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.

AN APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
The Honorable Stephen H. Locher
No. 3:22-CV-00027

BRIEF OF DEFENDANTS-APPELLEES

Mikkie R. Schiltz
LANE & WATERMAN LLP
220 N. Main St., Suite 600
Davenport, IA 52801
Telephone: (563) 324-3246
Facsimile: (563) 324-1616
Email: mschiltz@l-wlaw.com

ATTORNEY FOR DEFENDANTS-APPELLEES

DISCLOSURE STATEMENT

Arconic Davenport LLC was a wholly owned subsidiary of Arconic Corporation. Arconic Davenport LLC was merged into Arconic US LLC, which is a wholly owned subsidiary of Arconic Corporation. Arconic Corporation was a publicly traded company that stopped being publicly traded on August 18, 2023 when it was acquired by an affiliate of investment vehicles affiliated with Apollo Global Management, Inc. Such investment vehicles are not publicly traded; Apollo Global Management, Inc. is publicly traded.

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INTRODUCTION

Plaintiff-Appellant Daniel Snyder ("Snyder") posted an anti-LGBTQ+ statement on Defendants-Appellees Arconic, Corp. and Arconic Davenport, LLC's (collectively "Arconic") companywide intranet. Snyder's conduct violated Arconic's Diversity/Anti-Harassment Policies (collectively referred to as the "Diversity Policy") and he was terminated.

Snyder's argument is that Arconic violated the law when it did not allow him to engage in such harassing behavior without recourse. It is not debated that Snyder's comments were divisive towards the LGBTQ+ community. His comments were discriminatory and harassing in nature based on a protected class.

Snyder claims his violation of Arconic's anti-harassment policy must be accommodated because his statements were based on his religious beliefs. Tellingly, the accommodation noted is Snyder not being fired. This is because Snyder cannot identify an employment requirement that conflicts with Snyder's bona fide religious beliefs. What he seeks is preferential treatment, a pass, for his violation of Arconic's religiously neutral anti-harassment policy.

Snyder may argue his comments were based on his religious beliefs but that does not establish he was terminated because of his religion. *See Nelson v. J.C. Penney Co., Inc.*, 75 F.3d 343, 346 (8th Cir. 1996) (noting that a "fact finder may not simply convert a condition that is necessary for a finding of liability (here, knowledge of a plaintiff's [religion]) into one that is sufficient for such a finding" and finding no evidence of a discriminatory reason for termination). Snyder was not terminated "because of" his religion; Arconic did not oppose Snyder's religious beliefs, and Snyder's "religious practice" was not a factor in the decision to terminate him. Snyder was terminated "because of" his inappropriate comments in violation of Arconic's Diversity Policy.

Snyder's "simple" "straightforward" argument is that an employee's offensive comment or conduct can never be the subject of discipline as long as it has a religious foundation. Snyder's argument has wide-reaching implications. By adding the modifier "religious" to any inappropriate conduct or comment, Snyder argues an employer must accommodate such conduct or comment. "Religious" antisemitic statements—accommodate; "religious" racial slurs—accommodate; "religious" misogynistic comments—accommodate; discriminatory act

based on white supremacist "religious" beliefs—accommodate. That is not the law.

The District Court succinctly and correctly summarized this matter

> When a conflict exists between an employee's religious practices and an employer's policies, state and federal law require the employer to make an accommodation unless it would cause undue hardship. In the absence of a conflict, however, the law does not require the employer to give preferential treatment to an employee who violates a religiously neutral policy even if the violation is motivated by religious beliefs, particularly if the employer has no reason to believe, in advance that an accommodation is needed. Here, Plaintiff Daniel Snyder's employer concluded that he violated a religiously neutral anti-harassment policy by posting a message on a widely accessible intranet page stating that it is an "abomination to God" to use a rainbow symbol in connection with diversity initiatives. As Snyder has not identified any religious belief or practice that required him to post his message, and as there is no evidence that he placed his employer on notice that he needed an accommodation from company policy prior to violating it, he has failed as a matter of law to establish a prima facie case for religious discrimination. The Court therefore DENIES Snyder's Motion for Partial Summary Judgment and GRANTS Defendants' Motion for Summary Judgment.

Order on Cross-Motions for Summary Judgment filed August 31, 2023 ("Order"), App. 431, R.Doc.30, at 1.

SUMMARY OF THE ARGUMENT

1. Snyder cannot meet his prima facie case and summary judgment for Arconic was appropriate. Snyder posted on Arconic's intranet: "Its [sic] a [sic] abomination to God. Rainbow is not meant to be displayed as a sign for sexual gender," then argued his termination was discriminatory because his divisive comment was based on his religious beliefs.

In order to establish his prima facie case, however, Snyder must show that his religious belief was in *conflict* with an employment requirement and that Arconic knew of such conflict. Snyder admits he "wasn't required to affirmatively participate in some activity that conflicted with his religious belief," and he posted such comment because he wanted Arconic to know his "opinion." This does not establish a conflict with an employment requirement.

The District Court rightly viewed Snyder's argument as a request for "one free pass." Snyder argues that because his comment was based on his religious beliefs and because he stated he would never do it again, Arconic cannot terminate him; that Arconic should have allowed him this

one violation of its anti-harassment policy. The law does not require Arconic excuse Snyder's behavior because he promises to do it only once.

Arconic terminated Snyder for his violation of its neutral anti-harassment policy. Snyder failed to establish his prima facie case of religious discrimination.

2. Snyder's accommodation argument is irrelevant because he failed to establish a prima facie case. Even if Snyder could establish his prima facie case, however, accommodating Snyder's violation of its policy and harassing comments constitutes an undue hardship for Arconic. An accommodation for such comments would expose Arconic's employees to discrimination and harassment, and result in potential liability for Arconic.

