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 *AMICI CURIAE* OF LOCAL GOVERNMENT LEGAL CENTER, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF RESPONDENT

RICHARD A. SIMPSON
160 Ridge Road
Chapel Hill, NC 27599

AMANDA KARRAS
Executive Director /General Counsel
ERICH EISELT
Assistant General Counsel/ Director of Legal Advocacy
International Municipal Lawyers Association
51 Monroe St., Suite 404
Rockville, MD 20850

F. ANDREW HESSICK
Counsel of Record
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-4332
ahessick@email.unc.edu

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF THE *AMICI CURIAE*[1]

The Local Government Legal Center ("LGLC") is a coalition of national local government organizations formed in 2023 to provide education to local governments regarding the Supreme Court and its impact on local governments and local officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities and the International Municipal Lawyers Association are the founding members of the LGLC.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC"), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over 19,000 cities, towns, and villages, where more than 218 million Americans live.

---

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* made any monetary contribution to its preparation or submission.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

SUMMARY OF ARGUMENT

1. Local governments collectively are the largest employer in the country and attract a diverse workforce, particularly when it comes to religion. These government employees provide critical public functions such as law enforcement, fire protection, and emergency medical assistance. Because of the nature of their services, local governments and their employees need to be reliable and flexible.

Local government employees and potential future employees represent a wide range of religious practices and beliefs. As a group, municipal employees are more likely to be religious adherents than are members of the general public and tend to be more willing to bring their religious beliefs into the workplace. This religious diversity is valuable in many ways.

2. Consistent with their obligations under 42 U.S.C. § 2000e(j), local governments across the country make good faith efforts every day to accommodate the religious practices of their employees. But local governments cannot accommodate every religious practice of every employee in every circumstance—not only because of budgetary limitations but also because in many circumstances providing requested accommodation would compromise the ability of local governments to fulfill their critical duties to the public.

In *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), this Court determined that Title VII's "undue hardship" religious accommodation standard requires employers to provide reasonable

accommodations for religious practices unless doing so would impose more than de minimis costs on the employer. Under that standard, an employer may not reject a request for an accommodation because of a minor or trivial inconvenience the accommodation will require. Rather, in substance, the de minimis standard requires employers to accommodate religious beliefs unless doing so would impose a real burden on them. The de minimis standard thus provides meaningful protection for employees' religious beliefs without imposing undue burdens on local governments and other employers.

In that way, the de minimis standard allows local governments to honor the dual goals of accommodating employees' religious practices and fulfilling their obligation to serve their communities. All accommodations entail some administrative costs, but whether an accommodation is too costly turns on the facts of each case. Allowing employers to have flexibility under the de minimis standard strikes an essential balance between the employee's right to practice his religion and the employer's interest in not bearing undue hardship for accommodating the employee's religious practice.

3. Principles of federalism also support maintaining the de minimis standard. The Constitution reflects the fundamental principle that states are separate sovereigns. For good reason, this Court is hesitant to adopt rules that impose on each state's right to organize its government, establish its budgets, and tax its citizens as it sees fit. In particular, the Court has recognized that "it is appropriate to refer to basic principles of federalism

embodied in the Constitution to resolve ambiguity in a federal statute." *Bond v. United States*, 572 U.S. 844, 859 (2014). The de minimis standard honors this principle by reading Title VII as imposing only reasonable and limited burdens on state and local government employers.

4. Finally, *stare decisis* principles demand adherence to the de minimis standard. Although there are many compelling reasons to honor the principle of *stare decisis*, there are two reasons why *stare decisis* applies here with extra force. First, this Court has recognized that *stare decisis* is particularly appropriate for matters of statutory interpretation because Congress is always free to amend a statute if it disagrees with this Court's reading of the statute. That reluctance to revisit past interpretations of statutes is especially warranted as to the de minimis standard because Congress has chosen to make several amendments to Title VII, including amendments specifically intended to negate this Court's interpretation of the statute, but has not opted to change the de minimis standard. Second, *stare decisis* is especially appropriate here because public and private employers have relied on the de minimis standard for decades in making economic decisions. Imposing more than a de minimis standard would require local governments to revisit all of the employment policies and practices the governments have created in reliance on the de minimis standard.

ARGUMENT

I. Requiring local governments to provide accommodations that pose more than a de minimis burden would significantly impair local government operations.

