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 IN OPPOSITION

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QUESTION PRESENTED

Whether an employer establishes an undue hardship under Title VII by presenting undisputed, objective medical evidence establishing that a requested religious accommodation would increase the risk of healthcare workers transmitting a highly transmissible, deadly virus to vulnerable patients and other workers during a pandemic.

CORPORATE DISCLOSURE STATEMENT

Snohomish Regional Fire & Rescue is a municipal corporation, and thus has no parent company and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Just three Terms ago, this Court clarified the standard an employer must satisfy to establish that a requested religious accommodation would impose an undue hardship under Title VII. *See Groff v. DeJoy*, 600 U.S. 447, 469 (2023). The Court held that the employer "must show that the burden of granting an accommodation would result in substantial increased costs" to the employer's business. *Id.* at 470. The Court stressed whether costs are substantial in any case will be "fact-specific" and "take[] into account all relevant factors in the case at hand." *Id.* at 468-70.

In the decision below, the Ninth Circuit applied *Groff*'s "fact-specific" inquiry to Respondent Snohomish Regional Fire and Rescue's (SRFR) decision not to offer nearly 25% of its frontline emergency medical technicians (EMTs) and paramedics a religious accommodation to a COVID-19 vaccination requirement that would permit them to continue serving in patient care roles unvaccinated during a brief period when COVID cases were surging. SRFR presented undisputed, objective medical evidence showing unvaccinated employees were more likely to transmit COVID to vulnerable patients and other employees regardless of safety precautions, such as masking and testing. Based on that undisputed medical evidence, the Ninth Circuit held that permitting Petitioners to continue serving in patient care roles unvaccinated would have imposed an undue hardship on SRFR under *Groff*. Every circuit to consider a healthcare provider's undue hardship defense based on similar undisputed

medical evidence has reached the same conclusion—four circuits in all.

Faced with this uniform legal authority, Petitioners toil to manufacture a circuit split with two moves. First, Petitioners misstate the holding below. Petitioners say the Ninth Circuit deepened a circuit split as to whether "good-faith but mistaken fears of [substantial] hardship" can satisfy *Groff*. Pet. 3. It did not. The Ninth Circuit here nowhere held that a good faith, but mistaken, belief satisfies *Groff*. Rather, it held based on undisputed, objective medical evidence that permitting Petitioners to continue working in patient care roles unvaccinated would increase the risk of transmitting a deadly virus and such an increased risk establishes an *actual* undue hardship for a healthcare provider.

Second, Petitioners focus on specific facts in the various circuit court cases to support their invented split. But none of the circuits in that split disagree on the question presented either. Petitioners' split has not been acknowledged by any circuit. On the contrary, courts on opposite sides of Petitioners' split *favorably* cite the purportedly conflicting decisions. The supposed circuit split merely reflects how courts assess undue hardship in the "fact-specific" context involving the risk of transmitting a deadly virus and in other contexts. Indeed, Petitioners cite only cases in the disease transmission context on the so-called "good faith" side of the split and no disease transmission cases on the actual harm side.

This Court's review is further unwarranted because the petition suffers from significant vehicle

problems. The evidence Petitioners say the Ninth Circuit should have considered under a proper application of *Groff* is inadmissible because it was not based on Petitioners' personal knowledge, consisted of hearsay, and offered medical opinions Petitioners were not qualified to assert. Those evidentiary disputes will hinder this Court's review of the question presented and produce the same result on remand. This case is also a poor vehicle to offer guidance on the *Groff* standard as it concerns restrictions imposed during a once-in-a-century pandemic that no longer remain in place and are atypical of undue-hardship cases. And, finally, the decision below is correct.

The Court should deny the petition.

STATEMENT OF THE CASE

SRFR Firefighters and Paramedics/EMTs Live Together And Respond To 15,000 Calls For Medical Assistance Each Year.

Snohomish Regional Fire & Rescue provides emergency medical and fire suppression services throughout Snohomish County, Washington. It does so through firefighters who serve a dual role as both firefighters and paramedics/EMTs, as 85% of calls are for emergency medical assistance. Pet.App.5a. In 2021, SRFR employed 192 firefighters who responded to over 15,000 requests for medical assistance at private residences, schools, nursing homes, and a local Department of Corrections (DOC) prison. Pet.App.5a-6a; Pet. 5; ECF 25 ¶ 8. That year, SRFR

firefighters transported over 6,800 people to area hospitals. ECF 25 ¶ 8.

Between calls, firefighters live together in communal quarters at the fire station for 24-hour shifts. Firefighters eat, sleep, shower, exercise, and socialize in shared rooms at the fire station. Pet.App.29a; *see* ECF 25-1, Ex. C (providing pictures of shared living quarters). When responding to calls, firefighters "sit in a cab with two to three other firefighters" and "[w]hen transporting a patient, one or more firefighters rides in the vehicle compartment with the patient." Pet.App.28a.

