No. 22-174

In the Supreme Court of the United States

GERALD E. GROFF,

Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

BRIEF OF *AMICI CURIAE* NATIONAL RURAL LETTER CARRIERS' ASSOCIATION, NATIONAL ASSOCIATION OF LETTER CARRIERS, AND NATIONAL POSTAL MAIL HANDLERS UNION IN SUPPORT OF RESPONDENT

MICHAEL GAN
MARK GISLER
JEAN-MARC FAVREAU
PEER, GAN & GISLER, LLP
1730 Rhode Island Avenue N.W., Suite 715
Washington, DC 20036
(202) 223-1900
gan@peerganlaw.com

JACOB KARABELL
Counsel of Record
MATTHEW CLASH-DREXLER
ELISABETH OPPENHEIMER
RACHEL CASPER
BREDHOFF & KAISER, PLLC
805 15th Street N.W., Suite 1000
Washington, DC 20005
(202) 842-2600
jkarabell@bredhoff.com

Additional counsel on inside cover

Mosaic - (301) 927-3800 - Cheverly, MD

KEITH E. SECULAR
DANIEL M. NESBITT
COHEN, WEISS & SIMON,
LLP
900 Third Avenue,
Suite 2100
New York, NY 10022
(212) 563-4100
ksecular@cwsny.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The National Rural Letter Carriers' Association ("NRLCA") has represented rural letter carriers and has sought to improve their conditions of work with the United States Postal Service ("USPS" or "Postal Service") since 1903. The NRLCA is the union that represented Petitioner, Gerald Groff, in his position as a Rural Carrier Associate, and the NRLCA is deeply concerned about both non-discriminatory treatment for religiously observant rural letter carriers, and equitable scheduling for all rural letter carriers. Likewise, the National Association of Letter Carriers ("NALC"), founded in 1889, is the representative of city delivery letter carriers, and the National Postal Mail Handlers Union ("NPMHU"), founded in 1912, represents the mail handling craft. Both of these unions share NRLCA's concerns with fair treatment of USPS workers.

Together, these three unions ("Postal Unions") represent hundreds of thousands of Postal Service employees who will be directly affected by the issues before the Court. These postal unions have been involved in litigation and grievance proceedings on several different sides of religious accommodation issues with the U.S. Postal Service. As such, these postal unions have particular insight into the effects of accommodations and accommodation law on the Postal Service employees they represent. Moreover, as unions tasked with fairly representing all members of

---

[1] No party or counsel for a party has authored this brief in whole or in part, and no entity or person other than *Amici Curiae* and their counsel have made a monetary contribution intended to fund the preparation or submission of this brief.

their respective bargaining units, these postal unions have significant experience balancing the individual and collective interests of Postal Service workers.

STATEMENT OF THE CASE

The Postal Service's unofficial motto is: "Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds."[2] This "swift completion of . . . appointed rounds" is a labor-intensive project, and as such, scheduling is central to the functioning of the Postal Service's business.

If one Postal Service worker is not working, another is. Hence, accommodating one worker's request for time off for religious observance requires a change to regular scheduling procedures. In this section, we briefly outline, as background for the Court, some of the scheduling procedures and issues that apply to postal workers. We focus on delivery of rural mail, as the procedures and issues applicable in this context are central to the questions presented to this Court.

If an employee who delivers mail to rural routes is excused from Sunday work, there are several potential accommodations that are – at least as a theoretical matter – available. These include having mail delivered by an Assistant Rural Carrier ("ARC") or Rural Carrier Associate ("RCA"), who are non-career employees, or having mail delivered by career

---

[2] *Postal Service Mission and "Motto"*, U.S. POSTAL SERV., 1 (Oct. 1999), https://about.usps.com/who/profile/history/pdf/mission-motto.pdf.

rural letter carriers, managers, or employees in other crafts. Not delivering some or all of the mail is another potential option. We briefly describe some of the ramifications of these alternatives.

