No. __-____

IN THE
Supreme Court of the United States

GERALD E. GROFF,

Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964 generally prohibits an employer from discriminating against an individual "because of such individual's * * * religion." 42 U.S.C. §§ 2000e-2(a)(1), (2). The statute defines "religion" to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* § 2000e(j). In *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977), this Court stated that an employer suffers an "undue hardship" in accommodating an employee's religious exercise whenever doing so would require the employer "to bear more than a de minimis cost." *Id.* at 84.

The questions presented are:

1. Whether this Court should disapprove the more-than-de-minimis-cost test for refusing Title VII religious accommodations stated in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977).

2. Whether an employer may demonstrate "undue hardship on the conduct of the employer's business" under Title VII merely by showing that the requested accommodation burdens the employee's co-workers rather than the business itself.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Gerald E. Groff was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Louis DeJoy, Postmaster General, United States Postal Service, was the defendant in the district court and the appellee in the court of appeals. Megan J. Brennan, Postmaster General, United States Postal Service, was the defendant in the district court until Respondent was substituted in her place.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the U.S. District Court for the Eastern District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit:

- *Groff* v. *DeJoy*, No. 5:19-cv-01879-JLS (E.D. Pa.), judgment entered April 6, 2021;
- *Groff* v. *DeJoy*, No. 21-1900 (3d. Cir.), judgment entered May 25, 2022.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerald E. Groff respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The court of appeals' opinion (App., *infra*, 1a-32a) is reported at 35 F.4th 162. The district court's opinion (App., *infra*, 33a-60a) is unreported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was filed on May 25, 2022. App., *infra*, 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. § 2000e-2(a)(1) provides in relevant part:

> It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * religion * * * .

42 U.S.C. § 2000e(j) provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

PRELIMINARY STATEMENT

Adult Americans spend much of their lives at work. Congress recognized that they should not be forced to surrender their religious beliefs at the office or factory door. Thus, a half-century ago, a Title VII amendment mandated that employers must reasonably accommodate employees' religious practices unless doing so would inflict an "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). But just a handful of years later, this Court gutted those vital protections in dicta utterly divorced from the statutory text, declaring that employers could deny religious accommodations that impose "more than a de minimis cost." *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 84 (1977). Justice Marshall charged that this standard "ma[de] a mockery" of Title VII, *id.* at 88 (dissenting op.), and three current Justices have called for reconsidering it post-haste. This case presents that opportunity.

The 1972 amendment to Title VII aimed to ensure that no worker must make the cruel choice of surrender-

ing their faith or their job. On its face, the statute provides robust protections for religious employees—after all, "undue hardship" suggests that an employer must incur significant costs or difficulty before it is excused from offering an accommodation. But *Hardison*'s more-than-de-minimis test "effectively nullif[ies]" the statute's promise of a workplace free from religious discrimination. *Id.* at 88-89 (Marshall, J., dissenting). Scrupulously following this Court's dicta, lower courts have embraced *Hardison*'s more-than-de-minimis rule and, as a result, virtually always side with employers whenever an accommodation would impose any burden.

Hardison's nontextual standard has suffered widespread criticism. Three current Justices, distinguished lower-court judges, leading scholars, and the Solicitor General have all recognized that restoring the proper construction of "undue hardship" warrants this Court's attention. It is past time to reconsider *Hardison* and "correct" its error. *Small* v. *Memphis Light, Gas & Water*, 141 S. Ct. 1227, 1228 (2021) (Gorsuch, J., joined by Alito, J., dissenting from denial of certiorari); accord *Patterson* v. *Walgreen Co.*, 140 S. Ct. 685, 685, 686 n.* (2020) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring in denial of certiorari) (Court should "reconsider" *Hardison*).

Hardison's ill-considered test has spurred lower courts to break with Title VII's text in other ways as well. Although an employer must demonstrate "undue hardship *on the conduct of the employer's business*," seven courts of appeals—including the one below—allow employers to establish undue hardship merely by showing that the requested accommodation burdens *the employee's co-workers*. This nontextual rule conflicts with Title VII's command that employers afford "favored treatment"—not "mere neutrality"—to employees' religious practices, *EEOC* v. *Abercrombie & Fitch Stores,*

Inc., 575 U.S. 768, 775 (2015), and "effectively subject[s] Title VII religious accommodation to a heckler's veto by disgruntled employees." App., *infra*, 28a (Hardiman, J., dissenting).

The errors of *Hardison* and the courts of appeals are consequential. "In our time, few pieces of federal legislation rank in significance with the Civil Rights Act of 1964." *Bostock* v. *Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020). Yet *Hardison* undermines Congress's efforts to ensure that the Nation remains committed to religious pluralism and the free exercise of religious beliefs. This Court should remedy that wrong, and this case—free of vehicle problems that plagued previous petitions on this issue—presents an ideal opportunity to do so.

STATEMENT

I. BACKGROUND

A. Under Title VII of the Civil Rights Act of 1964, employers may not "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * religion." 42 U.S.C. § 2000e-2(a)(1). As originally enacted, Title VII did not explicitly require employers to accommodate employees' religious practices. See Civil Rights Act of 1964, Pub. L. No. 88-352, §§ 701, 703(a)(1), 78 Stat. 241, 253-255 (1964). But Congress amended the statute to do so in 1972. See Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 2(7), 86 Stat. 103, 103 (1972). Title VII now requires employers to "reasonably accommodate" "all aspects" of an "employee's * * * religious observance or practice" that can be accommodated "without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Title VII extends these protections to federal employees, including United States Postal Service ("USPS") employees. See *Loeffler* v. *Frank*, 486 U.S. 549, 558-559 (1988) (citing 42

U.S.C. § 2000e-16(a)).

In *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977), the Court considered an employee's request for an accommodation that would allow him to abstain from Sabbath work. *Id.* at 67-68. Ruling for the employer, the Court declared that an employer's business suffers an "undue hardship" whenever accommodating an employee's religious exercise would require the employer "to bear more than a de minimis cost." *Id.* at 84. Because the events underlying the claim occurred before the 1972 amendment to Title VII, *Hardison*'s statement rested not on the statutory language, but rather on an identical Equal Employment Opportunity Commission ("EEOC") guideline requiring accommodation absent "undue hardship on the conduct of the employer's business." *Id.* at 72, 76 & n.11. Justice Marshall, joined by Justice Brennan, dissented. He argued that the majority's decision "makes a mockery" of Title VII and "effectively nullif[ies]" the statute's promise of a workplace free from religious discrimination. *Id.* at 88, 89. Justice Marshall "question[ed] whether simple English usage permits 'undue hardship' to be interpreted to mean 'more than de minimis cost.'" *Id.* at 92 n.6.

B. Petitioner Gerald Groff is a Christian who observes a Sunday Sabbath, believing that day is meant for worship and rest. App., *infra*, 3a, 35a. Groff began his career with USPS in 2012 as a Rural Carrier Associate ("RCA"). *Id.* at 4a. An RCA is a non-career employee who provides coverage for absent career employees. *Ibid.* USPS also employs Assistant Rural Carriers ("ARCs") who are hired to work only on Sundays and holidays. *Ibid.* Groff worked at the Quarryville, Pennsylvania Post Office until he transferred to the Holtwood Post Office in August 2016. *Ibid.* He remained there until his resignation in January 2019. *Ibid.*

USPS signed a contract in 2013 to deliver packages for Amazon.com, Inc., including on Sundays. *Ibid.* In 2016, USPS and the National Rural Letter Carriers' Association entered a Memorandum of Understanding ("MOU") that established the process for scheduling employees for Sunday and holiday Amazon delivery. *Id.* at 5a. USPS would generate a list of part-time flexible rural carriers, substitute rural carriers, RCAs, and rural relief carriers. *Ibid.* USPS asked these employees whether they wanted to work on Sundays and holidays. *Ibid.* Based on their responses, USPS created two lists: volunteers and non-volunteers. *Ibid.* Each list was alphabetized by last name, without regard to seniority, classification, or assigned office. *Ibid.* For Sundays and holidays, management first scheduled ARCs. *Id.* at 5a-6a. If this was insufficient, management then scheduled from the volunteer list on a rotating basis. *Id.* at 6a. If more coverage was needed, management would schedule from the non-volunteer list on a rotating basis. *Ibid.*

The MOU created separate scheduling arrangements for "peak" and "non-peak" seasons. *Id.* at 5a. During peak season (mid-November through early January), each post office was responsible for scheduling its own carriers and delivering its packages on Sundays and holidays. *Ibid.* During non-peak season (early January through mid-November), individual post offices became part of a regional hub, from which all Sunday and holiday mail was delivered. *Ibid.* The Quarryville and Holtwood Post Offices are part of the Lancaster Annex hub. *Ibid.* All scheduled carriers thus reported to the Lancaster Annex for non-peak Sunday or holiday delivery. *Id.* at 6a.

When Quarryville began delivering Amazon packages on Sundays in 2015, its Postmaster exempted Groff from Sunday work so long as he covered other shifts

throughout the week. *Id.* at 6a. After the MOU went into effect, the Postmaster informed Groff that he would have to deliver packages on Sundays when he was scheduled or find another job. *Ibid.* To avoid a conflict between work and faith, Groff transferred to Holtwood, which had not yet implemented Amazon Sunday deliveries. *Ibid.* In 2017, Holtwood began delivering on Sundays. *Ibid.*

Groff informed Holtwood's Postmaster that he would not report to work on his scheduled Sundays due to his religious beliefs, *ibid.*, but that he was willing to work extra shifts to avoid working Sundays, C.A. App. 217. The Postmaster offered to send emails each time Groff was scheduled on Sunday asking for volunteers to cover his shifts. App., *infra*, 7a, 21a. This ad hoc approach failed to consistently accommodate Groff throughout two years of peak and non-peak seasons. *Id.* at 7a-9a, 21a.

During non-peak season, for a time, USPS automatically scheduled an extra person to work at the Lancaster Annex on Sundays that Groff was scheduled. *Id.* at 8a. However, in July 2018, management discontinued this practice that had effectively accommodated Groff. *Ibid.* From then on, when a volunteer replacement could not be found, Groff faced progressive discipline when he did not report for work on his scheduled Sundays. *Id.* at 7a.

Groff's absences during peak season required that other RCAs work more Sundays. *Id.* at 8a. On three occasions during peak seasons, the Holtwood Postmaster delivered mail on Sundays when the assigned RCA unexpectedly became unavailable. *Ibid.*; C.A. App. 468. During non-peak season, other RCAs were called to work on Sundays more often, and when management ceased its practice of scheduling an extra RCA in advance, other RCAs were required to deliver more mail than they oth-

erwise would have on Sundays due to Groff's absences. App., *infra*, 8a-9a.

Over time, Groff received all discipline short of termination for declining to work on Sundays for which USPS could not find a replacement. *Id.* at 9a, 40a-41a.

II. PROCEEDINGS BELOW

A. Proceedings in the district court

Facing termination, Groff resigned and sued USPS for failing to reasonably accommodate his religious practice. App., *infra*, 34a, 41a. The parties filed cross-motions for summary judgment, and the district court granted USPS's motion. *Id.* at 34a.

USPS conceded that Groff established a *prima facie* claim, and the burden thus shifted to USPS to show it reasonably accommodated Groff or that an accommodation would work an undue hardship upon USPS's business. *Id.* at 52a-53a. The district court first held that "an employer does not need to wholly eliminate a conflict in order to offer an employee a reasonable accommodation." *Id.* at 55a. Because USPS lessened the work-religion conflict by attempting to swap Groff's shifts with other employees, the district court concluded that USPS offered him a reasonable accommodation. *Ibid.* In addition, the district court held that exempting Groff from Sunday deliveries would cause undue hardship to USPS because it would "cause[] more than a *de minimus* [sic] impact on [Groff's] co-workers." *Id.* at 58a-59a.

B. Proceedings in the court of appeals

A divided Third Circuit panel affirmed. App., *infra*, 1a-32a. The majority held that "[i]nterpreting 'reasonably accommodate' to require that an accommodation eliminate the conflict between a job requirement and the religious practice is consistent with the meaning of the word 'accommodate.'" *Id.* at 14a. Accordingly, USPS's

efforts "did not constitute an 'accommodation' as contemplated by Title VII because it did not successfully eliminate the conflict." *Id.* at 21a.

The court of appeals concluded, however, that accommodating Groff by exempting him from Sunday work would result in undue hardship under *Hardison*. *Id.* at 21a, 25a. It reasoned that "[e]xempting Groff from working on Sundays caused more than a de minimis cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both the Holtwood Post Office and the Lancaster Annex hub." *Id.* at 24a. The majority emphasized that, during peak season, an exemption would "place[] a great strain on the Holtwood Post Office personnel," forcing other carriers to cover Groff's shifts and "give up their family time [and] their ability to attend church services if they would have liked to." *Id.* at 25a. The court further noted that accommodating Groff "created a tense atmosphere with the other RCAs" and, even during non-peak season, "result[ed] in other employees doing more than their share of burdensome work." *Ibid.*[1]

Judge Hardiman dissented. At the outset, he explained that "*TWA v. Hardison*, 432 U.S. 63 (1977), obliges us to depart from Title VII's text and determine whether accommodating Groff's religious practice would require USPS to 'bear more than a de minimis cost.'" App., *infra*, 27a n.1 (quoting *Hardison*, 432 U.S. at 84). He joined Justice Marshall in "'seriously question[ing]

[1] The parties disagreed over whether exempting Groff from Sunday duties would violate the MOU's non-seniority-based scheduling provisions, and, if so, whether that would constitute undue hardship. See App., *infra*, 10a; cf. *Hardison*, 432 U.S. at 79, 81-82 (holding that violating seniority-based provisions of a collective-bargaining agreement could constitute undue hardship given Title VII's preferential treatment for seniority provisions). However, the court of appeals did not reach those questions. See App., *infra*, 24a-25a.

whether simple English usage permits undue hardship to be interpreted to mean more than de minimis cost,' particularly when such a reading can 'effectively nullify' Title VII's promise of religious accommodation." *Ibid.* (quoting *Hardison*, 432 U.S. at 89, 93 n.6 (Marshall, J., dissenting)).

Even under the *Hardison* test, Judge Hardiman could not agree—at least "without more facts"—that USPS had established undue hardship. *Id.* at 26a. In Judge Hardiman's view, the majority misapplied *Hardison*'s standard by reasoning that "an accommodation that causes more than a *de minimis* impact on *co-workers* creates an undue hardship." *Id.* at 27a (emphasis added). After all, "Title VII requires USPS to show how Groff's accommodation would harm its *business*, not merely how it would impact Groff's coworkers." *Id.* at 28a. Judge Hardiman warned that "[b]y affirming the District Court's atextual rule, the Majority renders *any* burden on employees sufficient to establish undue hardship, effectively subjecting Title VII religious accommodation to a heckler's veto by disgruntled employees." *Ibid.*

Judge Hardiman concluded that a trial was necessary to determine whether the alleged scheduling difficulties created an undue hardship on USPS's business. *Id.* at 29a-30a. He explained that USPS faced scheduling challenges for only a few weeks each year during peak season when the Holtwood Postmaster used only RCAs at that station. *Ibid.* Additionally, he contended that USPS's assertions regarding the impact on other RCAs during non-peak season was "too speculative to be dispositive," noting that "USPS has provided no evidence that RCAs did 'more than their share' of work they were hired to perform." *Id.* at 30a n.4. To the contrary, USPS's corporate representative "conceded that scheduling an extra RCA in advance to take Groff's place on Sundays would not harm USPS; Groff's former postmaster acknowl-

edged the same in his email to USPS Labor Relations." *Id.* at 31a. Thus, Judge Hardiman would have reversed and remanded for trial on the undue-hardship question. *Id.* at 31a-32a.

REASONS FOR GRANTING THE PETITION

The judgment below vividly illustrates the fallout from this Court's profound weakening of an important civil-rights statute. This Court should grant review to revisit *Hardison*'s dicta. Because the 1972 amendment to Title VII's definition of religion was not at issue in *Hardison*, its undue-hardship discussion lacks *stare decisis* effect, and this case presents the Court with its first opportunity to construe Title VII's undue-hardship test. Looking to plain text, "undue hardship" must mean significant difficulty or expense. Indeed, Congress and the courts regularly define the term that way in other contexts, rendering *Hardison*'s more-than-de-minimis test an outlier.

Even if *stare decisis* applied, that doctrine would not mandate adherence to *Hardison's* egregious error. *Stare decisis* permits error correction where, as here, the prior decision wrongly resolved a minimally briefed issue with scant reasoning, has led to extreme consequences, and does not engender significant reliance interests. The lower courts have uniformly embraced *Hardison*'s more-than-de-minimis test, which has evolved into a per se rule that virtually any cost to an employer counts as undue hardship. As a result, *Hardison* has effectively nullified Title VII's protection of religious employees and thereby eroded the Nation's commitment to religious freedom and pluralism. *Hardison*'s test should be reconsidered and reformulated to match the text.

The judgment below, at minimum, provides an opportunity to correct the prevalent and erroneous view among courts of appeals that an employer may establish undue

hardship merely by showing that an accommodation burdens the plaintiff's co-workers. This concept is irreconcilable with the statutory text, which requires the employer to demonstrate "undue hardship on the conduct of [its] business." Making co-worker concerns dispositive means that an employer can nearly always establish undue hardship by pointing to an accommodation's inevitable imposition on other employees, rendering Title VII subject to a heckler's veto.

Three Justices and the Solicitor General have urged this Court to grant review in an appropriate case to reconsider *Hardison*. This is that case. It provides an excellent vehicle to address both questions presented and is free from the vehicle issues that plagued prior petitions asking this Court to revisit *Hardison*.

