RELIGIOUS ACCOMMODATIONS: THE NEW STANDARD FOR SOUTH CAROLINA EMPLOYERS FOLLOWING *GROFF V. DEJOY*

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I. INTRODUCTION..650

II. BACKGROUND..651
- A. *Religion Under Title VII*..651
- B. *Theory of Liability for Religious Accommodations*..652
- C. *The "Undue Hardship" Standard*..653

III. ANALYSIS..656
- *A.* Groff v. DeJoy..656
  - *1. Facts and Procedure*..656
  - *2. Historical Analysis*..657
  - *3. Clarifying* Hardison..658
  - *4. Substantial Increased Costs*..660
- B. *The Prevalence of "De Minimis"*..661
- C. *Survey of Case Law*..663
  - *1. The Fourth Circuit Court of Appeals*..663
  - *2. The United States District Court for the District of South Carolina*..667

IV. EVALUATING SUBSTANTIAL INCREASED COSTS..671
- A. *Americans With Disabilities Act*..671
- B. *Equal Employment Opportunity Commission*..671
- C. *South Carolina Human Affairs Commission*..672
- *D.* Stroud v. Coordinating Control..673

V. CONCLUSION..674

* J.D. Candidate, May 2025, University of South Carolina Joseph F. Rice School of Law. This Note is dedicated to my family and to my aunt, Jennie Pittman Sikes. Firstly, I would like to thank Professor Joseph Seiner for serving as my faculty advisor. I would also like to recognize the University of South Carolina Department of Religious Studies and Dr. John Mandsager for introducing me to the fascinating intersection of law and religion. Finally, I would like to thank the members of *South Carolina Law Review* for their wonderful guidance and support.

I. INTRODUCTION

For almost fifty years,[1] South Carolina employers have understood that under Title VII, they are not required to provide their employees with a religious accommodation where it would "result[] in 'more than a *de minimis* cost' to the employer."[2] However, this is no longer the reliable standard.[3] In the 2023 case of *Groff v. DeJoy*, the United States Supreme Court upended this interpretation of the undue hardship defense.[4] Now, to be relieved of liability for failure to provide a religious accommodation, an employer must establish undue hardship by demonstrating that the "accommodation would result in *substantial increased costs*" in the employer's business.[5]

This Note examines the development of the "erroneous"[6] interpretation of the undue hardship standard that developed under the precedential authority of *Trans World Airlines v. Hardison*.[7] Following this discussion, this Note analyzes how the Supreme Court "bush[ed] away,"[8] the *de minimis* standard through the "clarifications"[9] provided in *Groff v. DeJoy.*[10] Next, this Note highlights the implications of *Groff* for South Carolina employers, applying *Groff*'s heightened[11] standard to prior Fourth Circuit and South Carolina District Court decisions in which the *de minimis* standard was upheld.[12] Finally, this Note concludes by evaluating how South Carolina employers may ensure compliance with *Groff*'s "substantial increased costs" standard[13] going forward.[14]

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1. Groff v. DeJoy, 600 U.S. 447, 456 (2023) ("Because this case presents our first opportunity in nearly 50 years to explain the contours of Hardison . . . .").
2. EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 312 (4th Cir. 2008) (citing Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 67 (1986)); *see generally* 42 U.S.C. § 2000e(j).
3. *See Groff*, 600 U.S. at 468 ("We hold that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII.").
4. *See id.*
5. *Id.* at 470 (emphasis added) (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 83 n.14 (1977)); *see generally* 42 U.S.C. § 2000e(j).
6. *Groff*, 600 U.S. at 471 ("The erroneous *de minimis* interpretation of *Hardison* . . . .").
7. *See* discussion *infra* Section I.II.C.
8. *Groff*, 600 U.S. at 472 ("Since we are now brushing away that mistaken view of *Hardison*'s holding . . . .").
9. *Id.* at 457 (discussing "the clarifications we offer today").
10. *See* discussion *infra* Section III.A.3.
11. *See Groff*, 600 U.S. at 470 (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 83 n.14. (1977)).
12. *See* discussion *infra* Section III.CIII.C.
13. *Groff*, 600 U.S. at 470 (citing *Hardison*, 432 U.S. at 83 n.14).
14. *See infra* Part IV.

II. BACKGROUND

A. Religion Under Title VII

Title VII of the Civil Rights Act of 1964 "prohibits employment discrimination based on race, color, *religion*, sex and national origin."[15] Thus, Title VII specifically identifies religion as a protected class.[16] This provision applies to all U.S. employers "engaged in an industry affecting commerce" with fifteen or more employees.[17] As a result, most workers are protected against religious discrimination in employment decisions, including hiring, firing, compensation, and promotions.[18] Further, employers are prohibited from invoking religion in any manner that "would deprive or tend to deprive a[n] individual of employment opportunities" or "adversely affect [their] status as an employee."[19]

Under Title VII, the statutory term 'religion' is defined as "all aspects of religious observance and practice, as well as belief, *unless* an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[20] Pursuant to this statutory definition, an employer's failure to reasonably accommodate an employee's religious practice is a violation of Title VII, resulting in liability.[21]

Finally, it is important to note that the Equal Employment Opportunity Commission's (EEOC) regulatory guidelines for religious discrimination define "religious practices" as "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."[22] Therefore, just as Title VII protects workers that identify with "traditional, organized religions" such as "Buddhism, Christianity, Hinduism, Islam, [or] Judaism,"[23] it also protects workers whose religious practices or

