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 A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE GENERAL CONFERENCE OF THE SEVENTH-DAY ADVENTIST CHURCH IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Statutes

Regulations

Other Authorities

INTEREST OF THE *AMICUS*[1]

The General Conference of Seventh-day Adventists is the national administrative body for the Seventh-day Adventist Church, a Protestant Christian denomination with more than 22 million members and a longstanding commitment to religious liberty. The Church and its members often confront Title VII religious accommodation issues because a core tenet of their faith is that no work should be performed on the Sabbath, from sundown on Friday to sundown on Saturday. Accordingly, the Seventh-day Adventist Church has extensive nationwide experience in litigating Sabbath accommodation cases on behalf of its members and other people of faith.

Consistent with that commitment, the Church was actively involved as amicus at both the certiorari and merits stages in *Groff* v. *DeJoy*, 600 U.S. 447 (2023), where it argued for a robust interpretation of Title VII's religious accommodation provisions. See *id.* at 465. The Church is concerned that should the Ninth Circuit's approach be widely adopted by the lower courts, *Groff*'s promise of strong religious accommodations for all employees of faith would be thwarted. It therefore urges the Court to grant review and reverse.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Groff* v. *DeJoy*, this Court rightly recognized that religious accommodations under Title VII require

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[1] No counsel for a party authored this brief in whole or in part and no person other than *Amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties received notice in accordance with Rule 37.2.

far greater protection than the "*de minimis*" standard that had been used in the lower courts. This Court rejected that approach in favor of a requirement that employers show "substantial increased costs in relation to the conduct of [their] particular business" that lower courts would evaluate using a "fact-specific inquiry" and a "context-specific standard." 600 U.S. 447, 468, 470, 473 (2023).

But the lower courts have not all taken *Groff*'s admonitions to heart. As Petitioners have already explained the lower courts are split over what a defendant employer has to show to make out an "undue hardship" affirmative defense to a Title VII religious discrimination claim. Pet.13-20. The Ninth Circuit and other lower courts have adopted an undue hardship standard that would effectively take the Title VII standard back to the days before *Groff*. That would be reason enough to grant the petition.

But the Ninth Circuit's approach to the undue burden test is problematic in another way: its cavalier treatment of the relevant evidentiary standard. Under the Ninth Circuit's approach, a defendant employer can *prove* an undue hardship defense by *speculating* about what hardships a proposed religious accommodaton might cause. That rule is in stark conflict with *Groff*'s direction that lower courts must be both "fact-specific" and "context-specific" in determining whether a defendant has proven its undue burden affirmative defense. 600 U.S. at 468, 473.

Indeed, *Groff*'s heightened evidentiary standard brought the law of Title VII back into harmony with other laws that employ the "undue hardship" concept. As we explain below, across federal civil rights law,

courts have long required employers invoking an "undue hardship" defense to support their claims with specific evidence. And since religious accommodations under Title VII are rooted in constitutional principles, they should receive *more*, not less, protection than comparable statutory rights.

The Ninth Circuit's decision thus risks severely undermining *Groff* and setting dangerous precedent for religious accommodations in the workplace. This Court should grant review.

ARGUMENT

I. Speculation or predictive harm does not suffice to prove an "undue hardship" under other federal civil rights statutes.

Across a host of civil rights laws, the "undue hardship" affirmative defense requires an employer to present case- and plaintiff-specific evidence of hardship, not speculation or predictive harm. In interpreting these other statutes, courts have rejected speculative hardships, thereby demonstrating that under Title VII, speculative hardships are similarly irrelevant.

A. Under the Americans with Disabilities Act, an employer bears the burden to show undue hardship with case-specific evidence.

Congress enacted the Americans with Disabilities Act in 1990 against the backdrop of Title VII, and its deliberate borrowing of statutory language confirms the close alignment between the two statutes. Courts have long recognized the close relationship between the ADA and Title VII and have treated each as a useful interpretive guide for the other. See, *e.g.*, *Kelly* v.

