No. 22-174

In the
Supreme Court of the United States

GERALD E. GROFF,

Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF *AMICUS CURIAE* LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Louis D. Brandeis Center for Human Rights Under Law is an independent, nonpartisan institution for public interest advocacy, research, and education. The Brandeis Center's mission is to advance the civil and human rights of the Jewish people and to promote justice for all. The Center's education, research, and advocacy focus, among other things, on the resurgent problem of anti-Semitism on college campuses, in the workplace, and across the nation.

In this case, the court below held that the United States Postal Service was not required to accommodate Petitioner's religious observance of the Sabbath by exempting him from Sunday deliveries, because such an accommodation would have more than a de minimis effect on his coworkers. If affirmed, that decision will further enshrine the second-class protections religious individuals receive under Title VII compared to other protected classes at a time when anti-Semitism is on the rise. The Brandeis Center thus has a strong interest in this important case.

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus* curiae or its counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress amended Title VII more than 50 years ago to ensure that religious employees wouldn't have "to make the cruel choice of surrendering their religion or their job." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 87 (1977) (Marshall, J., dissenting). But the United States Postal Service forced that choice on Petitioner Gerald Groff when it refused to accommodate his request for time off to observe the Sabbath. Sadly, the Third Circuit endorsed the Postal Service's discrimination by applying a watered-down version of Title VII's protection for religious employees. The Third Circuit reduced Title VII's "undue hardship" standard to a "more than de minimis cost" standard, meaning that employers need not provide religious accommodations if they would impose more than de minimis cost on the employer. This error flouts the text and purpose of Title VII and its amendments providing for broad religious exercise protections.

The root of the error lies neither with the Postal Service nor with the Third Circuit. Instead, it lies with this Court's misinterpretation of Title VII's religious accommodation provision in *Trans World Airlines, Inc. v. Hardison*, *id.* *See* Pet. App. 22a n.18 ("we are bound by [the *Hardison*] ruling").

In *Hardison*, this Court gutted Title VII's undue hardship test. Rather than giving "undue hardship" its plain meaning, i.e., significant difficulty or expense, the Court said that an employer suffers an "undue hardship" in accommodating an employee's religious exercise when such an accommodation would

require the employer "to bear more than a de minimis cost." *Id.* at 84.

Not only does that interpretation lack any grounding in Title VII's text, but it "effectively nullif[ied]" Title VII's promise of accommodation for religious employees. *Id.* at 89 (Marshall, J., dissenting). Indeed, *Hardison* "dramatically revised—really, undid—Title VII's undue hardship test," *Small v. Memphis Light, Gas & Water*, 141 S.Ct. 1227, 1228 (2021) (Gorsuch, J., dissenting from denial of certiorari), and has wrought significant negative consequences for religious Americans.

The Court should revisit its decision in *Hardison* for two reasons. First, *Hardison*'s de minimis standard is inconsistent with Congress's use of "undue hardship" in other accommodation statutes, and with judicial interpretations of "undue hardship" where Congress has not provided guidance in the text of the applicable statute. This misreading of Title VII singles out the religious for disfavored treatment, providing Americans of faith with fewer protections from employment discrimination than every other protected group.

Second, *Hardison's* watered-down protection of religious employees harms religious minorities, especially Jewish Americans. It allows employers to discriminate against observant Jewish employees, while disguising anti-Semitic discrimination in a facially neutral scheme of workplace scheduling or attire requirements. And this is all the more concerning given the resurgence of anti-Semitic discrimination and violence across the country and the serious rise in anti-Semitism in the workplace.

At bottom, Mr. Groff is here because of a "mistake … of the Court's own making—and it is past time for the Court to correct it." *Small*, 141 S. Ct. at 1229 (Gorsuch, J., dissenting from denial of certiorari). Indeed, "[a]ll Americans will be a little poorer until [*Hardison*] is erased." *Hardison*, 432 U.S. at 97 (Marshall, J., dissenting). The Court should correct its "tragic" error, *id.* at 96, and reverse the decision below.

ARGUMENT

I. Under *Hardison*, religious employees are afforded fewer protections from employment discrimination than other protected groups.

