FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL CHERRY; LINDA LOPEZ; STEPHEN J. ANDERSON; CHARLES FRADY; TRENTON DEBOER,

Plaintiffs - Appellants,

RUTHANNA SHIRLEY, JOHNATHAN HONE, MARCUS SANCHEZ, MORGAN WINES, SAMUEL KOLB, THOMAS MOATS, DONALD BRADLEY ALLEN, JOSHUA BELTZ, ERIC OSWALD, ISAAC STUTES, JULI ANDERSON, DREW DELOZIER, CARLY PETERS,

Plaintiffs,

v.

WASHINGTON DEPARTMENT OF FISH & WILDLIFE; KELLY SUSEWIND; AMY WINDROPE; LONNIE SPIKES; STEVE BEAR; CRAIG BURLEY,

Defendants - Appellees.

No. 25-4763

D.C. No. 3:23-cv-05077-DGE

OPINION

Appeal from the United States District Court
for the Western District of Washington
David G. Estudillo, District Judge, Presiding

Argued and Submitted June 11, 2026
Seattle, Washington

Filed August 21, 2026

Before: Milan D. Smith, Jr. and Eric C. Tung, Circuit Judges, and John Charles Hinderaker, District Judge.[*]

Opinion by Judge Tung

SUMMARY[**]

Employment Discrimination

The panel affirmed in part and reversed the district court's summary judgment in favor of the defendants and remanded for further proceedings in a reasonable accommodation action under Title VII and the Washington Law Against Discrimination.

The Washington Department of Fish & Wildlife granted five employees religious exemptions from a COVID-19 vaccination mandate. The Department informed the

[*] The Honorable John Charles Hinderaker, United States District Judge for the District of Arizona, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

employees that it could not accommodate them in their current roles but offered them a reassignment process.

The panel held that Title VII requires an employer to reasonably accommodate the religious beliefs and practices of its employees, short of incurring an undue hardship. Once an employee has made a prima facie showing of religious discrimination, the burden shifts to the employer to prove that it made good faith efforts to accommodate the employee's religious belief in a manner that would reasonably preserve that employee's employment status. If the accommodation proposed by the employer does not eliminate the conflict, then the employer must implement an alternate accommodation proposed by the employee, unless that would cause undue hardship to the employer. If the accommodation proposed by the employer does reasonably preserve an employee's status, then the employer has met its burden.

The panel held that the district court misapplied these rules when it concluded, as a matter of law, that the Department met its burden under Title VII. The panel concluded that offering the reassignment process was not, as a matter of law, an offer of a reasonable accommodation, meaning an alternate position or arrangement that eliminated the asserted conflict between the employees' religious beliefs and the employees' current jobs, because the reassignment process offered only a limited possibility of an accommodation. Thus, the panel could not say that, as a matter of law, the Department made a good faith effort to reasonably accommodate the employees' religion.

The panel reversed the district court's grant of summary judgment against most of the employees with respect to their Title VII claims and against all of the employees with respect

to their claims under the Washington Law Against Discrimination. For two of the employees who failed to meet the procedural requirements for bringing a Title VII claim, the panel affirmed the district court's grant of summary judgment for defendants with respect to those employees' Title VII claims.

The panel affirmed the district court's summary judgment to defendants as to the employees' federal and state constitutional claims. The employees forfeited their argument that their claims against Department officers in their official capacities were not barred by sovereign immunity. The district court did not abuse its discretion in retaining jurisdiction over the state-law claims and did not err in rejecting those claims.

Finally, the panel held that the district court did not abuse its discretion in excluding three of the employees' proffered experts, nor in issuing a protective order that prohibited their taking of a Fed. R. Civ. P. 30(b)(6) deposition.

COUNSEL

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OPINION

TUNG, Circuit Judge:

Title VII requires an employer to reasonably accommodate an employee's exercise of religion. This case asks whether, as a matter of law, an employer satisfies its obligation to provide a reasonable accommodation when it gives the employee the opportunity to participate in a reassignment process offering only a limited possibility of an accommodation and the employee does not complete the process. The answer is no. This case presents an issue of fact suitable for a jury trial.

The employer has the burden of proposing a reasonable accommodation that eliminates a conflict between the employee's job and his religious beliefs—by proposing, for example, an alternative position or the same position but with a different arrangement. The facts here suggest that the employer's reassignment process offered little more than a fig leaf. The process put forth by the Department of Fish and Wildlife of Washington State yielded reassignment only 14 percent of the time. And even among that small set of reassignments, the Department offered no information to suggest whether those reassigned positions in fact accommodated the employee's religious conflict and whether those purported accommodations were in fact reasonable (*i.e.*, whether they reasonably preserved the employee's pay and other privileges). The only information

we have about a specific proposed accommodation for an employee (not a party to this appeal) shows that the accommodation was *not* reasonable: the Department offered the employee a job that paid him only half of his current salary; of course, he turned it down.

