No. 25-1210

IN THE

Supreme Court of the United States

DAVID PETERSEN, ET AL.,
Petitioners,

v.

SNOHOMISH REGIONAL FIRE AND RESCUE,
Respondent.

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

BRIEF OF AMERICAN HINDU JEWISH CONGRESS AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Other Authorities:

INTEREST OF AMICUS CURIAE[1]

The American Hindu Jewish Congress ("AHJC") is a national, non-partisan coalition representing the shared interests and concerns of Hindu Americans and Jewish Americans. Founded in 2025, AHJC unites two vibrant, millennia-old faith communities to advocate for religious liberty, mutual respect, and interfaith solidarity. The AHJC membership encompasses community leaders, houses of worship, cultural associations, student fellowships, and civil-rights advocates across all fifty States.

As minority faith communities in America, Hindus and Jews are facing escalating antisemitism and Hinduphobia, including vandalism of temples and synagogues, harassment of students on college campuses, desecration of sacred spaces, and becoming targets of hate speech and hate crimes. Given the increasing hostilities against Jewish and Hindu Americans, these communities should not also face unjust discrimination in employment through denial of the reasonable religious accommodations mandated by Title VII of the Civil Rights Act. *See* 42 U.S.C. § 2000e(j). Such denial impermissibly chills religious speech and exercise by minority faiths that cannot

[1] Pursuant to Sup. Ct. R. 37.2, amicus certifies that all parties were timely notified of the amicus's intent to file and consent to such filing. Pursuant to Sup. Ct. R. 37.6, amicus certifies that no counsel for any party has authored this brief in whole or in part, no party or party's counsel has made a monetary contribution to fund its preparation or submission, and no person other than amicus or its counsel has made such a monetary contribution.

command legislative majorities, media attention, or institutional leverage.

SUMMARY OF ARGUMENT

This Court's decision in *Groff v. DeJoy*, 600 U.S. 447 (2023) reaffirmed that Title VII's undue-hardship defense is a fact-specific inquiry requiring employers to prove that granting a requested accommodation would impose a burden that is "substantial in the overall context of an employer's business[,]" *id.* at 468, *i.e.*, one that rises to an "excessive" or "unjustifiable" level. *Id.* at 469–71. Title VII's text likewise places the burden on the employer to "demonstrate[]" it is unable to accommodate an employee's religious belief "without undue hardship." 42 U.S.C. § 2000e(j).

The Ninth Circuit's decision in *Petersen* effectively rewrote that framework at the summary-judgment stage. *Petersen v. Snohomish Reg'l Fire & Rescue*, 150 F.4th 1211 (9th Cir. 2025). Rather than asking whether the requested accommodation would actually impose undue hardship under *Groff*'s substantial-cost standard, the Ninth Circuit treated it as sufficient that the employer had a reasonable concern that the accommodation might impose undue hardship—then insulated that concern from meaningful factual testing. *Id.* at 1221–22 (affirming summary judgment based on employer's asserted "substantial costs" and declining to "judge" the employer by other departments' responses or "the clarity of hindsight").

That shift fundamentally changes the nature of the inquiry from what would actually happen if the

accommodation were granted, the question *Groff* demands, to what the employer believed might happen at the time—regardless of whether the record contains substantial evidence that the accommodation would have worked. *See Groff*, 600 U.S. at 470–71 (requiring consideration of "all relevant factors," including the accommodation's "practical impact" in context).

Stated plainly, under the Ninth Circuit's approach: (1) an employer's predicted harms alone become sufficient to deny a religious accommodation; (2) proof of real-world feasibility of accommodating the employee becomes legally discounted as "hindsight"; and (3) the jury's ordinary role in resolving factual disputes about whether an employer would face undue hardship is displaced by a court's acceptance of employer risk assessments at summary judgment. *See Petersen*, 150 F.4th at 1221–22. The Petition record underscores why that matters: employees offered evidence that the same mitigation measures that would have accommodated their religious exemption worked before and after the vaccine mandate, and that neighboring fire departments accommodated similarly situated employees without facing any operational difficulty. *Id.* at 1219–22. Yet, the Ninth Circuit treated that category of evidence as irrelevant to whether the employer's asserted hardship should go to a jury. *Id.* at 1221–22.

