



**Joint Hearing on
Protecting Lives and Livelihoods: Vaccine Requirements and
Employee Accommodations**

**Subcommittee on Workforce Protection
and
Subcommittee on Civil Rights and Human Services
of the
House Committee on Education and Labor**

October 26, 2021

**Statement for the Record of
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Chairwoman Adams, Chairwoman Bonamici, Ranking Member Fulcher, Ranking Member Keller, and members of the Subcommittees, thank you for the opportunity to submit a statement for the record for the joint hearing, “Protecting Lives and Livelihoods: Vaccine Requirements and Employee Accommodations.”

Founded in 1947, Americans United is a nonpartisan advocacy and educational organization with a national network of more than 300,000 supporters. We are dedicated to preserving the constitutional principle of church-state separation, which is the foundation of religious freedom for all Americans. We fight to protect the right of individuals and communities to practice religion—or not—as they see fit without government interference, compulsion, support, or disparagement, so long as they do not harm others.

Our nation promises everyone the freedom to believe as they want, but our laws cannot allow anyone to use their religious beliefs to harm others. The fundamental right to be treated equally under the law depends upon the separation of church and state. This foundational American principle ensures everyone is able to live as ourselves and believe as we choose.

Religious freedom is meant to be a shield that protects; it should never be used as a sword to discriminate or cause harm. That’s especially true when it comes to public health and saving people’s lives.

The Free Exercise Clause Does Not Require a Religious Exemption from Vaccine Mandates

For more than a century, the United States Supreme Court has made clear that the government has the authority to protect public health through appropriate measures, including requiring vaccinations. In 1905, in *Jacobson v. Massachusetts*, the Supreme Court upheld a vaccination requirement, explaining that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”¹ Again in 1922, the Supreme Court in *Zucht v. King* rejected a challenge to a San Antonio ordinance that barred children from attending public or private schools without proof of vaccination.²

In *Jacobson*, the Supreme Court rejected claims that vaccination requirements violated individual liberties. The Court explained that “[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [liberty] . . . regardless of the injury that may be done to others.”³ Indeed “persons and property are subjected to all kinds of restraints and burdens in order to secure the . . . health . . . of the state.”⁴

In *Prince v. Massachusetts*, the Supreme Court explicitly held that vaccine requirements do not violate religious freedom: one “cannot claim freedom from compulsory vaccination . . . on religious grounds” because the “right to practice religion freely does not include liberty to expose the community . . . to communicable disease or . . . to ill health or death.”⁵

The holding in *Prince* was reaffirmed in *Employment Division v. Smith*,⁶ a 1990 opinion written by Justice Antonin Scalia. *Smith* held that neutral and generally applicable laws do not violate the Free Exercise Clause of the First Amendment to the U.S. Constitution—even if they result in a substantial burden on religious exercise. Allowing a person’s religious beliefs to “excuse” them from “compliance with an otherwise valid law” would make “professed doctrines of religious belief superior to the law of the land, and in effect . . . permit every citizen to become a law unto himself.”⁷ Thus, the *Smith* Court reaffirmed that the Free Exercise Clause does not “require[] religious exemptions from . . . health and safety regulation such as . . . compulsory vaccination laws.”⁸

¹ 197 U.S. 11, 27 (1905).

² 260 U.S. 174, 175 (1922).

³ *Jacobson*, 197 U.S. at 26.

⁴ *Id.* (quoting *Hannibal & St. Joseph R.R. Co. v. Husen*, 95 U.S. 465, 471 (1877)) .

⁵ 321 U.S. 158, 166-67 (1944).

⁶ 494 U.S. 872, 890 (1990).

⁷ *Id.* at 878-79 (quoting *Reynolds v. United States*, 98 U.S. 145, 166-67 (1879)).

⁸ *Id.* at 888-89 (citing *Cude v. State*, 377 S.W.2d 816 (Ark. 1964)).

Over several decades, dozens of federal and state courts have upheld this principle, confirming that, under the U.S. Constitution, religious objections do not entitle individuals to exemptions from vaccination requirements.⁹

Bottom line: there is simply no general constitutional right to a religious exemption from a public safety law such as a vaccine mandate.

