

RECENT CASES

FIRST AMENDMENT — EXPRESSIVE ASSOCIATION — SECOND CIRCUIT HOLDS THAT EXPRESSIVE ASSOCIATION RIGHTS EXTEND TO EMPLOYMENT. — *CompassCare v. Hochul*, 125 F.4th 49 (2d Cir. 2025).

The fundamental right to expressive association first emerged in *NAACP v. Alabama ex rel. Patterson*,¹ a case that shielded a civil rights organization from forced disclosure of its membership.² In the following years, some have contested the right due to its growing tension with antidiscrimination laws.³ Recently, in *CompassCare v. Hochul*,⁴ the Second Circuit held that New York’s law prohibiting employment discrimination based on an employee’s reproductive health choices may violate an employer’s right to expressive association.⁵ In holding that expressive association rights extend to the employment context, the Second Circuit diverged from precedent and minimized important differences between voluntary associations and employment relationships. Additionally, the Second Circuit’s test for expressive association claims excessively defers to employers seeking to immunize themselves from antidiscrimination law in cases where its protections are most needed.

Signed in November 2019,⁶ New York Labor Law § 203-e⁷ (the Act) prevents employers “from accessing an employee’s personal information regarding . . . reproductive health decision making” and from discriminating based on these decisions.⁸ Further, it requires that any employer who issues “an employee handbook . . . must include in the handbook notice of employee rights and remedies under [the Act].”⁹

Thereafter, CompassCare Pregnancy Services, the National Institute of Family and Life Advocates (NIFLA), and First Bible Baptist Church (First Bible) sued New York officials on First Amendment and vagueness grounds, seeking declaratory and injunctive relief.¹⁰ CompassCare, “a pregnancy care center,” “provides its services . . . pursuant to its pro-

¹ 357 U.S. 449 (1958); John D. Inazu, *The Strange Origins of the Constitutional Right of Association*, 77 TENN. L. REV. 485, 486 (2010).

² See *NAACP*, 357 U.S. at 460, 466.

³ See Elizabeth Sepper, *The Return of Boy Scouts of America v. Dale*, 68 ST. LOUIS U. L.J. 803, 810 (2024); see, e.g., Andrew Koppelman, *Signs of the Times: Dale v. Boy Scouts of America and the Changing Meaning of Nondiscrimination*, 23 CARDOZO L. REV. 1819, 1821–24 (2002).

⁴ 125 F.4th 49 (2d Cir. 2025).

⁵ *Id.* at 62.

⁶ *Senate Bill S 660*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2019/S660> [<https://perma.cc/HR56-J4WK>].

⁷ N.Y. LAB. LAW § 203-e (McKinney 2020).

⁸ *Id.* §§ 203-e(1)–e(2)(a).

⁹ *Id.* § 203-e(6).

¹⁰ *CompassCare v. Cuomo*, 465 F. Supp. 3d 122, 133, 136–37, 141–42 (N.D.N.Y. 2020).

life and religious viewpoint.”¹¹ It requires that its staff “believe in and agree to abide by its positional statements on abortion . . . [and] birth control”¹² so that “it will be able to spread an authentic message . . . and reduce the perceived need for abortion.”¹³ NIFLA, a national organization of “pregnancy care centers,”¹⁴ has New York members that “require their employees . . . to assent to and personally live by . . . organizational codes of conduct, positional statements, and/or statements of faith regarding pregnancy . . . [and] abortion.”¹⁵ First Bible “believes that abortion constitutes the unjustified, unexcused taking of unborn human life,”¹⁶ and refuses to “hire or retain any . . . employee . . . who” does not live according to “its statement of faith.”¹⁷

The district court granted the State’s motion to dismiss the expressive association, free exercise, religious autonomy, and vagueness claims, and most of the free speech claims.¹⁸ The court concluded that the State “ha[d] a legitimate interest”¹⁹ and did not “significant[ly] restrict[] . . . [the plaintiffs’] associational rights.”²⁰ It dismissed the free exercise claim because it determined that the Act was “generally applicable”²¹ and not motivated by animus.²² The court noted that the First Amendment does not “offer[] a blanket exception to religious organizations in . . . hiring and firing.”²³ It found that the Act’s examples of reproductive health decisionmaking were sufficiently specific.²⁴ As to speech, the court found that the waiver provision was content neutral.²⁵

The district court denied the State’s motion to dismiss the claims about the Act’s notice provision and entered a preliminary injunction barring its enforcement.²⁶ Applying strict scrutiny, the court held that the plaintiffs were likely to succeed in arguing that the notice requirement compelled speech and was too broad because less restrictive means were available to apprise employees of their rights.²⁷ After discovery, the parties cross-moved for summary judgment as to the notice provision.²⁸ The court granted the plaintiffs’ motion and permanently

¹¹ Complaint ¶¶ 55, 80, *CompassCare*, 465 F. Supp. 3d 122 (No. 19-cv-1409).