SRFR Concludes Exempting 25% Of Its Firefighters From A COVID Vaccine Requirement When Cases Were Surging Would Impose An Undue Hardship.

The COVID pandemic presented a significant challenge for SRFR and other healthcare providers. SRFR needed to prevent transmitting the virus to vulnerable patients as well as among its firefighters. "SRFR looked to county, state, and national public health authorities for guidance regarding how best to protect its employees and the public." ECF 25 ¶ 9.

In early August 2021, COVID-related hospital admissions in Washington reached early pandemic levels. ECF 26 ¶ 51. Governor Inslee responded to the surge by requiring healthcare providers, including SRFR firefighters, to be vaccinated against COVID. Pet.App.30a. The directive explained the mandate was necessary due to "the emergence of highly contagious COVID variants, including the 'delta

variant' that is at least twice as transmissible … coupled with the continued significant numbers of unvaccinated people, [that] have caused COVID-19 cases and hospitalizations to rise sharply." ECF 25-2 at 11. The directive permitted employees to request an exemption based on "a sincerely held religious belief" and required accommodation unless the accommodation would cause the employer "undue hardship." *Id.* at 13-14.

Nearly 25% of SRFR's firefighters requested a religious accommodation from the vaccination requirement. Pet.App.31a. SRFR met with each firefighter about the requests. Pet.App.32a. In response to employee questions about why vaccination was needed, SRFR explained that prior mitigation efforts, including masking, testing, and social distancing "did not curtail all outbreaks" and the "threat of COVID … evolv[ed] as new more easily transmitted and aggressive variants bec[a]me prevalent." ECF 25 ¶ 12.

SRFR determined it would grant all firefighters with religious objections some accommodation. However, SRFR concluded it could not permit 25% of its firefighters to continue serving in patient care roles unvaccinated without an undue hardship to its operations and the community it serves. Unvaccinated firefighters presented a greater risk of transmitting COVID to vulnerable patients and other firefighters, and social distancing, masking, and testing could not adequately mitigate that risk. ECF 25 ¶ 15. Testing was "not always accurate" and "convey[ed] a false sense of security." *Id.* Indeed, testing failed to detect 29-64% of asymptomatic

infections. ECF 26 ¶ 35. Firefighters also did not always comply with masking. ECF 25 ¶ 15. And masks and tests were "scarce and costly." *Id.* SRFR also concluded it could not carry out a contract to serve a local jail if 25% of its staff were unvaccinated and that permitting unvaccinated firefighters to provide patient care risked liability. *Id.*

SRFR considered other accommodations. It explored offering firefighters reassignment to nonpatient care roles, but none were available. Pet.App.34a. The Department ultimately negotiated an accommodation with the firefighters' Union. The firefighters could exhaust their paid leave and then take up to a one-year unpaid leave of absence with no loss of seniority. Pet.App.32a. The Department approved every request for this alternative accommodation. Pet.App.34a.

Through the end of 2021 and early 2022, SRFR closely monitored the risk posed by COVID and unvaccinated employees. *Id.* Once the Omicron wave subsided in spring 2022 and the risk from COVID diminished, SRFR reevaluated the accommodations it could provide to unvaccinated firefighters. On May 9, 2022, SRFR offered firefighters a new accommodation that would permit them to return to patient care roles while following enhanced safety protocols. Pet.App.35a.

The District Court Grants SRFR Summary Judgment Based On Undisputed, Objective Medical Evidence.

Petitioners are eight firefighters who requested religious accommodations from SRFR's vaccine requirement. They all worked in positions that required them to provide patient care and live communally with other firefighters during 24-hour shifts. In November 2022, Petitioners sued SRFR under Title VII and Washington State law for failing to accommodate their religious beliefs by permitting them to remain in patient care roles unvaccinated. Pet.App.5a-8a.

Both parties cross-moved for summary judgment. SRFR relied on testimony from its medical expert. The expert testified, among other things, that vaccination substantially reduced the likelihood of contracting and spreading COVID, that nonpharmaceutical alternatives like masking and testing would not have been effective alternatives at preventing the spread of COVID, and that SRFR's decision to deny the accommodation "was supported by the scientific evidence and public health data available at the time." ECF 26 ¶¶ 22-23, 26-28, 34, 39-41, 44-47, 50-52.

Petitioners presented no contrary expert testimony or medical evidence. Instead, they relied on their own declarations asserting their beliefs that they could have continued working safely, that other fire departments granted the requested accommodation, and that unvaccinated firefighters from other departments sometimes fought fires

alongside SRFR, and asserting that a representative from SRFR's insurer told them she was unaware of any lawsuits filed against healthcare providers for transmitting a communicable disease. ECF 29 at 4-6; ECF 32 at 4-5, 7; ECF 47 at 4-5.

SRFR moved to strike substantial portions of Petitioners' declarations that were not based on Petitioners' personal knowledge, that consisted of hearsay, and that offered medical opinions Petitioners were not qualified to assert. ECF 49 at 1-2; ECF 51 at 1-3.

