

THE NEXT EVOLUTION OF RELIGIOUS ACCOMMODATION IN EMPLOYMENT

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Abstract

Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on race, color, religion, sex, or national origin. An amendment to the Act mandates employers to accommodate sincerely held religious beliefs or practices, unless doing so imposes an undue hardship. Historically, this hardship merely required the employer to show a more than de minimis burden. However, the unanimous ruling in Groff v. DeJoy redefined undue hardship as a substantial cost, demanding a higher burden for employers seeking exemption.

In recent years, religious accommodation requests have expanded beyond traditional conflicts like scheduling or dress codes. Employers now face requests that may be insincere, obscure, or even discriminatory toward other workers' protected traits. After Groff, and absent a court-established standard to validate the legitimacy of such requests, safeguards are imperative to prevent potential manipulation or increased discrimination.

This Note argues that accommodating religious beliefs or practices that are inherently hateful or violative of another person's protected characteristic or class is an undue hardship even if accommodating the request would not result in substantial cost to the employer. Specifically, this Note argues that accommodating such beliefs forces employers to effectively discriminate against other employees in violation of Title VII, facilitates segregation, and creates other aggregate effects that adversely impact employers and communities alike. Therefore, courts should find undue hardship when the underlying religious belief or practice requiring accommodation is inherently hateful, intolerant, or violative of another's protected characteristic or class under Title VII, thus exempting the subject employer from accommodating the belief or practice.

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INTRODUCTION

Imagine that you are the hiring manager for a busy factory in a rural area. You need to find good employees who will work hard and stick around. You interview a qualified applicant who seems to have a strong work ethic and a positive attitude. You make an employment offer on the spot, and you are elated when the applicant accepts your offer a couple days later.

Upon acceptance of the employment offer, you learn that the new employee identifies as gender non-binary and uses gender-neutral pronouns, namely “they/them.” You pass this information to their supervisor, but the supervisor responds by expressing an unwillingness to use gender-neutral pronouns. He says he is a Christian and it would violate his beliefs if he acknowledged the new employee’s “chosen” gender.

You consider the predicament you are in, but you are not sure what to do. You know that the law prohibits you from allowing the supervisor to misgender the new employee or use the wrong pronouns.¹ As a supervisor, other employees would likely mirror that behavior. But you also have an obligation to accommodate the supervisor’s sincere belief. The factory operates in a manner where it is not feasible to transfer either employee or substantially limit their interactions.

As a result, you are left wondering how to prioritize your obligation to each employee while minimizing liability for the company.

Employers are increasingly faced with these questions, especially as requests for religious accommodation become more frequent, and the types of accommodation requests expand.² Conflicts between members of different protected classes, or members within the same protected class, create lose-lose situations for employers and the individual employees involved.³

1. See *Bostock v. Clayton Cnty.*, 590 U.S. 644, 681–82 (2020) (holding that an employer who takes adverse action against an employee because of homosexuality or transgender status discriminates on the basis of sex, violating Title VII); see also *Sexual Orientation and Gender Identity (SOGI) Discrimination*, EEOC, <https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination> (last visited Mar. 5, 2024) (“Although accidental misuse of a transgender employee’s preferred name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.”).

2. See Allen Smith, *Religious Accommodation Requests May Result in Some Conflicts*, SHRM (Sept. 11, 2023), <https://www.shrm.org/topics-tools/employment-law-compliance/religious-accommodation-requests-may-result-conflicts> [hereinafter Smith].

3. See *id.*

Unquestionably, religion plays a significant role in society. The United States (U.S.) population identifies as 70% Christian,⁴ 5% non-Christian faiths,⁵ and 23% unaffiliated.⁶ An increasing number of young adults self-identify as religious,⁷ and the religions they identify with are incredibly diverse.⁸ Religion is broad in the employment context and many religious beliefs and practices are not commonly known, thus employers are advised to assume that any employee's request for accommodation is legitimate.⁹ In 2023, the U.S. Supreme Court expanded access to accommodations for religious employees by significantly increasing an employer's obligation to provide religious accommodation.¹⁰

The "undue hardship" standard is an employer's yardstick to evaluate the burden of providing accommodation.¹¹ Historically, the undue hardship standard was a minimal bar and, unfortunately, the test allowed an employer to deprive an employee of religious accommodation by asserting nothing more than a de minimis hardship, often satisfied by even a slight inconvenience to the employer.¹² On the other hand, the standard doubled as a mechanism to curb outrageous or offensive beliefs, protecting employers and genuinely devout employees from the misuse or manipulation of the right to accommodation.¹³ Nevertheless, when the Supreme Court unanimously expanded the burden an employer must bear to provide accommodation, it did so by clarifying that the standard for undue hardship was never meant to be strictly de minimis.¹⁴ Now, an employer must show that an accommodation would result in substantial cost

4. *The American Religious Landscape in 2020*, PUB. RELIGION RSCH. INST. (July 8, 2021), <https://www.prrri.org/research/2020-census-of-american-religion/> [hereinafter *PRRI Census*] (considering "Christian" to include census participants who identified as evangelical and non-evangelical Protestant, Catholic, Latter-day Saint (Mormon), Orthodox Christian, and Jehovah's Witness).

5. *Id.* (stating that non-Christian religions include Muslims, Buddhists, Jews, Hindus, Unitarian Universalists, and "adherents of any other world religion").

6. *Id.* (explaining that 2% of respondents said "don't know" or refused to answer).

7. *Id.* (showing that while adults ranging from 18–29 years old were 10% unaffiliated in 1986 and grew to 38% by 2016, the 18–29 group became 2% less unaffiliated from 2016 to 2020).

8. Seventy percent of Americans identify as Christian, but only 54% of respondents ages 18–29 identify as Christian. *Id.*

9. EEOC, OFF. OF LEGAL COUNS., EEOC-CVG-2021-3, COMPLIANCE MANUAL ON RELIGIOUS DISCRIMINATION § 12-I.A.3 (2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination> [hereinafter EEOC, RELIGIOUS DISCRIMINATION].

10. *See Groff v. DeJoy*, 600 U.S. 447 (2023).

11. *See* discussion *infra* Section III.A.

12. *See* Smith, *supra* note 2.

13. *See* discussion *infra* Section II.C.

14. *See Groff*, 600 U.S. at 473.

when considering the totality of the employer's business in order to be considered an undue hardship.¹⁵

The de minimis standard once served as a gatekeeper for religious accommodation requests based on inauthentic, offensive, or obscure beliefs.¹⁶ In this post-*Groff v. DeJoy*¹⁷ era, and absent a court-adopted definition or test to validate the legitimacy of an employee's religion, sincerely held belief, or need for accommodation, there must be an exception that operates as a new ceiling to prevent manipulation. This Note argues that accommodating religious beliefs or practices that are inherently hateful or violative of another person's protected characteristic or class is an undue hardship because accommodating such beliefs forces employers to effectively discriminate against other employees in violation of Title VII¹⁸ and facilitates segregation and creates other aggregate effects that adversely impact employers and communities. Therefore, courts should find undue hardship when the religious belief or practice requiring accommodation is inherently hateful, intolerant, or violative of another's protected characteristic or class under Title VII, thus exempting the employer from accommodating the belief or practice.

Part I introduces the Civil Rights Act of 1964, the Equal Employment Opportunity Commission (EEOC), and an employer's obligations to provide religious accommodation. Part II explores challenging definitional issues and surveys the evolution of religious accommodation requests. Part III discusses recent changes under *Groff* as well as the decision's implications in the current cultural climate, including post-*Groff* jurisprudence. Finally, Part IV acknowledges the threats posed by the new test for undue hardship and proposes an exception to safeguard against manipulation and opportunistic abuse of the right to religious accommodation.

I. THE CIVIL RIGHTS ACT OF 1964 AND THE EEOC

After 500 amendments to the bill and 534 hours of debate, the U.S. Congress enacted the Civil Rights Act of 1964 to legally eradicate discrimination.¹⁹ Title VII of the Act prohibits employers from discriminating against an employee or prospective employee because of "race, color, religion, sex, or national origin."²⁰ The Act created the EEOC and gave it enforcement authority to investigate

15. *See id.* at 468.

16. *See* discussion *infra* Section II.C.

17. 600 U.S. 447 (2023).

18. *See generally* 42 U.S.C. § 2000.

19. *See EEOC History: The Law*, EEOC, <https://www.eeoc.gov/history/eeoc-history-law> (last visited Mar. 5, 2024) [hereinafter *EEOC History*].

20. 42 U.S.C. § 2000e-2(a)(1).

charges of discrimination and litigate those cases against employers.²¹ The EEOC plays other important roles including voting on regulations and providing guidance to employers regarding applications of Title VII.²² Nevertheless, the EEOC's guidelines are not binding and receive varying degrees of deference.²³

A religious employee is entitled to religious accommodation under Title VII, and an employer who fails to provide such accommodation may be liable for discrimination.²⁴ To establish a claim for religious discrimination under Title VII, an employee must show that (1) their sincerely held religious belief or practice conflicted with an employer's requirement; (2) the employer was aware of the conflict; and (3) the employee subsequently experienced an adverse employment action or threat of adverse employment action.²⁵ For religious discrimination claims that stem from a failure to provide religious accommodation, the employer can defeat a prima facie case by showing a reasonable accommodation was offered to the employee, or that any possible "accommodation would result in undue hardship."²⁶ The employer's proposed accommodation need not be the employee's preferred accommodation as long as it resolves the conflict between the religious belief or practice and the employer's work requirement.²⁷

To conduct a proper analysis of a Title VII claim for failure to provide religious accommodation, it is crucial to understand the relevant terms of art. Namely, what qualifies as a "religion"? What does it mean for a belief or practice

21. See *EEOC History*, *supra* note 19.

22. The EEOC provides guidance to employers through "Q&A" fact sheets and the *EEOC Compliance Manual*. See *Laws & Guidance*, EEOC, <https://www.eeoc.gov/laws-guidance> (last visited Mar. 5, 2024) ("Regulations implement federal workplace discrimination laws [and] are voted on by the Commission after the public has a formal opportunity to provide comments to EEOC.").

23. See *e.g.*, *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975) (noting that the EEOC is "entitled to great deference" (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 434 (1971))); *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1489 (9th Cir. 1993) (holding that the court was not bound by EEOC guidelines and ruling contrary to them).

24. See *Patterson v. Walgreen Co.*, 727 F. App'x. 581, 585 (11th Cir. 2018). Title VII applies to employers with fifteen or more employees. 42 U.S.C. § 2000e(b).

25. See *EEOC v. Kelly Servs., Inc.*, 598 F.3d 1022, 1029 (8th Cir. 2010); *Tiano v. Dillard Dep't Stores, Inc.*, 139 F.3d 679, 681 (9th Cir. 1998).