I. THIS COURT SHOULD REVISIT AND DISAPPROVE *HARDISON*'S DEFINITION OF UNDUE HARDSHIP

This Court's statement in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 84 (1977), that an employer suffers "undue hardship" whenever a religious accommodation imposes "more than a de minimis cost" lacks any support in Title VII's text, structure, history, or purpose. *Stare decisis* does not mandate adherence to *Hardison*'s unsound dicta. And perpetuating this flawed reading of Title VII "effectively nullif[ies]" the statute's guarantee of a workplace free from religious discrimination. *Hardison*, 432 U.S. at 89 (Marshall, J., dissenting). As members of this Court, lower-court judges, leading commentators, and even the United States have urged, *Hardison* should be revisited and its standard recalibrated.

A. *Hardison*'s discussion of undue hardship is dicta that lacks the force of *stare decisis*

As three Justices have recognized, *Hardison*'s undue-hardship remarks are dicta because the Court was not interpreting Title VII. "Because the employee's termina-

tion had occurred before the 1972 amendment to Title VII's definition of religion, *Hardison* applied the then-existing EEOC guideline—which also contained an 'undue hardship' defense—not the amended statutory definition." *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 787 n.* (2015) (Thomas, J., concurring in part and dissenting in part); see also *Patterson* v. *Walgreen Co.*, 140 S. Ct. 685, 686 n.* (2020) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring in denial of certiorari) ("*Hardison* did not apply the current form of Title VII, but instead an [EEOC] guideline that predated the 1972 amendments defining the term 'religion.'"). Since Title VII's definition of religion was not before the *Hardison* Court, any statement about that statute is "dictum" and "entirely beside the point." *Abercrombie*, 575 U.S. at 787 n.* (Thomas, J., concurring in part and dissenting in part); see also *Patterson*, 140 S. Ct. at 686 n.* (Alito, J.).

"Dicta that does not analyze the relevant statutory provision cannot be said to have resolved the statute's meaning." *Oklahoma* v. *Castro-Huerta*, 142 S. Ct. 2486, 2498 (2022). Such a statement "does not constitute precedent" and certainly "does not alter the plain text" of the statute. *Ibid.* Thus, while *stare decisis* requires consideration of past judgments, "respect for past judgments also means respecting their limits." *Brown* v. *Davenport*, 142 S. Ct. 1510, 1528 (2022). Statutory questions should not be decided "on the basis of a handful of sentences extracted from [a] decision[] that had no reason to pass on the argument," nor should courts "comb these pages for stray comments and stretch them beyond their context." *Ibid.*

In short, the Court is not bound by dicta, particularly where "more complete argument demonstrate[s] that the dicta is not correct." *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013) (collecting cases). This case

would present the Court's first opportunity to construe Title VII's undue-hardship test.

B. *Hardison*'s erroneous test is at war with Title VII's text, structure, history, and purpose

In Justice Marshall's words, *Hardison*'s more-than-de minimis test "makes a mockery" of Title VII. 432 U.S. at 88. Its construction defies "simple English usage" and "effectively nullif[ies]" the statute's promise of a workplace free from religious discrimination. *Id.* at 89, 92 n.6; see also *Small* v. *Memphis Light, Gas & Water*, 141 S. Ct. 1227, 1228 (2021) (Gorsuch, J., dissenting from denial of certiorari) (same). As the United States has explained, *Hardison* is therefore "incorrect" and should be revisited by this Court. U.S. Amicus Br. 19, *Patterson*, 140 S. Ct. 685 (No. 18-349) (hereinafter, "U.S. *Patterson* Br.").[2]

1. *Hardison*'s more-than-de-minimis standard conflicts "with the ordinary public meaning of [Title VII's] terms at the time of its enactment." *Bostock* v. *Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020); see App., *infra*, 27a n.1 (Hardiman, J., dissenting) (*Hardison* "obliges us to depart from Title VII's text"). Indeed, as Judge Thapar has noted, contemporaneous dictionaries reflect that the phrase "undue hardship" means "the accommodation must impose significant costs on the company." *Small* v. *Memphis Light, Gas & Water*, 952 F.3d 821, 827 (6th Cir. 2020) (Thapar, J., joined by Kethledge, J., concurring), cert. denied, 141 S. Ct. 1227 (2021).

"Hardship" ordinarily means "a condition that is difficult to endure," "suffering," or "something hard to bear." The Random House Dictionary of the English Language 602 (1968). While "hardship" alone "impl[ies] some pret-

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[2] The EEOC voted unanimously to participate as amicus curiae and join the Solicitor General's brief in *Patterson*. EEOC, *Commission Votes: December 2019*, https://www.eeoc.gov/commission-votes-december-2019.

ty substantial costs," Congress also specified that the "hardship" must be "undue." *Small*, 952 F.3d at 827 (Thapar, J., concurring). "Undue" means "unwarranted," "excessive," "inappropriate," "unjustifiable," or "improper." The Random House Dictionary of the English Language 1433. Combining the two terms, "[a]n undue hardship is thus an 'excessive hardship' or a hardship that is 'more than appropriate or normal.'" U.S. *Patterson* Br. 19.

By contrast, "de minimis" means "very small or trifling matters." Black's Law Dictionary 482 (4th ed. 1968). "That seems like the opposite of an 'undue hardship.'" *Small*, 952 F.3d at 828 (Thapar, J., concurring). It is therefore unsurprising that the United States has argued that interpreting "undue hardship" "to mean any cost that is 'more than a trifle'" is "an ill fit" to the ordinary meaning of the word "undue." U.S. *Patterson* Br. 19. Nevertheless, without any textual analysis, *Hardison* pronounced that anything more than the slightest burden is an "undue hardship." 432 U.S. at 84.

Congress's other uses of "undue hardship" confirm *Hardison*'s error. "Congress has typically defined 'undue hardship'" throughout the U.S Code according to its plain meaning. *Small*, 952 F.3d at 827 (Thapar, J., concurring.). The Americans with Disabilities Act's ("ADA") similar reasonable-accommodation provision defines "undue hardship" to mean "an action requiring significant difficulty or expense" in light of certain enumerated factors. 42 U.S.C. §§ 12111(10), 12112(b)(5)(A). The ADA therefore rejected "the principles enunciated by the Supreme Court in [*Hardison*]." S. Rep. No. 101-116 at 33 (1989); H.R. Rep. No. 101-485(II) at 68 (1990) (same); see also H.R. Rep. No. 101-485(III) at 40 (1990) ("[A] definition was included in order to distinguish the duty to provide reasonable accommodation in the ADA from [*Hardison*]."). Congress has enacted other civil-rights laws with

similarly defined "undue hardship" defenses. *Small*, 141 S. Ct. at 1228 (Gorsuch, J.) (citing the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4303(15), and the Affordable Care Act, 29 U.S.C. § 207(r)(3)). Indeed, even where Congress has used the term "undue hardship" without an accompanying definition, courts interpret that phrase in accordance with its plain meaning rather than following *Hardison*'s aberrant reading. See *Small*, 952 F.3d at 827 (Thapar, J, concurring) (citing 11 U.S.C. § 523(a)(8) and collecting cases). *Hardison*'s nontextual test sticks out like a sore thumb.

Finally, *Hardison*'s myopic focus on "costs" rewrites the statute's focus on the "*conduct* of the *employer's business*." This has led to further textual deviations in the courts of appeals—discussed *infra* Part II—whereby any non-trivial burdens on co-workers suffice to show undue hardship, regardless whether they meaningfully hamper the functioning of the business.

2. *Hardison* also rests on an outmoded concern about granting religious accommodations. *Hardison* reasoned that Title VII did not "contemplate" the "unequal" or "prefer[ential]" treatment of "religious needs" over "nonreligious[] reasons for not working on weekends." *Hardison*, 432 U.S. at 81, 84-85. In the *Hardison* Court's view, textually enforcing the undue-hardship test would "require an employer to *discriminate* against some employees in order to enable others to observe their Sabbath." *Id.* at 85 (emphasis added). Employers were not obligated "to finance" this supposed religious favoritism. *Id.* at 84.

Justice Marshall's dissent persuasively refuted the majority's understanding: "[I]f an accommodation can be rejected simply because it involves preferential treatment, then [Title VII], while brimming with 'sound and fury,' ultimately 'signif[ies] nothing.'" *Id.* at 87. And this Court has since explained that "Title VII does not de-

mand mere neutrality with regard to religious practices—that they be treated no worse than other practices." *Abercrombie*, 575 U.S. at 775. "Rather, it gives them favored treatment." *Ibid.*; see also *id.* at 772 n.2 ("accommodate" "means nothing more than allowing the plaintiff to engage in her religious practice despite the employer's normal rules to the contrary"). After all, "[i]f neutral work rules (*e.g.,* every employee must work on Saturday, no employee may wear any head covering) precluded liability, there would be no need to provide [the undue-hardship] defense." *Id.* at 789 (Alito, J., concurring in the judgment).

In light of this modern understanding, *Hardison*'s concern with preferential treatment "seems unreasonable on its face." *Small*, 952 F.3d at 828 (Thapar, J., concurring). Under the ADA, for example, "[n]o right-minded person would call such accommodations a form of impermissible discrimination against *non*-disabled employees." *Ibid.*

Hardison's misplaced concern over allowing religious accommodations produces absurd results when juxtaposed with ADA accommodations. "Under [that statute], an employer may be required to alter the snack break schedule for a diabetic employee because doing so would not pose an undue hardship. Yet, thanks to *Hardison*, at least one court has held that it would be an undue hardship to require an employer to shift a meal break for Muslim employees during Ramadan." *Small*, 141 S. Ct. at 1229 (Gorsuch, J.) (citations omitted). *Hardison* makes these "anomalies" and "uneven results" "increasingly commonplace." *Ibid.*

3. Title VII's history also confirms that *Hardison* wrongly construed the undue-hardship test. When first enacted in 1964, Title VII did not explicitly require religious accommodations. See *supra* p. 4. In 1966, the EEOC adopted guidelines requiring employers to ac-

commodate religious employees absent "serious inconvenience to the conduct of the business." 31 Fed. Reg. 8370 (June 15, 1966). A year later, in response to complaints about failures to accommodate Sabbath observance and religious holidays, the EEOC adopted revised guidelines requiring accommodation absent "undue hardship on the conduct of the employer's business," noting that "[s]uch undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer." 32 Fed. Reg. 10298 (July 13, 1967); see also 29 C.F.R. §§ 1605.2, 1605.3, App. A. (discussing background information to EEOC guidelines and 1972 amendment).

When Congress amended Title VII in 1972 to add an express accommodation requirement, see *supra* p. 4, it codified this "seemingly stiffened" standard, Ackerman, Cong. Research Serv., No. 77–163A, *Religious Discrimination in Employment: An Analysis of* Trans World Airlines v. Hardison 5 (1977). As Justice Marshall noted, the "instructive" legislative history of the 1972 amendment shows that its "primary purpose" was to codify the EEOC's accommodation requirement after courts "question[ed] whether the guidelines were consistent with Title VII." *Hardison*, 432 U.S. at 88-89. Through an amendment that "track[ed] the language of the EEOC regulation," Congress sought "to make clear that Title VII requires religious accommodation, even though unequal treatment would result," and "to protect Saturday Sabbatarians * * * 'whose religious practices rigidly require them to abstain from work * * * on particular days.'" *Id.* at 89-90 (quoting 118 Cong. Rec. 705 (1972)).

Despite these concerted efforts by Congress to increase workplace protections for religious employees, *Hardison* dramatically undercut them, violating the text, purpose, and history of the 1972 amendment.

C. Even if it applied, *stare decisis* would not mandate adherence to *Hardison*'s egregiously unsound reasoning

Even if *Hardison*'s manifestly defective undue-hardship test were not dicta, *stare decisis* principles would still favor overruling it. "[*S*]*tare decisis* is 'not an inexorable command.'" *Janus* v. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478 (2018) (collecting cases). It is "a flexible doctrine permitting error correction," Barrett, *Stare Decisis and Due Process*, 74 U. Colo. L. Rev. 1011, 1013 (2003), which requires careful consideration of "the quality of [the decision's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus*, 138 S. Ct. at 2478-2479.

1. At the outset, *Hardison*'s lack of focus on the undue-hardship provision sharply limits its precedential force. That is because "the precedential sway of a case is directly related to the care and reasoning reflected in the court's opinion." Garner et al., The Law of Judicial Precedent 226 (2016); see *Hohn* v. *United States*, 524 U.S. 236, 251 (1998) (Court "felt less constrained to follow [a statutory] precedent where, as here, the opinion was rendered without full briefing or argument").

As the United States has acknowledged, this Court has never had a meaningful opportunity to interpret Title VII's undue-hardship provision. U.S. *Patterson* Br. 21. *Hardison* "primarily addressed whether Title VII's accommodation provision required employers to violate seniority systems created by their collective-bargaining agreements." *Small*, 952 F.3d at 828 (Thapar, J., concurring). As a result, "the parties' briefs in *Hardison* did not focus on the meaning of [undue hardship]," and "no party in that case advanced the *de minimis* position."

Patterson, 140 S. Ct. at 686 (Alito, J.). The Solicitor General's amicus brief in *Hardison* assumed a standard that required accommodation "except to the limited extent that a person's religious practice *significantly and demonstrably affects* the employer's business." U.S. *Patterson* Br. 21 (quoting U.S. Amicus Br. 20, *Hardison*, 432 U.S. 63 (No. 75-1126)). And even the employer in *Hardison* conceded that incurring potentially substantial out-of-pocket costs would not qualify as undue hardship. *Ibid.* (citing Pet. Br. 41, 47, *Hardison*, 432 U.S. 63 (No. 75-1126)).

Nonetheless, "in two brief paragraphs at the end of the opinion, the Court also asserted—almost as an afterthought—that requiring an employer 'to bear more than a de minimis cost' in order to accommodate an employee's religion would be 'an undue hardship.'" *Small*, 952 F.3d at 828 (Thapar, J., concurring) (quoting *Hardison*, 432 U.S. at 84). "The Court announced that standard in a single sentence with little explanation or supporting analysis." *Small*, 141 S. Ct. at 1228 (Gorsuch, J.). Given these circumstances, it is unsurprising that "*Hardison*'s reading does not represent the most likely interpretation of the statutory term 'undue hardship.'" *Patterson*, 140 S. Ct. at 686 (Alito, J.).

These aspects of *Hardison* counsel against according precedential force to its more-than-de-minimis test. "[A] case cannot be resolved merely by pointing to [several] sentences in [a prior decision] that were written without the benefit of full briefing or argument on the issue." *McCutcheon* v. *FEC*, 572 U.S. 185, 202 (2014) (collecting cases). Whether *Hardison* is dicta or something more, "plenary consideration" of Title VII's undue-hardship test is warranted. Cf. *id.* at 203.

2. Even if traditional *stare decisis* analysis applies, "the quality of [the decision's] reasoning"—or lack thereof—militates strongly in favor of revisiting *Hardison*.

Janus, 138 S. Ct. at 2479. "[I]f a litigant demonstrates that a prior decision clearly misinterprets the statutory or constitutional provision it purports to interpret, the court should overrule the precedent." Barrett, *supra*, at 1075. *Hardison*'s more-than-de-minimis test does not even pretend to interpret the statutory text. *Stare decisis* does not require honoring a "clear case of judicial overreach" or an interpretation that "was not really statutory interpretation at all." *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 465-466 (2015) (Alito, J., dissenting). *Hardison* is the poster child for an egregiously wrong legal test that lacks even the most tenuous connection to the governing text. It is a purely judicial creation.

The Court should not hesitate to overrule *Hardison*, especially since "this Court has applied the doctrine of *stare decisis* to civil rights statutes less rigorously than to other laws." *Johnson* v. *Transp. Agency*, 480 U.S. 616, 672-673 (1987) (Scalia, J., dissenting). As in past civil-rights cases, the Court should not "place on the shoulders of Congress the burden of the Court's own error." *Monell* v. *Dep't of Soc. Servs.*, 436 U.S. 658, 695 (1978) (citation and internal quotation marks omitted).

3. As the United States has argued, "[r]eliance interests also are less of a concern in this context." U.S. *Patterson* Br. 21-22. This case does not involve property or contract rights, where "considerations favoring *stare decisis* are at their acme." *Kimble*, 576 U.S. at 457 (citation and internal quotation marks omitted). Overruling where parties have structured complex business arrangements in reliance on a precedent could cause "long-dormant" agreements to "spring back to life." *Ibid.* But that is not the case here. Employment agreements are typically short-term, and employers regularly adapt their human-resources arrangements in response to legal changes and employee needs. Cf. *Janus*, 138 S. Ct. at 2484 ("[I]t would be unconscionable to permit free speech

rights to be abridged in perpetuity in order to preserve contract provisions that will expire on their own in a few years' time."). Any reliance interest claimed by employers should be "outweigh[ed]" by the employees' "countervailing interest * * * in having their [Title VII] rights fully protected." *Ibid.*

Lastly, employers "have been on notice for years regarding this Court's misgivings about [*Hardison*]," diminishing any reliance interests they may claim. *Ibid.* Members of this Court, lower-court judges, scholars, and even the United States have all acknowledged that *Hardison*'s test is baseless. This persistent criticism counsels in favor of revisiting that decision. See *Pearson* v. *Callahan*, 555 U.S. 223, 234-235 (2009).[3]

4. *Hardison* has also proven "unworkable in practice." *Knick* v. *Twp. of Scott*, 139 S. Ct. 2162, 2178 (2019). The outcome of Title VII religious-accommodation cases is usually known before suit is even filed. "[T]he lower courts have embraced [*Hardison*], routinely granting employers summary judgment if an accommodation would impose on the employer virtually any burden at all. In fact, some courts have gone so far as to grant employers summary judgment, not because of any actual hardship, but because of the mere possibility of hardship in the future." Flake, *Restoring Reasonableness to*

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[3] Two Justices have suggested that reliance concerns are "inapposite" or at least "significantly diminished" when the precedent "demonstrably conflicts" with the governing statute or constitutional provision. See *Gamble* v. *United States*, 139 S. Ct. 1960, 1986 (2019) (Thomas, J., concurring) (when "a federal court [is asked] to depart from its own, demonstrably erroneous precedent," "[c]onsiderations beyond the correct legal meaning, including reliance * * * are inapposite."); Barrett, *supra*, at 1062 (where "a litigant demonstrates that precedent demonstrably conflicts with the statutory or constitutional provision it purports to interpret, the role of reliance is significantly diminished, and possibly eliminated").