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15. *Title VII of the Civil Rights Act of 1964,* U.S. EQUAL EMP. OPPORTUNITY COMM'N, (emphasis added) https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964# [https://perma.cc/33FZ-ERTH]; *see generally* 42 U.S.C. § 2000e-2.
16. *See* 42 U.S.C. § 2000e-2.
17. *Id.* § 2000e(b).
18. EEOC Compl. Man. § 12-II (Jan. 2021) [hereinafter *Compliance Manual on Religious Discrimination*] (citing 42 U.S.C. § 2000e-2(a)(1)–(2)), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination [https://perma.cc/VCP8-9WAN].
19. *Id.*
20. 42 U.S.C. § 2000e(j) (emphasis added).
21. *See id*. § 2000e(b)(1); 29 C.F.R. § 1605.2(b)(1) (2022).
22. 29 C.F.R. § 1605.1 (2022) (first citing United States v. Seeger, 380 U.S. 163 (1965); and then citing Welsh v. United States, 398 U.S. 333 (1970)).
23. *Religious Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/religious-discrimination [https://perma.cc/TE8H-Y43X].

beliefs may be considered "non-traditional" or unique.[24] The regulatory guidelines specify that a religious organization's promulgation of—or adherence to—a specific belief is *not* required for a belief to be considered religious.[25] Thus, unconventional beliefs or practices are afforded equal protection under Title VII.[26]

B. *Theory of Liability for Religious Accommodations*

Traditionally, an employee's claim for failure-to-accommodate was considered an individual cause of action under Title VII.[27] However, in *EEOC v. Abercrombie & Fitch Stores, Inc.*, the Supreme Court specified that only two causes of action exist under Title VII, classified as "disparate treatment" or "disparate impact."[28] In *Abercrombie,* the court evaluated a failure-to-accommodate claim under the theory of disparate treatment,[29] concluding that an employer's failure to accommodate results in disparate treatment.[30] Furthermore, to bring a claim, a plaintiff is not required to prove their employer had "actual knowledge" of their need for a religious accommodation.[31]

Under the *Abercrombie* framework, to state a cause of action the plaintiff is only required to demonstrate that they suffered an "adverse employment action" due to their religious practices or beliefs.[32] Once this is established, the burden shifts to the employer to present an affirmative defense; by demonstrating it provided the employee with a reasonable accommodation, or by proving that the reasonable accommodation would have resulted in an undue hardship on "the conduct of the employer's business."[33] Therefore, under *Abercrombie*, the provision of a reasonable accommodation is only relevant in regards to the employer's defense.[34]

Notably, several courts have failed to adopt this interpretation of *Abercrombie* and continue to evaluate failure-to-accommodate claims as

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24. *See id.*
25. *See* 29 C.F.R. § 1605.1 (2022).
26. *See id.*
27. *Compliance Manual on Religious Discrimination, supra* note 18.
28. 575 U.S. 768, 771 (2015).
29. *See id.* at 771–72.
30. *See id*. at 775.
31. *Id.* at 772.
32. *See id.* at 780 (Alito, J., concurring).
33. *See id.* at 770–71 (quoting 42 U.S.C. § 2000e(j)).
34. *See* Lauren Bateman, Note, *Religious Discrimination: An Employee's Burden of Proof Under Title VII*, 21 RUTGERS J. L. & RELIGION 63, 79–80 (2021).

separate causes of action,[35] thus requiring the plaintiff to "satisfy additional burdens of proof."[36] Under this framework, the plaintiff must establish that they "ha[ve] a bona fide religious belief [or] practice that conflicts with an employment requirement," in addition to evidencing that they "suffered an adverse employment action as a result of the conflict."[37] Irrespective of which framework is applied, once the plaintiff establishes their claim, the employer has "the burden" and ability to raise the "'undue hardship' defense."[38] The challenging question then becomes: what constitutes an "undue hardship" under Title VII?

C. The "Undue Hardship" Standard

In 2023, the Supreme Court of the United States significantly altered the judicial interpretation of "undue hardship" in the case of *Groff v. DeJoy.*[39] Prior to this ruling, it was understood that a religious accommodation resulting in "more than a *de minimis* cost" constitutes an undue hardship under Title VII.[40] However, in an unanimous decision, the Court held that under Title VII, "'undue hardship' is only shown when a burden is *substantial* in the overall context of an employer's business."[41] The Court highlighted the magnitude of this ruling in its opinion, asserting that the holding "bush[ed] away"[42] a "mistaken"[43] fifty-year precedent.[44]

Prior to the *Groff* decision, the Court has addressed the issue of an employer's "failure to accommodate" only three times.[45] The first occurrence

35. *Compliance Manual on Religious Discrimination*, *supra* note 18, at n.17; *see also* Bateman, *supra* note 34, at 80 ("[S]ome circuit courts have read *Abercrombie* more narrowly and continue to maintain separate approaches for analyzing religious disparate treatment and reasonable accommodation claims.").

36. Bateman, *supra* note 34, at 80.

37. *Id.*

38. EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768, 772 & n.2 (2015).

39. *See* Groff v. DeJoy, 600 U.S. 447, 468 (2023) ("We hold that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII.").

40. *See* 29 C.F.R. § 1605.2(e)(1) (2022) (citing Trans World Airlines, Inc. v. Hardison*,* 432 U.S. 63, 74 (1977)); *Compliance Manual on Religious Discrimination*, *supra* note 18.

41. *Groff*, 600 U.S. at 468 (emphasis added).

42. *Id.* at 472 ("Since we are now brushing away that mistaken view of *Hardison*'s holding . . . .").

43. *Id.*

44. *See id*. at 456 ("Because this case presents our first opportunity in nearly 50 years to explain the contours of *Hardison* . . . .").