A. State and local governments combined are the largest employer in the country, even larger than the federal government.[2] Over 10% of the United States civilian labor force works for a local government. Local governments employ nearly three times as many workers as state governments and nearly seven times as many as Walmart.[3]

---

[2] Of the 165 million people in the United States workforce, 19.7 million are employed by local and state governments, compared to only 1.8 million federal government employees. *See Economic News Release: Employment Status of the Civilian Population by Sex and Age*, U.S. Bureau Lab. Stat., https://www.bls.gov/news.release/empsit.t01.htm (last updated Mar. 10, 2023) (stating that the civilian labor force in the United States is 165 million); *Federal Civilian Employment*, U.S. Off. Pers. Mgmt. (Sept. 2017), https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/ (describing that federal government civilian employment was 1.8 million as of 2017).

[3] Adam Grundy, *Education, Hospitals, Police Protection are Largest Government Employment Categories*, U.S. Census Bureau (Oct. 7, 2020), https://www.census.gov/library/stories/2020/10/2019-annual-survey-of-public-employment-and-payroll-is-out.html ("Local governments employed 14.2 million workers in March 2019, far more than state governments that had 5.5 million employees on their payroll."); Frank Holmes, *Top 10 Largest Fortune 500 Employers in the U.S.*, U.S. Glob. Invs.

Local governments and their employees serve critical functions. They provide essential services like law enforcement, fire protection, emergency medical assistance, rescue, and transportation. They operate community hospitals and testing centers for COVID-19 and other diseases, and they administer local courts and other government offices responsible for economic and community development. Local governments also employ over eight million public-education employees[4] who help educate the 49.5 million students enrolled in public schools from pre-k to grade 12.[5]

Many of these jobs require employees to work longer hours than in the private sector. Some of these services, like snow removal and rescue services, operate on unexpected or inconsistent schedules. Other services, like county-owned hospitals and nursing homes, require substantial staff-to-patient ratios for adequate care. The nature of the services local governments provide requires the governments and their employees not only to be competent, but also to be reliable and flexible.

(Oct. 26, 2022), https://www.usfunds.com/resource/top-10-largest-fortune-500-employers-in-the-u-s/ (stating that the largest employer, Walmart, had 2.3 million employees, and Amazon, the second largest, had 1.6 million).

[4] Grundy, *supra* note 3.

[5] *Back-to-school Statistics*, Nat'l Ctr. for Educ. Stat., https://nces.ed.gov/fastfacts/display.asp?id=372 (last visited Mar. 24, 2023).

B. Local government employees and potential future employees have a wide range of religious practices and beliefs. Indeed, as a group, municipal employees are more likely to be members of an organized religion than are members of the general public. Patricia K. Freeman & David J. Houston, *Belonging, Believing, Behaving: The Religious Character of Public Servants*, 42 Admin. & Soc'y 694, 706–08 (2010) (recounting that municipal employees are 1.48 times more likely to be members of religious organizations than is the general public). Municipal employees also tend to be more willing to bring their religious beliefs into the workplace. David J. Houston, Patricia K. Freeman & David L. Feldman, *How Naked Is the Public Square? Religion, Public Service, and Implications for Public Administration*, 68 Public Admin. Rev. 428, 433–34 (2008) (finding that those in public service are more likely to "try to carry [their] religious beliefs over into all [their] other dealings in life").

This religious diversity is valuable in many ways. It contributes to the robust civic atmosphere that characterizes our country. Likewise, it reinforces the idea that people from all walks of life have the right to participate in government at a local level.

In addition, religious diversity among local government employees supports the legitimacy of the government by confirming that the government serves all members of the community, not just those in the religious majority. It also helps make the local governments aware of and sensitive to the various religious practices in the community.

Many local government services depend on community interactions; understanding the religious

beliefs of the community is critical to providing those services in a way that does not denigrate the beliefs of any citizens. Moreover, understanding the diverse religious beliefs of the communities that local governments serve helps prevent prejudices that may interfere with the provision of services to the community. *See, e.g.*, *Shelton v. Univ. of Med. & Dentistry of N.J.*, 223 F.3d 220, 228 (3d Cir. 2000) (emphasizing that "public protectors" such as police, firefighters, and public healthcare providers "must be neutral in providing their services").

For these reasons and others, local governments aim to accommodate the religious practices of their employees whenever they can do so without incurring an unreasonable burden. But they cannot reasonably be expected to accommodate all of those practices.

Some accommodations of religious practices may simply compromise the ability of local governments to serve their communities. For example, providing any accommodation to a police officer who objects on religious grounds to protecting a segment of the community would undermine "public confidence in the neutrality" of the police force—which could lead to unrest and other undesirable consequences such as vigilante justice. *Rodriguez v. City of Chicago*, 156 F.3d 771, 779 (7th Cir. 1998) (Posner, C.J., concurring); *see also Ryan v. Dep't of Just.*, 950 F.2d 458, 460–62 (7th Cir. 1991) (upholding removal of FBI agent whose religious beliefs about nonviolence conflicted with case assignments). Although the out-of-pocket costs of providing such an accommodation may be low, the detrimental effect on the

government's ability to provide effective service would impose an undue burden on the government.