This doctrinal move is not incremental. It alters how Title VII operates at summary judgment by converting a fact-bound affirmative defense into a rule under which an employer can prevail as a matter of

law whenever it can articulate a reasonable risk narrative—exactly the kind of regime *Groff* rejected when it clarified that "more than a *de minimis* cost" would not suffice. 600 U.S. at 468–69 (internal quotation marks omitted).

ARGUMENT

I. *Groff* Requires the Actual Hardship Rule.

Compliance with this Court's holding in *Groff* requires that employer defendants show evidence of actual hardship to avail themselves of the "undue hardship" exception to Title VII's religious accommodation requirement. Title VII prohibits "discriminat[ion] against any individual with respect to his … religion" in employment. 42 U.S.C. § 2000e-2(a)(1). Nonetheless, it is a defense to a claim of religious discrimination under Title VII for an employer to "demonstrate[] that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). In *Groff*, this Court considered the United States Postal Service's ("USPS") refusal to accommodate Gerald Groff's sincerely-held religious belief that "Sunday should be devoted to worship and rest, not 'secular labor' and the 'transport[ation]' of worldly 'goods.'" *Groff*, 600 U.S. at 454 (alteration in original). Based on this belief, Groff refused to work on Sundays and sought accommodation from USPS to allow him to continue his employment without violating his conscience. *Id.* at 455. USPS refused, arguing that

accommodating Groff's religious beliefs would impose an "undue hardship" on its business. *Id.* at 455–56.

Rejecting the interpretation of its holding in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), that an employer only needs to show "more than a *de minimis* cost" to prove that a requested accommodation imposes an undue hardship, this Court held that "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." *Groff*, 600 U.S. at 468. "[A]n employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." *Id.* at 470. Courts evaluating an employer's asserted burden "must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'" *Id.* at 470–71 (alteration in original). Critically, this Court emphasized that "Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations." *Id.* at 473. In Groff's case, "it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary." *Id.*

As detailed in the Petition, Courts of Appeals applying the holding in *Groff* have fallen into a 3-3 split, with the Third, Seventh, and Eighth Circuits

and the Equal Employment Opportunity Commission applying an "actual hardship" rule (Pet. at 13–17) and the First, Sixth, and—as relevant to this case—Ninth Circuits applying a "reasonable concern of undue hardship" rule (Pet. at 17–20). Courts applying the "actual hardship" rule require that an accommodation "undisputably … impose[s] an undue hardship" to excuse an employer's failure to grant it. *Smith v. City of Atlantic City*, 138 F.4th 759, 775 (3d Cir. 2025); *see also Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 807–8 (7th Cir. 2025) ("it is the employer's burden to prove undue hardship arising from the accommodation" and "religious-accommodation cases require an employer to demonstrate an objective undue hardship on its business, not one just subjectively perceived."); *Naylor v. County of Muscatine*, 151 F.4th 973, 977 (8th Cir. 2025) (undue hardship defense requires "definitive evidence" of hardship); 29 C.F.R. § 1605.02(c) ("[a] refusal to accommodate is justified only when an employer … can demonstrate that an undue hardship would in fact result.").

In contrast, the "reasonable concern" rule applied by the First, Sixth, and Ninth Circuits permits the court to find undue hardship based solely on a finding that the employer "reasonably relied" on the evidence available to it and "reasonably conclud[ed]" that granting an accommodation would cause it undue hardship. *Rodrigue v. Hearst Commc'ns*, 126 F.4th 85, 92 (1st Cir. 2025); *see also Wise v. Children's Hosp. Med. Ctr. of Akron*, No. 24-3674, 2025 WL 1392209, at *5 (6th Cir. May 14, 2025) (affirming summary judgment for an employer based on its "decision-

making process" in the absence of evidence of actual hardship).

