

Title VII — Religious Accommodations —
Groff v. DeJoy

Religious practice and disability are two of the only three statuses for which federal law protects the right to workplace accommodations.¹ For both, the law requires that employers provide reasonable accommodations to qualifying workers unless such accommodation would impose an “undue hardship” on their businesses.² Despite containing near-identical statutory models for accommodations, Title VII of the Civil Rights Act of 1964³ and the Americans with Disabilities Act of 1990⁴ (ADA) have long used different standards for “undue hardship”: for decades, courts have applied a “more than a de minimis cost” standard to Title VII,⁵ while using a more stringent “significant difficulty or expense” standard for the ADA.⁶ Last Term, in *Groff v. DeJoy*,⁷ the Supreme Court held that “more than a de minimis cost” was the incorrect standard for proving Title VII undue hardship;⁸ instead, religious accommodations must pose “substantial increased costs” to an employer to constitute undue hardship.⁹ The Court’s choice to overrule the de minimis standard was widely expected. What was surprising was that it did so without ever addressing how the Title VII and ADA standards relate, given the statutory similarities, and given the Court’s own context-agnostic reasoning for rereading undue hardship. In declining to speak on the Title VII–ADA undue hardship relationship, the Court sidestepped a debate many expected it would enter in *Groff*, leaving the details for future litigants and lower courts to resolve.

In 2012, Gerald Groff began working for the United States Postal Service (USPS) as a Rural Carrier Associate.¹⁰ As an evangelical Christian, he refrained from working on Sundays, believing that the day should be set aside for rest and worship.¹¹ At first, Groff’s employment

¹ The third being pregnancy, after the Pregnant Workers Fairness Act (PWFA), 42 U.S.C. §§ 2000gg to 2000gg-6, took effect in June of 2023. See Alisha Haridasani Gupta, *A New Law Aims to Stop Pregnancy Discrimination at Work*, N.Y. TIMES (June 27, 2023), <https://www.nytimes.com/2023/06/27/well/live/pregnancy-workers-fairness-act-discrimination.html> [https://perma.cc/RUD5-8FGJ]. Given the recency of the PWFA, it is not discussed in this comment. Reasonable accommodations emerge elsewhere in the federal law. See, e.g., 42 U.S.C. § 3604(f)(3)(B) (providing reasonable accommodations under the Fair Housing Act). However, the ADA, PWFA, and Title VII are the only three federal statutes that operate with the same model of reasonable accommodations absent undue hardship.

² 42 U.S.C. §§ 2000e(j), 12112(b)(5)(A).

³ 42 U.S.C. §§ 2000e to 2000e-17.

⁴ 42 U.S.C. §§ 12101–12213; 47 U.S.C. § 225.

⁵ *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977) (italics omitted).

⁶ 42 U.S.C. § 12111(10)(A).

⁷ 143 S. Ct. 2279 (2023).

⁸ *Id.* at 2294 (italics omitted).

⁹ *Id.* at 2295 (citing *Hardison*, 432 U.S. at 83 n.14).

¹⁰ *Id.* at 2286.

¹¹ *Id.*

and religious practice did not conflict because he generally had no Sunday shifts.¹² But then, in 2013, USPS began to schedule Sunday deliveries for Amazon from select offices.¹³ A few years after, USPS signed a memorandum of understanding with the letter carriers' union that required workers like Groff to often deliver packages on Sundays.¹⁴

Groff initially sought accommodation by transferring to an office that did not deliver on Sundays.¹⁵ This worked until that office also began making Sunday deliveries.¹⁶ USPS offered him various accommodations — helping him find coverage for Sunday shifts, allowing him to come to work after Sunday service, and offering different days to observe the Sabbath — but never a full exemption from Sunday shifts.¹⁷ Groff missed roughly twenty-four Sundays of scheduled work over the next year.¹⁸

The shifts originally assigned to him were divvied up between the office's remaining employees, and Groff faced escalating punishment for his absences.¹⁹ Groff made another request to be transferred to a job with no Sunday work, which USPS denied because no such position existed.²⁰ After filing multiple internal complaints, Groff resigned from his position and filed suit in the Eastern District of Pennsylvania.²¹

His suit advanced two theories under Title VII.²² His first claim argued that USPS treated him differently than other employees on the basis of religion; his second argued that USPS failed to accommodate his religious practice.²³

The district court granted summary judgment to USPS on both claims.²⁴ On the first claim, the court found that Groff failed to provide any direct or circumstantial evidence of anti-Christian animus from USPS, and thus could neither directly nor indirectly prove disparate treatment.²⁵ As to the failure-to-accommodate claim, the court found that USPS had met Title VII's accommodation obligations by offering Groff shift swapping, even if it did not fully eliminate his work-religion conflict.²⁶ Even if USPS had not offered that, the court found that Groff's claim would still fail, because his requested accommodation

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Groff v. DeJoy*, 35 F.4th 162, 166 (3d Cir. 2022).