There is no legal support for Snyder's argument that Arconic cannot act on an employee's harassing behavior and resulting violation of a neutral anti-harassment policy until such conduct is so bad that it constitutes a hostile work environment under Title VII. An employer is obligated to maintain a workplace free from discrimination and harassment, not a workplace in which discrimination and harassment exists just below the tipping point of creating a hostile work environment.

In addition, Snyder's argument Arconic should have considered different discipline for his violation of the anti-harassment policy does not support a claim for a violation of Title VII. Snyder seems to concede he violated the anti-harassment policy but believes that because it was only a single offensive comment, he should have been subject to lesser discipline. Termination was a legitimate business decision made by Arconic based on Snyder's conduct. The Court does not sit as a super personnel department to determine the appropriate level of discipline.

3. Snyder cannot establish his prima facie case of retaliation because he did not engage in protected activity. Snyder cannot produce sufficient evidence to support an inference that his comments about his religion were causally connected to his termination. It was not his religious beliefs condemning homosexuality but his actual public condemnation of homosexuals that resulted in his termination.

ARGUMENT

I. The Court Rightly and Correctly Applied the Traditional Prima Facie Framework to Snyder's Discrimination and Retaliation Claims and Found Snyder Could Not Meet his Prima Facie Burden.

Contrary to Snyder's somewhat confusing argument that the prima facie framework for his case has gone by the wayside, the law still

requires Snyder establish a prima facie case for employment discrimination. Snyder must show he: (1) has a bona fide religious belief that conflicts with an employment requirement, (2) informed the employer of such conflict, and (3) suffered an adverse employment action. App. 435, R.Doc.30, at 5 (Order citing *Wilson v. U.S. W. Commc'n*s, 58 F.3d 1337, 1340 (8th Cir. 1995)); *see also E.E.O.C. v. Kelly Servs., Inc.*, 598 F.3d 1022, 1030 (8th Cir. 2010). The United State Supreme Court's 2023 *Groff v. DeJoy* ruling did not revise or clarify the prima facie case. *Groff v. DeJoy,* 600 U.S. 447 (2023).

Snyder argues the Supreme Court's 2015 decision in *EEOC v. Abercrombie & Fitch* establishes a plaintiff need not meet the tripartite prima facie framework. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015). Snyder believes the ultimate and only question a plaintiff must meet is regarding "because of;" so in *Abercrombie*, was the applicant "not hired because of her religious practice." Opening Brief of Plaintiff-Appellant ("Brief") p. 28 (citing *Abercrombie*, 575 U.S. at 772). Snyder's citation to *Abercrombie* is distinguishable from the facts in this case.

In *Abercrombie*, the conflict between the plaintiff's religious beliefs and Abercrombie's employment requirements was obvious. The Supreme Court determined the employer was on sufficient notice of the plaintiff's religious belief that she must wear a headscarf (a hijab) because she wore the hijab to her job interview. Abercrombie was aware of her religious practice (wearing of the hijab), knew it was in conflict with its work rules (not allowing for headwear), and refused to hire her because of such conflict.

As the District Court noted, *Abercrombie* is of "no assistance to Snyder, however, because there is nothing in the record to suggest that Arconic suspected there might be a conflict between its anti-harassment policy (which, in relevant part, simply forbids employees from expressing hostility toward protected groups) and Snyder's religious practices." App. 444, R.Doc.30, at 14. The "bottom line" is that "there is no reason in these circumstances to skip over the traditional elements of a prima facie religious discrimination case." App. 445, R.Doc.30, at 15.

Similarly, Snyder's citation to *Bostock* is taken out of context. *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 140 S.Ct. 1731 (2020). In *Bostock*, three separate employers fired a long-term employee simply

because the employee was homosexual or transgender. There was no dispute that the employees were terminated because of their sexual orientation or gender identity. The Court determined that such terminations were based solely on sex and an employer who intentionally penalizes an employee for being homosexual or transgender violates Title VII.[1]

Unlike *Bostock,* there is no support in this case that Snyder was terminated because of his religion. Snyder argues his inappropriate comment was based on his religious beliefs but that alone does not establish he was terminated for his religious beliefs or that such beliefs were a factor in Arconic's employment decision. They were not.

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[1] The Court noted in *Bostock*: "Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent." *Bostock* 140 S.Ct. at 1742. Similarly, in this matter, there is no support that an employee who made the same comment as to homosexuality/transgender being an abomination would have been treated any differently than Snyder if the employee said he made the comment not based on his religion, but because he just thought being homosexual/transgender was wrong. Title VII would "stand silent."

A. Snyder Failed to Prove or Even Allege a Conflict Between his Religious Practices and a Job Requirement.

Snyder failed to meet his prima facie case because he cannot establish a *conflict* between his religion and a job *requirement*. App. 445, R.Doc.30, at 15 (noting plaintiff must show a *conflict* between his religious practices and an employment policy) (emphasis added); *see Bolden-Hardge v. Office of the California State Controller*, 63 F.4th 1215, 1222-1223 (9th Cir. 2023) (noting there must be an inquiry on whether plaintiff alleged an actual conflict).

"[T]he word 'belief' here is really a shorthand for religious observances and practices that are a manifestation of the employee's religious belief." *E.E.O.C. v. Kroger Ltd. P'Ship I*, 608 F. Supp. 3d 757, 776 (E.D. Ark. 2022). "Speaking metaphysically, a belief cannot conflict with a workplace rule. Instead, it is the religious observance or practice—i.e., doing something or refraining from doing something based on a religious belief—that can conflict with a workplace rule." *Id.* As the District Court here noted, "Title VII comes into play only when an employee's religious beliefs 'proactively require or encourage' the employee to *do something* that the employer forbids or *refrain from doing*

something that the employer requires." App. 439, R.Doc.30, at 9 (citing *O'Connor v. Lampo Grp., LLC*, 3:20-CV-00628, 2021 WL 4480482, at *7 (M.D. Tenn. Sept. 29, 2021)).