After full briefing and argument, the district court granted SRFR's summary judgment motion. The court "decline[d] to individually address each statement Snohomish Fire seeks to strike but" said it "considered only admissible evidence in reaching its decision." Pet.App.37a. The court then carefully parsed the uncontradicted medical evidence. It concluded "the uncontroverted evidence in this case demonstrates that unvaccinated firefighters were at a higher risk of contracting and transmitting COVID-19 even with the use of masks, PPE, testing, and social distancing." Pet.App.44a. Thus, the court concluded SRFR "could not reasonably accommodate Plaintiffs' vaccine exemption requests without undue hardship." Pet.App.45a-46a.

The Ninth Circuit Affirms.

A unanimous Ninth Circuit panel affirmed. The court first explained that under *Groff* any costs must be "substantial" to constitute an undue hardship and that *Groff* requires a context-specific inquiry.

Pet.App.11a-14a. Applying that standard, the court found SRFR would have suffered multiple substantial costs.

Like the district court, the Ninth Circuit carefully walked through the "objective, unrebutted" medical evidence from the medical expert. It explained the evidence established permitting unvaccinated firefighters to continue providing patient care would have imposed significant costs by increasing the risk of COVID transmission to vulnerable patients and other firefighters. Pet.App.14a-18a. "Plaintiffs fail[ed] to provide any evidence that their proposed accommodation would have been a reasonable alternative to vaccination." Pet.App.17a. While Plaintiffs asserted "they were 'able to safely perform [their] job' and 'never transmitted [COVID],'" those assertions were "unsupported by any medical evidence and would be impossible to prove at trial." *Id*. The court further found even if masking and social distancing would have been sufficient (contrary to the objective medical evidence), the evidence "showed that Plaintiffs did not always wear masks or social distance." *Id.* With 25% of the workforce requesting accommodation, the court concluded "there can be no doubt that granting that many exemptions would have hamstrung SRFR's operations." Pet.App.18a-19a.

Beyond the increased risk of transmitting COVID, the Ninth Circuit also found several financial costs supported its undue hardship finding, including the "'increased risk' of employee absences," the risk of losing a contract to serve a local prison that SRFR believed it could not perform with 25% of its

firefighters unvaccinated, and the risk of liability if unvaccinated firefighters transmitted COVID to the public. Pet.App.19a-22a. The court concluded that, when considered alongside the health and safety costs, "[a]ll of this amounts to a showing that SRFR could not reasonably have accommodated Plaintiffs without undue hardship in October 2021." Pet.App.22a.

Petitioners subsequently petitioned for rehearing and rehearing en banc. C.A. Dkt. 59. The Ninth Circuit denied the petition with no judge requesting a vote. Pet.App.1a.

REASONS TO DENY CERTIORARI

I. The Purported Question Presented Is Not Implicated In This Case.

Title VII requires an employer to "reasonably accommodate … an employee's … religious observance or practice" unless the accommodation would impose "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Under *Groff*, to establish an undue hardship an employer "must show that the burden of granting an accommodation would result in substantial increased costs" in the specific context of the employer's business. *Groff*, 600 U.S. at 470.

Petitioners urge this Court to grant certiorari to determine whether an employer's undue hardship determination is entitled to "a form of qualified immunity" under which "good-faith but mistaken fears of such hardships suffice." Pet. 3, 21. This case

does not present that question. The Ninth Circuit held SRFR faced *actual* undue hardship. It did not hold SRFR's fears were mistaken or find merely that SRFR had a subjective good-faith belief of hardship.

A. The Ninth Circuit was clear: "In general, we consider only *actual hardships*, not hypothetical ones when assessing undue hardship." Pet.App.21a (emphasis added). The court recited long-standing Ninth Circuit precedent requiring "proof of actual imposition." *Id.* (quoting *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 615 (9th Cir. 1988)). And, following *Groff*, the Ninth Circuit explained such actual imposition must be "substantial in the overall context of an employer's business." Pet.App.12a (quoting *Groff*, 600 U.S. at 468). Nowhere did the Ninth Circuit say SRFR could establish undue hardship by proving it acted in subjective good faith without showing it faced actual substantial costs.

The Ninth Circuit then detailed multiple *actual* substantial costs in the fact-specific context of a regional fire and rescue agency managing a complex and once-in-a-century pandemic. It found "objective, unrebutted medical evidence show[ed] that SRFR *would have faced* significant health and safety costs [that] *would have affected* SRFR's own workforce and persons in the public needing emergency, even life-saving, services." Pet.App.18a (emphasis added). The court found "[t]he cost of accommodating nearly twenty-five percent of its firefighters *is substantial*," and "there can be no doubt that granting that many exemptions *would have hamstrung* SRFR's operations." Pet.App.19a (emphasis added). It found the "'increased risk' of employee absences … imposed

real and substantial costs to SRFR." Pet.App.20a (emphasis added). And it concluded "'none of [Petitioners' proposed accommodations] *could have been* effective non-pharmaceutical interventions to prevent the spread of COVID-19.'" Pet.App.16a (emphasis added). The court further found SRFR faced additional costs from a "realistic and not 'merely conceivable or hypothetical'" risk of liability from unvaccinated employees transmitting COVID as well as a "risk[of] losing a contract to provide emergency medical services" to a local prison. Pet.App.20a-22a.