¹² *Id.* ¶ 83.

¹³ *Id.* ¶ 93.

¹⁴ *Id.* ¶ 97.

¹⁵ *Id.* ¶ 106.

¹⁶ *Id.* ¶ 121.

¹⁷ *Id.* ¶ 131.

¹⁸ *CompassCare*, 465 F. Supp. at 150, 155, 159, 161–62, 164, 167 (N.D.N.Y. 2020).

¹⁹ *Id.* at 149.

²⁰ *Id.* at 150.

²¹ *Id.* at 155.

²² *See id.* at 154.

²³ *Id.* at 164.

²⁴ *Id.* at 166.

²⁵ *Id.* at 160. See the waiver provision at N.Y. LAB. LAW § 203-e(2)(b).

²⁶ *CompassCare*, 465 F. Supp. at 159, 167.

²⁷ *Id.* at 157–59.

²⁸ *CompassCare v. Cuomo*, 594 F. Supp. 3d 515, 518 (N.D.N.Y. 2022).

enjoined enforcement of the provision.²⁹ The parties filed appeals, which were held in abeyance pending the decision in *Slattery v. Hochul*,³⁰ a Second Circuit case raising similar challenges to the Act.³¹

After the Second Circuit decided *Slattery*, it vacated the dismissal of CompassCare’s expressive association claim and the grant of summary judgment as to the notice provision, but it affirmed the dismissal of the free speech and free exercise claims.³² Writing for the panel, Judge Merriam³³ applied *Zauderer v. Office of Disciplinary Counsel*,³⁴ in which mandatory commercial disclosures of “purely factual and uncontroversial information” were not subject to strict scrutiny.³⁵ The court held that disclosing rights and remedies available under New York law — while potentially reflecting a “controversial” policy judgment — “[wa]s not itself controversial”³⁶ and “[d]id not require alter[ing]” protected speech in the handbook.³⁷ The court remanded because the outcome of each plaintiff’s expressive association claim would determine whether the notice provision applies.³⁸

As to free speech and free exercise, the Second Circuit reaffirmed *Slattery*.³⁹ It found that employment decisions were not “sufficient[ly] communicative . . . to bring the First Amendment into play.”⁴⁰ Similarly, it found that “the obligation to comply with a valid and neutral law of general applicability” did not give rise to a free exercise claim.⁴¹

As to expressive association, the Second Circuit began by discussing relevant Supreme Court precedent.⁴² In *Roberts v. United States Jaycees*,⁴³ the Court held that the First Amendment supported a “right to associate with others,”⁴⁴ which “plainly presuppose[d] a freedom not to associate.”⁴⁵ Further, in *Boy Scouts of America v. Dale*,⁴⁶ the Court held that the “freedom not to associate”⁴⁷ could, in some instances, permit groups to exclude members even where doing so would violate

²⁹ *Id.* at 529.

³⁰ 61 F.4th 278 (2d Cir. 2023); Brief for Appellees-Cross-Appellants at 17–18, *CompassCare*, 125 F.4th 49 (Nos. 22-951, 22-1076).

³¹ *Slattery*, 61 F.4th at 288.

³² *CompassCare*, 125 F.4th at 54, 69.

³³ Judges Parker and Pérez joined the opinion. *Id.* at 53.

³⁴ 471 U.S. 626 (1985).

³⁵ *CompassCare*, 125 F.4th at 67 (quoting *Zauderer*, 471 U.S. at 651).

³⁶ *Id.* at 65.

³⁷ *Id.* at 66.

³⁸ *Id.* at 67.

³⁹ *Id.*

⁴⁰ *Id.* at 68 (quoting *Texas v. Johnson*, 491 U.S. 397, 404 (1989)).