The authority Snyder cites throughout his Brief confirms the requirement a plaintiff must establish a conflict between religion and a job requirement to meet his prima facie burden on an employment discrimination claim.[2] *See, e.g., Groff*, 600 U.S. 447 (*conflict* between religious requirement of rest on the Sabbath and working on Sundays); *Abercrombie*, 575 U.S. 768 (*conflict* between job requirement that employees not wear headwear and applicant's religious practice of wearing a hijab); *Ollis v. HearthStone Homes, Inc.*, 495 F.3d 570, 575 (8th Cir. 2007) (*conflict* between employee's Christian religious beliefs and requirement that employees participate in "Mind Body Energy" sessions affirming past lives, ritual-like activities, and reading Hindu and Buddhist literature); *Altman v. Minn. Dept. of Corrs.*, 251 F.3d 1199, 1201-03 (8th Cir. 2001) (conflict between religious beliefs and *mandatory*

[2] In addition, almost all those cases Snyder cites confirm the three part analysis for a plaintiff to establish prima facie case for religious discrimination under Title VII.

training program entitled "Gays and Lesbians in the Workplace")[3]; *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 475 (7th Cir. 2001) (noting a reasonable accommodation is one that eliminates the *conflict* between employment requirements and religious practices); *Brener v. Niagnostic Ctr. Hosp.*, 671 F.2d 141 (5th Cir. 1982) (conflict between religious holidays and work schedule); *Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL-CIO*, 643 F.2d 445 (7th Cir. 1981) (*conflict* in that employee's religious beliefs prevented him from the job requirement that employees join and pay union dues); *Anderson v. Gen. Dynamics Convair Aerospace Div.*, 589 F.2d 397 (9th Cir. 1978) (*conflict* in that employee's religious beliefs prevented him from the job requirement that employees join and pay union dues). Snyder neither proved nor alleged a conflict.

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[3] Unlike Snyder, who never gave notice to Arconic of his beliefs regarding use of the rainbow prior to posting his offensive comments, in *Altman*, the plaintiffs notified their boss prior to the mandatory training that they objected to attending based on their religious beliefs. Because they were made to attend, plaintiffs sat and silently read their Bibles. Unlike Snyder, they did not publicly condemn a protected class. The plaintiffs also established that, while they were reprimanded for their inattentiveness during the training, other employees were not reprimanded for similar behavior during training.

Arconic understands that Snyder's religious belief is "marriage is only between one man and one woman." App. 9-10, R.Doc.3, at 4-5, ¶18. His "practice" was posting on Arconic's intranet, believing he was responding to an anonymous survey "about Gay Pride month," that "Its [sic] a [sic] abomination to God. Rainbow is not meant to be displayed as a sign for sexual gender." Brief p. 9.[4]

There is, however, no job requirement in conflict with Snyder's belief. Snyder conceded at oral argument that he "wasn't required to affirmatively participate in some activity that conflicted with his religious belief." App. 460, R.Doc.36, at 7, ll. 8-10. There was no job requirement that Snyder post his beliefs on the company intranet. In fact, there was no requirement whatsoever that Snyder participate in the survey he believed he was posting to or participate in Gay Pride month, show support for diversity, or participate in any activity that would conflict with his religious beliefs.

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[4] Snyder may have believed his comment would remain anonymous and/or that his co-workers would not see it, but it was posted to the company intranet available companywide.

Snyder voluntarily posted harassing comments denigrating a protected class on the company intranet in violation of Arconic policies and the law prohibiting harassment in the workplace. His termination was based on such conduct. *See Walker-Swinton v. Philander Smith College*, 62 F.4th 435, 438–39 (8th Cir. 2023) (affirming district court's grant of summary judgment to employer on Title VII claim, finding professor's violation of the anti-harassment policy—for her statement it was "retarded" for a student to think it was okay to use a cellphone during a test—provided reason to fire her); *Ryan v. Cap. Contractors, Inc.*, 679 F.3d 772, 777 (8th Cir. 2012) ("[V]iolating a company policy is a legitimate, non-discriminatory rationale for terminating an employee." (citation omitted)); *Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1135 (8th Cir. 1999) ("Our cases have repeatedly held that . . . violation of company policy are legitimate reasons for termination."); *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1286 (8th Cir. 1977) (finding plaintiff's belief that his "religion somehow made him feel justified in violating a rule on corporate property simply does not suffice to imbue Chrysler's action in discharging him with a religious animus;" his "discharge was caused by his violation of company rules of conduct. It was not the result of antagonism by

Chrysler to his religious beliefs and did not violate Title VII."); *Ervington v. LTD Commodities, LLC*, 555 F. App'x 615, 618 (7th Cir. 2014) (upholding discharge for employee violating company's anti-harassment policy by distributing religious pamphlets that denigrated other religions because employer not required to accommodate employee conduct offensive to other employees and law does not "prohibit employers from enforcing anti-harassment policy"); *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 745-46 (9th Cir. 2004) (ruling that supervisor's harassment of subordinate in violation of employer's anti-harassment policy was a legitimate nondiscriminatory reason for termination, even if the violations were motivated by the supervisor's religious beliefs).

Snyder's citation to *Carter* is inapplicable. Brief p. 41 (citing *Carter v. Transp. Workers Union of AM. Loc. 556*, 353 F. Supp. 3d 556, 563 (N.D. Tex. 2019)). *Carter* involved a Motion to Dismiss, which limits the Court's review to the face of the pleadings. *Id.* at 569. The Court denied the Motion to Dismiss on the Title VII claim but noted plaintiff's claim may be addressed at the summary judgment stage. *Id.* at 578.

Snyder attempts to circumvent the prima facie case by arguing he was terminated for violating Arconic's anti-harassment policy and that

in itself establishes a conflict with a job requirement. Brief p. 39. But his perfunctory statement does not identify a religious practice that was in conflict with such policy/job requirement. Presumably he avoids setting forth his prima facie case because he would have to argue his religious belief requires that he engage in expressive activity to harass and/or offend other employees and, thus, he cannot comply with the anti-harassment policy. He has never made such argument.

