

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*

**BRIEF OF *AMICI CURIAE* FORMER EEOC
GENERAL COUNSEL AND RELIGIOUS
NONDISCRIMINATION EXPERT IN
SUPPORT OF PETITIONERS**

RACHEL N. MORRISON
Counsel of Record
ETHICS & PUBLIC POLICY
CENTER
1730 M Street, N.W.
Suite 910
Washington, D.C. 20036
(202) 682-1200
rmorrison@eppc.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT..... 3

 I. Title VII prohibits religious discrimination
 and requires reasonable accommodations
 absent actual undue hardship. 3

 II. The reasonable-concern-of-hardship rule
 departs from Title VII’s legal standards for
 undue hardship..... 9

CONCLUSION 13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ansonia Bd. of Educ. v. Philbrook</i> , 479 U.S. 60 (1986)	5, 6, 9
<i>EEOC v. Abercrombie & Fitch Stores, Inc.</i> , 575 U.S. 768 (2015)	4, 5
<i>Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal</i> , 546 U.S. 418 (2006)	12
<i>Groff v. DeJoy</i> , 600 U.S. 447 (2023)	<i>passim</i>
<i>Holt v. Hobbs</i> , 574 U.S. 352 (2015)	11
<i>Petersen v. Snohomish Reg'l Fire & Rescue</i> , 150 F.4th 1211 (9th Cir. 2025)	2, 10, 11
<i>Thomas v. Review Bd. of Ind. Emp't Sec. Div.</i> , 450 U.S. 707 (1981)	4
<i>Trans World Airlines, Inc. v. Hardison</i> , 432 U.S. 63 (1977)	6
<i>United States v. Seeger</i> , 380 U.S. 163 (1965)	4, 5
<i>Welsh v. United States</i> , 398 U.S. 333 (1970)	3, 4

Williams v. Legacy Health,
No. 24-5977, 2026 WL 1239760
(9th Cir. May 6, 2026) 2-3, 10, 11

Young v. United Parcel Serv., Inc.,
575 U.S. 206 (2015) 11

Statutes

42 U.S.C. 2000e *passim*

42 U.S.C. 2000e-2 3, 4

Other Authorities

118 Cong. Rec. 705 (1972) 12

29 C.F.R. 1605.1 4

29 C.F.R. 1605.2 2, 5, 6, 7

EEOC, *Compliance Manual: Religious
Discrimination* (2021)
(last visited May 26, 2026) *passim*

EEOC, *What You Should Know About
COVID-19 and the ADA, the Rehabilitation
Act, and Other EEO Laws*
(last visited May 26, 2026) 8, 9

INTEREST OF *AMICI CURIAE*¹

Amici Sharon Fast Gustafson, former General Counsel for the Equal Employment Opportunity Commission (EEOC), and Rachel N. Morrison, former attorney advisor to General Counsel Gustafson, are experts in religion-related employment discrimination. During her time at the EEOC, Gustafson established a Religious Discrimination Work Group to promote religious nondiscrimination and accommodation. Ms. Gustafson has worked to promote religious nondiscrimination and accommodation, as well as litigated these cases under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* Morrison was a member of the Religious Discrimination Work Group and has written and spoken as an expert on employees' religious rights in the workplace.

Amici offer this brief to explain Title VII's religious discrimination, accommodation, and undue hardship standards and show how the reasonable-concern-of-hardship rule departs from Title VII's legal standards.

SUMMARY OF ARGUMENT

This case involves whether respondent, Snohomish Regional Fire & Rescue (SRFR), lawfully denied petitioners, eight firefighters, religious accommodations to its COVID-19 vaccination policy. SRFR claimed the religious accommodations would

¹ No counsel for a party authored this brief in whole or in part, and no person other than *Amici* or their counsel made a monetary contribution to fund the brief's preparation or submission. Counsel for all parties received timely notice of the intent to file this brief.

pose an undue hardship on the fire district. The firefighters disagreed. Instead of allowing a jury to decide this factual dispute, the Ninth Circuit affirmed summary judgment for SRRF, crediting the fire district's claimed reasonable concerns of undue hardship.