The district court nevertheless concluded that the Department's "reassignment" process was sufficient as a matter of law to satisfy the Department's duties under Title VII, granting summary judgment for the Department. We reverse that judgment, while affirming other orders that are on appeal as discussed below.

I.

In August 2021, the Washington Governor issued a mandate that generally required most State employees to vaccinate against COVID-19 or face termination from their employment. 15-ER-4087–96. The mandate applied to the Washington Department of Fish and Wildlife and permitted exemptions for medical or religious reasons. 15-ER-4088.

Plaintiffs-Appellants are five Employees (Paul Cherry, Stephen Anderson, Trenton DeBoer, Charles Frady, and Linda Lopez) who worked for the Department in 2021. When the vaccine mandate was issued, the Employees sought religious exemptions. *See, e.g.*, 13-ER-3480–81. The Department found that each of the five Employees' requests for exemption was based upon sincerely and personally held religious beliefs and granted them each a religious exemption. 13-ER-3480–81; *id.* at 3256–57, 3374–75, 3451–52; 12-ER-3041–42.

Finding that the Employees' jobs "must at times be done in the physical presence of others" and that vaccination was imperative, the Department informed the Employees that it

could not accommodate them in their current roles.[1] *See, e.g.*, 13-ER-3256. The letters from the Department notifying the Employees that they would be unable to stay in their current positions included the following language: "Reassignment remains a possibility, although opportunities may be limited. If you would like to explore any available reassignment options, please contact Joceile Moore, Reasonable Accommodation Specialist . . . as soon as possible." *Id.* The remainder of the letters notified the Employees that they would be separated if they could not show proof of vaccination and provided resources to support the employees during this "difficult time," including services related to unemployment and retirement. *Id.* at 3257.

The Department's data reflect that, historically, out of 122 requests for a religious accommodation, only 17 were granted (or 14 percent). 4-ER-794. The data provide no information about what jobs were given and whether they preserved the employee's prior employment conditions. *Id.* One employee (not a part of this appeal) who participated in the reassignment process was offered a job at 50 percent of his salary; he left the Department because "the pay cut was not feasible." 1-ER-30. One of the Employees (Anderson) testified that he discussed reassignment with the Department's human resources specialist (Joceile Moore) and that she told him, "We don't have anything for you.

[1] All five Employees requested to stay in their jobs while masking and distancing. 13-ER-3381–82; 13-ER-3485–86; 13-ER-3290–91; 13-ER-3456–57; 12-ER-3053–54. Some indicated willingness to telework in the alternative, 13-ER-3456–57; 12-ER-3053–54, and all appeared willing to be considered for another job that would eliminate the religious conflict. 13-ER-3381–82; 13-ER-3485–86; 13-ER-3290–91; 13-ER-3456–57; 12-ER-3053–54.

There's just nothing available." 3-ER-462. The Employees did not complete the reassignment process, and the record reflects that some of them believed the process to be pointless. For instance, as the district court acknowledged, Anderson believed the process was just "a show." 15-ER-3864; *see* 1-ER-49. And Cherry believed that, "[b]ecause [he] was unvaccinated," he had no chance of being reassigned. 15-ER-3877–78. The Department ultimately fired the Employees, some in October 2021 and others in November 2021. 13-ER-3369; 12-ER-3036; 13-ER-3445; 13-ER-3250; 12-ER-3036.[2]

The Employees sued the Department and five of its officers in federal court. (As a shorthand, we refer to the Defendants as "the Department.") The Employees asserted violations of Title VII of the Civil Rights Act of 1964 and the Washington Law Against Discrimination (WLAD), as well as violations of the federal and state constitutions. 18-ER-4594–600; 18-ER-4604–08. The Department moved for

[2] Five non-appealing plaintiffs fully completed the Department's process yet were not reassigned. For example, the Department initially granted Ruthana Shirley and Jonathan Hone's requests to be accommodated by teleworking or masking and distancing. 1-ER-28–29; 5-ER-966. But the Department later rescinded their accommodations on the grounds that their jobs "must at times be done in the physical presence of others," and offered them possible reassignment. 1-ER-28-29. Shirley and Hone both requested reassignment, but they were both told that no position was available for them. *Id.* The Department then fired them. *Id.* During this process, Shirley and Hone had also filed grievances through their union. *Id.* Shirley's arbitrator found that the Department had not made a good faith effort to find a reasonable accommodation for her, and Hone's arbitrator found that the Department had not conducted an individualized assessment of whether it could reasonably accommodate him. *Id.* Thus, the arbitrators concluded that the Department had violated the law and awarded Shirley and Hone reinstatement to their jobs. *Id.*

summary judgment with respect to those claims. The district court granted that motion.

