

No. 26-3345

**In the United States Court of Appeals
for the Ninth Circuit**

SCOTT CARLSON, BRIAN ROBILLARD, ALISON HALLIFAX, MATTHEW
PETERSON, JOSHUA FREI, and TYLER PARNELL,

Plaintiff-Appellants

v.

MAYOR ANGELA BIRNEY, FIRE CHIEF ADRIAN SHEPPARD, and CATHRYN
LAIRD, in their individual and official capacities,

Defendant-Appellees.

*On Appeal from the United States District Court for the Western District of
Washington, Seattle, No. 2:25-cv-00514, Hon. Jamal N. Whitehead*

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INTRODUCTION

No government may burden religious exercise pursuant to laws that do not meet the requirements set forth by the First Amendment’s Free Exercise Clause. Yet the City of Redmond did just that. The City terminated Plaintiffs—six firefighters with decades of service between them—for refusing to comply with a vaccine mandate that transparently failed to comport with the First Amendment’s demands.

Under the Free Exercise Clause, a local policy burdening religion that is not “neutral” or “generally applicable” must be narrowly tailored to vindicate the government’s compelling interests. A policy is not “generally applicable” if it contains a mechanism for individuals to claim exceptions or accommodations. And a policy is not “neutral” if lawmakers express animus toward religion.

The City’s vaccine mandate satisfied none of those criteria. It was not “generally applicable” because it contained a mechanism for the City to grant individualized exemptions. It was not “neutral” because the City’s Mayor, Angela Birney, expressed hostility toward those with religious objections to the vaccine—pledging “consequences” for the “unvaccinated” when promulgating the mandate. And it was not narrowly tailored because the City

easily could have met its interest in safety through less restrictive means like masking and testing.

The district court did not question that Plaintiffs had identified a First Amendment violation. But the court nevertheless dismissed Plaintiffs' 42 U.S.C. § 1983 claims against the City and its officers.

As to the City, the court found that Plaintiffs had failed to allege that the City's policy—as opposed to discrete actions taken by employees tasked with implementing the policy—was the true cause of Plaintiffs' constitutional injuries. The court thus found that Plaintiffs had not alleged that a municipal “policy” was the “moving force” behind their firings—as required to state a claim against the City itself under *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978).

That conclusion was mistaken. The City fired Plaintiffs pursuant to a written Executive Order that on its face contained individualized exemptions of the sort that trigger heightened First Amendment scrutiny. Although City employees, like HR Director Cathryn Laird and Fire Chief Adrian Sheppard, implemented that policy, controlling precedent is crystal clear that municipalities are liable where “action[s] to ... implemen[t] or execut[e] a policy” violate the Constitution. *Id.* at 690.

The district court also erred in finding that qualified immunity barred Plaintiffs' claims against the individual officers responsible for executing the City's Order: Mayor Birney, Director Laird, and Chief Sheppard. No reasonable officer could have failed to appreciate that a policy with individualized exemptions had to be narrowly tailored—yet on the alleged facts, Defendants *refused* to consider whether measures less restrictive than vaccination might have sufficed. It was likewise clear that the Constitution forbids policies motivated by religious hostility; Defendants pressed on with enforcing such a policy anyway. Because it is not yet clear that Plaintiffs could unearth no evidence overcoming qualified immunity, dismissal on that basis would be premature.

This Court should reverse the district court's order dismissing Plaintiffs' claims and remand for further proceedings.

JURISDICTION

The district court had jurisdiction over Plaintiffs' federal section 1983 claims under 28 U.S.C. § 1331. The district court entered a final judgment on May 14, 2026, ER-3, and Plaintiffs timely noticed an appeal on May 20, 2026, ER-65; *see* Federal Rule of Appellate Procedure 4(a)(1)(A). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

ISSUES

1. Whether the City of Redmond's vaccine policy was the "moving force" behind the City's violations of Plaintiffs' First Amendment rights, as required for Plaintiffs to state a claim against the City under *Monell*, 436 U.S. at 694.
2. Whether the individual Defendants are entitled to qualified immunity.

STATEMENT

A. Constitutional and Statutory Background

1. Free Exercise Clause. The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law ... prohibiting the free exercise" of religion. The Clause "protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022).¹ All religious practices receive that protection, even those that others perceive as "[un]acceptable, [il]logical, [in]consistent, or [un]comprehensible." *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

¹ Unless otherwise noted, all citations are omitted.

“Neutral and generally applicable” laws that incidentally burden religion are “ordinarily not subject to strict scrutiny under the Free Exercise Clause.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). However, a law burdening religious exercise is “not generally applicable”—and thus invites strict scrutiny—if it allows “the government to consider the particular reasons for a person’s conduct by providing ‘a mechanism for individualized exemptions.’” *Id.* Put otherwise, “the mere existence of government discretion is enough to render a policy not generally applicable” such that “a mechanism for individualized exemptions’ ... subjects a governmental regulation to review under strict scrutiny.” *Fellowship of Christian Athletes v. S.J. Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 685-86 (9th Cir. 2023) (en banc).

A law is not “neutral” if, among other things, a plaintiff identifies “‘official expressions of hostility’ to religion” by the decisionmakers responsible for the law. *Kennedy*, 597 U.S. at 525 n.1 (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617, 639 (2018)). Such evidence of animus is enough for a court to “‘set aside’ [the] polic[y] without further inquiry.” *Id.*

Where strict scrutiny applies, “[a] government policy can survive ... only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.” *Fulton*, 593 U.S. at 541. “[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.” *Id.* Accordingly, where “less restrictive measures” are available, a policy is not “narrowly tailored” and does not satisfy strict scrutiny. *Fellowship of Christian Athletes*, 82 F.4th at 685, 694.

2. Section 1983 and Monell. 42 U.S.C. § 1983 allows individuals to sue State and local officials who violate their federal constitutional rights. Under the statute’s terms, “every person who, under color of any statute, ordinance, regulation, custom, or usage of any State ..., subjects ... [any] person ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.” *Id.* § 1983.