26. See 29 C.F.R. § 1605.2(b) (2024); *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986) (holding that "an employer has met its obligation . . . when it demonstrates that it has offered a reasonable accommodation to the employee"); *Reed v. UAW*, 569 F.3d 576, 580 (6th Cir. 2009).

27. See *Philbrook*, 479 U.S. at 72–73 (Marshall, J., concurring in part and dissenting in part) ("If the employer has offered a reasonable accommodation that *fully* resolves the conflict between the employee's work and religious requirements . . . no further consideration of the employee's proposals would normally be warranted.").

to be “sincere”? When does a “hardship” become “undue”? The next Part explores such key terms.

II. THE EVOLUTION OF RELIGION IN THE WORKPLACE

Religion, its various expressions, and the effects of religion in the workplace continue to evolve and expand, and the current evolution is unprecedented. In 2022, the EEOC received nearly 14,000 charges of religion-based discrimination—more than the previous five years combined.²⁸ While this dramatic inflation is largely attributed to charges alleging failure to accommodate religious employees who refused the COVID-19 vaccination, it represents other religious developments as well.²⁹ The following Sections explore how relevant terms of art are defined and how those definitions shape the evolution of accommodations, specifically when applying the test for undue hardship.

A. *Defining the Problem: A Problem with Definitions*

Title VII does an unimpressive job defining its terms of art—a problem that proliferates a significant portion of the challenges discussed herein. For instance, an “employee” is “an individual employed by an employer.”³⁰ Equally as unhelpful, Title VII uses a circular definition of “religion,” providing that “all aspects of religious observance and practice, as well as belief” are included in the term.³¹ Courts have declined to establish objective definitions for a religious belief or practice,³² the problematic nature of which is exacerbated by the expansion created in *Groff v. DeJoy*.³³

28. See *Religion-Based Charges (Charges filed with EEOC) FY 1997 – FY 2022*, EEOC, <https://www.eeoc.gov/data/religion-based-charges-charges-filed-eeoc-fy-1997-fy-2022> (last visited Mar. 5, 2024) (showing that a total of 13,535 charges were filed with the EEOC from 2017-2021 alleging religion-based discrimination).

29. *Id.*

30. 42 U.S.C. § 2000e(f).

31. 42 U.S.C. § 2000e(j).

32. See MICHAEL WOLF, BRUCE FRIEDMAN & DANIEL SUTHERLAND, *RELIGION IN THE WORKPLACE: A COMPREHENSIVE GUIDE TO LEGAL RIGHTS AND RESPONSIBILITIES* 29 (1998).

33. See discussion *infra* Section III.A.2.

Courts have recognized major world religions such as, for example, Islam,³⁴ Christianity,³⁵ and Judaism.³⁶ Myriad other religions are also recognized—familiar and lesser-known—including the Church of Body Modification,³⁷ Rastafari,³⁸ Kemetecism,³⁹ and Norse Paganism.⁴⁰ Additionally, the Supreme Court has held that some beliefs may be religious but do not stem directly from any specific religion.⁴¹ Plaintiffs with sincere and meaningful personal beliefs that fall outside traditional concepts of religion may enjoy religious exemptions, even when void of belief in God or any “Supreme Being.”⁴²

34. *See, e.g.*, *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 776 (2015).

35. *See, e.g.*, *EEOC v. Consol Energy, Inc.*, 860 F.3d 131, 141 (4th Cir. 2017).

36. *See, e.g.*, *Ackerman v. Washington*, 16 F.4th 170, 176 (6th Cir. 2021). For other religions such as Hinduism, Buddhism, Catholicism, and Sikhism, see *Bekkem v. Wilkie*, 915 F.3d 1258 (10th Cir. 2019) (Hinduism), *Murdick v. Catalina Mktg. Corp.*, 496 F. Supp. 2d 1337 (M.D. Fla. 2007) (Buddhism); *Brown v. Collier*, 929 F.3d 218 (5th Cir. 2019) (Catholicism); *Tagore v. United States*, 735 F.3d 324, 329 (5th Cir. 2013) (Sikhism).

37. *See, e.g.*, *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 128–29 (1st Cir. 2004) (stating that the Church of Body Modification’s professed mission is “to grow as individuals through body modification and its teachings” and “be confident role models in learning, teaching, and displaying body modification” (internal quotations omitted)).

38. *See, e.g.*, *Brown v. F.L. Roberts & Co.*, 896 N.E.2d 1279, 1283 (Mass. 2008). Rastafari is a “religious and political movement, begun in Jamaica in the 1930s and adopted by many groups around the globe, that combines Protestant Christianity, mysticism, and a pan-African political consciousness.” Elizabeth A. McAlister, *Rastafari*, *ENCYCLOPEDIA BRITANNICA* (Mar. 2, 2024), <https://www.britannica.com/topic/Rastafari>.

39. *See, e.g.*, *EEOC v. Red Robin Gourmet Burgers, Inc.*, No. C04-1291JLR, 2005 WL 2090677, at *1 (W.D. Wash. Aug. 29, 2005) (stating that Kemetecism is “a religion with roots in ancient Egypt”).

40. *See, e.g.*, *Sughrim v. New York*, No. 19-cv-7977, 2023 WL 5713191, *1, *4 n.2 (S.D.N.Y. Sept. 5, 2023) (“Norse Paganism encompasses a number of different faiths . . . including Asatru, Odinism and Forn Sidr.”). For other religions such as Presbyterianism, the Worldwide Church of God, Satmar Hasidim, Seventh Day Adventist, Old Order Amish, and Jehovah’s Witness, see *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 705–06 (1985) (Presbyterianism); *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 62–63 (1986) (Worldwide Church of God); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 690–91 (1994) (identifying Satmar Hasidim as a “strict form of Judaism”); *EEOC v. N. Mem’l Health Care*, 908 F.3d 1098, 1101 (8th Cir. 2018) (Seventh Day Adventist); *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972) (stating that “the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living”); *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 709 (1981) (Jehovah’s Witness); *Fowler v. Crawford*, 534 F.3d 931, 932 (8th Cir. 2008) (Native American faiths).

41. *See Welsh v. United States*, 398 U.S. 333, 339–40 (1970).

42. *Id.* (demonstrating such in the context of a conscientious objector to war based on personal, moral, and ethical beliefs that were not directly tied to any religion).

The EEOC employs a generous definition of “religious beliefs” that includes not only beliefs in God but non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”⁴³ When evaluating accommodation requests, the “fact that *no* religious group espouses such beliefs . . . which the individual professes . . . will not determine whether the belief is a religious belief of the employee.”⁴⁴ In other words, there need not be anything particularly religious about one’s beliefs to qualify, so long as one believes strongly enough. Even a self-proclaimed non-religious plaintiff who simply, but sincerely, opposed working on “the Lord’s Day” was entitled to protection under Title VII.⁴⁵ As such, nearly every employee in the United States could conceivably run to their human resources department demanding the Lord’s Day off.

Circuit courts have crafted various definitions and tests attempting to evaluate the legitimacy of one’s religious belief,⁴⁶ but the Supreme Court continues to instruct them to refrain from assessing whether the belief is valid.⁴⁷ For example, one plaintiff seeking religious exemption from his employer’s

43. 29 C.F.R. § 1605.1 (2024); *see also* *United States v. Seeger*, 380 U.S. 163, 184 (1965) (considering whether the plaintiff’s claimed moral belief held the same significance to them as a religious belief would occupy for a Christian).

44. 29 C.F.R. § 1605.1 (2024) (emphasis added).

45. *EEOC v. Aldi, Inc.*, No. 06-01210, 2008 U.S. Dist. LEXIS 25206, at *7 (W.D. Pa. Mar. 28, 2008) (citing *Frazer v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829 (1989)).

46. *See, e.g.*, *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 491 (3d Cir. 2017) (defining “religion” by analogy: “First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a beliefsystem [sic] as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.” (quoting *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981))); *Brown v. Pena*, 441 F. Supp. 1382, 1385 (S.D. Fla. 1977) (employing a three-part test to determine if a belief is religious: “(1) whether the belief is based on a theory of ‘man’s nature or his place in the Universe,’ (2) which is not merely a personal preference but has an institutional quality about it, and (3) which is sincere”).

47. *Seeger*, 380 U.S. at 184–85 (evaluating whether a conscientious objector to war was entitled to an exclusion of military service: “In such an intensely personal area, of course, the claim of the [plaintiff] that his belief is an essential part of a religious faith must be given great weight. . . . The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the [plaintiff’s] ‘Supreme Being’ or the truth of his concepts. But these are inquiries foreclosed to Government. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Local boards and courts in this sense are not free to reject beliefs because they consider them ‘incomprehensible.’ Their task is to decide whether the beliefs professed by a [plaintiff] are sincerely held and whether they are, in his own scheme of things, religious”).

dress code provided the employer with a statement written by “a man he met in the park who [was] not affiliated with any religion.”⁴⁸ This “spiritual teacher” penned the letter claiming that their shared “spiritual faith” required loose clothing that could not be tucked in or buttoned.⁴⁹ The plaintiff refused to provide valid contact information for the spiritual teacher in response to the employer’s request.⁵⁰ Nevertheless, the employer provided a religious accommodation and alternative dress code.⁵¹ Although the situation was obscure and the validity of the religious belief questionable, ultimately the employer was prudent to provide the accommodation.⁵²

Furthermore, one’s sincerely held religious belief need not be supported nor required by any religion. Courts must recognize that even when an individual identifies as a follower of an established religion like Christianity, they may simultaneously hold non-traditional beliefs or practices as part of their dedication to that traditional religion.⁵³ Courts will not evaluate whether the plaintiff’s claimed religion mandates, prohibits, or promotes the belief or practice asserted to secure accommodation.⁵⁴ In other words, courts are mostly unwilling to decide

48. *Chloe v. George Wash. Univ.*, No. 20-3090, 2023 WL 6199076, at *5–6 (D.D.C. Sept. 22, 2023).

49. *Id.* at *2.

50. *Id.* at *7.

51. *Id.* at *2–3.

52. *See Can We Require Documentation From a Religious Authority to Verify an Employee’s Request for Religious Accommodations?*, SHRM, <https://www.shrm.org/topics-tools/tools/hr-answers/can-require-documentation-religious-authority-to-verify-employees-request-religious-accommodation> (last visited Mar. 30, 2024) (“When an employer disputes the sincerity of a particular belief or practice, the EEOC guidance allows the employer to request additional information; however, ‘since idiosyncratic beliefs can be sincerely held and religious, even when third-party verification is needed, it does not have to come from a church official or member, but rather could be provided by others who are aware of the employee’s religious practice or belief.’”).