Workplace Religious Accommodations, 95 Wash. L. Rev. 1673, 1683 (2020); see *infra* pp. 25-26. Unless an accommodation requires only a truly de minimis cost, courts will side with the employer. See *infra* pp. 25-26.

Hardison itself is a prime example—as Justice Marshall noted, the employee could have been accommodated for $150, a "far from staggering" cost. 432 U.S. at 92 n.6. But that amount was too burdensome for "one of the largest airlines in the world." *Small*, 952 F.3d at 828 (Thapar, J., concurring). Soon after *Hardison*, the Ninth Circuit noted that "a standard less difficult to satisfy * * * is difficult to imagine." *Yott* v. *N. Am. Rockwell Corp.*, 602 F.2d 904, 909 (9th Cir. 1979). *Hardison* deprives employees of their statutory right to a workplace free of religious discrimination, and this "significant consequence" renders the rule unworkable. Cf. *Knick*, 139 S. Ct. at 2179 (holding rule unworkable because "many takings plaintiffs never have the opportunity to litigate in a federal forum that § 1983 by its terms seems to provide").

5. This Court's subsequent decisions have "eroded" *Hardison*'s "statutory and doctrinal underpinnings." *Kimble*, 576 U.S. at 458. *Abercrombie*'s recognition that affording favored treatment to religious accommodations is a feature, not a bug, of Title VII is incompatible with *Hardison*'s misreading of the statute to require neutrality. See *supra* pp. 16-17. "[F]avored treatment"—not "mere neutrality"—for religious practices is the purpose and effect of Title VII. *Abercrombie*, 575 U.S. at 775.

Relatedly, "the [*Hardison*] majority may have construed Title VII so narrowly because it feared that a broader reading might run afoul of the Establishment Clause." *Small*, 952 F.3d at 828 (Thapar, J., concurring) (citing *Hardison*, 432 U.S. at 89-90 (Marshall, J., dissenting)). This concern likely lacked merit even in 1977. See *Hardison*, 432 U.S. at 89-90 (Marshall, J., dissenting).

"Yet whatever doctrinal merit that concern once may have had," it no longer "remains valid." *Small*, 952 F.3d at 828 (Thapar, J., concurring). This Court has rejected the view that "statutes that give special consideration to religious groups are *per se* invalid" under the Establishment Clause. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 338 (1987). To the contrary, it "has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." *Id.* at 334; see also *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 189 (2012) (First Amendment "gives special solicitude to the rights of religious organizations."). While an "absolute and unqualified right" to accommodation may implicate the Establishment Clause, "appropriately balanced" accommodation provisions—like those in Title VII's plain text—are permissible. *Cutter* v. *Wilkinson*, 544 U.S. 709, 722 (2005) (citation omitted). *Hardison*'s apparent "concerns about phantom constitutional violations"—it is now clear—cannot justify its nontextual and egregiously wrong test. *Kennedy* v. *Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2432 (2022).

At a broader doctrinal level, this Court's approach to interpreting statutes has changed dramatically in the intervening decades as well. *Hardison* is "a relic from a 'bygone era of statutory construction'" that omitted rigorous attention to a statute's text and structure, *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019), while favoring "a more freewheeling approach to statutory construction," *Wooden* v. *United States*, 142 S. Ct. 1063, 1085 (2022) (Gorsuch, J., concurring in the judgment). *Hardison*'s outdated methodology further undermines its precedential value.

6. Finally, a textually sound test for "undue hardship" is close at hand. Decisions under the ADA, various

civil-rights statutes, and other statutory provisions regularly apply the plain meaning of that term: "significant difficulty or expense in light of the employer's financial resources, the number of individuals it employs, and the nature of its operations and facilities." *Small*, 141 S. Ct. at 1228 (Gorsuch, J.) (citation and internal quotation marks omitted). See *supra* pp. 15-16. Thus, the Court need not wonder whether a workable replacement exists for *Hardison*'s test. Cf. *Fulton* v. *City of Phila.*, 141 S. Ct. 1868, 1882-1883 (2021) (Barrett, J., concurring). The Court need only confirm that a textually faithful construction—and not *Hardison*'s aberrant alternative—is the proper interpretation of Title VII.

* * *

In sum, this is a case where "an earlier interpretation of a statute was so wrongheaded or has had such calamitous consequences—while earning meager reliance—that it should not be retained." Garner et al., *supra*, at 337-338.

D. *Hardison* undermines religious pluralism and especially harms religious minorities

If *Hardison*'s nontextual interpretation of Title VII were largely harmless, perhaps this Court's attention would be unnecessary. But nothing could be further from the truth. Revisiting *Hardison* is urgently needed because it has gravely injured our Nation. Applying *Hardison*, "[l]ower courts have determined that employers are virtually never required to bear any economic or efficiency costs in accommodating a religious employee." Kaminer, *Title VII's Failure to Provide Meaningful and Consistent Protection of Religious Employees: Proposals for an Amendment*, 21 Berkeley J. Emp. & Lab. L. 575, 621 (2000). *Hardison* has evolved into a "per se" rule where "virtually all cost alternatives have been declared unduly harsh simply because a loss [to the employer] is

involved." Zablotsky, *After the Fall: The Employer's Duty to Accommodate Religious Practices under Title VII after* Ansonia Board of Education v. Philbrook, 50 U. Pitt. L. Rev. 513, 547 (1989). Thus, the only plaintiffs who prevail are those with "employer[s] [that] made no attempt at accommodation." Engle, *The Persistence of Neutrality: The Failure of the Religious Accommodation Provision to Redeem Title VII*, 76 Tex. L. Rev. 317, 397 (1997).

This legal landscape has produced "[e]mployer apathy toward religious accommodation" and "ushered in" a "culture of nonaccommodation." Marshall et al., *Religion in the Workplace: Proceedings of the 2000 Annual Meeting of the Association of American Law Schools Section on Law and Religion*, 4 Emp. Rts. & Emp. Pol'y J. 87, 92 (2000) (remarks of Professor Roberto L. Corrada). "Title VII's current message after *Hardison* * * * is not that an employer should seek diligently to reasonably accommodate religious observance but that religion must only be afforded de minimis consideration." *Id.* at 93.

"The irony (and tragedy) of decisions like *Hardison* is that they most often harm religious minorities—people who seek to worship their own God, in their own way, and on their own time." *Small*, 952 F.3d at 829 (Thapar, J., concurring). Minority faiths often have distinctive worship, grooming, and dress requirements that are likelier to conflict with job requirements than the practices of more prevalent religions. Cf. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2063-2064 (2020) (noting various non-Protestant approaches to "ministers"). Businesses tend to close on Christmas and Easter, but usually remain open on Eid al-Fitr and Yom Kippur. *Hardison* places religious minorities at a disadvantage because accommodating their less-common practices may seem more challenging, making it easier for

employers to satisfy *Hardison*'s already lenient standard. That "is deeply troubling, for a society that truly values religious pluralism cannot compel adherents of minority religions to make the cruel choice of surrendering their religion or their job." *Hardison*, 432 U.S. at 87 (Marshall, J., dissenting).

Hardison erodes "one of this Nation's pillars of strength"—"our hospitality to religious diversity"—and "[a]ll Americans will be a little poorer until [*Hardison*] is erased." *Id.* at 97. That time should be now, before *Hardison* does further damage to religious freedom in the American workplace.

II. The Decision Below Further Entrenches The Erroneous View That An Employer May Demonstrate Undue Hardship Merely By Showing That The Requested Accommodation Burdens The Employee's Co-Workers

Even if the Court does not thoroughly recalibrate *Hardison*'s more-than-de-minimis test to match Title VII's text, it should at least correct one particularly egregious corollary of that test manifested in the decision below. In affirming summary judgment for USPS, the court of appeals held that an employer may establish undue hardship merely by showing that an accommodation burdens or inconveniences the plaintiff's co-workers. That holding follows a troubling trend of courts that "emphasize the seeming neutrality of workplace rules in rejecting plaintiffs' claims" and "find that, if other employees would be negatively affected by a proposed accommodation, that accommodation would cause undue hardship to the employer." Engle, *supra*, at 392.

A. Title VII requires the employer to show "undue hardship on the conduct of the employer's *business*." 42 U.S.C. § 2000e(j) (emphasis added). Yet the decision below holds that "an accommodation that causes more than

a *de minimis* impact on *co-workers*" suffices to make that showing. App., *infra*, 27a (Hardiman, J., dissenting) (emphasis added) (citation and internal quotation marks omitted). The majority reasoned that "increased workload on other employees[] and reduced employee morale" qualify as undue hardship, *id.* at 22a, and accordingly concluded that "[e]xempting Groff from working on Sundays caused more than a de minimis cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both the Holtwood Post Office and the Lancaster Annex hub," *id.* at 24a.

Judge Hardiman rightly criticized this "atextual rule," *id.* at 27a, which courts of appeals have employed to further tighten the already narrow protection for religious employees under Title VII. *Id.* at 22a-24a (majority opinion collecting cases). Indeed, the decision below marks the seventh circuit to embrace this misguided interpretation of Title VII. See *EEOC* v. *Walmart Stores E., L.P.*, 992 F.3d 656, 659-660 (7th Cir. 2021); *Harrell* v. *Donahue*, 638 F.3d 975, 980-981 (8th Cir. 2011); *EEOC* v. *Firestone Fibers & Textiles Co.*, 515 F.3d 307, 317 (4th Cir. 2008); *Virts* v. *Consol. Freightways Corp. of Del.*, 285 F.3d 508, 520-521 (6th Cir. 2002); *Bruff* v. *N. Miss. Health Servs., Inc.*, 244 F.3d 495, 501 (5th Cir. 2001); *Opuku-Boateng* v. *California*, 95 F.3d 1461, 1468 (9th Cir. 1996).

This view of Title VII finds no support in the statutory text. "Simply put, a burden on coworkers isn't the same thing as a burden on the employer's business." App., *infra*, 28a. (Hardiman, J., dissenting). As Judge Hardiman noted, this Court has never held that "impact on coworkers alone—without showing business harm—establishes undue hardship." *Id.* at 27a. Nor could it do so without further rewriting the statute.

The rule followed by these courts of appeals also conflicts sharply with *Abercrombie*. Title VII commands employers to afford "favored treatment"—not "mere neutrality"—to employees' religious practices and to allow them to engage in these practices "despite the employer's normal rules to the contrary." *Abercrombie*, 575 U.S. at 772 n.2, 775. Yet the courts of appeals' emphasis on how an accommodation burdens co-workers (rather than the business) expands upon *Hardison*'s misplaced desire to ensure that religious accommodations do not "discriminate" against non-religious employees. See *supra* pp. 16-17. As the United States explained in its *Hardison* brief, "[i]f employees are disgruntled because an employer accommodates its work rules to the religious needs of one employee, * * * such grumbling must yield to the single employee's right to practice his religion." U.S. Amicus Br. 28, *Hardison*, 432 U.S. 63 (No. 75-1126) (citation and internal quotation marks omitted).[4]

Giving dispositive weight to co-worker effects disrupts the "balance" Title VII seeks to strike between employer and employee interests. Engle, *supra*, at 405. "Once the interests of employees who do not require religious accommodation are brought into the equation, it is difficult for courts to require accommodation, since all accommodation requires disparate treatment." *Id.* at 405-406; see also *Harrell*, 638 F.3d at 980 ("Certainly, every religious accommodation will inevitably cause some differences in treatment among employees."). Furthermore, "many courts have set the bar on what constitutes preferential treatment very low, effectively allowing an

[4] USPS invoked this erroneous non-discrimination rationale in refusing to accommodate Groff, contending that "it would be showing favoritism to allow [Groff] to avoid Sundays," C.A. App. 217, because RCAs "are scheduled when they're scheduled," not "based on religious beliefs or faith systems," *id.* at 477.

employer to show minimal impact on coworkers to be relieved of its accommodation obligation." Birnbach, Note, *Love Thy Neighbor: Should Religious Accommodations that Negatively Affect Coworkers' Shift Preferences Constitute an Undue Hardship on the Employer Under Title VII?*, 78 Fordham L. Rev. 1331, 1371 (2009); see *Brener* v. *Diagnostic Ctr. Hosp.*, 671 F.2d 141, 143, 146-147 (5th Cir. 1982) (co-workers' complaints that Orthodox Jew received "special treatment" for observance of his Sabbath established undue hardship). The upshot is an employer can nearly always establish undue hardship by pointing to the accommodation's inevitable imposition on other employees. As Judge Hardiman noted, this "effectively subject[s] Title VII religious accommodation to a heckler's veto by disgruntled employees." App., *infra*, 28a. Because religious expression is a vital part of "a pluralistic society," it should be met with tolerance and accommodation, not silenced by a "heckler's veto." *Kennedy*, 142 S. Ct. at 2427, 2431 (citation and internal quotation marks omitted).

B. To be sure, an accommodation's impact on coworkers can be *relevant* under the proper reading of Title VII. But employee dissatisfaction or inconvenience alone does not *establish* undue hardship. U.S. Amicus Br. 28, *Hardison*, 432 U.S. 63 (No. 75-1126). "[R]ather, it is the *effect* such dissatisfaction has on the employer's ability to operate its business that may alleviate the duty to accommodate." *Crider* v. *Univ. of Tenn., Knoxville*, 492 F. App'x 609, 614 (6th Cir. 2012). In other words, "an accommodation's effect on a co-worker *may* lead to an undue hardship *on the employer*." *Id.* at 615. But an impact on co-workers—without proof of harm to the business—should not suffice to establish undue hardship under Title VII. See App., *infra*, 29a (Hardiman, J., dissenting) ("An employer does not establish undue hard-

ship by pointing to a more-than-de-minimis impact on an employee's coworker.").

C. The most straightforward path for the Court is a *de novo* overhaul of *Hardison*'s undue-hardship dicta—correcting the *quantum* of hardship required (significant rather than "more than de minimis"), while also clarifying *who* must suffer the hardship ("the business" rather than co-workers). But even if this Court declines a wholesale re-evaluation of the undue-hardship test—whether for *stare decisis* reasons or otherwise—there is value in addressing the narrower, second question presented. In doing so, the Court need not disapprove any statement in *Hardison*. Yet it can provide important discipline to lower courts gone astray and bring Title VII's interpretation a few degrees closer to the statutory text. Consequently, the Court may wish to grant review of both questions to facilitate a thoroughgoing consideration of Title VII's undue-hardship provision.

III. This Case Is An Excellent Vehicle To Address The Questions Presented

A. As three Justices and the United States have urged, review should be granted in an appropriate case to reconsider *Hardison*. See *supra* p. 3. This is that case. Groff openly challenged *Hardison*'s undue-hardship test below, and the court of appeals noted that it was bound to follow *Hardison* and circuit precedent applying the more-than-de-minimis test. See App., *infra*, 22a & n.18; Groff C.A. Br. 50-52.

This case, moreover, is free of the vehicle problems that plagued previous petitions on this issue. In *Patterson*, the court of appeals held that the employer *satisfied* its duty to offer a reasonable accommodation and then additionally held that the employee's desired accommodation would have imposed an undue hardship on the employer. *Patterson* v. *Walgreen Co.*, 727 F. App'x 581,

585-589 (11th Cir. 2018). The employee sought certiorari on both (1) whether the accommodation was valid when it allegedly did not eliminate the religious conflict and (2) whether *Hardison*'s undue-hardship test should be revisited. Pet. i, *Patterson*, 140 S. Ct. 685 (No. 18-349). But, as the United States observed in its amicus brief, the court of appeals' holding that the employer offered a reasonable accommodation was correct even under the employee's preferred legal standard. U.S. *Patterson* Br. 12-14. Thus, the court of appeals' judgment could be affirmed solely on the accommodation holding, without reaching the undue-hardship issue under *Hardison*. That posture rendered *Patterson* a poor vehicle for reconsidering *Hardison*. *Patterson*, 140 S. Ct. at 686 (Alito, J.).

Here, in contrast, the undue-hardship issue is the entire case. The court of appeals held that USPS *failed* to offer Groff a reasonable accommodation and nevertheless affirmed summary judgment for USPS because accommodating Groff would cause it undue hardship. App., *infra*, 21a, 25a. Thus, unlike in *Patterson*, Groff's Title VII claim rises or falls with the undue-hardship standard.

Small, as the court of appeals noted in that case, did not "involve a challenge to the 'de minimis' test." 952 F.3d at 829 (Thapar, J., concurring). The employee "[did not] even contest[]—at least in a meaningful way—his employer's claim of 'undue hardship.'" *Ibid.* As a result, "issue preservation" clouded whether that case was a proper vehicle for confronting *Hardison*. *Small*, 141 S. Ct. at 1229 (Gorsuch, J.). That is not the case here. Groff vigorously contested undue hardship and urged that *Hardison* be revisited. Groff C.A. Br. 37-52. Thus, *Hardison*'s validity is squarely presented in this case.