Although section 1983 does not permit suits against “local government[s]” for “injur[ies] inflicted solely by ... employees or agents” on a theory of “*respondeat superior*,” the statute does allow so-called *Monell* claims against government entities where an “official policy [is] the moving force” behind the “constitutional violation.” *Monell*, 436 U.S. at 693-94. Where a plaintiff’s “injury” is the result of “a government’s policy or custom, whether

made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy,” the plaintiff may bring a section 1983 claim against the government itself. *Id.*

What a plaintiff must plead to survive a motion to dismiss on a section 1983 claim depends on whether the plaintiff sues individual officers or a municipality. In individual officer suits, the plaintiff must show that an officer “acting under color of state law” violated his constitutional rights. *Soo Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017). Although individual officers are entitled to qualified immunity, such that they are liable only for violating clearly established rights, plaintiffs need not “anticipate” that defense in their pleadings. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

Where a plaintiff proceeds against a municipality, by contrast, he must plead that his constitutional injuries were the result of “an official policy,” a “pervasive practice or custom,” or a “decision or act by a final policymaker.” *Horton ex rel. Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019). Qualified immunity does not apply to *Monell* claims. *Id.*

B. Factual Background

1. Plaintiffs were long-serving firefighters with the Redmond Fire Department. The Redmond Fire Department serves over 100,000 community

members in the City of Redmond, Washington and parts of the City's neighboring county. *2021 Annual Report* at 3, RFD (2021), <https://perma.cc/PAR5-UAHU>. The Department is responsible for “fire suppression” (putting out fires), “emergency medical services” (first aid), and “[f]ire prevention” (inspections to ensure fires do not happen). *Id.* at 3, 7. The Department also engages in other functions that enable frontline operations, like “training” firefighters. *Id.* at 23; *accord* ER-40.

Plaintiff-appellants are six former Redmond firefighters. Plaintiffs are also deeply religious. ER-16-17. When the COVID pandemic struck Redmond in early 2020, Plaintiffs served as first responders, caring for City residents, providing emergency medical services, and transporting patients to emergency care. ER-18. In doing so, Plaintiffs, like other Redmond firefighters, did “an exceptional job of mitigating the spread of COVID-19” by wearing personal protective equipment (PPE). ER-18-19. Those precautions proved so effective that “Redmond was unaware of any transmissions of COVID-19 from a firefighter to a patient or a patient to a firefighter at any time throughout the pandemic.” ER-19.

2. *The City imposes a vaccine mandate.* On August 9, 2021, Governor Jay Inslee issued a Proclamation requiring Washington healthcare workers to

vaccinate against COVID-19. ER-20; Proclamation 21-14, Office of Governor Jay Inslee (Aug. 9, 2021), <https://perma.cc/GP8B-9PVW>. The Proclamation contained express exemptions for workers with disabilities or sincerely held religious beliefs. Proc. § 2. And it tasked public and private employers with handling those requests, *id.*, while emphasizing that employers had discretion to “implemen[t] requirements that exceed the requirements of this Order.” *Id.* § 4.

Following the Proclamation, the City of Redmond required firefighters to vaccinate. ER-21. Plaintiffs requested religious accommodations, explaining that vaccination conflicted with their sincerely held religious beliefs. ER-21. The City granted Plaintiffs exemptions, permitting them to continue serving as firefighters provided that they test before every shift, wear “personal protective equipment,” and allow “vaccinated employee[s] to provide patient care” where possible. ER-21. By September 20, the City had approved Plaintiffs’ requests. ER-22.

But even as that process played out, behind the scenes the City’s decisionmakers resolved to take a much stricter approach to vaccination. Around September 3, 2021, the City’s Mayor, Angela Birney, told HR Director Cathryn Laird that she wanted “consequences for the unvaccinated.” ER-28.

In Birney’s view, “public perception” meant that the City should be seen as “making the unvaccinated uncomfortable” and “treat[ing] [them] differently.” ER-28. Given the City’s ongoing discussions with Plaintiffs and other firefighters about religious accommodations, these statements had a clear import: Birney wished to make an example of Plaintiffs for holding to their religious beliefs.

Around the same time, the City’s Fire Chief, Adrian Sheppard, resolved in private discussions with fire chiefs from neighboring departments that “unvaccinated firefighters could not work in direct patient care roles” regardless of their religious beliefs. ER-24. To support that decision, Sheppard reached out to Dr. Rea, the Medical Program Director of King County Public Health’s EMS Division, to solicit a “corroborat[ing]” medical opinion. ER-23-24. Sheppard then communicated his stance to Mayor Birney, who (unsurprisingly, given her earlier statements) agreed with him. ER-24.

On September 20, 2021—the same day the City finalized Plaintiffs’ accommodations—Mayor Birney sent an email reversing the City’s “original stance on masking and pre-shift testing as acceptable accommodations for unvaccinated EMTs.” ER-24-25. Birney also directed Laird to stop approving accommodations. ER-25.

Mayor Birney memorialized the City's new policy in a September 30 Executive Order. ER-25; *see also* Executive Order: Mandatory Vaccination of City Firefighters and Paramedics, City of Redmond (Sep. 30, 2021), <https://perma.cc/VG64-TCTP> ("EO").² Citing requests by "several Redmond firefighters ... for religious accommodations" as a reason for issuing additional guidance, the Order explained that the City needed to consider unspecified "additional factors" in evaluating future exemption requests and thus terminated Plaintiffs' existing accommodations. EO at 1-2; ER-25-26, 30.

The same day as the Executive Order, the City and the Union representing Redmond firefighters signed a Letter of Understanding about the City's new vaccine mandate. ER-30. The letter explained that absent a new accommodation, firefighters had two choices: vaccinate by October 18, 2021, or lose their jobs. ER-30.

Experiencing severe anxiety at the prospect of choosing between their jobs and their religious beliefs, Plaintiffs took medical leave pursuant to the Family and Medical Leave Act. ER-31.

² This Court may consider the Executive Order on this motion to dismiss because it is "incorporated into the complaint by reference." *Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1023 n.3, 1026 (9th Cir. 2025).

