No. 24-1942

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN M. KLUGE,

Plaintiff-Appellant

v.

BROWNSBURG COMMUNITY SCHOOL CORPORATION,

Defendant-Appellee

On Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division
Case No. 1:19-cv-02462-JMS-KMB
The Honorable Jane Magnus-Stinson, District Court Judge

AMICUS CURIAE BRIEF OF YOUNG AMERICA'S FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

James Bopp, Jr.
Counsel of Record
Taylor C. Shetina
THE BOPP LAW FIRM, PC
The National Building
1 South 6th Street
Terre Haute, IN 47807
Telephone: 812/232-2434
Facsimile: 812/235-3685
jboppjr@aol.com
tshetina@bopplaw.com

Counsel for Amicus Curiae

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-1942

Short Caption: John Kluge v. Brownsburg Community School Corporation

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Young America's Foundation

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Attorney's Signature: s/ James Bopp, Jr. Date: 7/17/2024

Attorney's Printed Name: James Bopp, Jr.

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: 1 South 6th Street, Terre Haute, IN 47807

Phone Number: 812-232−2434 Fax Number: 812-235-3685

E-Mail Address: jboppjr@aol.com

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N/A

Attorney's Signature: s/ Taylor C. Shetina Date: 7/17/2024

Attorney's Printed Name: Taylor C. Shetina

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: 1 South 6th Street, Terre Haute, IN 47807

Phone Number: 812-232−2434 Fax Number: 812-235-3685

E-Mail Address: tshetina@bopplaw.com

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INTEREST OF AMICUS CURIAE[1]

Young America's Foundation[2] ("**YAF**") is a nonprofit organization whose mission is to educate and inspire young Americans with traditional American values, including religious freedom. YAF's objective as amicus curiae in this case is to assist the Court in evaluating the district court's improper reliance on evidence that did not exist, or was unknown to the defendant at the time it took the adverse employment action against the plaintiff. YAF seeks to provide the Court with a comprehensive analysis demonstrating how the lower court's use of such after-acquired evidence, to deny summary judgment to the plaintiff and grant summary judgment to the defendant, contravenes the well-established principles of Title VII, the precedents of this Court and the Supreme Court's recent jurisprudence on religious accommodations in the workplace.

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[1]This brief is filed with the consent of all parties. No party's counsel authored the brief in whole or in part, and no one other than the *amicus curiae*, its members, or its counsel contributed money intended to fund the preparation or submission of this brief.

[2]Counsel for *amicus curiae* gratefully acknowledge Madison Hahn, Staff Attorney at YAF, for her valuable research and drafting contributions, which formed the foundation for this brief.

SUMMARY OF ARGUMENT

The district court erred in granting summary judgment to Brownsburg Community School Corporation ("**BCSC**"), contravening the fundamental purpose of Title VII of the Civil Rights Act of 1964. This case presents a critical test of the scope and strength of Title VII's protections for religious employees in the face of an employer's post hoc attempts to justify discrimination. Mr. John M. Kluge (**"Mr. Kluge**"), a devout Christian and public school teacher, requested a religious accommodation to avoid using transgender-identifying students' preferred names and pronouns, which he believed would violate his sincere religious beliefs. BCSC initially granted Mr. Kluge's request, allowing him to address all students by last names only. Mr. Kluge used this accommodation for a full school year without incident or complaint. However, at the start of the next school year, BCSC abruptly reversed course and revoked the accommodation, presenting Mr. Kluge with an untenable choice: violate his religious beliefs or lose his job. When Mr. Kluge refused to comply with a directive he believed was against his religious beliefs, BCSC forced him to resign.

The district court's reliance on post hoc rationalizations flagrantly violates Title VII's fundamental focus on contemporaneous employer motivations. The Supreme Court has unequivocally mandated that courts scrutinize an employer's actual reasons at the time of a challenged action, not convenient justifications invented

for litigation. By crediting BCSC's after-the-fact concerns about student discomfort and educational disruption—concerns conspicuously absent from the contemporaneous record—the district court has effectively rewritten Title VII, transforming it from a shield against discrimination into a sword for employers to wield against religious employees.