In dismissing the Employees' Title VII and WLAD claims, the district court assumed the Employees had "established a prima facie case of Title VII failure to accommodate." 1-ER-47. The district court then reasoned that "the burden shift[ed] to Defendants [the Department and its officers] to show that 'they initiated good faith efforts to engage in the interactive process or that they could not do so due to undue hardship.'" *Id.* (quoting *Dunbar v. Twentieth Century Fox Television*, No. CV 22-1075-DMG (JCX), 2024 WL 2107712, at *7 (C.D. Cal. Mar. 8, 2024)). "[T]he accommodations process is a two-way street that is premised on 'bilateral cooperation' between the employer and employee," the district court said; "each side is required to contribute to efforts to formulate a reasonable accommodation." 1-ER-48 (citing *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986)). The district court found that the Department offered a "reassignment process," but the Employees "did not fully participate in" it. 1-ER-49.[3] On these facts, the district court concluded, the Employees did not state "a failure to accommodate claim under Title VII or the WLAD." *Id*. The district court treated the Title VII and WLAD claims as rising or falling together. 1-ER-32–33; *see also Suarez v. State*, 552 P.3d 786, 795 (Wash. 2024). The district court accordingly dismissed "as a matter of law" the Employees' Title VII and WLAD claims and granted summary judgment for the Department. 1-ER-49.

[3] One did not meet the deadline for requesting reassignment (Frady); two others did not seek reassignment (Cherry and Lopez); one did not submit a resume for reassignment (Anderson); and another withdrew from the reassignment process (DeBoer). 1-ER-49.

The district court concluded that two of the Employees' Title VII claims failed for procedural reasons as well. 1-ER-43. The district court held that Cherry failed to exhaust administrative remedies with the Equal Employment Opportunity Commission and that Lopez failed to sue in court within the requisite 90 days of receiving her right-to-sue letter. *Id.*

In addition to dismissing the Title VII and WLAD claims, the district court granted summary judgment for the Department on the Employees' federal constitutional claims. The Employees had sued the Department and several of its officers under 42 U.S.C. § 1983, seeking both money damages for violations of the Free Exercise Clause, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment, and an injunction against further "harassment." 18-ER-4609–10; 5-ER-941–46. Because the Employees did not allege an ongoing violation or seek prospective injunctive relief sufficient to invoke the *Ex parte Young* exception to sovereign immunity, the district court dismissed the Employees' federal constitutional claims. 1-ER-61–68.

The district court also granted summary judgment for the Department on the Employees' state constitutional claims. The Employees had sued the Department and the officers for money damages for deprivation of the right of privacy under article I, section 7 of the Washington Constitution, which the Employees argued protects the right of bodily autonomy and the right to refuse vaccines. 18-ER-4594–98. The district court concluded that Washington State does not provide a private right of action for damages under article I, section 7, and thus dismissed the Employees' state constitutional claims. 1-ER-68–69.

The district court also ruled on certain matters relating to discovery that are also the subject of this appeal. The district court granted the Department's motions to exclude the testimony of three of the Employees' witnesses: Harvey Risch, Lisa Brock, and John Cary. Dr. Harvey Risch, an epidemiologist, submitted expert reports opining that COVID-19 vaccine mandates failed to recognize that post-infection natural immunity is just as good (if not better) than vaccination. 1-ER-15. Mrs. Lisa Brock, a human resources professional, was offered by the Employees to help explain how HR departments in large institutions process exemption and accommodation requests. 6-ER-1466–67. And Dr. John Cary, a rebuttal expert, was offered by the Employees seventeen days after the district court's rebuttal deadline. 1-ER-17. The district court excluded Dr. Risch because it found some of his testimony irrelevant and the rest unreliable, 1-ER-20–23; Mrs. Brock because it found that she did not review sufficient documents and advanced inadmissible legal conclusions, 1-ER-23–24; and Dr. Cary because it found that the Employees served his report late without requesting an extension, 1-ER-24–25. The district court also granted the Department's motion for a protective order to prevent the Employees from taking a Federal Rule of Civil Procedure 30(b)(6) deposition that contained 31 topics and 450 subtopics. 17-ER-4501–03.

The Employees appeal the district court's grant of summary judgment and its discovery orders. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment. *Brown v. Alaska Airlines, Inc.*, 179 F.4th 707, 717 (9th Cir. 2026). In reviewing a grant of summary judgment, we view the evidence in the light most favorable to the nonmoving party (here, the Employees). *Id*. We review for abuse of

discretion orders excluding expert testimony, *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1227 (9th Cir. 1998), and orders protecting parties from deposition notices, *Garris v. Fed. Bureau of Investigation*, 937 F.3d 1284, 1291 (9th Cir. 2019).

II.

A.

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers covered by the Act "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 . . . religion." 42 U.S.C. § 2000e-2(a)(1). The term "religion" under the statute "includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate [] an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

Construing these two provisions together, we have made clear that "Title VII requires an employer to reasonably accommodate the religious beliefs and practices of its employees, short of incurring an 'undue hardship.'" *Am. Postal Workers Union v. Postmaster Gen.*, 781 F.2d 772, 775 (9th Cir. 1986) (citation omitted); *see also Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977) ("The intent and effect of this definition [of 'religion'] was to make it an unlawful employment practice under [section] 703(a)(1) [of the Civil Rights Act] for an employer not to make reasonable accommodations, short of undue hardship,

for the religious practices of his employees and prospective employees.").

