IN THE DISTRICT COURT OF APPEAL OF FLORIDA, SIXTH DISTRICT

CHRISTIAN MARIN,

Appellant,

vs.

NEMOURS CHILDREN'S HOSPITAL A/K/A THE NEMOURS FOUNDATION,

Appellees.

CASE NO.: 6D2024-1080

L.T. NO.: 2023-38313

ON APPEAL FROM
FLORIDA COMMISSION ON HUMAN RELATIONS
FCHR Order No. 24-022
FCHR Case No. 2023-38313
DOAH Case No. 23-1666

AMICUS CURIAE BRIEF OF FIRST LIBERTY INSTITUTE

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

At stake here is whether the Florida Civil Rights Act protects a Catholic employee from being terminated for refusing a vaccine that, if taken, would violate his sincerely held religious beliefs. To assist this Court with that assessment, we take up the second question for which it invited amicus support:

> Whether "federal Title VII authorities concerning religious accommodation in employment apply to claims brought under FCRA" despite "differences in statutory language between Title VII and FCRA concerning the definition of 'religion.'"

For the reasons that follow, we maintain that Title VII authorities should be considered persuasive in the FCRA context but only when those authorities are interpreting or applying Title VII's text that overlaps with the FCRA's text, and where those authorities properly examine the text to determine its meaning. This means that when the texts depart, Title VII authorities are inapposite, including cases applying Title VII's "undue hardship" defense set forth in its definition of religion, which was omitted from the FCRA.

We expand in turn.

QUESTIONS PRESENTED

2. Given the differences in statutory language between Title VII and FCRA concerning the definition of "religion," *compare* 42 U.S.C. § 2000e(j) (defining "religion") *with* § 760.02, Fla. Stat. (2021) (not defining "religion"), should federal Title VII authorities concerning religious accommodation in employment apply to claims brought under FCRA? How, if at all, does FCRA's existing references to Title VII federal case law impact this question? *See* 760.02, Fla. Stat. (2021); *see also Alachua Cnty. v. Watson*, 333 So. 3d 162, 171–72 (Fla. 2022) (discussing negative-implication canon).

I. Background Of The Florida Civil Rights Act.

Florida enacted its first anti-discrimination statute—the Florida Human Relations Act—in 1969, five years after enactment of the Civil Rights Act of 1964, which included Title VII. The goal of the Florida Human Relations Act was "to secure for all individuals within the state freedom from discrimination because of race, color, religion, or national origin." Ch. 69-287, § 1 at 1049, Laws of Fla.[1]

In 1977, the Legislature renamed the Florida Human Relations Act to the Human Rights Act of 1977 ("Human Rights Act") and added additional protected grounds. Ch. 77-341, at 1461–76, Laws of Fla. This was the first comprehensive overhaul of Florida's civil rights law.

The Human Rights Act was introduced through Senate Bill 1165[2] and in response to the prior statutory framework lacking teeth. The staff analysis to the bill explained that "[i]n 1972 the legislature gave the [Florida Human Relations Commission] the power 'to become a deferral agency for the federal government and to comply with the necessary regulations to effect this part.'" Fla. S. & H.R.,

[1] In 1972, the Legislature amended the Human Relations Act to prohibit sex-based discrimination. Ch. 72-48, at 197, Laws of Fla.
[2] The house also introduced its companion bill, House Bill 2026.

Session Law 77-341 (1977), Staff Analyses & Legislative Documents 40, at 4, https://ir.law.fsu.edu/staff-analysis/40/.[3] Then "Attorney General Shevin issued an opinion stating that [Florida's original 1972] statute 'lacks the specificity required to effectuate a valid adoption by reference' of Title VII of the Civil Rights Act of 1964." *Id.* The Human Rights Act thus was meant to "expand[] the commission's authority by declaring certain discriminatory acts unlawful and by authorizing the commission to issue an order prohibiting the practice and providing affirmative relief," and, in turn, allow Florida to "handl[e] its own problems with discrimination rather than having the federal government handle them." *Id.* at 5.

