of "religious belief"' promulgated by the Third Circuit.). This has led to disparate outcomes for individuals with the same beliefs based solely on where each individual resides.

B. On August 12, 2021, Delaware Governor John Carney ordered all Delaware state healthcare employees to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021. In November 2021, the CMS issued a COVID-19 vaccine mandate requiring certain healthcare facilities to ensure their covered staff were vaccinated against COVID-19, but it also allowed for medical and religious exemptions. App. 35a.

In response to the mandate, Bayhealth required employees wishing to decline the vaccine on religious grounds to submit a "COVID-19 Religious Request for Immunization Exemption" form. App. 35a. Exempted employees would be required to comply with alternative health and safety protocols.

The form required the requesting employee to state why they were seeking a religious exemption, the religious principles that guided their objection to immunizations, whether the employee opposed all immunizations, and if not, the religious basis on which the employee objected to the COVID-19 immunization. *See, e.g.*, App. 287a-288a.

Each Petitioner submitted the required exemption request form explaining their individual religious beliefs and their reasons for refusing the vaccine. Although some requests were more eloquently stated than others, each cited a scriptural basis for their refusal. Tammy Harvey refused the COVID-19 vaccine because she sincerely believes her body is a temple of the Holy Spirit, and she must be careful to monitor what she introduces into her body. She believes God would not want her to receive the vaccine and that her belief in the scriptures leads her to have faith in effective alternatives. She believes taking the vaccine would violate her relationship with God, requiring her to use alternatives to the vaccine if they were available. App. 178a-182a. Her request was denied with no explanation. A request for reconsideration was met with a response that each exemption request was thoroughly reviewed, and her exemption request was denied because her religion had no theological opposition to vaccinations. Harvey's employment was terminated on February 28, 2022. App. 173a-174a.

Shariti Lane offered two categories of beliefs for refusing the vaccine. She sincerely believes her body is a temple of the Holy Spirit and also believes the Bible holds there is no need for a physician unless

one is sick. She does not believe immunizations can heal, as that is God's job, and notes the Bible says she should visit a doctor when she is sick, not when she is well. App. 191a-195a. After her exemption was denied, she requested an explanation and asked if she could submit a revised request. Bayhealth responded that her letter presented no theological opposition to vaccinations and that no revisions would be accepted. Lane's employment was terminated on February 28, 2022. App. 186a.

Janelle Caruano offered three categories of beliefs for refusing the vaccine, each supported by citations to scripture. She sincerely believes her body is a temple for the Holy Spirit. She honors God with her body because it is his temple by controlling what she puts into it after discernment with the Lord. Also, noting she is "fearfully and wonderfully made," she believes it is against God's word to put anything into her body that would alter her God-given immune system. Lastly, she believes she was created in the image of God. App. 205a-10a. A letter from her Pastor supported her beliefs and requested that Bayhealth honor her exemption request. App. 216a-217a. After being denied, Caruano wrote Bayhealth to ask why and if it was possible to submit a revised request. Bayhealth informed Caruano that there was no appeals process. Her employment was terminated on February 28, 2022. App. 200a.

Donna Maher offered two categories of beliefs for refusing the vaccine. She sincerely believes her body is a temple of the living God, and also believes her God-given immune system gives her immunity to COVID-19. She cited numerous biblical passages

supporting her beliefs. App. 225a-228a. Maher's exemption request was denied without explanation, and her employment was terminated on February 28, 2022. App. 221a.

Sean McCarthy refused the vaccine because he sincerely believes his body is a living temple of the Holy Spirit of God, that he is commanded to present his body as a living sacrifice, and that keeping and presenting his body in this way is part of how he worships God. He supported these beliefs with citations to scripture that he believes support his convictions. App. 242a-245a. After his exemption request was denied without explanation, he requested a re-evaluation. Bayhealth's response informed him that it was not evident from the exemption form that his religion had a theological opposition to vaccinations, that there was no appeal process, and that the decision stood as is. His employment was terminated on February 28, 2022. App. 232a.

Cheryl Hand offered two categories of beliefs for refusing the vaccine. She sincerely believes her body is a temple of the Holy Spirit, that she should take care of her body and not defile it, and that she should not willingly introduce something into her body that could harm it. She also believes that because the COVID-19 vaccine is an mRNA vaccine, it would make changes to the DNA with which God created her. She supports her beliefs with citations to supporting scripture. App. 260a-266a. Her exemption request was denied, and her employment was terminated on February 28, 2022. App. 256a.

Andrea Maloney sincerely believes she was made in the image of God and has a duty to honor and

care for the body God has given her against anything unclean. She believes the mandated vaccine has various additives that have the potential of altering her body and mind, and that Christians have a duty to honor and care for the body God has given us as a temple of the Holy Spirit. App. 276a-277a. After her exemption request was denied, she wrote to Bayhealth seeking an explanation and requesting information regarding Bayhealth's appeal process. She was informed that her letter presented no theological opposition to vaccinations and that there was no appeal process. Her employment was terminated on February 28, 2022. App. 270a-271a.