Town of Abingdon, 90 F.4th 158, 169 n.6 (4th Cir. 2024) ("Because the ADA echoes and expressly refers to Title VII, and because the two statutes have the same purpose—the prohibition of illegal discrimination in employment—courts have routinely used Title VII precedent in ADA cases.").[2]

The two statutes are also united by a shared purpose. Religious and disability accommodations address the same fundamental problem: neutral workplace rules that burden individuals whose defining characteristics cannot—or should not—be changed. As Professor McConnell has explained, both religious individuals and disabled individuals "are different in a way that cannot be changed but can only be accommodated." Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. Chi. L. Rev. 1109, 1140 (1990). Just as the ADA requires departures from neutral workplace rules to ensure equal access for individuals with disabilities, Title VII requires removal of the barriers that would otherwise exclude religious employees from full participation in the workplace. See *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015). ("But Title VII does not demand mere neutrality with regard to religious practices—

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[2] Although this Court in *Groff* declined to import ADA doctrine wholesale into Title VII, it expressly relied on "the common use of that term in other statutes" as one of the justifications for rejecting the "*de minimis*" standard in favor of "substantial increased costs in relation to the conduct of its particular business." 600 U.S. at 470-471. That reliance confirms that, while the ADA is not controlling, it remains a persuasive guide to the ordinary meaning of "undue hardship" and how the standard must be proven in practice.

that they be treated no worse than other practices. Rather, it gives them favored treatment.").

Consistent with that purpose, the ADA requires employers to prove "undue hardship" through concrete, case-specific evidence. Under the ADA, an employer must demonstrate that a proposed accommodation would impose an undue hardship, defined as "an action requiring significant difficulty or expense." 42 U.S.C. 12111(10)(A). The determination is made by considering factors such as the nature and cost of the accommodation, the overall financial resources of the facility and the employer, the number of employees, and the impact of the accommodation on the operation of the business. 42 U.S.C. 12111(10)(B).

Similarly, the ADA's burden-shifting framework leaves no room for speculation. To rebut the defendant's motion for summary judgment, the plaintiff has the initial burden of showing that the proposed "'accommodation' seems reasonable on its face." See *US Airways*, *Inc.* v. *Barnett*, 535 U.S. 391, 401-402 (2002). The burden then shifts to the defendant to "show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances." See *id.* at 402. Moreover, undue hardship must be assessed through actual evidence of specific burdens to the employer, rather than generalized predictions or hypothetical harms. This Court has held that the ADA "makes it the employer's duty to prove that it *would* suffer such a burden, instead of requiring * * * that the complaining party negate reasonable bases for the employer's decision." *Board of Trs. of Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 372 (2001) (emphasis added).

Lower courts have accordingly rejected speculation as a basis for an undue hardship defense. See, *e.g.*, *EEOC* v. *Drivers Mgmt., LLC,* 142 F.4th 1122, 1132 (8th Cir. 2025) ("conclusory statement that any accommodation would fundamentally change the training program" did not suffice); *Osborne* v. *Baxter Healthcare Corp.*, 798 F.3d 1260, 1273 (10th Cir. 2015) (employer must identify facts "with specificity to illustrate why the proposed accommodation constitutes an undue hardship and is thus unreasonable").

Nor does the ADA's additional language explaining the nature of an undue hardship justify a different result with respect to Title VII. The enumerated factors simply make clear what an undue hardship inquiry inherently demands. At the very least, the ADA's framework should operate as a floor for Title VII. Because this Court has made clear that "[n]othing in this history plausibly suggests that 'undue hardship' in Title VII should be read to mean anything less than its meaning in ordinary use," *Groff*, 600 U.S. at 469-470, it should ensure that lower courts apply the term consistently, according to its ordinary meaning. Title VII, which protects the exercise of religion—a constitutional right—should be applied at least as robustly as the ADA.

B. Under the Pregnant Workers Fairness Act, an employer cannot demonstrate "undue hardship" by relying on "an assumption or speculation."

The same is true of the Pregnant Workers Fairness Act. Enacted in 2022, the PWFA requires employers to provide reasonable accommodations "to the known limitations related to the pregnancy, childbirth, or re-

lated medical conditions of a qualified employee," unless the employer can demonstrate that such accommodations would "impose an undue hardship on the operation of the business." 42 U.S.C. 2000gg-1(1).