B. Petitioners ignore the Ninth Circuit's statements that only "actual hardships" and "actual imposition" count and the numerous times it described costs as "realistic" and "real" and concluded they "would have affected" SRFR "realistic[ally]," "not hypothetical[ly]." Pet.App.18a, 21a-22a. Instead, Petitioners distort the decision below to manufacture a holding that appears nowhere in the opinion.

Petitioners first seize onto a single reference at the end of the court's 26-page decision to SRFR having "a reasonable concern that it would lose a lucrative contract" with a local prison. Pet.App.20a. Petitioners attempt to transform that solitary reference to reasonableness into a holding that an employer need only have a subjective good-faith belief of hardship through sheer repetition—repeating the phrase over 15 times. Pet. 3, 4, 10, 11, 12, 13, 18, 20, 22, 23, 24. But a single reference to a business concern being reasonable is not a holding that an employer may act on subjective good faith alone or that the confronted hardship need not be real.

When read in context, accounting for the court's repeated statements that only actual and real costs count, at most the court meant SRFR's assessment of risk with respect to the contract was *objectively* reasonable, i.e., that the risk was sufficiently likely to qualify as "a cost that SRFR was entitled to consider" under *Groff*. Pet.App.21a. Describing an assessment of a risk as reasonable does not imply that the assessment was mistaken, that the risk was insubstantial, or that the risk was not real. And even then, the Ninth Circuit did not conclude the risk of losing the contract was sufficient to establish undue hardship on its own. It considered it alongside the undisputed actual harm from the increased risk of disease transmission. *See* Pet.App.22a.

Petitioners also attribute to the Ninth Circuit a holding that courts are "precluded as a matter of law" from "considering [an employee's] evidence showing that the proposed accommodation would not have imposed an undue hardship." Pet. 10. Petitioners do not quote any portion of the decision below saying that, because the Ninth Circuit did no such thing. On the contrary, the court faulted Petitioners for "fail[ing] to provide any evidence that their proposed accommodation would have been a reasonable alternative to vaccination"—something it would not have done had it considered an employee's evidence legally irrelevant. Pet.App.17a.

Nor did the Ninth Circuit ignore the materials Petitioners did submit. For example, Petitioners say the court "disregarded" health and safety evidence, including evidence that testing and PPE "had been sufficient to prevent outbreaks." Pet. 11, 18. That

evidence consisted of Petitioners' unqualified assertions that they were able to perform their jobs "safely" and "d[id] not know of any instance" when COVID spread among firefighters. *E.g.*, ECF 47 at 4-5. The court rejected that evidence not because only SRFR's state of mind mattered but because the assertions were "unsupported by any medical evidence and would be impossible to prove at trial." Pet.App.17a.

Likewise, the court rejected Petitioners' evidence about "other fire districts' accommodations" on the merits. Pet. 11. That evidence consisted of Petitioners' bare assertions that other districts offered accommodations—unaccompanied by any details about those districts, their policies, or what workplace considerations led another employer to a particular decision with respect to a specific accommodation request. *E.g.*, ECF 29 at 5-6; ECF 47 at 4. The court explained Petitioners' bare assertions were not probative of whether *SRFR* faced an undue hardship in the context of its particular business. Pet.App.23a; *see Groff*, 600 U.S. at 470-71 (focusing on the accommodation's impact in light of the specific employer's nature, size, and operating costs).

As to the prison contract and risk of liability, the court made a case-specific determination that the evidence was insufficient to create a dispute of fact. Pet.App.20a-21a. Although Petitioners focused on the DOC not objecting to unvaccinated firefighters in May 2022, the court emphasized the relevant time was "the time SRFR imposed its vaccine mandate."

Pet.App.20a.[1] And the court found a "realistic," "not hypothetical" risk of liability in this case. Pet.App.22a.

Petitioners also point to the Ninth Circuit's statement that it cannot "judge SRFR with the clarity of hindsight" and say this means the court refused to consider "[e]vidence bearing on whether an accommodation *in reality* would impose an undue hardship." Pet. 10-11 (discussing Pet.App.23a); *see also* Pet. 18. Petitioners again misread the decision. In the very next sentence, the court explained what it meant—it "must consider the costs faced by SRFR in October 2021, not today" when "COVID-19 cases were spiking due to the Delta variant despite other strategies in place." Pet.App.23a. Petitioners cite no circuit court decision holding undue hardship is evaluated from a different perspective. *Cf. Bragdon v. Abbott*, 524 U.S. 624, 649 (1998) ("existence, or nonexistence, of a significant risk must be determined from the standpoint of the person who refuses the … accommodation").