Title VII makes it an "unlawful employment practice for an employer" to discriminate against an employee (or a potential employee) because of their religion. 42 U.S.C. §2000e-2(a)(1)-(2). It defines religion broadly, "includ[ing] all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). The lone exception to Title VII's religious discrimination provision requires an employer to "demonstrate[] 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.* (emphasis added). Read together, the plain language of Title VII's religious protections dictates that "[a]n employer may not take an adverse employment action against an applicant or employee because of any aspect of that individual's religious observance or practice unless the employer demonstrates that it is unable to reasonably accommodate that observance or practice without undue hardship." *EEOC v. Abercrombie & Fitch*

Stores, Inc., 575 U.S. 768, 776 (2015) (Alito, J. concurring).

But Title VII does more than prohibit religious discrimination. The statute not only "demand[s more than] mere neutrality with regard to religious practices," or that people of faith "be treated no worse than other practices, [but it] gives them favored treatment." *Id.* at 775 (majority opinion). Indeed, "Title VII requires otherwise-neutral policies to give way to the need for an accommodation." *Id.*

Yet this Court departed from the plain meaning of Title VII in *Hardison*, with foreseeable consequences. In that case, the Court stated that a religious accommodation imposing anything more than a de minimis cost on an employer is an undue hardship that excuses the employer from the statutory obligation to accommodate the employee. *Hardison*, 432 U.S. at 84. And it also stated that the undue hardship test is met if a religious accommodation could have a potentially adverse impact on the business's *other employees*, rather than on the business *itself*. *Id.* at 84-85.

This concocted standard has had a predictably harmful effect on religious Americans. It provides religious employees—and only religious employees—with fewer protections from employment discrimination than every other protected group. A comparison of accommodation laws reveals that the de minimis standard is inconsistent with Congress's use of "undue hardship" in other accommodation statutes and with judicial interpretations of "undue hardship" absent guidance in statutory text. As a result, the de

minimis test is applied *only* to religious accommodations.

Unsurprisingly then, "even subpar employees may wind up receiving more favorable treatment than highly performing employees who seek only to attend church." *Small*, 141 S. Ct. at 1228-29 (Gorsuch, J., dissenting from denial of certiorari). For example, under the Americans with Disabilities Act, "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." *Id.* at 1229 (citing *Spiteri v. AT&T Holdings, Inc.*, 40 F.Supp.3d 869, 878 (E.D. Mich. 2014); *EEOC v. JBS USA, LLC*, 339 F. Supp. 3d 1135, 1181 (D. Colo. 2018)). Unfortunately, these instances of unequal treatment for religious employees "have become increasingly commonplace." *Id.* As a result, religious employees are often "needlessly deprived of [their] livelihood[s] simply because [they] chose to follow the dictates of [their] conscience[s]." *Hardison*, 432 U.S. at 96 (Marshall, J., dissenting).

A. *Hardison*'s interpretation of undue hardship is inconsistent with other accommodation laws.

The *Hardison* Court's faulty interpretation of "undue hardship" is not only irreconcilable with the plain meaning of Title VII, *see* Pet. Br. at 17-24, but also with Congress's typical use of the term. In fact, Congress routinely uses the "undue hardship" standard to provide effective employee

accommodations that meaningfully limit employer exceptions in other laws, such as the Americans with Disabilities Act and the Uniformed Services Employment and Reemployment Rights Act, as well as recent bills such as the Pregnant Workers Fairness Act. *See Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) ("a legislative body typically uses a particular word with a consistent meaning in a given context"). But because of the Court's decision in *Hardison*, "Title VII's right to religious exercise has become the odd man out. Alone among comparable statutorily protected civil rights, an employer may dispense with it nearly at whim." *Small*, 141 S. Ct. at 1228 (Gorsuch, J., dissenting from denial of certiorari).

Congress itself has recognized that the de minimis standard is an outlier. In fact, *Hardison*'s reading of "undue hardship" is so out of step with normal usage that the Code of Federal Regulations notes that the phrase "has different meanings" depending on whether it is used "with regard to religious accommodation." 29 C.F.R. §37.4 (2019). Thus, undue hardship means "significant difficulty or expense" in every other relevant context, but "[f]or purposes of religious accommodation only, 'undue hardship' means any additional, unusual costs, other than de minimis costs, that a particular accommodation would impose upon a recipient." *Id.* In other words, the de minimis standard is not only textually absurd, it effectively "single[s] out the religious for disfavored treatment"—a practice this Court has repeatedly rejected as unconstitutional. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2020 (2017). The Civil Rights Act and our legal traditions

"neither mandate[] nor tolerate[]" such discriminatory treatment of claims for accommodations based on faith. *Kennedy v. Bremerton*, 142 S. Ct. 2407, 2433 (2022).

