

YES, YOU WILL ATTEND: HOW EMPLOYEES CAN BE  
REQUIRED TO ATTEND RELIGIOUS EVENTS  
AND WHY THEY SHOULD BE

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I. INTRODUCTION

The tension surrounding the right to freedom of religion and its role in the employment context has been building for many years. A prime source of the tension is the employer's duty to accommodate employees' religious beliefs. More recently, decisions have raised other issues, noting that employees or professionals can be required to serve others—regardless of their religious objections—and considering whether employees can refuse to carry out duties that violate their beliefs.<sup>1</sup> Two recent decisions have raised related questions: How can employers require employees to attend religious events in certain contexts? Can employees refuse to attend religious services as part of their job duties? When is it permissible for employers to force employees to attend religious services?

Two recent decisions, *Fields v. City of Tulsa* and *Williams v. California*, demonstrate that employees can be forced to attend religious services to serve legitimate purposes, including preventing infringement of a patient's own religious rights.<sup>2</sup> These cases continue to delineate the limits of the Free Exercise Clause and the Establishment Clause in the employment context. However, they do raise questions about whether related cases are consistent with these recent decisions.<sup>3</sup> Despite the issues raised, the holdings of these cases are ultimately correct and are consistent with the First Amendment. In addition, policy arguments demonstrate that these cases should be upheld, in part because they avoid the necessity to differentiate between claims

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<sup>1</sup> See *infra* Parts II.C., II.D.

<sup>2</sup> See *Fields v. City of Tulsa*, 753 F.3d 1000, 1004 (10th Cir. 2014), *cert. denied*, 135 S.Ct. 714 (2014); *Williams v. California*, 990 F. Supp. 2d 1009, 1018 (C.D. Cal. 2012), *aff'd*, 764 F.3d 1002 (9th Cir. 2014).

<sup>3</sup> See *infra* Part III.A.

based on legitimately held religious beliefs from claims based on illegitimate reasons, such as discrimination or animus.

## II. RELIGIONS EXEMPTIONS IN THE CONTEXT OF EMPLOYMENT

### A. *Establishment Clause v. Free Exercise Clause*

Two distinct claims generally arise in First Amendment cases: infringement based on the Establishment Clause and infringement based on the Free Exercise Clause, both contained within the First Amendment of the United States Constitution.<sup>4</sup> The First Amendment reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>5</sup> The clauses are distinct but embody “correlative and coextensive ideas, representing only different facets of the single great fundamental freedom [of religion].”<sup>6</sup>

The Establishment Clause prevents the government from acting in a way that promotes a particular religion or faith.<sup>7</sup> The Supreme Court has said:

The “establishment of religion” clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs . . . [T]he clause of establishment of religion by law was

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<sup>4</sup> See U.S. CONST. amend. I.

<sup>5</sup> *Id.*

<sup>6</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 40 (1947) (Rutledge, J., dissenting).

<sup>7</sup> *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

intended to erect “a wall of separation between Church and State.”<sup>8</sup>

However, more recent cases have modified this by acknowledging that church and state cannot be completely separate, as some relationship between government and religious organization is necessary.<sup>9</sup> In fact, while the Establishment Clause prevents the promotion of a particular religion, the Supreme Court also has allowed and sometimes even required the accommodation of religious practices.<sup>10</sup> The Supreme Court has recognized that the government may, and at times even must, accommodate religious practices and can do so without violating the Establishment Clause.<sup>11</sup> Therefore, “[t]he touchstone for [the Court’s] analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’”<sup>12</sup> Accordingly, the Supreme Court established a test in *Lemon v. Kurtzman* (the “*Lemon test*”) in order to determine violations of the Establishment Clause.<sup>13</sup> A statute or regulation will stand if: (1) it has a secular legislative purpose, (2) its primary effect neither advances nor inhibits religion, and (3) it does not foster excessive government entanglement with religion.<sup>14</sup>

Similarly, but separately, the Free Exercise Clause prevents the government from restricting an individual’s religious practices.<sup>15</sup> To demonstrate a violation, a plaintiff must show that the actions impaired her free exercise of sincerely held beliefs.<sup>16</sup> However, “every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs.”<sup>17</sup> Indeed, the right does not relieve an individual of his

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<sup>8</sup> *Everson*, 330 U.S. at 15–16 (quoting *Reynolds v. United States*, 98 U.S. 145, 164 (1878)).

<sup>9</sup> *See, e.g., Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971) (finding statutes problematic only if they involve “excessive entanglement between government and religion.”)

<sup>10</sup> *Williams v. California*, 990 F. Supp. 2d 1009, 1022 (C.D. Cal. 2012), *aff’d*, 764 F.3d 1002 (9th Cir. 2014).

<sup>11</sup> *Hobbie v. Unemployment Appeals Com.*, 480 U.S. 136, 144–145 (1987).

<sup>12</sup> *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 860, (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

<sup>13</sup> *See Lemon*, 403 U.S. at 612–13.

<sup>14</sup> *Id.*

<sup>15</sup> *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 222–23 (1963).

<sup>16</sup> *See United States v. Lee*, 455 U.S. 252, 256–57 (1982).

<sup>17</sup> *Id.* at 261.

duty to comply with a “valid and neutral law of general applicability” because the law prohibits (or requires) conduct that his religion requires (or prohibits).<sup>18</sup> Accordingly, when a law is neutral and generally applicable, it will be upheld if the law is rationally related to a legitimate governmental purpose.<sup>19</sup>

### *B. Religion in the Employment Context*

While the First Amendment delineates the government’s ability to support or limit religious conduct, if an individual experiences religious discrimination in the workplace, the complaint generally falls under the purview of Title VII.<sup>20</sup> Title VII, commonly referred to as the Civil Rights Act of 1964, prohibits employers from discriminating against employees based on their religion.<sup>21</sup> Title VII states that it is unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of

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<sup>18</sup> *Emp’t Div. v. Smith*, 494 U.S. 872, 879 (1990). Notably, Congress enacted the Religious Freedom Restoration Act (RFRA) in 1993 in an attempt to legislatively overrule *Smith*. See *City of Boerne v. Flores*, 521 U.S. 507, 512 (1997) (noting that Congress passed RFRA in response to *Smith*). However, in 1997 the Court held the RFRA unconstitutional as applied to the states. *Id.* at 511. Accordingly, *Smith* remains valid. 3 LEX K. LARSON, LARSON ON EMPLOYMENT DISCRIMINATION § 54.01 n. 1 (2015). In addition, since *Boerne*, several circuits have held that *Boerne* does not pertain to the application of the RFRA to federal law. *Id.*

<sup>19</sup> *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993) (citing *Smith*, 494 U.S. at 879).

<sup>20</sup> RAYMOND F. GREGORY, ENCOUNTERING RELIGION IN THE WORKPLACE: THE LEGAL RIGHTS AND RESPONSIBILITIES OF WORKERS AND EMPLOYERS 27 (2011). Title VII applies to employers with fifteen or more employees for each working day in each of the twenty or more calendar weeks in the current or preceding calendar year. 42 U.S.C. § 2000e (2014).

<sup>21</sup> See 42 U.S.C.S. 2000e–2 (2014). Notably, Title VII does not define religion, but states that it includes “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. 2000e(j).

employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.<sup>22</sup>

The purpose of Title VII was to achieve equality in employment by eliminating discriminatory practices in the workplace.<sup>23</sup> According to the guidelines of the Equal Employment Opportunity Commission ("EEOC"), Title VII requires an employer to reasonably accommodate an employee "whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship."<sup>24</sup> Title VII prohibits discrimination in regards to all terms, conditions, compensation and privileges of employment.<sup>25</sup> An employee is required to advise the employer of his or her sincerely held religious belief, and the burden then shifts to the employer to make an accommodation.<sup>26</sup> However, the employer may be excused from making an accommodation if doing so would place undue hardship on the employer's business.<sup>27</sup> Thus, a Title VII claim involves three aspects: (1) a sincerely held religious belief; (2) the accommodation of that belief; and (3) undue hardship on the employer.<sup>28</sup>

Under Title VII, to demonstrate undue hardship, an employer must show that a case poses more than a *de minimis* burden on the employer.<sup>29</sup> A private employer may express its own religious beliefs or practices in the workplace.<sup>30</sup> However, for example "if an employer holds religious services or programs or includes prayer in business meetings," Title VII demands that the employer accommodate an employee who asks to be excused for religious reasons, unless the employer can show undue hardship.<sup>31</sup>

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<sup>22</sup> 42 U.S.C. § 2000e-2.