A Medical Exemption to a Vaccine Mandate Does Not Necessitate a Religious Exemption Under the Constitution

Medical exemptions to vaccination requirements are ubiquitous because it would be “cruel and inhuman in the last degree” to require vaccination of a person “if it [is] apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination, or that vaccination, by reason of his then condition, would seriously impair his health, or probably cause his death.”¹⁰ Furthermore, a failure to provide medical exemptions would undermine the overall goal of vaccine requirements, which is to protect the public health and save lives.

⁹ See, e.g., *Does 1-6 v. Mills*, ___ F.4th ___, No. 21-1826, 2021 WL 4860328 (1st Cir. Oct. 19, 2021), *application for injunctive relief denied by* ___ S. Ct. ___, No. 21A90, 2021 WL 5027177 (Oct. 29, 2021); *Nikolao v. Lyon*, 875 F.3d 310 (6th Cir. 2017); *Phillips v. City of N. Y.*, 775 F.3d 538 (2d Cir. 2015); *Workman v. Mingo County Bd. of Educ.*, 419 F. App'x 348 (4th Cir. 2011); *Dixon v. de Blasio*, No. 1:21-cv-5090, 2021 WL 4750187 (E.D.N.Y. Oct. 12, 2021); *Dr. T. v. Alexander-Scott*, No. 1:21-cv-387, 2021 WL 4476784 (D.R.I. Sept. 30, 2021); *Harris v. Univ. of Mass.*, No. 21-cv-11244, 2021 WL 3848012 (D. Mass. Aug. 27, 2021), *appeal docketed*, No. 21-1770 (1st Cir. Sept. 28, 2021); *Klaassen v. Trustees of Ind. Univ.*, ___ F. Supp. 3d ___, No. 1:21-cv-238, 2021 WL 3073926 (N.D. Ind. July 18, 2021), *mot. for injunction pending appeal denied by* 7 F.4th 592 (7th Cir. 2021), *emergency application for writ of injunction denied by* No. 21A15 (U.S. Aug. 12, 2021); *W.D. v. Rockland County*, 521 F. Supp. 3d 358 (S.D.N.Y. 2021), *appeal docketed*, No. 21-551 (2d Cir. Mar. 9, 2021); *Whitlow v. California*, 203 F. Supp. 3d 1079 (S.D. Cal. 2016); *Middleton v. Pan*, No. 2:16-cv-5224, 2016 WL 11518596 (C.D. Cal. Dec. 15, 2016), *report and recommendation adopted by* 2017 WL 10543984 (C.D. Cal. July 13, 2017); *Schenker v. County of Tuscarawas*, No. 5:12-cv-1020, 2012 WL 4061223 (N.D. Ohio Sept. 14, 2012); *Brock v. Boozman*, No. 4:01-cv-760, 2002 WL 1972086 (E.D. Ark. Aug. 12, 2002); *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002); *McCarthy v. Boozman*, 212 F. Supp. 2d 945 (W.D. Ark. 2002); *Sherr v. Northport-E. Northport Union Free Sch. Dist.*, 672 F. Supp. 81 (E.D.N.Y. 1987); *F.F. v. New York*, No. 2021-443, 2021 WL 4735375 (N.Y. Oct. 12, 2021); *Acebedo v. Commonwealth*, No. 21-0187-cv, slip op. (N. Mar. I. Commw. Super. Ct. Sept. 13, 2021), <https://bit.ly/3FhBG5D>; *C.F. v. N.Y.C. Dep't of Health & Mental Hygiene*, 139 N.Y.S.3d 273 (N.Y. App. Div. 2020); *Brown v. Smith*, 235 Cal. Rptr. 3d 218 (Cal. Ct. App. 2018); *Davis v. State*, 451 A.2d 107 (Md. 1982); *Wright v. DeWitt School District No. 1*, 385 S.W.2d 644 (Ark. 1965); *Cude v. State*, 377 S.W.2d 816 (Ark. 1964); *Bd. of Educ. v. Maas*, 152 A.2d 394 (N.J. Super. Ct. App. Div. 1959), *aff'd mem.*, 158 A.2d 330 (N.J. 1960); *State ex rel. Dunham v. Bd. of Educ.*, 96 N.E.2d 413 (Ohio 1951); *Anderson v. State*, 65 S.E.2d 848 (Ga. Ct. App. 1951); *Mosier v. Barren County Bd. of Health*, 215 S.W.2d 967, 969 (Ky. 1948); *Sadlock v. Bd. of Educ.*, 58 A.2d 218 (N.J. 1948); *In re Whitmore*, 47 N.Y.S.2d 143 (N.Y. Dom. Rel. Ct. 1944); *State v. Drew*, 192 A. 629 (N.H. 1937); *Vonnegut v. Baun*, 188 N.E. 677, 679 (Ind. 1934); *Commonwealth v. Green*, 168 N.E. 101 (Mass. 1929); *City of New Braunfels v. Waldschmidt*, 207 S.W. 303, 305 (Tex. 1918). See also, *Brown v. Stone*, 378 So. 2d 218, 223 (Miss. 1979) (holding not only that religious exemption to Mississippi student-vaccination statute was not required by Free Exercise Clause but also that it violated Equal Protection Clause because it “would discriminate against the great majority of children whose parents have no such religious convictions”).

