

No. 25-1210

In the Supreme Court of the United States

DAVID PETERSEN, ET AL.,
PETITIONERS,

v.

SNOHOMISH REGIONAL FIRE & RESCUE,
RESPONDENT.

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

REPLY BRIEF FOR PETITIONERS

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The courts of appeals are split 3-3 over whether employers can defeat Title VII religious accommodation claims based simply on a reasonable concern of hardship—as opposed to an actual hardship. That question arises every time an employer raises an undue hardship defense. The petition thus has enormous consequences for the rights of tens of millions of religious employees across the country. And the question is squarely presented and outcome-determinative. This is a paradigmatic case for review. Indeed, thirteen amicus briefs and twenty-two States urge this Court to intervene.

SRFR (at 21) recasts the split as mere “context-specific differences.” But the circuits diverge over a purely

legal question: Must an employer’s evidence prove actual hardship, or is a “reasonable concern” of hardship enough? Pet.13-20. Only by ignoring the language and reasoning of the decision below can SRFR (at 10-15, 24-28) argue that the Ninth Circuit never adopted a reasonable-concern-of-hardship rule, claiming the court “meant” something else. But nobody is buying it—not the amici, not the States, not district courts in the Ninth Circuit, and indeed, apparently not even SRFR, which (at 27) says the decision below rested on SRFR’s “real and significant concern[s].” SRFR’s other vehicle arguments (at 21-23) rest on evidentiary objections that neither court below accepted and have no basis in the record.

SRFR (at 3, 11, 23) contests the importance of the question presented, arguing the refusal to accommodate was “atypical” and arose “during a once-in-a-century pandemic.” But vaccine cases are still being litigated, and more importantly, the standard adopted by the court below will dictate the outcome in *every* accommodation request, whether for shift changes, prayer breaks, or headscarves. This Court should step in, hold actual hardship is required in religious accommodation cases, and remand so petitioners’ claims may proceed.

I. The Decision Below Deepens An Intolerable Split

The circuits are split over Title VII’s undue hardship standard. Pet.13-20. Three circuits, joined by the EEOC, embrace the view that “actual” hardship is required. Pet.13-17. But three other circuits merely ask whether the employer’s evidence supports a reasonable concern of hardship. Pet.17-20.¹

¹ SRFR (at 16) claims petitioners sometimes “characterize the split” as a disagreement over whether good-faith beliefs of hardship are sufficient. But the question presented (at I), the petition throughout (at

SRFR (at 17-18) claims courts have not adopted a reasonable-concern-of-hardship test. SRFR says (at 17) that the Ninth Circuit “required and found *actual* substantial costs.” But those are SRFR’s words, not the Ninth Circuit’s. In truth, the Ninth Circuit stated a rule of “reasonable concern[s]” and rested its analysis on the risks of costs, rather than costs that impose an actual undue hardship. *See infra* pp. 6-9.

The First Circuit similarly asks whether the employer “reasonably relied” on the evidence and whether it “acted reasonably.” *Rodrique v. Hearst Commc’ns, Inc.*, 126 F.4th 85, 91-92 (2025). The Sixth Circuit “permit[s]” employers “to draw conclusions based on evidence and information that was available at the time,” *Henry v. S. Ohio Med. Ctr.*, 155 F.4th 620, 632 (2025) (citation omitted), and asks only whether the employer “reasonably concluded” hardship would result, *Savel v. MetroHealth Sys.*, 2025 WL 1826674, at *2 (6th Cir. July 2, 2025). And the decision below held summary judgment was proper because the employer’s decision was based on “reasonable concern[s].” Pet.App.20a. District courts in those circuits read the decisions the same way. *See Curtin v. Cambridge Health All.*, 2026 WL 1459788, at *7 (D. Mass. Apr. 10, 2026) (“what matters ... is whether [the employer] reasonably relied” on the evidence before it); *Munroe v. Bos. Med. Ctr.*, 790 F. Supp. 3d 52, 60 (D. Mass. 2025) (“[t]he issue is the reasonableness of the employer’s decision”); *Abbawi v. Henry Ford Health Sys.*, 2025 WL 3146670, at *5 (E.D. Mich. Oct. 10, 2025) (same); *infra* pp. 8-9.

