No. 22-174

# In The Supreme Court of the United States

GERALD E. GROFF,

*Petitioner,*

v.

LOUIS DEJOY, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit**

## BRIEF *AMICUS CURIAE* OF CHRISTIAN LEGAL SOCIETY, KARAMAH, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, THE RUTHERFORD INSTITUTE, AND INSTITUTIONAL RELIGIOUS FREEDOM ALLIANCE IN SUPPORT OF PETITIONER

KIMBERLEE WOOD COLBY
LAURA NAMMO
CENTER FOR LAW & RELIGIOUS FREEDOM
8001 Braddock Rd.
Springfield, VA 22151
(703) 894-1087
Laura@clsnet.org

THOMAS C. BERG
*Counsel of Record*
UNIVERSITY OF ST. THOMAS SCHOOL OF LAW-MINNESOTA RELIGIOUS LIBERTY APPELLATE CLINIC
MSL 400, 1000 LaSalle Ave.
Minneapolis, MN 55403
(651) 962-4918
tcberg@stthomas.edu
*Counsel for Amici Curiae*

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

## INTEREST OF *AMICI CURIAE*[1]

**Christian Legal Society** (CLS) is an association of Christian attorneys, law students, and law professors. CLS has long believed that pluralism, essential to a free society, prospers only when the First Amendment rights, including especially the free exercise of religion, of all Americans are protected.

**KARAMAH** is a nonprofit organization that derives its name from the Arabic term for "dignity." Through education, legal outreach, and advocacy, KARAMAH promotes human rights worldwide, particularly the rights of Muslim women and girls in Islamic and civil law. KARAMAH aims to create a global network of advocates for the rights of Muslim women, educate the public with respect to the gender-equitable principles of Islam, and advance the cause of Muslim women's rights in legal and social environments. As an organization advocating for the rights of Muslim women and children for nearly twenty-five years, KARAMAH has a direct and substantial interest in the outcome of this case. KARAMAH is therefore qualified to inform the Court of the disproportionate impact on Muslims as a religious minority in the United States if the Court were to reject religious accommodation under Title VII that benefits religious minorities.

---

[1] Neither a party nor party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund its preparation or submission. No person (other than the *amici curiae*, their members, or their counsel) made a monetary contribution intended to fund its preparation or submission.

The **Association of Christian Schools International** (ACSI) is a nonprofit association providing support services to 24,000 Christian schools in over 100 countries. ACSI directly serves over 5300 member schools worldwide, including 2200 Christian preschools, elementary, and secondary schools and 90 post-secondary institutions in the United States; 160 Christian international schools; and over 3000 Christian global schools. Member-schools educate some 5.5 million children around the world. ACSI accredits Protestant pre-K—12 schools, provides professional development and teacher certification, and offers member-schools high-quality curricula, student testing and a wide range of student activities. ACSI members advance the common good by providing quality education and spiritual formation to their students. Our calling relies upon a vibrant Christian faith that embraces every aspect of life. This gives ACSI an interest in ensuring expansive religious liberty with strong protection from government attempts to restrict it.

**The Rutherford Institute** (Institute) is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when

it infringes on the rights guaranteed by the Constitution and laws of the United States.

The **Institutional Religious Freedom Alliance** (IRFA), founded in 2008 and now a division of the Center for Public Justice, a nonpartisan Christian policy research and citizenship education organization, works to protect the religious freedom of faith-based service organizations through a multi-faith network of organizations by educating the public, training organizations and their lawyers, creating policy alternatives that better protect religious freedom, and advocating to the federal administration and Congress on behalf of the rights of faith-based service organizations.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a vital question under the religious-accommodation provision, section 701(j), of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e(j). That provision makes it illegal for an employer to act against an employee based on the employee's religiously grounded observance or practice, unless the employer "demonstrates that he is unable to reasonably accommodate to [the] observance or practice without undue hardship on the conduct of the employer's business." In *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977), this Court read the phrase "undue hardship" to mean that an employer's statutory duty to accommodate an employee's religious exercise

is met if doing so would require the employer "to bear more than a de minimis cost." *Amici* agree with petitioner that the "*de minimis*" standard grossly misconstrues the phrase "undue hardship" and should be overruled.

We write to focus on the fact that this misreading of "undue hardship" undermines the protection that the accommodation provision gives to employees in their religious practices, especially to employees of minority faiths.

