



PROGRAM MATERIALS

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Religion and Reasonable Accommodation in the Workplace

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RELIGION AND REASONABLE ACCOMMODATION IN THE WORKPLACE

Wednesday, August 26, 2026

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2

**SUBSTANTIALLY
INCREASED COSTS**

GROFF V. DEJOY

2023 U.S. LEXIS 2790 (S. CT. JUNE 29, 2023) ALITO, J.

- Title VII requires reasonable accommodation to religious practices.
- To the extent that the Supreme Court, in *Trans World Airlines, Inc. v. Hardison*, 432 U. S. 63, 84, 97 S. Ct. 2264, 53 L. Ed. 2d 113 (1977), required only a *de minimis* showing of inconvenience, that will not be followed since it was only a comment in the opinion.

GROFF V. DEJOY

2023 U.S. LEXIS 2790 (S. CT. JUNE 29, 2023) ALITO, J.

- Rather, the Court held that more than a *de minimis* cost does not suffice to establish hardship under Title VII.
- Statutory interpretation must be in what the statute actually says.
- Here, the key phrase is “undue hardship.”
- An employer could not escape liability simply by showing that an accommodation would impose some sort of additional costs.

GROFF V. DEJOY

2023 U.S. LEXIS 2790 (S. CT. JUNE 29, 2023) ALITO, J.

- Those costs would have to rise to the level of hardship and adding the modifier “undue” means that the requisite burden, privation, or adversity must rise to an “excessive” or “unjustifiable” level.
- We think it is enough to say that an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.

GROFF V. DEJOY

2023 U.S. LEXIS 2790 (S. CT. JUNE 29, 2023) ALITO, J.

- Title VII requires an assessment of a possible accommodation's effect on "the conduct of the employer's business."
- That other employees would object is not sufficient.

GROFF V. DEJOY

2023 U.S. LEXIS 2790 (S. CT. JUNE 29, 2023) ALITO, J.

- In terms of whether the reasonable accommodation would violate collective bargaining agreements, that may be less clear although it is referred to by the Court as having been an issue in the *TWA* case.

8

VACCINE MANDATE

SPIVACK V. CITY OF PHILADELPHIA
109 F.4TH 158 (3D CIR. 2024) BECK, J.

- Rachel Spivack was fired working at the Philadelphia District Attorney's office because she claimed a religious exemption to the vaccine mandate. After initially saying that she would be accommodated, District Attorney Krasner changed his mind.
- Rather than offering religious exemption and evaluating them on a case-by-case basis, Krasner decided to categorically deny religious exemption requests without individual assessment.

SPIVACK V. CITY OF PHILADELPHIA
109 F.4TH 158 (3D CIR. 2024) BECK, J.

- There is a dispute of material fact as to whether anti-religious hostility tainted the DA's treatment of religious exemptions.
- Heavily relied upon was Krasner's deposition testimony.
- If a government policy is neutral, it must also be generally applicable to avoid strict scrutiny.
- Jury must resolve whether the policy Krasner used when he denied Spivack's religious exemption requests, by extension, whether the applicable policy provided for discretionary, individualized exemptions.

SPIVACK V. CITY OF PHILADELPHIA
109 F.4TH 158 (3D CIR. 2024) BECK, J.

- Jury must decide whether the policy was neutral, given Krasner's testimony.
- DA's vaccine mandate must be both neutral and generally applicable.
Then it is subject to rational basis review.
- It must be rationally related to a legitimate government objective.
- If it is not both neutral, and generally applicable, strict scrutiny is applied.

SPIVACK V. CITY OF PHILADELPHIA

109 F.4TH 158 (3D CIR. 2024) BECK, J.

- Supreme Court has instructed Third Circuit and other circuits not to frame government objectives at a high level of scrutiny generally- instead the courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants.
- Question is not whether the DA has a compelling interest in enforcing his vaccine policies generally, but whether it has an interest in denying exemption to Spivack.
- DA must show the policy was narrowly tailored, which requires a government is the least restrictive means of achieving its directive.
- Case remanded for finding by jury.

13

UNDUE HARDSHIP



PODELL V. AUSTIN, ET AL.

14

- Jeffrey Podell applied for a job with the Department of Defense Police Force.
- He had experience working for the New York City Police, with both an undergraduate and master's degree in criminal justice.
- Jeffrey was informed that the testing for the position, both written, interview and physical, would be on a Saturday. He is a sabbath-observant Jew, who asked for a reasonable accommodation.
- He received responses that people would get back to him about the reasonable accommodation.
- After much back-and-forth, conversation and emails, Podell was told that he could not be and would not be accommodated.