53. *See WOLF ET AL.*, *supra* note 32, at 37 (“With few exceptions, the courts will accept an employee’s assertion that he or she is acting upon a religious belief, even when those religious beliefs are unique to that employee or are different from the beliefs subscribed to by other adherents of the same religion.”).

54. *See, e.g., Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978) (“[T]o restrict the act to those practices which are mandated or prohibited by a tenet of the religion, would involve the court in determining not only what are the tenets of a particular religion, which by itself perhaps would not be beyond the province of the court, but would frequently require the courts to decide whether a particular practice is or is not required by the tenets of the religion.”).

the legitimacy of a party's religious belief even if it is in direct opposition to the teachings or tenets of their proclaimed religion.⁵⁵

It may seem counterintuitive or illogical that an individual would associate with a specific religion but fail to adopt the tenets of that faith. However, this lack of continuity is reflected in the current spectrum of beliefs within any given religion, for better or worse. For example, only 64% of Catholics say they are "absolutely certain" in their belief in God.⁵⁶ This demonstrates that religions can be internally divided on many issues, even those seemingly at the core of a religion's purpose. In fact, 40% of individuals who practice Judaism believe in heaven, while 49% do not.⁵⁷ Likewise, individuals who practice Hinduism are similarly split on the issue.⁵⁸ In addition to the empirical data, recent case law is rich with examples of individuals requesting religious accommodation for beliefs that are misaligned or directly opposed to the traditional beliefs of their chosen faith. One illustration is the litany of cases filed by Roman Catholic plaintiffs asserting religious exemptions for COVID-19 vaccination mandates⁵⁹ despite the leader of the Roman Catholic church, Pope Francis, repeatedly urging parishioners to get vaccinated and declaring vaccination an "act of love" and a "moral obligation."⁶⁰

Therefore, employees who identify with a specific religion may be entitled to accommodation based on a belief or practice, regardless of whether that belief or practice aligns with their chosen religion. Employees who do not identify with a specific religion may also be entitled to accommodation if they assert a belief or practice that is sincerely and strongly held, even if no known religion

55. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–16 (1981) (holding that protection of religious beliefs "is not limited to beliefs shared by all of the members of a religious sect").

56. An additional 27% report being "fairly certain" in their belief in God and 9% are not certain or do not believe in God. *See Belief in God*, PEW RSCH. CTR., <https://www.pewresearch.org/religion/religious-landscape-study/belief-in-god> (last visited Mar. 5, 2024).

57. Additionally, 7% of respondents indicated "other/don't know" when asked if they believe in heaven. *See Belief in Heaven*, PEW RSCH. CTR., <https://www.pewresearch.org/religion/religious-landscape-study/belief-in-heaven> (last visited Mar. 5, 2024).

58. *Id.* (stating that 48% of Hindus reported believing in heaven, 42% of Hindus said they did not believe in heaven, and 9% responded "other/don't know").

59. *See, e.g., Fahy v. City of New York*, No. 526097/2022, 2023 WL 4381754, at *2 (N.Y. Sup. Ct. May 1, 2023); *Pinner v. Am. Assoc. of Orthodontists*, No. 4:22-CV-870-CDP, 2023 WL 2707440, at *1 (E.D. Mo. Mar. 30, 2023).

60. *See Devin Watkins, Pope Francis Urges People to get Vaccinated Against Covid-19*, VATICAN NEWS (Aug. 18, 2021), <https://www.vaticannews.va/en/pope/news/2021-08/pope-francis-appeal-covid-19-vaccines-act-of-love.html>; *Pope Francis Calls COVID-19 Vaccination Moral Obligation*, VOA NEWS (Jan. 10, 2022), <https://www.voanews.com/a/pope-francis-calls-covid-19-vaccination-moral-obligation-/6390278.html>.

recognizes the belief or practice. Does this mean that anyone who holds an ethically adjacent personal value that conflicts with a work activity or policy can request an accommodation? Where is the line drawn? The over-inclusivity of these definitions and lack of boundaries present problematic implications.

The following Section explores the evolution of religious accommodations and discusses how the undue hardship test has inadvertently served to establish boundaries in this space.

B. #Trending: Accommodation Requests

An employee who identifies a conflict between their religious belief or practice and an employment requirement generally must first inform the employer of the conflict.⁶¹ Upon notice, the employer is obligated to provide a reasonable accommodation⁶² that resolves the conflict.⁶³ If an employee requests accommodation for multiple conflicts, the employer must attempt to accommodate each one.⁶⁴ Employers then must assess each possible accommodation to determine if any accommodation is possible without undue hardship to the employer.⁶⁵

The most common form of religious accommodation allows the observance of one's Sabbath or resolves other scheduling conflicts.⁶⁶ The EEOC advises employers to consider accommodating religious scheduling needs with voluntary substitutes, shift swapping, lateral transfer, change of job assignments, or flexible

61. See *Patterson v. Walgreen Co.*, 727 F. App'x. 581, 585 (11th Cir. 2018). *But see* *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015) (stating that Title VII does not require knowledge: “[a]n employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his *motive*. Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed”).

62. See 29 C.F.R. § 1605.2(c)(1) (2024).

63. See *EEOC v. Universal Mfg. Corp.*, 914 F.2d 71, 72–73 (5th Cir. 1990); *see also* Richard C. Cleary, *Religion in the Workplace: Reasonable Accommodation in Employment*, 13 ME. BAR J. 102, 102 (1998) (“The employee has a responsibility under the law protecting religious freedom to cooperate by examining the employer’s offer to resolve the religious conflict, in good faith, and determine if it reasonably meets the employee’s needs.”).

64. See *Universal Mfg. Corp.*, 914 F.2d at 73.

65. See WOLF ET AL., *supra* note 32, at 79.

66. See 29 C.F.R. § 1605.2(d) (2024) (“Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules.”).

scheduling.⁶⁷ Given the ubiquity of accommodating one's Sabbath, some states have enacted legislation guaranteeing schedule accommodations and threatening employers with additional penalties for failing to provide reasonable accommodations.⁶⁸ Another historically common religious accommodation request allows a deviation from a company's standard dress code or grooming policy.⁶⁹ Examples of this include employers allowing a Christian to wear a cross⁷⁰ and permitting a Muslim to wear a hijab,⁷¹ or a Sikh to wear a turban,⁷² when headwear or hats are not otherwise allowed. Other religious beliefs may prohibit an employee from wearing certain garments.⁷³ Grooming practices such as maintaining facial hair⁷⁴ or hair of a certain length⁷⁵ have also been accommodated, although exceptions may apply for safety reasons.⁷⁶

67. Flexible scheduling may include "flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices." 29 C.F.R. § 1605.2(d)(1).

68. See, e.g., GA. CODE ANN. § 10-1-573 (West 2023) (stating that "The Common Day of Rest Act of 1974" requires employers who operate on Saturday or Sunday to accommodate employees who observe a day of worship); S.C. CODE ANN. § 53-1-150(C) (2023) (providing that an employee may refuse to work on Sunday without penalty, however, if a "conscientious objector" to Sunday work is terminated for that reason, the employer is liable for myriad penalties including treble damages).

69. See *Religious Garb and Grooming in the Workplace: Rights and Responsibilities*, EEOC, <https://www.eeoc.gov/laws/guidance/religious-garb-and-grooming-workplace-rights-and-responsibilities> (last visited Nov. 11, 2023) ("In most instances, employers are required by federal law to make exceptions to their usual rules or preferences to permit applicants and employees to observe religious dress and grooming practices.") [hereinafter *Religious Garb and Grooming*].

70. See, e.g., *McCarter v. UT-Battelle, LLC*, No. 3:20-CV-483-DCP, 2022 WL 3654940 (E.D. Tenn. Aug. 24, 2022).

71. See, e.g., *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 770 (2015).

72. See *Religious Garb and Grooming*, *supra* note 69.

73. *Id.*; see also *EEOC v. Kroger Ltd. P'ship I*, 608 F. Supp. 3d 757, 761 (E.D. Ark. 2022) (denying employer Kroger's motion for summary judgment in respect to religious discrimination claim wherein EEOC-represented employees refused to wear the uniform apron with a multi-colored heart icon, asserting that the design promoted the LGBTQ+ community and conflicted with their religious beliefs).

74. See *Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 367 (3d Cir. 1999).

75. See *Brown v. F.L. Roberts & Co.*, 896 N.E.2d 1279, 1282 (Mass. 2008).

76. See, e.g., *EEOC v. Geo Grp., Inc.*, 616 F.3d 265, 274-75 (3d Cir. 2010) (finding that the employer of a Muslim prison guard was not required to accommodate the employee and permit them to wear a khimar because of the safety risks wearing a khimar could impose upon prisoners, staff, and visitors); *EEOC v. Kelly Servs.*, 598 F.3d 1022, 1029, 1033 (8th Cir. 2010) (affirming lower court's granting of summary judgment in favor of employer wherein

Religious accommodation requests have evolved to extend far past the traditional remedies for conflicting scheduling or dress code requirements, and employers must navigate increasingly unusual requests. For example, the EEOC found that the Orange County Transit Authority failed to provide a reasonable *religious* accommodation when it fired a vegetarian bus driver for refusing to give patrons coupons for free hamburgers, costing the employer \$50,000 to settle the lawsuit.⁷⁷ Nutrition was also at the center of controversy in a case where an employee sought religious accommodation to consume “Kozy Kitten Cat Food” that he believed was the key to sustaining the energy he needed to perform his work.⁷⁸ Another unusual request came from a Nigerian employee who needed leave to perform religious rites that included “leading an extended procession through the village, animal sacrifice in the form of killing five goats, and cutting off his mother’s hair and anointing her head twice with snail oil while she remained secluded in her home for one month of mourning” following the death of the employee’s father.⁷⁹ Lastly, an employee prevailed against his employer when it failed to accommodate his refusal to use a biometric hand scanner on account of his belief that the scanner might brand him with the “Mark of the Beast.”⁸⁰ After the company denied accommodation, the employee felt compelled to retire⁸¹ and the company was ordered to pay over half a million dollars in damages.⁸² These cases are illustrative of the evolution of religious accommodation spanning much greater breadths than the traditional context of scheduling and dress code conflicts.

the use of religious headscarves was precluded by safety concerns given the employee’s proximity to “fast-moving machines and conveyor belts”); *Kalsi v. N.Y. City Transit Auth.*, 62 F. Supp. 2d 745, 760 (E.D.N.Y. 1998) (dismissing employee’s reasonable accommodation claim to wear his turban because it interfered with his ability to properly wear a hard hat and stating that “Title VII does not require employers to absorb the cost of all less than catastrophic physical injuries to their employees in order to accommodate religious practices”).