When drafting the PWFA, Congress intentionally borrowed from existing civil rights statutes and adopted key language and concepts from both the ADA and Title VII. In particular, the statute expressly adopts the ADA's definition of "undue hardship," defining it as an action requiring "significant difficulty or expense." 42 U.S.C. 2000gg(7); 42 U.S.C. 12111. As the EEOC has explained, "because the PWFA borrows intentionally and extensively from existing civil rights laws" it allows employers to rely on "existing policies and processes" while ensuring consistent protection for employees. Regulations To Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54,714, 54,717 (Aug. 11, 2023).

Moreover, the EEOC has explained the proper evidentiary standard, stating that "a covered entity cannot demonstrate that a reasonable accommodation imposes an undue hardship based on an assumption or speculation that other employees might seek a reasonable accommodation—even the same reasonable accommodation—or the same employee might seek another reasonable accommodation in the future." 88 Fed. Reg. 54,735.

It is thus evident that the "undue hardship" standard is a demanding one, and that, like the ADA, generalized predictions about potential burdens cannot satisfy an employer's burden.

C. Under the Rehabilitation Act, an employer bears the burden to show "undue hardship" by case-specific evidence.

The Rehabilitation Act follows the same pattern, expressly adopting the ADA's undue hardship standard. 29 U.S.C. 791(f); 29 U.S.C. 794(d). The Department of Education promulgated regulations used to determine "whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity."

> [F]actors to be considered include:
>
> (1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;
>
> (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
>
> (3) The nature and cost of the accommodation needed.

34 C.F.R. 104.12(c).

Unsurprisingly, then, courts interpreting "undue hardship" under the Rehabilitation Act have found that reliance on speculative evidence does not suffice. For example, in *Borkowski* v. *Valley Central School District*, a disabled school librarian was denied a tenured position, resigning from the position because the defendant school district argued that providing an accommodation would cause an undue hardship. 63 F.3d 131 (2d Cir. 1995). The Second Circuit rejected the defense, finding that the school district "presented no evidence concerning the cost of providing a teacher's aide, its budget and organization, or any of the other

factors made relevant by the regulations." *Id.* at 142. While defendants might be able to make out a defense "in cases in which the plaintiff's proposal is either clearly ineffective or outlandishly costly," it does not presumptively allow defendant employers to utilize speculative evidence to perform their analysis. *Id.* at 139. The Second Circuit emphasized a strong showing of definitive proof rather than an "unthinking reliance on intuition" that the cost of providing reasonable accommodation would have unduly burdened the school district could be resolved as a matter of law. *Id.* at 140. But "absent a showing by the employer that the cost is excessive in light of the factors enumerated in the regulations," summary judgment to resolve such a defense was improper. *Id.* at 142.

D. Under the Uniformed Services Employment and Reemployment Rights Act, an employer bears the burden to show "undue hardship" by a preponderance of the evidence.

Enacted in 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) aims to prohibit discrimination against individuals because of their uniformed service. 38 U.S.C. 4311(c)). This includes encouraging uniformed service by (1) eliminating or minimizing the disadvantages to civilian employment that can result from such service, and (2) providing for the prompt reemployment of individuals upon their completion of uniformed service. 38 U.S.C. 4301(a).

To that end, USERRA requires employers to reemploy an individual who served in the military unless "such employment would impose an undue hard-

ship on the employer." 38 U.S.C. 4312(d)(1)(B). Employers have the burden of proving an undue hardship, 38 U.S.C. 4312(d)(2), and USERRA—like the ADA—defines an undue hardship as an "action[] requiring significant difficulty or expense." 38 U.S.C. 4303(16). USERRA also includes a list of various factors for employers and courts to consider, including the nature and cost of reemployment, the overall financial resources of the facility and employer, and the type of operations of the employer. See 38 U.S.C. 4303(16)(A)-(D).