The staff analysis further stated, in pertinent part:

> The proposed Human Rights Act would transform the Human Relations Commission into an agency with authority to protect Florida's citizens against discrimination based on race, sex, religion, national origin, age, handicap or marital status. At present, the state has very limited authority in equal employment opportunity matters, and its citizens are compelled to rely on an

[3] The Florida State University College of Law Scholarship Repository maintains a compilation of the legislative history for Senate Bill 1165 (which became Ch. 77-341, Laws of Fla.) in a single fifty-eight-page PDF document titled "Session Law 77-341." Pinpoint citations refer to the PDF's pages. *See* https://ir.law.fsu.edu/staff-analysis/40/.

> increasingly unwieldy federal system for redress of these grievances.

Id. at 15. But the Legislature had a choice at that time to simply adopt Title VII in its entirety or to provide more robust protection for Florida's citizens. It chose the latter.

The Legislature specifically highlighted that it expanded on Title VII and other federal anti-discrimination statutes by including "marital status as a proscribed basis for discrimination," adding "age and handicap" as a basis for discrimination, rejecting the age limits for age-based discrimination in the "Age Discrimination in Employment Act of 1967," and applying Florida's statute to "private employers" even if they were "not receiving federal funds." *Id.* at 17–19.

> Senate Bill 1165 also contained the following provision:
>
> > (14) It is the intent of the Legislature that in construing this section, due consideration and great weight shall be given to the interpretation of the Equal Employment Opportunity Commission and the federal courts relating to Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000 e), as amended.

CS for SB 1165, § 6(14) (1977). But that provision never made its way into the statute, as enacted.

Then, in 1992, the Legislature passed Senate Bills 1368 and 72, which renamed the Human Rights Act to the current Florida Civil Rights Act of 1992 ("FCRA"). Notwithstanding the change in name, the unlawful employment practices section, § 760.10(1), Florida Statutes, remained unchanged. *See* Ch. 92-177, § 760.10(1) at 1730, Laws of Fla.

The purpose of the FCRA, as set forth in the statute, is to:

> secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

§ 760.01(2), Fla. Stat. And, to that end, Florida courts are required to "liberally construe[]" the FCRA in order "to further th[ose] general purposes . . . and the special purposes of the particular provision involved." § 760.01(3), Fla. Stat.

II. Title VII Authorities Concerning Religious Accommodation in Employment Have Limited Applicability to FCRA Claims.

This Court has asked whether "[g]iven the differences in statutory language between Title VII and FCRA concerning the

definition of 'religion,' . . . should federal Title VII authorities concerning religious accommodation in employment apply to claims brought under FCRA?" In short, some Title VII authorities can be relied on as persuasive authority for claims brought under the FCRA, while others cannot; the applicability of any given authority is constrained by the material similarity—or lack thereof—between the statutory texts.

The Florida Supreme Court requires that all lower courts adhere to the "supremacy-of-text principle." *Ham v. Portfolio Recovery Assocs.*, 308 So. 3d 942, 946 (Fla. 2020). And that principle, in turn, dictates that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Advisory Op. to Governor re Implementation of Amend. 4, Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Scalia & Garner, Reading Law: The Interpretation of Legal Texts 56 (2012)); *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) ("[T]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341

(1997))). This is important because, even though the FCRA was modeled after—and in many important ways overlaps with—Title VII, the FCRA does not do so in all respects. And where they depart, the text of the FCRA reigns "supreme"; this is especially true where the Legislature could have incorporated then-available aspects or language from Title VII but chose not to.

And so, where the text of the FCRA and Title VII align, this Court may consider Title-VII authorities persuasive—even if not binding—precedent for evaluating claims brought under the FCRA. *See, e.g.*, *State v. Cook*, 146 So. 223, 224 (1933) (Florida statute patterned after federal statute should be given "same construction in the Florida courts as its prototype has been given in the federal courts, in so far as such construction is not inharmonious with the spirit and policy of our own legislation upon the subject"). Where they do not align, however, such authorities should be given no consideration at all.

We next examine the relevant ways in which the FCRA and Title VII align and, just as critically, depart on the question of religion-based discrimination.

III. Points of Agreement Between the FCRA and Title VII.

Under the FCRA, it is an "unlawful employment practice" for an employer:

> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, pregnancy, national origin, age, handicap, or marital status.