Beth McDowell refused the vaccine because she sincerely believes God wants her to protect and purify her body (His temple) and that taking the COVID-19 vaccine would be purposely defiling God's temple. She supports her belief with citations from scripture. App. 287a-292a. She also submitted a letter from First Harvest Ministries supporting her beliefs. App. 293a-95a. After her exemption request was denied, McDowell demanded an explanation for the denial and requested Bayhealth's appeal policy. Bayhealth stated that the information provided by McDowell did not support a theological opposition to vaccinations and that there was no appeal process. Her employment was terminated on February 28, 2022. App. 281a-282a.

II. Proceedings Below

A. Proceedings in the District Court

Initial complaints for the eight cases were filed between September 30, 2022, and January 27, 2023.

On March 6, 2023, the District Court granted motions to dismiss without prejudice in three of the related cases. Amended Complaints were filed in each of the cases at bar between March 31, 2023, and April 27, 2023. App. 170a, 183a, 196a, 218a, 229a, 253a, 267a, and 278a. Motions to dismiss each of the eight Amended Complaints were filed between May 30, 2023, and June 6, 2023. The District Court dismissed each case with prejudice between January 25, 2024, and February 5, 2024. App. 33a, 48a, 66a, 84a, 100a, 117a, 134a, 151a.

The only issue before the trial court was whether each Petitioner had sufficiently pled that a belief upon which the objection to receiving the COVID-19 vaccine was based on was a religious belief. *See, e.g.*, App. 42a. Bayhealth argued that the beliefs upon which Petitioners based their objections to the vaccine were secular beliefs based on each Petitioner's personal moral code as opposed to religious beliefs that formed a part of each Petitioner's Christian faith. *See, e.g.*, App. 43a. The trial court placed Petitioner's beliefs in one of four categories, with some Petitioners providing more than one belief. Generally, the first category is the belief that one cannot knowingly harm one's body because the body is a temple of the Holy Spirit. *See, e.g.*, App. 144a. The second category is the belief that one has a God-given immune system and that healing power rests with God. This encompasses a belief that one should not seek a doctor unless one is sick. App. 58a-59a. The third category is that we are all created in the image of God and are, therefore, perfect. As espoused by Caruano, this belief was not well developed and, as espoused by Maloney, was linked to her belief that her

body is a temple of the Holy Spirit. App. 144a, 149a. The fourth category was the belief that the COVID-19 vaccine, as an mRNA vaccine, would alter one's God-given DNA. App. 127a.

The most common belief was that the body is a temple of the Holy Spirit, and therefore, one cannot knowingly ingest something that may harm the body. The second most common was the belief that we are endowed with a God-Given immune system that should not be altered. One Petitioner put forth a belief claiming we are made in the image of God and therefore perfect, and one Petitioner argued that the mRNA vaccine would alter the DNA with which God created her. No matter the espoused belief, the court's reasons for finding each belief was not religious and dismissing the cases were surprisingly similar. The trial court found that each belief was the type of blanket privilege that does not qualify as a religious belief under *Africa* because the belief was too broad or because the belief was predicated fundamentally on a concern about the safety or efficacy of the vaccine.

When disqualifying a Petitioner's belief that taking the COVID-19 vaccine would violate God's directive to treat one's body as a temple of the Holy Spirit by not introducing a substance into the body that may cause it harm, the trial court consistently conflated the petitioner's secular and religious beliefs. Although the court recognized "the notion that we should not harm our bodies is ubiquitous in religious teaching," it found "a concern that a treatment may do more harm than good is a medical belief, not a religious one." App. 98a, 114a, 128a, 146a, 163a. The

same rationale was used to reject the belief in a God-given immune system. App. 61a, 97a. In a number of cases, the court found stated beliefs to be "predicated fundamentally on [] concerns with the safety of the vaccine" and would then note the individual did "not articulate any religious belief that would prevent her from taking the vaccine if she believed it was safe." App. 98a, 114a, 128a, 145a-146a, 163a. The same rationale was applied to the belief in a God-given immune system by changing the wording to "taking the vaccine if she believed it would not affect her immune system." App. 81a.

Petitioners argued the belief that a substance may cause harm to the body is a secular belief, but the belief that one should not put such a substance into one's body because it is a temple of the Holy Spirit is a valid religious belief. Citing to *Africa*, the court found this argument to be an attempt to cloak with religious significance (a term synonymous with asserting a blanket privilege, *see* App. 4a) the Petitioner's concern that the vaccine may harm his body. App. 114a-115a, 128a-129a, 146a-147a, 164a. This argument was also applied to dismiss beliefs in a God-given immune system. App. 61a-62a, 81a-82a, 95a.