3. Implementing the Executive Order, City officials refuse Plaintiffs accommodations. Two days *after* the October 18, 2021 deadline for compliance with the vaccine mandate had passed, the City eventually offered unvaccinated firefighters further accommodations. ER-31. Under an agreement with the Union, unvaccinated firefighters had the chance to apply for reassignment to five (later reduced to four) non-patient-facing positions within the Department that did not require vaccination. ER-31-32; *see also* ER-31 (“The union had suggested positions sufficient to accommodate all the unvaccinated firefighters, but Redmond did not agree.”). All of those positions came with a 3% pay cut. ER-31.

Having belatedly offered the possibility of reassignment, HR Director Laird and Chief Sheppard took steps to prevent unvaccinated firefighters from receiving the accommodation positions. Aware of Mayor Birney’s desire for “consequences” for the unvaccinated, Laird understood that although the Executive Order on its face permitted further accommodation requests, it *de facto* “precluded any alternative to vaccination as [a] safety measur[e].” ER-30. Indeed, Laird could hardly have missed that message given that Birney continued to express her desire to tell the public that “all working firefighters were vaccinated.” ER-32. As the official with responsibility for approving

accommodations under the Order, ER-22, Laird carried out Birney's directive, ER-30; ER-33-34.

Defendants thus frustrated Plaintiffs' ability to apply for the accommodation positions at every turn. The City twice emailed Plaintiffs asking if they were interested in the accommodation positions in October and November 2021, and, after Plaintiffs promptly expressed interest, promised them a decision by "December 17." ER-31-32. Yet the City blew past that deadline and reversed course, writing to Plaintiffs on December 21 that it would not consider them for reassignment until they returned from medical leave. ER-32-33. During Plaintiffs' absence, Laird then gave an accommodation position to a *vaccinated* firefighter and advertised another position without informing Plaintiffs. ER-33-36.

Despite Laird and Sheppard's efforts to "delay and obstruct," ER-34, when Plaintiffs began returning from medical leave in March 2022, the City still had an accommodation position available. ER-35. But the City did not use it to accommodate any Plaintiff. Instead, after Plaintiffs "requested the position before its open enrollment ended," Sheppard falsely told them that no such position existed. ER-36. Having misled Plaintiffs, Sheppard awarded the position to a vaccinated firefighter on April 1. ER-36.

Throughout the accommodation process, other City staff members reported that Laird and Sheppard appeared “very frustrated with the unvaccinated firefighters and upset they were pushing back and would not just get vaccinated.” ER-36. Sheppard even “blam[ed] Plaintiffs for terminating themselves” by refusing the vaccine. ER-37.

After refusing to offer a single Plaintiff any accommodation, the City terminated Plaintiffs between April 4 and May 25, 2022. ER-46. Remarkably, the City did so *after* it had lifted other COVID safety protocols. ER-46-47. For example, on March 15, 2022, the Fire Department relaxed COVID masking and testing precautions for firefighters because daily COVID positivity rates throughout King County had continued to decline. *See* ER-47; *see also* ER-50 (“the pandemic was waning”). Nor did the City mandate booster vaccinations in spring 2022, notwithstanding Dr. Rea’s recommendations to require boosters. ER-50.

C. Procedural History

1. *Plaintiffs file suit.* On March 21, 2025, Plaintiffs brought claims under 42 U.S.C. § 1983 against Angela Birney, Cathryn Laird, and Adrian Sheppard in their official and individual capacities, alleging violations of Plaintiffs’ First Amendment rights to free exercise of religion. D. Ct. Dkt. No.

1. Plaintiffs later amended their Complaint to state additional facts. ER-16 (First Amended Complaint).³

The City’s vaccine mandate, Plaintiffs observed, had burdened their religious exercise by forcing them to choose between their religious beliefs and their continued employment. ER-56. Nor was the policy neutral and generally applicable. It was not generally applicable because it provided a “mechanism for individualized exemptions.” ER-57. And it was not neutral because contemporaneous remarks from City decisionmakers revealed impermissible hostility to Plaintiffs’ religious practice of abstaining from vaccination. ER-57. As a result, Plaintiffs claimed, the policy was subject to heightened scrutiny—yet it could not survive such scrutiny because it was not narrowly tailored to achieve the City’s safety objectives. ER-57-58.

Based on that clear constitutional violation, the Complaint asserted two counts. Count I alleged a *Monell* claim, seeking to hold the City (through its officials) liable for its vaccine mandate, as expressed in Mayor Birney’s

³ Plaintiffs also asserted First Amendment free-speech and Fourteenth Amendment equal-protection violations. *See* ER-54-63. Because neither the City nor the district court questioned that Plaintiffs had stated facts that, if true, would establish a constitutional violation, this brief focuses on Plaintiffs’ free-exercise claim.

Executive Order and as implemented by Director Laird and Chief Sheppard. ER-54; *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (“[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent” (cleaned up)). Count II alleged claims against Birney, Laird, and Sheppard in their individual capacities for their roles in imposing the City’s unlawful mandate on Plaintiffs. ER-59.

2. Defendants move to dismiss. In their motion to dismiss, Defendants did not dispute that the City’s policy violated the Free Exercise Clause. D. Ct. Dkt. No. 22. Instead, as to Count I, Defendants claimed that Plaintiffs had failed to show the alleged First Amendment violation was the result of a policy or custom, as required for liability under *Monell*. In Defendants’ view, neither Mayor Birney’s Order nor Laird and Sheppard’s application of it revealed a custom or policy enacted by the City. Instead, the City’s Order was merely the implementation of the State’s Proclamation. *Id.* at 15-16.

As to Count II, Defendants asserted that qualified immunity barred Plaintiffs from holding them individually liable because Plaintiffs’ free-exercise rights were not clearly established. Defendants faulted Plaintiffs for failing to point to a “case in 2021 or 2022 [that] held that an official violates the constitution by requiring a firefighter be vaccinated to treat patients in a

pandemic.” *Id.* at 21.

Plaintiffs responded. D. Ct. Dkt. No. 29. *First*, Plaintiffs contested the notion that the City’s conduct was merely an implementation of state law. Plaintiffs explained that the City’s Executive Order was an “independent municipal policy decision” that went much further than the State’s Proclamation in restricting religious accommodations—as evidenced by the fact that other fire departments subject to the Proclamation offered extensive religious exemptions. *Id.* at 5, 17. And the City’s implementation of its Order, Plaintiffs explained, reflected a continuous course of conduct pursuant to a considered City policy—not ad hoc actions by City employees.