§ 760.10(1), Fla. Stat (emphasis added). This provision mirrors both the wording and substance of Title VII's analogous provision. Here's how Title VII phrases it:

> It shall be an unlawful employment practice 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

42 U.S.C. § 2000e-2(a)(1) (emphasis added).

As should be plain from their respective texts, each statute makes it unlawful to "discharge," "fail or refuse to hire," "or otherwise discriminate against any individual with respect to" "compensation, terms, conditions, or privileges of employment, because of such

individual's . . . religion." *Compare* § 760.10(1), Fla. Stat. *with* 42 U.S.C. § 2000e-2(a)(1). And for that reason, it offers one area for which federal precedent may be persuasive—because of the precisely overlapping text. *See Cook*, 146 So.at 224; *see also State v. Jackson*, 650 So. 2d 24, 27 (Fla. 1995) (same). That is, of course, provided their rulings do not hinge on extra-textual interpretive techniques—like appealing to "legislative purpose" or invoking judge-made exceptions—that would be at odds with Florida's supremacy-of-text principle. *See Ham*, 308 So. 3d at 946.

With all this in mind, we turn to one principal authority that Florida courts should accept as persuasive here: *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015).[4]

There, the U.S. Supreme Court was asked to determine whether Title VII's prohibition against "refusing to hire an applicant in order to avoid accommodating a religious practice," i.e., a failure-to-accommodate claim, "applies only where an applicant has informed the employer of his need for an accommodation." *Id.* at 770. But before it could do so, the Court first had to (and did) ground Title VII

[4] This Court referenced *Abercrombie* in its Order, albeit for a different reason.

failure-to-accommodate claims in section 2000e-2(a)'s text. This even though Title VII, like the FCRA, mentions the word "accommodate" nowhere in its proscriptive text. *See* 42 U.S.C.A. § 2000e-2(a); § 760.10(1), Fla. Stat.

Even so, Justice Scalia, writing for the majority, began by observing that Title VII "prohibits two categories of employment practices." *Abercrombie*, 575 U.S. at 771. The first being a bar against "disparate treatment" (or, as he called it, "intentional discrimination"), and the second being a bar against "disparate impact." *Id.* Both, the Court found, are exclusively grounded in the text of sections 2000e–2(a)(1)–(2). *Id.*; *see also Staple v. Sch. Bd. of Broward Cnty., Fla.*, 2024 WL 3263357, at *3 (11th Cir. July 2, 2024) (Luck, J.) ("section 2000e-2(a)(1)'s disparate treatment provision and section 2000e-2(a)(2)'s disparate impact provision 'are the only causes of action under Title VII'" (quoting *Abercrombie*, 575 U.S. at 771–72)). And although neither uses the term "accommodate," a failure-to-accommodate claim likewise necessarily travels under section 2000e-2(a). *See Abercrombie*, 575 U.S. at 771–74; *Staple*, 2024 WL *3 ("[T]he [*Abercrombie*] Court explained, a religious

discrimination claim 'based on a failure to accommodate a religious practice' flows from Title VII's disparate treatment provision.").[5]

That the duty to accommodate is grounded in the proscriptive text is further corroborated in how Title VII defines *religion*. The relevant section reads as follows: "The term 'religion' includes all aspects of religious observance and practice, as well as belief, *unless* an employer demonstrates that he is unable to reasonably *accommodate* . . . [a] religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C.A. § 2000e(j) (emphasis added). Critically, the word "accommodate"—as the italicized portion of the text makes clear—is used in the *negative*

[5] Though the Court highlighted that Title VII's definition of religion includes "all aspects of religious observance and practice," *Abercrombie*, 575 U.S. at 771–72, the plain meaning of "religion" includes both. *See* The American Heritage Dictionary of the English Language (5th ed. 2022) (defining "religion" to include "[a] particular variety of such belief, especially when organized into a system of doctrine and practice"); Religion, Merriam-Webster, https://www.merriam-webster.com/dictionary/religion (last visited Jan. 20, 2026) (defining "religion" as "an organized system of religious attitudes, beliefs, and practices" and "the religious beliefs, observances, and social practices found within a given cultural context"); *see also* § 760.01(3), Fla. Stat. (FCRA "shall be liberally construed to further . . . the special purposes of the particular provision involved"). Thus, there is no daylight between Title VII's inclusion of "practice" and "observance" in its definition of religion and the plain meaning of "religion" in the FCRA.