Budgetary constraints also limit the ability of local governments to provide accommodations that impose significant monetary costs. Many local governments operate on tight budgets and do not have the funds to bear any substantial expense resulting from providing an accommodation.

For these reasons, this Court should not re-interpret Title VII—which obliges the government to provide reasonable accommodations for religious practices unless doing so would impose an "undue hardship," 42 U.S.C. § 2000e(j)—to force local government to provide accommodations that would be unduly burdensome. Instead, as it held in *Hardison*, the Court should recognize that local governments and other employers must provide only those religious accommodations that impose de minimis costs.

C. The requirement that local governments and other employers provide accommodations where doing so imposes a de minimis burden provides meaningful protection for religious beliefs. Under the de minimis standard, an employer may not reject a request for an accommodation by pointing to a minor or trivial inconvenience the accommodation will require. Rather, in substance, the de minimis standard requires employers to accommodate religious beliefs unless doing so would impose an unreasonable burden on them.

Ordinarily, employers have no obligation to provide *any* accommodations for employee requests—even if providing the accommodation would impose

only trivial costs. For example, an employer need not indulge an employee who wants to wear long hair for secular reasons, nor must an employer provide vegetarian options to an employee who dislikes meat. By contrast, under Title VII, employers are required to provide reasonable religious accommodations and bear the costs, so long as these costs are not significant.

De minimis cost is quite different than zero cost. If nothing else, all accommodations entail some administrative costs, and those costs typically are not a basis for refusing to provide an accommodation. For example, if reassigning an employee to another facility is otherwise not burdensome on an employer, the administrative costs of processing that reassignment is not a basis for refusing to provide that accommodation.[6]

An employer also cannot refuse to provide an accommodation based on the mere speculation that doing so might result in costs; the accommodation must result in an actual "hardship." 42 U.S.C. § 2000e(j). Nor can an employer accommodate a religious practice by requiring an employee to take advantage of procedures or practices already available to employees. For example, an employer cannot accommodate a request for a day off in observance of a religious holiday by telling the employee to use one of the employee's vacation days. Moreover, if a proposed

---

[6] U.S. Equal Emp. Opportunity Comm'n, EEOC-CVG-2021-3, Compliance Manual on Religious Discrimination (2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftnref248.

accommodation poses more than a de minimis cost, the employer must consider alternative means of providing an accommodation.

These requirements demonstrate that the de minimis test places significant obligations on local governments and other employers. It obliges them to try to find effective but inexpensive ways of accommodating religious requests. Accordingly, it requires local governments to act in good faith in attempting to accommodate religious practices where they can do so without undue expense or undermining the governments' obligations to the community.

Whether an accommodation is too burdensome depends on the "particular factual context of each case."[7] Important considerations include, among other things, the characteristics of the employer's business, the nature of the requested accommodation, the role of the requesting employee, and the disruption that the accommodation may cause. For local governments, the set of considerations also includes the nature of the services provided by the employee and the consequences that would result to the

---

[7] *See* U.S. Equal Emp. Opportunity Comm'n, *supra* note 6 ("The determination of whether a particular proposed accommodation imposes an undue hardship 'must be made by considering the particular factual context of each case.'"); *see also E.E.O.C. v. GEO Grp., Inc.*, 616 F.3d 265, 273 (3d Cir. 2010) ("In deciding whether undue hardship exists, [w]e focus on the specific context of each case, looking to both the fact as well as the magnitude of the alleged undue hardship." (internal quotation marks omitted)).

community from accommodating the employee's religion.

These considerations establish that a particular accommodation required in one circumstance may not be required in another circumstance. For instance, an employer with many different facilities on a single campus may be able to accommodate a transfer request without incurring any significant costs, whereas it may be prohibitively expensive for a different employer with only two facilities hundreds of miles apart to accommodate a similar request.

This context sensitivity strikes a balance between the employee's right to practice his religion and the employer's interest in not bearing undue expense in accommodating that religious practice.

D. Petitioner's contention that employers must accommodate religious practices that impose more than a de minimis burden on the employer, if adopted, would have a severely negative impact on local governments. A higher burden would require employers to provide more accommodations at a higher cost for each accommodation. This twofold increase in costs—more accommodations and each accommodation potentially costing more—would be particularly burdensome for local governments because of the diversity of their workforces, the wide array of services local governments provide, the budgetary constraints under which local governments operate, and the impact more extensive accommodations might have on community perceptions of local governments and on community interactions with those governments. The higher burden proposed by the petitioner would compromise

the ability of local governments to fulfill their missions.