BCSC's cynical attempt to invoke the after-acquired evidence doctrine represents a perversion of Title VII principles that this Court must emphatically reject. The Supreme Court's decisions in Kennedy and McKennon leave no doubt: an employer cannot escape liability based on information it did not possess when making its decision. BCSC's reliance on student complaints, it admittedly lacked knowledge of when revoking Mr. Kluge's accommodation, is not just legally impermissible—it is a brazen attempt to circumvent Title VII's protections that, if sanctioned, would render the statute toothless.

The district court's unprecedented scrutiny of Mr. Kluge's religious sincerity, based on post hoc evidence, marks a dangerous foray into theological interpretation that courts are neither equipped nor permitted to undertake. This approach contravenes settled Seventh Circuit precedent requiring evaluation of sincerity, based solely on contemporaneous evidence. It opens a Pandora's box of judicial second-guessing of religious beliefs, threatening to strip Title VII of its power to protect religious diversity in the workplace.

Moreover, BCSC's assertion of an inflexible policy prohibiting accommodations is questionable both factually. The record indicates that BCSC accommodated Mr. Kluge for an entire academic year, without significant issues. Accepting BCSC's current position could potentially create a precedent that might weaken Title VII's religious accommodation requirements by allowing employers to implement rigid policies.

ARGUMENT

I. The district court improperly relied on BCSC's post hoc rationalizations, contravening Title VII's focus on the employer's actual, contemporaneous motivations at the time of the challenged action.

The district court improperly relied on after-the-fact justifications offered by BCSC to defend its decision to revoke the religious accommodation previously granted to Mr. Kluge. In doing so, the court contravened the fundamental purpose of Title VII, which is to eradicate employment discrimination by scrutinizing the reasons actually relied upon by the employer at the time of the challenged action.

The text, statute's purpose and binding precedent interpreting Title VII all underscore that the touchstone of the undue hardship analysis must be the employer's contemporaneous motivations, not hypothetical concerns or post hoc rationalizations invented for litigation. By crediting student affidavits and educational disruption concerns that played no role in BCSC's decision-making

process regarding Mr. Kluge's accommodation, the district court committed reversible error.

This Court should follow the Supreme Court's directive in Kennedy and hold BCSC to the reasons it actually relied upon when it suspended Mr. Kluge, as required by Title VII. Those reasons—student offense and an inflexible terminology policy—fall far short of establishing the undue hardship necessary to justify denying a reasonable religious accommodation. The district court's reliance on after-acquired evidence and speculative inferences to shore up BCSC's defense undermines the effective enforcement of Title VII's religious protections and cannot stand.

A. Title VII's text, history and jurisprudence reveal an unwavering focus on eradicating discriminatory motivations, not merely discriminatory actions.

Title VII of the Civil Rights Act of 1964 revolutionized American employment law by prohibiting discrimination based on race, color, religion, sex and national origin. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. The statute's overarching purpose was to root out employment practices motivated by prejudicial bias and ensure equal opportunity in the workplace. While Title VII's scope has expanded over time, its core focus on eliminating discriminatory motivations has remained steadfast.[3]

[3] *See* 42 U.S.C. § 2000e-2(a)(1) (prohibiting adverse employment actions

As originally enacted, Title VII left "religion" undefined. The Equal Employment Opportunity Commission ("**EEOC**") quickly stepped in, initially interpreting religious discrimination narrowly. Guidelines on Discrimination Because of Religion, 31 FED. REG. 8370 (June 15, 1966) (codified as 29 C.F.R. § 1605.1(a)(2) (2017)). But just one year later, the agency dramatically expanded its construction, replacing the duty to accommodate "reasonable religious needs" with a broader duty to provide "reasonable accommodations" absent "undue hardship." 32 FED. REG. 10298 (July 13, 1967). This pivot shifted the focus to the reasonableness of the employer's efforts and placed the burden on the employer to prove undue hardship.

Congress embraced the EEOC's approach in the Equal Employment Opportunity Act of 1972, codifying a definition of religion that tracks the agency's revised rule. Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e(j). The definition encompasses "all aspects of religious observance and practice, as well as belief," unless the employer demonstrates that it cannot reasonably accommodate the observance or practice without undue hardship. Id. Notably, the text mandates accommodations only for observances and practices, not beliefs, recognizing the challenges of accommodating every employee's religious beliefs.

"because of" an individual's protected characteristics. The plain language indicates Congress's intent to target adverse actions motivated by discriminatory reasons, even if religion is not the sole factor.