Snyder's failure to identify a conflict between his religion and an employment requirement is fatal to his case.

B. Arconic Reasonably Viewed Snyder's Statement as an Expression of Hostility and Violation of Its Diversity Policy.

Similarly, Snyder's attempted argument that Arconic's representative's statement that he did not view Snyder's divisive comments as "religious" is not "fatal" to Arconic's case. Brief p. 60. There is no suggestion that the representative was probing Snyder's religion or making a statement as to his dislike of Snyder's "religious" expression. The representative noted his view that Snyder's "expression was one of hatred," and that he did not believe it was religious to call someone "an abomination to God." Brief p. 60.

It was Arconic's position that Snyder was calling the LGBTQ+ community an abomination. App. 43, R.Doc.22-2, at 4, ¶25; App. 88, R.Doc.22-3, at 43; App. 101, R.Doc.22-3, at 56; App. 115, R.Doc.22-3, at 70; App. 121, R.Doc.22-3, at 76; App. 123, R.Doc.22-3, at 78. Snyder admits that "Arconic deemed Snyder's comments a violation of its 'Diversity Policy,' which prohibits employee 'conduct that denigrates or shows hostility or aversion towards someone because of' a protected characteristic." Brief p. 13.

Arconic's Diversity Policy defines harassment, in part, as written material that "denigrates or shows hostility or aversion toward a person or group because of any protected characteristic." App. 42, R.Doc.22-2, at 3, ¶19; App. 67, R.Doc.22-3, at 22. The policy notes that harassment includes circulating on social media outlets connected to the workplace written material that "denigrates or shows hostility or aversion toward a person or group because of any characteristic protected by law." App. 43, R.Doc.22-2, at 4, ¶20; App. 69, R.Doc.22-3, at 24.

As the District Court noted, Arconic's interpretation of Snyder's comment as "an expression of hostility toward a protected group in violation of [its] policy" was reasonable. App. 447-48, R.Doc.30, at 17

(citing *Mershon v. St. Louis Univ.*, 442 F.3d 1069, 1074-75 (8th Cir. 2006)); *see also McCullough v. Univ. of Arkansas for Med. Scis.*, 559 F.3d 855, 861-62 (8th Cir. 2009) (holding that the "critical inquiry" in an employment discrimination case is the employer's good faith belief about what occurred). Arconic terminated Snyder for violating its Diversity Policy and engaging in conduct that is discriminatory/harassing of others based on a protected status.

"[A]n employer does not violate federal anti-discrimination laws by making decisions based on a reasonable *perception* of what happened even if that perception turns out to be incorrect." *Mershon*, 442 F.3d at 1074-75 (affirming summary judgment for university that banned disabled student for making what was perceived to be a threatening phone call); *Scarborough v. Federated Mut. Ins. Co.*, 996 F.3d 499, 507 (8th Cir. 2021) ("[T]he key question is not whether the stated basis for termination actually occurred, but whether the defendant believed it to have occurred."); *McCullough*, 559 F.3d at 861-62 ("The critical inquiry in discrimination cases . . . is not whether the employee actually engaged in the conduct for which he was terminated, but whether the employer in

good faith believed that the employee was guilty of the conduct justifying discharge.").

Not only was Arconic's interpretation reasonable, it was correct. Snyder testified that gay relationships and being transgender are an abomination—a sin, something that causes disgust or hatred to God, and something exceptionally loathsome, hateful, sinful, wicked, or vile. App. 41, R.Doc.22-2, at 2, ¶¶9-10; App. 67-68, R.Doc.22-3, at 22-23; App. 78-79, R.Doc.22-3, at 33-34. Snyder was "going after" the LGBTQ+ community for taking a godly symbol and he needed to give it correction because it was "doing something wrong" and would go to hell. App. 41, R.Doc.22-2, at 2, ¶12; App. 67-68, R.Doc.22-3, at 22-23; App. 76-77, R.Doc.22-3, at 31-32. Snyder stated diversity was "all wrong" because it was a "pathway" for "sexual immorality." App. 41, R.Doc.22-2, at 2, ¶11; App. 68; R.Doc.22-3.

Snyder agreed that someone from the LGBTQ+ community could find his comment to be hostile. App. 458, R.Doc.36, at 5, ll. 23-24. However, Snyder believes termination was inappropriate and his statement must be accommodated because it was expressed as a matter

of his religion[5]. App. 460, R.Doc.36, at 7, ll. 24-25. There is no support for his argument. *See Wilson*, 58 F.3d at 1341 (noting the employer did not oppose Wilson's religious beliefs but was concerned with their expression through an anti-abortion photograph on the button).

Snyder's reliance on *Brown v. Polk Cnty., Iowa*, 61 F.3d 650 (8th Cir. 1995) is misplaced. Although in *Brown* the court determined the employer failed to establish that accommodating *Brown* would lead to undue hardship, *Brown* also made clear that employees can be disciplined for inappropriate behavior even when such inappropriate behavior involves religious expression. *Id.* at 657 (finding it was appropriate to discipline *Brown* for directing a secretary to type his Bible study notes and for allowing prayers in his office before the start of the workday). Furthermore, in *Brown*, the religious expression to be accommodated was exactly that, spontaneous religious expression and, unlike Snyder's comments, Brown's religious expression did not violate the rights of other employees. *Id.* at 656 (noting the religious expression at issue was

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[5] Snyder was terminated after his comment and after two prior disciplinary actions for violations of Arconic policy. App. 43, R.Doc. 22-2, at 4, ¶24; App. 341, R.Doc. 24-1, at ¶30 Response.

occasional spontaneous prayer and isolated references to Christian beliefs, not hostile speech that violates the employer's polices).

Though an employer cannot forbid speech simply because it could be considered religious, *Brown* also conceded that an employer "has a legal right to ensure that its workplace is free from religious activity that harasses or intimidates." *Id.* at 658. *Brown's* applicability is limited because it did not address offensive comments directed at a protected community[6] and such limited applicability supports Arconic's position.