1. All employers need well informed cost projections to operate their businesses prudently. That is particularly so for local governments. Local governments typically establish their budgets through an annual budgeting process. Because they are established by ordinance or statute, local government budgets may not be easily modified. It is often unrealistic and inefficient for local governments to build in excess funds for uncertain contingencies that may arise. Indeed, many local governments face budgetary shortfalls that make it difficult even to provide the most basic services. *See* National League of Cities, *Principles of Home Rule for the 21st Century*, 100 N.C. L. Rev. 1329, 1380 (2022) (recounting "the fiscal challenges facing local governments," particularly following the Great Recession).

Requiring employers to provide accommodations that pose more than de minimis costs will lead to local governments being forced to bear costs that are both high and uncertain. This combination will put local governments in the difficult position of likely having to reduce services on which the community depends, since raising additional revenue through increased taxes or other means is often not a realistic or politically viable option.

Because of the nature of religious accommodations, local governments cannot readily predict the types of accommodations they might have to provide for an employee's religion. Religious practices come in many different forms. Some require the wearing of particular clothes. *See GEO Grp., Inc.*, 616 F.3d at 267

(Muslim employees at private prison wanted exception to private prison's dress policy that prohibited head coverings). Others restrict the days on which a person may work. *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1083 (6th Cir. 1987) (requiring accommodation not to work on Sunday). Some prohibit devotees from asking *others* to work on particular days. *See id.* at 1084 (sincere religious belief that working on Sunday was morally wrong and that it was sin to try to induce another to work). Some require praying at intervals across the day. *See E.E.O.C. v. JBS USA, LLC*, 339 F. Supp. 3d 1135, 1154–58 (D. Colo. 2018) (Muslim employee seeking short unscheduled prayer breaks throughout the day). Others impose dietary restrictions. *Jones v. TEK Indus., Inc.*, 319 F.3d 355, 357, 359 (8th Cir. 2003) (sincere religious belief not to eat pork). Other religious beliefs limit the ways in which a person may interact with others. *See Weber v. Roadway Express, Inc.*, 199 F.3d 270, 272 (5th Cir. 2000) (Jehovah's Witness truck driver requesting not being assigned to trucking assignments that involved sleeping overnight with female co-driver). Others require a practitioner to refuse to act in a way that supports particular activities. *See Rodriguez*, 156 F.3d at 773 (police officer refusing to stand guard outside abortion clinic). Others restrict practitioners from providing information. *See Baltgalvis v. Newport News Shipbuilding Inc.*, 132 F. Supp. 2d 414, 415 (E.D. Va. 2001), *aff'd*, 15 F. App'x 172 (4th Cir. 2001) (claiming religious rule against providing Social Security number). And some religious beliefs require the use of pronouns corresponding to birth gender instead of identity gender. *See Haskins v. Bio Blood*

Components, 1:22-CV-586, 2023 WL 2071483, at *1 (W.D. Mich. Feb. 17, 2023).

These examples constitute only a small set of the extraordinarily wide range of religious practices that might require accommodation. Religion is by its nature deeply personal. Each individual may have unique religious views and practices that require a unique accommodation. One person may believe that cleanliness is paramount while another person may firmly believe that it is a sin to wash his hands. The personal nature of religion makes it difficult to predict the types of accommodations that may be requested and, consequently, the costs of those accommodations. In this way, religious accommodations differ from disability accommodations, which tend to fall into predictable categories that impose commensurate costs.

The sweeping range of religious accommodations that a local government will be required to grant under the higher burden proposed by petitioners will result in unascertainable costs for state and local governments, which require certainty when adopting their budgets.

Compounding these uncertainties is that multiple accommodations may interact to increase costs in unexpected ways. For example, an observant Jew might request Saturday off, and a Christian might request Sunday off. Each such accommodation requires reorganizing the schedule. Each repeated effort to rework the schedule potentially compounds costs. A local government might be able to accommodate the Saturday request within its budget,

but because it has done so, it may be prohibitively costly to accommodate the later Sunday request.

Whether an accommodation can be made thus may depend on the order in which the requests arose. Such arbitrary outcomes surely undermine the core purpose of Title VII, but they will be unavoidable if a heightened burden is imposed on governments. In contrast, restricting accommodations to those that impose only de minimis costs significantly ameliorates this problem. Because each accommodation poses only de minimis costs, local governments are more likely to be able to handle multiple accommodations.

To make matters worse, requiring local governments to spend more on accommodations—or even simply to allocate more of their budget for accommodations in anticipation of requests for accommodations—will also have downstream effects that are difficult to predict. For example, fewer police officers will result in reduced capacity to provide law enforcement, which may in turn result in higher crime rates. Fewer road maintenance workers may result in worse road conditions, which may translate into more road accidents and fatalities. Fewer nurses available at a hospital on a religious holiday may diminish the quality of care that patients receive. To put the point more starkly, the services that local governments provide maintain safety and prosperity at the community level. Local governments already face fiscal challenges in providing those services, and this Court should not exacerbate the situation by increasing the costs of those services.