**I.** This Court should overturn *Hardison*'s holding that anything more than "*de minimis* harm" from an accommodation constitutes "undue hardship." The *de minimis* standard has multiple fundamental flaws.

**A.** First and foremost, the *de minimis* standard is inconsistent with the text of Title VII. This Court has repeatedly and recently emphasized that a statute must be interpreted according to the ordinary public meaning of its words at the time of enactment. The ordinary meaning of "undue hardship" at the time the accommodation provision was enacted (1972) included not only that some "suffering" or "deprivation" existed—"a condition that is difficult to endure"—but also that it was serious enough as to be "excessive" or "inappropriate." That meaning is irreconcilable with a standard of mere "*de minimis*" cost. Multiple other civil rights statutes define "undue hardship," more sensibly, as involving "significant difficulty or expense"; there is no reason to apply a lesser standard in a statute protecting the civil right of religious exercise.

**B.** Moreover, the premise of the *de minimis* standard has been undercut by this Court's recent decision in *EEOC v. Abercrombie & Fitch, Inc.*, 575 U.S. 768 (2015). The Court in *Hardison* adopted the weak *de minimis* standard largely on the basis that Title VII aims only at preventing intentional discrimination against religion. But *Abercrombie* makes clear that Title VII, in its accommodation provision, also requires protection against the effects of a religion-neutral employer policy.

**C.** A weak interpretation of Title VII's religious-accommodation provision is particularly harmful to religious minorities, who are particularly likely to come into conflict with formally neutral employer policies reflecting the majority's norms. Such effects are apparent in the accommodation cases listed in the Appendix to this brief, a disproportionate number of which involve religious minorities. In the list, which includes Title VII cases in which summary judgment was granted between 2000 and the present, Muslims account for 17.4 percent of the cases even though they made up only 0.9 percent of the overall population in 2014. Members of non-Christian faiths together account for 35.6 percent of the cases, compared with only 5.9 percent of the population in 2014 (and less in earlier years). The share of cases involving minorities climbs to 62.1 percent when one adds Seventh-day Adventists and other Christian groups that follow the minority practice of Saturday Sabbath observance. The "undue hardship" standard as interpreted in *Hardison*

has a severe real-world impact on religious freedom for these Americans, among many others.

**II.** Under the proper definition—the ordinary meaning—of "undue hardship," USPS failed to show such hardship to its business. USPS failed to show that the scheduling difficulties and morale problems to which it pointed actually rose to the level of excessive oppression of its business, or "significant difficulty or expense." Under the proper standard, Groff was entitled to summary judgment, or at the least, questions of fact made summary argument for USPS erroneous.

## ARGUMENT

Petitioner Gerald Groff is a Christian who observes a Sunday Sabbath, believing the day is meant for worship and rest. Br. for Pet'r 6. Groff worked for the USPS as a Rural Carrier Associate ("RCA"), a non-career employee who provides coverage for absent career employees. *Id.* at 6. At two different USPS locations where Groff worked, the USPS began delivering Amazon.com packages on Sundays after Groff had begun work at that location. Indeed, Groff transferred to the second location, Holtwood, after he was informed at the first location that he would need to begin working on Sundays. *Id.* at 7. But then Holtwood began Sunday deliveries as well.

At the first location, Quarryville, Groff had been exempted from Sunday work as long as he covered other shifts throughout the week. At the second

location, Holtwood, Groff expressed willingness to work extra shifts during the week. Br. for Pet'r 7-8. But eventually, at Quarryville and then again at Holtwood, various accommodations for Groff were discontinued. From July 2018, at the Holtwood location, Groff faced progressive discipline when he did not report for work on his scheduled Sundays. *Id.* at 9. Over time, he received all discipline short of termination for declining to work Sundays for which USPS could not find a replacement. *Id.* at 9-10.

Facing termination, Groff resigned and sued under Title VII, alleging that USPS had failed to accommodate his religious practice. On cross-motions for summary judgment, the district court granted USPS's motion. The court concluded that exempting Groff from Sunday work would cause USPS "undue hardship" because it would "cause[ ] more than a de minimus [sic] impact on [Groff's] co-workers." Pet. App. 58a-59a. The court of appeals affirmed, likewise reasoning—over a dissent from Judge Hardiman—that exempting Groff from Sunday shifts imposed "more than a *de minimis* cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both [locations]." Pet. App. 24a. Accordingly, the definition of "undue hardship" as "anything more than a *de minimis* cost" was integral to dismissal of Groff's claims without a trial.