77. See David Haldane, *Fired Vegetarian Bus Driver’s Lawsuit Settled*, L.A. TIMES (Nov. 20, 1996), <https://www.latimes.com/archives/la-xpm-1996-11-20-me-827-story.html>.

78. See *Brown v. Pena*, 441 F. Supp. 1382, 1385 (S.D. Fla. 1977) (holding, despite the plaintiff’s claim of following a “personal religious creed,” that his proclivity for cat food was a “mere personal preference” and “beyond the parameters of the concept of religion”).

79. *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 452 (7th Cir. 2013) (finding the employer liable for failing to provide a religious accommodation).

80. *EEOC v. Consol Energy, Inc.*, 860 F.3d 131, 137-38 (4th Cir. 2017).

81. *Id.* at 139.

82. See *Court Awards Over Half Million Dollars Against Consol Energy/Consolidation Coal in EEOC Religious Discrimination Lawsuit*, EEOC (Aug. 27, 2015), <https://www.eeoc.gov/newsroom/court-awards-over-half-million-dollars-against-consol-energy/consolidation-coal-eeoc> (awarding “a total of \$586,860 in lost wages and benefits and compensatory damages, and permanently enjoin[ing] the companies from committing similar acts in the future in violation of Title VII”).

The next Section discusses the de minimis test that often acted as a gatekeeper for employers to curb obscure beliefs.

C. *The De Minimis Ceiling*

A reasonable accommodation resolves the conflict between an employee's belief or practice and the employer's requirement without imposing an undue hardship on the employer.⁸³ The term undue hardship was interpreted by the U.S. Supreme Court in *Trans World Airlines v. Hardison*,⁸⁴ a 1977 decision wherein the Court stated that for an employer "to bear more than a de minimis cost in order to [provide religious accommodation] is an undue hardship."⁸⁵ The Court reasoned, inter alia, that requiring more than a de minimis cost could result in employers effectively discriminating against non-religious employees.⁸⁶ Following *Hardison*, courts used the de minimis test to determine whether a religious accommodation created an undue hardship until the Court "clarified" the standard in *Groff v. DeJoy* in 2023.⁸⁷

Notwithstanding the employer's obligation to make a good faith effort to provide reasonable accommodation, the de minimis test, by definition, set a very low bar for the burden an employer must bear before a requested accommodation could be found to be an undue hardship.⁸⁸ The de minimis test failed to precisely define undue hardship but succeeded in strongly suggesting that "the undue hardship test [was] not a difficult threshold to pass."⁸⁹ For the forty years following *Hardison*, courts used a variety of economic and non-economic barometers to shape the scope of what constituted more than a de minimis cost. For instance, accommodations resulting in an employer paying higher wages or suffering a loss of efficiency have been considered undue hardships.⁹⁰ Similarly,

83. See 42 U.S.C. § 2000e(j).

84. 432 U.S. 63 (1977).

85. *Id.* at 84.

86. *Id.* at 84–85.

87. See *Groff v. DeJoy*, 600 U.S. 447, 454 (2023).

88. See *id.* at 464–66 (defining "de minimis" as "so 'very small or trifling' that they are not even worth noticing").

89. *Webb v. City of Phila.*, 562 F.3d 256, 260 (3d Cir. 2009) (quoting *United States v. Bd. of Educ. for Sch. Dist. of Phila.*, 911 F.2d 882, 890 (3d Cir. 1990)).

90. See *Balint v. Carson City*, 180 F.3d 1047, 1054 (9th Cir. 1996) (stating "that an accommodation results in undue hardship when there is more than a de minimis cost to the employer, which could include 'additional costs in the form of lost efficiency or higher wages'" (quoting *Opuku-Boateng v. California*, 95 F.3d 1461, 1468 n.11 (9th Cir. 1996))); *Hayes v. Potter*, No. C-02-0437 VRW, 2006 WL 8448504 (N.D. Cal. Nov. 8, 2006), *aff'd*, 271 F. App'x. 676 (9th Cir. 2008) (unpublished) (stating that "the job restructuring requested by

an employer having to bear the cost of hiring additional employees or incur a loss of production because an employee was unavailable for religious reasons could constitute an undue hardship.⁹¹ The *de minimis* test also served to protect coworkers from other employees who might use religious accommodation to disrupt a seniority system⁹² or cause coworkers to disproportionately perform dangerous work⁹³—both of which constituted undue hardship.⁹⁴ Even a simple showing that accommodation posed a “disruption of the work routine” relieved employers from Title VII obligations.⁹⁵ Thus, the *de minimis* test was a gatekeeper for employers to reject accommodations that required more than mere administrative costs.⁹⁶

The stinginess of *Hardison* notwithstanding, the *de minimis* test proved valuable in providing a means to curb religious accommodation requests of questionable legitimacy.⁹⁷ Although the *de minimis* test had redeeming qualities, it regrettably enabled employers to deny accommodations for even traditional and legitimate religious conflicts, such as scheduling or dress code requirements.⁹⁸ Additionally, members of less common religions criticized the standard, claiming unjust and disproportionate denial of minor

[plaintiff] would have imposed more than a *de minimis* loss in efficiency because [plaintiff’s] job became superfluous and no longer served any productive purpose”).

91. *Lee v. ABF Freight Sys., Inc.*, 22 F.3d 1019, 1023 (10th Cir. 1994). The EEOC states that “costs similar to the regular payment of premium wages of substitutes” constitutes undue hardship unless those costs are infrequent or a temporary solution. 29 C.F.R. § 1605.2(e) (2024).

92. *See Balint*, 180 F.3d at 1054.

93. *See Bhatia v. Chevron U.S.A., Inc.*, 734 F.2d 1382, 1384 (9th Cir. 1984).

94. *See Balint*, 180 F.3d at 1056; *Bhatia*, 734 F.2d at 1384.

95. *Burns v. S. Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978).

96. *See* 29 C.F.R. § 1605.2(e) (2024).

97. *See, e.g., Wilson v. U.S. W. Comm’cs*, 58 F.3d 1337, 1342 (8th Cir. 1995) (holding that accommodating an employee’s practice of wearing an anti-abortion pin that depicted a fetus on account of a self-professed religious endeavor to end abortion was an undue hardship); *Brown v. Polk Cnty.*, 61 F.3d 650, 655 (8th Cir. 1995) (finding that accommodating an employee by allowing him to task his secretary with typing Bible study notes was an activity completely unrelated to the employment and thus an undue hardship).

98. *See, e.g., Harrell v. Donahue*, 638 F.3d 975, 984 (8th Cir. 2011) (explaining that an accommodation of employee’s Sabbath was an undue hardship for employer because it would have substantially imposed upon co-workers and created a violation of the workplace’s seniority system); *Dalberiste v. GLE Assocs., Inc.*, 814 F. App’x. 495, 496, 498 (11th Cir. 2020) (holding that an employee’s Sabbath observance could not be accommodated without undue hardship because it would cause the employer “to change its scheduling and work assignment procedures” and “incur additional costs”); *EEOC v. Geo Grp., Inc.*, 616 F.3d 265, 273–75 (3d Cir. 2010) (holding that an employer was justified in denying accommodation for religious headwear due to safety concerns).

accommodations.⁹⁹ For these reasons, legal scholars and legislators have long advocated for the riddance of the de minimis test in favor of a standard that would raise an employer's obligation to provide religious accommodation.¹⁰⁰ Part III considers how far the pendulum might swing after the Supreme Court redefined undue hardship in *Groff*.

III. GROFF V. DEJOY

Groff v. DeJoy introduced plaintiff-appellant Gerald Groff, a former United States Postal Service (USPS) employee and self-identifying Evangelical Christian.¹⁰¹ After four years of employment, Groff became subject to working Sundays on account of a new contract between USPS and Amazon.¹⁰² Groff disfavored working on Sundays for religious reasons and USPS facilitated his transfer to a small station that did not require Sunday work.¹⁰³ Shortly after the transfer, however, the small station also began requiring Sunday work and Groff was subject to disciplinary action for his failure to work Sundays, ultimately resulting in his voluntary resignation from USPS.¹⁰⁴

Groff brought an action against Louis DeJoy, the U.S. Postmaster General, under Title VII claiming that “USPS could have accommodated his Sunday Sabbath practice without undue hardship.”¹⁰⁵ Using *Hardison's* de minimis approach, the Third Circuit affirmed the district court's granting of summary judgment in favor of USPS.¹⁰⁶ The two courts agreed that USPS could not accommodate without undue hardship because any accommodation would disrupt workflow and negatively impact employee morale.¹⁰⁷

The Supreme Court granted certiorari and concluded that the *Hardison* standard for determining whether an accommodation poses an undue hardship had been misinterpreted and misapplied for the past forty years.¹⁰⁸

99. See *Groff v. DeJoy*, 600 U.S. 447, 465–66 (2023).

100. See, e.g., Debbie N. 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, 579 (2000); see also Judy Greenwald, *Greater Accommodation Proposed: A Federal Bill Would Set a Higher Standard for Employer Tolerance*, 39 BUS. INS. 33 (2005) (stating that the Workplace Religious Freedom Act of 2005 had “broad bipartisan support” and demanded “a much higher standard of accommodation for employers”).

101. *Groff*, 600 U.S. at 454.

102. *Id.*

103. *Id.* at 454–55.

104. *Id.* at 455.

105. *Id.* at 456.

106. *Id.*

107. *Id.*

108. *Id.*

A. Undue Hardship Means What It Says

In *Groff*, the U.S. Supreme Court stated that, “[w]hat is most important is that ‘undue hardship’ means what it says, and courts should resolve whether a hardship would be substantial in the context of an employer’s business in the common-sense manner that it would use in any such test.”¹⁰⁹ Under *Groff*, an undue hardship is a substantial cost when considering the totality of the employer’s business.¹¹⁰ Factors for consideration include the particular accommodation requested and how the accommodation might impact the employer depending on the type of the employer in addition to its size and operating cost.¹¹¹ The analysis is a fact-heavy inquiry evaluated on a case-to-case basis.¹¹² As parties and judges navigate the new boundaries of undue hardship, *Groff* offers some guidance, and courts are putting the new standard to the test.

1. The Boundaries of Substantial Cost

Courts are beginning to work out what it means for a cost to be substantial using the factors identified in *Groff*.¹¹³ On the way to reaching a decision, the U.S. Supreme Court evaluated and dismissed a couple of alternative frameworks for measuring undue hardship. On one hand, the Court decided unanimously that the standard for undue hardship was too low.¹¹⁴ On the other hand, the Court rejected the parties’ proposals to fully adopt either the EEOC’s guidance or the standard for accommodation under the Americans with Disabilities Act (ADA) because both suggestions went “too far.”¹¹⁵ These theories, along with the Court’s dicta, provide insight as to how expansive the ruling is intended to be.