Moreover, Congress has never drafted a de minimis undue hardship standard. In the employment context and elsewhere, Congress always defines undue hardship to require substantially *more* than de minimis hardship. The Americans with Disabilities Act, for example, defines "undue hardship" as "an action requiring significant difficulty or expense, when considered in light of" several factors laid out by the statute, 42 U.S.C. §12111(10), and the Uniformed Services Employment and Reemployment Rights Act contains a virtually identical definition. 38 U.S.C. §4303(16). The Affordable Care Act provides that "[a]n employer that employs less than 50 employees shall not be subject to" requirements to provide adequate break time for nursing mothers, but only "if such requirements would impose an undue hardship by causing the employer s*ignificant difficulty or expense* when considered in relation to the size, financial resources, nature, or structure of the employer's business." 29 U.S.C. §207(r)(3) (emphasis added). And recent legislation, most notably the Pregnant Workers Fairness Act, declares that "undue hardship" has "the meanings given such terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111)"—significant difficulty or expense. H.R. 1065, 117th Cong. §5(7) (2021).

Congress has also given undue hardship the same meaning outside the employment context. The Judicial Improvements and Access to Justice Act, for

instance, provides that "'undue hardship or extreme inconvenience', as a basis for excuse from immediate jury service … shall mean great distance, either in miles or travel time, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror." 28 U.S.C. §1869(j). Thus, *Hardison*'s interpretation of "undue hardship" is bizarrely isolated from other statutory uses of the term.

B. Nor does *Hardison* align with judicial decisions interpreting identical language in other statutes.

Hardison's interpretation of "undue hardship" also conflicts with judicial decisions interpreting identical language in other statutes. Typically, when "words or phrases [] have already received authoritative construction" those words or phrases "are to be understood according to that construction." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 322 (2012). But *Hardison* has consistently been the exception to that rule.

In the rare event that Congress has left "undue hardship" undefined, courts have found that it entails significant, rather than de minimis, hardships. Consider the Rehabilitation Act of 1973. That law requires employers to make a reasonable accommodation for an otherwise qualified handicapped applicant unless "the accommodation

would impose an undue hardship on the operation of its program.'" *Am. Fed'n of Gov't Emps., Loc. 51 v. Baker*, 677 F. Supp. 636, 638 (N.D. Cal. 1987) (citing 29 C.F.R. §1613.704(a)). But a reviewing court explicitly declined to impute *Hardison*'s de minimis standard into the Act, explaining that "Congress was unwilling to approve language" in the statute that would have limited the "duty to make reasonable accommodation to instances in which the cost of accommodation does not disproportionately exceed actual damages." *Id.* (quoting *Prewitt v. United States Postal Serv.*, 662 F.2d 292, 308, n.22 (1981)).

Courts have rejected similar attempts to impute *Hardison*'s de minimis standard into the Federal Housing Amendments Act of 1988 (FHAA). Just as Title VII requires employers to "reasonably accommodate" religious individuals, 42 U.S.C. §2000(e)(j), the FHAA requires landlords to "make reasonable accommodations" for handicapped individuals, 42 U.S.C. §3604(f)(3)(B) (1988). But a court rejected out of hand a landlord's argument that a de minimis standard applied to the FHAA, calling a reliance on *Hardison* "misplaced." *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 334 (2d Cir. 1995). Instead, the court determined that Congress had relied on the definition of undue hardship "developed under … the Rehabilitation Act of 1973." *Id.* at 334. It also recognized that reasonable accommodations "can and often will involve some costs." *Id.* at 334-35 (citation omitted).

In sum, federal courts have consistently interpreted "undue hardship" to mean more than a de minimis impact, leaving Title VII's religious

accommodation provision "the odd man out." *Small*, 141 S. Ct. at 1228 (Gorsuch, J., dissenting from denial of certiorari).