45. *See* Bateman, *supra* note 34, at 78 (describing *Abercrombie* as "the third case pertaining to failure to accommodate a religious practice that the Supreme Court has ever ruled on, and the first one in nearly thirty years" following *Hardison* and *Philbrook*).

was in the case of *Trans World Airlines v. Hardison*,[46] from which the language of "de minimis" was first articulated and the precedential standard was subsequently derived.[47] In this case, the Court evaluated if accommodating an employee's observance of the Sabbath in violation of a collective-bargaining agreement constituted an undue hardship under Title VII.[48]

While working for Trans World Airlines (TWA), Hardison converted to a new religion.[49] As a result, Hardison began to observe the Sabbath, which required him to refrain from working "from sunset on Friday to sunset on Saturday."[50] This religious practice interfered with Hardison's scheduled working hours.[51] As an employee, Hardison was governed by a collective-bargaining agreement between TWA and his union.[52] This agreement established a "seniority system" in regard to the allocation of employee shift assignments,[53] and Hardison "did not have enough seniority to avoid work during his Sabbath."[54] Unfortunately, all attempts to provide a scheduling accommodation for Hardison were unsuccessful.[55] Hardison was continually absent from scheduled Saturday shifts, and he was subsequently fired for "insubordination."[56] In response, Hardison filed an employment discrimination action against TWA under Title VII.[57]

The district court held that TWA met Title VII's reasonable accommodation requirement, concluding that "any further accommodation" would have placed an "undue hardship" on the company.[58] On appeal, however, the Eighth Circuit reversed.[59] In TWA's petition for certiorari, it asserted that if Title VII required TWA to provide Hardison with further accommodations, Title VII violated the Establishment Clause of the First

46. *See id.* at 78 n.102.
47. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977).
48. *See id.* at 66–67.
49. *Id.* at 67.
50. *Id.*
51. *See id.* at 66–67.
52. *Id.* at 67.
53. *Id.*
54. Groff v. DeJoy, 600 U.S. 477, 459 (2023) (citing *Hardison,* 432 U.S. at 69).
55. *See id.*
56. *Hardison*, 432 U.S. at 69.
57. *Id.* Hardison also filed a claim against his union, the International Association of Machinists and Aerospace Workers. *Id.* The District Court held that "the union's duty to accommodate Hardison's belief did not require it to ignore its seniority system as Hardison appeared to claim." *Id.* On appeal, "[b]ecause it did not appear that Hardison had attacked directly the judgment in favor of the union" the Eighth Circuit "affirmed the judgment without ruling on its substantive merits." *Id.* at 70.
58. *Id.*
59. *Id.*

Amendment of the Constitution.[60] However, as articulated in *Groff*, the Supreme Court did not address this constitutional argument.[61] Instead, the Court focused its ruling on determining if Title VII requires an employer to provide a religious accommodation if it would deny workers of their seniority rights under a collective-bargaining agreement.[62]

In rendering its decision, the Court reasoned that requiring employees to work on Saturdays and Sundays was "essential" to TWA's business, and that collective bargaining was an appropriate process for allocating that burden.[63] The Court highlighted that as Title VII prohibits employment discrimination, it "would be anomalous" to assert that the statute demands an employer deny the contractual rights and scheduling preferences of senior employees in order to provide junior employees with religious accommodations.[64] Further, the Court emphasized that Title VII recognizes the importance of "seniority systems" by "afford[ing]" them "special treatment."[65]

As a result, the Supreme Court reversed, holding that "TWA made reasonable efforts" to provide Hardison with accommodations, and that the alternatives suggested by the Eighth Circuit went too far.[66] In expounding upon its ruling, the Court articulated its famous line: "To require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship."[67]

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60. *See id.*; *Groff,* 600 U.S. at 459.

61. *Groff*, 600 U.S. at 461 ("Despite 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, which focused instead on seniority rights.").

62. https://plus.lexis.com/api/document/collection/cases/id/68K6-6VF1-F1P7-B14D-00000-00?page=5&reporter=1290&cite=143%20S.%20Ct.%202279&context=1530671*Id.* at 461–62 (citing *Hardison*, 432 U.S. at 83 n.14).

63. *Hardison*, 432 U.S. at 80.

64. *Id.* at 81.

65. *Id.*; *see also generally* 42 U.S.C. § 2000e-2(h) ("[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin.").

66. *Hardison*, 432 U.S. at 77.

67. *Id.* at 84.

III. ANALYSIS

A. Groff v. DeJoy

1. Facts and Procedure

Similar to the facts of *Hardison*, the issue presented before the Court in *Groff v. DeJoy* was to determine if the United States Postal Service (USPS) was liable for religious discrimination after adhering to a union agreement governing Sunday work scheduling; and in accordance, failing to provide an employee with a religious accommodation for Sabbath observance.[68]

In 2012, Gerald Groff began working for USPS as a Rural Carrier Associate (RCA).[69] Groff identified as an Evangelical Christian and observed Sunday Sabbath.[70] Therefore, his religious beliefs required him not to work on Sundays.[71] In 2013, USPS contracted to begin delivering packages on behalf of Amazon.[72] This agreement required USPS to deliver Amazon packages on Sundays.[73] At that time, it was within the Postmaster's discretion to exempt an RCA employee from participating in Sunday deliveries.[74] Due to Groff's religious beliefs he received an exemption, and he was allowed to "cover[] for other shifts throughout the week" instead.[75]

In 2016, USPS and Groff's union signed an agreement governing Sunday and holiday deliveries.[76] The agreement dictated the order by which USPS employees would be scheduled, requiring Groff to participate in Sunday deliveries "on a rotating basis."[77] As a result, the Postmaster informed Groff that he could no longer be exempted from working on Sundays.[78]

Groff subsequently transferred to a smaller USPS station that did not complete Sunday Amazon deliveries.[79] However, in 2017, the smaller station was required to participate as well.[80] Groff reiterated that he was unable to complete Sunday deliveries due to his observance of Sabbath.[81] Consequently, the Postmaster and other RCAs were required to cover Groff's Sunday

68. *See* Groff v. DeJoy, 600 U.S. 447, 455–56 (2023).
69. *Id.* at 454.
70. *Id.*
71. *Id.*
72. Groff v. DeJoy, 35 F.4th 162, 165 (3d Cir. 2022).
73. *Id.*
74. *Id.*
75. *Id.* at 166.
76. *Groff,* 600 U.S. at 454.
77. *Id.* at 455.
78. *Groff,* 35 F.4th at 166.
79. Groff v. DeJoy, No. 19-1879, 2021 WL 1264030, at *2 (E.D. Pa. Apr. 6, 2021).
80. *Groff,* 35 F.4th at 166.
81. *Id.*

assignments, and Groff continued to "fac[e] progressive discipline" for his absences.[82] Ultimately, in 2019, Groff resigned.[83]