Once an employee has made a prima facie showing of religious discrimination, "the burden shifts to the employer to prove that it made good faith efforts to accommodate that employee's religious belief." *Am. Postal Workers*, 781 F.2d at 776. That "requires an employer to accommodate the religious beliefs of an employee in a manner which will reasonably preserve that employee's employment status, *i.e.*, compensation, terms, conditions, or privileges of employment." *Id.* Thus, if "an employment situation creates a religious conflict for a particular employee," we have said, "the employer must take some initial step to reasonably accommodate the religious belief of that employee." *Id.*

At this juncture, two possibilities emerge. If "the accommodation proposed by the employer" does not eliminate the conflict, the employer "must implement an alternate accommodation proposed by the employee, unless implementation of that accommodation would cause 'undue hardship' to the employer." *Id.* (citation omitted). But "[w]here an employer proposes an accommodation which effectively eliminates the religious conflict faced by a particular employee," the "inquiry under Title VII reduces to whether the accommodation reasonably preserves the affected employee's employment status." *Id.* at 776–77. If the accommodation proposed by the employer does reasonably preserve an employee's status, then the employer has met its burden; if the proposed accommodation does not, then the employer has not satisfied its duties under Title VII. *Id.* at 777.

This conclusion, we have said, "is consistent with the design" of Title VII's religious-accommodation

requirement. *Id.* While "the statutory burden to accommodate rests with the employer, the employee has a correlative duty to make a good faith attempt to satisfy his needs through means offered by the employer." *Id.* "In other words, a reasonable accommodation need not be on the employee's terms only." *Id.* It is in this context that we have described Title VII as "premised on 'bilateral cooperation'" or "mutual cooperation." *Id.* (citation omitted); *see also Ansonia*, 479 U.S. at 69. "An employee's 'concomitant duty' to cooperate, however, arises only *after* the employer has suggested a possible accommodation[.]" *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1440 (9th Cir. 1993) (emphasis in original); *see also Horvath v. City of Leander*, 946 F.3d 787, 791 (5th Cir. 2020) ("The employer's offer of a reasonable accommodation triggers an accompanying duty for the employee" to cooperate.).

B.

The district court misapplied these rules when it concluded, as a matter of law, that the Department met its burden under Title VII. The Department merely invited the Employees to participate in a "reassignment process" with the caveat that "opportunities may be limited," which the Employees—perhaps understandably—did not complete. Title VII requires that the Department take the initial step of *proposing a reasonable accommodation* that would then trigger any concomitant duty on the employee's part to cooperate. *Am. Postal Workers*, 781 F.2d at 776; *Heller*, 8 F.3d at 1440. We disagree with the district court's conclusion that offering this reassignment process was, as a matter of law, an offer of a reasonable accommodation.

To be sure, the Employees are not entitled to their own *preferred* accommodation, but that presupposes the

Department's own offer of a reasonable accommodation. As an initial matter, the Department must offer an accommodation—an alternative position or arrangement—that eliminates the asserted conflict between the employee's religious beliefs and the employee's current job. The first step in the "negotiat[ing]" process must be the Department's proposal of an accommodation, which can then be evaluated for its "reasonableness"—*i.e.*, whether the accommodation reasonably preserves the employee's pay and other conditions of employment. *Am. Postal Workers*, 781 F.2d at 776; *Heller*, 8 F.3d at 1440.

Here, because the Department's initial offer was nothing more than an opportunity for reassignment, couched in language that made success appear unlikely, we cannot say that it has made a good faith effort to reasonably accommodate the Employees' religion as a matter of law. An employee's duty to cooperate under Title VII is only triggered once the employer makes an initial offer of a reasonable accommodation. Accordingly, because there is an issue of fact as to whether the Department took that initial step, we cannot say that Title VII mandated "bilateral cooperation" in this case. Here, it is unclear that offering a "reassignment process"—about which we have little factual information (*infra* at 20–21)—is enough to trigger the duty to cooperate.

The district court's contrary conclusion rests on a mistaken view of the legal standard. In the district court's view, the Department definitively satisfied its Title VII duties by showing that it "initiated good faith efforts to engage in the interactive process or that [it] could not do so due to undue hardship." 1-ER-47 (citation omitted). That improperly relaxes the actual standard. Efforts "to engage *in the interactive process*" is not the test; rather, the test is

for the "employer to prove that it made good faith efforts *to accommodate* [the] employee's religious belief." *Am. Postal Workers*, 781 F.3d at 776 (emphasis added) (citation omitted). The district court's erroneous shift is subtle but substantial: engaging in a *process* may be different from proposing *an accommodation*, and whether the process here constituted a reasonable accommodation is best left to a jury. We cannot say that offering this reassignment process constituted offering an accommodation as a matter of law.[4]