The Ninth Circuit below adopted the same line of reasoning, favoring Snohomish Regional Fire and Rescue's ("SRFR") "reasonable concern" that accommodating firefighters' religious objections to its COVID-19 vaccination mandate would impose undue hardship over the evidence that no such hardship would actually occur. *Petersen*, 150 F.4th at 1221 ("SRFR had a reasonable concern that it would lose a lucrative contract. This is a textbook economic hardship."). The Ninth Circuit credited SRFR's evidence of

> several substantial costs of accommodating Plaintiff's requested vaccine exemption—the health and safety of its own firefighters and the public, the large number of firefighters seeking accommodations, the risk to its operations and the cost of widespread absences, the potential loss of a lucrative contract with DOC, and the risk of additional liability ….

Id. at 1222. It also credited evidence of "the inadequacy of Plaintiffs' proposed accommodation" *if* the requested accommodations were granted. *Id.* In doing so, the court rejected evidence that none of this parade of horribles came to pass during the times when SRFR managed the COVID-19 pandemic without a vaccine mandate on the grounds that it could not "judge SRFR with the clarity of hindsight or the benefit of post-pandemic debates over what

measured responses frontline employers should have taken. We must consider the costs faced by SRFR in October 2021, not today." *Id.* The court placed the employer's "reasonable concerns" of potential hardship that might occur in the future if its COVID-19 vaccination mandate was not enforced over evidence that no such hardships actually occurred during times when the mandate was not in force. *Id.* at 1218–22.

The "reasonable concern" rule is contrary to the plain language of this Court's holding in *Groff*, which requires a finding of actual—not anticipated—hardship for an employer to establish undue hardship. As illustrated in the cases discussed below, the "reasonable concern" rule amounts to a rule that an employer need only "assess the reasonableness of a particular possible accommodation", directly contrary to this Court's direction in *Groff*. *Groff*, 600 U.S. at 473. Under that rule, an employer's "reasonable concern" about potential hardship is sufficient to satisfy its burden, even where the record contains substantial evidence that the accommodation would not, in fact, impose such a burden. *Petersen*, 150 F.4th at 1218–22. Applying this framework, courts would never weigh competing evidence at summary judgment. Instead, they would simply accept the employer's framing of risk and ask only whether it was reasonable to consider those risks at the time. Crucially, the "reasonable concern" rule achieves that result by excluding entire categories of probative evidence from the analysis. Comparator evidence—such as how similarly situated employees or organizations handled the same accommodation—is dismissed as improper evidence that cannot be

considered "with the clarity of hindsight." *Id.* at 1222. Evidence that the employer itself successfully implemented accommodations before or after the challenged decision is likewise disregarded. *Id.* at 1214 (discussing previous accommodations given to employees). And evidence that alternative accommodations would have mitigated or eliminated the asserted burden is effectively sidelined because the inquiry focuses on the employer's contemporaneous perception, not on whether workable solutions existed in practice. *Id.* at 1222 (discounting plaintiff's evidence that other similarly situated employers successfully accommodated their employees who asked for the same accommodations as plaintiff). In contrast, requiring an employer to show evidence of actual hardship reinforces *Groff*'s mandate that employers actually "reasonably accommodate an employee's practice of religion." *Groff*, 600 U.S. at 473. Thus, adherence to *Groff* requires courts to apply the "actual hardship" rule over the "reasonable concern" rule.

II. The "Reasonable Concern" Rule Prevents Employees' Discrimination Claims From Proceeding to Trial.

The "reasonable concern" rule is outcome-determinative because it treats employers' anticipated harms as sufficient as a matter of law and discounts the very evidence employees ordinarily use to create a triable dispute—comparator evidence, alternative-accommodation experience, and proof-in-practice—as impermissible "hindsight." *Petersen*, 150 F.4th at 1222.