PODELL V. AUSTIN, ET AL.

15

- The case was initially filed in the Eastern District of Philadelphia, since Podell lives in Ardmore and did the application process from Philadelphia.

PODELL V. AUSTIN, ET AL.

- During the pendency of the case, *Groff v. DeJoy, et al.* was to be argued and decided.
- The Rieders Foundation, which is paid out-of-pocket costs in the *Podell* litigation, filed an *Amicus Curiae* Brief on its own behalf and on behalf of Jeffrey Podell in *Groff v. DeJoy, et al.*

PODELL V. AUSTIN, ET AL.

- *Groff* involved a postal worker in Lancaster, Pennsylvania, who wanted a Sunday accommodation because of his religious beliefs. The U.S. Postal Service attempted to make accommodations, but there were only two or three employees, and no accommodation could be made.
- The question in *Groff* was whether defendants had to show more than a *de minimis* inconvenience.
- The *de minimis* rule seemed to be *dicta* and was not even consistent with the Religious Freedom Restoration Act or rules and guidelines issued by various federal and state governments.

PODELL V. AUSTIN, ET AL.

- Podell was the only individual who filed an *amicus* brief. Groff brought out one of the greatest numbers of *amicus* briefs ever filed in a U.S. Supreme Court case, but yet *Podell* was the only one with a pending claim.
- The United States Supreme Court in *Groff* determined that a reasonable accommodation had to be afforded if it could be without undue hardship. The court discussed what undue hardship would be.

PODELL V. AUSTIN, ET AL.

- *Podell*: the Government put a full **court** press attack against Podell to have the case transferred to the Eastern District of Virginia, but also to have the case dismissed; claiming that Title VII preempts the First Amendment to the Constitution; that the Religious Freedom Restoration Act did not apply; that Podell did not prove that the Saturday testing infringed upon the religious rights of observant Jews.

PODELL V. AUSTIN, ET AL.

- The Government claimed that Podell could not prove disparate impact by the Saturday testing requirement.
- The case was ultimately transferred to the Eastern District of Virginia. The Government, however, made the argument that there is a specific section to Title VII when it was amended in 1972 permitting the federal government to be sued for civil rights discrimination that cases against the Government could only be brought in the Eastern District of Virginia, where personnel records are.

PODELL V. AUSTIN, ET AL.

- Ignored was the fact that personnel records for the federal government are archived in Boyers, Pennsylvania.
- A hearing before Judge Ellis in the Eastern District of Virginia resulted in the Judge stating to the Bench that he was shocked by the Government's argument that Jews would not be impacted by Saturday testing, and the Podell could not prove a disparate impact upon observant Jews by the Saturday testing.

PODELL V. AUSTIN, ET AL.

Judge Ellis expressed shock and dismay at the way the Department of Defense treated Jewish applicants....

“You know, I am stunned, frankly — I’m an old person, I’ve been around a long time. I’ve been on this bench for 36 years. And to have this claim brought forward seems to me to be odd. I don’t understand why the Department of Defense couldn’t have simply done it on Thursdays or Wednesdays for this person.”

“I mean, how many Orthodox Jews do you get applying? A tiny number, probably. And so, we’re here for all of this?”

During the argument on whether Mr. Podell had properly made a claim for disparate impact of observant Jews, the Court engaged in the following exchange with the United States Attorney:

THE COURT: Do you have any idea what Orthodox Judaism requires?

MR. PICKREN: I do, Your Honor.

THE COURT: You do? Have you ever lived next to an Orthodox Jew?

MR. PICKREN: I have not.

THE COURT: Do you have personal friends who are believing Orthodox Jews?

MR. PICKREN: I do not.

THE COURT: Reminds me of the days when — well, never mind. They have alleged sufficient. There is adequate information there, there's no question. Where did you attend law school?

MR. PICKREN: The University of North Carolina.

THE COURT: Chapel Hill.

MR. PICKREN: Yes, Your Honor.

THE COURT: So, there may not have been any Orthodox Jews there.

MR. PICKREN: I did grow up in Northern New Jersey.

THE COURT: Well, you should have lived close to some there. Where did you attend college?

MR. PICKREN: Albright College in Reading, Pennsylvania.