II. *Hardison* harms religious workers, particularly Jewish Americans.

A. Jews and other religious minorities are particularly likely to suffer discrimination under *Hardison*.

Congress amended Title VII to require religious accommodations, in part, to protect religious minorities. *See* Equal Employment Opportunity Act, 42 U.S.C. §2000(e); *Hardison*, 432 U.S. at 89 (Marshall, J., dissenting). Indeed, Senator Jennings Randolph, one of the amendment's top congressional champions, specifically named Orthodox Jews as an example of a group discriminated against on the basis of religious practice. 118 Cong. Rec. 705 (1972) (noting "[t]here are approximately 750,000 men and women who are Orthodox Jews in the U.S. work force who fall in this category of persons I am discussing. ... [T]here has been a partial refusal at times on the part of employers to hire or to continue in employment employees whose religious practices rigidly require them to abstain from work ... on particular days"). But almost as soon as Congress clarified that religious practice must be accommodated, this Court "dramatically revised—really, undid—Title VII's" protection for religious monitories in *Hardison* by reinterpreting undue hardship to mean de minimis cost. *Small,* 141 S. Ct. at 1228 (Gorsuch, J., dissenting from denial of certiorari).

Concerns about *Hardison*'s effect on religious minorities were present from the start. In dissent, Justice Marshall recognized that the decision would particularly harm "adherents of minority faiths who do not observe the holy days on which most businesses are closed—Sundays, Christmas, and Easter—but who need time off for their own days of religious observance." *Hardison*, 432 U.S. at 85 (Marshall, J., dissenting). And a year after the Court issued the decision, EEOC Commissioner Eleanor Holmes Norton raised during a hearing her concern that *Hardison* harmed "those with non-traditional religious needs." Hearings Before the United States Equal Opportunity Comm'n on Religious Accommodation, at 1 (statement of Eleanor Holmes Norton, Chair, EEOC) (1978).

Unfortunately, Jewish Americans often bear the brunt of *Hardison* today. Around two percent of the U.S. population is Jewish, but eight to ten percent of religious discrimination claims the EEOC receives each year involve discrimination against Jewish employees. *See* Louis D. Brandeis Center for Human Rights Under Law, *Religious Accommodations in the Corporate Workplace Factsheet*, perma.cc/2X8U-XX47. Jewish employees may have a range of religious obligations, including, for example, the need to abstain from work on "the High Holidays, Passover and Shabbat," don "long sleeves and skirts" for women, or wear "a beard or yarmulke" for men. *See id.* at 3. But Jewish employees often face difficulties obtaining an accommodation from their employer due to *Hardison*'s de minimis standard. *See, e.g.*, Rachel Schneider et al., *How Religious Discrimination is Perceived in the Workplace: Expanding the View*, Am.

Sociological Ass'n (2022) (study in which many Jewish respondents "described struggles around issues of accommodation and wearing of religious attire in the workplace").

Consider, for example, *Brener v. Diagnostic Center Hospital*, 671 F.2d 141 (5th Cir. 1982). Marvin Brener was an Orthodox Jewish pharmacist at a Texas hospital. *Id.* at 142-43. Brener observed the Sabbath, and his supervisor initially agreed to arrange shift trades with other workers to accommodate his schedule. *Id.* at 143. But when other workers began to complain about Brener's "special treatment," the supervisor refused to arrange any more shift swaps. *Id.* Brener's supervisor allowed voluntary swaps with other workers, but when Brener failed to find someone to trade shifts with, he missed several scheduled shifts on the holy days. *Id.* He resigned shortly after. *Id.* at 143-44. Relying on *Hardison,* the Fifth Circuit rejected Brener's Title VII claim, concluding that a schedule accommodation would result in "a lowering of morale among other pharmacists," which in the court's view, was more than a de minimis cost. *See id.* at 146-47.