SRFR (at 17) admits that “[t]he First Circuit has applied a narrow objective reasonableness standard,” and

4, 12, 13, 14, 15, 16, 17, 18, 20), and scores of amici, *see, e.g.*, Jewish Coal. for Religious Liberty Br. 21, identify the competing rules as actual hardship and reasonable-concern-of-hardship.

attempts to justify the lax standard because it is supposedly “limited” to cases about “disease transmission.” But precedents are not trapped in the context in which they arose: In the First Circuit, an employer’s reasonable actions can atone for the lack of actual hardship. As for the Sixth Circuit, SRFR (at 17) claims that the presence of “undisputed increased risk[s]” amounts to actual hardship. But risks and hardships are not the same thing. An Evangelical Christian who declines Sunday shifts will undoubtedly increase the risk that his employer will have to pay overtime for other employees to cover those shifts. *See Groff v. DeJoy*, 600 U.S. 447, 454-55 (2023). But the bare presence of some risk does not automatically create “a hardship [that] would be substantial in the context of [the] employer’s business.” *Id.* at 471.

SRFR (at 20) argues the Third Circuit’s decision in *Bushra v. Main Line Health, Inc.*, 2025 WL 1078135 (3d Cir. Apr. 10, 2025), “reached the same result” as the decision below. But *Bushra* squarely conflicts with the Ninth Circuit’s approach: It held that the employer’s evidence of medical risk was so “substantial” it constituted actual hardship, and while contrary “comparator evidence” could have created a dispute of fact, the employee “presented no[ne].” *Id.* at *2 & n.15. In contrast, the Ninth Circuit focused only on “reasonableness,” so it held courts categorically “cannot” consider comparator evidence like petitioners’ evidence that neighboring fire districts granted accommodations without issue. Pet.App.23a. The conflict is stark.

SRFR (at 18-19) faults petitioners’ reliance on two unpublished Sixth Circuit cases, but those cases illustrate the Sixth Circuit’s law and are both cited in the published case on which petitioners rely. *See Henry*, 155 F.4th at 632-33. And while SRFR (at 20) notes that the opinion

below “favorably” cited the Third Circuit’s conflicting decision in *Smith*, SRFR elides the fact that the panel below cited *Smith* with a *cf.* signal, distinguished that case, and applied a different rule. Pet.App.25a. Similarly, the Seventh Circuit’s “favorabl[e]” cite of *Rodrique* addressed an unrelated point about emotional harms. See *Kluge v. Brownsburg Cmty. Sch. Corp.*, 150 F.4th 792, 807-08 (2025). Finally, SRFR (at 21) argues the reasonable-concern-of-hardship rule is “consistent with EEOC guidance,” but the cited guidance says nothing about whether reasonable concerns are enough. To the contrary, the EEOC requires showing “*actual*” hardship. Pet.16-17.

II. The Question Presented Is Important And Cleanly Presented

SRFR does not dispute the importance of setting the right standard for Title VII’s undue hardship defense. SRFR (at 3, 11, 23) merely argues that the question presented is limited to the “particular context” of medical risks in a “once-in-a-century pandemic.” But nothing in the decision below cabined the reasonable-concern-of-hardship rule to medical risks or pandemics. Again, the Ninth Circuit applied the rule in part because of “operational burdens” (like potential staffing shortages) and “financial burdens” (like a potential contract cancellation). Pet.App.14a. Those and similar “burdens” can arise in nearly every Title VII case.

Amici illustrate the breadth of the Ninth Circuit’s rule. A prison employer might reasonably fear hardship from safety risks associated with Muslim employees’ head coverings, despite the warden’s acknowledgment such risks were minimal. See, e.g., *Islam & Religious Freedom Action Br.* 19. An employer might reasonably predict hardship from the cost of accommodating a Sabbath-observer’s shift swap, despite evidence that other

employees’ swaps caused no disruptions. *See, e.g.*, Jewish Coal. for Religious Liberty Br. 20. In each case, there may be enough evidence to support an employer’s reasonable concern, but also enough conflicting evidence on whether there would be actual hardship. Thus, for all manner of accommodation requests, the question presented will control the outcome, regardless whether the dispute involves “medical risks.”

That leaves SRFR’s vehicle arguments.

1. SRFR (at 10-15) contends the Ninth Circuit did not apply the reasonable-concern-of-hardship rule. That account of the decision below is belied by what the Ninth Circuit said, what it did, and how other courts have read the decision. Indeed, twenty-two States have read the Ninth Circuit’s opinion and understood that it (a) employed a “reasonable-concern-of-hardship test” that (b) splits with “other circuits.” States Br. 15, 20-21. So have prominent religious organizations and nonprofits. *E.g.*, Nat’l Cath. Bioethics Ctr. Br. 12-13; Islam & Religious Freedom Action Team Br. 15-18. And so have employment discrimination experts. *E.g.*, Former EEOC Gen. Couns. Br. 10.