¹⁸ *Id.* at 173.

¹⁹ *Groff*, 143 S. Ct. at 2286–87.

²⁰ *Groff*, 35 F.4th at 166.

²¹ *Id.* at 167.

²² *Groff v. DeJoy*, No. 19-1879, 2021 WL 1264030, at *1 (E.D. Pa. Apr. 6, 2021).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at *7, *9.

²⁶ *Id.* at *10.

would have imposed an undue hardship on the employer.²⁷ The court found that granting a Sunday exemption would have violated the memorandum of understanding with the union and burdened Groff's coworkers.²⁸ Since this imposed "more than a de minimus [sic] cost" on USPS, it amounted to undue hardship.²⁹

The Third Circuit affirmed in a 2–1 vote.³⁰ On the reasonable accommodation question, the Third Circuit disagreed with the lower court, finding that shift swapping was not a reasonable accommodation for Groff because it did not eliminate his conflict between work and religious practice.³¹ However, it affirmed summary judgment on the basis that offering Groff a Sunday exemption would have impacted his coworkers, imposing "more than a de minimis cost" and thus an undue hardship on USPS.³² Accordingly, Title VII did not require such accommodation.³³ In dissent, Judge Hardiman argued that an impact on coworkers alone does not amount to undue hardship.³⁴ In his view, USPS could still prove undue hardship but had not done so by summary judgment.³⁵

The Supreme Court vacated and remanded.³⁶ Writing for a unanimous Court, Justice Alito found that showing "more than a de minimis cost" does not sufficiently demonstrate undue hardship under Title VII.³⁷

Justice Alito began by walking through the history of religious accommodations, which started as the Equal Employment Opportunity Commission's (EEOC) formulation of Title VII's religious discrimination provisions.³⁸ The EEOC was the first to conceive of undue hardship as a defense to accommodations; following a series of court opinions rejecting the duty to accommodate, Congress ratified the EEOC's interpretation in 1972, creating a statutory right to reasonable workplace accommodation for religious practice absent undue hardship.³⁹

Justice Alito then discussed *Trans World Airlines, Inc. v. Hardison*,⁴⁰ the seminal case that has undergirded interpretations of Title VII undue hardship for the past forty-six years.⁴¹ Although both parties in *Hardison*

²⁷ *Id.* at *11.

²⁸ *Id.*

²⁹ *Id.* (italics omitted) (citing *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977)).

³⁰ *Groff v. DeJoy*, 35 F.4th 162, 164–65 (3d Cir. 2022).

³¹ *Id.* at 173.

³² *Id.* at 175.

³³ *Id.* at 175–76.

³⁴ *Id.* at 176 (Hardiman, J., dissenting).

³⁵ *Id.*

³⁶ *Groff*, 143 S. Ct. at 2297.

³⁷ *Id.* at 2294 (italics omitted).

³⁸ *Id.* at 2287–88.

³⁹ *Id.* at 2288.

⁴⁰ 432 U.S. 63 (1977).

⁴¹ See *Groff*, 143 S. Ct. at 2286.

believed the case would turn on whether Title VII's new religious accommodation mandate violated the Establishment Clause, "constitutional concerns played no on-stage role in [*Hardison*]."⁴² Instead, *Hardison* focused on how Title VII did not require employers to override their seniority systems in the name of religious accommodations.⁴³ In addition to other descriptions of undue hardship, the *Hardison* Court made the following statement: "To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship."⁴⁴ This sentence went on to gain outsize importance in religious accommodation jurisprudence over the next few decades, creating a test that "blessed the denial of even minor accommodation[s]" for many minority religions, a fact that Justice Alito lamented.⁴⁵