## I. This Court Should Overrule the *TWA v. Hardison* Definition of "Undue Hardship" as "Anything More than *De Minimis* Harm."

*Amici* urge this Court to reconsider the *de minimis* standard adopted in *Hardison*.[2] For multiple reasons, this standard is fundamentally flawed as a definition of "undue hardship." This mistaken definition has had important and recurring consequences for individuals, especially those of minority faiths, who of necessity rely on Title VII's protection against religious discrimination in the workplace.

### A. The *De Minimis* Standard Is Inconsistent with the Text of Title VII.

First and foremost, the phrase "undue hardship" in Title VII simply will not bear the meaning that expands it to "[anything] more than a *de minimis* cost."

As this Court recently reaffirmed in interpreting Title VII itself, the Court "normally interprets a statute in accord with the ordinary public meaning of its

---

[2] *Amici* focus here on the flaws in *Hardison*'s reasoning in adopting the *de minimis* standard. A further reason to reconsider that standard is that *Hardison*'s discussion of "undue hardship" was technically dicta. Br. for Pet'r 15-17, citing *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 787 n.* (2015) (Thomas, J., concurring in part and dissenting in part); see also *id.* ("Because the employee's termination had occurred before the 1972 amendment to Title VII's definition of religion, *Hardison* applied the then-existing EEOC guideline—which also contained an 'undue hardship' defense—not the amended statutory definition.").

terms at the time of its enactment." *Bostock v. Clayton County, Ga.*, 140 S. Ct. 1731, 1738 (2020). The Court "'start[s], of course, with the statutory text,'" and "proceed[s] from the understanding that '[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.'" *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (some brackets in original) (quoting *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)). Consequently, the Court sharply rejects interpretations that are "completely unmoored from the statutory text." *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 138 S. Ct. 617, 632 (2018). And to reiterate, ordinary meaning is determined "at the time Congress enacted the statute." *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018).

Here, the phrase at issue is "undue hardship." Because Title VII does not "otherwise defin[e]" it (*Cloer*, *supra*), the phrase should be interpreted according to its ordinary public meaning in 1972, the time Congress added the provision to the statute. *Bostock*, 140 S. Ct. at 1738. Begin with the term "hardship": At that time, Random House defined hardship as "a condition that is difficult to endure; suffering; deprivation; oppression; or something hard to bear, as a deprivation, lack of comfort, constant toil or danger, etc." *Random House Dictionary* 646 (1973). "[H]ardship," it added, "applies to a circumstance in which excessive and painful effort of some kind is required." *Id*. Similarly, Webster's Dictionary defined hardship as "something that causes or entails suffering or privation." *Webster's New American Dictionary* 379 (1965). Black's Law Dictionary

echoes the others, defining hardship as "privation, suffering, adversity." *Black's Law Dictionary* 646 (5th ed. 1979). In a zoning example, hardship means that a restriction applied is "unduly oppressive, arbitrary or confiscatory." *Id*.

With respect to "undue," Random House defined it as "unwarranted" or "excessive"; "inappropriate, unjustifiable or improper"; or "not owed." *Random House Dictionary*, *supra*, at 1433. Webster's defined it as "not due," as "inappropriate" or "unsuitable," and as "exceeding or violating propriety or fitness." *Webster's New American Dictionary*, *supra*, at 968. And Black's defined "undue" to mean "more than necessary; not proper; illegal. It denotes something wrong." *Black's Law Dictionary*, *supra*, at 1370.

In other words, the ordinary meaning of "undue hardship" includes not only that some "suffering" or "deprivation" exists—"a condition that is difficult to endure"—but also that it is serious enough as to be "excessive" or "inappropriate."

It is impossible to reconcile that ordinary meaning of "undue hardship" with *Hardison*'s definition of it as "[anything] more than a *de minimis* cost." See also Br. for Pet'r 17-22. A cost that is barely more than minimal does not correspond either with the baseline idea that a hardship involves "suffering" and "a condition difficult to endure" or with the further idea that this suffering is serious enough as to be "undue" or "excessive."

In short, as three justices pointed out recently, "*Hardison*'s reading does not represent the most likely

interpretation of the statutory term 'undue hardship' "—"and the [*Hardison*] Court did not explain the basis for this interpretation." *Patterson v. Walgreen Co.*, 140 S. Ct. 685, 686 (2020) (Alito, J., concurring in denial of certiorari). They echo Justice Marshall's observation in *Hardison* itself that it is "seriously question[able] whether simple English usage permits 'undue hardship' to be interpreted to mean 'more than *de minimis* cost.' " 432 U.S. at 92 n.6 (Marshall, J., dissenting).