2. Petitioner's proposal to require employers to incur a much higher burden in order to accommodate

religious practices, if adopted, would impair the ability of local governments to accomplish their mission of serving the community in other ways as well.

The efficacy of local governments depends on many intangibles that may be impaired by an accommodation. For example, an accommodation for one employee may hurt the morale of other employees, with the consequence that the other employees perform their jobs less effectively. *See Aron v. Quest Diagnostics Inc.*, 174 F. App'x 82, 83 (3d. Cir. 2006) (affirming a finding of undue hardship for an accommodation that would "negatively affect employee morale").

An accommodation exempting a nurse from providing a vaccine against a contagious deadly disease may result not only in the spread of the disease, but also in a loss of public confidence in the government and the healthcare system. So too an accommodation exempting a health worker from performing certain types of life-saving surgeries may result in a death, or at least may cause apprehension among members of the public who depend on the hospital at which the employee works.

These intangibles are particularly important for law enforcement. Effective law enforcement depends on, among other things, public trust—both because law enforcement wields such significant power that any appearance of abuse risks unrest and because distrust of law enforcement may lead individuals to take the law into their own hands. An accommodation exempting a law enforcement officer from protecting certain types of individuals because of his religion—for example, a devout Baptist police officer who

refuses to protect a local bar because he believes it is immoral to drink alcohol—may imperil this critical public confidence. *See Rodriguez*, 156 F.3d at 779 (Posner, C.J., concurring). Similarly, as noted above, accommodating an officer who objects on religious grounds to investigating a particular group may not only result in a crime going unsolved, but may more generally injure the mission of the entire police department. *See Ryan*, 950 F.2d at 462 (upholding refusal to accommodate FBI agent who objected to investigating pacifist group because of the potential "injury to the FBI's mission").

To be sure, one might argue that these consequences would constitute an undue hardship under petitioner's proposed higher standard. But that is hardly a given. In evaluating whether an accommodation is warranted, the natural tendency will be to focus on the fiscal expense imposed by the accommodation. Beyond that, the current de minimis standard requires local governments to accommodate religious practices where they reasonably can do so. The whole point of the proposed higher standard is to expand substantially the burden employers must bear to accommodate religious practices. That higher burden would extend beyond budgetary impact to include the other consequences of accommodating religious practices.

The de minimis test avoids this serious problem. Under that test, local governments need not try to place a dollar value on these intangibles. Accommodations that undermine intangible but essential attributes related to the provision of government services are not required.

E. Principles of federalism also support maintaining the de minimis standard. A fundamental principle underlying the Constitution is that the states are separate sovereigns. Each state has the right to organize its government, establish its budgets, and tax and spend.

Congress can enact laws that impose some obligations on state governments. *See Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 556–57 (1985) (upholding federal legislation imposing minimum wage requirements on state employees). But that power is circumscribed. Congress cannot, for example, dictate the location of state capitals, *see Coyle v. Smith*, 221 U.S. 559, 565–66 (1911), or prohibit states from imposing taxes, *Lane Cnty. v. Oregon*, 74 U.S. 71, 76 (1868), nor can Congress commandeer state legislatures or executives to carry out federal programs, *see, e.g.*, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1477 (2018); *Printz v. United States*, 521 U.S. 898, 935 (1997).

Consistent with these principles, this Court has recognized that it should tread lightly when interpreting federal statutes in a way that interferes with local governments. "[I]t is appropriate to refer to basic principles of federalism embodied in the Constitution to resolve ambiguity in a federal statute." *Bond*, 572 U.S. at 859 (2014).

Application of this principle counsels against interpreting the "undue hardship" language in Title VII to require local governments to provide accommodations that pose more than a de minimis burden. The term undue hardship does not compel adoption of a higher obligation, and adopting that

higher standard would impose the substantially greater monetary and nonmonetary burdens on state and local governments discussed above. It accordingly would interfere with the states' ability to administer their governments.

II. Fundamental principles of *stare decisis* also compel adherence to the de minimis standard.

Stare decisis also compels adherence to the de minimis test announced in *Hardison*.

Stare decisis rests on the basic principle that "it is usually 'more important that the applicable rule of law be settled than that it be settled right.'" *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015) (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). Thus, even when this Court considers a prior decision to have been wrongly decided, it typically will not overrule that prior decision.