But rather than overrule *Hardison*, the Court in *Groff* held that it was wrong to reduce the case to "that one phrase."⁴⁶ Instead, it took "*Hardison* to mean that 'undue hardship' is shown when a burden is substantial in the overall context of an employer's business."⁴⁷ Such a reading better aligned with ordinary meaning, the history of Title VII and the EEOC's caselaw, as well as *Hardison* itself.⁴⁸

Justice Alito began with ordinary meaning, finding that "hardship" is defined as more than a "mere burden"; the addition of "undue" raises the "requisite burden . . . to an 'excessive' or 'unjustifiable' level."⁴⁹ In contrast, "de minimis" is defined as "very small or trifling."⁵⁰ The Court found that between the different visions of undue hardship posed in *Hardison*, the one referring to "substantial additional costs" better matched ordinary meaning,⁵¹ and "no factor," including the EEOC's pre-1972 decisions or even "the common use of that term in other statutes," supported a reading of *Hardison* as advancing a de minimis standard.⁵²

Having established that the de minimis standard was incorrect, Justice Alito declined to delve too deeply into alternative definitions of undue hardship, settling instead on a formulation from a footnote in *Hardison*: "[S]ubstantial increased costs in relation to the conduct of [the employer's] particular business."⁵³ Such an assessment must be fact

⁴² *Id.* at 2290.

⁴³ *Id.* (citing *Hardison*, 432 U.S. at 83 & n.14).

⁴⁴ *Hardison*, 432 U.S. at 84 (italics omitted).

⁴⁵ *Groff*, 143 S. Ct. at 2292.

⁴⁶ *Id.* at 2294.

⁴⁷ *Id.*

⁴⁸ *See id.*

⁴⁹ *Id.* (quoting THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1547 (1966)).

⁵⁰ *Id.* at 2295 (italics omitted) (quoting *De minimis non curat lex*, BLACK'S LAW DICTIONARY (5th ed. 1979)).

⁵¹ *Id.* (quoting *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 83 n.14 (1977)).

⁵² *Id.*

⁵³ *Id.* (citing *Hardison*, 432 U.S. at 83 n.14).

specific and consider “all relevant factors,” such as the “accommodations at issue” and the “nature, ‘size and operating cost of [an] employer.’”⁵⁴ In so holding, the Court rejected Groff’s request to adopt the ADA’s definition of undue hardship: a “significant difficulty or expense.”⁵⁵ The Court also declined to adopt either the EEOC’s construction of *Hardison* or the ADA’s undue hardship case law, noting that both parties’ suggestions went “too far.”⁵⁶ The Court explained it would be imprudent to ratify the EEOC’s interpretations because they predated *Groff*, but offered no analogous explanation for the ADA.⁵⁷

Finally, the Court clarified that coworker impact can constitute undue hardship, but only if that impact is tied back to effects on the employer’s business; coworker animosity toward religion cannot constitute undue hardship.⁵⁸ The Court also noted that undue hardship is assessed in terms of the religious practice, not the suggested accommodation — if an employer decides an accommodation would pose an undue hardship, they must consider alternatives.⁵⁹ Given the fact-intensive nature of the undue hardship inquiry, the Court remanded the case, instructing the lower court to apply this new standard to the facts of *Groff*.⁶⁰

Justice Sotomayor concurred.⁶¹ Joined by Justice Jackson, Justice Sotomayor agreed that *Hardison*’s core holding had little to do with de minimis: instead, using the EEOC’s definition of undue hardship, *Hardison* found that an accommodation that would have interfered with seniority rights imposed “substantial additional costs” and thus an undue hardship on the employer.⁶² She also noted that the choice to clarify *Hardison*, rather than overrule it, was the right approach under stare decisis in statutory cases: Congress had many opportunities to overturn *Hardison* and chose not to, a decision that ought to be respected.⁶³ Finally, Justice Sotomayor drew a more direct line from coworker impact to undue hardship than the majority opinion did, emphasizing that the “conduct of [a] business’ plainly includes the management and performance of the business’s employees.”⁶⁴

The Court’s decision to reinterpret *Hardison* was not surprising. Many agreed that the de minimis standard as applied was unworkable:

⁵⁴ *Id.* (alteration in original) (quoting Brief for the Respondent at 39, *Groff*, 143 S. Ct. 2279 (No. 22-174)).

⁵⁵ *Id.*

⁵⁶ *Id.* at 2296.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 2296–97.