What is more, the proper interpretation of "undue hardship" is dispositive on these facts. Indeed, the panel divided over whether USPS met even *Hardison*'s exceed-

ingly low bar. Under a proper standard that requires USPS to show significant difficulty or expense, see *supra* p. 25, there would at least be a fact issue over whether the scheduling challenges and morale problems relied on by the court of appeals created an undue hardship on USPS's business.

While the majority noted USPS's testimony that Groff's absences "disrupted the workplace and workflow" and made timely delivery "more difficult," it cited no evidence suggesting that his absences prevented USPS from satisfactorily performing its Sunday delivery obligations and merely asserted in a conclusory fashion that his absences had an undefined "impact on operations." App., *infra*, 24a-25a. Similarly, even if Groff's co-workers "were being forced to cover Groff's shifts" or "had to deliver more mail," there is no evidence that this imposed any significant difficulty on USPS's business. *Ibid.* In fact, a minimally burdensome solution was readily available: USPS's corporate representative "conceded that scheduling an extra RCA in advance to take Groff's place on Sundays would not harm USPS," and "Groff's former postmaster acknowledged the same in his email to USPS Labor Relations." *Id.* at 31a (Hardiman, J., dissenting). In any event, as Judge Hardiman explained, any scheduling difficulties arose only during the peak season, which lasted just a few weeks a year. *Id.* at 29a-30a.

Under the proper standard, these fact issues would preclude a grant of summary judgment to USPS and, at minimum, require a trial on the issue of undue hardship.

B. This case also squarely presents the important question of whether an employer may rely on an accommodation's impact on co-workers to establish undue hardship, notwithstanding the statute's focus on the "conduct of the employer's business." Groff argued below that it was legally incorrect to rely on his accommodation's effects on his co-workers without evidence that

these effects in turn meaningfully harmed the conduct of USPS's business, Groff C.A. Br. 47-48, and the court of appeals explicitly rejected that argument, App., *infra*, 21a-25a. As evidenced by Judge Hardiman's dissent, requiring the court of appeals to assess hardship on the conduct of USPS's business, not merely Groff's coworkers, would require reversal of the court of appeals' judgment and, at minimum, a remand for trial on the issue of undue hardship. *Id.* at 29a-30a.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted.

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August 2022

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 21-1900

GERALD E. GROFF,

Appellant

v.

LOUIS DEJOY, POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE,

Appellee

(**May 25, 2022**)

Appeal from United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 5-19-cv-01879)
U.S. District Judge: Honorable Jeffrey L. Schmehl

Argued January 25, 2022

Before: HARDIMAN, SHWARTZ, and FUENTES,
Circuit Judges.

(Filed: May 25, 2022)

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OPINION OF THE COURT

SHWARTZ, *Circuit Judge*.

Plaintiff Gerald Groff is a Sunday Sabbath observer whose religious beliefs dictate that Sunday is meant for worship and rest. As a result, Groff informed his employer, the United States Postal Service ("USPS"), that he was unable to work on Sundays. USPS offered to find employees to swap shifts with him, but on more than twenty Sundays, no coworker would swap, and Groff did not work. Groff was disciplined and ultimately left USPS.

Groff sued USPS[1] for violating Title VII by failing to reasonably accommodate his religion. Because the shift swaps USPS offered to Groff did not eliminate the conflict between his religious practice and his work obligations, USPS did not provide Groff a reasonable accommodation. The accommodation Groff sought (exemption from Sunday work), however, would cause an undue hardship on USPS, and so we will affirm the District Court's order granting summary judgment in USPS's favor.

I

A

USPS employs several types of postal carriers. One type is a Rural Carrier Associate ("RCA"). An RCA is a non-career employee who provides coverage for absent career employees. RCAs work "as needed," so the job requires flexibility. JA456. RCAs do not accrue leave, and any leave they take is unpaid. USPS also employs Assistant Rural Carriers ("ARCs") who are hired to work only on Sundays and holidays. At the time of Groff's employment, there was a shortage of RCAs in his region.

Groff joined USPS in 2012. He became an RCA that year. In March 2014, Groff transferred to the Quarryville Post Office, where he worked until he transferred to the Holtwood Post Office in August 2016. Groff remained at Holtwood until he resigned from USPS in January 2019.

B

In 2013, USPS contracted with Amazon to deliver Amazon packages, including on Sundays. Amazon delivery initially began at only some post offices and the scheduling of RCAs was left to each postmaster's

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[1] Postmaster General Louis DeJoy is the named defendant, but we refer to Defendant as USPS for simplicity.

discretion.[2] The success of Amazon Sunday delivery was critical to USPS.

In May 2016, USPS and the National Rural Letter Carriers' Association ("Union") entered a Memorandum of Understanding ("MOU") concerning Sunday and holiday parcel delivery.[3] The MOU created two scheduling arrangements. During the peak season (mid-November through early January), each post office was responsible for scheduling its own carriers and delivering its packages on Sundays and holidays. During the non-peak season (late January through mid-November), individual post offices became part of a regional hub, from which all Sunday and holiday mail was delivered. The Quarryville and Holtwood Post Offices are part of the Lancaster Annex hub.

To staff the hub during the non-peak season, USPS generated a list of part-time flexible rural carriers, substitute rural carriers, RCAs, and rural relief carriers employed at post offices within the geographic area serviced by the Lancaster Annex hub. USPS asked these employees whether they wanted to work on Sundays and holidays. Based on their responses, USPS created two lists: volunteers and non-volunteers.[4] Each list was alphabetized by last name, without regard to seniority, classification, or assigned office. For Sundays and holidays, management first scheduled any ARCs assigned

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[2] The Holtwood Post Office was a "non-promised site" under the Amazon contract, which meant that it was not contractually bound to deliver parcels on Sunday, but the volume of packages made Sunday Amazon delivery at Holtwood a necessity.

[3] RCAs were also obligated to work on Sundays as needed under the Union's contract.

[4] Of the forty employees as of July 2, 2017, thirty-seven were on the non-volunteer list and three were on the volunteer list.

to the hub. If this was insufficient for coverage, management then scheduled from the volunteer list on a rotating basis. If more coverage was needed, management would then schedule from the non-volunteer list on a rotating basis. All scheduled carriers then reported to the Lancaster Annex for the Sunday or holiday delivery.[5] The MOU contained two exemptions for Sunday or holiday work. USPS could skip an individual (1) who had approved leave adjacent to a Sunday or holiday, or (2) whose workweek would exceed forty hours if assigned to work on the Sunday or holiday.[6]

Quarryville began delivering Amazon packages on Sundays in 2015. Quarryville was a relatively large station and had sufficient carriers available for Sunday delivery. Before the MOU went into effect, the Quarryville Postmaster exempted Groff from Sunday work so long as he provided coverage for other shifts throughout the week. After the MOU went into effect, the Postmaster informed Groff that he would have to work Sundays during the peak season or find another job.

To avoid Amazon Sunday deliveries, Groff transferred to Holtwood, a small station with a postmaster, three full-time carriers, and three RCAs (including Groff). In March 2017, however, Holtwood began Amazon Sunday deliveries.

Groff informed the Holtwood Postmaster that he would not be reporting to work on Sundays due to his religious beliefs. In response, the Holtwood Postmaster offered

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[5] While RCAs had no contractual right to specific days off, they received overtime pay for working Sundays and holidays.

[6] Additionally, RCAs covering vacant regular routes or regular routes during the absence of a regular carrier would not be scheduled unless both the volunteer and non-volunteer lists were exhausted.

Groff several options. The Holtwood Postmaster offered to adjust Groff's schedule to permit him to attend religious services on Sunday morning and report to work afterward, which was an accommodation provided to other employees. Later, the Holtwood Postmaster sought out others to cover Groff's Sunday shifts, which he said was the only accommodations that would not "impact operations." JA599. During the 2017 peak season, another RCA agreed to cover Groff's Sunday shifts, but she was later unable to do so due to an injury. As a result, the remaining RCA and the Holtwood Postmaster worked all Sunday shifts. Groff acknowledged that his fellow RCA had to bear the burden of Amazon Sundays alone during the 2017 peak season.

Because Groff did not work when scheduled on Sundays, he faced progressive discipline. During the disciplinary process, USPS proposed another alternative: pick a different day of the week to observe the Sabbath.

Groff contacted an Equal Employment Opportunity ("EEO") counselor at USPS to pursue pre-complaint counseling, during which he requested a total exemption from Sunday work. Thereafter, Groff filed a complaint with the EEO office. USPS determined that Groff established a prima facie claim for failure to accommodate, but that USPS did not engage in discrimination.

Thereafter, Groff requested a lateral transfer to a position that did not require Sunday work. All available positions typically required Sunday work, however, so his request was rejected. To accommodate Groff during the 2018 peak season, the Holtwood Postmaster again attempted to find coverage for each Sunday that Groff was scheduled to work. The Holtwood Postmaster described finding coverage for Groff as "not always easy, . . . time

consuming, and [that] it added to [his] workload and those of other postmasters." JA452.

In addition to the resources expended to find coverage, Groff's absence had other consequences. The Holtwood Postmaster himself was forced to deliver mail on Sundays when no RCAs were available because putting off delivery until Monday would have impacted efficiency and safety the following day.[7] Moreover, Groff's refusal to report on Sundays created a "tense atmosphere" among the other RCAs, as they had to work more Sundays to cover Groff's absences, JA 464, and resentment toward management.

Groff's absence also had an impact at the hub during the non-peak season. For example, other carriers were called to work at the hub more frequently, which resulted in other employees "do[ing] more than their share of burdensome work." JA218. One supervisor at the hub testified that this contributed to morale problems amongst the RCAs. In addition, USPS scheduled an extra person to work at the Lancaster Annex each Sunday on which Groff was scheduled in anticipation that he would not show up. However, in July 2018, management was directed not "to overschedule non volunteers to accommodate" Groff.[8]

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[7] The Holtwood Postmaster also testified that USPS had to pay overtime to ensure Sunday coverage, though the USPS corporate representative had no knowledge of overtime payments.

[8] In addition, a union member submitted a grievance in summer 2017, alleging that the MOU was violated because he was being "forc[ed]" to work on Sundays while others were not being required to work. JA 501. The grievant specifically identified Lancaster management's scheduling practices around Groff. USPS expended time and resources engaging in the grievance process with the Union, including appeal and settlement. As part of that settlement, the Union and USPS agreed that (1) any accommodation "cannot infringe upon or deprive another employee their contractual rights or benefits under

JA684. Groff's absence also required the other carriers to deliver more mail than they otherwise would have on Sundays. JA492.

Groff received additional discipline and submitted two more EEO complaints, in which he again sought an accommodation not to work on Sundays or a transfer to a position that did not require Sunday work.

Groff resigned in January 2019. In his resignation letter, he stated that he decided to leave his job because he was unable to find an "accommodating employment atmosphere with the USPS that would honor [his] personal religious beliefs" and would instead pursue "more rewarding work/service interests." JA388.

After Groff's employment ended, USPS issued a final agency decision as to Groff's complaints challenging the discipline and USPS's alleged failure to accommodate. USPS found no discrimination. Groff did not appeal to the Equal Employment Opportunity Commissions ("EEOC").

C

Groff sued USPS, alleging two causes of action for religious discrimination under Title VII of the Civil Rights Act of 1964: (1) disparate treatment, and (2) failure to accommodate. After discovery, the parties filed cross-motions for summary judgment. The District Court granted USPS summary judgment on both claims. *Groff v. DeJoy*, No. 19-1879, 2021 WL 1264030, at *5 (E.D. Pa. Apr. 6, 2021).[9]

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the bargaining unit agreement" and (2) Sunday/holiday delivery schedules must be consistent with the MOU. JA516.

[9] Groff does not appeal the District Court's order granting summary judgment on his disparate treatment claim.

The District Court stated that our Court never squarely held that an accommodation needs to wholly eliminate the conflict between a work requirement and a religious practice to be reasonable. *Id.* at *10. Relying on opinions from other circuits and from district courts within our Circuit, the Court held that "an employer does not need to wholly eliminate a conflict in order to offer an employee a reasonable accommodation." *Id.* The Court noted that Groff was offered the chance to swap shifts with other employees and concluded USPS offered Groff a reasonable accommodation, even if he was "not happy" with it, because voluntary shift swapping could be a reasonable accommodation. *Id.*

The District Court also: (1) found that USPS provided evidence of "multiple instances" of undue hardship, including that providing Groff an exemption from Sunday work would violate the MOU; (2) disagreed with Groff that *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), was limited to violations of a collective bargaining agreement's seniority provisions; (3) explained that interpreting "approved leave" in the MOU to include permanent religious leave would "strain[] credulity"; and (4) found that granting Groff's requested exemption was an undue hardship because, among other things, it required the only other RCA to work "every single Sunday without a break." *Groff*, 2021 WL 1264030, at *11-12.

Groff appeals.

II[10]

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[10] The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. Our review of a district court's order granting summary judgment is plenary, *Mylan Inc. v. SmithKline Beecham Corp.*, 723 F.3d 413, 418 (3d Cir. 2013), and we view the facts and make all reasonable inferences in the non-movant's

A

Title VII of the Civil Rights Act of 1964 makes it unlawful "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). Congress "illuminate[d] the meaning [of] religious discrimination" in its definition of religion under Title VII. *EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 312 (4th Cir. 2008) (quoting *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 63 n.1 (1986)). Under Title VII, "[t]he term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate . . . an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).[11]

To establish a prima facie case of religious discrimination under Title VII, an employee must show that he: (1) holds a sincere religious belief that conflicts with a job requirement; (2) informed his employer of the conflict; and (3) was disciplined for failing to comply with the conflicting job requirement. *EEOC v. GEO Grp., Inc.*, 616 F.3d 265, 271 (3d Cir. 2010). The parties do not dispute

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favor, *Hugh v. Butler Cnty. Family YMCA*, 418 F.3d 265, 266-67 (3d Cir. 2005). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the non-moving party fails to make "a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

[11] Collectively, we will refer to 42 U.S.C. §§ 2000e-2(a)(1) and 2000e(j) as "Title VII's religious discrimination provision."

that Groff established a prima facie case for purposes of summary judgment because he: (1) has a sincere religious belief that prohibits work on Sunday, and this conflicts with USPS's Sunday schedule; (2) informed USPS of this conflict; and (3) was disciplined after he failed to appear for his scheduled Sunday shifts.

Once a plaintiff establishes a prima facie case, "the burden shifts to the employer to show either it made a good-faith effort to reasonably accommodate the religious belief, or such an accommodation would work an undue hardship upon the employer and its business." *Webb v. City of Phila.*, 562 F.3d 256, 259 (3d Cir. 2009). Thus, we must determine whether the employer offered a reasonable accommodation to the employee. *Ansonia*, 479 U.S. at 69. If it did, then "the statutory inquiry is at an end." *Id.* at 68. If it did not, then we evaluate whether the employee's requested accommodation would cause the employer an undue hardship. *Id.* at 67. Whether the employer provided a reasonable accommodation and whether the accommodation would cause an undue hardship are separate inquiries. *Id.*

B

We must first determine what constitutes a "reasonable accommodation." The plain language of the statute directs employers to "reasonably accommodate" religious practices, so "Title VII requires otherwise-neutral policies to give way to the need for an accommodation." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015). Indeed,

> 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, affirmatively obligating employers not "to fail or refuse to hire or discharge

> any individual . . . because of such individual's" "religious observance and practice."

Id. (quoting 42 U.S.C. § 2000e(j)). Our task is to determine whether an offered accommodation must eliminate the conflict between a job requirement and the religious practice.

Cases from the Supreme Court and our Court answer this question. The Supreme Court has stated that an accommodation is reasonable if it "eliminates the conflict between employment requirements and religious practices." *Ansonia*, 479 U.S. at 70 (holding an accommodation is reasonable where it "allow[s] the individual to observe fully religious holy days and requires him only to give up compensation for a day that he did not in fact work"). Our Court has said that, where a good-faith effort to accommodate a religious practice has been "unsuccessful," the inquiry must then turn to the undue hardship analysis, which suggests that an accommodation must be effective. *Getz v. Pa. Dep't of Pub. Welfare*, 802 F.2d 72, 73 (3d Cir. 1986); *see also US Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (explaining that "the word 'accommodation' . . . conveys the need for effectiveness"). Thus, a legally sufficient accommodation under Title VII's religious discrimination provision is one that eliminates the conflict between the religious practice and the job requirement. *See Getz*, 802 F.2d at 74 (holding that a neutral scheduling policy reasonably accommodated employee's religious observance where there was "no conflict" between her employment and observance of religious holidays, such that she was "able to worship fully"); *see also Shelton v. Univ. of Med. & Dentistry of N.J.*, 223 F.3d 220, 226-27 (3d Cir. 2000) (holding that a lateral transfer was a reasonable accommodation where a

plaintiff "had not established that she would face a religious conflict" in the new position).

Interpreting "reasonably accommodate" to require that an accommodation eliminate the conflict between a job requirement and the religious practice is consistent with the meaning of the word "accommodate." The word "accommodate" is not defined in the statute, so we apply its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). To accommodate means "to furnish with something desired, needed or suited"; "to bring into agreement or accord." *Accommodate*, Webster's Third New International Dictionary 12 (3d ed. 1993); *see also Accommodate*, Webster's New World College Dictionary 8 (5th ed. 2018) ("to provide (someone) with something needed or desired"; "to reconcile"). To accommodate therefore requires an actor to adapt, adjust, or modify its conduct. In the context of Title VII, and given the Supreme Court's directive that even neutral policies must be adjusted to ensure their application does not disfavor a person based upon religion, a neutral policy must "give way to" religious practice. *Abercrombie*, 575 U.S. at 775.