THE COURT: Well, I'm reminded of reasons in this country why discrimination arose, because people didn't know each other. They didn't know different groups. I can't tell you how many people have never lived next to or close to or had African-American friends and look what grew out of that. And the same is true with this.

After further argument, the Court again observed:

THE COURT: Again, I'm stunned. I'm stunned that you and the EEOC and nobody else would know that there is such a thing as Orthodox Judaism, and what that is. It's astonishing, absolutely astonishing.

The United States appeared to argue that Mr. Podell was obligated to prove that an observant Jew would object to Saturday testing. As counsel for Mr. Podell stated:

MR. RIEDERS: And, frankly, I am amazed to read, given I've had many of these cases with the United States on the other side, the United States argue – and they have argued in their brief, and I hope this will be repudiated – that Mr. Podell is obligated to prove that Saturday testing – and what happens there is testing both physical and written. That Saturday testing affects Jewish people. They have put that in their brief. I'll give you the exact quote, because I read it, and I couldn't believe I was reading it correctly.

So let me give you that exact quote from the government brief: ***"He," Mr. Podell, "He has failed to allege any facts plausibly suggesting that the above-mentioned practices caused a disparate impact on those who practice the Jewish faith."***

Finally, the Court, in understandable frustration, noted:

THE COURT: Well, you don't want to show up in this court again in abject ignorance about Orthodox Jewry, would you?

MR. PICKREN: I would not, Your Honor. And I just want to —

THE COURT: Good. You should go read Exodus and some other parts of the Old Testament. The rules are quite explicit.

Now, I would argue some of the rules.

For two years I lived next door to an Orthodox Jewish family at Harvard and learned a great deal about it. We've even had some arguments about whether some of the rules were really required or whether they were interpretations that should have gone the other way.

THE COURT CONT'D: But that's not the point here. The point is that he thinks that this case should be a moment for education among the Department of Defense, and, indeed, I would even think at the EEOC. They should know this.

Now, let's do this. You've briefed this matter fairly thoroughly. I think I'm going to recess this matter until 3 o'clock, at which time I will see if you've reached some accommodation which will solve this plaintiff's problem, and also whether you all, in the future, will have this problem.

I will tell you this much. I think he has adequately pled his disparate impact claim. And, on exhaustion, there's a good deal of mixed-up law in that regard, but it's basically an affirmative defense. And how much has to be exhausted is always going to be an issue, how precise it has to be.

In conclusion, the Court noted:

In other words, if there's an Orthodox Jew who is observant — there are lots of Orthodox Jews that aren't observant about the Sabbath. But if one of them shows up to be an applicant, he ought to be accommodated, and you get on with it. Even the Israel Defense Force does that.

Ultimately, under the extremely strong hand of Judge Ellis, the matter was resolved, although the negotiations were long, difficult, and borderline acrimonious.

PODELL V. AUSTIN, ET AL.

The key components of the resolution were as follows:

Both applicants for employment and current employees of NGA are entitled to request accommodations from generally applicable employment-related rules and requirements, so long as the accommodation requested would not result in undue hardship to the conduct of NGA's business.

PODELL V. AUSTIN, ET AL.

These accommodations are equally available to those who apply for employment with the NGA Police and inform NGA that their sincerely held religious beliefs preclude them from attending a hiring event; individuals who make such a request should be provided with an alternate day on which to come to the relevant NGA campus for hiring-related events. NGA Police who receive such requests are to consult immediately with NGA's Human Resources staff and office of General Counsel.

PODELL V. AUSTIN, ET AL.

Outcome & Lessons:

- Even though the law may seem absolutely clear, that still does not mean the Government will roll over and do the right thing.
- I ended up with a cordial, and even somewhat friendly, relationship with the United States Attorney who handled this case.
- The settlement even includes provisions so that the testers will not retaliate against Mr. Podell, although he obviously would have a retaliation claim if they do.

RELIGIOUS FREEDOM RESTORATION ACT OF 1993

35 ***BURWELL V. HOBBY
LOBBY STORES, INC.,
573 U.S. 682 (2014)***

- Whether the Religious Freedom Restoration Act of 1993 (RFRA) permits the United States Department of Health and Human Services to demand that three closely held corporations provide health-insurance coverage for methods of contraception that violate the sincerely held religious belief of the companies' owners.



36 ***BURWELL V. HOBBY
LOBBY STORES, INC.,
573 U.S. 682 (2014)***

- “We hold that the regulations that impose the obligation violate the RFRA, which prohibit the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest.”
- RFRA protection is not jettison when the businesses incorporate.