But this is contrary to Title VII. Under Title VII, when a workplace policy violates an employee's sincerely held religious belief, an employer must reasonably accommodate the employee's religious observance or practice if it can do so without undue hardship to the employer's business. The Equal Employment Opportunity Commission (EEOC)—the federal agency tasked with enforcing Title VII—has set out what is required of a religious accommodation, explaining that an employer has the “burden of persuasion” to “demonstrate[]” that an accommodation would “in fact” create an “actual” undue hardship. EEOC, *Compliance Manual: Religious Discrimination* §§ 12-IV-A-2 and 12-IV-B (2021), <https://perma.cc/53SA-VNVL>; EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. 1605.2(b)(1) and (c)(1). As this Court clarified in *Groff v. DeJoy*, undue hardship means “substantial increased costs in relation to the conduct of its particular business.” 600 U.S. 447, 470 (2023).

Nevertheless, post-*Groff* and contrary to at least three circuit courts, the Ninth Circuit along with two other circuit courts, have adopted a reasonable-concern-of-hardship rule. Pet. Br. 13-20. And the Ninth Circuit's decision below in *Petersen v. Snohomish Regional Fire & Rescue*, 150 F.4th 1211 (9th Cir. 2025), is already being relied on to resolve other undue hardship disputes on summary judgment. See *Williams v. Legacy Health*, No. 24-

5977, 2026 WL 1239760 (9th Cir. May 6, 2026). Such a rule undermines Title VII’s religious accommodation protections for employees and this Court’s clarification of the undue hardship standard in *Groff*.

This Court should grant the petition to correct this harm and restore Title VII’s religious accommodation protections to the firefighters and other employees.

ARGUMENT

I. Title VII prohibits religious discrimination and requires reasonable accommodations absent actual undue hardship.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, prohibits discrimination in the workplace on the basis of religion. 42 U.S.C. 2000e-2(a).

Religious. Title VII defines “religion” broadly to include “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. 2000e(j). Beliefs are considered “religious” if they are “sincerely held” and, “in the individual’s ‘own scheme of things, religious.’” Equal Opportunity Employment Commission (EEOC), *Compliance Manual: Religious Discrimination* § 12 (2021), <https://perma.cc/53SA-VNVL> (EEOC Religion Guidance)² (quoting *Welsh v. United States*, 398 U.S. 333, 339 (1970), and *United*

² EEOC’s religion guidance was passed by the Commission after notice and public comment. While it is not legally binding on employers, it states the EEOC’s positions and contains extensive footnotes to case law in support. In *Groff v. DeJoy*, this Court recognized that “a good deal of the EEOC’s guidance in this area is sensible.” 600 U.S. 447, 471 (2023).

States v. Seeger, 380 U.S. 163, 185 (1965)); see also EEOC Guidelines on Discrimination Because of Religion (EEOC Religion Guidelines), 29 C.F.R. 1605.1 (EEOC has “consistently applied” the *Welsh* and *Seeger* standard to Title VII). Title VII protects an individual’s religious beliefs—including religious beliefs about vaccination—regardless of whether those beliefs are common or traditional, whether they seem logical or reasonable to others, whether they are recognized by an organized religion, and whether only a “few—or no—other people adhere to [them].” EEOC Religion Guidance § 12-I.A.1 (citing *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981); EEOC Religion Guidelines, 29 C.F.R. 1605.1; *Welsh*, 398 U.S. at 343); see also EEOC Religion Guidance § 12-I.A.1 (explaining religious practices can include “refraining from certain activities”).

Prohibited discrimination. Title VII forbids employers from discriminating because of an individual’s religion in hiring, promotion, discharge, “compensation, terms, conditions, or privileges of employment.” 42 U.S.C. 2000e-2(a)(1). Further, employers must not “limit, segregate, or classify” employees based on religion “in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee.” 42 U.S.C. 2000e-2(a)(2). Employers are prohibited from discriminating intentionally (disparate treatment) or through policies that have a disparate impact on religious employees. See *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771 (2015).