The district court erred in reading *American Postal Workers* and *Ansonia* to conclude that the Department's offer to engage in a mere *process* was sufficient to satisfy Title VII as a matter of law. This court's decision in *American Postal Workers* concluded that the employer's proposed accommodation—a transfer to a different job—"effectively removed the religious conflict facing" the employees; the court did not hold that only offering a reassignment process was sufficient. 781 F.2d at 777. And in *Ansonia*, too, the Supreme Court addressed a proposed accommodation (unpaid leave)—not just a process—in

[4] The district court appeared to mistakenly import an "interactive process" standard from a different scheme altogether—the Americans with Disabilities Act. *See* 29 C.F.R. § 1630.2(o)(3) ("To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation."). The district court cited *Dunbar v. Twentieth Century Fox Television*, 2024 WL 2107712, at *7 (C.D. Cal. Mar. 8, 2024), an unpublished district court case. 1-ER-47. But *Dunbar* relied on another district court decision, which did not apply an "interactive process" standard for Title VII claims. 2024 WL 2107712, at *7 (citing *O'Hailpin v. Hawaiian Airlines, Inc.*, 583 F. Supp. 3d 1294, 1309 (D. Haw. 2022)). Instead, the court in *O'Hailpin* addressed the phrase "interactive process" in the context of an ADA claim. 583 F. Supp. 3d at 1311 n.12.

determining whether the accommodation was reasonable. 479 U.S. at 70–71.

The Department for its part seizes on language in *American Postal Workers*—that the employee must "make a good faith attempt to satisfy his needs through means offered by the employer"—to excuse itself from having to propose an actual accommodation. Answering Br. at 24 (quoting *Am. Postal Workers*, 781 F.2d at 777). But as the discussion above makes clear, the "means offered by the employer" in *American Postal Workers* referred to a proposal by the employer of a reasonable accommodation (not just the possibility of a reassignment through a process). *See Am. Postal Workers*, 781 F.2d at 777 (citing *Brener v. Diagnostic Ctr. Hosp.*, 671 F.2d 141 (5th Cir. 1982)); *see also Brener*, 671 F.2d at 145–46 (finding the employer "took active steps to accommodate" the employee by providing a "rotating shift scheduling system" whereby employees could trade schedules).

The Department relies also on a few out-of-circuit cases for the proposition that inviting participation in a mere reassignment process is enough to trigger an employee's duty to cooperate. Answering Br. at 24–26. None of those cases persuades the court to adopt the Department's reading of Title VII.

The Department first cites *Walden v. Centers for Disease Control & Prevention*, 669 F.3d 1277 (11th Cir. 2012), *abrogated in part on other grounds by Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015). In *Walden*, the employee was a counselor who refused to provide relationship counseling to same-sex couples on religious grounds. *Id.* at 1280. The employee's supervisor suggested several options that would

allow the employee to stay in her position and avoid any conflict with her religious beliefs, but the employee rejected those approaches. *Id.* at 1281. The employee was eventually laid off, but the employer provided the employee with resources to find another job within the company, and the layoff designation allowed the employee to retain her tenure with the company if she found a new position within one year. *Id.* at 1282. Though there were no positions available in the same city, "other positions were available" in different cities, and the employee did not apply to any of the available positions. *Id.* at 1294. The Eleventh Circuit found the employer had provided the employee with a reasonable accommodation as a matter of law when it "encouraged her to obtain new employment with the company[,] offered her assistance in obtaining a new position," and allowed her to retain her tenure had the employer hired her in another position. *Id.*

The Department also cites *Bruff v. North Mississippi Health Services, Inc.*, 244 F.3d 495 (5th Cir. 2001), a case with facts like those in *Walden*. There too, the employee was a counselor who refused to provide counseling on same-sex relationships on religious grounds. *Id.* at 497. Unable to accommodate the employee in her original position, the employer suggested a transfer to a Christian or pastoral counseling position, but the employee "declined to even consider" such a transfer. *Id.* at 498, 502. The employee was encouraged to request a transfer and apply to a new position, was "advised of other available positions," and was offered extensive assistance from the employer's in-house employment counselor. *Id.* at 498, 502. The employee applied to one available position but was not selected and "declined to apply for [a] second counselor position." *Id.* at 502–03. The Fifth Circuit found the employee had not met

her duty to cooperate in achieving an accommodation. *Id.* at 503.

Finally, the Department cites *Shelton v. University of Medicine and Dentistry of New Jersey*, 223 F.3d 220 (3d Cir. 2000). There, the employee (a nurse who refused to participate in abortions) was offered a "lateral transfer" to the "Newborn ICU" where she would not have to participate in abortions. *Id.* at 223. The employer also invited the employee to contact its HR department to help her identify additional available positions. *Id.* The Third Circuit held that the offer of a lateral transfer constituted a reasonable accommodation. *Id.* at 227. The court also held that the employee failed to satisfy her duty to cooperate when she refused to meet with HR, reasoning that there was no support for the employee's argument that a transfer to another department was not viable. *Id.* at 227–28. Accordingly, her refusal to cooperate was not justified. *Id.* at 228.