II. The Claimed Split Is Illusory.

The petition should also be denied because the purported conflict does not exist. Petitioners allege a 3-3 split between the Third, Seventh, and Eighth

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[1] Petitioners are also wrong that the court "refused to permit a jury to consider whether the risk of losing a $400,000 DOC contract" would impose a hardship in light of SRFR's yearly budget. Pet. 11. The Ninth Circuit did not consider that argument because Petitioners did not make it on appeal or before the district court.

Circuits on one side and the First, Sixth, and Ninth Circuits on the other over how to scrutinize an employer's claimed undue hardship. Petitioners' description of the split is something of a moving target. Sometimes they characterize the split as a disagreement over whether an employer need only show a subjective "good-faith" belief of hardship. Pet. 4. Other times they say the split is over whether an employer must establish "actual hardship" or a "reasonable concern" of hardship, which suggests a more modest disagreement over two formulations of objective standards. Pet. 13. However framed, there is no conflict.

A. No circuit holds that an employer's subjective good-faith belief of hardship suffices to establish undue hardship under *Groff*. Petitioners point to decisions from the Third and Seventh Circuits holding that an employer cannot avoid Title VII liability by showing that it acted in "good faith" "regardless of undue hardship." *Smith v. City of Atlantic City*, 138 F.4th 759, 774 (3d Cir. 2025); *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 807 (7th Cir. 2025) (citing *Smith*). But Petitioners identify no decision holding the opposite—that a subjective good-faith belief of hardship provides a defense to liability. Indeed, the First, Sixth, and Ninth Circuit decisions Petitioners cite do not even discuss good faith when assessing undue hardship.[2] *See generally*

[2] The decision below notes that an employer can sometimes defeat an employee's prima facie case if it shows "that it initiated good faith efforts to accommodate reasonably the employee's

Henry v. S. Ohio Med. Ctr., 155 F.4th 620 (6th Cir. 2025); *Rodrique v. Hearst Commc'ns, Inc.*, 126 F.4th 85 (1st Cir. 2025); *see also* Pet.App.2a-26a.

B. Nor has any circuit held an employer's claimed hardship should generally be evaluated under an objective reasonableness or "reasonable concern" standard. As explained above, the Ninth Circuit's decision below required and found *actual* substantial costs. *Supra* § I. The First and Sixth Circuit cases Petitioners invoke likewise do not adopt a general reasonableness standard. The First Circuit has applied a narrow objective reasonableness standard expressly limited to a risk of disease transmission, while the Sixth Circuit decisions found undue hardship from an undisputed increased risk of disease transmission based on objective medical evidence.

The First Circuit's decision in *Rodrique v. Hearst Commc'ns, Inc.* is illustrative here. In that case, the First Circuit held an employer established substantial harm under *Groff* by showing that the employer "reasonably relied on objective medical evidence, including public health guidance" demonstrating that unvaccinated employees were more likely to transmit COVID. *Rodrique*, 126 F.4th at 91-93. The court was explicit that its standard was limited to the case-specific context of hardships involving medical risks. The court stressed that its "holding is a narrow one" tied to "the unique posture

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religious practices," such as by offering a reasonable accommodation the employee rejected. Pet.App.10a. But the court did not apply that doctrine when reaching its conclusion here.

of th[e] case." *Id.* at 94. And the court derived that medical-context-specific standard from *Bragdon v. Abbott*, 524 U.S. 624 (1998), *id.* at 91-92, which addressed medical risks under an ADA exemption for "direct threat[s] to the health or safety of others," *Bragdon*, 524 U.S. at 628-29 (quoting 42 U.S.C. § 12182(b)(3)).[3] In that same medical-risk context, this Court held, like the First Circuit, that the "existence, or nonexistence, of a … risk must be determined from the standpoint of the person who refuses the … accommodation," and courts should assess whether "actions were reasonable in light of the available medical evidence." *Id.* at 649-50.

The Sixth Circuit decisions Petitioners invoke also all arise in the unique context of risk of disease transmission. Those decisions do not expressly adopt any reasonableness standard. The only published decision Petitioners cite—*Henry v. Southern Ohio Medical Center*—says nothing about reasonableness. Pet. 17. It concluded that granting a hospital employee an exemption from COVID testing "*would have imposed* an undue hardship" where the employee "introduced no evidence" disputing the objective medical evidence establishing an increased risk of transmission and insufficiency of mitigation measures (e.g., saliva testing). *Henry*, 155 F.4th at 633. Petitioners also point to a statement in the unpublished *Wise* decision that the court would not

[3] The ADA defines a direct threat to be "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services." 42 U.S.C. § 12182(b)(3).

"Monday morning quarterback[]" the consistency of a hospital's decisionmaking. Pet. 17-18 (quoting *Wise v. Children's Hosp. Med. Ctr. of Akron*, No. 24-3674, 2025 WL 1392209, at *5 (6th Cir. May 14, 2025)). But an unpublished decision is not precedential, and in any event the court limited its statement to the specific context of "a rapidly evolving, highly uncertain novel pandemic." *Wise*, 2025 WL 1392209, at *5.