Stare decisis "serves many valuable ends." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022). It "protects the interests of those who have taken action in reliance on a past decision." *Id.* at 2261–62. It also "reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation," and it "fosters 'evenhanded' decision making by requiring that like cases be decided in a like manner[,] . . . [which] 'contributes to the actual and perceived integrity of the judicial process.'" *Id.* at 2262 (first quoting *Kimble*, 576 U.S. at 455; then quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). Moreover, *stare*

decisis "restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past." *Id.*; *see also Pearson v. Callahan*, 555 U.S. 223, 233 (2009). Thus, although "[*s*]*tare decisis* is not an inexorable command," this Court approaches reconsideration of any of its decisions "with the utmost caution." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (quoting *Payne*, 501 U.S. at 828); *see also* Robert H. Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A. J. 334, 334 (1944) ("To overrule an important precedent is serious business.").

Stare decisis is warranted here. *Hardison*'s de minimis test has now been invoked in nearly 200 decisions over more than four decades,[8] including as recently as February 2023. *See, e.g.*, *Riley v. New York City Health and Hosps. Corp.*, 22-CV-2736 (JGK), 2023 WL 2118073, at *3 (S.D.N.Y. Feb. 17, 2023). The result has been a coherent and reliable balancing, accommodating employees' religious practices while enabling employers to operate without undue burden as required by Title VII.

Moreover, this Court has recognized that there are particularly compelling reasons to honor the principle of *stare decisis* in cases involving statutory interpretation and in cases in which parties have made economic decisions in reliance on the prior decision. Both of those circumstances are present here.

---

[8]A search on Westlaw of "Hardison /30 de /2 minimis" in federal district courts yielded 212 results.

A. This Court has repeatedly stressed that *stare decisis* is particularly warranted in matters of statutory interpretation because Congress is always free to amend a statute if it disagrees with the Court's reading of it. *Kimble*, 576 U.S. at 456 (stating that "*stare decisis* carries enhanced force when a decision . . . interprets a statute" because "Congress can correct any mistake it sees"). This stands in sharp contrast with decisions on constitutional issues, as to which the prior wrongly decided case will remain binding law unless it is overruled. *See Agostini v. Felton*, 521 U.S. 203, 235 (1997) ("[*Stare decisis*] is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions.").

For that reason, the Court gives "great weight to *stare decisis* in the area of statutory construction . . ." *Neal v. United States*, 516 U.S. 284, 295 (1996). "That is true," this Court has recognized, regardless of whether the prior decision "focused only on statutory text or also relied . . . on the policies and purposes animating the law." *Kimble*, 576 U.S. at 456. In either circumstance, Congress has the ability to correct any mistake it perceives. Only if there has been a change in the law or there is "compelling evidence" that the original decision was wrong will this Court revisit an interpretation of a statute. *Neal*, 516 U.S. at 295. This reluctance to overturn prior interpretations rests on the recognition that "Congress, not this Court, has the responsibility for revising its statutes." *Id.* at 296.

Here, the de minimis standard announced in *Hardison* involved the interpretation of a statute, and

so it falls within the category of cases in which the Court should be particularly hesitant to overrule a prior decision. *Hardison*, 432 U.S. at 85 ("[W]e will not readily construe the statute to require an employer to discriminate against some employees in order to enable others to observe their Sabbath.").[9]

Petitioner has not brought forward any sort of "compelling evidence" that the de minimis standard was wrongly decided. Nor has there been an intervening change in the law.

To the contrary, Congress has opted not to exercise its prerogative to enact change; it has been fifty years since *Hardison*, and Congress has not sought to amend Title VII's relevant language to reject the de minimis standard.

This absence of an amendment is particularly meaningful because Congress has amended other portions of Title VII. Most notably, Congress has amended Title VII specifically to overturn decisions of this Court construing the protections afforded by the statute more narrowly than Congress deemed appropriate but has not similarly altered the de minimis standard applicable to religious accommodations. *See, e.g.*, Civil Rights Act of 1991,

---

[9] Although the facts in *Hardison* unfolded while the EEOC guideline, 29 C.F.R. § 1605.1(b) (1968), required employers, short of "undue hardship," to make "reasonable accommodations" to the religious needs of its employees, this requirement was codified in 42 U.S.C. § 2000e(j) by the time *Hardison* was decided. In construing "undue hardship," the Court imposed a de minimis standard that Congress could fix by amending 42 U.S.C. § 2000e(j).

Pub. L. No. 102-166, 105 Stat. 1071, 1071 (responding to "the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)" by "expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination").[10]

Moreover, since *Hardison*, Congress has enacted other statutes imposing accommodation obligations that explicitly differ from the de minimis standard. For example, the Uniformed Services Employment and Reemployment Rights Act, the Americans with Disabilities Act, and the Affordable Care Act all require accommodations unless they would pose "significant difficulty or expense." *See* Uniformed Services Employment and Reemployment Rights Act of 1994 § 2(a), 38 U.S.C. § 4303(15); Americans with Disabilities Act of 1990 § 101, 42 U.S.C.