BURWELL V. HOBBY LOBBY STORES, INC.,
573 U.S. 682 (2014)

- If the owners comply with the HHS mandate, they believe they will be facilitating abortions.
- Under RFRA, a Government action that imposes a substantial burden on religious exercise must serve a compelling government interest.
- In order for HHS mandate to be sustained, it must also constitute the least restrictive means of serving an interest and the mandate plainly fails that test.

BURWELL V. HOBBY LOBBY STORES, INC.,
573 U.S. 682 (2014)

- HHS has already devised and implemented a system that seeks to respect the religious liberty of religious nonprofit corporations while ensuring that employees of these entities have precisely the same access to all FDA-approved contraceptives as employees of companies whose owners have no religious objection to providing such coverage.

BURWELL V. HOBBY LOBBY STORES, INC.,
573 U.S. 682 (2014)

- The employees of religious nonprofit corporations have access to insurance coverage without cost sharing for all FDA-approved contraceptives.
- Although HHS has made the system available to religious nonprofits, HHS has provided no reason why the system could not be made available for the owners of non-profit corporations that have similar religious objections.

40

MASKING

FALCONE V. DICKSTEIN

92 F.4TH 193 (3D CIR. 2024)

- Question presented was whether masking policy implicates First Amendment.
- School district measures require those who spoke at school board to wear masks.
- Policy of the school district here was not subject to debate or policy change but to a summons and an arrest.
- It was claimed that the summons and arrest were retaliation for exercising First Amendment rights.

FALCONE V. DICKSTEIN

92 F.4TH 193 (3D CIR. 2024)

- Circuit Court reversed and remanded the court's order against George Falcone and affirmed the court's order against Gwyneth Murray-Nolan.
- There is a right to symbolically protest and not be punished for it by not wearing a mask.
- There is no First Amendment right to refuse to wear a mask as required by valid health and safety orders put in place during a recognized public health emergency.

REGULATING SPEECH CONCERNING SEXUAL CHANGE

CHILES V. SALAZAR

146 S. CT. 1010 (2026)

- Kaley Chiles is a mental-health counselor in Colorado.
- Colorado passed a state law regulating what she may say when speaking with her clients about sexual changes.
- Colorado adopted a law prohibiting licensed counselors from engaging in conversion therapy with minors.
- This can result in disciplinary action against the counselor.

CHILES V. SALAZAR

146 S. CT. 1010 (2026)

- United States Supreme Court speaking through Justice Gorsuch authored a strongly worded opinion on First Amendment rights.
- Court discussed cases where speech may or may not be examined under the highest standard, strict scrutiny.
- Content-based restrictions trigger strict scrutiny, demanding standard.
- Laws addressing fraud, defamation, and fighting words properly regulate speech.
- The therapist in this case was utilizing talk therapy and not trying to convince anybody of anything.

CHILES V. SALAZAR

146 S. CT. 1010 (2026)

- As a talk therapist, Ms. Chiles speaks with clients. She does not prescribe medication, use medical devices or employ any physical methods.
- Under the First Amendment, what matters is not how a government describes its laws or whether the law may regulate conduct in other circumstances. What matters is whether, in fact, the law regulates speech in the case at hand.
- Colorado law does not just regulate the content of the speech. It goes a step further, prescribing what views the counselor may or may not express.
- For a gay client, Ms. Chiles may express acceptance, support, and understanding.
- For a client undergoing gender transition, Ms. Chiles may offer words of assistance.

CHILES V. SALAZAR

146 S. CT. 1010 (2026)

- But if a gay or transgender client seeks counsel in the hope of changing sexual orientation or gender identity, Ms. Chiles cannot provide it.
- The law forbids the counselor from saying anything that attempts to change a client's sexual orientation or gender identity, including anything that might represent an effort to change the client's behaviors or gender expressions or romantic attractions.
- The Court had no trouble distinguishing this case from others where strict scrutiny was not required.

PARENTAL OBJECTIONS TO GENDER TRANSITIONING INFORMATION

MIRABELLI V. BONTA

607 U.S. 492 (2026)

- Court indicated that parents who objected to gender transitioning information to minor who are likely to succeed on the merits of the free exercise clause of the first amendment and the due process clause of the fourteenth amendment.
- The parents have religious objections to gender transitioning but were not told by their daughter's school when she began to present as a boy and using a male name and male pronouns during her seventh-grade year.
- The parents believe they should have been told.
- Ninth Circuit stay the injunction, and the parents and teachers filed an application seeking vacatur of the Ninth Circuit's stay pending appeal.