Several of our sister circuits agree that an accommodation under Title VII's religious discrimination provision must eliminate the conflict between the employee's religious practice and job requirement.[12] *See*

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[12] Other courts examine the religious discrimination provision in different ways. For example, at least one circuit court has adopted a "totality of the circumstances" approach but has not explicitly addressed whether the offered accommodations must always eliminate the conflict between work and religion. *See Sanchez-Rodriguez v. AT & T Mobility P.R., Inc.*, 673 F.3d 1, 12 (1st Cir. 2012) (adopting a totality of the circumstances approach for determining whether the employer fulfilled its obligation to provide a reasonable

Morrisette-Brown v. Mobile Infirmary Med. Ctr., 506 F.3d 1317, 1322-23 (11th Cir. 2007) (combining rotating scheduling system, shift change, opportunity to transfer positions, and other accommodations that would "eliminate[] the conflict between employment requirements and religious practices," thus reasonably accommodating a Sabbath observer) (quoting *Ansonia*, 479 U.S. at 70); *Baker v. Home Depot*, 445 F.3d 541, 547-48 (2d Cir. 2006) (allowing Sabbath observer to start later on Sundays to attend religious services, but requiring him to come to work, did not permit him to observe his religious requirement to totally abstain from Sunday work and thus offered "no accommodation at all"); *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1576 (7th Cir. 1997) (offering two Jewish employees a day off besides Yom Kippur did not "eliminate the conflict between the employment requirement and the religious practice" and thus was not a reasonable accommodation); *Opuku-Boateng v. State of California*, 95 F.3d 1461, 1467 (9th Cir. 1996) (explaining that where negotiations between employer and Sabbath observer "do not produce a

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accommodation and holding that the employer had accommodated a Sabbath observer where it offered the observer two alternative positions with lower pay and permitted shift swapping). One circuit seems to adopt at least two approaches. *Compare EEOC v. Universal Mfg. Corp.*, 914 F.2d 71, 73, 74 (5th Cir. 1990) (holding an employer's accommodation of one aspect of an employee's religion but failure to accommodate another constituted a "selective" accommodation that would be "patently unreasonable" and that Title VII does not permit an employer "under the guise of reasonableness, [to choose] between which religious conflicts that employer will or will not accommodate"), *with Bruff v. N. Miss. Health Servs., Inc.*, 244 F.3d 495, 500 (5th Cir. 2001) (explaining that an employer must "offer[] an alternative reasonable accommodation to resolve the conflict" between work and religion but that duty to accommodate is met where employee can transfer to a position "where conflicts are less likely to arise").

proposal by the employer that would eliminate the religious conflict, the employer must either accept the employee's proposal or demonstrate that it would cause undue hardship"); *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1379 (6th Cir. 1994) (offering altered schedule that still required Saturday Sabbath observer to perform some Saturday work was not a reasonable accommodation because it "failed to address her principal objection to working on Saturday").[13] For the same reasons, permitting a Sabbath observer to swap shifts would not be a reasonable accommodation if other employees are regularly unavailable to cover a Sabbath observer's shifts.

Other circuit courts have concluded that requiring a total elimination of the conflict ignores Title VII's inclusion of the word "reasonably" as a modifier to the word "accommodate." *Firestone Fibers*, 515 F.3d at 313; *see also Sturgill v. United Parcel Serv., Inc.*, 512 F.3d 1024, 1031, 1033 (8th Cir. 2008) (explaining that it would be inconsistent with Title VII "to hold that an accommodation, to be reasonable, must wholly eliminate

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[13] The EEOC generally recognizes a "voluntary swap" as a reasonable accommodation. 29 C.F.R. § 1605.2(d)(1) ("Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap."). In addition, the EEOC "believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications." *Id.*

The EEOC, however, has stated that "[a]n adjustment offered by an employer is not a 'reasonable' accommodation if it merely lessens rather than eliminates the conflict between religion and work, provided that eliminating the conflict would not impose an undue hardship." EEOC, Compliance Manual on Religious Discrimination § 12-IV(A)(3) (2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_255006745363916107498678 44.

the conflict between work and religious requirements in all situations," but also observing that "there may be many situations in which the only reasonable accommodation is to eliminate the religious conflict altogether"). These cases read the word "reasonably" as evaluating matters of degree and not imposing a duty to accommodate at all costs. *See Firestone Fibers*, 515 F.3d at 313; *Sturgill*, 512 F.3d at 1031, 1033; *see also Tabura v. Kellogg USA*, 880 F.3d 544, 551 (10th Cir. 2018) (in a case involving unsuccessful shift swapping, declining to adopt "a per se 'elimination' rule that applies across all circumstances" for reasonable accommodations and remanding for a jury to determine reasonableness). This interpretation, however, merges the concept of "reasonableness" with "undue hardship" even though, as stated above, they are separate inquiries.

USPS similarly misunderstands the interaction between the words "reasonably" and "accommodate." USPS argues that "reasonably" limits the employer's obligation. It asserts that so long as the offered accommodation could, in theory, eliminate the conflict between a job duty and the religious obligation, the employer has fulfilled its Title VII duty even if the accommodation does not eliminate the conflict in practice. Put differently, USPS asserts that so long as the employer offers an accommodation that may work, it has acted reasonably. This argument is inconsistent with Title VII's religious discrimination provision. As interpreted by the Supreme Court, that provision requires the employer to deviate even from neutral practices to ensure an employee's religious beliefs and practices are not infringed. *Abercrombie*, 575 U.S. at 775. To offer an accommodation that in practice will result in continued infringement does not fulfill Title VII's requirements.

In addition to requiring that the accommodation eliminate the conflict, the statute requires that the offered accommodation be reasonable. The word "reasonable" is not defined, so we look to its ordinary meaning. *Taniguchi*, 566 U.S. at 566. Webster defines "reasonable" to mean "not conflicting with reason; not absurd; not ridiculous; being or remaining within the bounds of reason; not extreme; not excessive." *Reasonable*, Webster's Third New International Dictionary 1892 (3d ed. 1993). Thus, the word "reasonable" here requires that an adjustment to an otherwise neutral policy need not go beyond what is necessary to eliminate the conflict.

At oral argument, the Government contended that the word "reasonable" in other contexts does not require complete achievement of the action that the word "reasonable" modifies. Oral Argument at 40:29-40:44, *Groff v. DeJoy* (Jan. 25, 2022), https://www2.ca3.uscourts.gov/oralargument/audio/21211 9_Groffv.DeJoy.mp3. For example, the phrase "reasonable doubt" does not mean that there must be a complete elimination of all doubt to find that the Government has proven the elements of the crime charged. *See, e.g.*, *Dunbar v. United States*, 156 U.S. 185, 199 (1895) ("[B]y a reasonable doubt you are not to understand that all doubt is to be excluded.") (quoting *Miles v. United States*, 103 U.S. 304, 312 (1880)); *United States v. Isaac*, 134 F.3d 199, 203 (3d Cir. 1998) (upholding jury instruction that contrasted "reasonable doubt" with "all possible doubt"). The Government is correct, but context matters.[14] The context in which the word "reasonable" is used informs what it modifies. In the Title

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[14] For this reason, our discussion of the meaning of "reasonably accommodate" in this opinion is limited to Title VII's religious discrimination provision.

VII religious discrimination context, the word "accommodate" requires the employer to offer an adjustment that allows the employee to fulfill the religious tenet but requires nothing more from the employer. The word "reasonably" informs how an employer provides an accommodation that eliminates the conflict, but it does not obligate the employer to "choose any particular reasonable accommodation," *Ansonia*, 479 U.S. at 68, or grant an employee's preferred accommodation, *Getz*, 802 F.2d at 74.

In evaluating whether the avenue is reasonable, we look at the manner in which the accommodation is implemented. For example, paid leave or use of vacation time, *Getz*, 802 F.2d at 74, unpaid leave, *Ansonia*, 479 U.S. at 70, transfers, *Shelton*, 223 F.3d at 226, 228, and shift swapping, *Hardison*, 432 U.S. at 77-78, are all possible avenues to eliminate a conflict between working on a specific day and observing one's religion on that day. However, some accommodations that eliminate a conflict may still be unreasonable. An employer that provides unpaid personal leave for religious observance may accommodate an employee whose religion forbids work on a particular day, thus eliminating the conflict between work and religion; but if that employer provided paid leave to accommodate other employees with nonreligious work conflicts, we would likely hold the accommodation unreasonable. *See Ansonia*, 479 U.S. at 71 ("[U]npaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious ones. A provision for paid leave 'that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free . . . not to provide the benefit at all.'") (emphasis and citation omitted).

On the other hand, offering a less desirable shift, position, or location can be a reasonable accommodation. *See Shelton*, 223 F.3d at 228; *see also Sturgill*, 512 F.3d at 1033 (explaining that a reasonable jury could find that Title VII's bilateral duty of cooperation may require an employee to "accept a less desirable job or less favorable working conditions"). Even a reduction in salary associated with the accommodation may not necessarily be unreasonable. *See, e.g.*, *EEOC v. Walmart Stores E., L.P.*, 992 F.3d 656, 659-60 (7th Cir. 2021)[15] (offering an hourly rather than a salaried position to accommodate a Sabbath observer was reasonable); *Sanchez-Rodriguez v. AT & T Mobility P.R., Inc.*, 673 F.3d 1, 12-13 (1st Cir. 2012) (offering lower-paying positions, allowing shift swapping, and refraining from disciplining an employee for missing work constituted a reasonable accommodation); *Bruff v. N. Miss. Health Servs., Inc.*, 244 244 F.3d 495, 502 n.23 (5th Cir. 2001) (reducing pay is not unreasonable). *But see Baker*, 445 F.3d at 548 ("[A]n offer of accommodation may be unreasonable 'if it cause[s] [an employee] to suffer an inexplicable diminution in his employee status or benefits.'") (quoting *Cosme v. Henderson*, 287 F.3d 152, 160 (2d Cir. 2002)).[16]

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[15] The Supreme Court later granted certiorari, vacated an order denying intervention, and remanded to the Court of Appeals for the Seventh Circuit to take further steps as a result of its ruling in *Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. ——, 142 S. Ct. 1002 (2022). *See Hedican v. Walmart Stores E., L.P.*, 142 S. Ct. 1357 (2022) (Mem.).

[16] Because these cases are fact sensitive, we do not endorse any particular accommodation but rather note an accommodation must be considered on a case-by-case basis based upon the practice required by the sincerely held religious belief and the job duty. *See Fallon v. Mercy Catholic Med. Ctr. of Se. Pa.*, 877 F.3d 587, 490-91 (3d Cir. 2017) (holding that a sincerely held belief was "not religious and not

Here, USPS attempted to facilitate shift swaps for Groff on each Sunday that he was scheduled to work.[17] Between March 2017 and May 2018, Groff was scheduled to work on twenty-four Sundays. The Holtwood Postmaster testified that, for each week Groff was scheduled for Sunday work, he sent emails seeking volunteers from other offices. Despite these undisputed good-faith efforts, USPS was unsuccessful in finding someone to swap shifts on twenty-four Sundays over a sixty-week period. Because no coverage was secured and Groff failed to appear for work, he was disciplined. Thus, even though shift swapping can be a reasonable means of accommodating a conflicting religious practice, here it did not constitute an "accommodation" as contemplated by Title VII because it did not successfully eliminate the conflict.

As a result, we next consider whether exempting Groff from Sunday work—which would eliminate the conflict—would result in an undue hardship.

C

An employer is not required "to accommodate at all costs." *Ansonia*, 479 U.S. at 70. Where an employer's good-faith efforts to accommodate have been unsuccessful, the inquiry turns to whether the employer demonstrated that "such an accommodation would work

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protected by Title VII" under this Court's definition in *Africa v. Commonwealth of Pennsylvania*, 662 F.3d 1025, 1032 (3d Cir. 1981)).

[17] USPS also offered other alternatives, such as working on Sundays after attending church services or observing the Sabbath on a day other than Sunday, but neither would allow Groff to fulfill his religious practice of observing the Sabbath by abstaining from work on Sundays. As a result, these options do not constitute "accommodations" under Title VII's religious discrimination provision. USPS does not argue for these options on appeal.

an undue hardship upon the employer and its business." *GEO Grp.*, 616 F.3d at 271. "An 'undue hardship' is one that results in more than a de minimis cost to the employer."[18] *Id.* at 273. Both economic and noneconomic costs suffered by the employer can constitute an undue hardship. *Id.* The undue hardship analysis is case-specific, requiring a court to look to "both the fact as well as the magnitude of the alleged undue hardship," though it is "not a difficult threshold to pass." *Id.* (quoting *Webb*, 562 F.3d at 260).

Examples of undue hardships include negative impacts on the employer's operations, such as on productivity or quality, personnel and overtime costs, increased workload on other employees, and reduced employee morale.[19] *See, e.g.*, *Walmart Stores E., L.P.*, 992 F.3d at 659 (noting that "Title VII does not require an employer to offer an 'accommodation' that comes at the expense of other workers" and concluding undue hardship as shown where employer demonstrated that proposed accommodations would require "more than a slight burden when vacations, illnesses, and vacancies reduced the number of other" employees available); *Harrell v. Donahue*, 638 F.3d 975, 980-81 (8th Cir. 2011) (giving postal worker Saturdays off constituted an undue hardship because it would have burdened co-workers with more weekend work); *Firestone Fibers*, 515 F.3d at 317 ("[W]hen determining

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[18] *Hardison* held that requiring an employer "to bear more a than a de minimis cost" to provide a religious accommodation is an undue hardship, *Hardison*, 432 U.S. at 84, and we are bound by this ruling, *see Walmart Stores E., L.P.*, 992 F.3d at 660. The impact on the workplace here, however, far surpasses a de minimis burden.

[19] A business may be compromised, in part, if its employees and poor morale among the work force and disruption of work flow. This, of course, could affect an employer's business and could constitute undue hardship.

the reasonableness of a possible accommodation, it is perfectly permissible for an employer to consider the impact it would have on . . . other employees."); *Virts v. Consol. Freightways Corp. of Del.*, 285 F.3d 508, 520-21 (6th Cir. 2002) (holding that accommodations that would potentially adversely impact other employees by causing them to receive less profitable routes or less time off between routes amounted to undue hardship); *Bruff*, 244 F.3d at 501 (holding that requiring coworkers to "assume a disproportionate workload," or for employer to overschedule employees to provide accommodation, "is an undue hardship as a matter of law" and "clearly involve[s] more than de minimis cost," after considering size of the staff and the nature of the employer's business); *Opuku-Boateng*, 95 F.3d at 1468 (acknowledging that an employer may show either "hardship on the plaintiff's coworkers" or on the conduct of the business to demonstrate undue hardship); *Brown v. Polk Cnty, Iowa*, 61 F.3d 650, 656-57 (8th Cir. 1995) (en banc) (concluding no undue hardship where conduct created potential for polarization amongst staff, but did not result in any "actual imposition on co-workers or disruption of the work routine") (quoting *Burns v. S. Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978)); *Eversley v. MBank Dallas*, 843 F.2d 172, 176 (5th Cir. 1988) (concluding it was "unreasonable and an undue hardship on an employer to require the employer to force employees, over their express refusal, to permanently switch from a daytime to a nighttime shift in order to accommodate another employee's different Sabbath observation"); *Brener v. Diagnostic Ctr. Hosp.*, 671 F.2d 141, 147 (5th Cir. 1982) (holding there was undue hardship where forced shift trades "resulted in disruption of work routines and a lowering of morale" among coworkers and employer was "also harmed because its employees are compelled to accept less favorable working conditions");

cf. Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 710 & n.9 (1985) (acknowledging that "[o]ther employees who have strong and legitimate, but non-religious, reasons for wanting a weekend day off" would be "significant[ly] burden[ed]" if Sabbath observers were granted an absolute right not to work on their Sabbath); *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1341-42 (8th Cir. 1995) (explaining that requiring religious employee's coworkers to accept her practice of wearing a button with a photograph of a fetus was "antithetical to the concept of reasonable accommodation" because employee's beliefs were imposed on coworkers and disrupted workplace).[20]

Groff's proposed accommodation of being exempted from Sunday work would cause an undue hardship. Exempting Groff from working on Sundays caused more than a de minimis cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale at both the Holtwood Post Office and the Lancaster Annex hub. The Holtwood Post Office to which Groff was assigned had only a postmaster and three RCAs (including Groff) available for Sunday deliveries. Because Groff would not work on Sundays, only three individuals remained who could work on Sundays during the peak season. After the one RCA who covered for Groff was injured, only the Holtwood Postmaster and the remaining RCA were available to

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[20] The EEOC also recognizes that impacts on coworkers may constitute an undue hardship under Title VII. EEOC, Compliance Manual on Religious Discrimination § 12-IV(B)(4) (2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_2550067453639161074986 7844 (explaining that "general disgruntlement, resentment, or jealousy of coworkers will not" constitute undue hardship, which "generally requires evidence that [an] accommodation would actually infringe on the rights of coworkers or cause disruption to the work").

work the Sunday shift. This placed a great strain on the Holtwood Post Office personnel and even resulted in the Postmaster delivering mail on some Sundays. The Holtwood Postmaster testified, "[o]ther carriers were being forced to cover [Groff's] shifts and give up their family time, their ability to attend church services if they would have liked to," and these additional demands "created a tense atmosphere with the other RCAs." JA464.