⁴¹ *Id.* (quoting *Cent. Rabbinical Cong. of the U.S. & Can. v. N.Y.C. Dep’t of Health & Mental Hygiene*, 763 F.3d 183, 193 (2d Cir. 2014)).

⁴² *See id.* at 57–58.

⁴³ 468 U.S. 609 (1984).

⁴⁴ *Id.* at 622.

⁴⁵ *Id.* at 623.

⁴⁶ 530 U.S. 640 (2000).

⁴⁷ *Id.* at 648 (quoting *Roberts*, 468 U.S. at 623).

antidiscrimination laws.⁴⁸ The *Dale* Court devised a three-part test to determine whether an antidiscrimination law violates the right to expressive association: First, the court “determine[s] whether the group engages in ‘expressive association’”⁴⁹ and “defer[s] to an association’s assertions regarding the nature of its expression.”⁵⁰ Second, the court considers “whether [a protected class member’s] presence . . . would significantly burden” the group’s expression, again “defer[ring] to” the group.⁵¹ But *Dale* cautioned that “an expressive association” could not “erect a shield against antidiscrimination laws simply by asserting that mere acceptance of a member from a particular group would impair its message.”⁵² Third, if the court finds a burden, it asks whether the state’s interests outweigh the competing expressive interest.⁵³

After reviewing these precedents, the Second Circuit noted that “[t]he Supreme Court has never explicitly addressed whether, and to what extent, an *employer* has a right of expressive association with respect to its paid employees.”⁵⁴ The Court has instead “considered the relationships among members of voluntary associations.”⁵⁵ The State asked the Second Circuit not to extend the right to employment, a decision the court had not previously been asked to make.⁵⁶ Rather, in a prior case, the court had “implicitly assumed without deciding . . . that employers enjoy at least some right to expressive association.”⁵⁷ And in *Slattery*, the Second Circuit had “applied *Dale* to hold that an anti-abortion pregnancy center plausibly stated” an expressive association claim.⁵⁸ In *CompassCare*, the court interpreted this “portion[] of the opinion” as “necessary to [the] result.”⁵⁹ Thus, the court concluded it could not “hold that employers have *no* freedom of expressive association”; it had to consider “[t]he *scope* of [their] freedom . . . in light of *Slattery*.”⁶⁰

The Second Circuit declined to hold that employers’ expressive association rights equaled those of voluntary membership organizations.⁶¹ To the contrary, it noted that there are “*meaningful differences* between

⁴⁸ See *id.* at 653–56.

⁴⁹ *Id.* at 648.

⁵⁰ *Id.* at 653.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *id.* at 658–59. Accordingly, Professor Elizabeth Sepper has noted that *Dale* “can be read to give expressive associations a presumptive out from antidiscrimination law.” Sepper, *supra* note 3, at 806.

⁵⁴ *CompassCare*, 125 F.4th at 58.

⁵⁵ *Id.* (citing *Dale*, 530 U.S. at 649–50; *Roberts v. U.S. Jaycees*, 468 U.S. 609, 612–13 (1984); *N.Y. State Club Ass’n v. City of New York*, 487 U.S. 1, 8–9 (1988); *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 539–40 (1987)).

⁵⁶ See *id.* (citing Brief for Appellees-Cross-Appellants, *supra* note 30, at 31).

⁵⁷ *Id.* (citing *New Hope Fam. Servs. v. Poole*, 966 F.3d 145, 178–80 (2d Cir. 2020)).

⁵⁸ *Id.* (citing *Slattery v. Hochul*, 61 F.4th 278, 286–91 (2d Cir. 2023)).

⁵⁹ *Id.* at 59 (alterations in original) (quoting *Seminole Tribe v. Florida*, 517 U.S. 44, 67 (1996)).