---

[10] *See* Michael Selmi, *The Supreme Court's Surprising and Strategic Response to the Civil Rights Act of 1991*, 46 Wake Forest L. Rev. 281, 281–85 (2011) (explaining that various sections of the 1991 Civil Rights Act overturned portions of many Supreme Court decisions that had narrowed the scope of Title VII beyond Congress's intent, including: CRA § 105's reversal of the Court's rewriting of the disparate impact law in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), CRA § 109's reversal of the Court's exterritorial application of Title VII in *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244 (1991), CRA § 113's reversal of the Court's interpretation of expert witness fees in *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83 (1991), CRA § 112's reversal of the Court's interpretation of the seniority system in *Lorance v. AT&T Techs., Inc.,* 490 U.S. 900 (1989), and CRA § 107(a)'s reversal of the Court's "mixed motives" doctrine in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)).

§ 12111(10)(A); Affordable Care Act § 4207, 29 U.S.C. § 207(r)(3). According to the House Report on the ADA, this deviation in language makes "clear that the principles enunciated by the Supreme Court in *TWA v. Hardison* . . . are not applicable to this legislation." H.R. Rep. No. 101-485(II), at 68 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 303, 350; *see also* H.R. Rep. No. 101-485(III), at 40 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 445, 463 ("[T]he definition of 'undue hardship' in the ADA is intended to convey a significant, as opposed to a de minimis or insignificant, obligation on the part of employers.").

These statutes demonstrate that Congress knows how to impose a higher obligation when it means to do so, and it has not opted to amend Title VII to impose a higher obligation than the de minimis standard. This Court should not take on the endeavor to establish new policy through reinterpretation. Instead, it should leave the policymaking to Congress.

B. Adherence to *stare decisis* is also particularly appropriate here because parties (public and private) have relied on the de minimis standard in making economic decisions.

Stare decisis "protects the interests of those who have taken action in reliance on a past decision." *Dobbs*, 142 S. Ct. at 2261–62. As this Court has repeatedly recognized, protecting reliance interests is most important when the past decision involves economic activity such as "property and contract rights" because "parties are especially likely to rely on such precedents when ordering their affairs." *Kimble*, 576 U.S. at 457; *see also Janus v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 138 S. Ct. 2448, 2485–86 (2018)

(finding the "short-term nature of collective-bargaining agreements" as a weak reliance interest factor). Accordingly, "[c]onsiderations in favor of *stare decisis* are at their acme in cases involving property and contract rights . . . ." *Payne*, 501 U.S. at 828; *accord Pearson*, 555 U.S. at 233.

The de minimis standard announced in *Hardison* imposes economic obligations on employers. It sets the costs that employers must bear under Title VII to provide religious accommodations for their employees. Employers have relied on this de minimis standard for decades. The de minimis standard has impacted how local governments have organized departments and workforces. It has influenced decisions about hiring, staffing, scheduling, hours of operation, uniforms, workplace training, and countless other policies and decisions. Requiring local governments to provide accommodations that impose more than de minimis costs would require them to revisit all of those policies and would significantly disrupt business decisions and operations—not only because policies would have to be altered to provide for the broader scope of accommodations, but also because municipalities would have to rework their decisions and operations to absorb the additional costs associated with broader accommodations.

Local governments would face even greater challenges in making these policy changes than private businesses. Unlike private businesses, many local government policies are dictated by ordinances and other laws that may be difficult to amend. Moreover, local governments cannot simply alter their services based on economic considerations and the

bottom line because they provide services on which communities depend, including essential services like law enforcement, water and sewage, and fire control; as well as departments of motor vehicles, judicial services, and a host of others. Because most municipalities do not run on a surplus, increasing the cost of religious accommodations that municipalities must provide will force them to make difficult choices about reducing services, increasing taxes, or both.

For nearly fifty years, public and private parties have ordered their affairs with a careful eye to the de minimis standard, which implicates both property and contract rights. Upending years of precedent will undermine this reliance, and the power of *stare decisis* is therefore at its apogee in this case and should be respected.[11]

---

[11] Petitioner argues that *stare decisis* does not support maintaining the de minimis standard announced in *Hardison* because *Hardison* was interpreting an EEOC regulation instead of Title VII. *See* Pet. 28 (citing *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2040 n.* (2015) (Thomas, J., concurring in part and dissenting in part) ("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, containing an 'undue hardship' provision.")). But as the *Hardison* Court explained, Congress amended Title VII before *Hardison* was decided to mirror the language in the EEOC guideline. *See Hardison*, 432 U.S. at 66. Accordingly, the Court's interpretation applied equally to the guideline and to Title VII. Moreover, *Hardison* made clear that its determination was that Title VII itself, not the regulation, imposed the de minimis requirement. *Id.* at 85 ("In the absence of clear statutory language or legislative history to the contrary, we will not readily construe the statute to require an employer to