At the hub, Groff's absences also had an impact on operations and morale. The hub supervisor testified that Groff's absence made timely delivery more difficult, and carriers had to deliver more mail. As at the Holtwood Post Office, Groff's absence also had a negative impact on morale among the RCAs at the hub and resulted in a Union grievance being filed. According to management, allowing Groff to swap shifts was the only accommodation that would not impact operations and exempting him from the rotation would result in other employees "do[ing] more than their share of burdensome work." JA218; *see also* JA468, 492, 599. Thus, Groff's absences caused, and exempting Groff from Sunday work would continue to cause, an undue hardship.

Because exempting Groff from Sunday work caused undue hardship, USPS did not violate Title VII by declining to grant his accommodation.

IV

For the foregoing reasons, we will affirm.

Gerald E. Groff v. Louis DeJoy, Postmaster General USPS, No. 21-1900

HARDIMAN, *Circuit Judge*, dissenting.

The United States Postal Service offered Gerald Groff an accommodation that failed to eliminate the conflict between his religious practice and job requirements. I agree with my colleagues that such an accommodation cannot be "reasonable" under Title VII. Judge Shwartz's cogent analysis follows Supreme Court precedent in clarifying what it means to "reasonably accommodate" an employee's religious observance or practice, 42 U.S.C. § 2000e(j). A reasonable accommodation must "eliminate[] the conflict between employment requirements and religious practices." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70 (1986). This rule puts us on the right side of an unresolved circuit split involving Title VII religious accommodation. *See* Maj. Op. at 16–19 & n.12.

But without more facts, I cannot agree that USPS has established "undue hardship on the conduct of [its] business" by accommodating Groff's sincerely held religious belief. 42 U.S.C. § 2000e(j); *see* Maj. Op. 28 ("Because exempting Groff from Sunday work caused undue hardship, USPS did not violate Title VII by declining to grant his accommodation."). Title VII requires USPS to show how Groff's accommodation would harm its "*business*," not Groff's coworkers. 42 U.S.C. § 2000e(j) (emphasis added). USPS has yet to satisfy that burden on this record. The Majority cites cases echoing the District Court's observation that "[m]any courts have recognized that an accommodation that causes more than a *de minimis* impact on co-workers creates an undue hardship." *Groff v. DeJoy*, 2021 WL 1264030, at *12 (E.D.

Pa. Apr. 6, 2021). Yet neither our Court nor the Supreme Court has held that impact on coworkers alone—without showing business harm—establishes undue hardship. *See* Maj. Op. at 25–27.

USPS ultimately may be able to prove that accommodating Groff would have caused its business to suffer undue hardship. Because it has not yet done so, I respectfully dissent in part.[1]

I

In deciding Groff's case, the District Court inferred an atextual rule from Title VII: "an accommodation that causes more than a *de minimis* impact on co-workers creates an undue hardship." *Groff*, 2021 WL 1264030, at *12 (observing that "[m]any courts have recognized" such a rule).[2] The Majority gathers cases—all from other

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[1] The decision to remand should have been easier for our panel to make, since USPS has not yet established "undue hardship on the conduct of [its] business." 42 U.S.C. § 2000e(j). It's not that simple, because *TWA v. Hardison*, 432 U.S. 63 (1977), obliges us to depart from Title VII's text and determine whether accommodating Groff's religious practice would require USPS to "bear more than a de minimis cost." *Id.* at 84. The Majority may be correct; perhaps *anything* that keeps a postmaster at work during Christmastime can be considered "more than a de minimis cost" to USPS under *Hardison*'s capacious standard. But such a de minimis impact on USPS seems rather far afield from the text of Title VII. The Supreme Court has not yet clarified what it means for an employer to "bear more than a de minimis cost" when accommodating an employee's sincerely held religious belief. Like Justice Marshall, "I seriously question whether simple English usage permits 'undue hardship' to be interpreted to mean 'more than de minimis cost,'" particularly when such a reading can "effectively nullify[]" Title VII's promise of religious accommodation. *Id.* at 89, 93 n.6 (Marshall, J., dissenting).

[2] None of the cases cited by the District Court bind us. In fact, the only Third Circuit case—which was nonprecedential—considered how an accommodation that "would result in unequal treatment of the

circuits—affirming that rule, but without an important correction to the District Court's analysis. Maj. Op. at 25–27. Simply put, a burden on coworkers isn't the same thing as a burden on the employer's business. And Title VII requires an employer to show "undue hardship on the conduct of [its] *business*" by accommodating an employee's sincerely held religious belief. 42 U.S.C. § 2000e(j) (emphasis added). Neither Supreme Court nor Third Circuit precedent establish a derivative rule that equates undue hardship on business with an impact—no matter how small—on coworkers.

Title VII requires USPS to show how Groff's accommodation would harm its *business*, not merely how it would impact Groff's coworkers. By affirming the District Court's atextual rule, the Majority renders *any* burden on employees sufficient to establish undue hardship, effectively subjecting Title VII religious accommodation to a heckler's veto by disgruntled employees. Even USPS is unwilling to go that far.[3]

While it may ultimately be able to prove such undue hardship—"one that results in more than a de minimis cost to the employer," *EEOC v. GEO Grp., Inc.*, 616 F.3d 265, 271 (3d Cir. 2010)—USPS did not satisfy its burden at the summary judgment phase. Speculative, or even

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other employees and negatively affect employee morale" may support a claim of undue hardship. *Aron v. Quest Diagnostics Inc.*, 174 F. App'x 82, 83 (3d Cir. 2006).

[3] Before settling, USPS repeatedly denied its employee's 2017 Union grievance for this very reason. As the Majority notes, the Lancaster RCA grieved that "he was being 'forc[ed]' to work on Sundays while others were not being required to work." Maj. Op. 9 n.8 (citing App. 501). In response, USPS management asserted that the RCA's contractual employment rights were not violated by Groff's religious accommodation. App. 512 ("Management's position is that no contractual violation exists in this case.").

actual, effects on USPS employees in Lancaster or Holtwood cannot suffice to prove undue hardship. And taking all inferences in Groff's favor, as required at summary judgment, issues of material fact remain regarding USPS's claims related to RCA scheduling and overtime. Accordingly, I would remand so the District Court could evaluate those factual issues before concluding that USPS's business would suffer undue hardship by accommodating Groff.

A

I begin with USPS's claim that skipping Groff on Sundays would result in "fewer days off for the other RCAs." DeJoy Br. 57. Even if we accept its math—which seems debatable, given the possibility of Groff working every Saturday and holiday that doesn't fall on Sunday—the claim does not support USPS's argument. An employer does not establish undue hardship by pointing to a more-than-de-minimis impact on an employee's coworker. As I noted already, Title VII concerns undue hardship on the employer's *business*. *See* 42 U.S.C. § 2000e(j).

The Majority rightly notes that "Groff was scheduled to work on twenty-four Sundays" between March 2017 and May 2018. Maj. Op. at 23. But most of those Sundays were during non-peak season, when Groff would have been assigned to work at the Lancaster Annex hub, not his home station in Holtwood. The Lancaster Annex hub drew RCAs from all over the region, any of whom could be assigned to work on Sundays. So during non-peak season, Groff's supervisors had access to many more RCA replacements for Groff. During those ten months, USPS management could rely on regional RCAs to cover Groff's Sunday shift, or simply avoid scheduling him in the first

place, knowing that any RCA affiliated with the Lancaster Annex had to be available for Sunday work.[4]

Groff's accommodation created a predicament for the Holtwood Postmaster between Thanksgiving and New Years, since he could assign only Holtwood-based RCAs to cover Groff's local delivery routes. Even so, an employer does not establish undue hardship by pointing to a more-than-de-minimis impact on an employee's coworker. Without more evidence, USPS cannot rely on the limited experience of the Holtwood station at Christmastime to establish that its business would suffer undue hardship by accommodating Groff. At trial, the District Court could clarify whether scheduling difficulties created an undue hardship on USPS's business, not simply its Postmaster in Holtwood or certain Lancaster Annex RCAs.

B

Second, USPS cites testimony from Groff's former Postmaster to claim that "when Groff did not work on Sundays it caused overtime at the Holtwood station." DeJoy Br. 59. But where is the documentation of paid

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[4] On this point, I find assertions made by USPS management about the Lancaster Annex—upon which the Majority relies in finding undue hardship—too speculative to be dispositive. *See* Maj. Op. 28 ("According to management, allowing Groff to swap shifts was the only accommodation that would not impact operations and exempting him from the rotation would result in other employees 'do[ing] more than their share of burdensome work.'" (quoting App. 218)); *see also* App. 218 ("Manager Zehring declared that allowing some substitutes to be exempt from working Sundays would . . . pose an undue burden when requiring other employees to do more than their share of burdensome work."). USPS has provided no evidence that RCAs did "more than their share" of work they were hired to perform. And USPS management repeatedly denied the one Union grievance its Lancaster RCA filed in 2017. *See supra* note 3.

overtime wages? USPS has provided none. In fact, its corporate representative acknowledged that she had no idea whether overtime costs were incurred to accommodate Groff. The representative also conceded that scheduling an extra RCA in advance to take Groff's place on Sundays would not harm USPS; Groff's former postmaster acknowledged the same in his email to USPS Labor Relations.

We cannot assume that USPS paid overtime it would not have otherwise owed another RCA to cover for Groff. The parties stipulated that every RCA received overtime pay for working Sundays and holidays, whether or not they were covering for Groff. Since Groff would have been paid overtime for Sunday work, any salary that would have been owed him had he worked Sundays should have been used to pay another RCA, resulting in no additional cost to USPS.

I also note that an obligation to pay overtime "only at Holtwood during peak season," DeJoy Br. 59—no more than six Sundays, presuming Groff was assigned each Sunday between Thanksgiving and New Years in 2017—might be insufficient to establish undue hardship. EEOC regulations "presume that the infrequent payment of premium wages for a substitute . . . are costs which an employer can be required to bear as a means of providing a reasonable accommodation." 29 C.F.R. § 1605.2(e)(1).

More evidence is needed to resolve this question of Sunday overtime pay. When combined with USPS's failure to identify any concrete evidence of overtime costs, and its own witnesses' admissions, an issue of material fact precludes summary judgment. At trial, the District Court could determine whether USPS incurred overtime costs when Groff wasn't scheduled on Sundays and, if it did,

whether those costs resulted in an undue hardship on the conduct of its business.

In sum, Title VII requires USPS to show how Groff's accommodation would harm its business. Inconvenience to Groff's coworkers alone doesn't constitute undue hardship. USPS may be able to prove such undue hardship at trial. But taking all inferences in Groff's favor at summary judgment, multiple issues of material fact remain. I would remand so the District Court can determine whether USPS suffered an undue hardship.

II

Neither snow nor rain nor heat nor gloom of night stayed Gerald Groff from the completion of his appointed rounds. But his sincerely held religious belief precluded him from working on Sundays. Because USPS has not yet shown that it could not accommodate Groff's Sabbatarian religious practice without its business suffering undue hardship, I respectfully dissent. The cause should be remanded for a trial on the question of undue hardship.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL NO. 5:19-CV-01879-JLS

GERALD E. GROFF,
Plaintiff,

v.

LOUIS DEJOY, POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE
Defendant.

(April 6, 2021)

MEMORANDUM OPINION

Schmehl, J. /s/ JLS **April 6, 2021**

I. INTRODUCTION

Plaintiff, Gerald Groff ("Groff" or "Plaintiff") brings this suit against his former employer, Louis DeJoy, Postmaster General, United States Postal Service ("Defendant"). Groff's Complaint contains a cause of action for religious discrimination under two different theories: disparate treatment and failure to accommodate. Before the Court is the Motion for Summary Judgment of Defendant, the Motion for Partial Summary Judgment of Groff, the parties Joint Statement of Material Facts, and Plaintiff's Motion for Sanctions. All motions have been responded to and oral argument has been held. For the reasons discussed more fully below, Defendant's Motion for Summary Judgment will be granted, and Groff's Motion for Partial Summary Judgment will be denied.

II. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. Proc. 56(c). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury

could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." *Pignataro v. Port Auth. of N.Y. and N.J.*, 593 F.3d 265, 268 (3d Cir. 2010) (*citing Reliance Ins. Co. v. Moessner*, 121 F.3d 895, 900 (3d Cir. 1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250.

III. FACTUAL BACKGROUND

Groff identifies as an Evangelical Christian within the Protestant tradition. (Joint Statement of Facts, ¶ 1.) On April 7, 2012, he was hired as a Temporary Relief Carrier at the Quarryville Post Office for the USPS. (*Id.* at ¶ 2.) He transferred to the Paradise Post Office as a Rural Carrier Associate on July 14, 2012. (*Id.* at ¶ 4.) As an RCA, Groff was classified as a "non-career" employee, responsible to cover for the work of any Rural Route Carrier (a "career" employee) in the delivery of mail and packages. (*Id.* at ¶ 5.) Part of being an RCA is being flexible. (*Id.*) Most career employees who are mail carriers began their USPS employment as a noncareer employee. An RCA is one such non-career position. This is generally an entry-level position. (JSOF at ¶ 6.) RCAs are responsible for the safe and efficient delivery and collection of the mail, working part-time to cover for regular carriers. (https://about.usps.com/publications/pub181.pdf.) Work

hours vary depending on the office and route. *Id.* As flexible, relief carriers, all RCAs must be willing to work weekends and holidays. *Id.* RCAs are neither guaranteed specific hours or set schedules and are scheduled on an as-needed basis. (*See* Hess Decl. at ¶3, ECF No. 36, Ex. E.)

Groff was part of the Central Pennsylvania District of USPS, which includes Lancaster County. (*Id.* at ¶ 7.) In an effort to remain profitable, in 2013, the USPS signed a contract with Amazon pursuant to which the USPS would deliver Amazon packages. (Groff Dep. at 159, 166). It was critically important to the USPS that Sunday Amazon delivery be successful. (Hess Decl. ¶4.)

On May 24, 2016, USPS and the National Rural Letter Carriers Association ("Union") entered a Memorandum of Understanding ("MOU") about how the USPS would deliver for Amazon. (*Id.* at ¶ 8.) The MOU sets forth a detailed procedure for Sunday Amazon deliveries. First, the union creates a list of all part-time flexible rural carriers, substitute carriers, RCAs, and rural carrier relief employees. Then, every employee is asked if he or she wants to work on Sundays and holidays. Then two lists are created: one of employees who want to volunteer to work on Sundays and holidays; and one of employees who do not. (*Id.* at ¶ 9.) On any given Sunday or holiday, management determines how many carriers are necessary given the expected mail volume. (*Id.* at ¶ 10.) Under the MOU, management then assigns carriers as follows: First management schedules assistant rural carriers ("ARCs"). If there are sufficient ARCs, no additional part-time flexible carriers are scheduled. If there are insufficient ARCs, management then schedules additional carriers from the volunteer list, on a rotating basis. If between the ARCs and volunteers there are sufficient carriers to cover the need, no additional part-

time flexible carriers are scheduled. If there are insufficient carriers between the ARCs and volunteers, additional part-time flexible carriers are scheduled, on a rotating basis, from the non-volunteer list. (JSOF at ¶ 10.) Pursuant to the MOU, a part-time flexible carrier may be bypassed in the rotation if the part-time flexible carrier has approved leave or a non-scheduled day adjacent to the Sunday or holiday or scheduling the part-time flexible carrier to work on Sunday or holiday would result in the carrier exceeding 40 hours at the end of the work week. In addition, RCAs covering the extended vacancy of full-time career carriers are only scheduled if all other part-time flexible carriers have been scheduled and more carriers are still needed. (*Id.* at ¶ 11.)

For RCAs, seniority is based on time in service in a particular office, not based on time working for USPS as an organization. (*Id.* at ¶ 12.) In 2015, prior to the enactment of the MOU, exempting an RCA from Sunday delivery was within the discretion of the postmaster. (Hess Decl. ¶7.) The relatively large Quarryville station had other carriers available to deliver on Sundays. (*Id.* at ¶5.) The Quarryville station began delivering Amazon packages on Sundays in 2015, (Groff Dep. at 161, 169, ECF No. 36, Ex. B,) and Groff negotiated with his then-postmaster, Patricia Wright, to be exempt from working on Sundays. (*Id.* at 108.) In 2016, Postmaster Wright informed Groff that she would no longer be able to exempt him from Sunday work. (Groff Response to Interrogatory No. 5, ECF No. 36, Ex. C.)

After learning he would no longer be exempted from Sunday work in Quarryville, Groff requested reassignment to the Holtwood station, which was not yet delivering Amazon packages on Sundays. (Groff Dep. at 161.) At all relevant times that Groff was working at

Holtwood, Brian Hess was Groff's Postmaster. (JSOF at ¶ 13.) When Hess hired Groff, he knew Groff transferred to avoid Sunday Amazon deliveries due to Groff's religious beliefs. (*Id.* at ¶ 14.) No one ever promised Groff that the station would continue to be so exempt or that he specifically would be exempt from delivering on Sundays. (*Id.* at ¶ 15.)

From the time he first transferred to the Holtwood station until March of 2017, Groff got along well with Postmaster Hess and the other employees in that station and was never disciplined. (*Id.* at ¶ 17.) Beginning in March of 2017, the Holtwood Post Office was required to participate in Amazon package deliveries, which meant Groff could be scheduled to work on Sundays. (*Id.* at ¶ 18.) The first Amazon schedule involving Holtwood carriers was for Sunday, March 19, 2017, and Groff was scheduled for that Sunday. (*Id.* at ¶ 16.)