1. Assigning the work to another non-career ARC or RCA is the most straightforward way of accommodating time off for religious observance. ARCs and RCAs are leave replacement workers; their role is to fill in as carriers when career carriers are out, including on Sundays and holidays. *See* Pet. Br. 6; Resp. Br. 7. As laid out in the parties' briefs, ARCs and RCAs have no set schedules, although scheduling is governed by a collectively bargained Memorandum of Understanding ("MOU") aimed at ensuring an equitable work rotation (an MOU that was violated in this case). *See* Pet. Br. 6; Resp. Br. 7-8. ARCs and RCAs are also the most cost-effective categories of employees for Sunday rural delivery, and replacing one RCA – Groff – with another RCA would keep costs consistent.

However, this alternative is not viable in many instances. There is a severe shortage of ARCs and RCAs, *see* J.A. 283, which has gone on for decades and shows no signs of abating.[3] The Rural National Agreement (the collectively bargained agreement

---

[3] *See, e.g.*, *Peak Season Hiring*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Sep. 23, 2021), https://www.uspsoig.gov/reports/audit-reports/peak-season-hiring; *Mail Processing Facilities Staffing*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Mar. 30, 2018), https://www.uspsoig.gov/reports/audit-reports/mail-processing-facilities-staffing; *Non-Career Employee Turnover*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Dec. 20, 2016), https://www.uspsoig.gov/reports/audit-reports/non-career-employee-turnover.

between the NRLCA and USPS) provides for an available ARC, RCA, or other leave replacement employee for each of the approximately 75,000 regular rural routes.[4] At present, however, there are just over 50,000 potential ARCs, RCAs, or other leave replacement employees working.[5] Only about 20% of post offices have a full complement of leave replacement employees. That shortage has affected and continues to affect the Central Pennsylvania region, where Mr. Groff worked. *See* J.A. 283; Pet. App. 4a. The region requires approximately 1,500 RCAs but has only about two-thirds of that number. J.A. 283. At times, Groff was the only RCA in his office for an extended period. J.A. 307.

2. The next alternative – assigning Sunday work to a career rural letter carrier from the same office – would ordinarily violate the Rural National Agreement.[6] Under this collectively bargained agreement, career rural carriers do not work on Sundays and holidays.[7] Indeed, not having to work on Sundays and holidays is a key benefit of being a career rural carrier. Career carriers are, however, permitted

---

[4] *See National Agreement Between the United States Postal Service and the National Rural Letter Carriers' Association 2021-2024*, THE NAT'L RURAL LETTER CARRIER, 47 (2022), https://www.nrlca.org/Documents/WebContent/EditorDocuments/userFiles/File/public/2021-2024%20Special%20Contract%20Edition_FINAL.pdf [hereinafter *Rural National Agreement*].

[5] *Postal Service Active Employee Statistical Summary*, POSTAL REG. COMM'N, (Mar. 16, 2023), https://www.prc.gov/docs/124/124673/HAT%20Report%20PP%206-2023.pdf.

[6] *See Rural National Agreement*, *supra* note 4, at 3.

[7] *Id.* at 3, 20.

to volunteer to work on Sundays at an overtime rate.[8] Thus, having career carriers make Sunday deliveries is a potential accommodation if such carriers volunteer, but it comes at an increased cost to USPS.

3. The next group of alternatives – assigning Sunday delivery work to an employee from a different craft or to a supervisor – normally would violate the Rural National Agreement.[9] Violations are likely to spark grievances under the agreement and impose significant remedial costs.

4. Finally, USPS could stop delivering some or all mail on Sundays when it is unable to find a replacement carrier. Curtailing delivery of mail has already occurred in certain rural areas as a result of insufficient staffing.[10] If this occurs, USPS does not meet its contractual obligations, primarily to Amazon. USPS's statutory mission – to "provide prompt, reliable, and efficient services to patrons in all areas," and in particular to "provide a maximum degree of effective and regular postal services to rural areas" – will also be impaired. 39 U.S.C. § 101(a), (b). In addition, this option might also increase USPS's costs if the mail is delivered during the week by career rural carriers at a higher rate of pay.