Although the out-of-circuit cases bear some similarities to our case in that the employee was offered an opportunity to apply for another position, the cases are not analogous. In *Bruff* and *Shelton*, the employers offered the employees concrete options for transfer. In *Walden*, the employer offered several solutions to the employee's religious conflict before she was removed from her position. In all three cases, there were available positions to which the employees chose not to apply. Here, by contrast, the Employees were not offered any available positions—in fact, the Department told employees that reassignment opportunities "may be limited" and provided them with resources on unemployment and retirement. *See, e.g.*, 13-ER-3256–57. Unlike the employers in *Walden*, *Bruff*, and *Shelton*, the record does not show that the Department actively *encouraged* the Employees to apply to *available* positions (perhaps the opposite). At any rate,

the standard for what constitutes a reasonable accommodation in the Ninth Circuit comes from *American Postal Workers*. *See* 781 F.2d at 776–77 ("[T]he inquiry under Title VII [is] whether the accommodation reasonably preserves the affected employee's employment status."). Irrespective of the holdings in our sister circuits, we cannot say the Department's process met this standard as a matter of law.

Our conclusion is reinforced all the more by the Department's failure to offer any material facts suggesting that its "reassignment process" would likely yield a reasonable accommodation. And the bare-bones facts that the Department does offer do little to assure us of such a prospect. The State's data about its "reassignment process" show just a 14 percent chance of placement into *some* job. 4-ER-794. But what kinds of jobs, how much those jobs paid, whether they eliminated the employees' religious conflicts—we do not know. The Department's own witness who worked in HR, Moore, was unable to provide details. She testified that she did not investigate "how many possible reassignment positions were available," claiming that "it's difficult to know the numbers" of positions. 14-ER-3823–24. That is wholly insufficient to satisfy the Department's burden of showing, as a matter of law on summary judgment, "that it made a good faith effort to accommodate" each of the employee's religious beliefs. *Am. Postal Workers*, 781 F.2d at 776.

The only specific examples of reassignment in the record cut against the Department. The district court found it "undisputed" that, of the six then-plaintiffs who fully completed the reassignment process, five were told that no possibility of reassignment was available to them. 1-ER-49–50. For example, Shirley and Hone received

accommodations that were later rescinded because their jobs "must at times be done in the physical presence of others"—the same reason the appealing Employees were denied accommodations. 1-ER-28–29. Combined with the fact that the Department was only willing to transfer employees to jobs that allowed "100% telework and/or require[d] no in-person contact," 14-ER-3694, successful reassignment of the appealing Employees appeared all the more unlikely. The sixth then-plaintiff, who completed the process, was offered a job that reduced his current salary by half, which he "could not afford to live on" (1-ER-49)—an offer that hardly "preserve[s]" that employee's "compensation." *Am. Postal Workers*, 781 F.2d at 776. On this record, summary judgment for the Department was improper.

The scheme that Title VII sets forth is straightforward. The Department has a choice. Either it proposes a reasonable accommodation (which triggers the employee's duty to cooperate), or it must prove that a reasonable accommodation would produce an undue hardship on the conduct of the Department's business.

These are not parchment demands. The statutory guarantee of religious accommodation provided by Congress in Title VII must be taken seriously and rigorously enforced by courts. With respect to "undue hardship," the Supreme Court clarified in *Groff v. DeJoy* that "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." 600 U.S. 447, 468 (2023). "[A]n employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Id.* at 470 (citation omitted). This is a "fact-specific inquiry," and courts must "take[] into account all relevant factors in the case at hand, including the particular

accommodations at issue and their practical impact in light of the nature, size[,] and operating cost of [an] employer." *Id.* at 468, 470–71 (internal quotation marks omitted).

Assertions of undue hardship are not enough. There must be a showing—with facts and evidence—of what the costs on the employer are. And not only what they are, but what they are *in relation* to its overall business. At a minimum, a showing of proportion must be made in order to assess whether any hardship would be "undue." Otherwise, as *Groff* warned, judges would be put in the position of merely rubber-stamping claims of undue hardship, returning us to a time when courts would reject Title VII religious-accommodation claims whenever the employer could claim that making a reasonable accommodation would impose a cost that was merely more than *de minimis*. *Id.* at 468. No more, the Supreme Court made clear.

The Department does not argue on appeal that accommodating the Employees would impose an undue hardship. Instead, the Department asserts that it made a reasonable accommodation by offering a process that holds out a mere possibility of an accommodation. As discussed, the Department has failed to show that it offered a reasonable accommodation as a matter of law. We reject the Department's attempt to loosen our reasonable-accommodation standard.