<sup>23</sup> GREGORY, *supra* note 20, at 27.

<sup>24</sup> *Questions and Answers: Religious Discrimination in the Workplace*, THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (January 31, 2011), [http://eeoc.gov/policy/docs/qanda\\_religion.html](http://eeoc.gov/policy/docs/qanda_religion.html)

<sup>25</sup> 42 U.S.C. § 2000e-2(a)(1).

<sup>26</sup> GREGORY, *supra* note 20, at 29.

<sup>27</sup> *Id.*

<sup>28</sup> *See id.*

<sup>29</sup> *Questions and Answers: Religious Discrimination in the Workplace*, *supra* note 24.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Similarly, an employer must excuse an employee from mandatory training that “conflicts with the employee’s sincerely held religious beliefs or practices, unless doing so would pose an undue hardship.”<sup>32</sup> Illustratively, it would pose an undue hardship to excuse an employee from a training that provides information on how to perform job duties, or other policies, procedures, or legal requirements relating to the employment.<sup>33</sup>

Notwithstanding these laws, employers have continued to promote their beliefs at work.<sup>34</sup> In the workplace, employers are allowed to hold “captive audience meetings,” including anti-union proselytizing meetings.<sup>35</sup> Yet religious proselytizing is impermissible when it becomes sufficiently harassing as to create a hostile work environment.<sup>36</sup> However, even advocacy of religious beliefs continues to take place.<sup>37</sup> For example, some Christian organizations offer ministry services for employers to provide to employees at work, including faith-based trainings and prayer breakfasts.<sup>38</sup>

And while employers have the ability to promote their own beliefs in some contexts, there is also a conflict between an employee’s right to religious expression and the right of other employees to be free from a hostile work environment.<sup>39</sup> On one hand, Title VII requires an employer to accommodate an employee’s religious needs and freedom of expression in the workplace.<sup>40</sup> At the same time, it prohibits religious expression that creates a hostile work environment for other employees, regardless of whether it is created by an employer or by other employees.<sup>41</sup>

However, cases involving an employer’s versus an employee’s religious speech differ in two significant ways.<sup>42</sup> First,

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See Roger C. Hartley, *Freedom Not to Listen: A Constitutional Analysis of Compulsory Indoctrination Through Workplace Captive Audience Meetings*, 31 BERKELEY J. EMP. & LAB. L. 65, 113 (2010).

<sup>35</sup> *Id.*

<sup>36</sup> *See id.* at 114.

<sup>37</sup> *See id.* at 113.

<sup>38</sup> *Id.*

<sup>39</sup> Debbie N. Kaminer, *When Religion Expression Creates a Hostile Work Environment: The Challenge of Balancing Competing Fundamental Rights*, 4 N.Y.U. J. LEGIS. & PUB. POL’Y 81, 85 (2000/2001).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 86.

the Free Speech and Free Exercise Clauses of the Constitution protect an employer's right to religious expression, whereas Title VII does not.<sup>43</sup> Second, because of the difference in power between employers and employees, courts often view an employer's religious expression as more coercive than an employee's religious expression.<sup>44</sup> Perhaps for that reason, the legal system has given more attention to prohibiting hostile work environments than to accommodating religious expression in the workplace.<sup>45</sup>

Yet, Title VII and state anti-discrimination laws have not provided a complete bar on activities that could be construed as creating a hostile work environment.<sup>46</sup> For example, in *Brown v. Polk County*, a supervisor allowed prayers, affirmed his faith to employees, and referenced Bible passages related to work ethics during mandatory employee meetings.<sup>47</sup> However, the Eighth Circuit found Title VII was not violated because the prayers were voluntary and spontaneous and thus, were not sufficiently regular to be ongoing and continuous.<sup>48</sup> Again, in *Kolodziej v. Smith*, the Supreme Court of Massachusetts found that the Constitution was not violated when an employer threatened to fire an employee who refused to participate in a week-long seminar centered around Christian beliefs.<sup>49</sup> The court explained:

[T]he seminar at issue here was in no sense a devotional service despite the fact that it promoted Scriptural passages . . . Surely, there is no evidence . . . that the defendants have forced the plaintiff to alter her religious convictions or her profession of belief, or to give the appearance of supporting a particular tenet of religion.<sup>50</sup>

Thus, the court found it did not violate the United States Constitution or the State Constitution.<sup>51</sup>

In addition, there have been a number of cases in which the Supreme Court denied the need for religious accommodation. In

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Kaminer, *supra* note 39, at 86.

<sup>46</sup> Hartley, *supra* note 34, at 114.

<sup>47</sup> 61 F.3d 650, 652 (8th Cir. 1995).

<sup>48</sup> *Id.*

<sup>49</sup> 588 N.E.2d 634, 636 (Mass. 1992).

<sup>50</sup> *Id.* at 638.

<sup>51</sup> *Id.* at 639.

*United States v. Lee*, the Supreme Court held that the Amish could not be exempted from making Social Security payments, even though their religion prohibited public assistance, because not granting exemptions was “essential” to an “overriding governmental interest” in preserving the tax system, and thus did not violate the Free Exercise Clause.<sup>52</sup> In *Employment Division, Department of Human Resources of Oregon v. Smith*, the Supreme Court abandoned the exemption doctrine, and decided that, under the Free Exercise Clause, no exemptions were required from laws that are religiously neutral and generally applicable, and held that if a law meets that standard, it does not necessitate religious accommodation.<sup>53</sup>

More recent decisions have raised questions about whether employees can refuse to carry out duties that violate their beliefs. Two recent decisions have weighed in on the complex and overlapping issues raised in religion and employment cases. The following cases, *Fields v. City of Tulsa* and *Williams v. California*, will be described and later analyzed in relation to past cases and public policy considerations.

### C. *Fields v. City of Tulsa*

In *Fields*, Paul Fields, a captain in the Tulsa, Oklahoma police department, filed a complaint under 42 U.S.C. § 1983 against the Chief of Police and Deputy Chief of Police.<sup>54</sup> The Chief of Police required him to either attend or to order subordinates to attend a law-enforcement appreciation event hosted by the Islamic Society of Tulsa, and when he refused, he was reprimanded.<sup>55</sup> Fields argued<sup>56</sup> that the punishment violated the First Amendment’s Free Exercise and Establishment Clauses.<sup>57</sup> However, the Tenth Circuit affirmed the Northern

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<sup>52</sup> 455 U.S. 252, 257 (1982).

<sup>53</sup> 485 U.S. 660, 665 (1988).

<sup>54</sup> *Fields v. City of Tulsa*, 753 F.3d 1000, 1004 (10th Cir. 2014), *cert. denied*, 135 S.Ct. 714 (2014).

<sup>55</sup> *Id.*

<sup>56</sup> Fields also raised an Equal Protection claim. He later sought to amend his complaint to add a claim that his freedom of speech was violated when he suffered retaliation for bringing this lawsuit and a claim that he was denied rights protected by the Oklahoma Religious Freedom Act (ORFA). *Id.* This Note does not address those additional claims.

<sup>57</sup> *Id.*

District of Oklahoma's grant of summary judgment for the defendants, denying Fields's claims.<sup>58</sup>

The Tulsa Police Department ("TPD") had worked with the Islamic Society to protect the mosque and the school next door against threats, and the Islamic Society held an event on March 4, 2011 to thank the TPD for its assistance.<sup>59</sup> After receiving the invitation to the law-enforcement appreciation day, Webster, the Deputy Chief of Police, approved distribution of an email from the Islamic Society containing a flyer, which invited officers to a "Casual Come & Go Atmosphere" with a buffet of food and desserts, to partake in mosque tours, to meet local Muslims and leadership, to watch the 2:00 to 2:45 pm prayer services, and to see "presentations upon request" on beliefs, human rights, and women.<sup>60</sup>

After failing to receive volunteers from the police department, the Major forwarded an email from the Deputy Chief of Police ordering each shift to send two officers and a supervisor or commander to the event, which read:

We are directed by DCOP Webster to have representatives from each shift—2nd, 3rd and 4th to attend. Here is his note to me:

Re that attached, I have advised Ms. Siddiqui to expect small-group visits at [11:00, 1:30, and 4:30]. Please arrange for 2 officers and a supervisor or commander from each of your shops to attend at each of those times. They can expect to be at the facility for approximately 30 minutes but can stay longer if they wish.<sup>61</sup>

The Deputy Chief of Police testified that he chose the times so that officers would not have to be present during the 2:00 to 2:45 prayer services unless they chose to stay for it.<sup>62</sup>

Fields objected, saying that it was not a police "call for service," but rather an invitation to attend an event at the mosque,

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<sup>58</sup> *See id.*

<sup>59</sup> *Id.* at 1004–05.