---

[8] *See Regular Carriers Working on Sunday MOU*, NAT. RURAL LETTER CARRIERS' ASS'N (Feb. 24, 2023), https://www.nrlca.org/Content/WorkingSundayMOU.

[9] *See Rural National Agreement*, *supra* note 4, at 1.

[10] *Delivery Operations – Undelivered and Partially Delivered Routes*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Dec. 16, 2022), https://www.uspsoig.gov/reports/audit-reports/delivery-operations-undelivered-and-partially-delivered-routes.

The city letter carriers and the mail handlers, who are represented by NALC and NPMHU respectively, have different scheduling issues and work pursuant to different collectively bargained agreements. But both the city letter carriers and the mail handlers are likewise understaffed and thus would face costs and tradeoffs in accommodating time off for religious observance.[11]

SUMMARY OF ARGUMENT

The question of when an employer must accommodate a request for a different schedule due to religious observance is important to the regular functioning of the Postal Service. *Amici* Postal Unions agree with the Postal Service that this Court should not overrule *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). The Postal Unions further agree with the Postal Service that this Court should affirm the judgment in the Postal Service's favor either under the *Hardison* standard or any new standard the Court may adopt.

In this brief, however, the Amici Postal Unions focus primarily on why the Court must remand this case *if* the Court does not accept the Postal Service's arguments.

---

[11] *See Nationwide Service Performance*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Sep. 20, 2021), https://www.uspsoig.gov/reports/audit-reports/nationwide-service-performance; *Assessment of Overtime Activity*, OFFICE OF INSP. GEN. U.S. POSTAL SERV. (Aug. 25, 2020), https://www.uspsoig.gov/reports/audit-reports/assessment-overtime-activity.

We show first that the Court should not reach the second question presented – whether an employer may demonstrate undue hardship on the conduct of its business under Title VII "merely by showing that the requested accommodation burdens the employee's co-workers rather than the business itself" – because that question is not actually presented on the facts of this case. Petitioner's proposed distinction between "burdens [on] the employee's co-workers" and "burdens [on] . . . the business itself" does not hold up under scrutiny either as a theoretical matter or on the facts of this case, since the burdens on Groff's co-workers translated directly into a burden on the conduct of the Postal Service's business. Hence, Petitioner's second question is an abstract inquiry that need not be answered here. In addition, based on his incorrect framing of the undue burden analysis, Petitioner claims that this Court can direct the entry of summary judgment in his favor. However, we show that summary judgment in favor of Petitioner is inappropriate on this record under any standard.

We next consider factual gaps in the record that would need further development if the Court adopts a new standard and does not affirm the grant of summary judgment in favor of the Postal Service. The courts below did not have the full information necessary to evaluate whether certain proposed accommodations are either effective or burdensome under a new standard of review. As the longtime representatives of Postal Service employees of several different crafts, *Amici* Postal Unions are well aware of significant issues with staffing and scheduling that may play into the ultimate reasonableness or burden of any given accommodation. We conclude by

identifying some of the evidence that the parties should have an opportunity to develop if the Court remands this case.

ARGUMENT

I. *Amici* Postal Unions Agree with USPS That This Court Should Not Overrule *Hardison*, But Should Clarify That There Is Substantial Protection for Religious Observance under *Hardison*.

Amici Postal Unions agree with the Postal Service that this Court should not overrule *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). Stare decisis "carries enhanced force" in the context of statutory interpretation, *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015); Congress has repeatedly declined to amend Title VII to overrule *Hardison*; and employers have relied on *Hardison* for decades. *See* Resp. Br. 18, 26.

Amici Postal Unions also agree with the Postal Service that this Court can and should make clear that *Hardison* provides substantial protection for religious observance. *See id.* at 38-39. The Postal Unions represent many religious employees, and fully support the protection of their rights under Title VII. The Postal Unions thus agree that the Court should make clear that the guidance of the Equal Employment Opportunity Commission at 29 C.F.R. § 1605.2., rather than the "*de minimis*" language of *Hardison* standing alone, provides the proper standards under which to evaluate a requested accommodation.