For the reasons stated, we reverse the district court's grant of summary judgment for Defendants and against most of the Employees (Anderson, DeBoer, and Frady) with respect to their Title VII claims, and we reverse the district court's grant of summary judgment for Defendants and against all of the Employees with respect to their WLAD claims. We find there is an issue of fact as to whether the

Department offered the Employees a reasonable accommodation, and remand for proceedings consistent with this opinion. The Title VII claims and WLAD claims generally rise and fall together, except that Title VII claims must clear certain procedural hurdles (such as exhaustion with the EEOC) before they can be heard. *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir. 2002) (citing 42 U.S.C. § 2000e–5(b)) (holding that an employee must file "a timely charge with the EEOC, or the appropriate state agency"), *abrogated on other grounds by Fort Bend Cnty. v. Davis*, 587 U.S. 541 (2019); *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1121 (9th Cir. 2007) (holding that an employee must "file suit within ninety days" of the date the EEOC dismisses a claim). For two of the Employees (Cherry and Lopez) who failed to meet the procedural requirements for bringing a Title VII claim in federal court, we affirm the district court's grant of summary judgment for Defendants with respect to those Employees' Title VII claims.

III.

The Employees also brought federal and state constitutional claims, but those claims were properly dismissed. Consider first the federal constitutional claims. The Employees sued the Department and its officers under 42 U.S.C. § 1983, seeking (among other relief) money damages for violations of the Free Exercise Clause, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment. 18-ER-4609–10; 5-ER-941–46. The district court granted summary judgment to the Department, holding that sovereign immunity barred the damages claims against the Department and the officers in their official capacities, and qualified immunity barred the damages claims against

the officers in their personal capacities. 1-ER-61–68. On appeal, the Employees do not challenge this ruling. Rather, the Employees now argue that their claims against the officers in their official capacities are not barred because the Complaint sought not only damages, but also an injunction: the reinstatement of the Employees' jobs.

The Employees have forfeited this argument. The Employees did not seek reinstatement in their Complaint; nor did they press this argument before the district court. The Employees sought damages in their Complaint, and they also sought to enjoin "harassment" and other future retaliation (injunctive relief that they do not pursue on appeal). 18-ER-4609–10. But they did not seek reinstatement. The Employees say that they asked for "other and further relief that is just and equitable," 18-ER-4610, but that catch-all clause is not enough to preserve a claim for reinstatement. The Employees' reliance on *Health Freedom Defense Fund, Inc. v. Carvalho*, 148 F.4th 1020 (9th Cir. 2025) (en banc), is misplaced. There, this court did not address sovereign immunity; rather, it held that a challenge to a school district's mandatory vaccination policy was not moot because, even though the school-district had rescinded its policy, a court could still issue "reinstatement" of the employees who were terminated pursuant to that policy. *Id.* at 1026–27. The employees sought to enjoin the school district from enforcing its policy and "such other and further relief as the Court may deem just and proper," and its complaint contained "allegations that individual Plaintiffs have been terminated under the Policy and have not been reinstated to their prior positions." *Id.* at 1025–26. This court thus held that the complaint "fairly encompasse[d] a request for reinstatement." *Id.* at 1026. By contrast here, the Employees' Complaint (again, seeking primarily damages

and an injunction against "harassment," which they have abandoned on appeal) contained no such allegations that could fairly encompass reinstatement. We therefore affirm the district court's grant of summary judgment denying the Employees' federal constitutional claims.

The Employees' state constitutional claims fail, too. As a threshold matter, the Employees argue that it was improper for the district court to retain jurisdiction over their state constitutional claims after dismissing their federal claims. But district courts have supplemental jurisdiction over state claims that "are so related to" federal claims "that they form part of the same case or controversy." 28 U.S.C. § 1367(a). District courts "*may* decline to exercise" jurisdiction over supplemental claims when they have "dismissed all" federal claims. *Id.* § 1367(c)(3) (emphasis added). But we do not see any abuse in the district court's exercise of discretion here to retain jurisdiction over the state-law claims. The Employees cite *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), but that case held that a federal court lacked jurisdiction over state-law claims when, after removal, the plaintiff *amends* the complaint to delete all the federal-law claims. *Id.* at 25. Here, the Employees did not delete the federal-law claims; rather, the claims were dismissed. Indeed, *Royal Canin* noted the difference: "[w]hen federal claims are dismissed by the district court, as in § 1367(c)(3), an appellate court may yet revive them; but that cannot happen when the plaintiff has excised them through a proper amendment." *Id.* at 33. Thus, the district court properly retained jurisdiction.

On the merits, the district court properly dismissed the state constitutional claims. In the district court, the Employees sought damages against the State for the deprivation of various state rights. Before us, the Employees

press only the right of privacy under the Washington Constitution, which they argue protects the right of bodily autonomy and the right to refuse vaccines. *See* Wash. Const. art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law."). But the Washington Supreme Court "has refused to create a constitutional cause of action for governmental privacy invasions" under article I, section 7. *Youker v. Douglas Cnty.*, 327 P.3d 1243, 1245 (Wash. Ct. App. 2014) (citing *Reid v. Pierce Cnty.*, 961 P.2d 333, 342–43 (Wash. 1998)). The Employees argue that Washington courts have created a cause of action where the State can be sued for damages for some intentional invasion-of-privacy torts. *See* Opening Br. at 42; *Youker*, 327 P.2d at 1245. But the Employees bring no common-law tort—only constitutional right-of-privacy claims. *See* 18-ER-4594–98. The district court did not err in rejecting those claims.