<sup>60</sup> *Fields*, 753 F.3d at 1005.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

which included touring the mosque, meeting leadership, watching a prayer service, and listening to a presentation.<sup>63</sup> In response to the invitation, Fields sent an email directed to the Major, but also sent it to police department officials and numerous others, stating that he was “confused” because attendance was previously on a voluntary basis, and which had now become a directive.<sup>64</sup> He continued that he had did not have an issue with sending officers to attend on a voluntary basis, but that he “[took] exception to requiring officers to attend [the] event.”<sup>65</sup> He further stated that past invitations to religious institutions for similar purposes had always been voluntary, and that he believed this directive was unlawful, “as it [was] in direct conflict with [his] personal religious convictions, as well as [being] conscience shocking.”<sup>66</sup> He also explained that if it had been a “call for service” he would have readily responded to it, as required by his oath as a police officer.<sup>67</sup> He stated, however, that because it was an invitation to tour the mosque, meet Muslim leadership, watch a prayer service, and receive presentations on beliefs, human rights, and women, he refused to attend.<sup>68</sup> He claimed that the order “forcing [him] to enter a Mosque” was a violation of his civil rights.<sup>69</sup> Accordingly, he stated that he did not intend to follow the directive, nor would he require any of his subordinates to do so if they shared similar religious convictions.<sup>70</sup>

Webster responded to Fields in a three-page letter, explaining that the Islamic Society engaged in significant preparations, that he would not have ordered officers to attend if he had received an adequate number of volunteers, that there would be an issue of disparate treatment if TPD failed to attend, and that community policing events were just as important to TPD’s mission as direct calls for service.<sup>71</sup> He added that officers were “not required to participate in any religious ceremony, make any profession of faith, or express opinions on or sympathy with any religious belief system.”<sup>72</sup> He stated that they were merely

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<sup>63</sup> *Id.* at 1005–06.

<sup>64</sup> *Id.* at 1005–06.

<sup>65</sup> *Id.*

<sup>66</sup> *Fields*, 753 F.3d at 1005–06

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 1006.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Fields*, 753 F.3d at 1006.

expected to meet with community members who wanted to meet with them at a lawful assembly.<sup>73</sup> He reiterated that Fields himself was not required to “participate or assist in any religious observance, make any expression of belief, or adopt any belief system.”<sup>74</sup> He also urged Fields to reconsider and reminded him of the consequences of refusing to obey a lawful order, emphasizing “refusal on the part of a leader, including extending that refusal to subordinate personnel, is particularly serious and injurious to good discipline.”<sup>75</sup>

When Fields continued to object, refusing to designate two officers and a supervisor or himself to attend, he was served with papers notifying him that he was being transferred to another division and would be investigated by TPD Internal Affairs for his refusal to follow a direct order.<sup>76</sup> On June 9, 2011, the Police Chief issued the personnel order setting forth Fields’s punishment.<sup>77</sup> The order suspended Fields without pay for ten days, due to his violation of TPD policies, rules, and regulations, stating:

You are hereby suspended for 40 hours for the following policy violation:

Rules and Regulation #6: Duty to be Truthful and Obedient, which states in part:

*“Employees shall obey lawful orders from an officer or employee, verbal or written in nature, including any relayed from a superior by an employee of the same or lesser rank.”*

Specifically, you failed to follow the directives of your chain of command regarding furnishing officers to attend the “Law Enforcement Appreciation Day,” [sic] held March 4, 2011.

You are hereby suspended for 40 hours for the following policy violation:

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1007.

Rules and Regulation #8: Conduct Unbecoming an Officer or Police Employee, which states in part:

*“Employees shall not commit any act or indulge in any behavior, on or off duty, which tends to bring reproach or discredit upon the Department. They shall not engage in any conduct that is considered unbecoming an officer or employee which might be detrimental to the service.”*

Specifically, your actions and writings that were made public brought discredit upon the department related to furnishing officers to attend the “Law Enforcement Appreciation Day”, [sic] held March 4, 2011.<sup>78</sup>

The order explained that further violations would lead to more severe disciplinary action, including dismissal, and that Fields would not be considered for promotion for at least a year.<sup>79</sup> Fields’s temporary transfer became permanent on the day the order was issued.<sup>80</sup> In addition, he was assigned to the graveyard shift, and the orders stated that his punishment and transfer became a part of his permanent record.<sup>81</sup> As a result of these events, Fields argued that his rights were infringed upon based on the Free Exercise Clause and separately based on the Establishment Clause.<sup>82</sup>

#### 1. Free Exercise of Religion in *Fields*

Fields argued that the defendants violated his right to free exercise of religion, as the order required him to attend the event or to require him to order his subordinates to do so, and that he was punished based on his refusal to comply.<sup>83</sup> The court of appeals affirmed the district court’s grant of summary judgment, as the court found that no reasonable jury could find that the order

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<sup>78</sup> *Fields*, 753 F.3d at 1007–08.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1008.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1009.

required Fields to attend the event himself.<sup>84</sup> The court first explained that a plaintiff states a claim of undue burden of his free exercise of religion “if the challenged action is coercive or compulsory in nature.”<sup>85</sup> As such, in order to prevail on a free exercise claim, Fields was required to demonstrate that the government placed a burden on the exercise of his religious beliefs or practices.<sup>86</sup>

The court found that Fields’s view that the order required officers and forced him to enter a mosque was wrong.<sup>87</sup> It stated that he was not required to attend because he could order others to do so.<sup>88</sup> Accordingly, the court found the police department did not burden Fields’s religious rights because the order did not compel him to violate his own religious beliefs by attending the event—Fields “could have obeyed the order by ordering others to attend, and he has not contended on appeal that he had informed his supervisors that doing so would have violated his religious beliefs.”<sup>89</sup> The court reasoned that he never asserted that he told his superiors that ordering others individuals to attend (which may have violated their own beliefs) would violate Fields’s religious beliefs.<sup>90</sup> It explained, “[a]lthough he made clear that he thought that ordering others to attend would be unconstitutional, that is a legal objection, not a religious one.”<sup>91</sup> As such, it could punish him<sup>92</sup> in accordance.<sup>93</sup>

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<sup>84</sup> *Fields*, 753 F.3d at 1009.

<sup>85</sup> *Id.* (citing *Bauchman v. W. High Sch.*, 132 F.3d 542, 557 (10th Cir. 1997)).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* The court seemed to be avoiding the issue of whether or not an order directing Fields specifically to attend himself would constitute a violation of his free exercise of religion. It does not appear that if the order had done so it would have been particularly more difficult to address, considering that the order did not necessarily order him to enter a mosque, nor did he demonstrate that it would have violated his religious beliefs. The court may have done so in part due to the difficulty in discerning plaintiffs’ sincerely held religious beliefs. *See infra* Part III.B.

<sup>89</sup> *Id.* at 1004.