⁶⁰ *Id.* at 2297.

⁶¹ *Id.* (Sotomayor, J., concurring).

⁶² *Id.* (citing *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 79–81, 83–84, 83 n.14 (1977)).

⁶³ *Id.* at 2297–98.

⁶⁴ *Id.* at 2298 (alteration in original) (quoting 42 U.S.C. § 2000e(j)).

the appellant,⁶⁵ the appellee,⁶⁶ authors of numerous amicus briefs filed in the case,⁶⁷ and all nine Justices of the Supreme Court.⁶⁸ What was surprising was *how* the Court navigated its reinterpretation: against the backdrop of a debate that has long focused on whether to unify Title VII's and the ADA's undue hardship standards, the Court never once weighed in on how the two standards are related. While the Court did not need to address the ADA's undue hardship standard to decide *Groff*, this incrementalism is a surprising departure from the long history of intermingled interpretation between the statutes, and even the opinion's own emphasis on ordinary meaning. By declining to explain how the two undue hardship standards relate, the Court sidestepped a debate many expected it to resolve in *Groff*, leaving the contours of the doctrine for future courts to hash out.

The debate over whether to revise the de minimis standard has long gone hand in hand with the debate over how the Title VII and ADA standards of undue hardship are related.⁶⁹ Religion and disability are two of the only statuses for which federal law provides a right to workplace accommodations.⁷⁰ Most antidiscrimination laws require only that employers do not treat employees differently on the basis of protected characteristics.⁷¹ In contrast, accommodation mandates like the ADA and Title VII's religious accommodation provision require far more: some workers *must* be treated differently and be accommodated.⁷²

Accommodation mandates stand apart from other antidiscrimination laws, and so the federal statutes share a legislative lineage, the language of each modeled closely after the last.⁷³ Title VII asks that employers accommodate religious practice “unless an employer demonstrates that he is unable to reasonably accommodate . . . without undue hardship on the conduct of the employer’s business.”⁷⁴ The ADA requires accommodating disabled workers “unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the

⁶⁵ Brief for Petitioner at 14–15, *Groff*, 143 S. Ct. 2279 (No. 22-174).

⁶⁶ Brief for the Respondent, *supra* note 54, at 30.

⁶⁷ *E.g.*, Brief of the National Employment Lawyers Association and the National Institute for Workers’ Rights as Amici Curiae in Support of Neither Party at 3, *Groff*, 143 S. Ct. 2279 (No. 22-174); Amicus Brief of the States of Washington et al. in Support of Respondent at 15, *Groff*, 143 S. Ct. 2279 (No. 22-174); Brief Amici Curiae of Former EEOC General Counsel and Title VII Religious Accommodation Expert in Support of Petitioner at 10–11, *Groff*, 143 S. Ct. 2279 (No. 22-174).

⁶⁸ *Groff*, 143 S. Ct. at 2285.

⁶⁹ See Stephen Gee, Note, *The “Moral Hazards” of Title VII’s Religious Accommodation Doctrine*, 89 CHI.-KENT L. REV. 1131, 1140 (2014).

⁷⁰ See *id.* at 1139.

⁷¹ Compare statutes cited *supra* note 2, with 42 U.S.C. § 2000e-2(a) (prohibiting differential treatment on the basis of race, sex, religion and national origin).

⁷² 42 U.S.C. §§ 2000e(j), 12112(b)(5)(A).

⁷³ For example, the PWFA borrows terminology and definitions from the ADA. H.R. REP. NO. 117-27, pt. 1, at 26 (2021).

⁷⁴ 42 U.S.C. § 2000e(j).

operation of the business.”⁷⁵ The one difference: Congress emphasized that the ADA would not adopt *Hardison*’s reading of undue hardship.⁷⁶ Instead, the statute defines undue hardship as a “significant difficulty or expense,” setting a higher bar for undue hardship than under Title VII.⁷⁷

This discrepancy created a puzzle: the statutory texts are mirrored, but the applied standards are not. Courts and advocates alike have long debated how the two standards relate.