II. If the Court Adopts a New Standard for Determining Undue Hardship under Title VII, Either Affirmance of the Grant of Summary Judgment to the Postal Service or Remand Is Appropriate.

As noted above, *Amici* Postal Unions urge the Court not to overrule *Hardison*. If, however, the Court adopts a new standard for determining "undue hardship" under Title VII, the normal course would be to remand to the District Court to apply that standard in the first instance. *Ret. Plans Comm. of IBM v. Jander*, 140 S. Ct. 592, 595 (2020); *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 435 (2016); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001).

Here, USPS argues that the Court can and should affirm the Third Circuit's grant of summary judgment in its favor even if a new standard is adopted. *See* Resp. Br. 46. The Postal Unions agree that, given the record, affirmance is appropriate under any standard for the reasons laid out in USPS's brief. *Id.* at 46-51. The remainder of this section, however, addresses why remand would be necessary *if* this Court adopts a new standard and does not agree that the grant of summary judgment to USPS should be affirmed.

We begin by explaining why Petitioner is wrong in arguing that this case turns on "mere[]" burdens on co-workers, as opposed to a burden on the conduct of USPS's business. We show that the Court should not reach the second question presented – whether an employer may demonstrate undue hardship on the

conduct of its business under Title VII "merely by showing that the requested accommodation burdens the employee's co-workers rather than the business itself" – because that question is not fairly presented on the facts of this case. We also explain why Petitioner's incorrect framing of the undue burden question leads to his incorrect conclusion that this Court can grant summary judgment to him on this record.

Next, we identify factual issues that would need to be developed in the District Court if this case were remanded, in light of the particular scheduling procedures and needs of the Postal Service. We show that there are several important gaps in the factual record developed below.

A. Petitioner Incorrectly Frames This Case As Involving "Mere" Burdens on Co-workers, Leading to His Incorrect Conclusion That Summary Judgment Can Be Granted in His Favor.

Petitioner proposes a new standard for determining "undue hardship" under Title VII that substantially mirrors the standard for determining undue hardship under other civil rights statutes, namely the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 126 *et seq*., and the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 43 *et seq*. Under Petitioner's proposed test, "an employer must incur significant difficulty or expense in light of the employer's financial resources, the number of individuals it employs, and the nature of its operations and facilities

before it is excused from accommodating an employee's religious exercise." Pet. Br. 17.

Because both the District Court and the Third Circuit were applying the test set forth by this Court in *Hardison*, the record on these factors was not fully developed below. Sidestepping this issue, Petitioner suggests that what is at issue here is "mere[]" burdens on co-workers; that "mere[]" burdens on co-workers cannot constitute undue hardship on the conduct of a business; and that therefore this Court should direct the lower courts to enter summary judgment in his favor. Both Petitioner's premise and his conclusion are wrong.

First, Petitioner's proposed distinction between burdens on co-workers and burdens on the conduct of the business is a false dichotomy (as even Petitioner concedes at certain points in his brief). *See* Pet. Br. 42. Businesses are made up of people, and this is particularly true in a labor-intensive business like the Postal Service; affecting employees' work necessarily affects the conduct of the business. As all parties agree, this is not a case where co-workers were merely annoyed by religiously motivated conduct, such as wearing a religious garment, that did not affect them, but a case where their own schedules and work were directly affected by Petitioner's inability to work on Sundays.

Petitioner asserts that the courts that have considered the effect of an accommodation on co-workers are merely applying an "offshoot" of the *Hardison* test. *See* Pet. Br. 38. This is wrong. Effects on co-workers are considered under the undue hardship test in the ADA and the USERRA context.