Second, Plaintiffs argued that the individual Defendants were not entitled to qualified immunity because by 2021 it was clearly established: (1) that policies with individualized exemptions must be narrowly tailored to deploy the least restrictive means; and (2) that actions may not be taken with animus against religious practices. *Id.* at 25-26.

3. *The district court grants Defendants’ motion.* The district court granted Defendants’ motion to dismiss. The court assumed that the City had violated Plaintiffs’ constitutional rights, instead holding that Plaintiffs had

failed to plead a “policy” sufficient to hold the City liable under *Monell*, and that the individual defendants were entitled to qualified immunity. ER-8.

On *Monell*, the court agreed with Defendants that the City’s Order did not count as a “policy” because it “merely implement[ed] state law” and “on its face” tracked the State’s Proclamation. ER-8-9. The court did not address facts—like the actions of other fire departments subject to the Proclamation—showing that the City took a much more aggressive stance to accommodations than the State required. The district court further suggested that Plaintiffs’ true “grievance” was not with City “policy” as expressed in the Order, but with the individual employees—Laird and Sheppard—who implemented it. ER-9. Although the court acknowledged that the City’s final policymaker, Mayor Birney, had “instigated” Sheppard and Laird’s actions, the court failed to explain why that connection was insufficient to show the City’s Order was the moving force behind Plaintiffs’ injuries. ER-10.

On qualified immunity, the court held that Plaintiffs’ asserted rights were not “clearly established” because they could not point to any cases that involved “a COVID-19 vaccination policy for healthcare-providing firefighters” and addressed “the specific question [of] denying a firefighter’s request to work unvaccinated during a pandemic.” ER-13.

The court granted Defendants’ motion and dismissed Plaintiffs’ claims with prejudice. ER-15. Plaintiffs timely appealed. ER-65.

SUMMARY

I. Plaintiffs have stated a *Monell* claim because the City maintained a “policy” that was the “moving force” behind Plaintiffs’ constitutional injuries.

A. Plaintiffs have alleged a constitutional violation—the first requirement of a *Monell* claim. Local laws burdening religion are subject to strict scrutiny under the First Amendment if they are not neutral or generally applicable. The City’s vaccine mandate is neither. It is not generally applicable because it contained a “mechanism for individualized exemptions.” *Fellowship of Christian Athletes v. S.J. Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 685-86 (9th Cir. 2023) (en banc). And it is not neutral because Plaintiffs have alleged “‘official expressions of hostility’ to religion” from the lawmaker, Mayor Birney, responsible for the policy. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524-25 (2022). Nor can the policy survive strict scrutiny. The City easily could have assuaged its safety concerns about COVID through less restrictive means like masking and testing.

B. The City’s vaccine mandate, as expressed in Mayor Birney’s Executive Order and as implemented by Director Laird and Chief Sheppard,

was the “moving force” behind Plaintiffs’ constitutional injury. The Order was obviously a “policy”—*i.e.*, a “formal rul[e]” designed to “establish [a] fixed pla[n] of action to be followed under similar circumstances.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986). And the City applied the Order to terminate Plaintiffs’ employment. That is enough for a *Monell* claim.

The district court erred by suggesting that the City could escape liability because its Executive Order reflected the State’s vaccine mandate in Governor Inslee’s Proclamation. A municipality cannot point to state law as a defense to a *Monell* claim unless the State’s rule deprived the municipality of all discretion. *Evers v. Custer County*, 745 F.2d 1196, 1203 (9th Cir. 1984). The Proclamation did not. It permitted employers both to make the final decision on accommodation requests and to adopt rules “exceed[ing]” the Proclamation’s terms. State law did not mandate the City’s actions.

No more convincing is the district court’s conclusion that Laird and Sheppard’s individual conduct in processing accommodations, not the City’s policy, was the proximate cause of Plaintiffs’ constitutional injuries. As the court elsewhere recognized, Mayor Birney and her Order “instigated” those actions. And “[l]ocal government bodies can be held liable” where officials

“unconstitutional[ly] implemen[t] or execut[e] a policy.” *Jackson v. Barnes*, 749 F.3d 755, 762-63 (9th Cir. 2014).

II. Plaintiffs have stated section 1983 claims against Defendants in their individual capacities, and Defendants are not entitled to qualified immunity.

A. Defendants Birney, Laird, and Sheppard each played an instrumental role in promulgating and executing the City’s unconstitutional policy against Plaintiffs. In doing so, they acted “under the color of law” by purporting to apply a municipal policy. Plaintiffs have thus pleaded the elements of a section 1983 claim.

B. Nor can Defendants invoke qualified immunity. Dismissal on qualified immunity grounds at the pleading stage is appropriate only if it is clear from the Complaint that Plaintiffs could present no evidence overcoming the defense. That is not the case here.

No reasonable officer could have behaved as Birney, Laird, and Sheppard did without appreciating that they were violating Plaintiffs’ clearly established rights. By 2021, it was pellucid that a law with a mechanism for granting individual exceptions must be narrowly tailored to avoid burdening religious exercise. Yet according to the Complaint, Defendants went out of their way to ensure that the City’s vaccine mandate *was not* tailored to

accommodate religious objectors to the vaccine. It was similarly beyond debate that local officials may not act with hostility to religion in making and applying local law. But Defendants acted with animus anyway.

ARGUMENT

This Court “review[s] de novo an order granting a motion to dismiss for failure to state a claim.” *Weiss v. Permanente Med. Grp., Inc.*, 182 F.4th 1139, 1144 (9th Cir. 2026). In doing so, the Court “‘accept[s] as true’ all well-pleaded allegations of fact in the complaint and construe[s] them in the light most favorable to the non-moving party.” *Id.* Applying that familiar standard here, the Court should reverse and remand.