Petitioners also argued that whether a belief amounted to a blanket privilege presented an issue of sincerity reserved for the jury. But, citing *Africa*, the court claimed, "a principal reason that courts engaged in the practice of making 'uneasy differentiations' between religious and nonreligious beliefs was to prevent any individual from retaining a 'blanket privilege' to make his own standards on matters of

conduct in which society as a whole has important interests." App. 45a, 62a-63a, 79a, 112a, 130a-131a, 148a.

The court also found that choosing what goes into one's body through prayer was too broad. The court felt allowing an individual to object to anything based on the practice of "praying on it" would amount to the type of blanket privilege precluded by *Africa.* App. 44a-45a, 111a, 130a. The court also rejected a person's ability to object to anything that "goes against God's will" or their "conscience" as the type of "blanket privilege" precluded by *Africa.* App. 78a, 147a.

B. Proceedings in the Court of Appeals

Petitioners appealed the decisions of the District Court to the Third Circuit in a consolidated brief on February 7, 2024. In a 2-1 decision, the majority affirmed the decisions of the District Court. App. 1a-16a.

1. The Majority Opinion

The analysis by the majority begins by saying, "[i]n religious objection cases, courts must examine whether a belief is a religious one, as opposed to a personal belief cloaked in religion." For this proposition, the majority cites to *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972) with the following parenthetical: "holding that where a plaintiff's asserted beliefs are based on a 'subjective evaluation and rejection of the contemporary secular values accepted by the majority,' a claim derived therefrom 'would not rest on a religious basis.'" This is accompanied by a citation to *Africa v. Pennsylvania*,

662 F.2d 1025, 1031, 1035 (3d Cir. 1981) (concluding that plaintiffs cannot use religion to claim a "blanket privilege" or "cloak[] with religious significance" a secular belief), and to *United States v. Seeger*, 380 U.S. 163, 165 (1965) (concluding beliefs that are "essentially political, sociological, or philosophical views" are not religious). App. 4a-5a. The Third Circuit's adoption and application of the blanket privilege theory significantly contracts this Court's prior decisions on what types of religious beliefs will be accorded protection.

Petitioners contend their bodies are God's temples and that receiving the COVID-19 vaccine would violate their religious beliefs. The majority contends it is for the courts to decide whether Plaintiffs' objections to the vaccine are best classified as either (1) personal, secular, or medical, or (2) religious.[1] App. 6a. Despite Petitioners' numerous citations to supporting scripture, the court found their requests "do not provide facts from which we can plausibly infer that Plaintiffs' objections to the vaccine are based on religious beliefs and not on their personal, secular, and medical beliefs about the efficacy and safety of the vaccine." App. 7a. There was no finding that the beliefs were political, sociological, or philosophical, and to the extent the court considered them personal, *Seeger* only exempts personal moral codes if it is the sole basis for one's belief and is in no way related to a Supreme Being. *Seeger*, 380 U.S. at 186.

---

[1] The belief that the body is a temple of the Holy Spirit is the only belief analyzed in the majority opinion. The remaining beliefs were disposed of in a footnote. *See* App. 8a n.5.

The court stated, "concluding that [Petitioners] state a claim by broadly invoking an overarching religious belief without directly connecting that religious belief to the objected-to employment term would impermissibly 'cloak[] with religious significance' a fundamentally secular objection to an employment term, and thereby create a 'blanket privilege' whenever an employee invokes scripture." App. 8a-9a. Apparently the court felt that allowing such exemption requests to stand would be contrary to ordered liberty, that "to allow such generalized objections would leave 'almost no limit to the accommodations that an employer would have to entertain under Title VII's ban on religious discrimination.'" App. 9a (quoting *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1014 (7th Cir. 2024) (Rovner, J., dissenting). But this Court's rulings place no such limits on one's beliefs. The Court's rulings allow for beliefs that are religious in an individual's own scheme of things and has warned against dissecting religious beliefs because they are not articulated with the clarity and precision that a more sophisticated person might employ. The majority opinion impermissibly narrows the types of beliefs allowed under this Court's jurisprudence.

2. The Dissenting Opinion

The dissenting opinion found Petitioners had satisfied their minimal pleading burden. App. 11a. "The Complaint follows the guidelines of the Equal Employment and Opportunity Commission defining religion 'to include moral ethical beliefs as to what is right and wrong which are held with the strength of traditional religious views.'" App. 12a n.1 (citing 29

C.F.R. § 1605.1). The court is required to accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. "Accordingly, if a 'plaintiff may be entitled to relief' 'under any reasonable reading of the complaint,' then a motion to dismiss fails." App. 11a (citing *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

"Plaintiffs pled that their bodies are sacred, and that vaccination would compromise that sacrosanct quality." App. 14a. Petitioners "ground their objections in Scripture. And they allege that prayer, discernment, and Scriptural study informed their decision." *Id.* The dissent found "[t]hese allegations connect their vaccination objections to their religious principles and raise a plausible inference of protected religious belief under Title VII." *Id.* (citing *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243-44 (6th Cir. 2024); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901-02 (8th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024); *Bazinet v. Beth Isr. Lahey Health, Inc.*, 113 F.4th 9, 15-18 (1st Cir. 2024)).