Snyder attempts to excuse his behavior by noting his post was "a one-time expression of his religious opinion about something the company's doing." App. 458, R.Doc.36, at 5, ll. 12-13. He stated Arconic was not considering his feelings and religious beliefs in using the rainbow. "Here Mr. Snyder is not asking that the company stop promoting pride or even the rainbow with pride as much as it offends him. He's essentially letting the company know that he has a very strong

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[6] In addition, *Brown* involved a public employer and First Amendment issues not applicable in this case. Snyder cites a number of cases that address public employers and First Amendment rights, none of which are applicable to his Title VII claim.

religious disagreement with the symbology, and that's it . . . ." App. 467, R.Doc.36, at 14, ll. 18-24.

Again, there is nothing in Snyder's argument to establish an employment requirement and/or a conflict between his religious beliefs and an employment requirement. Regardless of his intent, Snyder posted a companywide message reasonably interpreted as an expression of hostility toward a protected group in violation of the company's anti-harassment policy. App. 448, R.Doc.30, at 18; *see Prise v. Alderwoods Group, Inc.*, 657 F. Supp. 2d 564, 603-04 (W.D. Penn. 2009) (granting summary judgment for employer in Title VII claim despite employee's religiously motivated concerns for how the company was being operated; the employee's religion did not *require* her to raise those concerns and employee "enjoyed no statutory right to impose her own religious beliefs on her employer").

The Court acknowledged Snyder's argument that he "believes he should not have been terminated for what he characterizes as an 'isolated' statement that he thought would be confidential." App. 438, R.Doc.30, at 8; *see also* App. 457, R.Doc.36, at 4, ll. 21-22 (Sndyer stating that "tolerating that one comment" is a possible accommodation); App.

464, R.Doc.36, at 11, ll. 15-16, 19 (Snyder noting it was only a "one-time" comment). The Court noted, "In essence, [Snyder's] position is that "Title VII requires an employer to give at least 'one free pass' to an employee who makes a statement that violates the employer's anti-harassment policy if the statement was motivated by sincere religious beliefs." App. 438, R.Doc.30, at 8.

This is not a request for accommodation for a religious belief but a request for a "free pass" for prior violations of the policy. Snyder argues he did not ask for the comment to be restored and he would never do it again. Brief p. 63. When asked at oral argument, Snyder noted the accommodation required was "tolerating that one comment." App. 457, R.Doc.36, at 4, l. 21. Contrary to Snyder's convoluted argument otherwise, this was the District Court's analysis related to a "one free pass rule."

Snyder's implausible interpretation of the District Court's comment is not supported by any part of the Order. Snyder attempts to argue the Court's "one free pass" rule implies that Snyder cannot be accommodated because he only made one offensive comment based on his religion, but an accommodation would be appropriate if he made continuous offensive

comments. It is clear, however, the Court was referencing Snyder's argument that Arconic had to "accept[] that he made that one-time comment . . . and move forward." App. 458, R.Doc.36, at 5, ll. 5-8.

Snyder fails to cite any case with a fact pattern similar to that in this case. Snyder cites *Obergefell v. Hodges*, 576 U.S. 644 (2015) noting "people of good-faith may continue to vigorously advocate that same-sex marriage should not be condoned." *Obergefell* is inapplicable here; it was a right to marry case[7], noting that even though same-sex marriage is legal, individuals had a First Amendment right to advocate that, by divine precepts, same-sex marriage should not be condoned. *Id.* at 679-80. It has no bearing on a Title VII analysis for workplace conduct.

Snyder's continual reference to the protection of religious expression in the workplace is similarly misplaced. None of those cases cited involved conduct discriminatory against another employee *Brown*, 61 F.3d at 657 (the conduct at question involved "occasional and spontaneous prayers and isolated reference to Christian belief" for a public employer, not causing imposition on others). None involved offensive speech.

[7] *Obergefell* dealt with constitutional implications of state law not at issue here.

Title VII mandates "favored treatment" when there is a conflict between religious practices and employment requirements. App. 438, R.Doc.30, at 8. However, "the law does not require the employer to give preferential treatment to an employee who violates a religiously neutral policy even if the violation is motivated by religious beliefs . . . ." App. 431, R.Doc.30, at 1.[8]

C. Arconic was Never Aware of an Alleged Conflict Between Snyder's Religious Belief and an Employment Requirement.

As the District Court noted, "there is nothing in the record to suggest that Arconic suspected there might be a conflict between its anti-harassment policy (which, in relevant part, simply forbids employees from expressing hostility toward protected groups) and Snyder's religious practices." App. 444, R.Doc.30, at 14.

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[8] Snyder cites *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642 (9th Cir. 2006) to support his claim there is a prima facie claim for failure to accommodate where plaintiff was reprimanded for communicating with clients about religion. Brief p. 42. In *Berry*, the Court outlined the same prima facie case as noted in this matter and determined the employer was not required to accommodate plaintiff's desire to discuss religion with clients or his preference for displaying religious items in his cubicle. Berry's claim failed and the Court upheld summary judgment for the employer and denial of Berry's summary judgment.

Arconic understands that Snyder believes "marriage is only between one man and one woman" and that the use of a rainbow by the LGBTQ+ community is "sacrilegious" App. 9-10, R.Doc.3, at 4-5, ¶18, but it is not clear how his religious belief compels him to engage in expressive activity to harass and/or offend other employees. He has not advised what religious observance or practice must be accommodated. Snyder has never made the argument that his religion requires he post such divisive comments to his employer's intranet.[9] *See Brown*, 61 F.3d at 656 ("We would be surprised if directing a county employee to type Bible study notes is 'conduct mandated by religious belief,'" concluding such activity was not protected under the law and it was not a violation of Title VII for defendants to discipline Brown for such conduct); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004) ("[W]e seriously doubt that the doctrines to which Peterson professes allegiance compel any

[9] Snyder's own reference to his work alongside a "transgender person without any issues" (Brief pp. 7, 62) seems to nullify any argument his religion requires him to publicly condemn a certain lifestyle. In addition, Snyder stated his "beliefs further require him to respect all people regardless of their sexuality . . . ." Brief p. 7. His statements on the intranet do not seem to reflect this tenet of his beliefs.

employee to engage in either expressive or physical activity designed to hurt or harass one's fellow employees.")