⁶⁰ *Id.*

⁶¹ See *id.* at 59–60.

relationships among members of voluntary organizations and relationships between employers and employees,” including that “[e]mployment relationships are contractual,” “[e]mployees rely on their jobs for their livelihoods,” “significant power imbalances often exist between employers and employees,”⁶² and “employment . . . relationships are heavily regulated.”⁶³ Accordingly, the court stated that fully extending *Dale* to the employment context “could destabilize” antidiscrimination law.⁶⁴

The court held that an employer “must show that the Act threatens its very mission . . . in the context of a specific employment decision” to proceed with an expressive association claim.⁶⁵ This showing would be based on “the responsibilities of the position” — such as “whether it is client-facing” or “involves . . . speaking for the organization” — and the specific “conduct or attribute of the employee that renders the[ir] employment . . . a threat to the employer’s mission.”⁶⁶ The court then asks whether the state interests outweigh the burden on the employer.⁶⁷ The court remanded, asking “each Plaintiff . . . to demonstrate that it meets the relevant standard.”⁶⁸

The Second Circuit’s extension of expressive association rights to the employer-employee relationship departs from other federal courts and permits invidious discrimination in the workplace. The differences the court identified between employment and nonemployment contexts are at odds with its extension of the right and the test it derived for a sufficient claim. That test opens the door for courts to defer excessively to employers’ assessments of what would burden their expression. Claims of this nature would erode the protections of antidiscrimination law.

The Second Circuit found that expressive association rights extend to the employment context despite several federal courts’ refusal to do so.⁶⁹ In *Hishon v. King & Spalding*,⁷⁰ the Supreme Court rejected an employer’s argument that “the application of Title VII” to the employer’s choice not to promote a woman lawyer to partner “would infringe constitutional rights of expression or association,”⁷¹ as those rights do not permit “[i]nvidious private discrimination.”⁷² The Court

⁶² *Id.* at 59 (emphasis added).

⁶³ *Id.* at 60.

⁶⁴ *Id.* (acknowledging amici arguments). The court also noted that “permitting an employer to take adverse actions against employees on the basis of their . . . reproductive health decisions . . . could create a conflict with the protections of Title VII.” *Id.* n.7.

⁶⁵ *Id.* at 61 (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 653 (2000)).

⁶⁶ *Id.*

⁶⁷ *See id.* at 61–62.

⁶⁸ *Id.* at 62.

⁶⁹ The Second Circuit is the first federal appellate court to expand explicitly expressive association rights to employment. *See* Brief for Appellees-Cross-Appellants, *supra* note 30, at 31–32.

⁷⁰ 467 U.S. 69 (1984).

⁷¹ *Id.* at 78.

⁷² *Id.* (alteration in original) (quoting *Norwood v. Harrison*, 413 U.S. 455, 470 (1973)).

reaffirmed *Hishon* in *Wisconsin v. Mitchell*⁷³ and *New York State Club Ass'n v. City of New York*.⁷⁴ And unlike the activity of voluntary membership organizations, the Court has not described employment decisions as “inherent[ly] expressive[.]”⁷⁵ Accordingly, lower courts in several discrimination cases have not extended expressive association rights to employment.⁷⁶ For example, in a case involving Title VII⁷⁷ claims against a religious school, an Indiana district court rejected the school’s freedom of association defense, noting that “*Dale* did not arise from the employment context” and that “the Supreme Court has explicitly rejected a freedom of association defense in the employment context.”⁷⁸ In defining employers’ expressive association rights, *CompassCare* cited *Slattery* despite its tacit reasoning⁷⁹ and tension with *Hishon*.⁸⁰

Extending expressive association rights to the employment relationship conflicts with the Second Circuit’s express recognition of the differences between employment and nonemployment contexts. The court discussed “meaningful differences” between voluntary associations and

⁷³ 508 U.S. 476, 487 (1993) (“In *Hishon*, we rejected the argument that Title VII infringed employers’ First Amendment rights.”).

⁷⁴ 487 U.S. 1, 12 (1988) (citing *Hishon*, 467 U.S. at 78).

⁷⁵ *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 568 (1995); *cf.* *Roberts v. U.S. Jaycees*, 468 U.S. 609, 634 (1984) (O’Connor, J., concurring in part and concurring in the judgment) (“The Constitution does not guarantee a right to choose employees . . . or those with whom one engages in simple commercial transactions, without restraint from the State.”).