The dissent reasoned, "[c]oncerns that Plaintiffs' beliefs are insincere or disingenuous attack the merits, not the sufficiency of the pleadings." App. 15a. The court is only to consider the facial plausibility of the claim, and "[a]ccordingly, 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A discussion of decisions

from other circuits, *infra* at pp.27-32, demonstrates that the dissenting opinion's analysis aligns with the analysis of all other circuit courts that have ruled on this issue.

Reasons for Granting the Writ

The decision in *Africa* relied on this Court's language in *Wisconsin v. Yoder* to develop a theory of blanket privilege that restricts what constitutes a religious belief in a manner not contemplated by this Court. In recent religious discrimination litigation surrounding the COVID-19 vaccine mandate, courts in the Third Circuit have used the blanket privilege theory as a cudgel to dismiss cases involving the same types of religious beliefs that have survived motions to dismiss in every other circuit court that has addressed the issue. The Third Circuits' use of the language in *Yoder* to develop a theory that restricts the types of beliefs found to be religious and therefore entitled to protection fails to pay heed to this Court's prior decisions.

In *Wisconsin v. Yoder*, this Court stated, "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." 406 U.S. 205, 215-16 (1972). In *Africa v. Pennsylvania*, the Third Circuit stated, "'the very concept of ordered liberty precludes allowing' Africa, or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" 662 F.2d 1025, 1031 (3d. Cir 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)). The court also introduced

the idea of cloaking one's life activities with religious significance, but the concept was not further developed. 662 F.2d at 1035. Neither the words "blanket privilege" nor "cloaked in religious significance" were mentioned in *Yoder*, but these words are now words of choice when denying religious beliefs a court feels are too broad or may have secular roots.

I. The Third Circuit's "Blanket Privilege" Theory Impermissibly Limits Protected Religious Beliefs When a Court Subjectively Determines the Belief is Too Broad or Has Origins in Secular Beliefs

As discussed *infra*, this Court's test to determine whether an employee's beliefs are religious and entitled to an accommodation under Title VII is the test promulgated by this Court in *United States v. Seeger*. 380 U.S. 163 (1965). The test consists of two prongs: are the professed beliefs (1) sincerely held, and (2) religious in the employee's own scheme of things. Although political, sociological, or philosophical views or beliefs that can be viewed as merely personal moral codes are not covered under the test, beliefs that are personal (or isolated) moral codes and related to a Supreme Being are covered.

A. The Genesis of the "Blanket Privilege" Theory as Applied in Religious Discrimination Cases

The Third Circuit's blanket privilege theory materialized in *Africa v. Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981), and was reinforced in *Fallon v. Mercy Catholic Medical Center*, 877 F.3d 487 (3d Cir. 2017).

In *Africa,* the Third Circuit developed a three-part test, described *infra* at 23, to determine the existence of a religion. *Africa*, 662 F.2d at 1032. Prior to describing the test, in the space of a single sentence, the Third Circuit mentioned that ordered liberty precludes allowing individuals a blanket privilege to make their own standards. *Id.* at 1031. The blanket privilege theory is mentioned again in *Fallon* and appears to reinforce the concept. Under the three-part test, neither the beliefs of Africa nor the beliefs of Fallon were found to be religious. Recently, the blanket privilege theory has been used to reject religious beliefs that are supported by scripture, even when a trial court finds a belief system to be religious after applying the three-part test factors set forth in *Africa.* The blanket privilege theory has become a backstop for finding that certain beliefs are not entitled to protection even when the belief system as a whole meets the three-part test.

1. This Court's Language from *Wisconsin v. Yoder.*

The Third Circuit's blanket privilege theory claims roots in this Court's decision in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *Yoder*, respondents were members of the Old Order Amish Religion and the Conservative Amish Mennonite Church. This Court was asked to decide whether "respondents' convictions of violating [Wisconsin's] compulsory school-attendance law were invalid under the [First Amendment]." *Id.* at 207. The law required all children to attend public or private school until the age of 16. Respondents refused to place their children in school, public or private, after the eighth grade.

Respondents were charged, tried, and convicted of violating the compulsory school attendance law after refusing to enroll their children, ages 14 and 15, in school after they had completed the eighth grade. *Id.* at 207-08. There was no provision for a religious exemption to the compulsory school attendance law.

The Court noted that to survive a claim that the law interfered with the practice of a legitimate religious belief, the State would need to show it "does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." *Yoder*, 406 U.S. at 214. The Court realized it had to carefully determine whether the Amish religious faith and their way of life were inseparable and interdependent. "A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief." *Id.* at 215. Noting the determination of what is and is not a religious belief entitled to constitutional protection is a delicate question, the Court found "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Id.* at 215-16.