If that is now his argument, Snyder never made Arconic aware that his religion compelled him to post his opinion regarding "sexual gender," and he has never taken such position throughout this litigation. Arconic was aware Snyder was religious; it had granted him a religious accommodation allowing him not to work on Sundays so he could preach at his church. [CITE] Snyder had never expressed concern about the use of the rainbow symbol to Arconic or that his religion requires him to send messages objecting to the use of the rainbow imagery. As the Court noted, Snyder is "too late." App. 442-43, R.Doc.30, at 12-13 (citing, in part, *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1020 (4th Cir. 1996) (giving notice "at the same time as an employee violates employment requirements is insufficient to provide adequate notice to the employer and to shield the employee's conduct"); App. 445, R.Doc.30, at 15 (citing *Johnson v. Angelica Uniform Group, Inc.*, 762 F.2d 671, 673 (8th Cir. 1985); *Chalmers*, 101 F.3d at 1020; *Rose v. Midwest Express Airlines, Inc.*, 2002 WL 31095361, at *4 (D. Neb. 2002).

The Court in *Chalmers* also noted, "Knowledge that an employee has strong religious beliefs does not place an employer on notice that she might engage in any religious activity, no matter how unusual." *Id.* at 1020. As to Chalmers' contention "that because [her employer] was necessarily aware of the religious nature of the letters after her co-workers received them and before her discharge, [her employer] should have attempted to accommodate her by giving her a sanction less than a discharge, such as a warning," the Court noted "[t]his raises a false issue. There is nothing in Title VII that requires employers to give lesser punishments to employees who claim, after they violate company rules (or at the same time), that their religion caused them to transgress the rules." *Id.*

"[T]he facts show that Snyder: (i) violated the company's anti-harassment policy by intentionally posting a message expressing hostility toward a protected group on a widely accessible intranet page, despite (ii) never identifying a religious belief or practice that conflicted with the anti-harassment policy or (iii) placing Arconic on notice, in advance, of his need for an accommodation from that policy, and (iv) did

so in a situation where he had already violated the same policy two other times in the preceding twelve months." App. 446, R.Doc.30, at 16.

As the Court noted, Arconic's approach "aligns with binding Eight Circuit precedent" and "Snyder's position breaks down under scrutiny, as he simply has not satisfied the elements of a prima facie case under Title VII." App. 437, R.Doc.30, at 7. Because Snyder cannot establish his prima facie case, summary judgment for Arconic was appropriate. *See Celotex Corp. v.* Catrett, 477 U.S. 317, 322 (1986) (noting summary judgment is appropriate against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial").

D. Even if Snyder Could Establish a Prima Facie Case of Discrimination, Arconic Has Established Snyder's Proposed Accommodation Would Result in an Undue Hardship.

An accommodation analysis never comes into play because Snyder cannot meet his prima facie case that he was discriminated against based on his religion. If Snyder were able to establish his prima facie case,

however, Arconic has established Snyder's proposed accommodation would result in an undue hardship.[10]

Snyder argues he must be "accommodated" for his public condemnation of people based on sexual orientation/gender identity and allowed to violate Arconic's anti-harassment policy because he made his statement based on his religious beliefs. The accommodation would be for Arconic to have to revise its policy to remove sex as a protected status (to recognize Snyder's religious contention that homosexuality is an abomination), remove sexual orientation/gender identify from any diversity program, or declare that the neutral anti-harassment policy does not apply to Snyder.

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[10] Arconic does not address Snyder's "bad faith" argument because he has provided no legal support for his argument that Arconic acted in bad faith when it did not engage with Snyder about a reasonable accommodation following his posting of his offensive comment. Snyder's citation to the ADA interactive process and reasonable accommodation is not applicable. Brief p. 53.

E. Arconic Is Not Required to Accommodate Snyder By Allowing Speech Which Harasses Others Based on a Protected Characteristic.

Title VII requires the workplace be free of discrimination and harassment based on all statuses protected under the law. Arconic is required to protect its employees from discrimination and/or harassment. Discrimination on the basis of sex includes discrimination because of sexual preference as well as gender identity. *Bostock*, 140 S. Ct. at 1754. While the concepts of sex, sexual preference, and gender identity are separate, discrimination on the basis of the latter two *necessarily* discriminates on the basis of sex as well. *Id.*[11] Harassment is a form of sex discrimination. *Harris v. Forklift Systems*, 510 U.S. 17, 21 (1993).

The United States Supreme Court recently clarified the undue hardship test. *Groff v. DeJoy*, 600 U.S. 447 (2023). The few cases decided following *Groff* have continued to hold that a religious accommodation that requires violation of a legal mandate still constitutes an undue hardship. *See, e.g., D'Cunha v. Northwell Health Sys.*, 2023 WL 7986441, at *2 (2nd Cir. 2023) (dismissing plaintiff's claim of religious

[11] Iowa law specifically recognizes sexual orientation and gender identity as protected. Iowa Code § 216.6.

discrimination after hospital refused her request for vaccine exemption and terminated her employment; the requested accommodation would violate a state mandate exposing employer to potential penalties). There is no support in *Groff* that the clarified undue hardship test now requires an employer provide a religious accommodation to allow an employee to publicly harass and condemn members of its workforce based on their protected status.