<sup>90</sup> *Fields*, 753 F.3d at 1009 (citing *Bauchman*, 132 F.3d at 557).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> The court notes that in his appellate briefs, Fields seemed to be making an additional argument that, even if the Attendance Order was valid, the police department’s reason for punishing him or the severity of the punishment was due to Fields’s religious objection, and that someone with a purely secular objection would not have been punished or would not have been punished as severely. *Id.*

Further, the district court stated that the analysis “would not change if Fields had been ordered to attend,” except in considering whether an individualized exemption exception to neutral, generally applicable laws would apply.<sup>94</sup> Moreover, it stated that if he had been required to attend the event, he was not required to attend the prayer service or listen to presentations on Islam.<sup>95</sup> After disposing of Fields’s free exercise claim, the court then analyzed his establishment of religion claim.<sup>96</sup>

## 2. Establishment of Religion in *Fields*

The court determined that the order did not violate the Establishment Clause because “no informed, reasonable observer would have perceived the order or the event as a government endorsement of Islam.”<sup>97</sup> The court began by explaining that the Establishment Clause states, “Congress shall make no law respecting an establishment of religion.”<sup>98</sup> It explained that the Supreme Court had not clearly articulated the meaning of the clause, but that the Tenth Circuit followed the *Lemon* test.<sup>99</sup> Under the *Lemon* test, government action does not violate the clause if: “(1) it has a secular purpose; (2) ‘its principal or primary effect [is] one that neither advances nor inhibits religion’; and (3) it does not ‘foster an excessive government entanglement with religion.’”<sup>100</sup> The court interpreted the first and second prongs of the *Lemon* test under Justice O'Connor's endorsement test.<sup>101</sup> That is, courts ask “whether government's actual purpose is to endorse or disapprove of religion,” and “whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of

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at 1009–10. The court noted that, although here was some evidence in the record to support the assertion, that issue was never raised. *Id.* at 1010.

<sup>94</sup> *Fields v. City of Tulsa*, No. 11-cv-115-GKF-TLW, 2012 U.S. Dist. LEXIS 176698, at \*11 (N.D. Okla. Dec. 13, 2012).

<sup>95</sup> *Id.*

<sup>96</sup> *See Fields*, 753 F.3d at 1010.

<sup>97</sup> *Id.* at 1004.

<sup>98</sup> *See id.* at 1009 (quoting U.S. CONST. amend. I).

<sup>99</sup> *See Fields*, 753 F.3d at 1010.

<sup>100</sup> *Id.* (quoting *Am. Atheists, Inc. v. Duncan*, 637 F.3d 1095, 1117 (10th Cir. 2010)).

<sup>101</sup> *See Fields*, 753 F.3d 1010.

endorsement or disapproval.”<sup>102</sup> Courts evaluate the government's actions from the perspective of a reasonable observer who is cognizant of the history, purpose, and context of the act at issue.<sup>103</sup>

Fields claimed that TPD violated the Establishment Clause because the order from the department and the conduct surrounding the event communicated an official endorsement of Islam.<sup>104</sup> However, the court found that, considering the background, intent, and context of the order, it was unreasonable for an individual to conclude that the order or TPD's attendance was an endorsement of Islam.<sup>105</sup> TPD had attended hundreds of events at religious institutions, and Webster stated that officers were not required to participate in religious ceremonies, make professions of faith, or express opinions on any belief system, but rather to meet with members of the public.<sup>106</sup> Further, TPD's non-attendance would have signaled disparate treatment from other religious organizations that TPD had attended.<sup>107</sup> Fields argued that the event involved Islamic proselytizing, yet the court rejected the argument, stating, “[n]o informed reasonable person could view the purpose or effect of TPD's attendance at the event as suggesting that Islam is a preferred religion.”<sup>108</sup> It explained that officers were not required to attend religious services, read religious literature, or even discuss Islam.<sup>109</sup>

The court further explained that “[t]he Establishment Clause does not prohibit governmental efforts to promote tolerance, understanding, and neighborliness. There is no evidence in the record of any attempts to convert officers to Islam, as opposed to providing information.”<sup>110</sup> Further, the court noted,<sup>111</sup>

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<sup>102</sup> *Id.* (quoting *Am. Atheists, Inc.*, 637 F.3d at 1117 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring)).

<sup>103</sup> *Id.*

<sup>104</sup> *Fields*, 753 F.3d at 1010.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 1010–11.

<sup>107</sup> *Id.* at 1011.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Fields*, 753 F.3d at 1011.

<sup>111</sup> The court added:

On appeal Fields may be arguing that his punishment violated the Establishment Clause regardless of whether the Attendance Order and the conduct of the event did so. But as with his (possible) argument on appeal that his punishment violated

even if some representatives of the Islamic Center “crossed the line,” a reasonable observer would not have found the government to have endorsed the religion.<sup>112</sup> As such,<sup>113</sup> the court also denied Fields’s Establishment Clause claim.<sup>114</sup> Similar to *Fields, Williams v. California* is another decision in which a court analyzed an employee’s claim of infringement of religious freedom based on the employee’s refusal to attend religious services.<sup>115</sup>

#### *D. Williams v. California*

In *Williams v. California*, the plaintiffs alleged that the defendants violated their First Amendment right to freedom of religion by requiring them to attend a Jehovah’s Witness service in order to allow a developmentally disabled client to attend.<sup>116</sup> The Ninth Circuit affirmed the district court’s disposition.<sup>117</sup> The patient, C.W., wanted to attend Jehovah’s Witness services and was unable to do so without assistance.<sup>118</sup> Payne Care Center, where he was a patient, said it would transport C.W. and introduce him to members of the church in the community.<sup>119</sup> The Center required the plaintiffs, employees at the center, to

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the Free Exercise Clause even if the Attendance Order did not, this claim was not preserved below. We therefore need not consider it.”

*Id.* at 1012.

<sup>112</sup> *Id.* at 1011–12.

<sup>113</sup> The court also rejected Fields’s claims of right of association, equal protection, and ORFA and free-speech retaliation. It explained that the order did not burden Fields’s right of association, as it did not interfere with his right to decide which organizations to join as a member. In addition, his equal-protection claim was duplicative of his free-exercise claim and failed for the same reason. And finally, court found that the district court did not abuse its discretion in denying Fields’s motion to amend his complaint to add ORFA and free-speech retaliation claims, because such an amendment would have been futile. It explained that he did not demonstrate why an ORFA claim would succeed when his religion claims under the First Amendment did not, and his retaliation claim would fail as the TPD’s interests as an employer outweighed Fields’s interest in filing his lawsuit. *Id.* at 1004.

<sup>114</sup> *Id.*

<sup>115</sup> 990 F. Supp. 2d 1009, 1009 (C.D. Cal. 2012), *aff’d*, 764 F.3d 1002 (9th Cir. 2014).

<sup>116</sup> *Id.* at 1015.

<sup>117</sup> *See Williams*, 764 F.3d at 1003.

<sup>118</sup> *Williams*, 990 F. Supp. 2d at 1014.

<sup>119</sup> *Id.*

accompany the patient.<sup>120</sup> However, the employees did not believe they had an obligation to “personally accompany clients to religious services,” but rather to provide clients with an opportunity to attend services.<sup>121</sup> The plaintiffs asserted two claims under 42 U.S.C. § 1983: “(1) deprivation of the right to freedom of religion under the First Amendment, and (2) unlawful retaliation in response to [the plaintiffs’] assertion of their right to freedom of religion under the First Amendment.”<sup>122</sup>

The plaintiffs alleged that the defendants violated their rights under the Establishment and Free Exercise Clauses of the First Amendment.<sup>123</sup> The court explained that, to establish a claim under section 1983, the plaintiffs had to demonstrate that the defendants, acting under state law, deprived them of rights provided by the Constitution or federal statutes.<sup>124</sup>

As to the plaintiffs’ obligations under California’s Lanterman Developmental Disabilities Services Act (“the Lanterman Act”) and its corresponding regulations, the court said that care centers that provide “the opportunity to attend and participate in” religious services must then necessarily provide direct staff support in order to facilitate it, as they provide twenty-four hour care to patients.<sup>125</sup> Considering this conclusion, the court addressed both the Free Exercise claim and the Establishment Clause claim.<sup>126</sup>

### 1. Free Exercise Clause in *Williams*

Analyzing the case under *Smith*, the court stated that the Free Exercise Clause does not prohibit an otherwise valid and neutral law of general application, even if it does incidentally burden religious conduct.<sup>127</sup> The court found that the relevant parts of the Lanterman Act and corresponding regulations were neutral, because their purpose was not to restrict religious practices.<sup>128</sup> It found their purpose was to allow developmentally

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 1015.

<sup>123</sup> *Id.* at 1018.

<sup>124</sup> *Williams*, 990 F. Supp. 2d at 1017–18. (citing *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986)).

<sup>125</sup> *Id.* at 1018–19.