At this point in its opinion, the Court offered an analogy: "if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values

of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis." Although the Court noted "Thoreau's choice was philosophical and personal rather than religious," it found the "way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living." *Id.* at 216. The respondents' daily life and religious practice stem from "their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, 'be not conformed to this world . . . .'" *Id.*

2. The Third Circuit's Incorporation of the *Yoder* Language into *Africa*

In *Africa v. Pennsylvania*, Frank Africa was imprisoned and seeking a special diet consisting entirely of raw foods because other types of foods would violate his "religion." 662 F.2d 1025, 1025 (3d. Cir. 1981). Africa claimed to be a "Naturalist Minister" of the MOVE organization, "a 'revolutionary' organization 'absolutely opposed to all that is wrong.'" *Id.* at 1026. The organization had no governing body and no official hierarchy. Its goals were to bring about absolute peace, stop violence altogether, and to put a stop to all that is corrupt. *Id.* MOVE endorsed no existing regime or lifestyle, had no distinct ceremonies or rituals, no special holidays, and apparently had no religious structures or symbols. *Id.* at 1027.

As the Third Circuit began its analysis, it confirmed the two threshold requirements that "must be met before particular beliefs, alleged to be religious in nature, are accorded First Amendment protection."

Africa, 662 F.2d at 1029-30. The two requirements are to determine whether the beliefs avowed are "(1) sincerely held, and (2) religious in nature, in the claimant's scheme of things." *Id.* (citing *United States v. Seeger*, 380 U.S. 163, 185 (1965)). The court recognized it was "inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith. Judges are not oracles of theological verity, and the Founders did not intend for them to be declarants of religious orthodoxy." *Id.* at 1030 (citing *United States v. Ballard*, 322 U.S. 78, 85-88 (1944)). The Third Circuit also noted this Court "has emphasized, however, that 'while the truth of a belief is not open to question, there remains the significant question whether it is truly held.'" *Id.* (citing *United States v. Seeger*, 380 U.S. 163, 185 (1965)). The court believed that "[w]ithout some sort of required showing of sincerity on the part of the individual or organization seeking judicial protection of its beliefs, the first amendment would become a limitless excuse for avoiding all unwanted legal obligations." *Id.*

At this point in its analysis, in the space of a paragraph, the *Africa* Court borrows language from *Yoder* and, for the first time, mentions blanket privilege in the context of religious discrimination. The court first notes the question of whether MOVE's beliefs are religious and entitled to protection is a delicate question, and then states, "that 'the very concept of ordered liberty precludes allowing' Africa, or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Yoder*, 406 U.S. 205 at 215-16).

There is no further analysis as to what constitutes a blanket privilege, nor is the term repeated in the opinion.

Later in the opinion, in what appears to be a nod to this Court's Thoreau analogy, the *Africa* court explains, "The notion that all of life's activities can be cloaked with religious significance is, of course, neither unique to MOVE nor foreign to more established religions. Such a notion by itself, however, cannot transform an otherwise secular, one-dimensional philosophy into a comprehensive theological system." *Id.* at 1035. As with the term "blanket privilege," the term "cloaked with religious significance" receives no further analysis, nor is it repeated in the opinion.

The court proceeded to consider the three elements that come to be considered when determining the existence of a religion. The test, which the court refers to as a "definition by analogy," requires courts to determine whether an individual's beliefs "address fundamental and ultimate questions having to do with deep and imponderable matters, are comprehensive in nature, and are accompanied by certain formal and external signs." *Africa*, 662 F.2d at 1032.

3. The Holding in *Africa* is Reinforced by the Third Circuit in *Fallon v. Mercy Catholic Medical Center*

In *Fallon v. Mercy Catholic Medical Center*, Paul Fallon was terminated for refusing a flu vaccine after Mercy Catholic found he did not qualify for a religious exemption. 877 F.3d 487, 488 (3d Cir. 2017).

Although Fallon was not a Buddhist, he agreed with a quote attributed to the founder of Buddhism which generally stated one should not believe anything that is not verified by their own senses. He believed one should not harm their own body and that the flu vaccine would do more harm than good and concluded that if he yielded to coercion and consented to the hospital mandatory policy, he would violate his conscience as to what is right and what is wrong. *Id.* at 492.

The Third Circuit applied the three-part test set forth in *Africa* and determined that Fallon's beliefs were not religious and, therefore, not protected by Title VII. *Fallon*, 877 F.3d at 492. The three-part test from *Africa* was employed to thoroughly analyze Fallon's beliefs. Although the district court wrote, "the very concept of ordered liberty precludes allowing [Fallon], or any other person, a blanket privilege to make his own standards on matters of conduct in which society as a whole has important interests," neither the term "blanket privilege" nor "cloaked in religious significance" are found in the opinion. These terms will not be seen again until the COVID cases are first litigated in the district courts.