In other cases besides *Hardison*, this Court has repeatedly "decline[d] the . . . invitation to override Congress' considered choice by rewriting the words of the statute." *Nat'l Ass'n of Mfrs.*, 138 S. Ct. at 632; see *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1948-49 (2016). As the Court recently emphasized:

> [O]nly the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives.

*Bostock*, 140 S. Ct. at 1738. This Court should rectify *Hardison*'s mistaken rewriting of the words of Title VII's accommodation provision.

The ordinary meaning of "undue hardship" as of 1972 is far closer to the definition of that phrase under the Americans with Disabilities Act (ADA), which requires an employer to make "reasonable

accommodations" of an employee's disability unless accommodation would impose an "undue hardship" on the employer's business. 42 U.S.C. § 12112(b)(5)(A). According to the ADA, undue hardship means "an action requiring significant difficulty or expense." 42 U.S.C. § 12111(10)(A). The same standard, "significant difficulty or expense," applies under other statutes requiring "reasonable accommodation" of employees. These include the Uniformed Services Employment and Reemployment Rights Act, which requires employers to accommodate returning U.S. service members seeking to reassume their prior role, 38 U.S.C. § 4303(16); the Affordable Care Act, which requires employers to provide nursing mothers with work breaks, 29 U.S.C. § 207(r)(3); and the newly enacted Pregnant Workers Fairness Act, which requires accommodation of workers' physical or mental conditions "related to, affected by, or arising out of pregnancy." Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, Div. II, §§ 103(1), 102(7) (adopting "undue hardship" standard and defining it the same as the ADA standard).

Compared with these statutory rights that receive greater accommodation, "Title VII's right to religious exercise has become the odd man out. Alone among comparably protected civil rights, an employer may dispense with it nearly at whim." *Small v. Memphis Light, Gas & Water*, 141 S. Ct. 1227, 1228 (2021) (Gorsuch, J., joined by Alito, J., dissenting from denial of certiorari).

Nor is there a good reason to protect religious freedom rights less than these other civil rights. In fact, as

we now discuss, this Court has made clear that Title VII's accommodation provision gives religious practice "favored [rather than lesser] treatment." *Abercrombie & Fitch*, 575 U.S. at 775.

### B. The Premise Underlying *Hardison*'s "*De Minimis*" Standard Has Been Undercut by This Court's Decision in *Abercrombie & Fitch*.

*Hardison*'s *de minimis* standard should be reconsidered not only because it is textually indefensible, but also because the premise underlying it has been undermined by this Court's decision in *Abercrombie & Fitch*, 575 U.S. 768. This Court has overruled previous decisions, including decisions interpreting statutes, "when the theoretical underpinnings of those decisions are called into serious question." *State Oil Co. v. Khan*, 522 U.S. 3, 21 (1997); accord *Dickerson v. United States*, 530 U.S. 428, 443 (2000) ("we have overruled our precedents when subsequent cases have undermined their doctrinal underpinnings").

In *Hardison*, the Court justified its weak "*de minimis*" standard on the ground that religious practices should not be protected more than nonreligious practices: "[T]o require TWA to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion." 432 U.S. at 84. The Court found such treatment unwarranted based on its conclusion that "the paramount

concern of Congress in enacting Title VII was the elimination of discrimination in employment." *Id.* at 85. Focusing on protecting against overt discrimination, the Court thus declined to require accommodation for the employee from a neutral policy that coincidentally interfered with his religious practice. See *id.* at 82 (refusing to order accommodation in face of seniority system because system "was not designed with the intention to discriminate against religion").

Eight years ago, however, the Court in *Abercrombie & Fitch* rejected the theoretical underpinnings of *Hardison*'s rule. Contrary to *Hardison*'s reasoning that Title VII aims only at actions treating religion worse than other practices, the Court in *Abercrombie* said:

> Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not "to fail or refuse to hire or discharge any individual . . . because of such individual's" "religious observance and practice."