I. The District Court Erred in Dismissing Plaintiffs’ *Monell* Claim

Plaintiffs may hold the City liable as a “person” under 42 U.S.C. § 1983 because the City “maintain[ed] a policy or custom that cause[d] the deprivation of a plaintiff’s federally protected rights.” *Hyun Ju Park v. City of Honolulu*, 952 F.3d 1136, 1141 (9th Cir. 2020). The City undoubtedly had a “policy”—its vaccine mandate as enumerated in Mayor Birney’s Executive Order—and that policy was the “moving force” behind Plaintiffs’ alleged constitutional violations. *Chew v. Gates*, 27 F.3d 1432, 1444 (9th Cir. 1994); accord *Jackson*

v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014).⁴ The district court erred in holding otherwise.

A. Constitutional Violation

The alleged facts establish the first requirement of any *Monell* claim: a constitutional injury. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978). Although neither the district court nor the City disputed the existence of a First Amendment violation in proceedings below, identifying the violation with precision helps illustrate why the City's policy was the "moving force" behind it. *Id.*

Under the First Amendment, a local policy that burdens religion is subject to strict scrutiny if it is not "neutral and generally applicable." *Fulton*

⁴ In listing the elements of a *Monell* claim, the district court suggested that a plaintiff must show that "the policy amounted to a deliberate indifference to plaintiff's constitutional right." ER-7. But a plaintiff need only plead deliberate indifference where the municipality adopted a "policy of inaction." *Jackson*, 749 F.3d at 763. Because Plaintiffs here proceed on the theory that the government's officers acted *affirmatively*, pursuant to an official policy, they need not show that the government acted with deliberate indifference. *See Hyun Ju Park*, 952 F.3d at 1141; *see also Lowry v. City of San Diego*, 858 F.3d 1248, 1267 (9th Cir. 2017) (Thomas, C.J., dissenting) (discussing this rule).

v. City of Philadelphia, 593 U.S. 522, 533 (2021).⁵ The City’s vaccine mandate is neither.

The City’s policy is not “generally applicable” because it contained a “mechanism for individualized exemptions.” *See Fellowship of Christian Athletes v. S.J. Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 685-86 (9th Cir. 2023) (en banc). The Executive Order permitted firefighters to apply for exceptions for both secular and religious reasons—*i.e.*, based on “a disability or a sincerely held religious belief”—and authorized the “Human Resources Director” to “conduct an individualized review of ... request[s].” EO at 2. Underscoring the City’s discretion, the Order noted that the City would “consider” “additional factors” in “determin[ing] if ... religious beliefs can be accommodated.” *Id.* at 1. The City then exercised its discretion to deny Plaintiffs exceptions, raising “the prospect of religious discrimination.” *Bates v. Pakseresht*, 146 F.4th 772, 796-97 (9th Cir. 2025). That is enough to trigger strict scrutiny. *See Lewis-Williams v. S.F. Bay Area Rapid Transit Dist.*,

⁵ There is no question that the City’s vaccine mandate burdened Plaintiffs’ free exercise by forcing them to choose between continued employment and their sincere beliefs. *See, e.g., Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (forcing an individual to “abando[n] one of the precepts of her religion in order to accept work,” “puts ... [a] burden upon the free exercise of religion”); *accord Fulton*, 593 U.S. at 532.

2026 WL 2674526, at *11 (9th Cir. Sep. 11, 2026) (Nelson, J., concurring) (explaining why a “vaccine policy” with “individualized determinations on exemptions” was not generally applicable).⁶

Nor is the City’s policy neutral toward religion. Where “‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise,” courts may “‘set aside’ such policies without further inquiry.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 n.1 (2022) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm’n*, 584 U.S. 617, 639 (2018)). Plaintiffs have alleged evidence of such hostility: Before promulgating the Executive Order giving the “Human Resources Director” the power to adjudicate accommodation requests, EO at 2, Birney told the City’s HR Director, Laird, that she wanted “consequences for the

⁶ The City’s Executive Order also fails the test for general applicability in a second way: it applies only to “Redmond firefighters,” EO at 2, but not other City workers, like police officers, who also “have a duty to provide medical aid to individuals in need.” ER-27. In other words, the policy is problematically underinclusive in that it “prohibits religious conduct while permitting secular conduct that undermines the [City’s] asserted interests in a similar way.” *Fulton*, 593 U.S. at 533-34; *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542-46 (1993); *Bacon v. Woodward*, 104 F.4th 744, 752 (9th Cir. 2024); *see also Eshom v. King County*, 812 F. Supp. 3d 1190, 1203-04 (W.D. Wash. 2025) (recognizing that police “[d]eputies arguably face even more intimate public contact” than firefighters “when conducting arrests, executing search warrants, and interviewing victims in confined spaces.”).

unvaccinated” and to make them “uncomfortable.” ER-28. In context, “consequences for the unvaccinated” equates to consequences for Plaintiffs’ *religious practice* of remaining unvaccinated. Indeed, the Executive Order underscores the City’s animus, listing “firefighters ... [initial] appli[cations] for religious accommodations” as a driving force behind the City’s tighter stance on vaccination. EO at 1.

Because the City’s policy was not neutral or generally applicable, it must pass muster under strict scrutiny. The policy cannot. “[N]arrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID.” *Tandon v. Newsom*, 593 U.S. 61, 63 (2021) (per curiam). Yet here, the Complaint identifies several less-restrictive measures the City could have taken, including (1) reassigning Plaintiffs to other positions within the Fire Department that “did not typically [involve] provid[ing] emergency response services,” ER-40; *see* ER-40-41; (2) masking and testing, ER-41-43. For either option, the alleged facts would allow a jury to reasonably conclude that the City could have achieved its safety objectives without compelling vaccination. *See, e.g.*, ER-40-41 (discussing reassignment); ER-19, 27, 41-45, 50-52.

Because the City did not deploy the least restrictive means available to it, the policy cannot survive strict scrutiny. So Plaintiffs have pleaded a First Amendment violation.

B. Policy or Custom

As the foregoing discussion makes clear, the City violated Plaintiffs' rights by subjecting them to an unconstitutional policy. Because the City's policy itself caused the violation, Plaintiffs have alleged the second element of a *Monell* claim. *See* 436 U.S. at 694-95.