Smith v. Pyro Mining Co. illustrates what is lost in that analysis. There, the Sixth Circuit affirmed judgment for the employee and emphasized skepticism toward "hypothetical hardships that an employer thinks might be caused by an accommodation that never has been put into practice" and the need to evaluate accommodation on a case-by-case basis with the factfinder "in the best position to weigh" the operational realities. 827 F.2d 1081, 1085–87 (6th Cir. 1987) (internal quotation marks and citations omitted). Under the "reasonable concern" rule, an employer's asserted concerns about disruption and coworker burden would be treated as sufficient once framed as reasonable, while evidence of workable alternatives would be relegated to "hindsight" and never reach a jury.

The same is true of recent cases decided post-*Groff*. For example, in *Hayslett v. Tyson Foods, Inc.*, the court denied summary judgment because the record did not establish, as a matter of law, that masking and testing would impose "substantial increased costs," and the court stressed the undue-hardship inquiry "is generally a question of fact for a jury[]" and is therefore ill-suited for resolution at summary judgment. No. 1:22-CV-1123, 2023 WL 11897503, at *12–13 (W.D. Tenn. Sept. 20, 2023). Under the "reasonable concern" rule, the employer's generalized safety rationale in *Hayslett* would end the case, and the plaintiff's proof-in-practice evidence would be discounted as "hindsight" not worthy of consideration.

Similarly, in *Bobnar v. AstraZeneca Pharmaceuticals LP*, an employee's comparator and

policy evidence carried the day exactly how Title VII contemplates. 758 F. Supp. 3d 690 (N.D. Ohio 2024). There, the court considered dueling motions for summary judgment and granted the employee's motion as to the failure to accommodate where the employer's own widespread use of testing accommodations undermined its hardship claim. 758 F. Supp. 3d at 700–1, 724–29. If the "reasonable concern" rule governed, that comparator evidence—the most direct proof that accommodation is workable—would be treated as legally irrelevant "hindsight," and the employer's asserted safety-and-compliance judgment would control at Rule 56.

Nadler v. TriHealth, Inc. is another example. No. 1:23-CV-358, 2026 WL 860728 (S.D. Ohio Mar. 30, 2026). There, the court denied summary judgment to the defendant employer based in part on comparator evidence and inconsistent enforcement—facts from which a jury could conclude accommodation was feasible without undue hardship and that the employer's litigation-stage justifications overstated the real-world burden. *Id.* at *5–6 ("based on the record here, a jury could reasonably find that granting Nadler's religious exemption request would not impose an undue hardship on TriHealth based on its purported administrative reasons."). Under the "reasonable concern" rule, those same facts would not matter if the employer could articulate a reasonable safety or administrative concern, and the inquiry would collapse into deference to the employer's predictive assessment.

Finally, *Speer v. UCOR LLC* shows why a "reasonable concern" rule is incompatible with *Groff*'s

demand for context and proof. No. 3:22-CV-426, 2024 WL 4370773 (E.D. Tenn. Oct. 1, 2024). Although the employer invoked high-risk operations, regulatory constraints, and contract jeopardy, the court denied summary judgment because disputes remained as to whether the asserted burdens were actually substantial in context and supported by the operational detail required to remove the case from the jury. *Id.* at *3–4; *12 ("Because there is a question of material fact as to whether exempting Plaintiffs would have caused Defendant undue hardship, summary judgment is not appropriate[]" and noting this is "especially true considering" the new standard under *Groff*). Under the "reasonable concern" rule, those predicted risks—especially in a safety-sensitive setting—would likely be dispositive, and the factfinder's role would be eliminated.

Under the "reasonable concern" rule's interpretation of the undue-hardship inquiry, even cases that proved successful in front of a jury would never survive summary judgment. The most direct demonstration is *Benton v. BlueCross BlueShield of Tennessee, Inc.*, 765 F. Supp. 3d 723 (E.D. Tenn. 2025). That case proceeded to trial, and the jury found that the employee's objection was sincere and that the employer failed to prove either reasonable accommodation or undue hardship. *Id*. at 730–37. The court denied the employer's renewed motion for judgment as a matter of law, recognizing that competing evidence about feasibility and burden was properly resolved by the jury. *Id.* at 735–37.