¹⁰ *Jacobson*, 197 U.S. at 39.

Yet some people wrongly point to recent Supreme Court opinions to claim that medical exemptions necessitate religious exemptions. This is not the case.

Although the Court stated in *Tandon v. Newsom* that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise,” the Court explained that “whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue.”¹¹ In other words, when a nonreligious exemption to a law advances the governmental interests served by the law, or at least does not undermine those interests as much as a religious exemption would, the nonreligious exemption does not trigger a constitutional obligation to provide a religious exemption.

The obvious government interest in requiring vaccinations is to protect public health and a medical exemption *advances* this purpose. As explained by Professor Douglas Laycock, “[M]edical exceptions don’t undermine the government’s interest in saving lives, preventing serious illness or preserving hospital capacity. By avoiding medical complications, those exceptions actually serve the government’s interests.”¹²

In stark contrast, a religious exemption undermines the vaccination mandate’s purpose of protecting the public health and welfare. A religious exemption undermines public health by leading to fewer people being vaccinated and increasing the risk of disease outbreaks.

This distinction is evident in *Smith*. In *Smith*, the Court held that a religious exemption was not required in a law banning possession of controlled substances, even though the law included a medical exemption. As then-Judge Samuel Alito explained in an opinion for the Third Circuit, strict scrutiny did not apply to the refusal to provide a religious exemption because “[t]he purpose of drug laws is to protect public health and welfare.” But “when a doctor prescribes a drug, the doctor presumably does so to serve the patient’s health and in the belief that the overall public welfare will be served.”¹³

The Establishment Clause Bars Religious Exemptions that Cause Harm

Although the government may offer religious accommodations even where it is not required to do so by the Constitution, its ability to provide religious accommodations is not unlimited.

¹¹ *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam).

¹² Douglas Laycock, [What’s the Law on Vaccine Exemptions? A Religious Liberty Expert Explains](#), *The Conversation* (Sept. 15, 2021).

¹³ *Blackhawk v. Pennsylvania*, 381 F.3d 202, 211 (3d Cir. 2004) (discussing *Employment Div. v. Smith*, 494 U.S. 872 (1990)).

The Establishment Clause prohibits the government from granting religious exemptions that would detrimentally affect any third party.¹⁴ Thus, when crafting an exemption, the government “must take adequate account of the burdens” an accommodation places on nonbeneficiaries¹⁵ and ensure it is “measured so that it does not override other significant interests.”¹⁶ In short, the government may not make a person bear the costs of another person’s religion.

For example, in *Cutter v. Wilkinson*, the Court upheld the Religious Land Use and Institutionalized Persons Act (RLUIPA) against an Establishment Clause challenge. Under RLUIPA, people who are incarcerated may seek exemptions from prison rules that substantially burden their religious exercise.¹⁷ The Court explained that “[p]roperly applying RLUIPA” includes taking adequate account of other significant interests and does not “elevate accommodation of religious observances over an institution’s need to maintain order and safety.”¹⁸ The Court concluded that if, under RLUIPA, “requests for religious accommodations become excessive, impose unjustified burdens on other . . . persons, or jeopardize the effective functioning of an institution, the facility would be free to resist” granting an accommodation.¹⁹

Religious exemptions to vaccination requirements in the workplace put the health and safety of other people—including coworkers, patients, and customers—at risk and impose unjustified burdens on them and on employers. The Establishment Clause bars religious exemptions that cause harm.