First, the Court considered adopting the EEOC’s interpretation of *Hardison* as proposed by the government.¹¹⁶ Although unwilling to adopt the EEOC’s

109. *Id.* at 471.

110. *See id.* at 468.

111. *Id.* at 470–71.

112. *Id.*

113. *See, e.g.,* Smith v. City of Mesa, No. CV-21-01012-PHX-DJH, 2023 WL 2463819, at *1–5 (D. Ariz. Mar. 10, 2023) (analyzing whether providing an accommodation of 1.5 days of unpaid leave imposed a substantial cost to the defendant); Shields v. Main Line Hosp., Inc., No. 2:22-CV-03307-MRP, 2023 WL 7129953, at *6 (E.D. Pa. Oct. 27, 2023) (“Whether granting religious exemptions placed [the defendant’s] patients and employees at risk is central to determining whether granting [the plaintiff] a religious accommodation would have imposed an undue hardship.”).

114. *See generally Groff*, 600 U.S. 447.

115. *Id.* at 471.

116. *Id.* at 469.

guidance in total, the Court stated that its holding would “prompt little, if any, change in the agency’s guidance.”¹¹⁷ However, the guidance the Court referred to was the EEOC’s minimum standard that undue hardship does not result from “temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs.”¹¹⁸ As such, the EEOC’s guidance on bare minimum obligations fails to illuminate how high the substantial cost ceiling is now.

Next, the Court considered and declined to adopt the ADA’s framework for accommodation or definition of undue hardship.¹¹⁹ Under the ADA, an undue hardship is a “significant difficulty or expense” that is determined based on a comprehensive collection of factors.¹²⁰ If the ADA’s definitions go “too far,” it may be reasonable to conclude that a “substantial cost” is less than a “significant difficulty or expense.”¹²¹ Unfortunately, the Court declined to explain if any specific aspect(s) of the ADA’s framework made it undesirable.

In lieu of siding with either party’s proposal, the Court set out the factors for the test in instructive dicta.¹²² Although a bright line is nowhere in sight, courts will likely keep a few things constant. In addition to the EEOC’s minimum guidelines, it appears that an employer will still not be required to violate a collective bargaining agreement or established seniority system to provide accommodation.¹²³ However, whether an employer may consider an accommodation’s impact on coworkers now turns on whether such impact affects the conduct of the business.¹²⁴ It can no longer be said that “an accommodation that requires other employees to assume a disproportionate workload (or divert them from their regular work) is an undue hardship as a matter of law.”¹²⁵ Now, not only does the employer have a heftier cross to bear, but it may not necessarily take into account the negative side effects a proposed accommodation may have on other employees. As the next Section discusses,

117. *Id.* at 471.

118. *Id.*

119. *Id.* at 470–71.

120. Factors include the cost, financial resources, number of employees, size of the business, number of locations, type of business, operation and functions of the workforce, as well as the impact on other employees and the conduct of the business. *See* 29 C.F.R. § 1630.2(p) (2024).

121. *Groff*, 600 U.S. at 470.

122. *See id.* at 471–72.

123. *Id.* at 470–71; *see also* *Devore v. Univ. of Ky. Bd. of Trs.*, No. 5:22-CV-GFVT-EBA, 2023 WL 6150773 at *13–14 (E.D. Ky. Sept. 18, 2023) (discussing the Court’s departure from *Hardison* in *Groff* and noting that analyzing undue hardship “in situations not involving seniority rights is much less clear”).

124. *See Groff*, 600 U.S. at 472.

125. *Noesen v. Med. Staffing Network, Inc.*, 232 F. App’x. 581, 584–85 (7th Cir. 2007).

these limits of accommodation are being tested and recent case outcomes are shaping the expansive new standard.

2. *Groff* in Action

Since *Groff*, religious accommodation cases have been decided and re-decided in favor of employees. In one example, the City of Mesa, Arizona dodged summary judgment pre-*Groff* by showing that a scheduling accommodation would create an “*actual* imposition on coworkers or disruption of the work routine” by forcing the City to either “deny another employee’s right to their earned, accrued time off; or grant all employees’ time off requests and be severely short-staffed.”¹²⁶ Shortly after *Groff*, the court reconsidered the motion and vacated its previous holding, finding that the City of Mesa failed to “show that Plaintiff’s requested accommodation, or any accommodation, would result in substantial increased costs in relation to the conduct of its particular business.”¹²⁷

Other recent cases tend to indicate that safety concerns accompanying religious accommodations may not rise to the level of substantial cost. Cases involving religious accommodation for COVID-19 vaccination refusals continue to multiply, and outcomes vary. One hospice employer argued that employing unvaccinated workers caused undue hardship because of the “risk of infection to staff and patients, injury to [the company’s] reputation for safety, and loss of a business partnership.”¹²⁸ The district court disagreed, finding the evidence insufficient to show undue hardship under the *Groff* standard.¹²⁹

In another example, the Texas Department of Criminal Justice (TDCJ) defended a claim for failure to provide religious accommodation, prevailing in the district court under the *Hardison* standard in 2022, only to be overturned by the Fifth Circuit citing *Groff* a year later.¹³⁰ The plaintiff was employed as a correctional officer and sought accommodation for a religious conflict with the TDCJ’s grooming policy.¹³¹ The TDCJ was initially successful by asserting the

126. Smith v. City of Mesa, No. CV-21-01012-PHX-DJH, 2023 WL 2463819 at *8 (D. Ariz. Mar. 10, 2023).

127. Smith v. City of Mesa, No. CV-21-01012-PHX-DJH, 2023 WL 8373495, at *6 (D. Ariz. Dec. 3, 2023).

128. Lee v. Seasons Hospice, No. 22-CV-1593, 2023 WL 6387794 at *4 (D. Minn. Sept. 29, 2023).

129. *Id.*; see also MacDonald v. Or. Health & Sci. Univ., No. 3:22-cv-0119420IM, 2023 WL 5529959 *23–24 (D. Or. Aug. 28, 2023) (denying an employer’s motion to dismiss because the fact-intensive inquiry required by *Groff* to determine whether an accommodation caused undue hardship necessitated a “fuller evidentiary record”).

130. See Hebrew v. Tex. Dep’t of Crim. Just., 80 F.4th 717 (5th Cir. 2023).

131. *Id.* at 719–20.

undue hardship defense, claiming that to allow the plaintiff to keep his hair and beard long would create three substantial safety risks: (1) contraband could be hidden in the hair or beard; (2) a gas mask, which might be required in an emergency, would not fit properly over a long beard; and (3) a long beard or long hair could compromise the officer's safety if grabbed by a prisoner.¹³² This safety-centric undue hardship defense was not sufficient under the scrutiny of the Fifth Circuit, which reversed in favor of the employee.¹³³

Courts will inch closer to sharpening the scope of undue hardship and substantial cost as cases continue to be decided under *Groff*.¹³⁴ While those patterns slowly emerge, courts' respective intents may already be written on the wall in strong language, akin to the Fifth Circuit's commendation of the new standard:

The *de minimis* test had no connection to the text of Title VII. And by blessing "the denial of even minor accommodation in many cases," the *de minimis* test made it "harder for members of minority faiths to enter the job market." No more. The decision in *Groff* enables Americans of all faiths to earn a living without checking their religious beliefs and practices at the door.¹³⁵

As such, employers should prepare to grant an increased number of religious accommodations.¹³⁶ Moreover, there must be an exception to guard against unintended consequences from problematic beliefs and practices.

B. *A Prophecy of Unintended Consequences*

Groff paved the way for both the expansion and manipulation of religious accommodation, and there are several reasons to expect opportunistic employees to abuse the new standard. An initial consideration is that an employee is more likely to take advantage of an employer if the employee feels overworked or underpaid.¹³⁷ This is a viable concern as approximately 45% of workers are

132. *Id.* at 720, 723.

133. *Id.* at 724–25.

134. *See Groff v. DeJoy*, 600 U.S. 447, 471 (2023) (instructing courts to analyze substantial cost with common sense and on a case-by-case basis).

135. *Hebrew*, 80 F.4th at 725 (citations omitted).

136. *See Smith*, *supra* note 2.

137. *See Sam Brown, Four Factors Contributing to Employee Theft*, RANCHO MESA (June 14, 2022), <https://www.ranchomesa.com/industry-news/four-factors-contributing-to-employee-theft> ("Employees justify stealing when they believe the employer has overworked and underpaid its employees. An employee may also blame management when job performance does not warrant a pay increase. Employees may feel the company owes them.").

dissatisfied with their workload, and 43% of workers are dissatisfied with their wages.¹³⁸ Additionally, newer generations to the workforce are perceived by some as entitled and highly individualistic, which may lead to bold assertions of rights.¹³⁹

Other workers may be influenced by churches that are willing to weigh in on politics or current events. In 2023, the U.S. Supreme Court held that a Christian website designer was not obligated to create websites for same-sex weddings, a decision the Baptist Press referred to as “an important legal *win*.”¹⁴⁰

A further cause for concern is the intolerant and divisive messaging fueled by media and politicians in the name of religion. U.S. Representative Mike Johnson became speaker of the house in 2023 despite his track record of using flagrantly hateful anti-gay language.¹⁴¹ U.S. Representative Lauren Boebert touted that “the church is supposed to direct the government, the government is not supposed to direct the church.”¹⁴² Former President, and current president-hopeful, Donald Trump rallied a crowd promising “if you don’t like our religion . . . then we don’t want you in our country and you are not getting in.”¹⁴³

138. See Selcuk Eren, Allan Schweyer, Malala Lin & Allen Li, *Job Satisfaction 2023*, CONF. BD., 1, 4 (2023), <https://www.conference-board.org/pdfdownload.cfm?masterProductID=46114>.

139. See Charles Towers-Clark, *Generation Y and Z – Empowered or Entitled?*, FORBES (June 27, 2022), <https://www.forbes.com/sites/charlestowersclark/2022/06/27/generation-y-and-z-empowered-or-entitled/?sh=6bfda44f7715> (“A common accusation against millennials is one of being entitled. . . . Examining individualistic practices and values across 78 countries, the[] findings ‘suggested that individualism is indeed rising in most of the societies tested’. . . . [A]s we become more individualistic, we also become stronger in our view as to what we consider to be naturally ‘ours’.”).

140. Tom Strode, *Supreme Court Sides with Christian Who Won’t Make Gay Wedding Sites*, CHRISTIANITY TODAY (June 30, 2023, 10:17 PM), <https://www.christianitytoday.com/news/2023/june/supreme-court-lgbt-website-designer-303-creative-elenis-chr.html> (emphasis added).

141. See Andrew Kaczynski & Allison Gordon, *New Speaker of the House Mike Johnson Once Wrote in Support of the Criminalization of Gay Sex*, CNN (Oct. 27, 2023), <https://www.cnn.com/2023/10/25/politics/mike-johnson-gay-sex-criminalization-kfile/index.html>.