Religious accommodation requirement. In addition to those proscriptions, employers are

affirmatively required to “reasonably accommodate” an employee’s religious beliefs, observances, and practices “unless the employer demonstrates” that the accommodation would pose an “undue hardship on the conduct of the employer’s business.” 42 U.S.C. 2000e(j). Absent undue hardship, an employer’s failure to reasonably accommodate religious belief constitutes unlawful discrimination. In *Abercrombie*, this Court held that “Title VII requires otherwise-neutral policies to give way to the need for an accommodation.” 575 U.S. at 775. The Court further explained, “Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment,” creating an affirmative obligation on employers. *Ibid.*

An employee’s “sincerely held” religious objection to a workplace policy or job duty qualifies for a religious accommodation. EEOC Religion Guidance § 12-I.A.2 (citing *Seeger*, 380 U.S. at 185); *id.* § 12-IV; EEOC Religion Guidelines, 29 C.F.R. 1605.2.

An employer is not required to provide an unreasonable accommodation and is not necessarily required to provide the employee’s preferred accommodation. EEOC Religion Guidance § 12-IV.A.3 (citing *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986)). For an accommodation to be reasonable, it “must not discriminate against the employee or unnecessarily disadvantage the employee’s terms, conditions, or privileges of employment.” *Id.* (citing *Ansonia*, 479 U.S. at 70). An employer’s proposed religious accommodation is not reasonable if the employer provides a more favorable accommodation to other employees for non-religious reasons, including

medical reasons. *Id.* (citing *Ansonia*, 479 U.S. at 70-71).

Likewise, a religious accommodation is not reasonable “if it requires the employee to accept a reduction in pay rate or some other loss of a benefit or privilege of employment” and there is another accommodation available that would not require such a harm. EEOC Religion Guidance § 12-IV.A.3. When there is more than one reasonable accommodation that does not pose an undue hardship, “the employer * * * must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.” EEOC Religion Guidelines, 29 C.F.R. 1605.2(c)(2)(ii).

Employees who need religious accommodations should generally be accommodated in their current positions unless there is no accommodation in that position that does not pose an undue hardship. EEOC Religion Guidance § 12-IV.C.3 (citing EEOC Religion Guidelines, 29 C.F.R. 1605.2(d)(iii)). Only when no such accommodation is possible should the employer consider reassignment or a lateral transfer as an accommodation. *Ibid.*

Undue hardship defense. This Court recently clarified “that ‘undue hardship’ is shown when a burden is substantial in the overall context of an employer’s business.” *Groff v. DeJoy*, 600 U.S. 447, 470 (2023) (rejecting reliance on the “more than a de minimis cost” line in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), because “showing ‘more than a de minimis cost’ does not suffice to establish undue hardship under Title VII”).³ “Hardship” is

³ EEOC’s Religion Guidance was issued prior to the Supreme

“more severe than a mere burden” and, at a minimum, “something hard to bear.” *Ibid.* And “undue hardship” is hardship that rises to an “‘excessive’ or ‘unjustifiable’ level.” *Ibid.* To establish undue hardship, an “employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business,” “tak[ing] into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer.” *Id.* at 452 (cleaned up).

Because undue hardship is an affirmative defense, an employer carries “the burden of persuasion” to “demonstrate[]” that an accommodation “would result in undue hardship.” EEOC Religion Guidance § 12-IV.B; EEOC Religion Guidelines, 29 C.F.R. 1605.2(b)(1). Employers must show that the accommodation “would *actually* have posed an undue hardship.” EEOC Religion Guidance § 12-IV-A-2 (emphasis added). Put another way, an employer is justified in refusing a religious accommodation “*only when*” the employer “can demonstrate that an undue hardship would *in fact* result from each available alternative method of accommodation.” EEOC Religion Guidelines, 29 C.F.R. 1605.2(c)(1) (emphasis added).