USERRA's "protections are to be construed broadly in favor of the returning service member." *United States* v. *Nevada*, 817 F. Supp. 2d 1230, 1242 (D. Nev. 2011). Courts have therefore robustly enforced USERRA, rejecting undue hardship defenses predicated on speculative and hypothetical harms. See, *e.g.*, *id.* at 1244 (rejecting undue hardship defense based on general claims of significant difficulty or expense); *Keene* v. *Clark Cnty. Sch. Dist.*, No. 2:14-cv-381, 2016 WL 3580465, at *7 (D. Nev. June 30, 2016) (similar); *Grove* v. *Assured Self Storage*, No. 4:11-cv-642, 2013 WL 3098343, at *2 (E.D. Tex. June 18, 2013) (rejecting undue hardship defense when defendants failed to explain what other jobs might have been suitable for reemployment); *McLain* v. *City of Somerville*, 424 F. Supp. 2d 329, 336 (D. Mass. 2006) (rejecting argument that rehiring police officer would negatively impact

public safety because it was not "plausible on the present record that Somerville has no continuing need for police patrol officers").[3]

E. Similarly, mere speculation does not suffice under RFRA and RLUIPA.

This evidentiary principle is not novel, and courts evaluating religious liberty claims consistently require concrete evidence rather than speculation. Indeed, under the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act of 2000, and the Free Exercise Clause, courts have repeatedly required the government to justify burdens on religious exercise with concrete evidence.

In *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 732 (2014), for example, this Court rejected the government's least-restrictive-means argument because "HHS has made no effort to substantiate this prediction." Similarly, in *Holt* v. *Hobbs*, this Court explained that RLUIPA "does not permit such unquestioning deference" to prison officials. 574 U.S. 352, 364 (2015). "Indeed, prison policies 'grounded on mere

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[3] In addition to the ADA, the PWFA, the Rehabilitation Act, and USERRA, other federal statutes incorporate the undue hardship defense. See, *e.g.*, 29 C.F.R. 38.4(rrr)(1)(ii) (Workforce Innovation and Opportunity Act regulations); 29 U.S.C. 218d(c) (under the FLSA, an employer must provide accommodations for breast-feeding employees unless that employer has fifty or fewer employees and providing an accommodation "would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business"). Courts have had little occasion to interpret these provisions, but there is no indication that courts would interpret them differently.

speculation' are exactly the ones that motivated Congress to enact RLUIPA." See *id.* at 371 (Sotomayor, J., concurring). And in *Fulton* v. *City of Philadelphia*, this Court rejected the City's arguments as to an alleged compelling governmental interest because the City offered "only speculation that it might be sued over CSS's certification practices," which was "insufficient to satisfy strict scrutiny." 593 U.S. 522, 542 (2021).

Although Title VII's undue hardship standard is less demanding than strict scrutiny, the same evidentiary principle applies: claims of hardship must rest on concrete, fact-specific evidence rather than conjectural harms.

II. Under Title VII, speculative and hypothetical harms are insufficient to establish an undue hardship defense.

Drawing a through line from the ADA to the Free Exercise Clause to RFRA and RLUIPA and to Title VII also makes sense in light of the statute's purposes. Title VII's protections for religious exercise are robust because they are rooted in constitutional principles. Congress designed Title VII's protections to safeguard the ability of religious minorities to participate in the workplace without abandoning their faith. Where Congress has used identical language across closely related civil rights statutes, courts should not permit a weaker standard to govern one while demanding concrete proof in another. For this reason, this Court should clarify that Title VII religious accommodation claims cannot be defeated by speculative or hypothetical harms.

This Court has already helped ensure that Congress's mandate for workplace religious accommodations is realized. In *Groff*, this Court rejected a watered-down understanding of an undue hardship that had allowed employers to reject religious accommodations with ease. *Groff* clarified that Title VII's "undue hardship" standard is a "fact-specific inquiry" that demands something "very different from a burden that is merely more than *de minimis*, *i.e.*, something that is 'very small or trifling.'" *Groff*, 600 U.S. at 469 (quoting Black's Law Dictionary 388 (5th ed. 1979)). "[U]nder any definition, a hardship is more severe than a mere burden" and "an employer could not escape liability simply by showing that an accommodation would impose some sort of additional costs." *Ibid.* This Court further explained that "the modifier 'undue' means that the requisite burden, privation, or adversity must rise to an 'excessive' or 'unjustifiable' level." *Ibid.* (quoting Random House Dictionary of the English Language 1547 (1966)).