("unless") to introduce a limited exception from the obligation to accommodate, thus presupposing that an underlying obligation to do so already exists. *Id.*[6] And it is precisely *that* obligation that Scalia locates in the substantive provisions of Title VII, rather than in how it defines the word "religion." *See Abercrombie*, 575 U.S. at 771; *see also id.* at 772 n.1 (treating the "'undue hardship' defense" under § 2000e(j) as distinct from Title VII's broader obligation to ensure religious accommodations); *Staple*, 2024 WL 3263357, at *3.

In other words, failure-to-accommodate claims are grounded not in the definition of religion under Title VII but, rather, under section 2000e–2(a) alone. *Abercrombie*, 575 U.S. at 773; *see also Staple*, 2024 WL 3263357, at *3. And because section 760.10(1) of the FCRA is substantively identical to section 2000e–2(a) of Title VII (as explained above), Florida courts can look to *Abercrombie* for

[6] Were one to read this part of the Act as grounding not just the defense to an accommodation claim but, also, the obligation for providing an accommodation in the first instance, it would render the word "unless" useless, thus violating the surplusage cannon. *See* Scalia & Garner, *supra*, 26 ("If possible, every word and every provision is to be given effect (*verba cum effect sunt accipienda*). None should be ignored. None should be needlessly given an interpretation that causes it to duplicate another provision or to have no consequence.")

guidance when evaluating whether the FCRA includes an obligation to accommodate.[7]

This conclusion is reinforced by the Legislature's expressed intent to provide Florida citizens with at least as much protection under the FCRA as that provided by Title VII.

IV. Points of Departure Between the FCRA and Title VII.

While federal precedent may be persuasive in the FCRA context where the Title VII and FCRA texts align, it is not persuasive where the texts diverge. This follows from Florida courts' obligation to adhere to the statutory text, which renders interpretations of materially different language inapplicable.

Here, the Florida legislature's decision not to include Title VII's definition of "religion" is front-and-center.[8] As previously noted,

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[7] Other states' statutes with similar text to the FCRA—and patterned after Title VII—likewise have been interpreted to impose an obligation to accommodate. *See, e.g.*, *Lee v. Seasons Hospice*, 696 F. Supp. 3d 572, 581–85 (D. Minn. 2023) (applying same reasoning to rule that the Minnesota Human Rights Act includes a duty to accommodate); *Kumar v. Gate Gourmet Inc.*, 180 Wash. 2d 481, 501 (2014) (ruling same with respect to Washington Law Against Discrimination).

[8] While not dispositive, Congress enacted 42 U.S.C. § 2000e(j) in 1972. *See Groff v. DeJoy*, 600 U.S. 447, 458 (2023). The Human Rights Act was enacted in 1977 and then amended and renamed to the Florida Civil Rights Act in 1992. So, to the extent relevant, the Legislature was aware of Title VII's definition of religion before

section 2000e(j) not only defines religion but goes a step still further: It creates a defense to an accommodation-based claim. That is, under 42 U.S.C. § 2000e(j), an employer may defend against an accommodation-based Title VII claim by "demonstrat[ing] that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.*; *Abercrombie*, 575 U.S. at 772 n.1 (describing defense); *see also Groff*, 600 U.S. at 468 (same). But the FCRA contains no similar text and therefore does not provide an "undue hardship" defense. This, too, is confirmed by the Legislature's expressed intent to provide Florida citizens with more robust protections under the FCRA than Title VII and other federal anti-discrimination statutes.

And to the extent that the defendant (or any amicus) argues that the FCRA implicitly adopted Title VII's definition—the statutory text forecloses that conclusion.

Again, Florida courts cannot ignore the supremacy-of-text principle, *Ham*, 308 So. 3d at 946, and there is no textual basis in

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enacting both the Human Rights Act and the FCRA and chose to omit it both times.

the FCRA for reading in an undue-burden defense. The Florida Supreme Court considered a similar issue in *Delva v. Cont'l Grp., Inc.*, when addressing whether the FCRA's prohibition against sex-based discrimination included pregnancy discrimination. 137 So. 3d 371 (Fla. 2014). In arguing their positions, the parties relied on the fact that the FCRA was "patterned after the Federal Civil Rights Act." *Id.* at 373–74. The Court, however, ignored the federal-analog arguments and instead turned to the FCRA's text to hold that "discrimination based on pregnancy is in fact discrimination based on sex because it is discrimination as to a natural condition unique to only one sex and that arises 'because of [an] individual's . . . sex.'" *Id.* at 375 (quoting § 760.10(1)(a), Fla. Stat.).[9] That supremacy-of-text principle applies with just as much force here.