B. District Courts Expand the "Blanket Privilege" Theory to Cover Progressively Specific Beliefs

As individuals began litigating disputes over their religious beliefs and the COVID-19 vaccine, the terms "blanket privilege" and "cloaked with religious significance" made their way into district court opinions. In August of 2022, the District Court for the Middle District of Pennsylvania considered injunctive

relief for Christine Finkbeiner. Finkbeiner sought an exemption to COVID testing requirements because she believed she had the God-given right to determine what was good and bad for her and that God gave her free will to reject the vaccine. *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 463 (M.D. Pa. 2022). Citing to *Africa*, the court found her belief would "amount to 'a blanket privilege' and a 'limitless excuse for avoiding all unwanted . . . obligations.'" *Id.* at 465 (quoting *Africa*, 662 F.2d at 1030, 1031).

The "blanket privilege" and "cloaked in religious significance" terms would be applied to increasingly specific religious beliefs throughout the next few years. *See, e.g.*, *Lucky v. Landmark Med. of Mich., P. C ,* 2023 U.S. Dist. LEXIS 192507, at *2, *16 (E.D. Mich. Oct. 26, 2023) *rev'd*, 103 F.4th 1241 (6th Cir. 2024) (dismissing plaintiff's claim that "God spoke to [her] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine" because such a claim amounts to the type of blanket privilege that undermines our system of ordered liberty"); *Ellison v. Inova Health Care Services*, 692 F. Supp. 3d 548, 559 (E.D. Va. 2023) (dismissing the claims of Jenkins and Graham because their belief in prayer was the type of blanket privilege that undermines ordered liberty); *Ulrich v. Lancaster Gen. Health*, 2023 U.S. Dist. LEXIS 64750, *2-6, *15 (E.D. Pa. Apr. 13, 2023) (dismissing plaintiff's claim based on her belief that her body is a temple of the Holy Spirit because such a belief would constitute a blanket privilege); *Blackwell v. Lehigh Valley Health Network*, 2023 U.S. Dist. LEXIS 10747, *2-3, *24 (E.D. Pa. Jan. 23, 2023) (dismissing plaintiff's claim because her claim that her religion prohibited

injection with medical therapy derived from aborted fetal stem cells and using foreign mRNA material equated to Blackwell doing something she herself felt was unwanted and constituted the type of blanket privilege prohibited by *Africa*).

By the time the Petitioners filed their cases, the precedent was well established. As discussed *supra* pp. 12-14, the blanket privilege theory was used to dismiss claims that one's body is a temple for the Holy Spirit and cannot be knowingly harmed, that we are created in the image of God, that healing power rests with God and the immune system he designed will protect us, and that because the vaccine is an mRNA, it will change the DNA God gave us.

On appeal, the Third Circuit reiterated the District Court's findings. Because the application of the blanket privilege theory restricts the guidance given by this Court in *Seeger*, the Third Circuit essentially ruled that some beliefs are just too broad to be afforded protection. The courts base their argument on the idea that ordered liberty precludes granting these types of exemption when society as a whole has a greater interest, but this argument fails in the light of the CMC mandate allowing exemptions for religious reasons. By allowing religious exemption, the CMC essentially stated that societal good from the vaccine did not outweigh the Petitioner's right to practice their religion.

II. Out of Seven Circuits to Address the Issue, the Third Circuit is the Only Circuit Enforcing a Narrow and Restrictive Definition of Religion

To date, seven circuit courts have addressed the issue of religious exemptions for the COVID-19

vaccine. Six circuits have adopted a broad definition of the types of beliefs that should be protected under Title VII. The Third Circuit stands alone in applying the narrow definition adopted in *Africa*.

A. The Majority Opinion's Footnote 2 and the Cases Cited by the Dissent: The First Circuit, Sixth Circuit, Seventh Circuit, and Eighth Circuit have adopted a Broader Definition of Religion.

In a footnote in its opinion below, the majority recognized the circuit split it was creating and specifically acknowledged four cases mentioned in the dissenting opinion that invoke a broader definition of religion. App. 5a n.2 (referring to the dissent's citation of *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243-44 (6th Cir. 2024); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901-02 (8th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024); and *Bazinet v. Beth Isr. Lahey Health, Inc.*, 113 F.4th 9, 15-18 (1st Cir. 2024) at App. 14a). But the majority noted these other circuits were not bound by their precedent in *Africa* and *Fallon.* App. 5a n.2.

As the dissent noted, "Plaintiffs pled that their bodies are sacred, and that vaccination would compromise that sacrosanct quality," that they "ground[ed] their objections in Scripture," and that "prayer, discernment, and Scriptural study informed their decision." App. 14a. These explanations offered by the Petitioners are similar to those offered in cases cited by the dissent. *See Lucky*, 103 F.4th at 1243-44; *Ringhofer*, 102 F.4th at 901-02; *Passarella*, 108 F.4th at 1009.