Considerations Under Title VII

When discussing vaccination requirements in the workplace it is also important to examine Title VII of the Civil Rights Act. Title VII bars employment discrimination on the basis of race, color, religion, national origin, and sex, including sexual orientation and gender identity.²⁰ With respect

¹⁴ *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 729 n.37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring); *Cutter*, 544 U.S. at 726 (may not “impose unjustified burdens on other[s]”); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (may not “impose substantial burdens on nonbeneficiaries”).

¹⁵ *Cutter*, 544 U.S. at 720; *see also Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709-10 (1985).

¹⁶ *Cutter*, 544 U.S. at 722.

¹⁷ 42 U.S.C. §§ 2000cc - cc-5.

¹⁸ *Cutter*, 544 U.S. at 722.

¹⁹ *Id.* at 726.

²⁰ 42 U.S.C. § 2000e-2. Title VII also applies to federal employees and federal district and appellate courts have held that “Title VII provides the exclusive remedy” for religious discrimination claims, and not the Religious Freedom Restoration Act (RFRA). *See, e.g., Harrell v. Donahue*, 638 F.3d 975, 984 (8th Cir. 2011) (“[Appellant’s] claims under RFRA are barred because Title VII provides the exclusive remedy for his claims of religious discrimination.”); *Francis v. Mineta*, 505 F.3d 266, 272 (3d Cir. 2007) (“It is equally clear that Title VII provides the exclusive remedy for job-related claims of federal religious discrimination, despite [Appellant’s] attempt to rely upon the provisions of RFRA.”); *see also Holly v. Jewell*, 196 F. Supp. 3d 1079, 1090 (N.D. Cal. 2016) (“District courts uniformly have held that where a federal employee asserts a RFRA claim that addresses the same basic injury as a parallel claim asserted under Title VII, the RFRA claim is barred because Title VII provides the exclusive remedy.”) (citing *Tagore v. United States*, No. CIV. A. H–09–0027, 2009 WL 2605310, at *7-*9 (S.D. Tex. Aug. 21, 2009), *aff’d in part, rev’d in part* 735 F.3d 324 (5th Cir. 2013)).

to religion, Title VII also requires an employer to offer a reasonable accommodation for an employee's or applicant's sincerely held religious belief, observance, and practice, unless an accommodation would impose an "undue hardship" on the employer.²¹ An accommodation is an "undue hardship" when it imposes "more than de minimis" cost or burden on the employer.²²

Sincerely Held Religious Belief

An employer is only obligated to offer a reasonable accommodation to an employee, when the employee's belief, observance, or practice is religious in nature²³ and sincerely held.²⁴ To ascertain if the employee meets this criteria, employers not only are permitted to ask the employee questions²⁵ but should be encouraged to. Granting accommodations to employees without ensuring their religious beliefs or practices are sincerely held could lead to abuse of the accommodation process and will only increase the risk of spreading COVID-19 in the workplace.

According to the Equal Employment Opportunity Commission, under Title VII, religion includes familiar organized religions as well as religious beliefs that are not part of a set of traditional religious teachings. It includes beliefs that may be held by only a few people, as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."²⁶ But "[s]ocial, political, or economic philosophies, as well as mere personal preferences, are not religious beliefs protected by Title VII."²⁷

Courts consider several factors when determining whether a belief or practice is religious. One court explained:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.²⁸

In *Fallon v. Mercy Catholic Medical Center of Southeastern Pennsylvania*, a hospital employee requested a religious accommodation under Title VII from the requirement to get the flu vaccine, explaining he believed "one should not harm their own body" and the vaccine "may do more

²¹ 42 U.S.C. § 2000e(j).

²² *TWA v. Hardison*, 432 U.S. 63 (1977).

²³ *E.g.*, *Fallon v. Mercy Catholic Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017).

²⁴ *E.g.*, *EEOC v. Union Independiente De La Autoridad De Acueductos y Alcantarillados de Puerto Rico*, 279 F.3d 49, 55-57 (1st Cir. 2002). It is important to remember that although the "truth of a belief is not open to question," whether the belief is "truly held" is a "significant question." *Id.* at 56 (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

²⁵ *E.g.*, EEOC Compliance Manual on Religious Discrimination, § 12-I(A)(3) (2021).