142. Emily Mikkelsen, *Marjorie Taylor Greene Calls Herself a ‘Christian Nationalist.’ What Does that Mean?*, FOX8 (July 27, 2022, 01:02 PM), <https://myfox8.com/news/politics/christian-nationalism-explainer/>.

143. Phillip Bump, *Trump Pledges to Turn Away Those Who Don’t Like ‘Our Religion’*, WASH. POST (Oct. 24, 2023, 10:58 AM), <https://www.washingtonpost.com/politics/2023/10/24/trump-religion-immigration/>.

Whether fueled by media, politics, or righteousness, people are unabashedly buying into this dangerous rhetoric.¹⁴⁴ And the language and behavior is likely following employees to work in this “bring your whole self to work” era.¹⁴⁵ Perhaps it is not surprising that 90% of charges brought to the EEOC by employees purportedly denied accommodation from mandatory COVID-19 vaccinations were charges alleging religious discrimination, not disability discrimination as one may expect.¹⁴⁶

Lastly are the most severe examples of religious extremism that would seek to manipulate religious freedom for evil purposes. When U.S. Representative Marjorie Taylor Greene referred to herself as a “Christian nationalist,” she then responded to backlash by reiterating the sentiment and voicing her pride as a Christian nationalist.¹⁴⁷ Nearly 70% of U.S. adults believe that extremism “in the name of Christianity” is already a problem.¹⁴⁸ And this problem is not exclusive to Christianity. The majority of Muslims in the United States are concerned about global extremism “in the name of Islam.”¹⁴⁹

144. See, e.g., David French, *One Reason the Trump Fever Won't Break*, N.Y. TIMES (Oct. 1, 2023), <https://www.nytimes.com/2023/10/01/opinion/christian-nationalism-trump-renew-america.html> (discussing the dangers of Christian nationalism and “Trump fever,” stating that “[i]t’s not a serious position to argue that this diverse, secularizing country will shed liberal democracy for Catholic or Protestant religious rule. But it’s exceedingly dangerous and destabilizing when millions of citizens believe that the fate of the church is bound up in the person they believe is the once and future president of the United States”); see also Neil Hicks, *Blasphemy Laws Fuel the Ideology of Violent Extremism*, HUFFPOST, https://www.huffpost.com/entry/blasphemy-laws-fuel-the-i_b_9438804 (Mar. 12, 2017) (“Moreover, the influence of preachers and religious institutions from these large, influential states where extremist ideology is condoned and even fostered by state authorities spreads throughout the rest of [the] world as the Internet and satellite broadcasting networks carry their messages of extremism and intolerance to countless millions of people every day.”).

145. See *13 Effective Ways to Bring Your ‘Whole Self’ to Work*, FORBES (Aug. 10, 2022, 01:15 PM), <https://www.forbes.com/sites/forbescoachescouncil/2022/08/10/14-effective-way-s-to-bring-your-whole-self-to-work/?sh=49374889261e> (stating that “effective ways to bring your ‘whole self’ to work” include “start[ing] with self-searching,” “shar[ing] your ‘real’ self” and “align[ing] what you say with what you believe”).

146. See Robert Iafolla, *Workplace Vaccine Mandate Exemption Lawsuits Falter in Court*, BLOOMBERG L. (May 19, 2022), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XD0U7HD8000000?bna_news_filter=daily-labor-report#jcite (showing that 10% of charges were filed based on failure to accommodate under the ADA).

147. Mikkelsen, *supra* note 142.

148. *Large Majority of the Public Views Prosecution of Capitol Rioters as ‘Very Important,’* PEW RSCH. CTR. (Mar. 18, 2021), <https://www.pewresearch.org/politics/2021/03/18/large-majority-of-the-public-views-prosecution-of-capitol-rioters-as-very-important/>.

149. *Id.*

Although the undue hardship standard once operated as a shield for employers to fend off unusual or offensive religious beliefs,¹⁵⁰ the new test is vulnerable to being wielded as a sword by manipulative or opportunistic employees. As such, employers will face increasingly difficult and complex situations while applying the *Groff* standard, thereby warranting a specific exception when protected classes clash.

IV. AN EXCEPTION WHEN CLASSES CLASH

As evidenced in this Note's opening hypothetical,¹⁵¹ religious accommodations can conflict with the rights or accommodations of a member of another protected class, and in some cases, employers may face threats of hostile work environment claims resulting from efforts to provide religious accommodation.¹⁵² Courts are aware of the conflicts that arise between protected classes when providing religious accommodation.¹⁵³ In fact, *Hardison* warned that a clash of classes was possible if an accommodation for a religious employee's schedule caused discrimination against another employee.¹⁵⁴

Starting before *Groff*, courts' fists were shackled in the proverbial handcuffs of not being able to assess the legitimacy of a religious belief or practice—even if outrageous or incomprehensible.¹⁵⁵ Given the U.S. Supreme Court's refusal to define key terms or adopt an objective test to substantiate the legitimacy of one's religious belief or practice, the next best option is to exempt employers from providing accommodation in certain circumstances, even when the cost of accommodation may not rise to the heightened *Groff* standard. Specifically, when a fact finder could reasonably find a religious belief or practice inherently

150. See discussion *supra* Section II.B.

151. See discussion *supra* INTRODUCTION.

152. See Smith, *supra* note 2 (“An employee might request a religious accommodation that they not be required to use pronouns that differ from the sex assigned to a co-worker at birth. . . . An employee might request latitude to speak out on or criticize the employer's position on legislation relating to marriage equality or gender identification issues.”).

153. See *Hussein v. Hotel Emps. & Rest. Union, Local 6*, 108 F. Supp. 2d 360, 371 (S.D.N.Y. 2000) (stating that “*Hardison* has been followed consistently by the courts of every circuit”).

154. See *Trans World Airlines v. Hardison*, 432 U.S. 63, 85 (1977) (“As we have seen, the paramount concern of Congress in enacting Title VII was the elimination of discrimination in employment. In the absence of clear statutory language or legislative history to the contrary, we will not readily construe the statute to require an employer to discriminate against some employees in order to enable others to observe their Sabbath.”).

155. See, e.g., *United States v. Seeger*, 380 U.S. 163, 185 (1965) (“[C]ourts in this sense are not free to reject beliefs because they consider them ‘incomprehensible.’ Their task is to decide whether the beliefs professed by [an employee] are sincerely held and whether they are, in his own scheme of things, religious.”).

hateful or violative of another's protected characteristic or class, the belief or practice should not be accommodated. As the next Section discusses, requiring employers to accommodate intolerant or offensive beliefs perpetuates discrimination and facilitates segregation. Courts should therefore find undue hardship when the religious belief or practice requiring accommodation is inherently hateful, intolerant, or violative of another's protected characteristic or class under Title VII, thus exempting the employer from accommodating the belief or practice.

The language of this proposed exception requires an employer to determine whether an underlying religious belief or practice is *inherently* hateful, intolerant, or violative of another's protected characteristic or class under Title VII. Courts often use "inherently" to refer to characteristics that are natural or essential to a particular concept or thing.¹⁵⁶ As such, if a religious belief or practice necessarily discriminates against another person's protected characteristic or class on its face, it is inherently violative. A similar legal test already exists in the employment context and is demonstrative here.

Employers must not engage in conduct that is "inherently destructive" of a union member's rights.¹⁵⁷ To be "inherently destructive," the conduct must have both unavoidable and intentional consequences.¹⁵⁸ If the conduct is identified as inherently destructive, the burden shifts to the employer to justify or explain why the conduct is not as it appears on its face.¹⁵⁹ Similarly, employers should arguably determine whether an underlying belief or practice is unavoidably or intentionally discriminatory on its face. If so, an employee can then have the opportunity to justify or explain why the belief is not as it appears on its face.

Employers are equipped to apply this test and proposed exception generally. Given the requirements of Title VII, employers should already be familiar with anti-discrimination laws and requirements, including the recognition of protected classes and characteristics. This enables the employer to identify a belief or behavior that naturally and unavoidably creates discrimination. Detecting

156. *See, e.g.*, *Donovan v. Gen. Motors*, 762 F.2d 701, 703 (8th Cir. 1985) (stating an "inherently dangerous activity . . . necessarily presents a substantial risk of damage unless adequate precautions are taken" (quoting *Smith v. Inter-County Tel. Co.*, 559 S.W.2d 518, 523 (Mo. 1977))); *Forest Products Co. v. NLRB*, 888 F.2d 72, 75 (10th Cir. 1989) (stating that "conduct is 'inherently destructive' if it 'carries with it unavoidable consequences'" (quoting *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33 (1967))).

157. *NLRB v. Me. Coast Reg'l Health Facilities*, 999 F.3d 1, 14 (1st Cir. 2021).

158. *Great Dane*, 388 U.S. at 33.

159. *Id.*

potential discrimination is likely a simpler task for an employer than assessing the validity of a religion or determining whether a belief is sincerely held.¹⁶⁰

The following Section discusses the oxymoronic effect the *Groff* standard can have in providing religious accommodations that effectively discriminate against other protected classes. Such an effect demonstrates the critical need for a presumption of undue hardship for the employer when the religious belief or practice that drives the requested accommodation is inherently hateful, intolerant, or violative of another's protected characteristic or class under Title VII.

A. *When Accommodation Perpetuates Discrimination*

An employer should be exempt from providing religious accommodation when doing so forces the employer to validate, create, or promote discrimination, contrary to Title VII's chief purpose.¹⁶¹ Typically, an accommodation that would cause an employer to violate the law, such as Title VII, is an undue hardship—but this is not as bright a line as one would expect.¹⁶² The U.S. Supreme Court in *Groff* was quick to reinforce the idea that animosity toward religion is not undue hardship and would not excuse an employer from providing accommodation.¹⁶³ Nevertheless, there is ample evidence that many requests for religious accommodation are fueled by animosity toward other protected classes and employers are forced to effectively favor one employee over another.¹⁶⁴ The Court recognized that “[i]f bias or hostility to a religious practice or a religious accommodation provided a defense to a reasonable accommodation claim, Title VII would be at war with itself.”¹⁶⁵ But this war is not waged in a single direction toward religion. The bias or hostility of a religious practice or accommodation

160. See EEOC, RELIGIOUS DISCRIMINATION, *supra* note 9 (“Because the definition of religion is broad and protects beliefs, observances, and practices with which the employer may be unfamiliar, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief.”).

161. See EEOC History, *supra* note 19.

162. See *United States v. Bd. of Educ.*, 911 F.2d 882, 891 (3d Cir. 1990); *Cagle v. Weill Cornell Med.*, 22-cv-6951(LJL), 2023 WL 4296119, at *3 (S.D.N.Y. June 30, 2023).