None of the purportedly conflicting Third, Seventh, or Eighth Circuit cases Petitioners cite reflect any broader methodological disagreement that could warrant this Court's review. Pet. 13-16. To start, none of those cases involved disease transmission or health risks and none discusses whether in that distinct context a substantial risk can be one that is objectively "reasonable in light of the available medical evidence." *Bragdon*, 524 U.S. at 650. *Smith* concerned a requested accommodation from a fire department's prohibition on beards and turned on the "vanishingly small risk" that the employee would need to wear a tight sealing firefighting mask. *Smith*, 138 F.4th at 775. *Kluge* involved an accommodation to a transgender name policy and turned on "whether the accommodation caused" the alleged harm. *Kluge*, 150 F.4th at 806. And *Naylor* involved an accommodation from firing for an employee who wrote online commentary disparaging Muslims and "the gay lifestyle." *Naylor v. Cnty. of Muscatine*, 151 F.4th 973, 976 (8th Cir. 2025).

Tellingly, none of the courts in the purported split recognize any disagreement, and multiple decisions on each side of the alleged divide favorably cite the

very decisions they supposedly conflict with. For example, the Ninth Circuit in the decision below favorably cited the Third Circuit's *Smith* decision as a case in which an employer's perceived risk of harm was too insubstantial to establish undue hardship. Pet.App.25a. In that way, the Ninth Circuit further indicated that it did not consider an employer's subjective good faith belief or "reasonable concern" to suffice to establish undue hardship.

The Third Circuit, for its part, has reached the same result as the decision below when confronted with similar facts. *See Bushra v. Main Line Health, Inc.*, No. 24-1117, 2025 WL 1078135, at *2 (3d Cir. Apr. 10, 2025). In *Bushra*, the court affirmed summary judgment that a healthcare provider would face undue hardship in granting a doctor a religious accommodation from a COVID vaccination requirement. *Id.* Like the decision below, the court found an undue hardship because the employer "provided unrebutted expert testimony that unvaccinated healthcare workers … presented an increased risk of transmitting COVID-19 to others, particularly when they interacted with vulnerable groups." *Id.*

Similarly, the Seventh Circuit considered its *Kluge* decision consistent with the First Circuit's *Rodrique* decision. It favorably cited *Rodrique* as an example of a court finding an "employer proved undue hardship when it relied on 'objective, scientific information'" establishing a higher risk of COVID transmission for unvaccinated employees. *Kluge*, 150 F.4th at 808 (quoting *Rodrique*, 126 F.4th at 91); *see Rodrique*, 126 F.4th at 91.

Finally, the First, Sixth, and Ninth Circuit decisions are consistent with EEOC guidance. Pet. 16. The EEOC advised employers that "when considering undue hardship in the context of COVID, employers should consider if the employee 'works in a solitary or group work setting,' 'has close contact with other employees or members of the public,' and 'works outdoors or indoors.'" Pet.App.18a (quoting *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, EEOC (published Mar. 1, 2022), https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws [https://perma.cc/CQ9C-JPNY]).

Petitioners' claimed conflict amounts to at most context-specific differences in how courts analyze undue hardships involving a risk of disease transmission compared to other hardships with respect to which no circuits disagree.

III. This Is A Poor Vehicle To Consider Petitioners' Question Presented.

Even if the opinion below revolved around a holding that an employer can establish undue hardship by showing a good faith or reasonable concern of hardship, and even assuming this Court found the issue cert-worthy, this case would provide a poor vehicle for doing so for at least two reasons.

First, the decision below rests on an alternative ground that will complicate this Court's review by embroiling it in evidentiary disputes. Petitioners contend the lower courts' purported adoption of the

errant legal standard led them to disregard evidence that, if considered, would have created a dispute of fact precluding summary judgment. *See* Pet. 18 ("the Ninth Circuit disregarded extensive evidence showing that SRFR would not have actually suffered undue hardship") (emphasis removed). But most of Petitioners' evidence was inadmissible on independent grounds and therefore cannot defeat summary judgment. *See* Fed. R. Civ. P. 56(c)(1).

Indeed, Petitioners heavily rely on this inadmissible evidence. They identify as "key evidence" assertions in their own declarations about "other fire districts' accommodations," whether "SRFR's testing and PPE protocols had been sufficient to prevent outbreaks," and a phone call with "a representative of SRFR's insurer that the insurer 'had never faced … a lawsuit'" "based on disease transmission." Pet. 11-12. None of this evidence is admissible. Petitioners' second-hand assertions that other districts offered accommodations are not based on personal knowledge and rely on hearsay. *See* Fed. R. Civ. P. 56(c)(4) (declarations "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent"). Petitioners also lack the personal knowledge and the expertise necessary to testify to the effectiveness of SRFR's safety protocols. Pet.App.17a; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589-92 (1993) (distinguishing lay and expert testimony). And Petitioners' recounting of a phone call with the insurer is classic hearsay. Fed. R. Evid. 801(c). Because so much of Petitioners' key evidence is inadmissible, this Court's review would be

mired in evidentiary disputes. That obstacle weighs against granting review.