Regulations to the ADA, for instance, require a court to consider "the impact on the ability of other employees to perform their duties." 29 C.F.R. § 1630.2(p)(2)(v). And numerous courts have found that an accommodation that places a meaningful amount of additional labor on co-workers is either not reasonable in the first instance, or is an undue burden. *See, e.g.*, *Minnihan v. Mediacom Commc'ns Corp.*, 779 F.3d 803, 813 (8th Cir. 2015); *accord Anderson v. Harrison Cnty.*, 639 F. App'x 1010, 1015 (5th Cir. 2016); *Crabill v. Charlotte Mecklenburg Bd. of Educ.*, 423 F. App'x 314, 323 (4th Cir. 2011); *Mason v. Avaya Commc'ns, Inc.*, 357 F.3d 1114, 1121 n.3 (10th Cir. 2004); *Morrissey v. Gen. Mills, Inc.*, 37 F. App'x 842, 844 (8th Cir. 2002); *Turco v. Hoeschst Celanese Corp.*, 101 F.3d 1090, 1094 (5th Cir. 1996) (per curium).

In short, existing law in the ADA and USERRA context confirms what common sense suggests: a burden on co-workers creates some degree of burden (whether or not undue) on the conduct of a business. The facts of this case further demonstrate how, particularly in the context of the Postal Service's operations, a burden on co-workers directly translates to a burden on the conduct of the business.

Here, the Postal Service's attempt to accommodate Groff "meant other carriers had to work more Sundays than they otherwise would have had to." Pet. App. 39a (citations omitted). During the points in Groff's employment that "the Holtwood station only had two RCAs, one being Groff, . . . the other RCA in Holtwood would be required to work every single Sunday without a break." *Id.* at 58a. In

some cases, the "Holtwood Postmaster himself was forced to deliver mail on Sundays when no RCAs were available," thus taking him away from his other job responsibilities. *Id.* at 8a.

The ability to work on weekdays rather than weekends is a valued privilege among career postal workers that, depending on the craft, may be earned only after acquiring sufficient seniority through years of service. In the context of RCAs, weekend work is expected, but it is likewise expected that weekend work will be distributed equitably under the procedures of a collectively bargained MOU – an MOU that was violated when the Postal Service did not assign Groff to work on Sundays. Indeed, the exceptionally complex scheduling needs of the USPS are largely governed by various collectively bargained agreements with different crafts. Disruption of these collectively bargained expectations would cause a seismic change in the conduct of the Postal Service's business; moreover, any such disruption would both violate agreements reached on behalf of employees as a whole, and disturb labor-management relations. Resp. Br. 47-48; *see also LeBlanc v. McDonough*, 39 F.4th 1071, 1075 (8th Cir. 2022); *Eckles v. Consol. Rail Corp.*, 94 F.3d 1041 (7th Cir. 1996).

At Groff's facility, this disruption of settled expectations, on top of increased weekend work, "created a 'tense atmosphere' among the other RCAs, . . . and resentment toward management." Pet. App. 8a. Groff's Postmaster explained that the accommodation at issue undermined employee morale to the point where the Postal Service lost "some very good employees who thought things weren't being

handled fairly." J.A. 55. According to the District Court's findings, "[o]ne carrier transferred from Holtwood because he felt it was not fair that [Groff] was not reporting on scheduled Sundays. Another carrier resigned in part because of the situation." Pet. App. 39a (citations omitted).

The Postal Service can run only when it has the employees it needs to handle and deliver the mail. A worker's "threat to quit [their] job . . . if forced to [work additional Sundays] does present a colorable claim of undue hardship." *Crider v. Univ. of Tennessee, Knoxville*, 492 F. App'x 609, 615 (6th Cir. 2012). Here, at least two workers – in a small office – left USPS or transferred to a different office at least in part due to the burden the accommodation placed on them. *See* Pet. App. 39a. Thus, this burden on co-workers translated immediately and directly to a burden on the conduct of USPS's business. Even had there been plenty of other workers available to hire, replacing employees adds time and cost to running the business.

Moreover, as laid out in the Statement of the Case, there were not plenty of workers available to hire. Personnel problems, while troublesome for any employer, are particularly burdensome to the Postal Service and the Central Pennsylvania region, where there was and is a shortage of RCAs. Pet. App. 4a. Whereas the region required approximately 1,500 Rural Carrier Associates, at the time at issue, the region was "459 RCAs short," meaning it was "approximately one-third understaffed for RCAs." J.A. 283. The accommodation thus exacerbated an already debilitating staffing shortage.