Arconic "need not accommodate an employee's religious beliefs if doing so would result in discrimination against his co-workers or deprive them of contractual or other statutory rights." *Peterson*, 358 F.3d at 607; *see also Bolden-Hardge*, 63 F.4th at 1225 (noting a private employer demonstrates an undue hardship when the employer establishes that if it were to accommodate the employee, it would risk liability for violating the law—the "existence of such a law establishes undue hardship"). "Nor does Title VII require an employer to accommodate an employee's desire to impose his religious beliefs upon his co-workers." *Peterson*, 358 F.3d at 607 (citing *Wilson*, 58 F.3d at 1342).

> Employers are not required to accommodate every religious activity. In some situations, religious expression in the workplace can conflict with employer policies aimed at

> curbing speech in the workplace that could disrupt or offend coworkers. A plaintiff does not establish a Title VII claim if he or she refuses to comply with a generally applicable rule or procedure.

Mial v. Foxhoven, 305 F.Supp.3d 984, 993 (N.D Iowa 2018); *see also Wilson*, 58 F.3d at 1341-42 (holding that employer did not violate Title VII when it fired employee who refused to cover up a "graphic anti-abortion button" while at work, even though employee insisted that wearing the button was part of her religious beliefs); *Brown v. General Motors Corp.*, 601 F.2d 956, 960 (8th Cir. 1979) (Title VII "does not require an employer to reasonably accommodate the purely personal preferences of its employees"); *Matthews v. Wal-Mart Stores, Inc.*, 417 F. App'x 552, 554 (7th Cir. 2011) (holding that it was not discriminatory to terminate an employee for expressing that gay people will go to hell because such comments constituted harassment; accommodating such speech "could place Wal-Mart on the 'razor's edge' of liability by exposing it to claims of permitting workplace harassment"; *Peterson,* 358 F.3d at 607-08 (noting an employer "need not accept the burdens that would result from allowing actions that demean or degrade, or are designed to demean or degrade, members of its workforce"); *Rightnour v. Tiffany and*

Co., 354 F. Supp. 3d 511, 525 (S.D.N.Y. 2019) (in suit challenging the plaintiff's termination, the court noted "it does not constitute discrimination to discipline employees for making offensive comments in the workplace, even when those comments are tied to religion"); *Averett v. Honda of Am. Mfg., Inc.*, 2010 WL 522826, at *8-10 (S.D. Ohio Feb. 9, 2010) (holding that it was not religious discrimination to discipline an employee for violating a company policy prohibiting abusive and threatening language that her coworkers were sinful and evil people whom God would punish, explaining "Title VII…does not require employers to 'give lesser punishment' to employees who claim, after they violate company rules . . ., that their religion caused them to transgress the rules").

These interpretations are all consistent with Equal Employment Opportunity Commission ("EEOC") guidance. In its Compliance Manual on Religious Discrimination, the EEOC has provided:

> An employer never has to accommodate expression of a religious belief in the workplace where such an accommodation could potentially constitute harassment of coworkers, because that would pose an undue hardship for the employer. Nor does Title VII require an employer to accommodate an employee's desire to impose his religious beliefs upon his coworkers.

> It would be an undue hardship for an employer to accommodate religious expression that is unwelcome potential harassment based on race, color, sex, national origin, religion, age, disability, or genetic information, or based on its own internal anti-harassment policy, and it may take action consistent with its obligations under Title VII and the other EEO laws. …
>
> Religious expression can create undue hardship if it disrupts the work of other employees or constitutes—or threatens to constitute—unlawful harassment. Conduct that is disruptive can still constitute an undue hardship, even if it does not rise to the level of unlawful harassment. 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. …
>
> Because employers are responsible for maintaining a nondiscriminatory work environment, they can be held liable for . . . tolerating religious harassment of their employees.

U.S. Equal Employment Opportunity Commission, EEOC Compliance Manual, Section 12: Religious Discrimination, Directives Transmittal Number 915.063 (Jan. 15, 2021). [12]

[12] Available at: www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_603681551321916107498013 20 (Section 12).

Snyder conceded that "the law says it would be an undue hardship if some kind of comment or religious expression could become harassment . . . ." App. 458, R.Doc.36, at 5, ll. 9-11. He then, however, justifies his harassing comment by stating "one comment doesn't become harassment." App. 458, R.Doc.36, at 5, ll. 11-12. Snyder's argument is that it would not have been an "undue hardship" to accommodate his one-time comment in light of his statement he would never do it again. App. 459, R.Doc.36, at 6, ll. 4-7 (noting he was "expressing his religious opinion" and he would not do it again).

Legal authority is contrary to Snyder's unsupported argument that prior to terminating an employee for an offensive statement based on a protected status, that the employer must first work through a Title VII analysis to determine if the statement itself meets the definition of a hostile work environment and, if it does not, sit by passively until an employee's offensive comments tip the scale. App. 461, R.Doc.36, at 8, ll. 18-22. There is also no legal support for Snyder's argument that Arconic must show the comment itself caused "undue hardship." App. 459, R.Doc.36, at 6, ll. 1-3.

In *Peterson*, Peterson was terminated when he refused to remove scriptural passages condemning homosexual activities from his office though such postings violated the harassment policy and workplace diversity campaign. 358 F.3d at 602. Peterson filed a complaint alleging religious discrimination under Title VII and state law. *Id.* The court noted there was no reasonable accommodation to the diversity campaign—the only accommodations proposed would "permit an employee to post messages intended to demean and harass his co-workers" or "force the company to exclude sexual orientation from its workplace diversity program." *Id.* at 607. Either choice created an undue hardship for Hewlett-Packard. *Id.*

Seeming to acquiesce, Snyder does not argue he was entitled to an accommodation to the actual policy, but that Arconic must have implemented lesser discipline and allowed Snyder a second chance. Brief p. 65 (noting *Peterson* as inapplicable because Peterson was given a "second chance"); App. 472, R.Doc.36, at 19, ll. 10-14 (noting "just not keep speaking" was an appropriate accommodation); App. 456, R.Doc.36, at 3, ll. 17-20 (Snyder's argument noting Arconic terminated his employment for the posted statement "without engaging him in any other

options short of termination"); App. 468, R.Doc.36, at 15, ll. 1-2 (Snyder contending that Arconic could have sent him home and told him to think about it and come back); Brief p. 16 (Arconic could have offered a "last-chance agreement").