Following his resignation, Groff filed an action for religious discrimination against USPS, asserting "disparate treatment and failure to accommodate."[84] The district court granted summary judgment in favor of USPS.[85] On appeal, the Third Circuit affirmed the district court's decision, invoking the language of *Hardison* and asserting that "an 'undue hardship' is one that results in more than *a de minimis cost* to the employer."[86] The Court held that an accommodation allowing Groff to avoid Sunday shift scheduling resulted in "more than a *de minimis* cost" because it "actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale,"[87] factors which "negative[ly] impact[]" an employer's operations.[88] Therefore, the Third Circuit concluded that although USPS failed to provide Groff with a religious accommodation, USPS was not liable under Title VII.[89]

2. *Historical Analysis*

When the Supreme Court granted certiorari for *Groff v. DeJoy*, it emphasized the significance of the decision, highlighting that the case "present[ed] [the] first opportunity in nearly 50 years" to "explain the contours" of the *Hardison* opinion[90] and clarify what "Title VII requires."[91] To contextualize the *Hardison* decision and support the legal conclusions of *Groff*, the Supreme Court began by providing a detailed, historical analysis of religion as a protected class under Title VII.[92] In addition, the Court explained the development of the EEOC's guidance regarding religious discrimination, and the EEOC's influence upon Title VII's current statutory language.[93]

The Court asserted that the original statutory provisions of Title VII did not articulate what constitutes discrimination on the basis of religion.[94] Rather, the EEOC provided meaning for employers, interpreting the statute to

82. *Id.*
83. *See id.* at 167.
84. *Groff*, 2021 WL 1264030, at *1.
85. *Id.*
86. *Groff*, 35 F.4th at 174 (emphasis added) (quoting EEOC v. GEO Grp., Inc., 616 F.3d 265, 273 (3d Cir. 2010)).
87. *Id.* at 175.
88. *Id.* at 174 (citing EEOC v. Walmart Stores E., L.P., 992 F.3d 656, 659 (7th Cir. 2021)).
89. *See id.* at 175–76.
90. Groff v. DeJoy, 600 U.S. 447, 456 (2023).
91. *Id.* at 454.
92. *See id*. at 456–58.
93. *See id.*
94. *See id*. at 457.

require employers to "make reasonable accommodations to the religious needs of employees."[95] As this understanding developed, the EEOC opined that employers must make such accommodations "whenever [it] would not work an 'undue hardship on the conduct of the employer's business.'"[96] The Supreme Court highlighted that the EEOC also portrayed their interpretation of "undue hardship" through a series of decisions concerning contested employment policies.[97] Specifically, these actions demonstrated the EEOC's assertion that under Title VII, employers must provide religious accommodations such as allowing an employee to "wea[r] a religious garb" or take "time off from work to attend religious observations."[98]

The *Groff* Court emphasized that irrespective of the EEOC's guidance, in 1971 the Sixth Circuit held that Title VII "did not require an employer 'to accede or accommodate' religious practice because that 'would raise grave' Establishment Clause questions."[99] In response, Congress amended Title VII, implementing the EEOC's prior "regulatory language" and codifying it in the federal statute as written today.[100]

3. *Clarifying* Hardison

After providing this historical analysis, the Court analyzed its decision in *Hardison* regarding the standard for religious accommodations under Title VII. The Court explained that "[b]ased on a line in . . . *Hardison* . . . many lower courts . . . have interpreted 'undue hardship' to mean any effort or cost that is 'more than . . . *de minimis*.'"[101] As a result, the Court found it necessary to "clarify what Title VII requires."[102]

The Court argued that instead of "reducing *Hardison*" to its "*de minimis*" language[103] and interpreting that "single, but oft-quoted, sentence in the opinion . . . *literally*," the holding must be ascertained by evaluating the opinion in its *entirety*.[104] Firstly, the *Groff* court highlighted that the footnotes of *Hardison* describe the "governing standard quite differently, stating three times that an accommodation is not required when it entails 'substantial'

95. *Id.* (quoting 29 C.F.R. § 1605.1 (1968)).
96. *Id*. (quoting 29 C.F.R. § 1605.1 (1968)).
97. *Id.*
98. *Id.*
99. *Id.* at 458 (quoting Dewey v. Reynolds Metals Co., 429 F.2d 324, 334 (6th Cir. 1970)). The Supreme Court affirmed the decision by an "evenly divided vote." *Id.* (citing Dewey v. Reynolds Metal, Co., 402 U.S. 689 (1971)).
100. *Id*. (citing 42 U.S.C. § 2000e(j) (1970 ed., Supp. II)); *see also* 42 U.S.C. § 2000e(j).
101. *Groff*, 600 U.S. at 454 (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977)).
102. *Id.*
103. *Id.* at 470.
104. *Id.* at 464 (emphasis added).

'costs' or 'expenditures.'"[105] The Court asserted this language implies that under Title VII, employers are required to incur costs "that are not 'substantial,'" articulating a higher standard and diminishing the weight of the opinion's single reference to "*de minimis*."[106] In addition, the *Groff* court emphasized that the "undue hardship" issue in *Hardison* centered upon Title VII's statutory deference to "seniority rights."[107] Thus, the Court asserted the *Hardison* holding was not predicated upon a general undue hardship analysis.[108]

Furthermore, the Court supported its rejection of the *de minimis* test by citing other legal authorities. Firstly, the *Groff* court argued that the EEOC has attempted to "soften [the] impact" of the *de minimis* test by identifying specific accommodations and asserting that they meet the *de minimis* standard.[109] Secondly, the Court highlighted that in oral arguments, the Solicitor General conceded to their interpretation of *Hardison.*[110] Finally, the *Groff* court supported its position by referencing amici curiae briefs written by "diverse religious organizations" which attested that the "*de minimis* test" has allowed for the "denial of even minor accommodation[s]," increasing the difficulty for "members of minority faiths to enter the job market."[111]