However, under the "reasonable concern" rule, cases like *Benton* are the ones most at risk of

disappearing. The "reasonable concern" rule empowers employers to prevail at summary judgment based on predictive assertions of operational burden so long as those assertions are framed as "reasonable," while discounting evidence that the accommodation works in practice as "hindsight." *Petersen*, 150 F.4th at 1222. In other words, the jury's role is eliminated before it begins.

The practical consequences of the "reasonable concern" rule flow from the doctrinal design. If "reasonable concern" is enough, employers need only articulate risk. And if comparator evidence, alternative-accommodation success, and post-implementation experience are dismissed as "hindsight," employees cannot rely on the most probative real-world evidence to rebut that risk. *Id.* at 1221–22. The balance *Groff* requires—an evidence-based showing that hardship is actually undue in the employer's operational context—would be lost in the cases where it matters most: the close cases with competing evidence that should go to a jury.

Reliance on employers' articulation of anticipated risk of harm over evidence of actual hardship is of particular concern to AHJC, as it will likely have a disparate impact on religious minorities. By definition, the practices of minority faiths will be less familiar to employers, and employers are more likely to be able to articulate reasonable concerns that accommodating such practices will be disruptive to their businesses. Because minority beliefs are usually not reflected in employers' business practices—including working schedules, days off, dress codes, and vaccination requirements—adherents to minority

faiths are more likely to need accommodations in the first instance, and seek accommodations that differ significantly from the employer's standard practices. If employers can prevail on summary judgment simply by articulating a reasonable concern that accommodation of minority religious practices will disrupt their business, regardless of evidence to the contrary, then Title VII claims of religious minorities will rarely see a jury.

III. *Williams v. Legacy Health* Illustrates *Petersen's* Ongoing Damage to *Groff*.

The Ninth Circuit continues to perpetuate its error of applying the "reasonable concern" rule in *Petersen*, lending urgency to the Petition. In *Williams v. Legacy Health*, __ F.4th __, No. 24-5977, 2026 WL 1239760 (9th Cir. May 6, 2026), the Ninth Circuit affirmed the district court's grant of summary judgment to a healthcare system that denied employees religious accommodations to its COVID-19 vaccination policy. *Williams*, 2026 WL 1239760, at *1–*2. Relying heavily on *Petersen*, the court emphasized that costs of accommodating an employee's religious beliefs "need not be realized prior to raising an undue-hardship defense." *Id.* at *3. On this basis, the court held that Legacy had proven undue hardship solely by articulating "'realistic' concerns" that "threatened a 'substantial' burden on its business." *Id.* As in *Petersen*, the court rejected as "hindsight reasoning" the employees' arguments that no undue burden would actually result from their requested accommodation. *Id.* (citation modified). The court also rejected—contrary to *Groff*—the employees' arguments that

Legacy made no attempt to accommodate their religious beliefs, but rather simply rejected particular accommodations. *Id.* at *5; *see Groff*, 600 U.S. at 473 ("Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.").

Courts also continue to rely on *Petersen* to reject evidence that similar employers in similar situations granted similar accommodations without undue hardship if it does "not establish that the [employer's] determination" of undue hardship "was unreasonable." *Carlson v. City of Redmond*, No. 2:22-cv-01739, 2025 WL 3496535, at *11 (W.D. Wash. Dec. 5, 2025). As in *Petersen* and *Williams*, the court allowed employer's speculative assessment of possible future harms to substitute for evidence of actual harm from accommodating employees' religious beliefs, as required by Title VII and *Groff*.

These cases show that, without this Court's intervention, lower courts will continue to apply the "reasonable concern" rule in direct contravention of this Court's holding in *Groff*—to the detriment of employees seeking accommodations for their sincerely-held religious beliefs.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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