⁷⁶ *See, e.g., Richardson v. Nw. Christian Univ.*, 242 F. Supp. 3d 1132, 1153 (D. Or. 2017) (citing *Hishon*, 467 U.S. at 78) (holding that Title VII did not “infringe[]” on the “negative associational rights” of private employers, including religious institutions); *Billard v. Charlotte Cath. High Sch.*, No. 17-cv-00011, 2021 WL 4037431, at *23 (W.D.N.C. Sept. 3, 2021) (“[H]iring paid employees is commercial activity, not expressive association. Freedom of association does not apply in the employment context.”), *rev’d on other grounds*, 101 F.4th 316, 333 (4th Cir. 2024) (“As the district court recognized, endorsing . . . [defendant’s association] defense[] would require us to step beyond existing precedent and significantly diminish Title VII’s protections.” *Id.* at 324.); *McMahon v. World Vision, Inc.*, 704 F. Supp. 3d 1121, 1144 (W.D. Wash. 2023) (“[T]his employment discrimination action does not implicate . . . expressive associational rights.”), *appeal filed*, No. 24-3259 (9th Cir. May 22, 2024). But there is a growing undercurrent of lower court decisions extending expressive association rights to private employers. *See, e.g., Our Lady’s Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 821–22 (E.D. Mo. 2018) (“[a]pplying the principles of *Dale*,” *id.* at 821, without justifying its extension to employment); *Bear Creek Bible Church v. Equal Emp. Opportunity Comm’n*, 571 F. Supp. 3d 571, 615–16 (N.D. Tex. 2021) (“conclud[ing] that [*Dale*] [wa]s the most analogous case,” *id.* at 616), *vacated in relevant part sub nom. Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm’n*, 70 F.4th 914, 940 (5th Cir. 2023); *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1184–85 (D. Colo. 2023) (citing *Dale* and *Slattery* to find that the Academy “ha[d] the right to expressive association which the State’s hiring rules likely violate[d],” *id.* at 1184).

⁷⁷ 42 U.S.C. § 2000e-2.

⁷⁸ *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 496 F. Supp. 3d 1195, 1209 (S.D. Ind. 2020) (citing *Hishon*, 467 U.S. at 78).

⁷⁹ *Slattery* applied the freedom of expressive association precedents without justification. The parties had not briefed or argued the issue. Brief for Appellees-Cross-Appellants, *supra* note 30, at 26. Still, *CompassCare* extended the right to employment. 125 F.4th at 59.

⁸⁰ *See McMahon*, 704 F. Supp. 3d at 1145 (“[*Slattery*] fails to address the Supreme Court’s holding in *Hishon* . . .”).

employment relationships, noting that the latter are governed by contracts, power dynamics, and state and federal regulations.⁸¹ Employment, according to the court, is also “central to the well-being of the nation and its citizens.”⁸² But allowing employers to allege violations of expressive association rights exacerbates power differentials and undermines laws protecting employees from discrimination.⁸³

Further, the Second Circuit’s test for whether an antidiscrimination law violates an employer’s expressive association right only superficially reflects the differences the court identified. The court attempted to cabin its extension of the doctrine — and distinguish its inquiry from *Dale* — by requiring that the employment decision compromise the organization’s “very mission,”⁸⁴ rather than “merely . . . impair[ing]” the organization’s “expressive activity.”⁸⁵ But this distinction is only meaningful if courts can reliably home in on an organization’s true “mission.”

The test does not equip courts to make such a determination. The Second Circuit enumerated factors to assess how an employment decision may impact an employer’s mission,⁸⁶ but it did not define the contours of what an employer’s mission is. Language such as “very mission” and “structure and identity”⁸⁷ offers minimal guidance to lower courts applying the right to the employment context. Further, the court did not clarify the degree of deference owed to employers on the question of their mission. It “note[d] that First Bible d[id] not allege that anti-abortion advocacy [wa]s central to its mission,”⁸⁸ suggesting that an employer’s characterization of its mission does carry weight. As a result, discriminatory employers may be encouraged to define their missions broadly to claim that opposition to particular protected classes is central to their work.⁸⁹ This is true even if the organization was not formed to oppose the conduct that the law protects. As with *Dale*, deference makes it “hard to imagine a group that wants to discriminate that cannot avoid the application of state and local antidiscrimination laws.”⁹⁰

First Bible’s claims exemplify the importance of denying or limiting an employer’s expressive association right to make adverse employment decisions. Religious employers like First Bible can already claim a “ministerial exception” such that courts cannot intervene in “employment

⁸¹ *CompassCare*, 125 F.4th at 59, 59–60.

⁸² *Id.* at 60.

⁸³ See Sepper, *supra* note 3, at 818–19.

⁸⁴ *CompassCare*, 125 F.4th at 61 (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 653 (2000)).