We also note that – contrary to Petitioner's contention that this case involves mere burdens on co-workers – accommodating Groff affected the conduct of the Postal Service's business directly. The timely and efficient delivery of mail is the central function of the Postal Service's business, and when asked if "Mr. Groff's absence on Sundays ever contribute[d] to making it more difficult to get packages timely delivered on a Sunday," Lancaster Hub Supervisor Diane Evans said "Yes." J.A. 224.

In addition to undermining timely delivery, the accommodation also gave rise to longer working hours for other carriers and supervisors, thus introducing safety concerns for the Postal Service. With fewer Rural Carrier Associates to deliver packages on Sundays, "it sometimes took 15 or 16 hours to get the mail delivered." J.A. 11 (citations omitted). These "long days caused by insufficient manpower" meant carriers were delivering mail after daylight hours. Mem. Opp. Pl's Partial Mot. Summ. Judg. at 8, *Groff v. Brennan*, Case No. 19-CV-1879 (E.D. Pa. May 01, 2019), Docket No. 42. Delivering mail in the dark increases the risk of accidents and other safety hazards, particularly in often-unlit rural areas. *See* J.A. 264 ("the risk of accidents increase when you're carrying mail late."); *see also EEOC v. Kelly Servs., Inc.*, 598 F.3d 1022, 1033 n.9 (8th Cir. 2010) (citations omitted) ("Safety considerations are highly relevant in determining whether a proposed accommodation would produce an undue hardship on the employer's business.").

The accommodation made for Groff also cost the Postal Service in additional overtime pay. As the

Holtwood Postmaster noted: "The Postal Service had to issue overtime to other carriers to cover that route. So the more carriers you used on a Sunday, the more likely they were to run into overtime throughout the rest of the week." J.A. 54-55.

Petitioner argues that these burdens on USPS are merely hypothetical and that no *actual* burdens exist. *See, e.g.*, Pet. Br. 44-45. But there is nothing hypothetical about the Holtwood Post Office – a rural office with only three Rural Carrier Associates on staff – losing two Rural Carrier Associates due to Groff's accommodation during the relevant period. Pet. App. 39a. Likewise, it is not hypothetical that fewer carriers meant longer working hours and working in the dark, increasing the risk of accidents. *See* J.A. 264.

In sum, Petitioner's question of whether "merely" burdening co-workers can create a burden on the conduct of the business is not only ill-framed as a theoretical matter – it is not presented on the facts of this case. The real question in this case is whether the unquestioned burden on the conduct of the Postal Service's business was an *undue* burden. The Court therefore need not opine on the abstract question posed in Petitioner's second question presented.

B. The Parties Did Not Develop the Record on Factors Relevant to Undue Burden under a More Stringent Test Than the *Hardison* Test.

As Judge Hardiman stated repeatedly in his dissent below, the record does not contain facts on several issues relevant to undue hardship. *See, e.g.*,

Pet. App. 26a. Judge Hardiman pointed to several areas where "more facts" would have been helpful, such as details on the scheduling problems created by accommodating Groff, and "whether overtime costs were incurred to accommodate Groff." *Id.* at 30a-31a.

In addition to the questions posed by Judge Hardiman, there are numerous additional factual unknowns about whether the potential available accommodations would pose an undue burden. *See* 29 C.F.R. § 1630.2(p) (listing ADA factors); 38 U.S.C. § 4303(16) (listing USERRA factors). With respect to the employer's finances, for instance, the Postal Service's position is that delivering Amazon packages on Sundays was "critically important" to the financial viability of the Postal Service. Pet. App. 36a. Unquestionably, the Postal Service is a large employer with large gross revenue, but the Postal Service must be afforded the opportunity to respond to any newly developed standard and present evidence on how the Sunday deliveries in rural areas fit into the overall financial picture at USPS.