C. This case also does not implicate the other considerations this Court has identified as sometimes warranting overruling a prior decision. Those considerations include whether the earlier decision was "egregiously wrong," *Dobbs*, 142 S. Ct. at 2264; *see also Ramos v. Louisiana*, 140 S. Ct. 1390, 1414 (2020) (Kavanaugh, J. concurring) (stating that overruling precedent should be reserved for a decision that is "egregiously wrong as a matter of law" and is unwarranted for a "garden-variety error"). Another rare circumstance which calls for the overruling of a prior decision is when the rule created by such precedent is unworkable. *Dobbs*, 142 S. Ct. at 2264.

Even if this Court would reach a different conclusion if writing on a clean slate, *Hardison* is not of the "egregious" sort of error that warrants abandoning *stare decisis*. To the contrary, the de minimis standard is a reasonable interpretation of Title VII that implements the ambiguous phrase

---

discriminate against some employees in order to enable others to observe their Sabbath."). Indeed, this Court subsequently has expressly understood *Hardison* to have interpreted Title VII. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 67 (1986) ("As we noted in our only previous consideration of § 701(j), [the 'undue hardship'] language was added to the 1972 amendments on the floor of the Senate with little discussion. In *Hardison*, . . . we determined that an accommodation causes 'undue hardship' whenever that accommodation results in 'more than a *de minimis* cost' to the employer."); *Small v. Memphis Light, Gas & Water*, 209 L. Ed. 2d 538 (Apr. 5, 2021) (Gorsuch, J., dissenting from denial of certiorari) ("[*Hardison*] revised—really, undid—Title VII's undue hardship test."). Even if *Hardison* was interpreting only the regulation, the treatment by this Court and others of *Hardison* as establishing the meaning of Title VII has induced the sort of significant reliance that *stare decisis* aims to protect.

"undue hardship" by fairly balancing competing interests. Even if the Court were to conclude that *Hardison* was decided incorrectly, the mistake is at most a "garden-variety" error that does not justify overcoming the powerful countervailing *stare decisis* principle.

Nor has the de minimis standard proven unworkable. Although there was confusion about the requirements of the de minimis standard in the immediate wake of *Hardison*, 29 C.F.R. pt. 1605, App. A (reporting that in 1978, the EEOC found "widespread confusion concerning the extent of accommodation under the Hardison decision"), uncertainty of that sort is inevitable when a court announces any standard that requires the exercise of judgment. Moreover, fifty years of experience with the requirement has led to a body of precedent that provides significant guidance and generates consistent results in similar cases, even across different circuits. *See, e.g.*, *Webb v. City of Philadelphia*, 562 F.3d 256, 260 (3d. Cir. 2009) (noting that undue burdens include "violations of the seniority provision of a collective bargaining agreement and the threat of possible criminal sanctions"); *Chalmers v. Tulon Co.*, 101 F.3d 1012, 1021 (4th Cir. 1996) (holding that accommodations that result in an employee "invading" the "privacy" of other employees "and criticizing their personal lives" constitutes an undue burden); *Balint v. Carson City*, 180 F.3d 1047, 1054 (9th Cir. 1999) (noting that an undue hardship may be present "where an accommodation would [cause] coworkers to shoulder the plaintiff's share of potentially hazardous work").

Replacing the de minimis standard with another standard—such as the "significant difficulty" standard set out in the ACA, 29 U.S.C. § 207(r)(3)—would discard that body of precedent and vastly increase uncertainty surrounding the obligations imposed by Title VII.

In light of the *stare decisis* principles examined above, this Court should not revisit *Hardison*. Local governments and businesses have placed great reliance on the de minimis standard in making economic decisions. Congress has had ample opportunity to change the statute should it disagree with the Court's interpretation, but has not done so, even as it has amended Title VII in other aspects, including to overturn this Court's interpretation of some provisions. The de minimis standard has proven workable and has yielded predictable results. It should remain in place unless and until Congress chooses to change it.

CONCLUSION

The judgment of the Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

RICHARD A. SIMPSON
160 Ridge Road
Chapel Hill, NC 27599

AMANDA KARRAS
Executive Director /General Counsel
ERICH EISELT
Assistant General Counsel/Director of Legal Advocacy
International Municipal Lawyers Association
51 Monroe St., Suite 404
Rockville, MD 20850

F. ANDREW HESSICK
Counsel of Record
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-4332
ahessick@email.unc.edu

Counsel for Amici Curiae

MARCH 30, 2023