a. SRFR (at 11) quotes the court’s statement that it “general[ly] ... consider[s] only actual hardships.” But the court immediately qualified that statement by explaining that hardship “may include an evaluation of the risk of hardship.” Pet.App.21a; *see also* States Br. 19. Thus, the panel affirmed summary judgment only by relying on SRFR’s “evaluation of the risk,” crediting the “reasonableness” of SRFR’s decision; on SRFR’s “worrie[s]” and “reasonable concern[s]”; on whether SRFR’s decision rested on “justified ... consider[ations]” and “thorough[] expla[nations]”; and on the belief that SRFR “acted in the best interests of the community.” Pet.App.20a, 21a, 22a, 23a, 24a. Thus, despite SRFR’s

contention (at 12-13), petitioners rely not just on a “single reference” to reasonable concerns. The panel’s choice of synonyms does not negate the rule it ultimately applied. On its own terms, the Ninth Circuit applied a reasonable-concern-of-hardship rule.

b. The Ninth Circuit’s dismissal of petitioners’ competing evidence confirms its application of a reasonable-concern-of-hardship rule. SRFR (at 13) insists the Ninth Circuit did not “ignore,” and was not “precluded” from considering, petitioners’ evidence. But that is precisely what the Ninth Circuit did; just examine SRFR’s explanations.

First, SRFR (at 14) says the Ninth Circuit rejected petitioners’ testimony that testing and PPE constituted adequate accommodations because it was unsupported by “medical evidence” and “impossible to prove at trial.” But if the court were truly focused on actual hardships (as SRFR claims), then petitioners’ testimony that *no* outbreaks or interruptions occurred while they were testing and masking is highly relevant, regardless of whether it came from medical journals or personal knowledge of SRFR’s operations.

Second, SRFR (at 14) suggests the Ninth Circuit dismissed petitioners’ comparator evidence because it was “not probative.” But the Ninth Circuit never even considered the probative value of the evidence to assess actual hardship; it categorically held that courts “cannot” consider comparator evidence. Pet.App.23a. Absent that categorical holding, evidence that *identical* employers in the *same* county successfully provided the *same* accommodations during the *same* timeframe would obviously have been probative. *Cf. Holt v. Hobbs*, 574 U.S. 352, 368-69 (2015) (“[T]he policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.” (citation omitted)).

Third, SRFR (at 14) claims the Ninth Circuit dismissed petitioners’ evidence on the DOC contract and risk of COVID-related lawsuits because it was merely “insufficient to create a dispute of fact.”² Not so. The Ninth Circuit *recognized* petitioners’ rebuttal evidence—that DOC “never objected” to the presence of unvaccinated firefighters and SRFR’s insurer “never faced” such a lawsuit—but dismissed it anyway because SRFR had a “reasonable concern” of losing the contract and a “justified” fear of liability. Pet.App.20a-22a.

Fourth, SRFR (at 15) argues that the opinion’s references to “hindsight” only ruled out evidence postdating SRFR’s decision to refuse an accommodation, not to discount petitioners’ evidence on actual hardship. But all of petitioners’ evidence predates that decision—the Ninth Circuit just refused to consider it.

As for the rest of petitioners’ dismissed evidence, SRFR does not even attempt to reconcile the court’s approach with an actual-hardship rule. *E.g.*, Pet.11 (SRFR’s side-by-side work with unvaccinated firefighters from nearby districts; SRFR’s own prior and subsequent ability to accommodate).

c. SRFR’s refusal to acknowledge *Petersen*’s reasonable-concern-of-hardship rule cannot be squared with the fact that *Petersen*’s rule is already being applied in the

² The mere possibility of losing a \$400,000 contract is not an undue hardship to an entity like SRFR with \$67 million in annual revenue—a point SRFR (at 15 n.1) wrongly contends petitioners never made. While petitioners may not have cited SRFR’s precise budget, they certainly argued that SRFR’s theorized costs would not “substantially impact[] their business,” D.Ct.Dkt.27 at 14, and that the court did not “take[] into account” SRFR’s “size and operating cost,” C.A.Dkt.19 at 40 (citation omitted).

Ninth Circuit to summarily dismiss religious accommodation claims. In *Carlson v. City of Redmond*, employees seeking a religious accommodation from a vaccine mandate lost on summary judgment because, under *Petersen*, they failed to “establish that the City acted *unreasonably*.” 2025 WL 3496535, at *11 (W.D. Wash. Dec. 5, 2025) (emphasis added). And in *Hunter v. Peacehealth*, the court rejected a similar claim at summary judgment because, under *Petersen* and its progeny, the inquiry turns on “whether the employer acted *reasonably*.” 2026 WL 1509007, at *7 (D. Or. May 31, 2026) (cleaned up) (emphasis added). Absent this Court’s intervention now, employers will continue to cite the decision below to obtain summary dismissal of genuine and meritorious Title VII religious discrimination cases.