Mayor Birney's Executive Order is evidently a "policy." The phrase "official policy" refers "to formal rules or understandings—often but not always committed to writing"—that are promulgated by "municipal policymakers" to "establish fixed plans of action to be followed under similar circumstances consistently and over time." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81 (1986).

The Executive Order fits squarely within that definition. A "municipal policymaker"—Angela Birney, the Mayor and executive leader of the City of Redmond—enacted the Order. EO at 1; *see* ER-17; *Government*, City of Redmond (2026), <https://perma.cc/W96V-VTDG> ("The Mayor is the executive leader of the City of Redmond."). The Order expressly set forth the City's

policy governing the “Mandatory Vaccination of City Firefighters and Paramedics.” EO at 1. And the Order established a “pla[n] of action,” *Pembaur*, 475 U.S. at 480, by providing a deadline for vaccination and a process for discretionary accommodations. Frankly, it is hard to know what else to call the Order other than an “official policy.” *Id.*; see *Canzoneri v. Prescott Unified Sch. Dist.*, 2024 WL 4834240, at *1 (9th Cir. Nov. 20, 2024) (holding that a complaint sufficiently pleaded a *Monell* claim where it alleged an “adverse employment action” under a written “[p]olicy”).

The Executive Order was also the “moving force” behind Plaintiffs’ constitutional injuries. *Chew*, 27 F.3d at 1444. *Monell* liability applies where “the action that is alleged to be unconstitutional *implements or executes* a policy ... promulgated by [a municipality’s] officers.” *Monell*, 436 U.S. at 690 (emphasis added). That is what happened here: Acting pursuant to an unconstitutional policy enshrined in the City’s Order, Laird and Sheppard violated Plaintiffs’ rights by terminating their employment. *See supra* pp. 12-14.

The district court rejected that straightforward conclusion for two unconvincing reasons. *First*, the court suggested that because the Executive Order tracked Governor Inslee’s Proclamation 21-14, requiring vaccination for

healthcare workers, it does not count as an “independent municipal policy” for purposes of *Monell*. ER-8-9 (citing *Wilkins v. Herron*, 2024 WL 5200177, at *2 (9th Cir. Dec. 23, 2024)). True, a municipality cannot be held liable under *Monell* where state law “mandated” its actions. *Sandoval v. County of Sonoma*, 912 F.3d 509, 517 (9th Cir. 2018). But that rule does not apply where, as here, a state law leaves “discretion” to a local government. *Id.* at 518.

This Court’s decision in *Evers v. Custer County*, 745 F.2d 1196, 1203 (9th Cir. 1984), is illustrative. There, a state statute both defined the term “public highways” and required county “commissioners to record as public highways” certain roads. *Id.* at 1198 n.1. But the statute left to the commissioners the ultimate determination whether to issue a “Declaration of Public Road.” *Id.* at 1203. In a suit challenging Custer County’s decision to declare a particular road a public highway, the Court held that it was “difficult to imagine” a clearer instance of a policy under *Monell* and rejected the county’s argument that “it should be immune because it was merely acting according to state law.” *Id.*; see also *Brewster v. City of Los Angeles*, 672 F. Supp. 3d 872, 988 (C.D. Cal. 2023) (applying *Evers*).

This case is of a piece. The Governor’s Proclamation stipulated that all “Health Care Provider[s]” had to be “fully vaccinated against COVID-19 after

October 18, 2021.” Proc. § 1(c). But the Proclamation left employers, including the City, with considerable discretion in implementing its terms. For one, the Proclamation gave individual employers the final say in adjudicating accommodation requests. *Id.* § 2. For another, the Proclamation allowed “[p]ublic and [p]rivate ... [e]mployers” to “implemen[t] requirements that exceed the requirements of this Order.” *Id.* § 4.⁷

According to the Complaint, the City’s Executive Order exercised that discretion by “going beyond what the Proclamation required.” ER-20. Notably, the City initially *granted* Plaintiffs’ religious accommodations after the Proclamation went into effect. ER-24. That strongly suggests that the Proclamation *permitted* accommodations of just the sort Plaintiffs requested.

⁷ It is not even clear that the Proclamation required the City to terminate unvaccinated firefighters. The Proclamation imposed a *personal* obligation on “Health Care Providers”—a term defined to arguably cover firefighters—to get vaccinated. Proc. §§ 1(c), 5(b). And the Proclamation prohibited “entit[ies] ... operat[ing] a Health Care Setting from permitting a Health Care Provider to engage in work for the ... entity as an employee.” *Id.* § 1(d). But the Proclamation defined “Health Care Setting” to cover only settings “*primarily* used for the delivery of in-person health care services, such as a hospital.” *Id.* § 5(c) (emphasis added). A Fire Department is not “primarily used” for the delivery of health care services. So even if *Plaintiffs* risked a criminal misdemeanor for not getting vaccinated under the Proclamation, *see id.* at 8 (citing Wash. Rev. Code Ann. § 43.06.220), the City likely would have faced no such consequence for failing to take an employment action against unvaccinated firefighters.

The Order, by contrast, did not. EO at 1-2. So the Order, not the Proclamation, must have been the “moving force” behind the City’s decision to deny further accommodations and, ultimately, to terminate Plaintiffs for failing to receive the vaccine. That other fire districts “subject to the Governor’s Proclamation” offered similarly situated firefighters accommodations confirms that the City’s Order went further, ER-47; *see* ER-47-49—as does the fact that the City maintained the “status quo” under its Order even after the Governor “rescinded” his Proclamation on October 31, 2022. ER-53-54.

State law may have supplied the initial impetus for the City’s actions, but the City’s policy, not the State’s, caused the constitutional injuries at issue. *Schneider v. County of San Diego*, 145 F.3d 1340 (9th Cir. 1998) (table) (A county is “not immune from Section 1983 liability merely because it acted in accordance with state law.”).