<sup>126</sup> *See id.* at 1020.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 1021.

disabled individuals to freely exercise their religion, which was a legitimate secular purpose.<sup>129</sup> The court also found that the regulations were generally applicable, as they applied to all clients and providers.<sup>130</sup> Thus, the regulations were neutral and generally applicable, and were “rationally related to the legitimate governmental purpose of enabling developmentally disabled persons to approximate the daily lives of nondisabled persons.”<sup>131</sup> Thus, the court ruled there was not a violation<sup>132</sup> of the Free Exercise Clause.<sup>133</sup> It explained, “[w]hen followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.”<sup>134</sup> In conclusion, it found that the plaintiffs had not stated a violation of the Free Exercise Clause.<sup>135</sup> The court then turned to Williams’s Establishment Cause claim.

## 2. Establishment Clause in *Williams*

The court based its decision on the three-pronged test articulated in *Lemon*.<sup>136</sup> First, the court determined that the Lanterman Act and its corresponding regulations were enacted to allow developmentally disabled individuals to lead more independent and productive lives, and thus had a legitimate secular purpose.<sup>137</sup>

Second, the court stated that the primary effect of the regulations did not advance nor inhibit religion.<sup>138</sup> The regulations allowed developmentally disabled individuals to attend and participate in worship services of their choice, community service,

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<sup>129</sup> *Id.*

<sup>130</sup> *Williams*, 990 F. Supp. 2d at 1021.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> The court noted that the plaintiffs alleged that “certain employees” expressed that their attendance would violate their own religious beliefs—but did not state whether those employees were any of the plaintiffs themselves, and even if they were, they did not demonstrate a violation of the Free Exercise Clause. *Id.*

<sup>134</sup> *Id.* at 1022 (citing *United States v. Lee*, 455 U.S. 252, 261 (1982)).

<sup>135</sup> *Id.* at 1021.

<sup>136</sup> *See Williams*, 990 F. Supp. 2d at 1022; *supra* note 15.

<sup>137</sup> *Williams*, 990 F. Supp. 2d at 1023.

<sup>138</sup> *Id.*

community events including concerts and plays, self-help organizations, senior citizen groups, sports leagues and service clubs.<sup>139</sup> Thus, the act allowed individuals to participate in a variety of “everyday” activities of the client’s choice, most of which were secular activities.<sup>140</sup> Also, the regulations were not based upon whether or not a client held a particular religious belief.<sup>141</sup> Consequently, the regulations were neutral in offering assistance to developmentally disabled individuals without regard to their religion.<sup>142</sup>

In addition, the court stated that, although some clients could receive assistance in order to attend religious services, the Constitution allows for such accommodations in order to protect the free exercise of religion.<sup>143</sup> The court also noted that the regulations did not require the plaintiffs to adopt any particular religious beliefs or to participate in any religious services, and “[i]nsofar as the regulations require[d] [the plaintiffs] to merely be present at Jehovah’s Witness services, and thus inhibit their own practice of religion because that is something that their religion allegedly prohibits,” the court would not say that it was the “primary effect’ of the regulations.”<sup>144</sup>

Finally, under the third prong of the *Lemon* test, the court found that the regulations did not create excessive government entanglement with religion.<sup>145</sup> The court analyzed the “character and purposes” of the benefitting institutions, noting that the primary beneficiaries were developmentally disabled individuals rather than institutions.<sup>146</sup> And while some religious groups could benefit incidentally as the regulations allowed individuals to attend religious services, this “incidental benefit” did not support a violation of the Establishment Clause.<sup>147</sup> In addition, the court noted that the funds were directed towards private vendors for their services to the individuals rather than to religious institutions.<sup>148</sup> Further, the regulations did not demand any contact between the church and the state, and thus did not create

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 1023–24.

<sup>141</sup> *Id.* at 1024.

<sup>142</sup> *Id.*

<sup>143</sup> *Williams*, 990 F. Supp. 2d at 1024.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 1024–25.

<sup>148</sup> *Id.* at 1025.

an unconstitutional relationship between the two.<sup>149</sup> Consequently, the court found that, because the regulations had a secular legislative purpose, their primary effect neither advanced nor inhibited religion, and they did not create excessive government entanglement with religion, the regulations did not violate the Establishment Clause.<sup>150</sup> Related employment cases demonstrate similar issues that have arisen involving religious freedoms in the employment context.

### *E. Related Employment Cases*

#### 1. *Little v. Rummel*

In a case reminiscent of *Fields*, *Little v. Rummel*, Little, a sergeant employed by the Dickinson Police Department, brought a claim against the department after he was terminated in 2008.<sup>151</sup> Among his complaints, he alleged that he received a memorandum from his lieutenant directing all employees to attend a meeting with the police chaplain “for spiritual wellness.”<sup>152</sup> Little claimed that Police Chief Rummel had a duty to protect him by upholding the First Amendment and that Rummel infringed upon his right to freedom of religion by enforcing a mandatory meeting with the chaplain.<sup>153</sup> Accordingly, he alleged that he was deprived of his right to freedom of religion.<sup>154</sup>

However, the court did not rule on Little’s freedom of religion claim as they determined that he never intended to assert claims separate from his retaliation and due process claims, in part because he failed to respond to them.<sup>155</sup> Nonetheless, it noted that a directive to attend a mandatory meeting with the police chaplain to discuss spiritual wellness was “problematic.”<sup>156</sup> The court dismissed the city’s contention that the meeting was to familiarize officers with the services the police chaplain could offer to victims and families as an after-the-fact spin.<sup>157</sup> However, it

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<sup>149</sup> *Williams*, 990 F. Supp. 2d at 1025.

<sup>150</sup> *Id.*

<sup>151</sup> *Little v. Rummel*, No. 1:12-cv-113, 2014 U.S. Dist. LEXIS 77206, at \*2 (D.N.D. June 6, 2014).

<sup>152</sup> *Id.* at \*30.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *See id.* at \*51.

<sup>156</sup> *Id.* at \*50 n.7.

<sup>157</sup> *Little*, 2014 U.S. Dist. LEXIS 77206, at \*50–53 n.7.

neglected to rule on the claim and found that, even if he had intended to bring a claim, there was no evidence that Chief Rummel (the only named defendant) was involved in setting up the meeting nor that it was held pursuant to a city policy.<sup>158</sup> *Buford v. Coahoma Agricultural High School* also presents a claim of infringement of freedom of religion based on religious activities in an employment context.<sup>159</sup>

## 2. *Buford v. Coahoma Agricultural High School*

In *Buford*, a teacher claimed that the school inflicted requirements that “aided him to believe in the Existence of God,” including the inclusion of prayer at the beginning of PTA meetings, during which time he would excuse himself, and the distribution of reports referencing Christian scripture.<sup>160</sup> The plaintiff “wanted no part in the activities that were taking place at certain events.”<sup>161</sup> The Northern District of Mississippi denied the defendants’ summary judgment motion in regards to the Establishment Clause claims.<sup>162</sup> Analyzing the claims under the *Lemon* test, it found that the defendants failed to offer any secular purpose for the reports and school assemblies, and that there were genuine issues of material fact as to whether the practices effectively endorsed a religion and whether the practices excessively entangled religion and the state.<sup>163</sup>

As to the Free Exercise claims, the court granted summary judgment for the defendant.<sup>164</sup> The court noted that while “forced attendance at what amounts to a church service” clearly violates the Free Exercise Clause, the plaintiff was not forced to attend, as he was permitted to leave during prayer times.<sup>165</sup> In addition, there was no evidence that he was forced to read scripture included in reports, or that it affected the practice of his religion.<sup>166</sup> The following case provides another example in which an employee

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<sup>158</sup> *Id.* at \*53 n.7.

<sup>159</sup> *Buford v. Coahoma Agric. High Sch.*, No. 2:12-CV-00089-DMB-JMV, 2014 U.S. Dist. LEXIS 135459, at \*1 (N.D. Miss. July 18, 2014).

<sup>160</sup> *Id.* at \*4–29.

<sup>161</sup> *Id.* at \*29.

<sup>162</sup> *Id.* at \*27.

<sup>163</sup> *Id.* at \*22–28.

<sup>164</sup> *Id.* at \*29–30.

<sup>165</sup> *Buford*, 2014 U.S. Dist. LEXIS 135459, at \*29.