First, courts have varied widely in their willingness to use cross-statutory interpretation, creating an array of contradicting interpretations where the ADA and Title VII are sometimes analogous and sometimes not. Some courts readily adopted ADA case law in their religious accommodation analyses.⁷⁸ The Third Circuit’s opinion in *Groff* (in a holding the Court left undisturbed) concluded that ineffective accommodations are not truly accommodations, citing, in part, a decision that interpreted the ADA’s “reasonable accommodation” definition.⁷⁹ Other courts have done the opposite, rejecting the use of ADA case law in religious accommodations cases.⁸⁰ Circuit splits — like this one surrounding ADA and Title VII accommodations — are among the kinds of issues commonly taken up by the Supreme Court.⁸¹ Even if this issue is not central to the questions posed in *Groff*, this would have been a

⁷⁵ *Id.* § 12112(b)(5)(A).

⁷⁶ S. REP. NO. 101-116, at 36 (1989) (“The Committee wishes to make it clear that the principles enunciated by the Supreme Court in [*Hardison*] are not applicable to this legislation.”).

⁷⁷ 42 U.S.C. § 12111(10)(A).

⁷⁸ *See, e.g.*, *EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 314 (4th Cir. 2008) (relying on *US Airways, Inc. v. Barnett*, 535 U.S. 391, 399–400 (2002), to interpret a Title VII religious accommodations case); *Eckles v. Consol. Rail Corp.*, 94 F.3d 1041, 1049 (7th Cir. 1996) (recognizing that there is “usefulness” in drawing from ADA case law for religious accommodation contexts); *Thomas v. Nat’l Ass’n of Letter Carriers*, 225 F.3d 1149, 1155 n.5 (10th Cir. 2000) (finding that “[a] claim of religious discrimination under Title VII is similar to a claim under the ADA”); *Nawrot v. CPC Int’l*, 259 F. Supp. 2d 716, 724 (N.D. Ill. 2003) (citing *Hardison* in its analysis of an ADA case and finding “[w]here ADA language is similar to Title VII religious discrimination clauses, Title VII cases provide analogous case law for ADA decisions”); *Leonce v. Callahan*, No. 03-CV-110, 2008 WL 58892, at *4 (N.D. Tex. Jan. 3, 2008) (applying “the Court’s *U.S.* [sic] *Airways* [ADA] rationale in the Title VII context”). Some courts have gone as far as to import the interactive process used in ADA cases into Title VII religious accommodations proceedings. *See, e.g.*, *Filinovich v. Claar*, No. 04 C 7189, 2005 WL 2709284, at *4 (N.D. Ill. Oct. 19, 2005); *EEOC v. JBS USA, LLC*, 339 F. Supp. 3d 1135, 1174 n.23 (D. Colo. 2018) (citing an ADA case to analyze a Title VII pattern or practice religious accommodations claim).

⁷⁹ *Groff v. DeJoy*, 35 F.4th 162, 169 (3d Cir. 2022) (citing *Barnett*, 535 U.S. at 400).

⁸⁰ *E.g.*, *Kalsi v. N.Y.C. Transit Auth.*, 62 F. Supp. 2d 745, 757 (E.D.N.Y. 1998) (“Title VII’s obligation to make a reasonable accommodation of religious practices should not be confused with the obligation imposed by the [ADA] to make reasonable accommodation of disabilities.”), *aff’d*, 189 F.3d 461 (2d Cir. 1999) (unpublished table decision); *Prise v. Alderwoods Grp., Inc.*, 657 F. Supp. 2d 564, 599 (W.D. Pa. 2009) (“The phrases ‘reasonably accommodate’ and ‘undue hardship,’ . . . in the Title VII context, do not impose on employers the heightened standards applicable under the [ADA].”).

⁸¹ *See* SUP. CT. R. 10(a) (listing circuit splits as one factor weighing in favor of the Court’s review on a writ of certiorari).

ripe moment to address these inconsistent interpretations in the lower courts.⁸²

Second, the ADA's more exacting standard has marked it as a goal-post for advocates who want to reform Title VII's undue hardship standard, including in *Groff*. The Workplace Religious Freedom Act, a bill continually reintroduced in Congress from 1994 to 2013, sought to amend Title VII to match the ADA's undue hardship standard.⁸³ Much of the scholarship endorsing the revision of the de minimis standard called for the ADA's undue hardship standard to be used instead.⁸⁴ *Groff*'s brief directly asked the Court to unify the two standards, as did multiple amicus briefs.⁸⁵ What the Court accomplished in *Groff* answered half of this conversation: de minimis is dead, but how ADA undue hardship relates to Title VII is still unclear. The Court warned that it would go "too far" to adopt the ADA's definition and case law for Title VII's undue hardship standard.⁸⁶ While this may be true, the Court's choice not to address unification at all leaves one of the main questions faced by litigants and courts in undue hardship analyses unresolved.