575 U.S. at 775.[3] As the Court pointed out: "An employer is surely entitled to have, for example, a no-

[3] To make the point explicitly: When an employer takes adverse action against an employee because of an employee's practice that is religiously grounded, it is acting "because of" the employee's "religious observance and practice"—even if the employer's action is "neutral" in the sense that it does not target the employee's practice only when it is religiously grounded. *Abercrombie*, 575 U.S. at 775; see 42 U.S.C. § 2000e-2(a); 42 U.S.C. § 2000e(j).

headwear policy as an ordinary matter. But when an applicant requires an accommodation as an 'aspec[t] of religious practice . . . ,' it is no response that the subsequent 'fail[ure] . . . to hire' was due to an otherwise-neutral policy." *Id.* (ellipses in original).

As one commentator has put it, this Court in *Abercrombie*, "for the first time, emphasized that § 701(j) mandates more than formal equality. . . . The Court used different rhetoric than it had in its earlier decisions in *Hardison* and [*Ansonia Bd. of Ed. v.*] *Philbrook*, [479 U.S. 60 (1986),] where it emphasized formal equality." Debbie N. Kaminer, *Religious Accommodation in the Workplace: Why Federal Courts Fail to Provide Meaningful Protection of Religious Employees*, 20 Tex. Rev. L. & Pol. 107, 130 (2015). *Abercrombie* has cut the legs out from under the *de minimis* standard, and this Court should now confirm that fact.

This reasoning in *Abercrombie* was important to the Court's ultimate holding there: that an employer can be held liable for refusing to accommodate an employee's practice that is religiously grounded even if the employer had no actual knowledge that the practice was religious. Abercrombie & Fitch, the employer, had argued that a claim for accommodation could be brought only as a disparate-impact claim, not as a disparate-treatment (or intentional-discrimination) claim. 575 U.S. at 774. Specifically, the company argued that "the statute limit[s] disparate-treatment claims to only those employer policies that treat religious practices less favorably than similar secular practices." *Id.* at 775. This Court held that disparate-treatment claims

were not so limited, and it explained its holding on the basis that Title VII's accommodation provision gives "favored treatment," not "mere neutrality[,] with regard to religious practices." *Id.*

The reasoning in *Abercrombie* aligns with Justice Marshall's dissent in *Hardison*, not with the majority. As that dissent explained, the *Hardison* majority's claim that Title VII focuses only on "intentional discrimination" against religion, and rejects "unequal treatment" favoring employee religious practices, is irreconcilable with the very concept of accommodation:

> The accommodation issue by definition arises only when a neutral rule of general applicability conflicts with the religious practices of a particular employee. . . . In each instance, the question is whether the employee is to be exempt from the rule's demands. To do so will always result in a privilege being "allocated according to religious beliefs," unless the employer gratuitously decides to repeal the rule in toto. What the statute says, in plain words, is that such allocations are required unless "undue hardship" would result.

*Hardison*, 432 U.S. at 87-88 (Marshall, J., dissenting). *Hardison*'s *de minimis* standard, which could be read to reject "even the most minor special privilege to religious observers to enable them to follow their faith" (*id.* at 87), therefore rests on the very misunderstanding of Title VII that this Court has now rejected in *Abercrombie*.

### C. The *De Minimis* Standard Particularly Harms Accommodation of Religious Minorities, as an Examination of Lower-Court Cases Confirms.

Title VII's religious-accommodation provision is particularly vital to the protection of minority religious practices. Because facially or formally neutral workplace policies by nature reflect the perspective of the cultural majority, they will disproportionately come into conflict with the practices of religious minorities. Therefore, a meaningful requirement of religious accommodation disproportionately protects religious minorities—but a weak accommodation requirement, conversely, disproportionately hurts them.

These disproportionate effects appear in a list of reported religious accommodation cases, from 2000 to the present, decided on summary judgment motions concerning "undue hardship." See Appendix to this brief.[4] In the Appendix, we identify the religion of the employee claimants in those cases. Of 132 cases where the employee's religion is apparent, the number of cases involving claimants of varying faiths are:

| | |
|---|---|
| General Christian | 37 |
| Seventh-day Adventist | 28 |
| Muslim | 23 |

[4] The list in the Appendix here draws on and updates a table of cases set forth in the Appendix to the petition for certiorari in *Patterson v. Walgreen Co.*, No. 18-349 (cert. denied, 140 S. Ct. 685 (2020)), at 35a-67a.

| | |
|---|---|
| Sabbatarian Christian sects | 7 |
| Jehovah's Witness | 7 |
| Jewish | 9 |
| Idiosyncratic religions | 4 |
| Pentecostal Christian | 4 |
| Hebrew Israelite | 5 |
| Non-religious | 2 |
| Rastafarian | 2 |
| Sikh | 2 |
| African religions | 2 |