<sup>166</sup> *Id.*

was denied a claim of violations of religious freedom in his employment.<sup>167</sup>

### 3. *Wilson v. U.S. West Communications*

In *Wilson v. U.S. West Communications*, the Eighth Circuit determined that an employer was not required to allow an employee to wear an anti-abortion button showing a color photograph of a fetus.<sup>168</sup> When the plaintiff insisted on wearing the button, other employees complained of harassment.<sup>169</sup> There was also a forty percent decline in productivity and some employees refused to attend meetings in which the plaintiff was present.<sup>170</sup> When the plaintiff refused to stop wearing the button, she was fired.<sup>171</sup> The Eighth Circuit analyzed the case under Title VII and did not directly address its harassment aspects, partly because Wilson's colleagues did not claim harassment based upon a protected category and thus were not entitled to Title VII protections.<sup>172</sup> The court affirmed the district court's holding that Wilson's religious vow did not necessitate her being a "living witness"<sup>173</sup> and that her employer therefore offered her a reasonable accommodation in permitting her to wear the button if she kept it covered.<sup>174</sup> However, the court "took pains to sidestep the question of Wilson's right to religious expression in the workplace."<sup>175</sup> As Debbie N. Kaminer explained:

In reaching this conclusion, the Eighth Circuit essentially ignored the parties' stipulation that Wilson's religious beliefs were sincerely held. Instead, the court focused on the fact that this

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<sup>167</sup> See *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1338 (8th Cir. 1995).

<sup>168</sup> *Id.* at 1338–39.

<sup>169</sup> *Id.* at 1339.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 1340.

<sup>172</sup> Kaminer, *supra* note 39, at 115 (citing *Wilson*, 58 F.3d at 1339).

<sup>173</sup> The district court described being a "living witness," as Wilson's religious vow requiring "her to wear the button, although not prominently displayed on her person, at all times except when she bathed or slept . . ." as she stated, "until abortions ceased." *Wilson v. US W. Commc'ns*, 860 F. Supp. 665, 668, 674 (D. Neb. 1994). Considering the conflicting testimony and the evidence from trial, the court concluded that Wilson's vow did not include her being a living witness. *Id.* at 668.

<sup>174</sup> *Wilson*, 58 F.3d at 1340.

<sup>175</sup> Kaminer, *supra* note 39, at 115.

stipulation “does not cover the details of her religious vow.” It was clearly improper for the court to analyze the details of Wilson's vow, since a court's role is to determine whether a religious belief is sincerely held—not to determine the requirements of a particular religion. Furthermore, this aspect of the Eighth Circuit's decision also eludes common sense, since a covered button is a rather ineffective means of opposing abortion.<sup>176</sup>

Accordingly, the court declined to rule on whether Wilson's religious beliefs were sincerely held.<sup>177</sup> This and the previous cases demonstrate the wide array of court responses in religious freedom claims, and show that courts are generally hesitant to allow religious exemptions.

### III. CASE ANALYSIS AND WHY EXEMPTIONS MAY BE POOR PUBLIC POLICY

#### A. *An Analysis of Fields and Williams in Context*

In both *Fields v. City of Tulsa* and *Williams v. California*, the courts ruled that the employees could be forced to attend religious services under those circumstances.<sup>178</sup> However, under Title VII, employers are unable to engage in ongoing religious proselytizing at work.<sup>179</sup> Further, employees can refuse to perform duties that are against their religious beliefs.<sup>180</sup> And while the court neglected to rule on the First Amendment claim in *Little*, the court found mandatory meetings with the police chaplain

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<sup>176</sup> *Id.* at 115–16 (citing *Wilson*, 58 F.3d at 1341).

<sup>177</sup> *See Wilson*, 58 F.3d at 1340; *see also* Kaminer, *supra* note 39, at 115–16.

<sup>178</sup> *See Fields v. City of Tulsa*, 753 F.3d 1000, 1004 (2014); *Williams*, 990 F. Supp. 2d at 1027.

<sup>179</sup> *See Hartley*, *supra* note 34, at 114 (explaining that an employer can subject employees to a hostile work environment if the conduct is ongoing and continuous).

<sup>180</sup> *See* Eugene Volokh, *When Does Your Religion Legally Excuse You From Doing Part of Your Job?*, WASH. POST (Sep. 4, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/09/04/when-does-your-religion-legally-excuse-you-from-doing-part-of-your-job/>.

“problematic.”<sup>181</sup> Accordingly, how can employees be forced to attend religious services in some circumstances?

### 1. Consistency with Related Cases

First, it is important to consider *Fields* and *Williams* in context with related employment cases. *Fields* and *Williams* can be analogized to other First Amendment employment cases discussed above.<sup>182</sup>

#### a. *Buford*

In *Buford*,<sup>183</sup> analyzing his Free Exercise claim, the court found that Buford had not been forced to attend religious services because he was free to leave assemblies during times of prayer.<sup>184</sup> This is analogous to *Fields*, as the officers in *Fields* were not required to attend prayer services at the event.<sup>185</sup> However, it is somewhat different in that in *Buford*, the services were being held by the employer, and thus, may have presented an even stronger claim based on infringement of his free exercise of religion than *Fields*. Yet, in both cases, the minimal or arguably nonexistent burdens placed on the employees were insufficient.<sup>186</sup>

In regards to Buford’s Establishment Clause claim, the court found that under the *Lemon* test, the school could have effectively endorsed a religion through its activities, and denied summary judgment.<sup>187</sup> In *Fields*, the court found that requiring officers to attend an event at the mosque was not an endorsement of Islam, and in *Williams*, the regulations in question also did not effectively endorse a religion.<sup>188</sup> In *Buford*, the school engaged in

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<sup>181</sup> Little v. Rummel, No. 1:12-cv-113, 2014 U.S. Dist. LEXIS 77206, at \*50 n.7 (D.N.D. June 6, 2014).

<sup>182</sup> See *supra* Part II.E.

<sup>183</sup> See *supra* Part II.E.2.

<sup>184</sup> Buford v. Coahoma Agric. High Sch., No. 2:12-CV-00089-DMB-JMV, 2014 U.S. Dist. LEXIS 135459, at \*29 (N.D. Miss. July 18, 2014)

<sup>185</sup> See *Fields v. City of Tulsa*, 753 F.3d 1000, 1004 (2014).

<sup>186</sup> The employees in *Williams* seemed to have a higher burden as they were actually required to attend religious services. However, in *Williams*, the case was considered under the scope of the state statute at issue, the Lanterman Act, which was found to be neutral and generally applicable under *Smith*.

<sup>187</sup> *Buford*, 2014 U.S. Dist. LEXIS 135459, at \*22–28.

<sup>188</sup> *Fields*, 753 F.3d at 1004; *Williams v. California*, 990 F. Supp. 2d 1009, 1009 (C.D. Cal. 2012).

prayer at assemblies and distributed reports including verses of scripture.<sup>189</sup> These activities amount to much greater of an entanglement of religion than attending a one-time event at a mosque or bringing patients to religious services who are unable to do so on their own. Further, in *Buford*, the court noted that the school did not offer a secular purpose for the scripture on the reports or the religious tone of the assemblies.<sup>190</sup> In contrast, the defendants in *Fields* and *Williams* had clearly articulated purposes for requiring the employees' attendance.

b. *Wilson*

In *Wilson*,<sup>191</sup> the Eighth Circuit determined that an employer was not required to allow an employee to wear an anti-abortion button showing a color photograph of a fetus, ignoring the parties' stipulation that Wilson's beliefs were sincerely held, and stating that her religious vow did not require her to wear the button.<sup>192</sup> Comparing this to *Williams*, it seems possible that the plaintiffs in *Williams* could also be said to have held a sincerely held vow, which they believed forbade them from attending certain religious services. Similarly, in *Fields*, the officer also could have plausibly held an equally strong belief, which prohibited him from attending an event held at a mosque.<sup>193</sup> However, applying the court's reasoning in *Wilson*, the courts could also then have determined that despite those beliefs, the acts in questions were not requirements of their religions.