Brener's "employee morale" rationale is particularly problematic for Jewish workers.[2] Relying

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[2] While lower courts are split, many apply the morale rationale when determining whether an accommodation would result in undue hardship. *Compare Aron v. Quest Diagnostics Inc.*, 174 Fed. Appx. 82, 83 (3d Cir. 2006) (applying employee morale rationale); *EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 318 (4th Cir. 2008) (same); *Wilson v. U.S.W. Commc'ns*, 58 F.3d 1337, 1341-42 (8th Cir. 1995) (same) *with Crider v. Univ. Tenn., Knoxville*, 492 F. App'x 609, 610-15 (6th Cir. 2012)

on reactions of other employees to a colleague's accommodation is simply a "heckler's veto." *See* Pet. App. 28a (Hardiman, J., dissenting). It also empowers anti-Semitic co-workers to block otherwise reasonable accommodations by protesting that they are denied equivalent rights. In some cases, where the requested accommodation is sufficiently important, this may enable anti-Semitic workers to ensure that observant Jewish workers are eliminated from the workplace altogether.

This is especially troubling for employees of minority faiths, who often have "distinctive worship, grooming, and dress requirements that are likelier to conflict with job requirements than the practices of more prevalent religions." Pet. 26. And businesses typically remain open on major Jewish holidays like Yom Kippur but are often closed on major Christian holidays like Christmas. This automatically disadvantages religious minorities because "accommodating their less-common practices may seem more challenging, making it easier for employers to satisfy *Hardison*'s already lenient standard." Pet. 26-27. That "is deeply troubling" in a society that purports to "value[] religious pluralism." *Hardison*, 432 U.S. at 87 (Marshall, J., dissenting).

(holding that employer must show undue hardship on business—not coworkers); *see generally* Dallan F. Flake, *Bearing Burdens: Religious Accommodations That Adversely Affect Coworker Morale*, 76 Ohio St. L.J. 169 (2015).

B. *Hardison* makes it easier to conceal anti-Semitic discrimination.

Hardison's lenient standard makes it easier for employers and co-workers to conceal anti-Semitic discrimination. Employers seeking to discriminate against observant Jewish employees may rely on facially neutral workplace scheduling or attire requirements. *See Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. 642, 659 (1989) ("a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices"), *superseded by statute on other grounds* 42 U.S.C. §2000(e)-2(k); Flake, *supra*, 204-05. And anti-Semitic employees may prevent employers from accommodating their Jewish coworkers by claiming that they are denied equal rights or by vaguely asserting that the accommodation affects their morale. In other words, the *Hardison* standard perversely creates a safe harbor to protect anti-Semitic discrimination from appropriate legal review.

Under the de minimis standard, a court could hold that an employer seeking to discriminate against Jewish employees need only identify a small cost on their business, or a coworker disgruntled by having to swap shifts, to insulate their discriminatory conduct from legal review. Applying a standard for religious accommodations consistent with the undue hardship provisions of other statutes would make it harder for those seeking to discriminate to find a pretext to justify their actions, and easier for courts and regulators to identify and correct discrimination.

C. The lack of protection for Jewish workers is especially troubling given the recent resurgence of anti-Semitism across the nation and in the workplace.

The lack of protection for Jewish workers is especially troubling given the nationwide surge of anti-Semitism. Last year, an audit by the Anti-Defamation League found more anti-Semitic incidents in 2021 than in any other year since they began tracking in 1979. Press Release: *ADL Audit Finds Antisemitic Incidents in United States Reached All-Time High in 2021* (Apr. 25, 2022), perma.cc/YY92-YZ4J. That year marked a 14% increase in vandalism, a 43% increase in harassment, and an astonishing 167% increase in assaults against Jewish Americans. *Id.* According to another recent study, "one out of four American Jews report[ed] having been a victim of anti-Semitism," and 39 percent reported that "they had to change their behavior to limit activities and conceal their Jewishness." Dmitriy Shapiro, *Federal Civil-Rights Officials Raise Alarm Over 'Horrifying Statistics' on Anti-Semitism in Workplace*, Jewish News Syndicate (Jan. 12, 2022), perma.cc/TT37-WYRA. And anti-Semitic conspiracy theories have inspired violence against Jews and other minorities repeatedly in recent years. *See, e.g.,* Kenneth L. Marcus, *The Buffalo Massacre Was More Than Meets the Eye*, Jewish Journal (May 19, 2022), perma.cc/VH2Z-YSJY.