2. SRFR’s second vehicle argument (at 21-23)—that petitioners rely on inadmissible evidence—is similarly unavailing. Neither decision below accepted SRFR’s evidentiary arguments, and the Ninth Circuit “decided this case on the understanding that” petitioners’ evidence was properly before it. *Cf. Ellingburg v. United States*, 607 U.S. 163, 166 n.2 (2026). Thus, this Court can leave any evidentiary disputes for the lower courts to resolve on remand, under a corrected legal standard.

SRFR’s arguments are also mistaken. Evidence that COVID-related lawsuit liability was an insubstantial risk was not “hearsay”; it came from emails written by SRFR’s *own fire chief*. Pet.9. Evidence of other fire districts’ accommodations was not “secondhand”; it came from petitioners who worked in other districts, D.Ct.Dkt.34 at 5-6, other districts’ employees, D.Ct.Dkt.28 at 230, and another district’s commissioner who granted the accommodations, D.Ct.Dkt.44 at 4. And evidence that no outbreaks or disruptions occurred under SRFR’s pre-mandate protocols required no “expertise” to

observe; petitioners had personal knowledge of their workplace. Pet.9-10.

III. The Decision Below Is Wrong

The decision below is incorrect. Title VII provides a defense only to employers who are actually “unable” to accommodate without undue hardship. 42 U.S.C. § 2000e(j). Nothing in the statutory text turns on the “reasonableness” of the employer’s decision. *Contra* Pet.App.23a. The Ninth Circuit’s policy rationales—that SRFR’s decision was “justified,” “reasonable,” or made “in the best interests of the community,” Pet.App.20a-23a—cannot overcome the statutory text.

1. SRFR’s defense (at 28-30) of a reasonable-concern-of-hardship rule is meritless. SRFR argues (at 28-29) that the Ninth Circuit would have been “well within its authority” to “[i]mport” an “objective reasonableness framework” from the ADA’s “direct threat” provision, which allows a public accommodation to refuse service to an individual “where such individual poses a direct threat to the health or safety of others.” 42 U.S.C. § 12182(b)(3). As SRFR (at 29) explains, a showing of “cognizable harm” suffices within that framework. But a showing of mere “cognizable harm” is *exactly* what this Court rejected when it held an employer cannot “escape [Title VII] liability simply by showing that an accommodation would impose some sort of additional costs.” *Groff*, 600 U.S. at 469.

Regardless, SRFR is wrong to suggest (at 28-30) that this Court adopted a “reasonable concerns” interpretation of the “direct threat” provision in *Bragdon v. Abbott*, 524 U.S. 624 (1998). To the contrary, *Bragdon* flatly rejected such a reading and held that a “belief that a significant risk existed, even if maintained in good faith,

would not relieve [a defendant] from liability.” *Id.* at 649 (emphasis added).

The better analogy is to the ADA’s undue hardship provision. Pet.24. This Court has already rejected a reasonable-concern-of-hardship rule in that context, and it should do so again here. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 372 (2001).

2. Unable to defend the Ninth Circuit’s actual rule, SRFR (at 24-28) reprises its insistence that the decision below never adopted a reasonable-concern-of-hardship rule and instead applied ordinary summary judgment principles. That is wrong. *Supra* pp. 6-9. But if true, then the error below is even plainer because the record brims with disputed issues of fact that plainly precluded summary judgment for SRFR. For instance, SRFR’s asserted risk of losing the DOC contract contradicts petitioners’ evidence that DOC did not enforce its no-accommodation policy.³ And SRFR’s asserted risk of liability from COVID-related lawsuits contradicts petitioners’ evidence—from SRFR’s own fire chief—that such lawsuits are “rare and difficult ... to win.” Pet.9. Remarkably, SRFR (at 25) describes its evidence as simultaneously “undisputed” and “contradicted”—an oxymoron worthy of summary reversal. *Cf. Lombardo v. City of St. Louis*, 594 U.S. 464, 468 (2021). And while SRFR (at 25-27) attempts to erase disputes of fact by rehashing its evidentiary vehicle arguments, those fail for the reasons discussed above. *See supra* pp. 9-10.

³ SRFR’s own “determination” about the odds of cancellation says nothing about the likelihood that DOC would have canceled its contract, *contra* BIO 27 n.4, and even less about whether losing a \$400,000 contract would pose actual hardship.

Under ordinary summary judgment principles, a jury should have weighed the competing evidence, made credibility determinations, and rendered a verdict. None of that was permitted to take place here. If the Ninth Circuit applied an actual hardship rule as SFRF (at 10-15) contends, then petitioners are entitled to their day in court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 17, 2026