MIRABELLI V. BONTA

607 U.S. 492 (2026)

- Court says parents have a likelihood of success on the merits and are likely to succeed on a religious exemption claim.
- California policies will likely not survive this strict scrutiny test.
- The same is true for the subclass of parents who object to those policies on due process grounds.
- Parents, not the state, have primary authority with respect to upbringing an education of the children.
- The parents have a claim for irreparable harm and the equities are in their favor since it promotes child safety by guaranteeing a parental role in decisions concerning children's lives.



HISTORICAL PERSPECTIVE

HISTORY

52



In 1654 or 1655, the date is unclear from the literature, Stuyvesant, “importuned the colonial council to bar Jews from serving in the volunteer home guards.” While this ban was eventually overturned after a two-year legal battle between Asser levy, Joseph Barsimon and the colonial court, it represented one of the first instances of state-sanctioned discrimination against Jews serving in official positions.

HISTORY

Following the Dutch capture of Swedish territory along the Delaware River, “Stuyvesant refused to issue trade permits to Jewish settlers in the new territory.” After protests by Jewish settlers against these harmful restrictions, Stuyvesant was disciplined by the Dutch West India Company. “From then on, Jews in the colony were allowed to trade and own real estate, but not hold public office, open a retail shop, or establish a synagogue.”

54 HISTORY - PROFESSOR SARNA

Professor Jonathan Sarna provided a written statement in the district court with respect to the *Podell* matter and offered his Commentary on Anti-Semitism, an American History.



***PODELL* AMICUS - AMERICAN HEROES**

Even American heroes were not exempt from engaging in anti-Semitic rhetoric, as Thomas Jefferson, “in spite of having several Jewish acquaintances, continued to think Jews morally depraved, and lamented that ‘among them ethics are so little understood;” – Footnote Omitted

THE JEWISH SABBATH

56



As early as 1817, a Jewish lawyer name Zalegman Phillips sought to persuade a Philadelphia judge that, “those who profess the Jewish religion and others who keep the seventh day” should be exempted from blue laws on freedom of religion grounds. Although Phillips lost his case, leading nineteenth-century proponents of Sunday legislation advocated exemptions for all who conscientiously observed the sabbath on Saturday. In time, several states (twenty-four by 1908) enacted such exemptions into law.

IMMIGRATION PERSPECTIVES

The immigration of over 2 million East European Jews to the United States between 1881 and 1924 transformed the issue of the Jewish Sabbath in the United States. A great many available jobs in the clothing trade, the cigar trade, and even on farms in peddling made working on Saturday a condition of employment. With the six-day work week commonplace and Sunday closing laws strictly enforced, unsympathetic employers decreed that “if you don’t come in on Saturday, don’t bother coming in on Monday.” – Footnote Omitted

LEADING UP TO WORLD WAR II

In the decades leading up to World War II, Sarna contended that, “by all accounts, anti-Semitism crested in America during the half-century preceding World War II. During the era of nativism and then isolationism, Jews faced physical attacks, many forms of discrimination, and intense vilification in print, on the airwaves, in movies, and on stage.” – Footnote Omitted

THE BASICS OF A DISCRIMINATION CLAIM

FACIALLY NEUTRAL EMPLOYMENT PRACTICES

Some facially neutral employment practices **may** violate Title VII even in the absence of discriminatory intent, when they have disparate impact on otherwise qualified individuals. Citing *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 988 (1988).

ABSENCE OF DISCRIMINATORY INTENT

It is possible for a Title VII violation to be present not only when there is an absence of discriminatory intent, but even when the neutral employment practice has a disparate impact on those who hold minority religious views. The employment policy to host the hiring even only on Saturday (the day of Sabbath Observance), at first glance may appear to be a neutral day to hire individuals allowing more time to assess applicants.

NUMERICAL DISPARITY

62



The government argued that employer must isolate and identify specific employment practices allegedly responsible for the discrimination. The plaintiff must allege either the existence of numerical or statistical evidence demonstrating disparate impact or sufficient factual detail of a series of discrete episodes of the contested employment practice in order to raise a plausible inference that the employment practice has a discriminatory impact on the protected group.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

There must be an exhaustion of administrative remedies which is often the most significant obstacle in these cases.