To demonstrate undue hardship, employers must rely on “objective information,” not “speculative or hypothetical hardship,” including the assumption that other employees might seek accommodations. EEOC,

Court’s opinion in *Groff*. See EEOC Religion Guidance, *Notice Concerning the Undue Hardship Standard in Title VII Religious Accommodation Cases* (acknowledging that “*Groff* supersedes any contrary information” in its guidance).

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws §§ L.3 and L.4 (last updated May 15, 2023), <https://perma.cc/CQ9C-JPNY> (EEOC COVID-19 Guidance). Whether a reasonable accommodation exists that does not pose an undue hardship is a fact-specific inquiry appropriate for a case-by-case determination. EEOC Religion Guidance § 12-IV.B.1.

In the COVID-19 context, the EEOC identified considerations that may be relevant, such as whether the employee “works outdoors or indoors, works in a solitary or group work setting, or has close contact with other employees or members of the public (especially medically vulnerable individuals).” EEOC COVID-19 Guidance § L.3. But even pre-*Groff*, the EEOC did not indicate that such considerations are dispositive, because undue hardship must be assessed “by considering the particular facts of each situation.” *Ibid.*; cf. *Groff*, 600 U.S. at 468 (recognizing undue hardship is a “fact-specific inquiry”).

Reasonable accommodation process. To receive a religious accommodation, an employee should notify the employer of the conflict between a workplace requirement, policy, or practice and the employee’s sincerely held religious belief, observance, or practice. EEOC COVID-19 Guidance § L.1. An employer and an employee should engage in a “flexible, interactive process” to identify workplace accommodations that do not impose an undue hardship on the employer. *Id.* § K.6. An employer “should thoroughly consider all possible reasonable accommodations,” which in the COVID-19 vaccination context could include periodic testing, masking, social distancing, modified shifts, telework, and—as a “last

resort”—reassignment. *Id.* §§ K.2, K.6, K.12 and L.3. As this Court explained in *Groff*, “Title VII requires that an employer reasonably accommodate an employee’s practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.” 600 U.S. at 473.

Religious accommodation denials as disparate treatment. Denial of religious accommodation requests can also give rise to other disparate treatment, harassment, or retaliation claims. See EEOC Religion Guidance §§ 12-II.A.3 Ex. 13 & n.137 and 12-IV.C.4.a Ex. 48. Failure to treat like accommodation requests alike gives rise to an inference of pretextual religious discrimination. Cf. *Ansonia*, 479 U.S. at 71 (“unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious ones * * * [because] [s]uch an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness”).

II. The reasonable-concern-of-hardship rule departs from Title VII’s legal standards for undue hardship.

Petitioners, eight firefighters, requested religious accommodations from their employer, respondent Snohomish Regional Fire & Rescue (SRFR), but SRFR denied their requests, claiming that the accommodations would create undue hardship. Pet. App. 7a. The firefighters disagreed. Pet. App. 8a. Instead of allowing a jury to resolve this factual dispute, the Ninth Circuit erred by affirming summary judgment for SRFR. Pet. App. 26a.

Consistent with the First and Sixth Circuits but in contrast to at least the Third, Seventh, and Eighth Circuits, Pet. Br. 13-20, the Ninth Circuit agreed that SRFR’s “reasonable concern” that the religious accommodations would create undue hardship warranted summary judgment for SRFR. Pet. App. 20a. As another Ninth Circuit panel read *Petersen*, “A ‘risk of undue hardship’ will suffice—provided it is ‘realistic’ and ‘not “merely conceivable or hypothetical.”’” *Williams v. Legacy Health*, No. 24-5977, 2026 WL 1239760 (9th Cir. May 6, 2026) (quoting *Petersen v. Snohomish Regional Fire & Rescue*, 150 F.4th 1211, 1222 (9th Cir. 2025)) (relying on *Petersen* to grant summary judgment for employer in religious accommodation undue hardship dispute).