The number of individuals employed is also a relevant factor under Petitioner's proposed standard. *See* 29 C.F.R. § 1630.2(p); 38 U.S.C. § 4303(16). In Spring 2018, Petitioner was "once again the only [Rural Carrier Associate] in that office for most of the year." J.A. 307. In other words, the facility in which Groff worked had only one person in Groff's position for an extended period – Groff himself. *Id. See* 28 C.F.R. § 36.104 (stating that the "resources of the site or sites involved in the action," and not just the company's overall resources, are relevant to the analysis); *Brown v. Martin Marietta Materials, Inc.*,

440 F. Supp. 3d 503, 516 (M.D.N.C. 2020) (considering number of persons employed both at each facility and as a whole under the ADA). Full information about the employees in Groff's facility and nearby facilities over the time period relevant to this litigation is not in the record.

Under the ADA and USERRA standards for determining undue hardship, the number, type, and location of an employer's facility is also relevant. *See* 29 C.F.R. § 1630.2(p); 38 U.S.C. § 4303(16). So too is the "geographic separateness" of facilities. 29 C.F.R. § 1630.2(p); 38 U.S.C. § 4303(16). This case centers around a Rural Carrier Associate based in the Lancaster, Pennsylvania regional hub. Mr. Groff's job title itself is indicative of the "number, type, and location" and "geographic separateness" of USPS's facilities in the region. As a rural craft, Rural Carrier Associates cover approximately 75,000 postal routes in rural areas across the country. These routes may be isolated and geographically disparate with few rural carriers stationed at each post office. *See, e.g.*, Pet. App. 58a (explaining that the Holtwood Post Office often staffed only two RCAs).

The geographic separateness of the post offices, along with the relatively small numbers of employees at each office, may be especially meaningful in light of the likelihood that more than one employee will request an accommodation at certain offices. *See* 29 C.F.R. § 1605.2(e)(1) ("the number of individuals who will in fact need a particular accommodation" is relevant to the undue hardship analysis). The record in this case shows that nearly all of Groff's co-workers were also religious, and many wished to attend church

regularly, *see, e.g.*, J.A. 10, 13, 59, 78. Consistent with this, surveys indicate that religious observance is especially high in rural areas.[12] The Postal Service should have the opportunity to provide evidence on this point to the extent it is relevant in a given situation.

As set forth in the Statement of the Case above, there are numerous possible accommodations for individuals who seek schedule modifications for religious reasons, but there are also costs or practical obstacles associated with each accommodation. For instance, a court might conclude that paying a career rural carrier overtime to make occasional Sunday deliveries does not present an undue hardship on its face, but a court would also need to consider whether there is a reasonable chance that any career rural carriers will actually volunteer to make Sunday deliveries – otherwise, the accommodation will not be effective. The many specific and fact-bound questions around the potential accommodations were not considered in the courts below. Given both the complexity and the importance of the issues here, the lower courts should have the opportunity to review a full and complete record that is developed in light of the proper standard.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that the judgment of the Court of

---

[12] *See The 2020 Census of American Religion*, PUBLIC RELIGION RESEARCH INSTITUTE, (July 8, 2021), https://www.prri.org/research/2020-census-of-american-religion/ (discussing religiosity in rural America).

Appeals be affirmed or that the case be remanded for further factual development.

Respectfully submitted,

MICHAEL GAN
MARK GISLER
JEAN-MARC FAVREAU
PEER, GAN & GISLER, LLP
1730 Rhode Island Avenue N.W., Suite 715
Washington, DC 20036
(202) 223-1900
gan@peerganlaw.com

Counsel to National Rural Letter Carriers' Association

KEITH E. SECULAR
DANIEL M. NESBITT
COHEN, WEISS & SIMON, LLP
900 Third Avenue, Suite 2100
New York, NY 10022
(212) 563-4100
ksecular@cwsny.com

Counsel to National Association of Letter Carriers, AFL-CIO

JACOB KARABELL
Counsel of Record
MATTHEW CLASH-DREXLER
ELISABETH OPPENHEIMER
RACHEL CASPER
BREDHOFF & KAISER, PLLC
805 15th Street N.W., Suite 1000
Washington, DC 20005
(202) 842-2600
jkarabell@bredhoff.com

Counsel to National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO

March 30, 2023