However, this case is dissimilar in that the plaintiff brought her claim under Title VII. Under Title VII, the analysis centered on whether the employee sincerely held the religious beliefs and whether the employer's accommodation was reasonable. In *Fields* and *Williams*, the claims were considered under the First Amendment—whether Fields's religious practices were restricted by ordering others to attend or attending himself; and in *Williams* whether the regulations at issue were neutral and generally applicable. Notwithstanding these differences, the questions at issue were similar. Nonetheless, the cases are

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<sup>189</sup> *Buford*, 2014 U.S. Dist. LEXIS 135459, at \*4–29.

<sup>190</sup> *Id.* at \*24–25.

<sup>191</sup> *See supra* Part II.E.3.

<sup>192</sup> *See supra* Part II.E.3.

<sup>193</sup> As mentioned, the court's role is not to determine the requirements of a particular religion, but rather to determine whether a belief is sincerely held.

consistent as they all ruled that the employees were not entitled to accommodations despite their objections.

*c. Little*

Finally, the court in *Little* noted that a mandatory meeting to discuss spiritual wellness was “problematic,”<sup>194</sup> which appears at odds with *Fields* and *Williams*. Especially in contrast with *Fields*, requiring attendance at a meeting on spiritual wellness appears inconsistent with requiring attendance at a religious event. Regardless, as the court declined to rule on the issue related to his religious freedoms,<sup>195</sup> the rulings are not in contrast with one another.

Further, while individual instances in which employees were denied or accorded exemptions may appear inconsistent, the cases are often distinguished by the neutrality of the governing laws. Apart from the court’s concerns in *Little*, *Fields* and *Williams* are consistent with the related employment cases discussed.

## 2. Burden on Other Individuals

One possibility for potential inconsistencies is that in *Fields* and *Williams*, the burden was too high for employees to be allowed to refuse to perform their duties. Considering the burden on others in *Williams*, in that case the plaintiffs were required to attend because without their assistance, the disabled residents would have been unable to attend religious services, infringing upon their own rights.<sup>196</sup> However, an alternative solution does seem possible—another employee who did not have a religious objection may have been able to attend instead. In *Fields*, the plaintiff was not required to personally attend the services at the mosque but also could have delegated other officers to attend, which he also refused. Fields’s refusal to attend appears to be less of a burden than in *Williams*. However, as the court found, the police department’s interest in maintaining discipline among employees was significant,<sup>197</sup> and perhaps outweighed the officer’s free speech

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<sup>194</sup> *Little v. Rummel*, No. 1:12-cv-113, 2014 U.S. Dist. LEXIS 77206, at \*50 n.7 (D.N.D. June 6, 2014).

<sup>195</sup> *See id.* at \*51.

<sup>196</sup> *See Williams v. California*, 990 F. Supp. 2d 1009, 1019 (C.D. Cal. 2012).

<sup>197</sup> *See Fields v. City of Tulsa*, 753 F.3d 1000, 1015 (2014) (stating that TPD’s interests were compelling, and Fields’s status as a commanding officer and

interests. The interest in maintaining discipline seems much less persuasive than in *Williams* in which the refusal infringed on the patient's rights. Notwithstanding, the police department has a need to maintain positive relations with the community it serves, and maintaining discipline in facilitating those relations is a legitimate interest, and the burden to others could also arguably be high. Compared to the employee in *Little*, if he refused to attend mandatory meetings on spiritual wellness, the burden on other individuals seems slight. Similarly, the burden of accommodation in *Little* of not requiring employees to attend a meeting on spiritual wellness seems like a very small burden on the employer. Further, in addition to burdening other individuals, policy concerns also demonstrate that the rulings in the two cases are in the public interest.

### *B. Policy Concerns*

#### 1. Impermissible Motives

There are a number of policy considerations that encourage limiting religious accommodation. A major issue is that laws that permit refusals based on religious objections are subject to abuse and could be abused due to impermissible motives.<sup>198</sup> For example, pharmacists that refuse to dispense birth control based on religious objections may be using religion as a way to achieve political goals of reducing access to birth control, rather than following a religious practice, or at least have mixed motives.<sup>199</sup> And, in the context of *Fields*, it is possible that the officer held discriminatory beliefs about Muslims, or at least that he had mixed motives. Courts are hesitant to dig too deep into the sincerity of religious objections,<sup>200</sup> as it requires courts to attempt to discern what an individual's sincerely held beliefs are, which is often a difficult, if not impossible, task for courts. Thus, allowing individual religious accommodation can be a way for individuals to

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his refusal to obey orders would likely have undermined confidence in him and his authority).

<sup>198</sup> See Diana Snyder, *A Reasonable Time, Place and Manner Restriction: Medicare Reimbursement Law Should Require Pharmacists to Fill Prescriptions Regardless of Personal Belief*, 36 AM. J.L. & MED. 652, 671 (2010).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

receive religious exemptions based on impermissible motives.<sup>201</sup> This is problematic because exemptions are allowed only for religious exemptions, and other motives do not deserve relief from the courts. Applying this policy to *Fields* and *Williams*, *Fields* should not have been permitted to refuse to comply with the order, as his motives may have been impermissible. Similarly, *Williams* should not have been allowed to refuse to assist the patient in attending the services, as her motives may also have been impermissible.

In determining whether to allow an individual an exemption based on religious beliefs, some pertinent inquiries are: What classes of persons should be able to invoke a legal right? And what should be the scope of the right relative to the desires and needs of those seeking services and the needs of institutions providing them?<sup>202</sup> Here, there is a danger that nonreligious claims will be disguised as religious claims, thereby expanding the class of persons who are able to invoke a legal right. Illustrating this point, an individual's animus towards Muslims could be disguised as a claim of religious infringement in a case such as *Fields*. In addition, the scope of this right could infringe upon the desires and needs of those seeking services by allowing an employee to be excused from attending religious services. Illustratively, in *Williams*, the patient's rights would be infringed upon if no employee could take her to attend services, and in *Fields*, the Islamic Society's rights could be infringed upon if they were denied the same treatment as other religious groups and thus did not receive the same benefits that result from a good relationship with the police department.

Additionally, policy should not allow employees to refuse to work with people they consider morally objectionable or whose beliefs they believe are morally objectionable.<sup>203</sup> There are many examples of this, including: a state justice of the peace who refuses to marry an interracial couple;<sup>204</sup> doctors refusing to provide artificial insemination treatment because the woman is a

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<sup>201</sup> *Id.*

<sup>202</sup> Kent Greenawalt, *Symposium: The Future of Rights of Conscience in Health Care: Legal and Ethical Perspectives: Article: Refusals of Conscience: What are they and Should they be Accommodated?*, 9 AVE MARIA L. REV. 47, 49 (2010).

<sup>203</sup> Snyder, *supra* note 198, at 671.

<sup>204</sup> Mary Foster, *Interracial Couple Denied Marriage License By Louisiana Justice Of The Peace*, HUFFINGTON POST (Mar. 18, 2010), [http://www.huffingtonpost.com/2009/10/15/interracial-couple-denied\\_n\\_322784.html](http://www.huffingtonpost.com/2009/10/15/interracial-couple-denied_n_322784.html).

lesbian;<sup>205</sup> a landlord refusing to rent to unmarried couples;<sup>206</sup> police officers refusing to protect health clinics providing abortion services;<sup>207</sup> and nurses refusing to terminate emergency abortions in life-threatening situations.<sup>208</sup> The first example involved a Louisiana justice of the peace who in 2009 refused to issue a marriage license to an interracial couple.<sup>209</sup> The justice of the peace said he did not think that people were accepting of mixed-race children, and that he did not want to help put them through that experience.<sup>210</sup> However, he subsequently resigned shortly after the issue was publicized.<sup>211</sup> If the justice of the peace were allowed to engage in such discrimination if he had simply alleged a sincerely held religious belief, discrimination could be much more prevalent in today's society. This could lead courts down a slippery slope, allowing unlimited exemptions for people as long as they claim that it violates their religious beliefs.<sup>212</sup> Prohibiting such exemptions "would signal to others who are motivated by their beliefs to impede the rights of third parties that their efforts have not gone unnoticed and may similarly evoke a federal response."<sup>213</sup> As our melting pot of a country grows more diverse each year, society cannot allow professionals to refuse to serve individuals based on moral objections.