Several high-profile incidents of anti-Semitism have occurred this month. To take just a few representative examples:

- communities around the country found hate-filled, anti-Semitic flyers on their doorsteps;
- Jewish college students had religious items torn off their dorm room doors and pork smeared on the doors;
- police arrested a man who walked into a San Francisco synagogue and "fired several blank rounds" in front of congregants; and
- two Jewish men were shot as they left religious services at synagogues in the Los Angeles area.

See Melanie Maron Pell, *Antisemitism Is Not Just a Jewish Problem. We Must Work Together to Prevent It*, Louisville Courier-Journal (Feb. 13, 2023), perma.cc/Y7PR-A9BL; Aaron Bandler, *Three Jewish Students Dorm Rooms Vandalized at the University of Denver*, Jewish Journal (Feb. 15, 2023), perma.cc/W7FY-828Q; Yaron Steinbuch, *Chilling Video Captures Man Firing Blanks at San Francisco Synagogue*, N.Y. Post (Feb. 6, 2023), perma.cc/U2LS-7BWD; Richard Winton et al., *Suspect in Shootings of Two Jewish Men in L.A. Is Charged with Federal Hate Crimes*, Los Angeles Times (Feb. 17, 2023), perma.cc/NLU8-XFRM.

American college campuses are also rife with anti-Semitism. A recent Brandeis Center report found that two-thirds of openly Jewish students were familiar with anti-Semitic incidents on their campus. Brandeis Center, *Anti-Semitism @ College Survey* (Spring 2021), perma.cc/S8ZG-LNNJ. About two-thirds of the Jewish students surveyed reported feeling unsafe on campus, while 50% felt compelled to hide their Jewish identity. *Id.*

Anti-Semitism has recently reached record highs around the globe too. The United Kingdom's Community Security Trust, for example, recorded more incidents of anti-Semitism in the country in 2021 than in any other year on record—including ninety instances of "Holocaust celebration." Allegra Goodwin & Richard Allen Green, *UK Anti-Semitism Reaches High In 2021, Report Says*, CNN (Feb. 9, 2022), perma.cc/7VDJ-P883. The Vatican has also voiced concerns about the resurgence of anti-Semitism across Europe, explaining that it is "particularly alarmed by the rising number of attacks targeting synagogues, Jewish cemeteries and other sides of the Jewish community." Ivan Fernandes, *Holy See "Particularly Alarmed" by Antisemitism in Europe*, La Croix Int'l, perma.cc/CC98-CUTH.

Nor is the workplace safe from anti-Semitism. The EEOC has recently acknowledged the "serious rise" in anti-Semitism in the workplace and across the country. Shapiro, *supra*; *Resolution of the U.S. Equal Employment Opportunity Commission Condemning Violence, Harassment, and Bias Against Jewish Persons in the United States*, (May 26, 2021), perma.cc/3XZ9-WDVP (condemning on-the-job anti-Semitism, and noting that "nationwide … bias-motivated harassment against Jewish individuals and communities in the United States … ha[s] recently increased"). Commissioner Andrea Lucas lamented the "rising tide of hatred" against Jews and noted that "instances of antisemitism in the workplace" often "go ignored, unreported or unaddressed." Matt Gonzales, *Combating Antisemitism in the Workplace*, SHRM (Feb. 1, 2022), perma.cc/TC8F-VJYL.

Such workplace discrimination impacts significant numbers of Jewish Americans. A 2022 study conducted by researchers at Rice University, UT Health, and Wheaton College found that "more than half of the Jewish respondents experienced discrimination at work." Arianne Cohen, *On the Rise in the U.S., Antisemitism Is Seeping into the Workplace*, L.A. Times (Jan. 11, 2023), perma.cc/MQN8-C3CD. According to the vice-chair of the EEOC, incidents of discrimination against Jewish workers can include "firing, not hiring or paying someone less because the person is Jewish; assigning Jewish individuals to less-desirable work conditions; refusing to grant religious accommodations; and making anti-Jewish remarks." Gonzales, *supra.* And even "some [Diversity, Equity, and Inclusion] trainings have been rife with anti-Israel or antisemitic bias." *Id.*

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Hardison's watered-down protection of religious Americans enables this type of religious discrimination in the workplace, particularly against Jewish employees. Restoring Title VII's "undue burden" standard to an equal status with similar standards in other civil rights legislation would fix *Hardison's* error and properly protect religious employees, as Congress intended.

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

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