In conclusion, the Court applied a textual argument, defining the words "undue" "hardship" and "de minimis" to distinguish each term.[112] The Court asserted that while "a 'hardship' is, at a minimum, 'something hard to bear,'"[113] "*de minimis*" is "something … 'small or trifling.'"[114] Further, the Court argued that "the modifier 'undue'" connotes that the hardship must be "excessive" or "unjustifiable."[115] The Court asserted that this juxtaposition supports the "substantial additional costs . . . or expenditures" interpretation conveyed in the footnotes of *Hardison.*[116] As a result, the Court contended that the *Hardison* decision demonstrates that an "'undue hardship' is shown

105. *Id*. (quoting *Hardison*, 432 U.S. at 83 n.14).

106. *Id.*

107. *Id.* at 465.

108. *See id.*

109. *Id.* at 466 (citing 29 C.F.R. §§ 1605.2(e)(1), (2)) ("[T]o cover such things as the 'administrative costs' involved in reworking schedules, the 'infrequent' or temporary 'payment of premium wages for a substitute,' and 'voluntary substitutes and swaps' when they are not contrary to a 'bona fide seniority system.'")).

110. *See id*. at 467. ("*Hardison* does not compel courts to read the 'more than *de minimis*' standard 'literally' or in a manner that undermines *Hardison's* references to 'substantial' cost.").

111. *Id.* at 465.

112. *See id.* at 468–70.

113. *Id.* at 468 (quoting RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 646 (1966)).

114. *Id.* at 469 (quoting BLACK'S LAW DICTIONARY 388 (5th ed. 1979)).

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

116. *Id.*

when a burden is *substantial* in the overall context of an employer's business."[117]

4. *Substantial Increased Costs*

Following *Groff*, for an employer to avoid liability under Title VII it must now evidence that "the burden of granting an accommodation would result in *substantial increased costs*" for their business.[118] The Court specified that the undue burden defense is "fact-specific,"[119] in which all "relevant factors"[120] must be considered in a "common-sense manner."[121] Further, the analysis must include the accommodation's "practical impact" upon the employer's business, "in light of the nature, 'size and operating cost[s] of [the] employer.'"[122]

The *Groff* court also provided guidance regarding two common issues presented in lower court decisions applying the undue hardship standard.[123] Firstly, the Court held that if the accommodation's impact upon coworkers is a factor in the undue hardship analysis, "employee animosity" towards religion or the provision of a religious accommodation *never* results in an undue hardship.[124] As such, employee "bias or hostility" towards a religious practice or accommodation may not establish undue hardship.[125] Secondly, the Court specified that Title VII requires an employer *actually* attempt to accommodate an employer's religious practice or observance.[126] Thus, an assessment or conclusion that an accommodation would result in an undue hardship is not alone sufficient to avoid liability.[127]

As the substantial costs analysis is highly "context-specific," the *Groff* court vacated and remanded the Third Circuit's decision, concluding that it was most suitable for the lower court to apply the "*clarified* standard . . . in the first instance."[128]

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117. *Id.* at 468 (emphasis added).
118. *Id.* at 470 (emphasis added) (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 83 n.14 (1977)).
119. *Id.* at 468.
120. *Id.* at 470.
121. *Id.* at 471.
122. *Id.* at 470–71 (quoting Brief for United States at 40, Groff v. DeJoy, 600 U.S. 447 (2023) (No. 22-174)).
123. *Id.* at 472.
124. *Id.*
125. *See id.*
126. *See id.* at 473.
127. *See id.*
128. *Id.* (emphasis added).

B. The Prevalence of "De Minimis"

The Supreme Court's decision in *Groff v. DeJoy* is highly significant due to the renowned and "mistaken"[129] application of the *de minimis* standard for half a century.[130] Notably, following *Hardison*, the Supreme Court was asked rule upon the provision of a religious accommodations once again, in the 1986 case of *Ansonia Board of Education v. Philbrook.*[131] In discussing the requirements of Title VII, the *Philbrook* Court affirmed the '*de minimis*' language of *Hardison*, reiterating that "an accommodation causes 'undue hardship' whenever that accommodation results in 'more than a *de minimis* cost' to the employer."[132] The *Philbrook* Court also established that under Title VII, if an employer demonstrates it provided a reasonable accommodation, the statutory requirement is satisfied.[133] Thus, an undue burden analysis is "only" relevant if an employer fails to provide an accommodation and asserts an undue hardship defense.[134] In conclusion, the case was remanded.[135] However, *Philbrook* established that by offering a *reasonable* religious accommodation to its employee, the employer has fulfilled the statutory requirements of Title VII.[136] Further, the case solidified the use of '*de minimis* cost' to define undue hardship.[137] Markedly, the Supreme Court does not discuss *Philbrook*'s citation of the *de minimis* test in *Groff*, omitting *Philbrook* from its opinion entirely.[138] However, *Philbrook* has contributed greatly to the promulgation of the *de minimis* standard.[139]

129. *See id.* at 472 ("Since we are now brushing away that mistaken view of Hardison's holding . . . .").

130. *See id*. at 456 ("Because this case presents our first opportunity in nearly 50 years to explain the contours of Hardison . . . .").

131. *See* 479 U.S. 60, 63 (1986).

132. *Id.* at 67 (quoting Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977)).

133. *See id.* at 68.

134. *See id*. at 68–69.

135. *Id.* at 71.

136. *See id.* at 68.

137. *See id.* at 67 (citing *Hardison*, 432 U.S. at 84).

138. *See generally* Groff v. DeJoy, 600 U.S. 447 (2023) (not citing *Philbrook*).