The Court's decision not to address the ADA also sits in tension with its methodology for rereading *Hardison*. An opinion grounded in ordinary meaning and linguistic consistency will inevitably struggle to explain why it perpetuates inconsistent standards across statutes with near-identical wording. Here, *Groff* gives little indication that it was written to be a limited, religion-specific interpretation of undue hardship. The Court itself cites the "common use of [undue hardship] in other statutes" in its rationale for revising de minimis.⁸⁷ While it is possible that the Court believes undue hardship means different things in different contexts, as some advocates have urged,⁸⁸ *Groff*'s discussion of undue hardship never lays out a religion-specific context for its

⁸² *But see* Jonathan M. Cohen & Daniel S. Cohen, *Iron-ing out Circuit Splits: A Proposal for the Use of the Irons Procedure to Prevent and Resolve Circuit Splits Among United States Courts of Appeals*, 108 CALIF. L. REV. 989, 994–95 (2020) (discussing a rise in the number of circuit splits the Court has declined to resolve).

⁸³ *See, e.g.*, H.R. 5233, 103d Cong. (1994); S. 3686, 112th Cong. (2012).

⁸⁴ *See, e.g.*, Christopher M. Fournier, *Faith in the Workplace: Striking a Balance Between Market Productivity and Modern Religiosity*, 15 SEATTLE J. FOR SOC. JUST. 229, 239 (2016) (endorsing "[t]he EEOC's adoption of the stricter ADA standard of undue hardship" in religious accommodations); Keith S. Blair, *Better Disabled Than Devout? Why Title VII Has Failed to Provide Adequate Accommodations Against Workplace Religious Discrimination*, 63 ARK. L. REV. 515, 529–30 (2010) (describing the ADA as "a good model for Title VII accommodations").

⁸⁵ Brief for Petitioner, *supra* note 65, at 14; Brief of Amici Curiae States of West Virginia et al. in Support of Petitioner at 16, *Groff*, 143 S. Ct. 2279 (No. 22-174); Brief Amicus Curiae of the Union of Orthodox Jewish Congregations of America in Support of Petitioner at 27, *Groff*, 143 S. Ct. 2279 (No. 22-174).

⁸⁶ *Groff*, 143 S. Ct. at 2296.

⁸⁷ *Id.* at 2295.

⁸⁸ *See* Brief of Amici Curiae Americans United for Separation of Church and State and Lambda Legal Defense and Education Fund, Inc. in Support of Respondent at 5–7, *Groff*, 143 S. Ct. 2279 (No. 22-174).

interpretation. It moves from discussions of ordinary meaning,⁸⁹ to discussions of external consistency with EEOC case law,⁹⁰ to discussions of internal consistency within *Hardison*.⁹¹ One might wonder then why consistency with the ADA, which likewise mentions reasonable accommodations and “undue hardship” in the same sentence, is never discussed.

The Court certainly had good reasons not to unify. Justice Sotomayor’s concurrence emphasized coworker impact as a form of undue hardship,⁹² likely a nod to fears that upping Title VII’s undue hardship standard would facilitate discrimination under the guise of religious accommodations.⁹³ But *Groff* appears to have implicitly set up a case for unification anyway.

First, many of the arguments traditionally raised against unification apply to *any* movement away from the *Hardison* de minimis test. Many have argued that stare decisis, reliance on *Hardison*, and deference to the legislature make it unwise to revise de minimis.⁹⁴ The Court may have been right to change the standard anyway, but as explained above, it made no distinct case for reinterpreting *Hardison* that would not also logically point to unification.

Second, *Groff*’s own reasoning answers many antiunification arguments. Despite much academic emphasis on the constitutional limits restricting religious (but not disability) accommodations,⁹⁵ *Groff* itself seems minimally concerned with the Constitution: one footnote notes that another Supreme Court decision settled how the Establishment Clause does not impact Title VII religious accommodations.⁹⁶ *Groff*’s ordinary meaning focus also cuts against antiunification arguments grounded in the fundamental differences between religion and disability: dictionary definitions are not context dependent. Similarly, if

⁸⁹ *Groff*, 143 S. Ct. at 2295.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Groff*, 143 S. Ct. at 2298 (Sotomayor, J., concurring).