Second, the FCRA's framework proves that Title VII's "undue burden" defense should not be imputed to the FCRA. As this Court noted, the Legislature expressly incorporated Title VII principles in other areas of the FCRA. Sections 760.11(5), (6), and (7), Florida Statutes, all state: "It is the intent of the Legislature that this

[9] The Court endorsed reasoning from the Massachusetts Supreme Judicial Court regarding Massachusetts's similar state law.

provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action." But for unlawful practices, § 760.10(1), Fla. Stat., the Legislature chose to depart from Title VII, making no similar reference to it and dropping its definition of religion along with it.

Relevant here, the Florida Supreme Court recently applied the omitted-case canon under like circumstances in *R.R. v. New Life Community Church of CMA, Inc.*, and declared: "[w]hen a 'statute purports to provide a comprehensive treatment of the issue it addresses, judicial lawmaking is implicitly excluded.' Put differently . . . , '[t]o supply omissions transcends the judicial function.'" 303 So. 3d 916, 923 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 96 (2012) and *Iselin v. United States*, 270 U.S. 245, 251 (1926)) (alterations in original); *see also* Scalia & Garner, *supra*, at 96 ("[n]othing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*) . . . a matter not covered is to be treated as not covered."). It simply is "not [a judge's] function or within his [or her] power to enlarge or improve or change the law,' [n]or should the judge elaborate unprovided for exceptions to a text" because "'if the

[legislature] had intended to provide additional exceptions, it would have done so in clear language.'" Scalia & Garner, *supra*, at 93 (citations omitted); *see also D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 886 (Fla. 2018) (Canady, J., dissenting) ("The accrual doctrine should not be manipulated when the Legislature has clearly pronounced what the exceptions are and are not."); *Abercrombie*, 575 U.S. at 774 ("The problem with this approach is the one that inheres in most incorrect interpretations of statutes: It asks us to add words to the law to produce what is thought to be a desirable result. That is Congress's province.").

Last, and for clarity, recognizing an implicit adoption of Title VII's definition would run afoul of the long-standing principle that federal authorities on a federal statute only apply to Florida's correlating state statute when those statutes are harmonious.

While true that several Florida district courts have generally stated that "'[t]he FCRA is patterned after Title VII' and that 'federal case law on Title VII applies to FCRA claims," *Vill. of Tequesta v. Luscavich*, 240 So. 3d 733, 738–39 (Fla. 4th DCA 2018) (quoting *Palm Beach Cty. Sch. Bd. v. Wright*, 217 So.3d 163 (Fla. 4th DCA 2017)), those courts have not taken the necessary next step in the legal

analysis: confirming the FCRA text at issue overlaps with Title VII's text, such that Title VII authorities would be instructive in resolving questions on the former. *See, e.g.*, *Luscavich*, 240 So. 3d at 738–39 (no textual analysis). Doing so would have required them to grapple with the limiting principle that Florida statutes borrowed from similar federal acts on the same subject should be construed analogously to their federal counterparts, but only "*in so far as such construction is not inharmonious with the spirit and policy of our own legislation upon the subject.*" *Cook*, 146 So. at 224 (emphasis added); *see also O'Loughlin v. Pinchback*, 579 So. 2d 788, 791 (Fla. 1st DCA 1991) (same). And so, where, as here, the FCRA text departs from Title VII, i.e., when they are not in harmony, federal authorities carry no weight.[10]

[10] Even if one might believe that the FCRA's duty to accommodate, if unaccompanied by an undue-hardship defense, may impose a steep burden on employers, "it is not this Court's function to re-legislate th[e] Act." *Fisel v. Wynns*, 667 So. 2d 761, 764 (Fla. 1996) (quoting *Selby v. Bullock*, 287 So.2d 18, 22 (Fla.1973)). Any changes, especially those concerning public policy, are for the Legislature to weigh in on—not the courts.

V. Conclusion.

For these reasons, Title VII authorities should be considered persuasive in the FCRA context only when they are interpreting or applying Title VII's text that overlaps with the FCRA's text, and where they properly examine the text to determine its meaning. But where the texts depart, Title VII authorities are inapposite—including when they are applying an "undue hardship" defense that the Florida Legislature omitted from the FCRA.

Dated: January 28, 2026

Respectfully submitted,

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