⁸⁵ *Dale*, 530 U.S. at 655.

⁸⁶ *CompassCare*, 125 F.4th at 61.

⁸⁷ *Id.* (quoting *Slattery v. Hochul*, 61 F.4th 278, 288, 290 (2d Cir. 2023)).

⁸⁸ *Id.* at 62 n.9.

⁸⁹ See Katie Eyer, *Anti-Transgender Constitutional Law*, 77 VAND. L. REV. 1113, 1169 & n.290 (2024) (citing cases that “argued . . . for the extension of freedom of association arguments to preclude claims in the context of . . . sexual orientation, disability, and sex”).

⁹⁰ Erwin Chemerinsky & Catherine Fisk, *The Expressive Interest of Associations*, 9 WM. & MARY BILL RTS. J. 595, 604 (2001).

disputes involving” employees “holding certain important positions with . . . religious institutions.”⁹¹ An expressive association right could cover a broader class of employees and bar their employment discrimination claims.⁹² First Bible is a house of worship that offers outreach, schooling, and recreational programs.⁹³ Even if it also expressively advocates against abortion, it is not an organization formed to oppose abortion.⁹⁴ Thus, if organizations like First Bible can proceed beyond the pleading stage under the Second Circuit’s test, the inquiry into an organization’s mission appears rather hollow.

An expansive theory of expressive association in the employment context risks undoing protections against invidious workplace discrimination. This risk is not theoretical. The controversy and stigma surrounding reproductive health care in the United States has resulted in adverse employment decisions.⁹⁵ Allowing employers to claim expressive association rights could enable religiously affiliated, for-profit organizations with broad mission statements to refuse to hire people with protected characteristics because their presence would purportedly impair the organization’s religious message.⁹⁶ In fact, appellants have cited *303 Creative LLC v. Elenis*⁹⁷ to challenge their “reject[ed] . . . expressive association claims.”⁹⁸ Secular employers could wield expansive expressive association rights, too.⁹⁹ While one may contend that members of protected classes would not want to work for these employers, antidiscrimination law emerged in response to this issue.¹⁰⁰ As the Second Circuit itself acknowledged, individuals may lack the privilege to choose whether and where they work, as they may “rely on their jobs for their livelihoods.”¹⁰¹ Expansive expressive association rights threaten the ability of antidiscrimination law to protect and provide these employment opportunities.

⁹¹ *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp. Opportunity Comm’n*, 565 U.S. 171, 188 (2012).

⁹² See *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 469 F. Supp. 3d 1195, 1209 (S.D. Ind. 2020); see also *Morrissey-Berru*, 140 S. Ct. at 2060 (limiting the ministerial exception to “the selection of the individuals who play *certain key roles*” (emphasis added)).

⁹³ *CompassCare*, 125 F.4th at 55 (citing Complaint, *supra* note 11, ¶¶ 114–140).

⁹⁴ See Complaint, *supra* note 11, ¶¶ 114–131.

⁹⁵ See, e.g., *DeJesus v. Fla. Cent. Credit Union*, No. 17-cv-2502, 2018 WL 4931817, at *1 (M.D. Fla. Oct. 11, 2018) (citing Complaint ¶¶ 15–16, 22–23, *DeJesus*, 2018 WL 4931817 (No. 17-cv-2502)); *Doe v. C.A.R.S. Prot. Plus, Inc.*, 527 F.3d 358, 362–63 (3d Cir. 2008); *Hall v. Nalco Co.*, 534 F.3d 644, 646 (7th Cir. 2008).

⁹⁶ *Cf.*, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 700–04 (2014) (alleging that the contraceptive mandate of the Affordable Care Act violated Hobby Lobby’s mission).

⁹⁷ 143 S. Ct. 2298 (2023).

⁹⁸ Sepper, *supra* note 3, at 830 & n.186 (discussing the impact of *303 Creative*).

⁹⁹ See Brief for Appellees-Cross-Appellants, *supra* note 30, at 37. For example, King & Spalding, a secular employer, claimed that Title VII violated its expressive association rights. *Hishon v. King & Spalding*, 467 U.S. 69, 71, 78 (1984).

¹⁰⁰ See 29 C.F.R. § 1608.1(b).

¹⁰¹ *CompassCare*, 125 F.4th at 59.