From the time Groff was required to participate in Sunday Amazon deliveries until his employment with USPS ended on January 18, 2019, Groff never worked on a Sunday, although he did make Amazon deliveries on holidays that were not a Sunday. (JSOF at ¶ 21.) Management suggested all the following accommodations to Groff: If he was scheduled on a Sunday, he could take another day that week entirely off from work as a day of worship or he could come in later on a Sunday, after church. Management also suggested that it would contact other stations to attempt to find coverage for Groff when he was scheduled on a Sunday, and if coverage was found, Groff would be excused. (*Id.* at ¶ 22.) Groff was also permitted to find his own coverage for Sundays that he was assigned to work. (Hess Dep. at 122, 126, ECF No. 36, Ex. F.)

Groff was scheduled but did not report to work on the following days: March 19, 2017; April 2, 2017; April 16, 2017; April 23, 2017; May 7, 2017; May 21, 2017; June 11, 2017; July 2, 2017; July 23, 2017; August 6, 2017; August 28, 2017; September 17, 2017; October 1, 2017; October 15, 2017; December 3, 2017; December 17, 2017; January 14, 2018; March 4, 2018, March 18, 2018; March 25, 2018; April 1, 2018; April 8, 2018; April 22, 2018; and May 13, 2018. (JSOF at ¶ 23.) This is at least 24 scheduled Sundays where Groff was scheduled and did not report to work. (*Id.*) When the plaintiff was scheduled on a Sunday and did not work, it upset the other carriers. (Evans Dep. at 42, ECF No. 36, Ex. I; Hess Dep. at 41.) There were complaints. (French Dep. at 23) and discussion of a boycott. (Hess Dep. at 41-42.) One carrier transferred from Holtwood because he felt it was not fair that the plaintiff was not reporting on scheduled Sundays. (Hess Dep. at 102.) Another carrier resigned in part because of the situation. (Hess Dep. 103.) When the plaintiff was scheduled and did not work, it complicated the scheduling and planning processes and created more difficulties in timely delivering the packages. (Evans Dep. at 42-43; French Dep. at 31; Hess Dep. at 82.) Skipping Groff in the rotation meant other carriers had to work more Sundays than they otherwise would have had to. (Hess Dep. at 49, 82.)

Groff claims that Postmaster Hess treated other carriers better than him and required him to deliver the mail even when there was bad weather. Groff recalled this happening only on two specific occasions. Once there was an ice storm and it caused the plaintiff to be an hour later than the other carriers in delivering his route, and another time Hess ordered Groff to assist other carriers who needed help. (Groff Dep. at 289-290.) However, the record

shows that Plaintiff was the most experienced RCA in the station, one of the other RCAs was still relatively new, and the timecards show that Groff had the fewest pieces of mail to deliver and finished his work the earliest. (Groff Dep. at 349-350.)

On one occasion Postmaster Hess said to the plaintiff that the picture on his badge reminded him of "the guys on the front of that morning's newspaper." (Groff Dep. at 239.) The paper had photos of people who had been arrested for sexual deviance in a local park. (*Id.* at 240.) Groff did not contemporaneously report this comment to anyone in management, nor did he tell Hess that he didn't appreciate the comment. (*Id.* at 240-243.) Employees in Holtwood sometimes made jokes and teased each other. (*Id.* at 243-244.) More than once there was joking in the station about an employee's photo. (Groff Dep. 243-244.)

During the non-peak season of 2018, Postmaster Hess sometimes found coverage so that Groff did not have to work. (JSOF at ¶ 24.) Hess looked for substitutes for Groff each week, including from other post offices. (Hess Dep. at 122-123.) Hess notified Groff that USPS can progressively impose discipline on him for refusing to work Sunday, beginning with a letter of warning, to a 7-day suspension, to a 14-day suspension, and then termination. (JSOF at ¶ 25.) However, paper suspensions do not cause an employee to lose work or pay, (*Id.* at ¶ 26) as within the USPS, discipline is intended to be "corrective" in nature, not punitive. (*Id.* at ¶ 27.)

Solely by virtue of Groff not reporting for work on Sundays, USPS held eight (8) Performance Discipline Interviews ("PDIs") with Groff and imposed progressive discipline as follows: On June 9, 2017, USPS issued Groff a Written Letter of Warning. On January 2, 2018, USPS issued Groff a 7-Day Paper Suspension. On October 5,

2018, USPS issued Groff a 14-Day Paper Suspension. (*Id.* at ¶ 28.) For Groff, the discipline imposed on him was intended to correct his "[n]ot reporting to work as scheduled" on Sundays. (*Id.*) Aside from attendance, Groff otherwise had an excellent performance as an RCA, being a good and efficient employee. (*Id.* at ¶ 29.)

On April 5, 2017, Groff was summoned for a PDI with Station Master Aaron Zehring for failing to report to work on Sunday. (*Id.* at ¶ 30.) Zehring suggested Groff pick a different day of the week for observance of the Sabbath. (*Id.* at ¶ 32.) As a result of the July 11, 2017, Letter of Warning, Groff contacted an Equal Employment Opportunity counselor at USPS regarding his allegation that the USPS failed to give him a religious accommodation from Sunday deliveries. (*Id.* at ¶ 32.)

USPS next issued Groff a 7-Day Paper Suspension for not working Sunday, December 3, 2017, or December 17, 2017. (JSOF at ¶ 33.) As a result of this 7-Day Paper Suspension, on February 3, 2018, Groff again contacted an Equal Employment Opportunity counselor at USPS. (*Id.* at ¶ 34.)

Brian Hess held a PDI with Groff on September 6, 2018, due to Groff not reporting for work on Sundays, and USPS issued Groff a 14-Day Paper Suspension on October 5, 2018, for not reporting for Sunday deliveries on June 17, 2018, August 12, 2018, and August 26, 2018. (*Id.* at ¶¶ 35-36.) As a result of this 14-Day Paper Suspension, Groff again complained through the EEO process, (*Id.* at ¶ 37) then resigned his employment on January 18, 2019. (*Id.* at ¶ 38.) Groff also had additional Sunday absences in the time period following the September 6, 2018, PDI and receiving the 14-Day Paper Suspension on October 5, 2018. (JSOF at ¶ 39.)

When implementing the Amazon contract in the Central Pennsylvania District, USPS drew a distinction between the "peak" and the "non-peak" seasons. The "peak" season varied but was generally defined as the Sunday before Thanksgiving until the first or second week of the new year. (*Id.* at ¶ 42.) During the non-peak season, all RCA's in Lancaster County had to report for Sunday and holiday deliveries at the Lancaster County Annex in Lancaster City. (*Id.* at ¶ 43.) During the peak season, all Amazon deliveries were handled in each respective post office, using its own staff and without the Lancaster County Annex. (*Id.* at ¶ 44.)

RCAs have no contractual right to specific days off, (JSOF at ¶ 45) but receive overtime pay for working Sundays and holidays. (*Id.* at ¶ 46.) During non-peak season, RCAs were permitted to volunteer to always be scheduled for Sunday delivery. (*Id.* at ¶ 47.) Otherwise, Sunday delivery was assigned during nonpeak season using a rotating schedule for all RCAs, without regard to seniority. (*Id.*) No RCA had more or less of a right to have Sunday off than another RCA. (*Id.* at ¶ 48.) It would have been futile for Groff to have transferred to any other post office as an RCA because all RCAs must be available to deliver for Amazon deliveries on Sundays. (*Id.* at ¶ 40.)

During some non-peak seasons at issue in this case, Diane Evans was the Supervisor at the Lancaster County Annex in charge of assigning RCAs for Amazon deliveries on Sundays and holidays. (*Id.* at ¶ 49.) Once she created a list of Sunday assignments, it would then be reviewed and finalized by Lancaster City Postmaster Douglas French, who then circulated it to other postmasters and verified with them that their employees were notified. (JSOF at ¶ 49.) During the non-peak season, RCAs were drawn from the entirety of Lancaster County and

reported to the Lancaster County Annex for an assigned route that could be anywhere in Lancaster County, including outside of that RCA's regular workplace. (*Id.* at ¶ 50.)

During the "peak" season, Hess typically located another RCA who volunteered to cover Groff's Sunday shifts. (*Id.* at ¶ 51.) In the absence of unforeseeable issues where someone called-out at the last minute, Hess was able to find volunteers for most of Groff's Sunday shifts at Holtwood. (*Id.* at ¶ 52.) When Groff was scheduled and did not work, it complicated the scheduling and planning processes. (Evans Dep. at 42-43; French Dep. at 31; Hess Dep. at 82.) Similarly, when Groff was scheduled and did not work, it created more difficulties in timely delivering the packages. (Evans Dep. at 43.) Skipping Groff in the rotation meant other carriers had to work more Sundays than they otherwise would have had to. (Hess Dep. at 49, 82.) The USPS had difficulty getting carriers to work on Sundays and many RCAs resigned. (Evans Dep. at 14; Hess Dep. at 75.)

Neither Postmaster Hess nor anyone else in management ever made negative comments to Groff relating to his religion. (Groff Dep. at 286-287.) Supervisor Evans, Postmaster French, Labor Relations Manager Gaines and Postmaster Hess all deny discriminating against, retaliating against, or treating Groff any differently because of his religion or his religious objection to working on Sundays. (Evans Dep. at 43-44; French Dep. at 47-48; Gaines Dep. at 87-88; Hess Dep. at 202-203.) Further, Postmaster Hess and Supervisor Evans are both Christian, and Postmaster French is Catholic. (ECF No. 36, Ex. D, USPS00132, 00153, 00211.)

IV. DISCUSSION

Defendant argues that the claims contained in Plaintiff's Complaint for religious discrimination should be dismissed. For the reasons set forth below, Defendant's motion for summary judgment will be granted and Plaintiff's Complaint will be dismissed. Further, Plaintiff's motion for partial summary judgment as to his failure to accommodate claim will be denied.

Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Under Title VII, employees may assert two different theories of religious discrimination: failure to accommodate and disparate treatment. *E.E.O.C. v. Aldi, Inc.*, 2008 WL 859249, at *5 (W.D. Pa. Mar. 28, 2008); *citing Abramson v. William Paterson College of New Jersey,* 260 F.3d 265, 281 (3d Cir. 2001).

A. DISPARATE TREATMENT

To survive a motion for summary judgment on disparate treatment, Plaintiff can show direct or indirect evidence of discrimination. The typical *McDonnell Douglas* burden shifting paradigm is inapplicable where there is direct evidence of discriminatory animus. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 242 (1989). In the instant matter, Groff argues that there is direct evidence of discrimination, or in the alternative, that he has produced sufficient circumstantial evidence to survive summary judgment under the *McDonnell Douglas* test.

1. Direct Evidence

Direct evidence of discrimination takes the form of either: 1) a workplace policy that is discriminatory on its face; or 2) statements by decisionmakers that reflect the alleged animus and bear squarely on the alleged adverse employment decision. *Garcia v. Newtown Twp.*, 483 F. App'x 697, 704 (3d Cir. 2012). Evidence is only direct when it is so strong that a factfinder would have little choice but to conclude that a discriminatory attitude was, more likely than not, a motivating factor. *See Anderson v. Wachovia Mortg. Corp.,* 621 F.3d 261, 269 (3d Cir. 2010).

Groff does not argue that the USPS has a workplace policy that is discriminatory on its face. Rather, he focuses on the second form of direct evidence of discrimination, arguing that decisionmakers made statements that reflect alleged animus toward him.

Plaintiff's first alleged direct evidence of discrimination is Quarryville Postmaster Patricia Wright's 2015 alleged statement regarding Groff's refusal to work Sundays, "I'm not going to put up with this shit again this year." (Groff Dep., pp. 111-113; 325.) However, this statement is irrelevant to the instant allegations of discrimination, as it transpired before Groff was stationed at the Holtwood Post Office. Further, Wright is not a decisionmaker as to Groff's discipline.

Next, Plaintiff argues that in March of 2017, Christiana Postmaster Roger Sheddy was on a conference call with other postmasters and managers to discuss the Amazon contract in Lancaster County. (Sheddy Dep., ECF No. 43, Ex. A at 17.) He heard an individual who he believed was Brian Hess, Groff's postmaster, complain about someone not working Sundays due to religious observance, and assumed this statement was made in reference to Groff.

(*Id.*) Sheddy stated that in response, another manager said, "oh yeah, we're going to get him." (*Id.* at 17-19.) Sheddy then heard Mary Tyneway, the Post Office Operations Manager, state "Sunday's just another day." (*Id.* at 18.) Although it may sound nefarious, this allegation is too speculative to be the type of direct evidence that can serve as proof of discrimination. Sheddy heard someone that he **thought** was Hess complaining about someone that he **assumed** to be Groff not working on Sundays due to his religion. This allegation is rife with speculation and is insufficient to be the type of smoking gun evidence necessary to prove direct discrimination. Further, the statement of Mary Tyneway that "Sunday's just another day" makes no mention of religion, and Tyneway is also a non-decisionmaker as to Groff's discipline.

Quarryville Supervisor Sheddy felt that Groff was being treated unfairly and sent a letter reflecting these thoughts to a Post Office consultant in Washington D.C. However, Sheddy was not a decisionmaker regarding Groff's discipline and therefore, his thoughts clearly cannot be direct evidence of discrimination.

Groff also argues that Hess told him management was going to "make an example" out of him. (Groff Dep. at 231.) Hess denies that he ever made such a statement, but even if he did, it would be insufficient to serve as direct evidence of discrimination. It is clear from that record that USPS management did **not** in fact make an example of Groff. He was permitted 24 Sunday absences, three times the number that could have resulted in his termination and he was never fired. If management was looking to make an example of Groff, they could have done so after far fewer absences than 24. This alleged statement by Hess, even if true, is not the type of strong

evidence that permits a plaintiff to avoid application of *McDonnell Douglas* by proving direct evidence of discrimination.

Groff also makes much of the fact that on two occasions, Postmaster Hess helped other carriers and not him, and that Hess once made a joke that hurt his feelings. First, the record shows that none of these instances had anything to do with Groff's religion. The record shows that the instances when Hess helped other RCAs and not Groff involved carriers who were new, had a large amount of mail and packages to deliver, and were overwhelmed. The record also shows that the joke Hess made that hurt Groff's feelings had nothing to do with religion and that the atmosphere at Holtwood involved lots of joking between employees, including Groff. Groff could only cite to a few minor instances in which Hess allegedly treated him poorly over two years of working at the Holtwood post office. These minor instances are insufficient to prove animus directed toward Groff on the part of Hess.

Groff makes other unavailing arguments that direct evidence of discrimination exists. Groff being "subjected" to eight (8) pre-disciplinary interviews for his failure to work on Sundays, his claim that accommodations were offered and then revoked and his claim that accommodations varied from region to region are all insufficient direct evidence of discrimination. None of these allegations, even if proven to be true, amount to enough evidence to allow a factfinder to conclude that a discriminatory attitude was, more likely than not, a motivating factor in Defendant's treatment of Groff. It is noteworthy that Groff has produced no direct evidence of animus whatsoever.

In summary, Groff has failed to produce any direct evidence that clearly shows that postal management was

motivated by animus against Groff's religion. Therefore, he cannot avoid the application of the *McDonnell Douglas* burden shifting paradigm.

2. *McDonnell Douglas* Analysis

To establish a *prima facie* case of religious or national origin discrimination under a disparate treatment theory when there is no direct evidence of discrimination, courts use the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 803-05 (1973)[1]. First, the plaintiff has the burden of proving a *prima facie* case of discrimination by the preponderance of the evidence. Second, if the plaintiff succeeds in proving the *prima facie* case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *Id.* at 802. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. *Id.* at 804.

a. *Prima Facie* Case

To establish a *prima facie* case, the plaintiff must show: 1) he is a member of a protected class; 2) he is qualified for

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[1] Groff argues that the *McDonnell-Douglas* burden shifting framework is no longer applicable to disparate treatment cases after the U.S Supreme Court's decision in *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015). I find this to be incorrect. *Abercrombie* is a disparate treatment case, but it makes no mention of *McDonnell-Douglas* or "burden-shifting" anywhere in the opinion. Further, courts in this district have applied the *McDonnell Douglas* test to religious discrimination claims after Abercrombie was decided. *See Dinnerstein v. Burlington Cty. Coll.*, 764 F. App'x 214, 217-18 (3d Cir. 2019). Accordingly, I will apply the *McDonnell-Douglas* framework to the instant matter.

the position; 3) he suffered an adverse employment action; and 4) that the action occurred under circumstances that give rise to an inference of unlawful discrimination, such as when a similarly-situated person not of the protected class is treated differently. *Abramson*, 250 F.3d at 281-82 (*citing Goosby v. Johnson & Johnson Med., Inc.*, 228 F.3d 313, 318-19 (3d Cir. 2000).

Defendant admits that Groff can establish that he is a member of a protected class and is qualified for the position as issue. (ECF No. 36, p. 15.) However, Defendant argues that Groff cannot establish the third prong of the *prima facie* case – that he suffered an adverse employment action.

An action is adverse only if it tangibly affects the terms and conditions of employment. *Burlington N. & Santa Fe Ry Co. v. White*, 548 U.S. 53, 64 (2006). In support of his claim that he suffered an adverse employment action, Groff claims that he was constructively discharged. Constructive discharge requires discriminatory actions "so intolerable that a reasonable person would be forced to resign." *Goss v. Exxon Office Systems Co.*, 747 F.2d 885, 887 (3d Cir. 1984). Groff argues that he was forced to resign before Defendant fired him due to his repeated Sunday absences. Therefore, the question is whether a reasonable employee in Groff's shoes would have expected to be terminated. Groff was absent twenty-four times over a two-year period and received only a few disciplines. He lost no pay or hours because of his discipline and knew of no employee who had ever been fired for absenteeism.