The 1972 amendment tied the scope of Title VII's religious protections to a case-by-case analysis of whether a practice can be reasonably accommodated without undue hardship to the employer.

Subsequent developments in Title VII jurisprudence have reinforced the statute's emphasis on rooting out discriminatory motivations. The Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores, Inc.* is particularly instructive. 575 U.S. 768 (2015). Abercrombie provided critical guidance on Title VII's causation standard, explaining that the statute's prohibition on discrimination "because of" a protected characteristic like religion requires only that the characteristic be a motivating factor in the employer's adverse action. *Id.* at 773. The Court stressed that this "motivating factor" test is more protective of employees than the traditional but-for causation standard. Id. Significantly, *Abercrombie* held that an employer can violate Title VII by failing to accommodate a religious practice, even if it lacked actual knowledge that the practice conflicted with a work rule. *Id.* at 774. The key inquiry is whether the employee's religion motivated the employer's conduct, not whether the employer knew an accommodation would be needed. *Id.* at 773. By focusing on the employer's motives rather than its knowledge, *Abercrombie* underscores that Title VII aims to eradicate discriminatory decision-making, not just blatantly

discriminatory policies. *Abercrombie*'s reasoning is firmly grounded in Title VII's text, history and purpose.

The Civil Rights Act of 1991 codified the "motivating factor" test. Civil Rights Act of 1991, codified at 42 U.S.C. § 2000e-2(m). Under that amendment, an unlawful employment practice is established when the plaintiff shows a protected trait, like religion, "was a motivating factor for any employment practice, even though other factors also motivated the practice." *Id.* Congress added this language to make clear that "any discrimination that is actually shown to play a role in a contested employment decision may be the subject of liability." 102 H. Rpt. 40, pt. 2, at 18 (1991). If an employer takes an adverse action because of an employee's religion, it has violated Title VII, even if it did not definitively know an accommodation would be needed. Conditioning liability on proof of the employer's actual knowledge of a conflict would improperly restrict Title VII's reach to only the most clear-cut cases of discrimination.

The Supreme Court has repeatedly reaffirmed that the touchstone in a Title VII case is the employer's motivation for the challenged action. In *Bostock v. Clayton County*, the Court reiterated that Title VII's "because of" test incorporates a but-for causation standard, meaning a protected trait must be a but-for cause of the adverse action. 590 U.S. 644, 656 (2020). Critically, the Court clarified that this standard is satisfied even if other factors besides the protected characteristic also motivated the

employer. *Id.* at 664. In the Court's words, "[s]o long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law." *Id.* at 656.

Most recently in *Groff v. DeJoy*, the Court reinforced these principles in the religious accommodation context. 600 U.S. 447 (2023). *Groff* makes clear that the undue hardship analysis—the employer's defense to not accommodating a religious practice—must focus on the burden the accommodation would impose "in the overall context of the employer's business," not on "speculative or hypothetical" concerns. *Id.* at 468.

Abercrombie, Bostock and *Groff* confirm that Title VII requires courts to scrutinize an employer's actual motivations for taking an adverse action against an employee who has requested a religious accommodation. Post hoc rationalizations invented for litigation have no place in the analysis.[4] With these principles in mind, BCSC's actions cannot withstand Title VII scrutiny.

B. BCSC's justification that transgender-identifying students were "offended" impermissibly relies on post hoc rationalizations rather than contemporaneous evidence of undue hardship.

[4] *See* Andrew B. Rogers, Beyond Undue Hardship: Religion and Sincerity in a Post-Groff World, 62 U. Louisville L. Rev. 341, 445 (2024) (explaining that while employers are not obligated to implement accommodations that would cause undue hardship, they must support their claims of hardship with identifiable or defined costs rather than speculative arguments. "Title VII does not require employers to implement a religious accommodation and suffer a foreseeable undue hardship before it may refuse such a request or prevail in a Title VII action. However, employers may not establish undue hardship based on mere speculation.")