RETALIATION/HOSTILE WORKING ENVIRONMENT

Could there be a claim with respect to reasonable accommodation cases, of retaliation and hostile work environment?

BROWN V. GENERAL SERVICES ADMINISTRATION

Defendants chiefly rely upon *Brown v. General Services Administration*, 425 U.S. 820 (1976). The argument is that §717 of the Civil Rights Act of 1964, codified at 42 U.S.C. §2000e-16, provides the, “exclusive judicial remedy for claims of discrimination in federal employment.” A careful reading of *Brown*, however, does not extend it to preempting federal employment *religious* discrimination.

***BROWN* AS SPECIFIC TO CLAIMS OF RACIAL DISCRIMINATION**

At least one more recent United States Supreme Court case has characterized *Brown*'s holding as specific to claims of racial discrimination in federal employment. In *Jett*, the Supreme Court noted that in *Brown*, "[the] Court...[held] that §717 of Title VII constituted the exclusive remedy for allegations of racial discrimination in federal employment." *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 734 (1989).

RFRA

Brown's rationale does not apply to the RFRA. Brown applied the principle that a, "precisely drawn, detailed statute pre-empts more general remedies." *Brown*, 491 U.S. at 735 (quotation omitted). The RFRA is a more specific remedy than Title VII. While Title VII is specific to federal employment, the RFRA only protects against government-imposed burdens on the free exercise of religion, rather than the other forms of discrimination that Title VII protects against, 42 U.S.C. §2000e-16(a); 42 U.S.C. §200066-1. *Brown* compared §717 to 42 U.S.C. §1983, finding that former is more "precisely drawn" because of Title VII's "careful and thorough remedial scheme" that "provides for a careful blend of administrative and judicial enforcement powers." *Brown*, 425 U.S. at 833.

DOES TITLE VII PREEMPT RFRA?

Depends upon the circuit in which the government is arguing. In the Third Circuit, they do argue such preemption, and in the Fourth Circuit they did not. However, an internal memorandum from the Department of Justice is that even though the Third Circuit case authority supports preemption, the government will ignore that and simply let the court decide.

69

IMPORTANCE OF RELIGIOUS FREEDOM RESTORATION ACT

The importance of the Religious Freedom Restoration Act, including the necessity for a damage remedy thereunder, is well demonstrated by *Tanzin vs. Tanvir*, 141 S. Ct. 486, 209 L. Ed. 2d 295, 220 U.S. LEXIS 5987 (2020), distinguished by *Allen vs. Becerra*, 2022 U.S. Dist. LEXIS 2989, 2022 WL 374409 (2022).



THE SCOPE OF TITLE VII

The Supreme Court, "recognized generally that Title VII does not preclude a public employee from seeking other remedies." *Id.* at 640 (citing *Alexander vs. Gardner-Denver Co.*, 415 U.S. 36 (1974)). "Title VII was designed to supplement rather than supplant existing laws and institutions relating to employment discrimination." *Id.* (quoting *Alexander*, 415 U.S. at 47-49). "The Court observed that ' [d]espite Title VII' s range and its design as a comprehensive solution for the problem of invidious discrimination in employment, the aggrieved individual clearly is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief." *Id.* (quoting *Johnson vs. Railway Express Agency*, 451 U.S. 454, 459 (1975)).

HENLEY V. BROWN

686 F. 3D 634 8TH CIR. 2012

After analyzing guidance provided by the Supreme Court's jurisprudence, the Circuit Court in Henley stated as follows:

First Title VII provides the exclusive remedy for violations of its own terms and an employment discrimination plaintiff asserting the deprivation of rights created by Title VII must comply with the Acts procedural requirements before seeking judicial review. Second, a plaintiff may not invoke a purely remedial statute such as section 1985(3), to redress a violation of a right conferred only by Title VII. However, when the employer's conduct violates not only rights created by Title VII but also rights conferred by an independent source, Title VII supplements, rather than supplants, existing remedies for employment discrimination.

OFFICIAL-CAPACITY CLAIMS AGAINST DEFENDANTS OTHER THAN SECRETARY AUSTIN

The position of the United States is that the claims against Defendants in their official capacities are "duplicative" of claims against the agency itself and therefore subject to dismissal. Counsel for Plaintiff agrees that an official-capacity suit is to be treated as a suit against the entity. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). However, that does not mean that individuals cannot be sued for their own misconduct. The fact that an individual has taken action or failed to act in a liability creating manner, does not automatically eliminate that individual in terms of claims made.