139. *See generally Philbrook*, 479 U.S at 67 (only other Supreme Court case referencing the *de minimis* test in *Hardison*); *see also, e.g.*, Krizhner v. Purepower Tech., LLC, No. 3:12-1802-MBS, 2013 WL 5332686, at *6 (D.S.C. Sept. 23, 2013) (citing EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 313 (4th Cir. 2008)) ("[T]hat such accommodation was not provided because it would have caused an undue hardship—that is, it would have resulted in more than a de minimis cost to the employer.")); Baltgalvis v. Newport News Shipbuilding Inc., 132 F. Supp. 2d 414, 420 (E.D. Va. 2001) (describing *Philbrook* as "stating that an accommodation causes undue hardship whenever it results in more than de minimis cost to the employer.").

Lower court opinions evaluating failure-to-accommodate claims under Title VII cite the opinion, including those of the Fourth Circuit.[140]

Additionally, following *Hardison,* the EEOC began to assert the authority of the *de minimis* standard.[141] For example, in 2021, the EEOC published the *Compliance Manual on Religious Discrimination*, in which it asserted:

> "Undue hardship" under Title VII is not defined in the statute but has been defined by the Supreme Court as 'more than a *de minimis* cost' – a lower standard for employers to satisfy than the "undue hardship" defense under the Americans with Disabilities Act (ADA), which is defined by statute as "significant difficulty or expense."[142]

Similarly, the EEOC's regulatory guidelines cite the *de minimis* standard.[143] These sources portray the pervasiveness of the "mistaken"[144] interpretation of the *Hardison* opinion, as the agency empowered to enforce Title VII also "reduced [*Hardison*] to one phrase."[145]

Importantly, following the *Groff* decision, the EEOC placed a notice upon its *Compliance Manual* and other online resources,[146] indicating that *Groff* "supersedes" any information on the website and articulating the new standard for religious accommodations.[147] This notice reflects the immediate impact of *Groff* upon the regulatory interpretation of the standard. Thus, a similar amendment to the regulatory guidelines is likely eminent.

As the *Philbrook* decision and the EEOC's guidelines demonstrate, *Groff* significantly alters the established legal understanding of the obligation Title VII creates for employers in the provision of religious accommodations.

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140. *See, e.g.*, EEOC v. Thompson Contracting, Grading, Paving, & Utilities, Inc., 499 F. App'x 275, 282 (4th Cir. 2012) (quoting EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 313 (4th Cir. 2008)) ("[S]uch accommodation was not provided because it would have caused an undue hardship—that is, it would have 'result[ed] in more than a de minimis cost to the employer.'").

141. *See infra* notes 141–45.

142. *Compliance Manual on Religious Discrimination*, *supra* note 18.

143. *See* 29 C.F.R. § 1605.2(e)(1) (2022) ("An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require 'more than a *de minimis* cost.'").

144. *See* Groff v. DeJoy*,* 600 U.S. 447, 472 (2023) ("Since we are now brushing away that mistaken view of Hardison's holding . . . .").

145. *Id.* at 468 ("We hold that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII. *Hardison* cannot be reduced to that one phrase.").

146. *See, e.g.*, *What You Should Know: Workplace Religious Accommodation,* U.S. EQUAL EMP. OPPORTUNITY COMM'N, (Mar. 6, 2014) https://www.eeoc.gov/laws/guidance/what-you-should-know-workplace-religious-accommodation# [https://perma.cc/RS8L-VL9A].

147. *See Compliance Manual on Religious Discrimination*, *supra* note 18.

These impacts are also exhibited in the judicial decisions of the Fourth Circuit and the South Carolina District Court.[148]

C. Survey of Case Law

1. The Fourth Circuit Court of Appeals

Following *Abercrombie,* the Fourth Circuit Court of Appeals determined that to establish a prima facie case for disparate treatment based on a failure to accommodate, the plaintiff must demonstrate that their "bona fide religious belief or practice . . . conflicts with an employment requirement," and that "the need for an accommodation . . . served as a motivating factor in the employer's adverse employment action."[149] Accordingly, in order for a claim to succeed, the rule requires evidence of an *actual* conflict that results in a detrimental action related to the plaintiff's employment.[150] If the plaintiff presents a prima facie case, the court set forth a "two-prong inquiry" to determine if the employer "satisf[ied] its burden" under Title VII:

> [T]he employer must demonstrate *either* (1) that it provided the plaintiff with a reasonable accommodation for his or her religious observances *or* (2) that such accommodation was not provided because it would have caused an undue hardship—that is, it would have "*result[ed] in 'more than a de minimis cost' to the employer*."[151]

Thus, in articulating what constitutes "undue hardship," the Fourth Circuit cited the "oft quoted"[152] line from *Hardison*, expressly upholding "more than *de minimis* cost" as the defining legal standard.[153] This rule language was articulated in the court's 2008 decision, *EEOC v. Firestone Fibers Textiles*

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148. *See infra* Section III.C.

149. Abeles v. Metro. Wash. Airports Auth., 676 F. App'x 170, 176 (4th Cir. 2017) (citing EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768, 773 (2015)) ("[C]larifying that the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an employee's religious practice, confirmed or otherwise, a factor in employment decisions.") (internal quotations omitted)).

150. *See id.*; *see also* Foster v. Sara Lee Intimates, 113 F.3d 1231 (4th Cir. 1997) (unpublished table decision) ("[Plaintiff]'s religious accommodation claim fails because there was no conflict between his religious belief and an employment requirement."); Ali v. Alamo Rent-A-Car, Inc., 8 F. App'x 156, 159 (4th Cir. 2001) ("[A] Title VII plaintiff claiming discrimination on the basis of religion must allege adverse employment action in order to survive a motion to dismiss.").

151. EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 312 (4th Cir. 2008) (second emphasis added) (citing Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 67 (1986)).

152. Groff v. DeJoy, 600 U.S. 447, 464 (2023).

153. *Firestone,* 515 F.3d at 312.