The Supreme Court's recent decision in *Kennedy* provides a powerful template for analyzing the legitimacy of an employer's justifications in a First Amendment religious expression case. The Court's emphasis on contemporaneous evidence and its rejection of post hoc rationalizations apply with equal force to Title VII religious accommodation claims, like Mr. Kluge's. Just as the school district in *Kennedy* could not invent new reasons for its actions after the fact, neither can BCSC here. In *Kennedy*, a school district suspended a high school football coach for praying at midfield after games. *Id.* at 519. The coach requested an accommodation, offering to pray only after his players had left the field, but the district denied that request and took disciplinary action. *Id.* at 517-18. The Court held that the district's actions violated the coach's First Amendment rights. *Id.* at 542-44.

Central to the Court's analysis was its laser focus on the contemporaneous evidence of the district's motivations at the time it suspended the coach. The Court flatly rejected the district's argument that it needed to censor the coach's religious expression to avoid coercing students to pray, in violation of the Establishment Clause. *Id.* at 537. Critically, when the district attempted to rely on after-the-fact statements from parents claiming their children had felt pressured to pray, the Court found this evidence to be unsubstantiated hearsay. *Id.* at 539. The Court

pointedly observed that there was "no indication in the record that anyone expressed any coercion concerns to the District" about the coach's prayers at the time of the challenged actions. *Id.* Such post hoc rationalizations, invented for litigation, could not retroactively justify the district's decision. *See id.* at 543 n.8.

The parallels between Mr. Kennedy's and Mr. Kluge's cases are striking. Here, as in *Kennedy*, the school district attempts to defend its actions, restricting an employee's religious expression, by relying on student concerns that did not actually motivate the challenged decision. Like the school district in *Kennedy*, BCSC never raised any documented concerns about students feeling unwelcome or offended by Mr. Kluge's use of last names at the time BCSC revoked his accommodation and forced his resignation.[5] Instead, the district rely on rumors, communicated to Mr. Kluge by Ms. Gordon in the form of hearsay, to speculate that students were "offended by being called by their last name." *See* Doc.113-4 at 26. Just as the Supreme Court refused to credit the school district's reliance on after-the-fact parent complaints in *Kennedy*, *id*. at 539, this Court should reject BCSC's attempts to rely on student affidavits created long after Mr. Kluge resigned from BCSC. *See* Docs.22-3; 58-1. The record here is devoid of "offended" student complaints amounting to an undue hardship at the time, let alone a concrete

[5] On the contrary, for an entire semester, there were no disturbances, canceled classes, student protests or written complaints about Mr. Kluge using students' last names. *See* Doc.113-2 at 4.

complaint in general, which would have motivated BCSC to revoke Mr. Kluge's accommodation.

The Supreme Court's strong rejection of post hoc rationalizations in *Kennedy* sends a clear message that courts must focus on an employer's actual, contemporaneous motivations for restricting an employee's religious expression, not on hypothetical, biased concerns conjured up after-the-fact for purposes of litigation. That reasoning applies with full force to Title VII religious accommodation claims, which likewise, turn on an employer's motivations for denying an accommodation. BCSC cannot invent new justifications for its actions after-the-fact when the record shows that those justifications played no role at the time of the challenged decision.

Furthermore, even if "offended" students actually made complaints at the time, this justification would fall woefully short of establishing the kind of substantial burden on its operations that Title VII requires. Student discomfort with a teacher's religious practice, without any concrete evidence of actual disruption to the educational environment, cannot possibly meet that demanding standard. Accepting such a flimsy justification would effectively allow a heckler's veto to override Title VII's religious protections. *See Kennedy*, 597 U.S. at 538 (requiring that people suppress their religious beliefs or practices to avoid offense to others is repugnant to our constitutional values because "learning how to tolerate speech or

prayer of all kinds is 'part of learning how to live in a pluralistic society,' a trait of character essential to 'a tolerant citizenry'") (cleaned up).

C. Moreover, BCSC's reliance on student complaints it did not have knowledge of when revoking Mr. Kluge's accommodation fundamentally violates Title VII's focus on the employer's actual motivations.

BCSC's attempt to defend against Mr. Kluge's failure-to-accommodate claim by relying on after-acquired evidence cannot be squared with the fundamental principles articulated by the Supreme Court. *See McKennon v. Nashville Banner Publishing Company*, 513 U.S. 352 (1995). In *McKennon*, the Court made clear that an employer cannot escape liability for a discriminatory employment action based on information that was unknown to it at the time of the decision. *Id.* at 360. Rather, the relevant inquiry must focus solely on the employer's actual motivations and knowledge when it took the challenged action. *Id.* at 362.