Muslims, a classic religious minority in the United States, constitute 17.4 percent of this large set of accommodation decisions (23 of 132), even though, according to a comprehensive 2014 study, they constitute only 0.9 percent of the population. Pew Research Center, *America's Changing Religious Landscape*, at 4 (May 12, 2015), http://www.pewforum.org/wp-content/uploads/sites/7/2015/05/RLS-08-26-full-report.pdf.[5] Overall, claims by members of non-Christian faiths (Muslims, idiosyncratic faiths, Jews, Hebrew Israelites, Rastafarians, Sikhs, and African religions) make up 35.6 percent of the accommodation cases (47 of 132),

[5] Since 2014, the shares of some religions as a percentage of the overall population have changed slightly; we note such changes in the Appendix. The changes in no way alter the conclusions in this brief's text that minority religions are disproportionately represented, to a significant degree, in accommodation cases.

even though non-Christian faiths made up only 5.9 percent of the population in 2014 (and significantly less than that in earlier years). *America's Changing Religious Landscape*, *supra*, at 4. The percentage of cases in the Appendix involving religious minorities climbs to 62.1 percent when one combines the various non-Christians (35.6 percent of the cases) with Christian groups that follow the minority practice of Saturday Sabbath observance: Seventh-day Adventists (28 of 132, or 21.2 percent of the cases) and other small Saturday-observing sects (7 of 132, or 5.3 percent of the cases).[6]

## II. Under the Proper Definition of the Term, USPS Failed to Show that Accommodating Groff Would Cause "Undue Hardship."

As discussed above, the proper definition—the ordinary meaning—of "undue hardship" requires a suffering, deprivation, or oppression that is serious enough as to be undue or excessive. See *supra* pp. 8-9. This ordinary-meaning definition also fits the phrase's

[6] The overall list of cases reflects a variety of religious observances and practices conflicting with employer rules. For example, among Muslims the cases involve the ability to conduct prayer during the workday, see, e.g., *Mohamed v. 1st Class Staffing, LLC*, 286 F. Supp. 3d 884 (S.D. Ohio 2017) (space for prayer); to wear a beard, see, e.g., *Hussein v. The Waldorf-Astoria*, 134 F. Supp. 2d 591 (S.D.N.Y. 2001); and to wear a hijab or woman's headscarf, see, e.g., *EEOC v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106 (10th Cir. 2013), *rev'd*, 575 U.S. 768 (2015).

definition in other civil rights statutes as "significant difficulty or expense."

Under the proper definition, USPS failed to show that accommodating Groff's religious practice would cause "undue hardship." *Amici* therefore agree with petitioner that he should have been granted summary judgment, or at the very least that summary judgment against him was improper because there is a question of fact whether the alleged scheduling difficulties and morale problems to which USPS pointed actually rose to the level of excessive oppression of USPS's business or "significant difficulty or expense." Petitioner explains how "USPS could and did accommodate Groff without any undue hardship on the conduct of its business," and how any "effects on USPS's operations resulting from the alleged imposition on Groff's coworkers . . . were minimal, avoidable, and confined to the six-week-per-year peak season." Br. for Pet'r 44, 46. *Amici* also agree that the court of appeals' reliance on alleged employee morale problems to satisfy an already low standard for accommodation "effectively subject[s] Title VII religious accommodation to a heckler's veto by disgruntled employees." Pet. App. 28a (Hardiman, J., dissenting).

## CONCLUSION

For the foregoing reasons, this Court should overrule *Hardison*'s "*de minimis*" standard and adopt an interpretation consistent with the text and purpose of Title VII.

The Court should reverse the judgment of the court of appeals and direct entry of summary judgment for Groff or at least reverse the grant of summary judgment for USPS.

Respectfully submitted,

KIMBERLEE WOOD COLBY
LAURA NAMMO
CENTER FOR LAW & RELIGIOUS FREEDOM
8001 Braddock Rd.
Springfield, VA 22151
(703) 894-1087
Laura@clsnet.org

THOMAS C. BERG
*Counsel of Record*
UNIVERSITY OF ST. THOMAS SCHOOL OF LAW-MINNESOTA
RELIGIOUS LIBERTY APPELLATE CLINIC
MSL 400, 1000 LaSalle Ave.
Minneapolis, MN 55403
(651) 962-4918
tcberg@stthomas.edu
*Counsel for Amici Curiae*

February 28, 2023