The reasonable-concern-of-hardship rule contradicts the plain text of Title VII. Title VII requires employers provide reasonable accommodations for their employees’ religious observances and practices “unless the employer demonstrates” that the accommodations would create “undue hardship.” 42 U.S.C. 2000e(j). Title VII does not permit denials of religious accommodations based merely on a concern of undue hardship or a fear of undue hardship—even if reasonable or in good faith. Rather, Title VII requires that an employer demonstrate *actual* undue hardship, not speculative or hypothetical hardship. Under *Groff*, an employer must demonstrate that an accommodation will “result in substantial increased costs.” *Groff*, 600 U.S. at 470.

Undermining this Court’s direction in *Groff*, the Ninth Circuit erred by crediting a claimed reasonable concern or fear of undue hardship instead of *actual* undue hardship.

According to the Ninth Circuit, the fact that other fire departments in the area successfully accommodated their employees was dismissed as impermissible “hindsight’ reasoning.” Pet. App. 23a; see *Williams*, 2026 WL 1239760, at *3-4 (“[W]e do not ‘judge [a given employer] by the responses taken by other [employers].’ * * * [W]e rejected that form of ‘hindsight’ reasoning.” (quoting *Petersen*, 150 F.4th at 1222) (cleaned up). While not dispositive, the fact that neighboring fire departments were able to operate differently suggests that there was not an actual undue hardship for SRFR to grant the firefighters’ religious accommodations. Cf. *Holt v. Hobbs*, 574 U.S. 352, 369 (2015) (“We do not suggest that [the Religious Land Use and Institutionalized Persons Act] requires a prison to grant a particular religious exemption as soon as a few other jurisdictions do so. But when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course, and the Department failed to make that showing here.”).

The firefighters also pointed out SRFR was able to operate fine for months both prior to and after its vaccine mandate. Pet. App. 22a. Indeed, SRFR allowed its firefighters to fight fires alongside unvaccinated firefighters at other departments, including in one instance Petitioner David Petersen who was hired by another department while on leave from SRFR. *Ibid.* Prior, current, and sequent policies and practice are relevant to whether SRFR could actually accommodate the firefighters without undue hardship. Certainly, such factual evidence is proper for a jury to weigh and should not be disregarded by a judge on summary judgment. Cf. *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 231-232 (2015)

(vacating summary judgment for employer when lower court failed to consider “the combined effects” of the employer’s accommodation policies for nonpregnant workers and “the strength of [the employers’] justifications for each when combined”).

The Ninth Circuit also erred by crediting the fact that forty-six employees “initially” requested religious accommodations, even though “only eleven” ended up needing an accommodation. Pet. App. 19a. Undue hardship that may arise by granting *additional* religious accommodations does not establish undue hardship for the present religious accommodation. Cf. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (Religious Freedom Restoration Act) (“The Government’s argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I’ll have to make one for everybody, so no exceptions.”).

In contrast to Title VII’s dictates, the Ninth Circuit justified its reasonable-concern-of-hardship rule based on policy considerations, such as the unfairness of “judg[ing] SRFR by the responses taken by other fire departments,” or of “judg[ing] SRFR with the clarity of hindsight,” explaining that SRFR had to “make decisions quickly and with limited information.” Pet. App. 23a. But there is no “quick decision” exception to Title VII’s religious accommodation requirement. Congress accounted for policy considerations in Title VII only by requiring that religious accommodations be reasonable and that they do not pose an undue hardship on the employer. See 42 U.S.C. 2000e(j); cf. 118 Cong. Rec. 705 (1972) (explaining the addition of religious accommodation protections to Title VII was “to assure that freedom from religious discrimination

in the employment of workers is for all time guaranteed by law”).

This Court should grant the petition to correct the Ninth Circuit’s harmful errors and restore Title VII’s religious accommodation protections to employees. Without guidance, lower courts will continue to undermine the balance Congress struck in Title VII and this Court’s direction in *Groff*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

RACHEL N. MORRISON
Counsel of Record
ETHICS & PUBLIC POLICY CENTER
1730 M Street, N.W.
Suite 910
Washington, D.C. 20036
(202) 682-1200
rmorrison@eppc.org

Counsel for Amici Curiae

MAY 26, 2026