Here, BCSC's defense hinges on two student affidavits that BCSC did not even offer into evidence itself. Docs.22-3; 58-1. These affidavits, which the district court improperly relied upon, RSA.10, 12–14, 45; RSA.34, 37–39, concern events that occurred well after Mr. Kluge's forced resignation, including a student leaving the orchestra and school, and two students legally changing their names. See Docs.22-3; 58-1. Such after-the-fact complaints made by "offended" students could not possibly have motivated BCSC's decision to revoke Mr. Kluge's

accommodation, as they were unknown to the district at the relevant time. *Id.* at 360.

The district court's attempt to backdoor this evidence through a speculative chain of communication lacks any basis in the record. The court hypothesized that students must have complained to a teacher, Mr. Lee, who then relayed those complaints to the principal, who in turn informed the HR director, all before the decision was made to revoke Mr. Kluge's accommodation. *See* RSA.9–11. But there is no concrete evidence that any of these communications actually occurred, let alone that they accurately conveyed the substance of the students' alleged concerns to the relevant decision makers. Mere speculation cannot justify reliance on after-acquired evidence in the face of McKennon's clear directive that an employer's liability must be determined based on what it knew "at the time of the discharge." *Id.* at 363. The employer bears the burden of proving that it would have taken the same action based solely on the after-acquired evidence, a burden BCSC cannot meet.

Furthermore, even if BCSC could invoke the doctrine, Mr. Kluge's actions would not meet the standard required. *See Edwards v. Bisys, Inc.*, 2005 U.S. Dist. LEXIS 58886, *5 (S.D. Ind. June 29, 2005) (requiring that an employer who relies on the after-acquired evidence doctrine, "must establish that the employee's wrong doing was severe enough that the employee would have been terminated on those

grounds alone had the evidence been known to the employer at the time of the discharge."). Thus, the employer cannot rely on mere speculations, but must show some concrete evidence that the conduct would have resulted in adverse employment action. "[T]his inquiry focuses on the employer's actual employment practices." *Hollins v. Forest River, Inc.*, 2021 U.S. Dist. LEXIS 152782, *36-37 (N.D. Ind. Aug. 13, 2021) (internal quotes and citations omitted).

Permitting employers to escape Title VII liability based on information they did not actually rely upon would have devastating consequences for employees and the efficacy of the statute's protections. This practice would incentivize employers to engage in fishing expeditions after every challenged employment action, scouring for any shred of evidence that could retroactively justify their decisions. The focus of Title VII litigation would be improperly shifted from the key question of the employer's motivations at the time of the alleged discrimination to a post hoc rationalization process disconnected from the actual decision. This would place employees at a severe disadvantage, as they lack the access and resources to counter employer attempts to probe after-the-fact. Employers could easily concoct pretextual justifications based on information that played no role in the challenged action, effectively neutering Title VII's protections. Employees in protected classes, who already face significant workplace barriers, would be left with little recourse against discriminatory treatment.

D. BCSC's claimed inability to make exceptions to its terminology policy cannot justify its failure to accommodate Mr. Kluge's religious beliefs.

BCSC's assertion that its inflexible terminology policy precludes accommodating Mr. Kluge's religious beliefs is both factually untenable and legally unsound.[6] This claim is starkly contradicted by the undisputed record, which demonstrates that BCSC not only could, but did, grant Mr. Kluge an exception to its policy for an entire academic year. SA.241, 277; Doc.113-2 at 4. During this period, Mr. Kluge's use of last names exclusively operated without any discernible negative impact on the school's functioning. SA.241, 277; Doc.113-2 at 4. This historical precedent of accommodation fundamentally undermines BCSC's current stance of rigid inflexibility.

The inconsistency between BCSC's past actions and present claims raises serious questions about the authenticity of their position. It suggests a post hoc rationalization rather than a genuine policy constraint. This discrepancy not only weakens BCSC's credibility but also implies a potential discriminatory intent in their refusal to continue accommodating Mr. Kluge's religious beliefs.