Second, this case is a poor vehicle because its particular context (the risk of medical harm from a novel virus arising from a once-in-a-century pandemic) is not representative of the mine-run of religious accommodation claims. Such claims typically concern economic costs, such as additional overtime, schedule changes, or staffing difficulties that do not turn on risk-based medical judgments. *See, e.g.*, *Groff*, 600 U.S. at 456; *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 68, 76 (1977). And as discussed, that difference matters for this Court's review. This Court has previously recognized that an objective reasonableness standard should apply to the assessment of medical risks. *See Bragdon*, 524 U.S. at 649-50; *supra* 18; *infra* 28-30. If the Court is inclined to review Petitioners' question presented, it should do so in a more typical religious accommodation case, and only after a circuit has adopted a good faith or objective reasonableness standard in that context.

IV. The Decision Below Is Correct.

Review is also unwarranted because the decision below is correct. The Ninth Circuit correctly held that permitting unvaccinated firefighters to remain in patient care roles during the Delta and Omicron spikes would have imposed substantial costs on SRFR. And while the Ninth Circuit did not ask whether SRFR reasonably relied on the objective medical evidence, it would have been correct to have done so.

A. Permitting 25% of SRFR's firefighters to continue providing patient care unvaccinated would have caused SRFR undue hardship.

The Ninth Circuit did not, as Petitioners claim, invent a new undue-hardship standard that asked whether SRFR had "a 'reasonable' basis for fearing an undue hardship." Pet. 10, 18. Instead, the court applied the straightforward, well-recognized standard under *Groff*: whether "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of" the employer's business. Pet.App.12a (quoting *Groff*, 600 U.S. at 470).

Groff requires courts to "take[] 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." 600 U.S. at 470-71. The Ninth Circuit did just that and correctly held, based on undisputed evidence, that permitting 25% of SRFR's firefighters to continue providing patient care unvaccinated would have imposed substantial health and safety costs on SRFR.

Undisputed medical evidence supported the Ninth Circuit's conclusion. SRFR presented unrebutted expert testimony establishing that unvaccinated healthcare employees were more likely to transmit COVID to vulnerable patients and other employees regardless of safety precautions, such as masking and testing. Pet.App.14a-17a. An increased risk of transmitting a deadly virus during a novel

pandemic is a "substantial increased cost[] in relation to the conduct" of an emergency medical services first responder's business, especially when the risk is across nearly 25% of its workforce. Pet.App.12a, 18a-19a; *see also Groff*, 600 U.S. at 470-71.

The Ninth Circuit was not required to credit Petitioners' speculative, unsupported assertions over the objective medical evidence. Indeed, Petitioners presented no objective medical evidence whatsoever. Instead, they asserted in declarations that they were able to "safely" perform their jobs and had never transmitted COVID to co-workers or members of the public before. Pet.App.17a. Those assertions could not overcome medical evidence at trial. *See FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact."). They were also contradicted by other undisputed evidence that Petitioners did not always mask and could not always practice social distancing, and unrebutted expert testimony that social distancing does not prevent spread of the virus in living environments. Pet.App.17a, 18a.

Petitioners also relied on their own assertions that SRFR suffered no harm accommodating Petitioners before the vaccine mandate or after it was lifted. Pet.App.22a-23a. But Petitioners had no personal knowledge of SRFR's full operations. Fed. R. Civ. P. 56(c)(4) (declarations must be made on personal knowledge); ECF 49 at 1-2; ECF 51 at 1-3. And Petitioners presented no evidence addressing the unique risks SRFR faced by the far more

transmissible Delta and Omicron variants that dominated during the period at issue. The bare fact that SRFR determined unvaccinated firefighters presented no undue hardship later, when the risk of COVID was significantly lower and with those firefighters engaging in enhanced safety measures, does not establish a dispute about whether there was undue hardship earlier, when objective medical evidence showed the risk was higher. Pet.App.20a; *see also Smith*, 138 F.4th at 775 (the undue hardship "analysis is rooted in 'common-sense' reasoning and a keen review of the facts" (citing *Groff*, 600 U.S. at 471)).

Likewise, the court was not required to credit Petitioners' bare assertions that other fire districts granted accommodations permitting unvaccinated firefighters to provide patient care. Pet.App.22a-23a. That evidence was inadmissible, and in any event, it could not overcome the undisputed medical evidence of increased transmission risk in unvaccinated people or SRFR's determination that the risk was unacceptable given that nearly 25% of its workforce had requested the accommodation.