Despite this Court's clear command in *Groff*, a more lenient, *de minimis*-like standard continues to persist through manipulated evidentiary rules. Some courts have faithfully required concrete, case-specific evidence, and have denied summary judgment where genuine disputes of material fact exist. Others, however, have upheld denials of religious accommodations based on speculative or generalized harms, effectively allowing the former *de minimis* standard to survive under a different label.

A. Lower courts are split over how to weigh speculative harms when evaluating claims of undue hardship.

Even before *Groff*, lower courts required employers to marshal concrete evidence of hardship rather than mere speculation. Indeed, courts were openly skeptical of attempts to satisfy the former *de minimis* standard with hypothetical harms. See, *e.g.*, *Brown* v. *General Motors Corp.*, 601 F.2d 956, 960-961 (8th Cir. 1979) (refusing to consider "anticipated or multiplied hardship," focusing instead on "present" hardships, and that an employer "stands on weak ground when advancing hypothetical hardships in a factual vacuum"); *Draper* v. *United States Pipe & Foundry Co.*, 527 F.2d 515, 520 (6th Cir. 1975) ("[W]e are somewhat skeptical of hypothetical hardships that an employer thinks might be caused by an accommodation that never has been put into practice.").

Following *Groff*, however, courts have struggled over the applicability of hypothetical harms. The Third, Fifth, Seventh, and Eighth Circuits have all held that hypothetical harms are insufficient to prove an undue hardship defense. But in the decision below, the Ninth Circuit permitted employers to prevail based on "reasonable" hypothetical harms.

In *Smith* v. *City of Atlantic City*, 138 F.4th 759, 775 (3d Cir. 2025), the Third Circuit rejected an undue hardship defense in a case involving a religious accommodation to grow a beard. The public employer argued that it could not accommodate the plaintiff's religious practice due to its interest in preserving employee safety. *Ibid.* The Third Circuit disagreed, explaining that "[t]he City can only theorize a vanishingly small risk" that the plaintiff's beard would imperil his

safety. *Ibid.* Such conjectural harms were insufficient to qualify as an undue hardship.

The Fifth Circuit reached a similar conclusion in *Hebrew* v. *Texas Department of Criminal Justice*, 80 F.4th 717 (5th Cir. 2023). There, the Texas prison system fired the plaintiff after he refused to cut his beard in violation of his religious beliefs. The State argued that it would face prohibitive costs if it were forced to accommodate the plaintiff. But the Fifth Circuit noted that the State "nowhere identifies any actual costs it will face," and that its "reference to *possible* additional work for [the plaintiff's] coworkers is insufficient to show an undue hardship." *Id.* at 722-723. Indeed, the State argued that it might be forced to modify its employee policies were it required to accommodate the plaintiff, but the Fifth Circuit held that such "a hypothetical policy reevaluation" failed to demonstrate an undue hardship. *Id.* at 723.

The Seventh Circuit has also held that conjectural harms are insufficient to demonstrate an undue hardship. In *Kluge* v. *Brownsburg Community School Corp.*, it rejected a school's claim that it faced an undue hardship due to potential legal liability under Title IX. 150 F.4th 792, 810-811 (7th Cir. 2025). Though the Court stated that an employer is not obligated to accommodate an employee if it "would place it on the 'razor's edge' of legal liability," *id.* at 810 (quoting *Jackson* v. *Methodist Health Servs. Corp.*, 121 F.4th 1122, 1127 (7th Cir. 2024)), the Seventh Circuit nonetheless found the "specter of liability" remote and speculative, *id.* at 810-811. Accordingly, it rejected the school's undue hardship defense. *Id.* at 811.

Finally, in *Naylor* v. *County of Muscatine*, 151 F.4th 973 (8th Cir. 2025), a jail administrator was

fired for several controversial online posts regarding his religious beliefs. The county claimed that it could not accommodate the plaintiff without facing an undue hardship in the form of a tarnished public image and lost business relationships. The Eighth Circuit disagreed and reversed the grant of summary judgment in the county's favor. The Court found there was "some evidence" of possible reputational harm. And it found "some evidence" of possible lost business contracts were the county to accommodate the plaintiff's religious exercise. But absent more "definitive" or less "speculative" evidence of an undue hardship, the Eighth Circuit ruled that the county's harms were conjectural and insufficient. *Id.* at 977-978.