Second, the district court suggested that because the Executive Order “authorized religious accommodations[,] Plaintiffs’ grievance is not with the [Order] but with how Defendants Sheppard and Laird carried out the accommodation process.” ER-9. That assertion fails to view the allegations in

the Complaint in the light most favorable to Plaintiffs. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

The Complaint plausibly alleges a concerted course of conduct starting with Mayor Birney and her Order and running through Laird and Sheppard’s implementation of the Order’s accommodation process. To repeat: Mayor Birney—the City’s top decisionmaker—resolved to impose “consequences for the unvaccinated,” ER-28, and, to that end, promulgated an Order terminating Plaintiffs’ existing accommodations and requiring the City to consider “additional factors” in granting any future exemptions, EO at 1-2. Laird and Sheppard got the message. Acting pursuant to the Order and Birney’s contemporaneous instructions, they ensured that Plaintiffs did not receive accommodations and, ultimately, lost their jobs. *See, e.g.*, ER-61 (“Mayor Birney ... [e]nsured that Defendant Chief Sheppard and Defendant HR Director Laird carried out the provisions of the Executive Order”).

Remarkably, the district court acknowledged that “[p]re-conduct statements of intent,” like Mayor Birney’s assertion that she wanted “consequences for the unvaccinated,” “may support an inference that a policymaker instigated a course of action.” ER-10. And the court even concluded that Plaintiffs’ allegations “describe instigation,” ER-10, but the

court nevertheless blew past the obvious upshot: Mayor Birney instigated an unlawful course of action by enacting an official policy that Laird and Sheppard executed.⁸

It is no answer to contend, as the district court did, that the Executive Order contained a facially reasonable process for obtaining “religious accommodations.” ER-9. For one, the existence of a process for individual exceptions *itself* triggers heightened scrutiny. *See supra* pp. 24-25. For another, “simply because ... administrative procedures ... [are] theoretically reasonable,” does not mean that they are “immune from allegations” that “implementation of the policy ‘in toto’” amounts to a constitutional violation. *Berry v. Baca*, 379 F.3d 764, 768 (9th Cir. 2004). The relevant question is whether key policymakers made a “deliberate choice to follow a course of action,” even if the policy is “multi-faceted.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1075-76 & n.9 (9th Cir. 2016). Here, the alleged facts amply demonstrate such a deliberate choice.

⁸ The district court dismissed Mayor Birney’s statements as insufficient to show that Birney “ratif[ied]” Sheppard and Laird’s conduct. ER-10. Plaintiffs do not pursue a ratification theory on appeal.

In any case, even if this Court agrees with the district court that Laird and Sheppard's actions were the real cause of Plaintiffs' alleged constitutional injuries, the Court should still allow Plaintiffs' *Monell* claim to proceed. A municipality is liable under *Monell* where an "official with final policy-making authority" "committed the constitutional tort." *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 734 (9th Cir. 2025). Here, Laird, the City's HR Director, had the final say on processing accommodation requests. ER-22. And a department head, this Court has held, can be a "final policymaker" on matters within his or her purview. *Larez v. City of Los Angeles*, 946 F.2d 630, 646-47 (9th Cir. 1991) (holding that a police chief was a final policymaker on "police matters"); *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir. 1996) (similar). Plaintiffs may thus hold the City liable for Laird's denials of accommodation requests pursuant to an unconstitutional vaccine mandate. *See Gillette v. Delmore*, 979 F.2d 1342, 1347 (9th Cir. 1992) ("[A] single decision by a municipal policymaker may be sufficient to trigger ... liability under *Monell*.").

Whichever way the Court slices the City's conduct, Plaintiffs have alleged a *Monell* claim. This Court should reverse the district court's contrary conclusion.

II. The District Court Erred in Dismissing Plaintiffs’ Claims Against the Individual Defendants

Plaintiffs have also pleaded section 1983 claims against Birney, Laird, and Sheppard in their individual capacities because those officials violated Plaintiffs’ First Amendment rights. Nor are the officials entitled to qualified immunity, as the district court erroneously held.

A. Defendants Violated Plaintiffs’ Rights Under Color of State Law

To state an individual-capacity claim under section 1983, Plaintiffs must plead that an officer “acting under color of state law” violated their constitutional rights. *Soo Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017). Neither the City nor the district court disputed that Plaintiffs have established those elements here—nor could they have.

The officials clearly acted under the color of state law. “Because local governments are subdivisions of the State, actions taken under color of a local government’s law, custom, or usage count as ‘state’ action for purposes of § 1983.” *Lindke v. Freed*, 601 U.S. 187, 195 n.1 (2024). Accordingly, where, as here, a “municipal employee violates a federal right while acting ‘under color of law’ he can be sued in an individual capacity.” *Id.* The defendant officials purported to be acting pursuant to local law when they implemented the City’s

vaccine mandate, *see supra* pp. 9-14, so the first element of a section 1983 claim is satisfied.

Equally straightforward is the conclusion that Birney, Laird, and Sheppard violated Plaintiffs’ constitutional rights. According to the Complaint, all three officials played an instrumental role in promulgating and executing an unconstitutional vaccine mandate that failed to comply with the dictates of the Free Exercise Clause. *See supra* pp. 9-14; *Fulton*, 593 U.S. at 533; *Kennedy*, 597 U.S. at 525 n.1; *Masterpiece Cakeshop*, 584 U.S. at 639.

Birney committed to “consequences” for the unvaccinated and promulgated an Order to that effect. ER-28; *see* ER-25-26, 30, 57, 60. Laird executed Birney’s instructions, understanding that the Order *de facto* “precluded any alternative to vaccination.” ER-30; *see* ER-22, 28, 33-36. And Sheppard worked with Laird to ensure that Plaintiffs did not receive accommodations, even going so far as to “obfuscate the availability” of reassignment opportunities to ensure that Plaintiffs did not get them. ER-36; *see* ER-36-37.

In sum, because each Defendant “authorized, approved, or acquiesced” in the City’s unlawful policy—“a policy which may following trial be

determined to constitute a cause of [Plaintiffs'] injuries,” *Chew*, 27 F.3d at 1446—Plaintiffs have stated claims against them.

B. Defendants Are Not Entitled To Qualified Immunity at the Pleading Stage

Qualified immunity protects officials from liability for civil damages unless (1) the official violated a statutory or constitutional right, and (2) that right was “‘clearly established’ at the time of the challenged conduct.” *Wood v. Moss*, 572 U.S. 744, 757 (2014). Here, as just discussed, Defendants violated Plaintiffs’ constitutional rights. Those rights were also clearly established.