However, Groff did testify that Brian Hess told him that management "intended to skip the typical early steps of disciplinary action and go directly to a suspension and subsequent termination" of his job (ECF No. 36, Ex. D, Notice of Right to File Individual Complaint), and that

Supervisor Treva Morris told Groff in writing that she was considering discipline for his failure to work as scheduled and that the "corrective action may be up to and including a removal from the Postal Service." (ECF No. 37, Pl's Mtn Appendix, p. 140.) This creates a genuine issue of material fact as to whether a reasonable employee in Groff's shoes would have expected to be fired. Accordingly, I find that a genuine issue of fact exists as to whether Groff suffered an adverse employment action.

Defendant also argues Groff does not meet with fourth prong of the *prima facie* case because he cannot prove causation. A plaintiff must show some "causal nexus" between his protected status and an employment action. *Sarullo v. U.S. Postal Serv.,* 352 F.3d 789, 797 (3d Cir. 2003). In order to establish a *prima facie* case, Groff needs to show that Defendant's adverse employment action was motivated by an anti-religion animus. Typically, this type of causation is proven through the identification of similarly-situated employees outside of a plaintiff's protected class who received preferential treatment. In this matter, Groff has produced no evidence of causation through such comparators. There are no similarly-situated employees identified, no employees who were not religious and who were permitted be absent on certain required work days. Groff has completely failed to identify any similarly situated employees who were treated more favorably than him.

However, a plaintiff can also meet the fourth prong by showing that the circumstances of the adverse action give rise to an inference of discrimination. *Oakley v. Orthopaedic Assocs. of Allentown, Ltd.*, 742 F. Supp. 2d 601, 608 (E.D. Pa. 2010), *citing Jones v. Sch. Dist. of Philadelphia,* 198 F.3d 403, 411 (3d Cir. 1999); *Parsia v. Allied Tube & Conduit Corp.,* 2009 WL 750191, at *11–12

(E.D.Pa. Mar. 19, 2009). Therefore, Groff could establish the fourth prong by showing that the circumstances of his alleged constructive discharge give rise to the inference of discrimination. Upon review of the entire record in this matter, I find that there is a genuine issue of material fact as to whether Groff could show that the circumstances of his constructive discharge suggest discrimination on the part of Defendant. Accordingly, it is possible that Groff may meet the fourth prong and therefore, be able to prove a *prima facie* case of religious discrimination at the trial of this matter. Accordingly, I must proceed to the next step of the *McDonnell Douglas* analysis.

b. Non-Discriminatory Explanation

As it is possible that Groff could establish a *prima facie* case of discrimination, the burden now shifts to Defendant to establish a legitimate, non-discriminatory reason for its action. *Abramson v. William Patterson Coll. of NJ,* 260 F.3d 265, 282 (3d Cir. 2001). The burden on defendants at this juncture is "relatively light." *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). Defendant can meet this burden by setting forth evidence that the Postal Service was in serious financial distress, needed Sunday Amazon delivery to be successful, and therefore needed Groff and all RCAs to be in attendance. Accordingly, the burden now shifts back to Groff to prove by a preponderance of the evidence that the legitimate reasons offered by Defendant were a pretext for discrimination.

c. Pretext

To demonstrate pretext, a plaintiff must provide evidence either that the decision maker was motivated by animus or that shows the proffered explanation to be fabricated. *Atkinson v. Lafayette Coll.,* 460 F.3d 447, 454 (3d Cir. 2006). To prove pretext, a plaintiff must

demonstrate "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [defendant's] proffered legitimate reasons for its action that a reasonable fact finder **could** rationally find them unworthy of credence, and hence infer that [defendant] did not act for the asserted non-discriminatory reasons." *Fuentes*, 32 F.3d at 765. (emphasis in original.)

To show pretext, Groff must produce evidence that he was treated differently with regards to Sundays because he was a Christian or that Defendant's explanation of the need for Amazon Sunday delivery to be successful was fabricated. He can do neither. Not one decision-maker ever made a negative comment to Groff about his religion or his observance of it. All decision-makers denied anti-religious animus, and several of them were Christian themselves. Groff cannot prove pretext by suggesting or speculating that there was anti-Christian animus in the USPS. He must prove it and he clearly has not. Similarly, there is certainly evidence that Sunday Amazon delivery was very important but challenging for Defendant, and that the USPS struggled to get RCA's to work on Sundays. There is no evidence in the record of fabrication by Defendant. Accordingly, Groff cannot prove that Defendant's reasons for his discipline were a pretext for discrimination and his disparate treatment claim must fail.

B. <u>FAILURE TO ACCOMMODATE</u>

Title VII failure to accommodate claims are also governed by a burden-shifting framework. *E.E.O.C. v. GEO Grp., Inc.*, 616 F.3d 265, 271 (3d Cir. 2010). Under this framework, the plaintiff again has the initial burden of proving a *prima facie* case. *Id.* If he does, the burden then shifts to the employer to show either: (1) it made a good-faith effort to reasonably accommodate the plaintiff's religious belief, or (2) that such an

accommodation would cause an undue hardship to the employer.

To establish a *prima facie* case of religious discrimination, the employee must show: (1) he holds a sincere religious belief that conflicts with a job requirement; (2) he informed his employer of the conflict; and (3) he was disciplined for failing to comply with the conflicting requirement. *GEO Grp,* 616 F.3d at 271, *citing Webb v. City of Phila*, 562 F.3d 256, 259 (3d Cir. 2009). The burden [then] shifts to the employer to show either [1] it made a good-faith effort to reasonably accommodate the religious belief, or [2] such an accommodation would work an undue hardship upon the employer and its business. *Id.* (citations omitted).

In the instant matter, Defendant does not argue that Groff cannot establish a *prima facie* case. Rather, Defendant argues that he has two defenses to Groff's failure to accommodate claim that cause him to prevail in this matter.

1. Reasonable Accommodation

Title VII does not require an employer offer every accommodation, it need only offer a reasonable accommodation. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 70 (1986). "Title VII does not define what is a 'reasonable accommodation,'" but the Supreme Court has "made clear" that "a sufficient religious accommodation need not be the 'most' reasonable one (in the employee's view), it need not be the one that the employee suggests or prefers, and it need not be the one that least burdens the employee." *Shelton v. Univ. of Med. & Dentistry of N.J.*, 223 F.3d 220, 225 (3d Cir. 2000) (citing *Ansonia Bd. of Educ.*, 479 U.S. at 68–69986)). Simply put, when the

employer offers any reasonable accommodation, the statutory inquiry must end. *See id.*

Defendant argues that he accommodated Groff's religion in four ways. First, by allowing him to take another day off as a day of worship in a week when he was scheduled to work on a Sunday. Second, by allowing Groff to come in late on Sunday after church services if he was scheduled on a Sunday. Next, by excusing him from work on a Sunday if management could find coverage for Groff when he was scheduled, and lastly, by excusing Groff if he could find his own coverage for a Sunday when he was scheduled. (ECF No. 36, p. 22.) Defendant argues that these scenarios were a reasonable accommodation, as the latter two accommodations wholly resolved the conflict between Groff's work and his religion, because if a shift swap was arranged, either by management or by Groff himself, there was no conflict.

In response, Groff claims that in order to be reasonable, an accommodation must **fully** eliminate the conflict between work and religion, and that shift swapping does not do so because if another employee does not take Groff's Sunday shift, he is not accommodated. In support of this argument, Groff relies upon a circuit split (also discussed by Defendant) as to whether an accommodation need to wholly eliminate the conflict to be reasonable. *Compare EEOC v. Firestone Fibers & Textiles Co.,* 515 F.3d 307 (4th Cir. 2008); *Sturgill v. United Parcel Service, Inc.*, 512 F.3d 1024, 1032-33 (8th Cir. 2008) *with Morrisette-Brown v. Mobile Infirmary Medical Center*, 506 F.3d 1317, 1322 (11th Cir. 2007); *Baker v. Home Depot*, 445 F.3d 541, 548 (2d Cir. 2006); *Wright v. Runyon*, 2 F.3d 214, 217 (7th Cir. 1993). The Third Circuit has never squarely addressed this issue, but District Courts have held that an accommodation need not completely eliminate a conflict in

order to be reasonable. *See Miller v. Port Auth. of N.Y. & N.J.*, 351 F.Supp.3d 762, 778 (D.N.J. 2018); *E.E.O.C. v. Aldi, Inc.*, 2008 WL 859249, at *13 (W.D. Pa. Mar. 28, 2008).

Lacking any Third Circuit authority to the contrary, I find that an employer does not need to wholly eliminate a conflict in order to offer an employee a reasonable accommodation. Accordingly, Defendant did not need to completely eliminate the conflict for its offer of accommodation to Groff to be considered reasonable. Further, *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 77-78 (1977) held that voluntary shift swapping may be a reasonable accommodation. *See also Miller*, 351 F.Supp.3d at 781. In this matter, Defendant made accommodations, as management offered to help with shift swapping, and Groff was also permitted to arrange his own shift swaps. Groff was not happy with these accommodations, but that does not make them unreasonable. An employer is not required to offer an employee his preferred accommodation where an adequate accommodation has already been provided. *See Miller*, 351 F.Supp.3d at 778, *citing Prise v. Alderwoods Grp., Inc.*, 657 F.Supp.2d 564, 601 (W.D. Pa. 2009). I find Defendant offered Groff reasonable accommodations and summary judgment should therefore be granted to Defendant on Count II of Plaintiff's Complaint.

2. Undue Hardship

Typically, where a reasonable accommodation is found, "the statutory inquiry is at an end." *Ansonia*, 479 U.S. at 68. However, in the alternative, I will briefly address the undue hardship that would be suffered by Defendant if Groff were permitted his desired accommodation of being skipped over in the schedule every Sunday. An employer must reasonably accommodate an employee's religious

practices unless accommodation would cause an undue hardship. *TWA v. Hardison*, 432 U.S. 63, 71-72 (1977). An accommodation that imposes anything more than a *de minimus* cost on an employer causes such a hardship. *Id.* at 84. In examining an undue hardship, courts evaluate both economic and non-economic costs. *Webb v. City of Phila.*, 562 F.3d 256, 259-60 (3d Cir. 2009.) "[E]mployers must be given leeway to plan their business operations and possible accommodative options in advance, relying on an accommodation's predictable consequences along the way." *Firestone Fibers & Textiles Co.*, 515 F.3d at 317. If an accommodation would violate a CBA or impose more than a *de minimis* impact on co-workers, "then [the employer] is not required to offer the accommodation under Title VII." *Id.* (citing *Balint v. Carson City*, 180 F.3d 1047, 1054-55 (9th Cir. 1999).

In this matter, Defendant provides evidence of multiple instances of undue hardship if Groff were given his preferred accommodation and Groff raises numerous legal arguments in an attempt to defeat that evidence. However, there is no need to examine each and every argument, as *TWA v. Hardison* clearly shows that violation of a collectively bargained agreement is an undue hardship. 432 U.S. 63, 79. In the instant matter, allowing Groff to be skipped in the schedule every Sunday would be a clear violation of the MOU. Groff knew that as an RCA, he would be a part-time carrier who covered for regular carriers when needed and that he had no contractual right to specific days off. Beginning in 2016, pursuant to the MOU, all RCAs had to be available to work weekends. On any given Sunday, pursuant to the MOU, management would first schedule assistant rural carriers, then volunteer RCAs, then non-volunteer RCAs as needed on a rotating basis. This arrangement was negotiated and

agreed upon by Defendant and the union representing Groff.

Skipping Groff in the Sunday rotation and never scheduling him to work on that day of the week would clearly violate the process carefully laid out in the MOU. As a non-volunteer RCA, pursuant to the MOU, Groff had to be available if there were no ARCs or volunteer RCAs available for Sunday shifts. There was no mechanism set forth in the MOU for an RCA to be skipped over in the Sunday scheduling. The parties agree that the MOU was collectively bargained, governed RCAs and generally required RCAs to work Sundays, with only three exceptions. Those exceptions were: 1) approved leave; 2) to prevent overtime; and 3) where an RCA was on long-term assignment covering for a full-time career carrier. Groff makes much of the "approved leave" exception, arguing that the phrase "approved leave" as used in the MOU would include religious accommodations such as the one that he sought in this matter.[2] Groff also argues that *TWA* is distinguishable because in that CBA, union employees were selected for shifts based upon seniority, and the MOU at issue here was not seniority based.

First, it is completely irrelevant that the CBA in *TWA v. Hardison* was seniority-based while the MOU in this matter is not. Both the *TWA* CBA and the MOU were bargained for by the union representing the employee and the employer. How each agreement chose to assign shifts to its employees is of no consequence. Both agreements were bargained for and agreed upon. The MOU should stand on its own and must not be violated.

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[2] Groff does not argue that he should have been permitted to use leave such as vacation time as part of the "approved leave" exception in the MOU, as RCAs did not earn and cannot use leave. (Groff Dep. at 148.)

Next, the phrase "approved leave" as used in the MOU is not defined in that document. However, both the Postal Service and the Union viewed this phrase to include accrued, annual leave, something Groff did not have and could not earn. Further, it strains credulity to think "approved leave" would include the type of permanent religious leave sought by Groff that would exempt him from Amazon deliveries every single Sunday. Clearly, this phrase is meant to include the type of occasional leave an employee earns and uses sporadically. Accordingly, pursuant to *TWA*, Defendant in this case has more than met the *de minimus* standard necessary to prove undue hardship, as Groff's preferred accommodation of being skipped in the schedule every single Sunday would violate the MOU.

Further, even if the MOU did not exist, Defendant has identified multiple other hardships that would easily meet the *de minimus* standard necessary to prove an undue hardship. Of particular note would be the impact on the Holtwood Post Office. There were times during Groff's employment that the Holtwood station only had two RCAs, one being Groff. If Defendant passed over Groff in the schedule every Sunday, the other RCA in Holtwood would be required to work every single Sunday without a break. Many courts have recognized that an accommodation that causes more than a *de minimus* impact on co-workers creates an undue hardship. *See Miller*, 351 F.Supp.3d at 789; *see also Harrell v. Donahue*, 638 F.3d 975, 980 (8th Cir. 2011) (providing postal worker with Saturdays off would have burdened co-workers with more weekend work); *Aron v. Quest Diagnostics, Inc.*, 2005 WL 1541060, at *1 (D.N.J. June 30, 2005) (granting summary judgment for employer where plaintiff, who was not hired as phlebotomist which required two Saturday

shifts per month, because accommodation would have created undue burden on existing employees to work more Saturdays), *aff'd*, 174 Fed. App'x 82, 83 (3d Cir.) (recognizing that proposed accommodation would constitute undue hardship, in part, because it "would result in unequal treatment of the other employees and negatively affect employee morale."), *cert. denied*, 549 U.S. 973, 127 S.Ct. 393 (2006); *Lee v. ABF Freight System, Inc.*, 22 F.3d 1019, 1022-24 (10th Cir. 1994) (noting that employer is not required to assign another employee to perform plaintiffs duties, which would have resulted in alteration of employees' time off); *Prise*, 657 F.Supp.2d at 599-600 (stating that "courts have consistently held that Title VII does not require an employer to force other employees to work on a particular day in order to accommodate a specific employee's desire to observe a religious holiday or Sabbath"); *Sanchez-Rodriguez v. AT&T Wireless*, 728 F.Supp.2d 31, 43-44 (D.P.R. Aug. 5, 2010) (finding that proposed accommodation "to disrupt ... neutral scheduling system" and give Sabbath employee every Saturday off would be undue burden because other employees would have to cover plaintiffs Saturday shift); *Vaughn v. Waffle House, Inc.*, 263 F.Supp.2d 1075, 1085 (N.D. Tex. 2003) (holding that "Title VII does not require an employer to impose additional responsibilities on an employee's coworkers in accommodating that employee's religious beliefs" by requiring other employees to work employee's weekend shift). The impact that would be felt by the other RCA at the Holtwood post office if Groff was permitted to be skipped in the schedule every Sunday would clearly be more than *de minimus*, and Defendant meets its burden of proving undue hardship.

Therefore, even if Defendant did not make a reasonable accommodation to Groff by allowing shift-swapping, his

claim of discrimination still must fail because Defendant has demonstrated undue hardship. Summary judgment in favor of Defendant is warranted on Count II of Plaintiff's Complaint.[3]

Groff also filed a Motion for Partial Summary Judgment in this matter, seeking an entry of judgment on Count II of his Complaint. As discussed above, I find both that Defendant offered Groff a reasonable accommodation, and that Defendant would suffer undue hardship if Groff was permitted to skip Sunday shifts. Accordingly, Groff's motion for summary judgment on Count II of his Complaint is denied.[4]

V. CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment is granted, Plaintiff's Partial Motion for Summary Judgment is denied, and Plaintiff's Complaint is dismissed. An appropriate order follows.

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[3] Defendant makes much of the fact that Defendant's 30(b)(6) corporate designee could not identify the hardship that was caused to the Postal Service by skipping Groff in the Sunday schedule. However, I find this argument to be irrelevant, as the mere fact that skipping Groff in the rotation would violate the MOU is sufficient to prove undue hardship. Further, there was extensive evidence put forth by Defendant as to the effect allowing Groff to skip Sundays would have on his co-workers, which has also been held to be an undue hardship.

[4] Groff also filed a Motion for Sanctions seeking to strike Defendant's undue hardship affirmative defense from his Answer to the Complaint due to alleged discovery abuses. This request is neither supported by the facts of record nor the Rules of Civil Procedure and is therefore denied.