Applying this in the context of *Fields* and *Williams*, in *Fields*, a police officer should not have been allowed to refuse to attend an event at the mosque because he disagreed with Islamic

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<sup>205</sup> Susan Donaldson James, *Doctors Deny Lesbian Artificial Insemination*, ABC NEWS (May 28, 2008), <http://abcnews.go.com/TheLaw/story?id=4941377>.

<sup>206</sup> *Court Lets Landlord Refuse Unmarried Couple*, N.Y. TIMES (May 29, 1994), <http://www.nytimes.com/1994/05/29/us/court-lets-landlord-refuse-unmarried-couple.html>.

<sup>207</sup> Andrew Martin, *Officer Sues City For Making Him Guard Abortion Clinics*, CHI. TRIB. (Sept. 21, 1995), [http://articles.chicagotribune.com/1995-09-21/news/9509210199\\_1\\_guard-abortion-clinics-religious-beliefs-angelo-rodriguez](http://articles.chicagotribune.com/1995-09-21/news/9509210199_1_guard-abortion-clinics-religious-beliefs-angelo-rodriguez).

<sup>208</sup> Snyder, *supra* note 198, at 672.

<sup>209</sup> Foster, *supra* note 204.

<sup>210</sup> *Id.*

<sup>211</sup> Melinda Deslatte, *Keith Bardwell Quits: Justice Of The Peace Who Refused To Give Interracial Couple Marriage License Resigns*, HUFFINGTON POST (Mar. 18, 2010), [http://www.huffingtonpost.com/2009/11/03/keith-bardwell-quits-just\\_n\\_344427.html](http://www.huffingtonpost.com/2009/11/03/keith-bardwell-quits-just_n_344427.html).

<sup>212</sup> See Snyder, *supra* note 198, at 671–72.

<sup>213</sup> *Id.* at 672.

beliefs or practices, or that he found morally objectionable. Similarly, the plaintiffs in *Williams* should not have been allowed to refuse to attend religious services with a patient who could not attend alone because they found the services or perhaps the individual morally objectionable. Federal law should set a standard for encouraging tolerance and diversity in this country, and allowing employees to refuse to work with or serve certain individuals will only contribute to intolerance and misunderstanding.

Reiterating this idea, Eugene Volokh, a law professor who teaches religious freedom law, explained that while in religious exemption regimes the government has to demonstrate a strong interest in order to place a substantial burden on an individual's religious practices, the plaintiff has to show that the government action required him to do something that was against his religious beliefs.<sup>214</sup> Applying that to *Fields*, he explained that he had no sympathy for Fields, stating that his job as a police officer, and particularly as a police captain, was to strengthen the police department's relationship with the community and subcommunities.<sup>215</sup> Part of this role involves demonstrating respect for communities, so that individuals are more likely to contact the police and assist in furthering investigations, which is more likely when communities know and respect the police.<sup>216</sup> He continued:<sup>217</sup>

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<sup>214</sup> Eugene Volokh, *Police captain who refused order to go to Law Enforcement Appreciation Day" at mosque—or send his subordinates there—loses his lawsuit*, WASH. POST (May 23, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/23/police-captain-who-refused-order-to-go-to-law-enforcement-appreciation-day-at-mosque-or-send-his-subordinates-there-loses-his-lawsuit/>.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Volokh reasoned that if the order had required Fields to go to the event personally, and he had sincerely claimed that his religion forbade him from going inside a mosque, it would have been a substantial burden on Field's religious beliefs. The question would then be:

[W]hether the government has to show that requiring the police officer to go to the event is necessary to serve a compelling government interest, as the Oklahoma Religious Freedom Act seems to be mandate for all sorts of government action, or whether the statute should be read as implicitly incorporating the lower Title VII standard when the government acts as employer.

*Id.*

Don't like some group, for religious or ideological reasons? Put on a good face and pretend; certainly don't spurn their amicable invitations. And if you think the community harbors some dangerous terrorists (which seems to be part of the claim in Fields's [sic] Complaint), then that's all the more reason for you to have a relationship with the community that might get you more tips about such terrorists, or more opportunities to spot such terrorists.<sup>218</sup>

The American Civil Liberties Union ("ACLU") also argued that a police officer does not have a right to refuse assignments "simply because they require him to serve people who do not share his faith."<sup>219</sup> It stated that it was "discrimination, pure and simple," and that the First Amendment prescribes that public servants serve all individuals regardless of their faith.<sup>220</sup> Daniel Mach, director of the ACLU Program on Freedom of Religion and Belief, stated that while Fields was entitled to his own beliefs, he could not abandon individuals of other faiths while on duty, adding that "[t]he idea that an officer can pick and choose whom he will assist based on what they believe strikes at the heart of our most cherished constitutional values of religious liberty and equality."<sup>221</sup>

Thus, because these cases could bring about claims resulting from impermissible motives, public policy also is in accordance with the two decisions. Another concern that arises from these cases is that allowing employee exemptions could also result in infringement of other individuals' rights.

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He argues that under a Title VII standard, the government would likely easily win, but that under the "necessary to a compelling government interest" it would be less clear. *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Press Release, American Civil Liberties Union, ACLU Brief Argues That Tulsa Police Officer Cannot Refuse to Serve People of Other Faiths (Apr. 23, 2013), <https://www.aclu.org/religion-belief/aclu-brief-argues-tulsa-police-officer-cannot-refuse-serve-people-other-faiths>.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* Notably, Fields did state that if the order were a "call for service," he would have attended. *Fields v. City of Tulsa*, 753 F.3d 1000, 1005 (2014). However, as mentioned, fostering positive community relationships is also part of the police department's role in furthering its mission. *Id.*

## 2. Infringement of Other Individuals' Religious Beliefs

Allowing religious exemptions could lead to infringements of others individuals' religious freedoms. For example, if justices of the peace were allowed refuse to perform same-sex marriages, anti-gay marriage groups could then take advantage of this by conceivably occupying all of the justices of the peace positions in one county.<sup>222</sup> If this were to happen, there would be no available justice of the peace to perform same-sex marriages in the county, thereby denying homosexual couples the ability to marry in a certain county.<sup>223</sup>

Applying this same scenario to the *Williams* context, if every employee refused to accompany a disabled client to attend religious services, the client's own religious rights would be infringed upon. Therefore, allowing religious exemptions could lead to infringing on others' religious freedoms, as in *Williams*, in which an employee's refusal infringed on the patient's religious freedoms.

Due to the policy concerns of impermissible motives and infringement of other individuals' rights, as well as the consistency of the two cases in relation to other employment cases, *Field* and *Williams* were correctly decided.

### *C. Fields and Williams Were Correctly Decided*

The employees in *Fields* and *Williams* rightly could be forced to attend religious services. The cases are consistent with other religious freedom claims in the employment context, and such rulings are in accordance with public policy. First, the burden was too high on clients and those receiving the services, namely the disabled patient and the Muslim community members. In addition, allowances for the plaintiffs would have resulted in infringements of other individuals' rights. Further, employees should be held to a higher standard in rendering services than those receiving them. Consequently, *Fields* and *Williams* were rightly decided and similar cases that are bound to arise should be decided in accordance.

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<sup>222</sup> Allison L. Collins, "I Will Not Pronounce You Husband and Husband": *Justice and the Justice of the Peace*, 61 ALA. L. REV. 847, 865 (2010).

<sup>223</sup> *Id.* at 865–66.

## IV. CONCLUSION

The Tenth Circuit in *Fields* and the Central District of California in *Williams*, which was affirmed by the Ninth Circuit, ruled properly in denying the plaintiffs' claims of religious accommodation. First, the cases are consistent with other cases involving religious exemptions in the workplace. Additionally, the plaintiffs, as employees, should not have been excused from carrying out their duties in the context of their employment, despite their claims of infringement of their own rights. Employees have unique duties to serve the public, which include serving individuals of different faiths. Further, if courts allow such claims they will be required to determine if an individual holds sincerely held beliefs—a difficult, if not impossible, task. It also could provide an avenue for claims with impermissible motives, thereby allowing exemptions for individuals to object to duties they simply find morally objectionable, while claiming religious infringement. Public policy demands that employees serve individuals of different beliefs, which can extend to attendance at religious services. Thus, when considering similar cases and public policy, it is clear that *Fields* and *Williams* were properly decided and the plaintiffs' claims of religious accommodation were appropriately denied.