“A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per curiam) (cleaned up). That can be so even where there is no “case directly on point.” *Id.* “[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question,” rendering the plaintiff’s rights “clearly established.” *Taylor v. Riojas*, 592 U.S. 7, 8-9 (2020) (per curiam).

Qualified immunity is often not fit for resolution at the pleading stage. “Since qualified immunity is a defense, the burden of pleading it rests with the

defendant.” *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). A plaintiff has no “obligation to anticipate such a defense by stating in his complaint that the defendant acted in bad faith.” *Id.* As a result, “dismissal is not appropriate unless [the court] can determine, based on the complaint itself, that qualified immunity applies.” *O’Brien v. Welty*, 818 F.3d 920, 936 (9th Cir. 2016).

At the time of the challenged conduct here, the law was pellucid that local policies burdening religion are not generally applicable—and thus must be “narrowly tailored”—where they have “a mechanism for individualized exemptions.” *Fulton*, 593 U.S. at 533, 541. Defendants could not have missed the fact that the Executive Order contained such a mechanism, yet they made no real effort to consider “measures less restrictive” that could “address [the City’s] interest in reducing the spread of COVID.” *Tandon*, 593 U.S. at 63. Quite the contrary, Defendants went out of their way to *ensure* that the City’s vaccine policy burdened Plaintiffs’ religious exercise by frustrating their efforts to apply for accommodations. *See supra* pp. 12-14. No reasonable official could have thought that course of conduct complied with the law. *See Taylor*, 592 U.S. at 9.

Even setting that point aside, Defendants’ conduct violated clearly established free-exercise principles for a second reason. In 2018, the Supreme

Court deemed it “clear” that “the government, if it is to respect the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens.” *Masterpiece Cakeshop*, 584 U.S. at 638. That is exactly what Plaintiffs allege here.

Consider, again, the alleged facts. Mayor Birney displayed open hostility to those whose religious convictions compelled them not to receive the vaccine, stating that she wished to impose “consequences” on the “unvaccinated.” ER-28. Laird and Sheppard were aware of Birney’s motives, yet applied her Order to Plaintiffs, denied them accommodations, and ultimately terminated their employment. *See supra* pp. 12-14. Indeed, Laird and Sheppard also expressed hostility of their own, appearing “frustrated” and “hesitant to bring the unvaccinated firefighters back to work.” ER-36-37. In doing so, Defendants defied crystal-clear Supreme Court precedent that officials may not even “subtl[y] depar[t] from neutrality” toward religion. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). Those facts are enough to overcome qualified immunity at the pleading stage, especially because additional discovery may reveal further evidence of animus. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 743 (2011) (qualified immunity does not protect officials who “knowingly violate the law.”).

In finding that Plaintiffs’ rights were not clearly established, the district court faulted Plaintiffs for failing to identify a case “holding that a municipal official violates the Free Exercise Clause by implementing a COVID-19 vaccine mandate for healthcare-providing firefighters.” ER-13. In other words, the district court demanded “a case directly on point”—contravening this Court’s admonition that no such exact authority is required to defeat qualified immunity. *See, e.g., Jensen v. Brown*, 131 F.4th 677, 694 (9th Cir. 2025). Indeed, this Court has repeatedly rejected assertions of qualified immunity in COVID-era cases where the underlying constitutional right was clear, even if the pandemic was novel. *See, e.g., Polanco v. Diaz*, 76 F.4th 918, 932-33 (9th Cir. 2023); *Hampton v. California*, 83 F.4th 754, 770 (9th Cir. 2023). This Court should reach the same conclusion again here.⁹

⁹ The district court cited three cases that, in its view, suggested that the “constitutional question was not beyond debate.” ER-13-14. But none of those cases involved a free-exercise claim. *Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1031 (9th Cir. 2025), concerned substantive due-process and equal-protection challenges to a vaccine policy. *Curtis v. Inslee*, 154 F.4th 678, 692 (9th Cir. 2025), involved a potpourri of statutory and constitutional challenges to Governor Inslee’s Proclamation, none of which sounded in free exercise. And *Petersen v. Snohomish Regional Fire & Rescue*, 150 F.4th 1211, 1222 (9th Cir. 2025), involved a Title VII claim against a fire department’s vaccine mandate.

To be sure, this Court recently granted qualified immunity to Oregon officials who refused to accommodate a nurse under a state hospital’s COVID vaccine mandate. *MacDonald v. Or. Health & Sci. Univ.*, 2026 WL 2966688, at *5 (9th Cir. Oct. 2, 2026). But that decision has little purchase here. Unlike Plaintiffs, MacDonald did not “challenge ... the passing or enforcement of a law or regulation that burden[ed] her free exercise.” *Id.* at *6. And although MacDonald alleged that the defendant officials acted with animus toward her religious beliefs, those allegations were “sparse” and “conclusory.” *Id.* at *7. This Court did not doubt that the law clearly prohibited religious hostility, or that more fulsome allegations of animus would have defeated qualified immunity. *See id.* at *8. So *MacDonald* does not refute the conclusion that it would be premature to grant Defendants qualified immunity here.

CONCLUSION

This Court should reverse the district court's order dismissing Plaintiffs' claims and remand for further proceedings.

Respectfully submitted,

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DATED: OCTOBER 15, 2026

STATEMENT OF RELATED CASES

Appellants are aware of one related case: *Carlson v. City of Redmond*, 26-127. On June 4, 2026, this Court coordinated the briefing schedule in this case with *City of Redmond* and calendared both cases for consideration by the same panel. See Dkt. No. 6.

/s/ Edward Pickup
EDWARD L. PICKUP

DATED: OCTOBER 15, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Cir. R. 32-1(a) because this brief contains 8,242 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 and Century ExpdBT 14-point font.

/s/ *Edward Pickup*

EDWARD L. PICKUP

DATED: OCTOBER 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ *Edward Pickup*

EDWARD L. PICKUP

DATED: OCTOBER 15, 2026