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[6] *See* 29 C.F.R. § 1605.1 (1968) (Title VII "includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business")

BCSC's no-exception stance represents a fundamental misunderstanding—or misapplication—of Title VII's mandates. The statute explicitly requires employers to provide reasonable accommodations for employees' religious practices, absent undue hardship. 42 U.S.C. § 2000e(j). A policy that categorically precludes any accommodations, regardless of their ease of implementation or minimal scope, is inherently at odds with this legal requirement.

Accepting BCSC's position would set a dangerous precedent, effectively nullifying the statute's religious accommodation provision. It would provide employers with a facile mechanism to circumvent their legal obligations simply by adopting inflexible rules. This interpretation runs counter to the Supreme Court's guidance in *Abercrombie*, 575 U.S. at 775, which explicitly warns against employers using neutral policies as a shield against accommodating religious needs.[7]

Moreover, BCSC's stance reflects a concerning trend of prioritizing administrative convenience over the constitutionally protected right to religious freedom. By refusing to make reasonable accommodations, BCSC not only

[7] *See* Jeffrey M. Hirsch, EEOC v. Abercrombie & Fitch Stores, Inc.: Mistakes, Same-Sex Marriage, and Unintended Consequences, 94 TEX. L. REV. ONLINE 95, 100 (2016) (noting that Abercrombie primarily impacts job applicants whose religious practices are visibly apparent through their appearance, offering these individuals a viable means to contest hiring rejections, while emphasizing that success is not guaranteed as claimants still face the considerable challenge of proving unlawful discrimination in hiring decisions).

violates the letter of the law, but also its spirit, which seeks to foster an inclusive work environment that respects and accommodates religious diversity.

BCSC's position is further weakened by the absence of any comparable instances where a teacher was denied a religious exemption to use a student's last name. This lack of precedent is telling. "Proving that the same decision would have been justified . . . is not the same as proving that the same decision would have been made." *Davis v. Gov't Emple. Ins. Co.*, No. 1:19-cv-2723-RLM-MPB, 2021 U.S. Dist. LEXIS 148664, at *27 (S.D. Ind. Aug. 9, 2021). The absence of similar cases suggests that BCSC's decision regarding Mr. Kluge may be an outlier, potentially motivated by factors beyond mere policy adherence.

BCSC's claim of policy inflexibility as a defense against accommodating Mr. Kluge's religious beliefs is both factually inconsistent and legally untenable. It represents a dangerous attempt to circumvent the clear mandates of Title VII and, if accepted, would set a precedent that could significantly erode religious freedom protections in the workplace. The court must reject this specious argument and reaffirm the importance of religious accommodation in maintaining a diverse and inclusive society.

II. The district court contravened seventh circuit precedent by relying on post hoc evidence to question the sincerity of Mr. Kluge's religious beliefs, when the proper focus is on his words and conduct at the time the conflict arose.

The district court's reliance on ex post facto rationalizations to impugn Mr. Kluge's religious sincerity represents a grave misapplication of Title VII principles and a troubling departure from well-established Seventh Circuit jurisprudence. This approach not only contravenes legal precedent, but also threatens to erode the fundamental protections afforded to religious employees under federal law.

Central to Title VII jurisprudence is the principle that the sincerity of an employee's religious beliefs must be evaluated through the lens of contemporaneous evidence. The Seventh Circuit has consistently emphasized the primacy of assessing sincerity based on the employee's words and conduct at the precise moment when the conflict between belief and employment requirement crystallizes. This temporal focus aligns seamlessly with Title VII's broader intent to scrutinize an employer's actual motivations at the time of the challenged decision, rather than post hoc justifications.

Courts within the Seventh Circuit have made clear that the critical point for evaluating the sincerity of an employee's religious beliefs is the time at which the employee requests an accommodation. For example, one court rejected an employer's attempt to use an employee's later loss of faith to undermine the sincerity of his beliefs at the time he requested a Sabbath accommodation. *United States EEOC v. IBP, Inc*. 824 F. Supp. 147, 151 (C.D. Ill. 1993). The court held that "sincerity should be measured by the employee's words and conduct at the

time the conflict arose between the belief and the employment requirement." *Id.* This holding underscores that post hoc developments cannot be used to cast doubt on an employee's sincerity when the accommodation was initially requested.