In the referenced footnote, the majority noted the Sixth Circuit had "recently cited *Fallon* and held that an employee's assertions that, among other things, she had a 'religious obligation to treat her body as a temple' was insufficient 'to show a conflict between her religion and' the employer's COVID-19 vaccine and testing policy." App. 5a (citing *DeVore v. Univ. of Ky. Bd. of Trs.*, 118 F.4th 839, 847-48,n.1 (6th Cir. 2024)). Unfortunately, this short summary failed to acknowledge that (1) DeVore's objection was based on an invasive test and the university has subsequently offered an oral swab test, a test the plaintiff admitted was non-invasive, *DeVore*, 118 F.4th at 846, or that (2) the Sixth Circuit was deciding a motion for summary judgment and had specifically acknowledged that "[t]hese objections may have been enough to satisfy Title VII's pleading requirements." *Id.* at 848 (citing *Lucky*, 103 F.4th at 1242-44; *Savel v. MetroHealth Sys.*, 96 F.4th 932, 942-44 (6th Cir. 2024); *Passarella*, 108 F.4th at 1008-12 (7th Cir. 2024); *Ringhofer*, 102 F.4th at 900-02 (8th Cir. 2024)).

Moreover, the Sixth Circuit had previously decided two cases in which its broader definition of religion was employed when deciding motions to dismiss. Of these cases, *Lucky v. Landmark Medical*, was one of the cases cited by the dissent and acknowledged by the majority in Footnote 2. In this case, the plaintiff claimed her body was a temple and that she made all her decisions, especially medical decisions, through prayer. *Lucky,* 103 F.4th at 1243. The court found her claim that she prayed, received an answer, and acted accordingly, and that she had a religious objection to vaccines of any kind, were particular facts and almost "self-evidently enough to

establish, at the pleadings stage, that her refusal to receive the vaccine was an 'aspect' of her religious observance." *Id.*

In the second case, *Sturgill v. Am. Red Cross*, the plaintiff informed her employer that she is required to care for her body to honor God and the temple he gave her, and that she believed the ingredients in the vaccine could cause harm. 114 F.4th 803, 806 (6th Cir. 2024). The district court found her rationale to be clearly medical, but, as the circuit court noted, "the district court's parsing of plaintiff's complaint to conclude her objection was 'clearly medical' and not religious failed to read and accept her complaint 'as a whole.'" *Id.* at 810. Reversing the district court, the circuit court found "that there may be both religious and secular reasons for an act does not elevate the latter over the former." *Id.*

The majority opinion also noted the dissent referenced the First Circuit case of *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9 (1st Cir. 2024), and claimed the reliance on that case was "misplaced as that case involved a vaccine objection based on a plaintiff's opposition to abortion, which (1) is not present here, and (2) mirrors the types of claims the District Court allowed to proceed." App. 5a n.2 (citing App. 14a). However, on January 16, 2025, the First Circuit issued a decision in a case that did not involve an objection to abortion. In *Thornton v. Ipsen Biopharmaceuticals, Inc.*, the plaintiff informed her employer she could not receive the COVID-19 vaccine because "her religion prohibited her from defiling her perfectly created body, and that her prayers and

guidance from the Holy Spirit informed her beliefs that receiving the COVID-19 vaccine would violate that tenet of her faith." 126 F.4th 76, 83 (1st Cir. 2025). The First Circuit found the plaintiff had "plausibly alleged that her belief that the vaccine would defile her body is not an 'isolated moral teaching,' but rather is part of a 'comprehensive system of beliefs about fundamental or ultimate matters' that the plaintiff articulated." *Id.* (quoting *Fallon v. Mercy Cath. Med. Ctr. Of Se. Pa.*, 877 F.3d 487, 492 (3d Cir. 2017)).

B. Subsequent Opinions in the Fourth and Fifth Circuits Continue to Reinforce a Broader Definition of Religion.

On January 7, 2025, the Fourth Circuit issued its opinion in *Barnett v. Inova Health Care Services,* 125 F.4th 465 (4th Cir. 2025). In this case, the plaintiff "alleged (1) 'it would be sinful for her to engage with a product such as the vaccination after having been instructed by God to abstain from it'; (2) her 'religious reasons for declining the covid vaccinations . . . were based on her study and understanding of the Bible and personally directed by the true and living God'; and (3) receiving the vaccine would be sinning against her body, which is a temple of God, and against God himself." *Id.* at 471. She also referred to the scripture to support her beliefs. *Id.* at 468. The court found, "[a]t this stage, these allegations are sufficient to show that Barnett's 'belief is an essential part of a religious faith' that 'must be given great weight,' *Patrick v. LeFevre*, 745 F.2d 153, 157-58 (2d Cir. 1984), and are plausibly connected with her refusal to receive the COVID-19 vaccine." *Id.*

at 471 (citing *Ringhofer*, 102 F.4th 894 (2024)); *Sturgill*, 114 F.4th at 810-11; *Passarella*, 108 F.4th at 1009.