Co.[154] In this case, although the standard was articulated, it was not applied, as the court determined that the employer provided the plaintiff with a reasonable accommodation.[155] For this reason, the court did not conduct an undue hardship analysis.[156] However, the rule language of *Firestone* demonstrates the Fourth Circuit's adherence to the *de minimis* standard, establishing precedential authority for its use.[157]

For example, in *EEOC v. Thompson Contracting*, the Fourth Circuit conducted an undue hardship analysis, directly applying the *de minimis* cost standard and granting summary judgment for the defendant, Thompson Contracting (Thompson).[158] In this case, the EEOC filed a Title VII action on behalf of Yisreal, asserting that Thompson failed to accommodate Yisreal's "Saturday Sabbath observance" as a member of the "Hebrew Israelite faith."[159] Yisreal worked as a dump truck driver for Thompson, a business that served as a contractor for transportation building projects.[160]

As a dump truck driver, Yisreal was one of eight Thompson employees that possessed a commercial driver's license.[161] To assist in construction operations, Thompson would also hire independent contractors to drive dump trucks, if necessary.[162] At times, Thompson employees were required to work on Saturdays to meet construction project deadlines.[163] However, on his employment application, Yisreal indicated that his religion required him to abstain from Saturday work.[164] Additionally, when Yisreal's supervisor asked him to work on a Saturday, he reiterated his religious obligation to observe the Sabbath.[165] After two Saturday absences, Yisreal received a written warning, indicating that an additional "infraction [would] result in termination."[166] After his third Saturday absence, Yisreal was fired.[167]

The district court held that Thomspon provided Yisreal with a reasonable religious accommodation, asserting that employees could utilize "shift

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154. *See id.*

155. *See id.* at 312 (when applying *Philbrook*: "[I]f an employer has provided a reasonable accommodation, we need not examine whether alternative accommodations not offered would have resulted in undue hardship."); *see also id.* at 315 ("We hold that the district court properly determined that Firestone reasonably accommodated Wise's religious observances.")).

156. *See id.*

157. *See, e.g.*, EEOC v. Thompson Contracting, Grading, Paving, & Utilities, Inc., 499 F. App'x 275 (4th Cir. 2012) (affirming the undue hardship prong of *Firestone*).

158. *See id.* at 285.

159. *Id.* at 277.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *See id.* at 278.

165. *Id.*

166. *Id.*

167. *Id.*

swapping" or take "paid personal leave" for religious obligations.[168] Further, the court found that Thompson attempted to accommodate Yisrael "personally" by only asking him to work on Saturdays when all the dump truck drivers were needed.[169]

During the proceedings, the EEOC proposed three other religious accommodations, requesting that "Thompson Contracting excuse Yisrael from Saturday work, create a pool of substitute drivers, or transfer Yisrael to the position of general equipment operator."[170] On appeal, the Fourth Circuit focused its analysis on undue hardship.[171] Citing *Firestone,* the Court of Appeals held that such accommodations "would impose *more than a de minimis cost* on Thompson, resulting in an undue hardship on the conduct of its business."[172]

In its analysis, the court first asserted that dump truck drivers were considered "essential" when they were requested to work on Saturdays.[173] The court reasoned that if a dump truck was left "idle" Thompson could not charge its clients for its use, resulting in lost revenue.[174] Further, the court found that Yisreal's operation of a dump truck cost Thompson an estimated one-hundred dollars a day, while the use of an independent contractor in his absence cost fifty to one-hundred dollars an hour.[175] Alternatively, the court found that requiring Thompson's other dump truck drivers to fill in for Yisrael on Saturdays was "unacceptable" because it would directly burden other employees.[176] For these reasons, the court held that exempting Yisrael from Saturday work would "impose more than a *de minimis* cost on Thompson."[177]

Similarly, to form a group of substitute drivers, the court found that the costs of obtaining, training, and insuring drivers with commercial driver's licenses would also "result in a cost that was more than a *de minimis*."[178]

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168. EEOC v. Thompson Contracting, Grading, Paving, & Utils., Inc., 793 F. Supp. 2d 738, 744 (E.D.N.C. 2011).

169. *Id.* at 745.

170. *Thompson Contracting*, 499 F. App'x at 282.

171. *See id.* ("We are satisfied to affirm on the undue hardship prong only, rendering it unnecessary to reach the reasonably accommodate prong.").

172. *Id.* at 283 (emphasis added) (holding that the first two proposed accommodations would result in more than a *de minimis* cost and finding that "Thompson reasonably believed that Yisreal would not have agreed to change to the position of general equipment operator," and was therefore not obligated to offer Yisrael the transfer as a reasonable accommodation).

173. *Id.* at 282.

174. *Id.*

175. *Id.*

176. *Id.* at 283 (citing EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 317 (4th Cir. 2008) ("[W]e have recognized that an employer is not required to accommodate an employee's religious need if it would impose personally and directly on fellow employees." (internal quotes omitted)).

177. *Id.*

178. *Id.* at 284.

Therefore, the court held that Thompson presented an affirmative defense and satisfied its burden of demonstrating that the proposed accommodations would result in an undue burden.[179]

Applying the "substantial increased costs" standard set forth in *Groff*,[180] the issue presented in *Thompson* may have been decided differently. In *Groff*, the Supreme Court highlighted that an undue hardship is "something hard to bear," that "rise[s] to an 'excessive' or 'unjustifiable' level."[181] It is unlikely that the cost of providing the EEOC's recommended accommodations for the limited occasions in which Yisrael required a substitute would meet this definition.[182] "In light of the nature, size and operating cost[s]"[183] of Thompson's business operations, the additional cost incurred would likely be considered immaterial. For example, for a single workday, Thompson would employ up to forty-five independent contractors if needed.[184] Under the *Groff* interpretation of undue hardship, it is highly likely these facts would be considered in the court's decision, rendering the cost of a single substitute driver insubstantial. *Thompson Contracting* demonstrates that under the *Groff* standard, it is much more difficult for an employer to avoid liability by invoking the undue hardship defense.