The Ninth Circuit also correctly found under *Groff*'s well-established standard that SRFR established financial costs that supported its showing of undue hardship. Pet.App.19a-22a. Undisputed evidence established that SRFR risked losing a contract to serve a local jail if it accommodated Petitioners. Because the jail informed SRFR that all on-site contractors must be vaccinated, SRFR determined that it *could not* continue to perform its obligations under the contract with nearly 25% of its

workforce unvaccinated. Pet.App.20a.[4] DOC expressly told SRFR that it "ha[d] not identified any reasonable accommodations." Pet.App.20a; ECF 25 ¶ 15; ECF 25-2 at 85-86 (DOC letter to contractors, subcontractors, vendors, suppliers, and volunteers). As the Ninth Circuit recognized, a lost contract is a textbook economic hardship. Pet.App.20a.

Lastly, the Ninth Circuit correctly found SRFR faced significant costs from the threat of liability for transmitting COVID, another proper consideration under *Groff*. *See Kluge*, 150 F.4th at 810. SRFR presented evidence that the risk of liability from the spread of COVID was a real and significant concern for healthcare providers during the pandemic. ECF 25 ¶ 15; ECF 25-2 at 88-109 (WCIA Coverage Document). Indeed, the risk was so prominent that SRFR's insurer felt the need to notify SRFR that liability from transmitting COVID would not be covered. Petitioners' rebuttal evidence was a hearsay declaration recounting a conversation with a representative of SRFR's insurer during which she purportedly said she was unaware of the insurer ever facing such a suit. ECF 29 at 6. That conversation was both inadmissible and did not speak to the unique risk environment that existed during the COVID pandemic. On that record, the Ninth Circuit properly

[4] SRFR's determination that it could not perform under the contract further distinguishes this case from *Naylor* in which it was insufficiently certain whether a third party would actually cancel a contract. Pet. 19 (citing 151 F.4th at 977-78).

held the risk of liability contributed to a finding of undue hardship.[5]

B. When assessing undue hardship from an increased risk of disease transmission, courts properly consider whether the employer's decision was objectively reasonable in view of objective medical evidence.

The Ninth Circuit relied on the straightforward undue-hardship standard under *Groff*. It did not, as Petitioners contend, apply a reasonableness standard borrowed from another context. But even if it had relied on such a standard, the decision below would still be correct.

As discussed, in *Bragdon*, this Court applied an objective reasonableness standard to an analogous question in the "analogous" ADA context. *See* 524 U.S. at 649-50; Pet. 24. Similar to Title VII's undue hardship exemption to the duty to accommodate, the ADA provides an exemption to its accommodation requirements if an accommodation would pose a "direct threat to the health or safety of others." 42 U.S.C. § 12182(b)(3). The ADA defines direct threat to be "a significant risk to the health or safety of others

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[5] The panel's finding that the risk was realistic is fully consistent with the Seventh Circuit's *Kluge* decision, which acknowledged that the risk of legal liability can create an undue hardship but found a dispute of fact on summary judgment regarding the employer's undue hardship defense when an essential element of the feared claim was missing. Pet. 20 (citing *Kluge*, 150 F.4th at 810-11).

that cannot be eliminated by a modification of policies, practices, or procedures." *Id.*; 42 U.S.C. §§ 12111(3), 12113(b).

To determine whether an accommodation would impose such "significant risk," this Court held "[t]he existence, or nonexistence, of a significant risk must be determined from the standpoint of the person who refuses the … accommodation, and the risk assessment must be based on medical or other objective evidence." *Bragdon*, 524 U.S. at 649. The Court then went on to assess whether the "actions were reasonable in light of the available medical evidence." *Id.* at 650. "In assessing the reasonableness of petitioner's actions," the Court further held, "the views of public health authorities, such as the U.S. Public Health Service, CDC, and the National Institutes of Health, are of special weight and authority," and a person who seeks to depart from the views of public health authorities must "cit[e] a credible scientific basis for deviating from the accepted norm." *Id.*

The Ninth Circuit would have been well within its authority to apply the *Bragdon* rule to the undue-hardship inquiry in the Title VII context. Both the ADA's direct threat inquiry and Title VII's undue hardship analysis require an employer to demonstrate that granting an accommodation would impose cognizable harm. *See id.* at 648 (requiring a showing of "significant risk" to health and safety); *Groff*, 600 U.S. at 470 (requiring a showing of "substantial increased costs"). Importing *Bragdon*'s objective reasonableness framework would ensure that an employer claiming undue hardship based on

health and safety risks grounds that claim on objective medical evidence rather than subjective preferences or unfounded assumptions. *See Rodrique*, 126 F.4th at 91-93.

Such a rule would not "replicate[] the problems with the de minimis standard that *Groff* repudiated by turning Title VII's narrow undue-hardship exception into one that 'can be satisfied in nearly any circumstance.'" Pet. 21 (quoting *Groff*, 600 U.S. at 465). Rather, it cabins the inquiry to objectively reasonable concerns that are substantiated by objective medical evidence. This is precisely the rigor that *Groff*'s "substantial increased costs" standard demands. This Court should affirm under either standard.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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