On December 16, 2024, the Fifth Circuit issued an unreported opinion in *Sibley v. Touro LCMC Health*, 2024 U.S. App. LEXIS 31829 (5th Cir. Dec. 16, 2024). The plaintiff submitted a third exemption request in which she explained that she retained her right to sole possession and sole use of all her biological materials which were granted to her by her Creator. She claimed those rights included the right to decline all attempts to access, influence and or otherwise alter any and all of her God given biological material because they are unique, flawless, and original in design and craftsmanship. She "explained that she 'require[d] that any and all products offered to [her] by [her] employer or workplace be both entirely retrievable from and also removable in its entirety from [her] body, person, and womanhood at the conclusion of each and every work period[.]'" *Id.* at 5. The court found that by construing all reasonable inferences in the complaint in the light most favorable to Sibley, the exemption request was sufficient to inform her employer of her religious belief's conflict with the vaccination requirement. *Id.* at *10. "Under the deferential Rule 12(b)(6) standard, Sibley's third exemption request, alongside her allegation that she was suspended at the same time LCMC denied it, provides a sufficient factual basis to state a Title VII religious discrimination claim." *Id.* at 11.

III. Petitioners' Religious Beliefs are Directly Connected to the Objected-to Employment Term

The majority opinion found "Plaintiffs have not plausibly alleged a sufficient nexus between their religious beliefs about their bodies being G-d's temples and their objections to the vaccine," App. 7a, and that allowing their beliefs would "impermissibly 'cloak[] with religious significance' a fundamentally secular objection to an employment term, and thereby create a 'blanket privilege' whenever an employee invokes scripture." App. 8a. But this view fails to accurately interpret the Petitioners' claims. The most common claim, and the only claim to be analyzed in the majority opinion, was the claim that taking the vaccine would violate God's command not to harm one's body. Petitioners' voiced concerns regarding the safety of the vaccine. Accepting the vaccine while having these concerns would violate their belief that they could not harm their body. As the District Court noted, "the notion that we should not harm our bodies is ubiquitous in religious teaching." *See, e.g.*, App. 98a. Therein lies the objection to the vaccine. Taking the vaccine would violate a directive from God not to harm your body.

The objection was intricately tied to the employment term. The employment term was the requirement to be vaccinated or be terminated. As the dissent correctly observed, Petitioners grounded their objections in Scripture and alleged that prayer, discernment, and Scriptural study informed their decision. "These allegations connect their vaccination objections to their religious principles and raise a

plausible inference of protected religious belief under Title VII." Because the religious belief prevented Petitioners from receiving the vaccine, and because the vaccine was a term of employment, the beliefs are directly connected to the term of employment.

Conclusion

As the dissent correctly noted, on a motion to dismiss under Rule 12(b)(6), the court must "accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff." App. 11a (citing *Umland v. PLANCO Fin. Servs., Inc.*, 542 F.3d 59, 64 (3d Cir. 2008)). Under this standard, "if a 'plaintiff may be entitled to relief' 'under any reasonable reading of the complaint,' then a motion to dismiss fails." App. 11a (citing *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). Petitioners met this burden. Their claims would survive if brought in any other circuit where the circuit court has considered the issue. The Third Circuit has impermissibly contracted the scope of religious beliefs entitled to protection under Title VII. The blanket privilege theory allows the court to make subjective decisions as to whether an individual is truly expressing a religious belief or whether the individual is cloaking a secular belief in religious significance and thus exercising a blanket privilege. Such determinations touch on the sincerity of the individual's belief and are, therefore, a determination specifically reserved for a finder of fact.

Although not mentioned in either the District Court opinions of the Third Circuit opinion, it should be acknowledged that each of the Petitioners was willing to sacrifice a job they loved, that paid well, and

offered excellent benefits rather than violate their sincerely held religious beliefs. In *Welsh v. United States*, 398 U.S. 333, 337 (1970), this Court decided a case with facts similar to those in *Seeger*. The Court noted, "[t]heir objection to participating in war in any form could not be said to come from a 'still, small voice of conscience'; rather, for them that voice was so loud and insistent that both men preferred to go to jail rather than serve in the Armed Forces." *Id.* Like the defendants in *Welsh*, Petitioners' objections to the vaccine came from a voice that was so loud and insistent that they accepted termination of a lucrative career rather than violate their beliefs.

This Court's directives are clear. Religious beliefs are entitled to protection if they are sincere and religious in an individual's own scheme of things. *United States v. Seeger*, 380 U.S. 163, 184-85 (1965). Courts should not dissect religious beliefs because they are not articulated with the clarity and precision that a more sophisticated person might employ. *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 715 (1981). "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989). And courts should not second guess whether an individual's asserted religious beliefs are reasonable. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014). Because the Third Circuit decision failed to heed the directives of this Court, the requested petition for writ of certiorari should be granted.

Respectfully submitted,

Gary E. Junge
Counsel of Record
William D. Fletcher, Jr.
Schmittinger & Rodriguez, P.A.
414 South State Street
Dover, Delaware 19901
gjunge@schmittrod.com
(302) 674-0140
Counsel for Petitioners

March 2025