²⁶ EEOC Compliance Manual, § 12-I(A)(1) (citing Commission Guidelines, 29 C.F.R. § 1605.1).

²⁷ *Id.* at § 12-I(A)(1).

²⁸ *Fallon*, 877 F.3d at 491 (quoting *Africa v. Commonwealth*, 662 F.2d 1025, 1032 (3d Cir. 1981)).

harm than good.”²⁹ The Third Circuit determined that these were not religious beliefs for the purposes of Title VII, because they did not “address fundamental and ultimate questions having to do with deep and imponderable matters” and were not “comprehensive in nature.”³⁰

The religious belief must also be sincerely held. According to the EEOC, sincerity does not hinge on “scrupulous” observance, but evidence that the employee has acted inconsistent with their stated beliefs is relevant to determining sincerity. This evidence could include:

“whether the employee has behaved in a manner markedly inconsistent with the professed belief; whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons; whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.”³¹

If an employer is “aware of facts that provide an objective basis for questioning” whether an employee’s belief or practice is either religious or sincerely held, “the employer would be justified in requesting additional supporting information.”³²

For example, in *Bushouse v. Local Union 2209, United Automobile, Aerospace & Agricultural Implement Workers of America*, the plaintiff had “utilized information and forms prepared by” an advocacy organization “in submitting his request for religious accommodation” and the union had “reason to believe that the request [was] either insincere, political, or a personal preference rather than a religious belief.”³³ Based on these facts, the court held that “Title VII does permit an inquiry into the sincerity and religious nature of” an employee’s or union member’s “purported beliefs before the duty to accommodate such a belief arises.”³⁴ Likewise, with COVID-19 vaccination requirements, if an employee uses one of many widely available online forms³⁵ to request a religious accommodation, the employer has “an objective basis for questioning” whether the request is based on a sincerely held religious belief or practice.

²⁹ *Fallon*, 877 F.3d at 492.

³⁰ *Id.* See also, *Brown v. Children’s Hosp. of Phila.*, 794 F. App’x 226, 227 (3d Cir. 2020) (healthcare worker not entitled to Title VII religious accommodation because her objection to receiving a flu vaccine was not a religious belief); *cf.*, *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, No. 21-cv-4024, 2021 WL 4399672, *6 (E.D. Pa. Sept. 27, 2021) (Although each plaintiff seeking religious exemption from wearing masks in school under First Amendment have “passionate objection to wearing masks,” court determined objections were an “isolated teaching” or “personal moral code” rather than a religious belief “that warrants First Amendment protection.”)

³¹ EEOC Compliance Manual, § 12-I(A)(2) (footnotes omitted).

³² EEOC, [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) at K.12 (Oct. 28, 2021); see also [EEOC Informal Discussion Letter](#) (Mar. 5, 2012) (discussion of health care workers’ requests for exemption from employer-mandated vaccination).

³³ *Bushouse v. Local Union 2209, UAW*, 164 F. Supp. 2d 1066, 1071, 1073 (N.D. Ind. 2001).

³⁴ *Id.* at 1075.

³⁵ *E.g.*, Ruth Graham, [Vaccine Resisters Seek Religious Exemptions. But What Counts as Religious?](#), *N.Y. Times* (Sept. 11, 2021).

When there is “[e]vidence tending to show that an employee acted in a manner inconsistent with his professed religious belief,” the employer may also question the employee because consistency is “of course, relevant to the . . . evaluation of sincerity.”³⁶

There are numerous documented instances of people claiming a religious objection to the COVID-19 vaccine when they have not objected to other vaccines. Conway Regional Health System in Arkansas, for example, had a much larger percentage of staff request a religious accommodation to the required COVID-19 vaccine than to a required flu vaccine. In doing so, employees frequently cited an objection to the use of fetal cell lines in the testing or development of the COVID-19 vaccine. The employer asked employees to attest they do not use many other common medications developed using fetal cell lines in order to ensure that “their sincerely held religious belief is consistent and true.”³⁷

Reasonable Accommodation and Undue Hardship

If it’s clear that an employee’s belief or practice is both religious and sincerely held, then the employer must offer a reasonable accommodation to the employee unless offering the accommodation would impose more than a de minimis cost. This requirement respects the rights of employees with religious objections, but also takes into consideration how an accommodation would affect the employer and the workplace, including coworkers, customers, and patients.