In the case at hand, the contemporaneous evidence pertaining to Mr. Kluge's religious objection is not merely supportive, but compelling. His longstanding commitment as a devout Christian and active church member epitomizes the very type of evidence that this Court has previously deemed highly probative of sincerity. *See Redmond v. GAF Corp.*, 574 F.2d 897, 901 (7th Cir. 1978)). Moreover, Mr. Kluge's consistent invocation of Scripture and his faith in communications with BCSC regarding his objection further supports the authenticity of his beliefs. BCSC's initial grant of an accommodation serves as tacit acknowledgment of the perceived sincerity of Mr. Kluge's convictions.

The absence of contemporaneous evidence casting doubt on Mr. Kluge's sincerity is telling. In lieu of such evidence, BCSC has resorted to a form of theological scrutiny, running counter to established precedent, which holds that religious beliefs need not be orthodox or even associated with an established religion to merit protection. *See Vinning-El v. Evans*, 657 F.3d 591, 594 (7th Cir. 2011).

BCSC's post hoc arguments regarding Mr. Kluge's participation in an awards ceremony, or the scope of his accommodations are legally irrelevant to the

sincerity inquiry. Such retrospective evidence has no bearing on the employee's sincerity at the time of the accommodation request. Furthermore, the law is unequivocal that religious practices need not be mandated by the tenets of a religion to be protected. *See Anderson v U.S.F. Logistics (IMC), Inc.*, 2001 U.S. Dist. LEXIS 2807, *30 (S.D. Ind. Jan 30, 2001).[8]

The district court's reliance on post hoc evidence to question Mr. Kluge's religious sincerity constitutes a significant legal error with far-reaching implications. This approach not only contravenes established Seventh Circuit precedent, but also undermines the foundational principles of Title VII. It opens the door to a dangerous form of judicial theological interpretation, wherein courts may retrospectively scrutinize and redefine the contours of an individual's faith.[9]

Therefore, the integrity of Title VII protections for religious employees hinges on strict adherence to the principle of contemporaneous evaluation of sincerity.

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[8]Religion includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship on the conduct of an employer's business." 42 U.S.C. § 2000e(j).

[9]Courts have traditionally been reluctant to assess the sincerity of a claimant's religious beliefs when evaluating religious accommodation claims. However, some scholars have argued for a more probing judicial inquiry into sincerity to prevent abuse of the accommodation process. *See* Nathan S. Chapman, Adjudicating Religious Sincerity, 92 WASH. L. REV. 1185, 1185 (2017) (contending that "courts can and should adjudicate an accommodation claimant's religious sincerity" to reduce the costs that "[i]nsincere claims impose . . . on the government, third parties, and religious liberty itself").

The court must recalibrate its focus to the relevant timeframe, where the evidence unequivocally supports Mr. Kluge's sincerity, and categorically reject BCSC's improper attempts to engage in post hoc religious scrutiny.

CONCLUSION

The district court erred by relying on after-acquired evidence and post hoc rationalizations to manufacture hardship and question the sincerity of Mr. Kluge's beliefs, an approach that cannot be reconciled with Title VII's text, history, or purpose. Only by focusing on BCSC's actual, contemporaneous motivations for its decision and holding the school district to its burden of demonstrating undue hardship can Mr. Kluge receive the full protection against religious discrimination that Congress intended. For the foregoing reasons, this Court should reverse the district court's grant of summary judgment to BCSC and remand with instructions to enter judgment in Mr. Kluge's favor on his Title VII religious discrimination claims.

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Respectfully submitted,

By:
/s/James Bopp, Jr.

James Bopp, Jr., Ind. Bar No. 2838-84
Taylor C. Shetina, Ind. Bar. No. 37887-45
THE BOPP LAW FIRM, PC
The National Building
1 South 6th Street
Terre Haute, IN 47807
Telephone: 812/232 2434
Facsimile: 812/235-3685
jboppjr@aol.com
tshetina@bopplaw.com

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

The foregoing brief complies with the type-volume limitation of Fed. R. App. P. 28(e)(2) and 32(a)(7)(B), as modified by Cir. R. 28.1 and 32(c), because the brief contains 4,872 words, excluding the parts of the brief exempted from the word count by Fed. R. App. P. 32(f).

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/s/Taylor C. Shetina
Taylor C. Shetina

Counsel for Amicus Curiae

Dated: July 17, 2024

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

/s/Taylor C. Shetina
Taylor C. Shetina

Counsel for Amicus Curiae

Dated: July 17, 2024