Snyder's argument that Arconic failed to consider other discipline options is not a violation of Title VII. This concession that Arconic could discipline Snyder for his comment is antithetical to his discrimination claim. App. 491, R.Doc.36, at 38, ll. 1-12. He is not asking for an accommodation but for the Court to weigh-in on what discipline he should have received.

As noted above, employers are allowed to discipline employees for offensive conduct even when tied to religion. Courts do not act as a "super-personnel departments" that reexamine business decisions related to discipline. *See Gardner v. Wal-Mart Stores, Inc.*, 2 F.4th 745, 748 (8th Cir. 2021) ("Federal courts do not sit as a super-personnel department that reexamines an entity's business decisions .... Rather, our inquiry is limited to whether the employer gave an honest explanation of its behavior."); *see also Wilking v. County of Ramsey*, 153 F.3d 869, 873 (8th Cir. 1998) (noting courts do not reexamine business

decisions but limit their inquiry to whether the employer gave an honest explanation of its behavior); *Harvey v. Anheuser-Busch, Inc.*, 38 F.3d 968, 973 (8th Cir. 1994) ("While an employer's judgment may seem poor or erroneous to outsiders, the relevant question is simply whether the given reason was pretext for illegal discrimination.") (citing *Clay v. Hyatt Regency Hotel*, 724 F.2d 721, 725 (8th Cir. 1984). "There is nothing in Title VII that requires employers to give lesser punishments to employees who claim, after they violate company rules (or at the same time), that their religion caused them to transgress the rules." *Chalmers*, 101 F.3d at 1020.

As the Court noted, it was:

> not evaluating whether it was a good idea for Arconic to terminate Snyder, whether some lesser punishment might have been more appropriate, or even whether Snyder's conduct actually violated the anti-harassment policy. *See Torlowei v. Target*, 401 F.3d 933, 935 (8th Cir. 2005) (affirming summary judgment for employer despite alleged unfairness of decision to fire employee for purportedly minor violation). Snyder is essentially asking the Court to disregard this well-established precedent, as his claims revolve almost entirely around what happened after he posted his message on the company intranet, with a particular focus on whether Arconic should have imposed some form of discipline short of termination. It is not the Court's prerogative to tell an

> employer how a violation of company policy should be addressed. *See id.*

App. 448, R.Doc.30, at 18.

Arconic has no duty to accommodate an employee making offensive comments at work (even when the comment stems from the employee's religion). Snyder is not required to stifle or modify his religious beliefs, but he is required to abide by policies that prohibit harassing comments based on another employee's protected status.

F. Snyder Cannot Establish a Prima Facie Case of Retaliation.

To establish a prima facie case of retaliatory discrimination, Snyder must show that he engaged in protected activity, that an adverse employment action was taken against him, and that there was a causal connection between the two. *Brower v. Runyon*, 178 F.3d 1002, 1005 (8th Cir. 1999); *see also Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 281 (Iowa 2000) (articulating the three elements of a retaliation claim—protected activity, discharge, and a causal connection between the protected activity and discharge).

Snyder's retaliation claim fails because Snyder's publication of: "It[']s an abomination to God. Rainbow is not meant to be displayed as a

sign for sexual gender," does not constitute protected activity. *See* argument above.

In addition, Snyder cannot produce sufficient evidence to support an inference that his comments about his religion were causally connected to his termination. Arconic had accommodated his religious beliefs in the past by not scheduling him to work so he could preach. App. 40, R.Doc.22-2, at 1, ¶2; App. 52, R.Doc.22-3, at 5, ¶20.

II. CONCLUSION

Snyder's claim is that Arconic must accommodate his opinion, expressed on the company-wide intranet, that the LGBTQ+ community is an abomination to God. In no way was his conduct required of his employment. His accommodation is a request to excuse his inappropriate behavior under the guise of accommodating his religious beliefs. It is an accommodation that would require Arconic to allow him to publicly condemn people based on sexual orientation or gender identity, without reprimand or discipline, in clear violation of Arconic's policies.

Viewing the facts and inferences in the light most favorable to Snyder, "there is no genuine dispute as to any material fact" and Arconic "is entitled to a judgment as a matter of law." *See* Fed.R.Civ.P. 56(a);

Celotex, 477 U.S. at 325 (noting "the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case"); *McAllister v. Transamerica Occidental Life Ins. Co.*, 325 F.3d 997, 999 (8th Cir. 2003). The District Court's grant of Arconic's Motion for Summary Judgment on all Snyder's claims was appropriate.

For the foregoing reasons, this Court should AFFIRM the District Court's Order granting Arconic's Motion for Summary Judgment and denying Snyder's Motion for Partial Summary Judgment.

Respectfully submitted,

LANE & WATERMAN LLP

By: */s/ Mikkie R. Schiltz*
Mikkie R. Schiltz, AT0007038
220 North Main St., Suite 600
Davenport, IA 52801-1987
Telephone: (563) 324-3246
Facsimile: (563) 324-1616
Email: mschiltz@l-wlaw.com

ATTORNEYS FOR DEFENDANTS-APPELLEES

CERTIFICATE OF COMPLIANCE

1. Appellees' Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,129 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. Appellees' Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word in Century Schoolbook 14 point.

/s/ Mikkie R. Schiltz

CERTIFICATE OF COMPLIANCE—RULE 28A

The undersigned hereby certifies that an electronic version of the brief has been filed as a PDF generated by printing to PDF from the original word processing file, the electronic version of the brief has been scanned for viruses and the brief is virus-free, and the PDF is made searchable.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 21, 2023, the foregoing was electronically filed with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Appellants are registered CM/ECF users.

/s/ Mikkie R. Schiltz