Under Title VII, federal courts routinely rule in favor of employers when requested accommodations would negatively affect third parties.³⁸ In *Robinson v. Children’s Hospital Boston*, for example, the court held that “granting [plaintiff’s] request—no vaccination while

³⁶ *Union Independiente*, 279 F.3d at 57.

³⁷ Parris Kane, [Conway Regional CEO Says COVID-19 Religious Exemption Isn’t an Attempt to Shame Employees](#), KATV.com (Sept. 14, 2021).

³⁸ See, e.g., *Shelton v. Univ. of Med. & Dentistry*, 223 F. 3d 220 (3d Cir. 2000) (holding that a hospital that offered to transfer a nurse who refused to treat certain pregnancy complications based on her religious views acted properly because it was not required to risk that a patient be denied emergency medical treatment); *Chalmers v. Tulon Co.*, 101 F.3d 1012 (4th Cir. 1996) (employer did not have to accommodate employee who proselytized coworkers, mailing them letters that reprimanded them for immoral conduct and urging them to “get right” with God because Title VII does not require allowing an employee to impose religion on others); *Baz v. Walters*, 782 F. 2d 701 (7th Cir. 1986) (Veterans Administration hospital did not have to accommodate a chaplain serving psychiatric patients who wanted to use his position to proselytize and engage in his own religious ministry, which undermined the purpose of the hospital—the overall well-being of the patients); *Noesen v. Medical Staffing Network, Inc.*, No. 06-C-071-S, 2006 WL 1529664 (W.D. Wis. June 1, 2006), *aff’d*, 232 F. App’x 581 (7th Cir. 2007) (employer offered pharmacist with religious objection to filling birth control prescriptions the option of notifying other members of the staff; employer did not have to accommodate “abandonment” of customers); *Favero v. Huntsville Ind. Sch. Dist.*, 939 F. Supp. 1281 (S.D. Tex. 1996), *aff’d mem.*, 110 F.3d 793 (5th Cir. 1997) (school district did not have to accommodate school bus drivers’ request for eight days off to observe religious holiday because the accommodation interfered with the district’s conduct of its business; it was chronically short-staffed, forced to combine bus routes, causing delays, and needed mechanics to drive bus routes instead of performing their usual jobs, which put children at risk of being stranded if busses broke down); cf., *Weber v. Roadway Exp., Inc.*, 199 F.3d 270, 274 (5th Cir. 2000) (“The mere possibility of an adverse impact on co-workers . . . is sufficient to constitute an undue hardship.”).

keeping her patient-care position—would have created an undue hardship,³⁹ because the accommodation would “cause or increase safety risks.”⁴⁰

According to the EEOC, factors relevant to determining an undue hardship in the context of COVID-19 vaccinations include “the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine.”⁴¹ In the hospital setting, factors relevant to an accommodation for vaccination requirements include “the assessment of the public risk posed at a particular time, the availability of effective alternative means of infection control, and potentially the number of employees who actually request accommodation.”⁴²

* * *

We are a stronger nation when we protect religious freedom for all. Americans United remains steadfast in our work, as we have for more than seventy-five years, to fight back against threats to religious freedom, including religious exemptions that risk harm to others.

³⁹ No. 14-10263-DJC, 2016 WL 1337255, at *8 (D. Mass. Apr. 5, 2016).

⁴⁰ *Id.* (quoting *E.E.O.C. v. Oak-Rite Mfg. Corp.*, No. IP99-1962-C-H/G, 2001 WL 1168156, at *10 (S.D. Ind. Aug. 27, 2001). See also *Draper v. United States Pipe & Foundry Co.*, 527 F.2d 515, 521 (6th Cir. 1975) (“[S]afety considerations are highly relevant in determining whether a proposed accommodation would produce an undue hardship on the employer’s business. Title VII does not require that safety be subordinated to the religious beliefs of an employee.”).

⁴¹ EEOC, What You Should Know at K.12.

⁴² EEOC Informal Discussion Letter.