⁹³ For example, opponents of unification have noted that a heightened undue hardship standard might allow employees to refuse to work alongside women, or to display hate group symbols like swastikas in the workplace, all in the name of religious accommodations. Laura W. Murphy & Christopher E. Anders, *ACLU Letter on the Harmful Effect of S. 893, The Workplace Religious Freedom Act, On Critical Personal and Civil Rights*, ACLU (June 2, 2004), <https://www.aclu.org/documents/aclu-letter-harmful-effect-s-893-workplace-religious-freedom-act-critical-personal-and-civil> [<https://perma.cc/P9X9-6BBE>].

⁹⁴ See, e.g., Brief Amici Curiae of Local Government Legal Center et al. in Support of Respondent at 21, *Groff*, 143 S. Ct. 2279 (No. 22-174); *Groff*, 143 S. Ct. at 2297–98 (Sotomayor, J., concurring).

⁹⁵ Michael W. McConnell, *Accommodation of Religion: An Update and a Response to the Critics*, 60 GEO. WASH. L. REV. 685, 704 (1992) (“[T]he Court construed the religious accommodation provision of Title VII as requiring no more than ‘de minimis’ accommodation — probably out of concern that a more burdensome accommodation requirement would violate the Establishment Clause.”); S. Elizabeth Wilborn Malloy, *Something Borrowed, Something Blue: Why Disability Law Claims Are Different*, 33 CONN. L. REV. 603, 627–28 (2001).

⁹⁶ *Groff*, 143 S. Ct. at 2290 n.9 (citing *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015)).

the Court is correct that undue hardship is an analysis of employer resources and not of the accommodation itself,⁹⁷ then even if religion and disability were different workplace conditions, undue hardship would not be where that distinction manifests: an employer's ability to accommodate a Sunday schedule change does not vary depending on whether it is to accommodate the Sabbath or weekly medical appointments.

And so, the Court's decision sits in a curious position: it has moved religious accommodations closer to disability accommodations but left unclear how much of a gap continues to exist between the two. It has laid out a unification argument without endorsing or repudiating it.

What courts and litigants will do next remains to be seen. This landscape will certainly prove challenging for future litigants to navigate: after *Groff*, there are still two undue hardship standards. There will still be many situations where the application of ADA case law could determine the outcome of a religious accommodation case.⁹⁸ For example, under *de minimis*, schedule changes for Ramadan were found to pose an undue hardship, while the same accommodation for a diabetic employee was deemed acceptable under the ADA.⁹⁹ Does *Groff*'s rereading of *Hardison* resolve that discrepancy, or maintain it? Different courts will answer differently. Some courts may continue to uphold a hierarchy of accommodations between disability and religion, positioning "substantial increased costs" as a lower standard than the ADA's "significant difficulty or expense." On the other hand, they may continue to draw seamlessly between Title VII and the ADA, as courts have long done even before *Groff*. They may even do both, creating a web of contradicting circuit splits similar to those that erupted under *Hardison*. These are moments where clarification of the two standards' relationship could have helped.

These predictions are not meant to suggest that the Court should have unified the standards, or that they needed to address the ADA to decide this case. *Groff*'s limited holding is likely what earned it a unanimous vote. Some may even applaud this show of restraint from a Court often criticized for its heavy-handed intervention into issues of religious freedom.¹⁰⁰ But *Groff*'s restraint is also where its biggest open questions lie: for better or for worse, the Title VII–ADA undue hardship puzzle will be resolved another day.

⁹⁷ *Id.* at 2296.

⁹⁸ Brief for the Sikh Coalition et al. as Amici Curiae in Support of Petitioner at 23–24, *Groff*, 143 S. Ct. 2279 (No. 22-174) (listing discrepancies between religious and disability accommodations, such as schedule changes and expenditures on equipment).

⁹⁹ *Small v. Memphis Light, Gas & Water*, 141 S. Ct. 1227, 1229 (2021) (Gorsuch, J., dissenting from the denial of certiorari).

¹⁰⁰ See Ian Prasad Philbrick, *A Pro-Religion Court*, N.Y. TIMES (June 22, 2022), <https://www.nytimes.com/2022/06/22/briefing/supreme-court-religion.html> [<https://perma.cc/L6SK-NMWE>].