163. See *Groff v. DeJoy*, 600 U.S. 447, 471–72 (2023) (“An employer who fails to provide an accommodation has a defense only if the hardship is ‘undue,’ and a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered ‘undue.’”).

164. See *e.g.*, *Peterson v. Wilmur Commc’ns, Inc.*, 205 F. Supp. 2d 1014, 1016–17 (E.D. Wis. 2002) (acknowledging an employee’s right to religious accommodation where the employee’s religion, Creativity, and its central text, *The White Man’s Bible*, “teaches that Creators should live their lives according to the principle that what is good for white people is the ultimate good and what is bad for white people is the ultimate sin”).

165. *Groff*, 600 U.S. at 472.

toward another protected class creates the same war within Title VII that the Supreme Court purports to quash.¹⁶⁶

The first step to untangling this double standard is understanding how religious beliefs clash with other protected classes. For example, conflicts are common between religion and sex.¹⁶⁷ Sex as a protected class includes gender identity and sexual orientation.¹⁶⁸ These conflicts may be as simple as a worker's refusal to don a rainbow-colored logo even if the multi-colored symbol is in no way affiliated with the LGBTQ+ community the worker opposes.¹⁶⁹ In this example, it is highly unlikely that an employer could show that allowing the employee to cover the logo results in substantial cost.¹⁷⁰ However, any accommodation that the employer provides will arguably both unavoidably validate the intolerant belief and promote the accommodated employee's discrimination in the organization. Similarly, employees who insist on misgendering a coworker or using incorrect pronouns should not be accommodated.¹⁷¹ Here again, even if an accommodation for this belief is

166. *See id.*

167. *See, e.g.,* Jamie Margolis, *Freedom of Religion v. Sexual Freedom—A Conflict Between Liberties?*, BOS. UNIV. L., <https://www.bu.edu/law/record/articles/2015/freedom-of-religion-vs-sexual-freedom-a-conflict-between-liberties/> (last visited Mar. 6, 2024) (acknowledging “the ongoing ‘conflict between liberties,’ particularly free exercise of religion and sexual freedom” on topics including abortion and same-sex marriage); *Views About Homosexuality*, PEW RSCH. CTR., <https://www.pewresearch.org/religion/religious-landscape-study/views-about-homosexuality/> (last visited Mar. 6, 2024) (stating 84% of respondents who think that homosexuality should be discouraged report being absolutely certain in their belief in God); Chai R. Feldblum, *Protecting LGBTQ Liberty and Religious Liberty*, AM. BAR ASS'N (July 5, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/protecting-lgbtq-liberty-and-religious-liberty/ (recognizing “the values of religious liberty and LGBTQ liberty” as “two competing values in our pluralistic society”).

168. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 651–52 (2020) (holding that “[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex”).

169. *See EEOC v. Kroger Ltd. P'ship I*, 608 F. Supp. 3d 757, 757 (E.D. Ark. 2022).

170. *See id.* at 783–90. The employer argued that granting a religious accommodation exempting the employee from wearing or covering the multi-colored, heart-shaped logo would result in harm to its brand and business image, as well as financial costs and workplace disruption. *See id.* at 783. The court denied summary judgment because “[u]sing common sense, a rational juror could conclude that the cost would be *de minimis*.” *Id.* at 785–86. Thus, it logically follows that a burden that does not rise to the *de minimis* standard will automatically fail to satisfy the higher burden of substantial cost.

171. *See, e.g.,* Kluge v. Brownsburg Cmty. Sch. Corp., 64 F.4th 861, 886–87 (7th Cir. 2023). Just months before *Groff* was decided, a school prevailed against a teacher who was not accommodated in his refusal to recognize the chosen names and pronouns of transgendered

possible without incurring substantial financial cost, accommodation would unavoidably perpetuate the discriminatory behavior and should accordingly be recognized as an undue hardship. Religious opposition to homosexuality is commonplace¹⁷² and employers must not contribute to discrimination by accommodating intolerant beliefs.

Clashes between classes extend beyond sex, and some religious beliefs and practices conflict with race, color, or national origin. One employee prevailed in a case of religious discrimination after the employer demoted him for publicly promoting racial genocide in furtherance of “Creativity,” his white supremacist religion.¹⁷³ Although the district court found the belief “sincerely held and ‘religious’ in his own scheme of things” thereby warranting protection under Title VII, the judge lamented: “the question of whether I find a belief moral, ethical or otherwise valid in this subjective sense is decidedly not at issue when I am determining whether a belief is ‘religious.’”¹⁷⁴ Another district court finally drew the line when it refused to recognize the Ku Klux Klan (KKK) as a religion under Title VII.¹⁷⁵ However, the court arguably weakened its holding by merely reasoning that the KKK was more “political and social in nature” than it was a religious organization.¹⁷⁶ The court then missed an opportunity to hold that the hate and violence harbored and demonstrated by the KKK precluded its ability to be classified as a religion.¹⁷⁷

In addition to conflicts between classes, religious accommodation can, ironically, perpetuate increased religious discrimination.¹⁷⁸ Members of the same

students. *Id.* at 864. The court found that the “emotional harm to students and disruptions to the learning environment are objectively more than *de minimis* or slight burdens to schools.” *Id.* At the time of this writing, the Seventh Circuit has vacated its decision and remanded it to the district court to be re-considered under *Groff*. *Kluge v. Brownsburg Cmty. Sch. Corp.*, No 21-2475, 2023 WL 4842324 (7th Cir. July 28, 2023).

172. See *Views About Same-Sex Marriage*, PEW RSCH. CTR., <https://www.pewresearch.org/religion/religious-landscape-study/views-about-same-sex-marriage> (last visited Mar. 6, 2024) (stating that 52% of Muslims, 64% of Evangelical Protestants, 68% of Latter-day Saints, and 76% of Jehovah’s Witnesses oppose or strongly oppose same-sex marriage).

173. *Peterson v. Wilmur Commc’ns, Inc.*, 205 F. Supp. 2d 1014, 1015–16 (E.D. Wis. 2002).

174. *Id.* at 1023.

175. *Slater v. King Soopers, Inc.*, 809 F. Supp. 809, 810 (D. Colo. 1992).

176. *Id.*

177. See generally *id.*

178. See Debbie Kaminer, *Religious Accommodation Ruling Raises More Workplace Questions*, BLOOMBERG L. (July 3, 2023, 1:00 AM), <https://news.bloomberglaw.com/us-law-week/religious-accommodation-ruling-raises-more-workplace-questions> (commenting on *Groff* that “in broadly holding that an employee’s ‘dislike’ of religious expression in the workplace is irrelevant, the court ignored the fact that coworkers may dislike the religious

or different religions may have conflicting beliefs, especially because one's sincerely held belief need not align with their religion or any religion.¹⁷⁹ This conflict often manifests when an employee insists on proselytizing while at work. Although "Title VII does not require an employer to allow an employee to impose his religious views on others,"¹⁸⁰ some courts have required accommodation for proselytization even if it is offensive.¹⁸¹ Thus, employees may be involuntarily subjected to religion in the workplace with, for instance, religious greetings,¹⁸² prayers and scripture reading during work meetings,¹⁸³ or even condemnation from coworkers demanding repentance.¹⁸⁴ Proselytization takes multiple forms and may be the promotion of one's religion or the speaking out against another person's beliefs,¹⁸⁵ the latter of which may infringe on another's rights. Regardless of whether the recipient is of the same, different, or no religion, proselytizing is typically allowed unless riddled with intimidation, ridicule, or insult.¹⁸⁶

Neither religion nor any protected class should require an employer to provide accommodation for a hostile or animosity-driven belief that is inherently hateful or violative of another's protected rights. By accommodating intolerant

expression because it's demeaning or offensive"); *see also* *Castaneda v. Partida*, 430 U.S. 482, 499 (1977) (stating that "it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group"); *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 78 (1998) (stating that the court rejects "any conclusive presumption that an employer will not discriminate against members of his own race").

179. *See* discussion *supra* Section II.A.

180. *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1342 (8th Cir. 1995).

181. *See* *Newell v. Acadiana Plan. Comm'n Inc.*, 637 F. Supp. 3d 419, 429, 431–32 (W.D. La. 2022) (providing an example where the plaintiff sought relief for hostile work environment on account of being subjected to offensive proselytization, including repeatedly being instructed "to go to church and pray").

182. *See e.g.*, *Banks v. Serv. Am. Corp.*, 952 F. Supp. 703, 703 (D. Kan. 1996) (finding that there was a triable issue of fact as to whether employer could reasonably accommodate employees who wished to use phrases such as "God bless you," "Praise the Lord," and other similar phrases).

183. *See, e.g.*, *Brown v. Polk Cnty.*, 61 F.3d 650, 656 (8th Cir. 1995).

184. *See, e.g.*, *Chalmers v. Tulon Co.*, 101 F.3d 1012, 1021 (4th Cir. 1996) (regarding an employee-plaintiff who was "convalescing at her home, suffering from an undiagnosed illness after giving birth out of wedlock" received a lengthy letter from another employee providing in part: "One thing about God, He doesn't like when people commit adultery. You know what you did is wrong, so now you need to go to God and ask for forgiveness.").

185. *See Newell*, 637 F. Supp. 3d at 430–31 (regarding a plaintiff seeking relief for hostile work environment on account of being subjected to unwelcome proselytization such as admonishment for her lack of belief in God and demands to attend church and pray).

186. *Id.* at 432.

beliefs, the employer is forced to validate, create, or promote the kind of discrimination that Title VII aims to prevent.

One criticism of this theory is that the exception proposed may, inadvertently or intentionally, create a hierarchy of protected classes within the employment context.¹⁸⁷ It could be argued that denying religious accommodation in favor of another worker's rights prioritizes that protected class or characteristic over religion.¹⁸⁸ On the other hand, this Note argues that the inverse is currently true: providing religious accommodation that is discriminatory against other protected classes unjustly prioritizes religion over other classes. Unfortunately, in situations where classes clash, the employer must choose which protected class to accommodate. The need for an exception becomes even more apparent when evaluating the aggregate effects of accommodations.

B. Segregation and Other Adverse Aggregate Effects

The total effects of providing accommodations under *Groff* must be evaluated in the aggregate to avoid segregation and to limit adverse cumulative consequences to employers and communities. However, when analyzing undue hardship, employers are not currently permitted to consider the possibility that other religious employees may require or request the same accommodation.¹⁸⁹ Failing to evaluate the adverse effects of certain accommodations when provided in bulk is naïve—it warrants reiterating that approximately 75% of Americans identify as religious.¹⁹⁰ The potential downstream consequences of religious accommodation in the aggregate include segregation of classes reminiscent of a

187. See Megan Pearson, *Religious Claims vs. Non-Discrimination Rights: Another Plea for Difficulty*, 15 RUTGERS J.L. & RELIGION 47, 54 (2013) (“Conflicts between religious rights and the prohibition of sexual orientation discrimination are therefore not only likely but also potentially serious. A choice must be made about which interest to protect at the cost of violating another important interest, thus presenting a difficult dilemma.”).