IV.

Finally, the Employees challenge on appeal the district court's discovery-related orders. First, the Employees contest the district court's exclusion of three of their proffered experts. Second, they challenge the district court's issuance of a protective order that prohibits their taking a Federal Rule of Civil Procedure 30(b)(6) deposition. We review these decisions for abuse of discretion, and we find no such abuse here. *See Collagen Corp.*, 161 F.3d at 1227.

A.

Before admitting expert testimony into evidence, the district court must find it both "relevant" and "reliable" under Federal Rule of Evidence 702. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). The expert must help the trier of fact understand the evidence or

determine a fact in issue (Fed. R. Evid. 702(a)); he must base his testimony on sufficient facts or data (702(b)) and on reliable principles and methods (702(c)); and he must have reliably applied those principles and methods to the facts of the case (702(d)).

The district court did not abuse its discretion in concluding that the three experts did not meet the *Daubert* standard here. The first expert was Dr. Harvey Risch who submitted two expert reports—a report on the efficacy of the COVID-19 vaccines and vaccine mandates, and a rebuttal report. 1-ER-15. He based his reports, however, on evidence from after the Employees were terminated or resigned. The Employees had all left the Department by November 2021. 13-ER-3369; 12-ER-3036; 13-ER-3445; 13-ER-3250. Dr. Risch used data (from the Centers for Disease Control and Prevention) through the end of December 2021 to generate a higher—and thus less than reliable—breakthrough vaccination rate (the percentage at which fully vaccinated people can still catch the disease) than had the timeline been a month shorter. Risch Report, ECF No. 64-1 at 11–12 (filed Feb. 13, 2025), *Shirley, et al. v. Washington State Dep't of Fish & Wildlife*, No. 3:23-cv-05077-DGE; *see* 1-ER-22. The district court did not abuse its discretion in excluding Dr. Risch's opinions.

Nor was it an abuse of discretion to exclude Mrs. Lisa Brock. Mrs. Brock worked in Human Resources for over 40 years (6-ER-1467), and in producing her report, she reviewed "the first Complaint, the arbitration decisions of" certain plaintiffs, emails approving the accommodation requests of certain plaintiffs, denial letters for certain plaintiffs, and other emails. 1-ER-16. But Mrs. Brock concededly did not review the Department's accommodations policies or the Employees' job

descriptions. *Id.* She relied instead upon "the well-recognized guidelines" of the "Society for Human Resource Management" and of state and federal governmental agencies including the EEOC. 6-ER-1466–67. The district court did not abuse its discretion in concluding that Mrs. Brock's opinion lacked reliability where she did not review the accommodations policies that the Department had in place.

We likewise find no abuse of discretion with respect to the exclusion of Dr. John Cary's report. The district court had set an expert's rebuttal report deadline of January 14, 2025, but the Employees submitted Dr. Cary's report seventeen days after that deadline. "Expert reports must be disclosed 'at the times and in the sequence that the court orders.'" *Key v. Qualcomm Inc.*, 129 F.4th 1129, 1143 (9th Cir. 2025) (quoting Fed. R. Civ. P. 26(a)(2)(D)). And when disclosure of an expert report is not timely made, "the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). The Employees concede that Dr. Cary's report was not timely disclosed but argue that the delay was justified because his report was offered in response to the Department's expert witness disclosure, which the Employees contend was late. But the Employees did not seek to exclude the Department's witness, though they were free to do so just as the Department moved to exclude theirs. The district court did not abuse its discretion in excluding Dr. Cary's report.

B.

Finally, the Employees seek to overturn the district court's protective order that prevents the Employees from

taking a Rule 30(b)(6) deposition. We review protective orders from deposition notices for abuse of discretion. *Garris*, 937 F.3d at 1291. The Employees issued a notice with 31 topics (the district court counted 450 including subtopics), and the Department sought protection from it because the Department considered the notice "overbroad, unduly burdensome," and "disproportionate." 17-ER-4501. Because such notices are subject to Rule 26 proportionality standards and the district court has a "duty to protect" parties from needlessly burdensome notices, the district court issued a protective order. 17-ER-4502–03. On this record, we find no abuse of discretion with such an issuance.

* * *

For the reasons discussed, we reverse the district court's order granting summary judgment for the Department with respect to Anderson's, DeBoer's, and Frady's Title VII claims and all five Employees' WLAD claims; affirm the district court's order granting summary judgment for the Department with respect to Lopez's and Cherry's Title VII claims and all five Employees' federal and state constitutional claims; affirm the district court's orders excluding the Employees' three experts; affirm the district court's issuance of the protective order; and remand for proceedings consistent with this opinion.

REVERSED in part, AFFIRMED in part, AND REMANDED.