In contrast, the decision below held that hypothetical harms are enough to mount a successful undue hardship defense. Respondent Snohomish Regional Fire and Rescue (SRFR) argued that it could not provide Petitioners with an accommodation due to potential health and safety risks, the potential loss of a contract, and potential liability from lawsuits concerning COVID-19 transmission. The Ninth Circuit agreed and repeatedly emphasized that SRFR had a "reasonable concern" that an accommodation would cause undue hardship. Pet.App.20a. On that basis, it refused to consider Petitioners' "hindsight" evidence demonstrating that SRFR's alleged harms were merely conjectural or hypothetical. Pet.App.22a-23a.

For example, the Ninth Circuit disregarded Petitioners' crucial evidence related to health and safety and operational considerations. The Court declined to consider SRFR's previous and later accommodations, other fire districts' accommodations policies, SRFR's work with unvaccinated firefighters from surrounding

fire districts, and evidence that testing and PPE protocols had been sufficient to prevent outbreaks and operational disruptions. Pet.App.22a-23a; see also Pet.11. Cf. *Holt*, 574 U.S. at 368 (faulting Arkansas for discounting relevance of "policies followed at other well-run institutions").

It also accepted SRFR's hypothetical and speculative assertions concerning financial risks. For the Ninth Circuit, it was enough that "SRFR had a reasonable concern that it would lose a lucrative contract," even though the other party to the contract "was willing to consider accommodations." Pet.App.20a.

And as to the risk of uninsured liability from lawsuits based on COVID-19 transmission, the Ninth Circuit acknowledged that courts typically "consider only actual hardships, not hypothetical ones when assessing undue hardship." Pet.App.20a. But it then departed from that rule. The Court held that "SRFR was justified in seriously considering" the absence of insurance coverage for claims based on disease transmission, even though SRFR's insurer "confirmed that it had never faced such a lawsuit." Pet.App.21a-22a. Rather, speculation and hypothetical lawsuits—what SRFR "worried about"—were enough to justify SRFR's rejection of all religious accommodations. Pet.App.20a.

B. The Ninth Circuit misapplied Title VII in permitting consideration of speculative harms.

Properly understood, Title VII requires more than identifying possible costs in an abstract, generalized way. It requires evidence showing fact-specific circumstances that the requested accommodation would impose an undue hardship. *Groff*, 600 U.S. at 468, 473.

That requirement is especially important at summary judgment, where courts must draw all reasonable inferences in favor of the nonmoving party.

The panel's decision below departed from these principles. Although the Ninth Circuit identified several categories of potential costs, it accepted generalized, hypothetical predictions of risk without showing that these risks would in fact impose substantial costs on the employer's business.

In so doing, the Ninth Circuit disregarded extensive evidence offered by Petitioners showing that SRFR would not have suffered any undue hardship. For example, Petitioners demonstrated that SRFR did not experience any hardships both before and after the brief period it enforced its vaccine mandate. Petitioners pointed to other fire districts' accommodations policies and SRFR's own work with unvaccinated firefighters from surrounding fire districts. This is precisely the type of evidence that should create a genuine dispute of material fact. But the Ninth Circuit disregarded this evidence, holding that "reasonable" but hypothetical harms were enough to demonstrate an undue hardship. Pet.App.20a.

That turns Title VII on its head. Under the Ninth Circuit's approach, employers can successfully mount an undue hardship defense based on speculative, hypothetical harms. Employees, on the other hand, must then proffer evidence demonstrating that those harms are entirely remote or nonexistent. But Title VII places the burden on the *employer* to prove an undue hardship. Permitting the Ninth Circuit's decision to stand would transform Title VII into a liability shield for employers. It would tilt the playing field in their favor, allowing employers to escape legal liability even

when an accommodation would not create any actual undue hardship.

* * *

In *Groff*, this Court rejected an atextual reading of the statutory text and explained that "'undue hardship' in Title VII means what it says." *Groff*, 600 U.S. at 471. But like the repudiated *de minimis* standard, the Ninth Circuit's approach would allow an undue hardship defense to be "satisfied in nearly any circumstance." *Id.* at 465. That cannot be squared with the text of Title VII.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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