188. The First Amendment requires neutrality from the government when it comes to religion. See *McCreary Cnty. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 860 (2005). The Establishment Clause prohibits government support of religion, while the Free Exercise Clause prohibits restraints on religious practice. See *Carson v. Makin*, 596 U.S. 767, 778, 781 (2022). In fact, the Supreme Court's reticence to evaluate the legitimacy of one's religion or beliefs stems from First Amendment concerns. See *United States v. Ballard*, 322 U.S. 78, 86 (1944). However, the Court has declined to analyze how religious accommodation under Title VII intersects with the Establishment Clause despite having multiple opportunities to do so. See *Groff v. DeJoy*, 600 U.S. 447, 460–61 (2023) (failing to evaluate constitutional arguments, and noting that in *Hardison*, “[d]espite the prominence of the Establishment Clause in the briefs submitted by the parties and their amici, constitutional concerns played no on-stage role in the Court's opinion”).

189. 29 C.F.R. § 1605.2(c)(1) (2024).

190. *PRRI Census*, *supra* note 4, at 7.

“separate but equal” era¹⁹¹ that perpetuates discrimination, threatens employers, and harms employees.

Title VII warns employers not to segregate employees because of religion.¹⁹² And yet, courts continue to press employers to explore accommodations like transferring employees to other locations.¹⁹³ At what point, if any, can an employer recognize the divisive beginnings of destructive segregation and claim an undue hardship? Indeed, even documented employee complaints regarding favoritism and division between Christians and non-Christians within an office were too “hypothetical” to establish *de minimis* undue hardship¹⁹⁴—let alone constitute substantial cost. Employee happiness means “profitability and productivity” for employers,¹⁹⁵ but unfortunately, employee complaints regarding unfair accommodation and the diminished morale that results therefrom may not rise to the level of substantial cost, notwithstanding a measurable detriment to the employer.¹⁹⁶

Segregating employees is problematic for numerous other reasons. In the context of employment productivity, companies rely on diverse teams to optimize innovation.¹⁹⁷ Diverse organizations enjoy significantly better employee performance and retention than their nondiverse competitors.¹⁹⁸ Furthermore, racial, ethnic, and gender diversity are positively correlated with

191. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494–95 (1954).

192. See 42 U.S.C. 2000e-2(a)(2) (“It shall be an unlawful employment practice for an employer . . . [to] segregate, or classify his employees or applicants for employment in any way which would . . . adversely affect his status as an employee, because of such individual’s . . . religion.”).

193. See 29 C.F.R. § 1605.2(d)(1)(iii) (2024); see also *Kelly v. Cnty. of Orange*, 101 F. App’x. 206, 207 (9th Cir. 2004); *Groff*, 600 U.S. at 459–60.

194. *Brown v. Polk Cnty.*, 61 F.3d 650, 656–57 (8th Cir. 1995).

195. Cindy Gordon, *Employee Happiness is a Leading Indicator of Profitability and Productivity*, FORBES (Oct. 30, 2022), <https://www.forbes.com/sites/cindygordon/2022/10/30/employee-happiness-is-a-leading-indicator-of-profitability-and-productivity/?sh=20df14b1f8ff>.

196. See generally Dallon F. Flake, *Bearing Burdens: Religious Accommodations that Adversely Affect Coworker Morale*, 76 OHIO ST. L.J. 169 (2015) (arguing that courts should “accept harm to employee morale as a sufficient basis to deny an accommodation without requiring proof of how lowered morale hurts an employer’s business”).

197. See Manasi Sakpal, *Diversity and Inclusion Build High-Performance Teams*, GARTNER (Sept. 20, 2019), <https://www.gartner.com/smarterwithgartner/diversity-and-inclusion-build-high-performance-teams>.

198. See *Why Diversity and Inclusion are Good for Business*, UNIV. N.C. PEMBROKE (Oct. 27, 2021), <https://online.uncp.edu/articles/mba/diversity-and-inclusion-good-for-business.aspx> (citing research that shows “a 12% diversity boost, with similar improvements in employee retention”).

the likelihood of having higher financial returns.¹⁹⁹ For these reasons, a religious accommodation that separates employees based on class is a substantial cost.

The adverse aggregate effects of accommodating intolerant religious beliefs are not limited to the threat of segregation. An employer and its customers may also suffer hardship when employees refuse to perform certain tasks in the name of religion; a problem that has the potential to proliferate and harm an entire community. Worst-case scenarios may arise when multiple employers within a given industry or geographical area compound the adverse aggregate effects of accommodation by allowing religious employees to refuse tasks or deny services to people based on a protected trait.

Consider this concept in the context of a small rural healthcare setting in the Bible Belt, where the vast majority of workers are religious.²⁰⁰ Although religious and LGBTQ+ identities are not mutually exclusive, religious-based homophobia is prevalent throughout the Bible Belt²⁰¹ and some religious employees refuse to render medical services to patients based on various religious beliefs, including opposition to abortion,²⁰² birth control,²⁰³ or homosexuality.²⁰⁴ If Christian mental health counselors can refuse to provide treatment for any patient involved in a homosexual relationship,²⁰⁵ yet adults

199. *Id.* (stating that “companies in the top 25% for racial/ethnic and gender diversity were respectively 36% and 25% more likely to have superior financial returns”).

200. The Bible Belt is comprised of states that have the highest percentage of religious residents. Alabama is the most religious state with 88% of its residents identifying as religious. *See Bible Belt States 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/bible-belt-states> (last visited Feb. 4, 2024).

201. *See* Bernadette Barton, “Abomination”—*Life as a Bible Belt Gay*, 57 J. OF HOMOSEXUALITY 465, 465 (2010).

202. *See* Shelton v. Univ. of Med. & Dentistry, 223 F.3d 220, 223 (3d Cir. 2000). A survey of 35,071 individuals found that 47% of Catholics, 63% of Evangelical Protestants, 70% of Latter-day Saints, and 75% of Jehovah’s Witnesses say abortion should be illegal in all or most cases. *Views About Abortion*, PEW RSCH. CTR., <https://www.pewresearch.org/religion/religious-landscape-study/views-about-abortion> (last visited Mar. 6, 2024).

203. *See* Noesen v. Med. Staffing Network, Inc., 232 Fed. App. 581, 584–85 (7th Cir. 2007). When a customer came to the counter requesting their birth control prescription, the employee would go so far as to advise the customer against the medication, refuse to fill the prescription, or simply walk away from the customer, intentionally failing to tell another employee that the customer needed service. *See id.* at 583. The court found that any accommodation would create undue hardship because of the burden it would cause other workers. *See id.* at 584–85.

204. *See* Bruff v. N. Miss. Health Servs., 244 F.3d 495, 497 (5th Cir. 2001) (considering a marriage and family counselor’s accommodation request to “be excused from . . . actively helping people involved in the homosexual lifestyle to have a better relationship with their homosexual partners”).

205. *Id.*

who self-identify as gay are disproportionately vulnerable to mental illness,²⁰⁶ the LGBTQ+ community may remain a tragically underserved population.²⁰⁷ While the most catastrophic extrapolation of this projection may be unlikely,²⁰⁸ safe and accessible healthcare should never be contingent on the religious beliefs of employees in the healthcare industry.²⁰⁹

If antidiscrimination law “aims to reshape culture in order to eliminate patterns of stigma and prejudice that constitute some classes of persons as inferior members of society,” religious accommodation should not be granted for religious beliefs antithetical to this cause.²¹⁰ For these reasons, religious accommodations that perpetuate discrimination, facilitate segregation, or threaten other catastrophic effects in the aggregate create an undue hardship for the employer. Therefore, courts should find that any accommodation for a religious belief or practice that is inherently hateful, intolerant, or violative of another’s protected characteristic or class under Title VII is a substantial cost and employers are exempt from accommodating the belief.

CONCLUSION

Religious employees of all faiths enjoy a more reasonable expanse of accommodations after the U.S. Supreme Court clarified the undue hardship test for employers in *Groff v. DeJoy*. Although an important and meaningful triumph for devout employees, it would be unwise to turn a blind eye to the loopholes and potential manipulation that may accompany the new standard. After *Groff* and absent a court-adopted definition or test to validate the legitimacy of an

206. Joseph J. Frey, William J. Hall, Jeremy T. Goldbach, & Paul Lanier, “*Here in the Bible Belt, It’s Predominantly Negative*”: *Sexual Identity Stigma in the American South, 50 Years After Stonewall*, 12 FRONTIERS IN PSYCH. 804064, at 1 (Dec. 2021).

207. See *The Case for Designating LGBT People as a Medically Underserved Population and as a Health Professional Shortage Area Population Group*, FENWAY INST. 2–3 (2014), https://fenwayhealth.org/documents/the-fenway-institute/policy-briefs/MUP_HPS_A-Brief_v11-FINAL-081914.pdf (last visited Mar. 6, 2024).

208. Admittedly, the absolute worst-case scenario would likely never materialize because the United States has resources and policies to prevent or remedy a healthcare crisis. See, e.g., *Federal Emergency Authorities*, MEDICAID AND CHIP PAYMENT AND ACCESS COMM’N, <https://www.macpac.gov/subtopic/federal-emergency-authorities/> (last visited Mar. 6, 2024) (describing various federal emergency authorities such as the Public Health Service Act and the National Emergencies Act).

209. This argument extends beyond healthcare workers to security personnel. A Roman Catholic police officer was entitled to a religious accommodation that exempted him from assignments aimed to keep the peace outside abortion clinics. See *Rodriguez v. City of Chi.*, 975 F. Supp. 1055, 1057–58 (N.D. Ill. 1997).

210. ANDREW KOPPELMAN, *GAY RIGHTS VS. RELIGIOUS LIBERTY? THE UNNECESSARY CONFLICT* 53 (2020).

employee's religion, sincerely held belief, or need for accommodation, safeguards must be added to prevent future or further manipulation.

Accommodating religious beliefs or practices that are inherently hateful or violative of another person's protected characteristic or class is an undue hardship because accommodating such beliefs both forces employers to effectively discriminate against other employees in violation of Title VII and facilitates segregation, the aggregate effects of which adversely impact employers and communities alike. Therefore, courts should find undue hardship when the religious belief or practice requiring accommodation is inherently hateful, intolerant, or violative of another's protected characteristic or class under Title VII, thus exempting the employer from accommodating the belief or practice.