Importantly, there have been failure-to-accommodate claims in the Fourth Circuit in which the Court of Appeals has *not* referenced the *de minimis* language of *Hardison*.[185] However, it is often the case where an undue burden

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179. *Id.* at 285.

180. Groff v. DeJoy, 600 U.S. 447, 470 (2023).

181. *Id.* at 468–69.

182. In *Thompson Contracting*, the EEOC emphasized that during Yisreal's 11-week employment, he only required an accommodation for Saturday work on three occasions. 499 F. App'x at 283.

183. *Groff*, 600 U.S. at 470–71 (internal quotes omitted).

184. *Thompson Contracting*, 499 F. App'x at 277.

185. *See, e.g.*, Dachman v. Shalala, 9 F. App'x 186, 192–93 (4th Cir. 2001) ("While an employer has a duty to accommodate an employee's religious beliefs, the employer does not have a duty to accommodate an employee's preferences. . . . [W]e hold that appellant failed to establish any Title VII violation."); Ali v. Alamo Rent-A-Car, Inc., 8 F. App'x 156, 159 (4th Cir. 2001) ("[T]itle VII plaintiff claiming discrimination on the basis of religion must allege adverse employment action in order to survive a motion to dismiss…."); EEOC v. Consol Energy, Inc., 860 F.3d 131, 143 (4th Cir. 2017) ("This case does not present, for instance, the complicated questions that sometimes arise when an employer asserts as a defense to a religious accommodation claim that the requested accommodation would not be feasible, and would instead impose an 'undue hardship' on its operations."); Abeles v. Metro. Wash. Airports Auth., 676 F. App'x 170, 176 (4th Cir. 2017) ("Plaintiff does not establish the first element of her claim: a religious conflict with an employment requirement."); Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012, 1019 (4th Cir. 1996) ("Chalmers cannot satisfy the second element of the prima facie test."); Foster v. Sara Lee Intimates, 113 F.3d 1231 (4th Cir. 1997) ("[Plaintiff]'s religious accommodation claim fails because there was no conflict between his religious belief and an employment requirement.").

analysis was not required.[186] This does not undermine the influence of the rule set forth in *Firestone* and the significance of *Groff*. The Fourth Circuit has given precedential authority to *Hardison*'s and *Philbrook*'s reference to *de minimis*,[187] and as a result, it has also promulgated the "erroneous"[188] application of the standard in the South Carolina District Court.[189]

2. *The United States District Court for the District of South Carolina*

In as early as 1991, the South Carolina District Court began interpreting *Hardison*'s reference to *de minimis* as the defining standard for undue hardship.[190] In *Miller v. Drennon*, the court asserted that under *Hardison* an employer is not "required to incur anything more than *de minimis* cost in an effort to accommodate the religious practices or observances of employees" as "requir[ing] anything more. . . is an undue hardship."[191] In this case, the plaintiff alleged that his employer, Lexington County Emergency Medical Services (Lexington), violated Title VII by assigning him to shifts with female partners, and failing to accommodate his religious belief that it was impermissible to "sleep unsupervised in a room with another woman other than his wife."[192] Similar to *Firestone*, the Court did not conduct an undue burden analysis, holding that Lexington provided the plaintiff with a reasonable accommodation.[193] However, *Drennon* is significant in that within the opinion, the district court referenced the *de minimis* standard from *Hardison*,[194] creating a precedent for subsequent South Carolina District Court decisions.[195]

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186. *See* Bateman, *supra* note 34, at 64 (discussing "a three-part, burden-shifting framework for addressing individual disparate treatment claims," where "[f]irst, the plaintiff must establish a prima facie case"); *see also*, *e.g.*, *supra* note 185 (listing cases where undue burden analysis was not required).

187. *See* discussion *supra* notes 157–79.

188. *Groff*, 600 U.S. at 471 ("The erroneous *de minimis* interpretation of Hardison may have had the effect of leading courts to pay insufficient attention to what the actual text of Title VII means . . . .").

189. *See* discussion *infra* Section III.C.2.

190. *See* Miller v. Drennon, No. 3:89-1466-0, 1991 WL 325291, at *6 (D.S.C. June 13, 1991), *aff'd.* 966 F.2d 1443 (4th Cir. 1992).

191. *Id.* (internal quotation marks omitted).

192. *Id.* at *1.

193. *Id.* at *8.

194. *Id.* at *6 ("The [*Hardison*] Court held that an employer which follows a neutral, rotating shift schedule is not required . . . to incur anything more than *de minimis* cost in an effort to accommodate the religious practices or observances of employees.").

195. *See, e.g.*, Whatley v. S.C. Dep't of Pub. Safety, No. 3:05-0042-JFA-JRM, 2007 WL 120848, at *6 (D.S.C. Jan. 10, 2007) (defining "reasonable accommodation" as "one that does

For example, in *Carter v. Centura College*, the South Carolina District Court granted summary judgment for the defendant, holding that the plaintiff's proposed religious accommodation would result in an undue burden.[196] In this case, Carter filed a failure-to-accommodate claim under Title VII, alleging that her employer, Centura College, required her to teach night classes in conflict with religious services she was obligated to lead as an ordained minister.[197]

Carter served as the coordinator of Centura's legal assistant program.[198] Due to budget constraints, Centura began enforcing a policy that required coordinators to teach classes if student enrollment numbers dropped below a certain threshold, in order to reduce the school's salary expenses.[199]

Centura did not claim to have provided Carter with a reasonable accommodation, but raised the affirmative defense of undue hardship.[200] The court found that accommodating the plaintiff's request and excusing her from teaching two nights a week would have "reduced her availability to teach evening classes by approximately 50% and have cut her availability to teach classes at any time by approximately 25%."[201] Additionally, the court asserted that the cost of hiring a substitute instructor (an estimated forty to sixty dollars a week) "was not a *de minimis* expense" for a seemingly "unprofitable" education program, in which a substitute would not provide the caliber of instruction Centura desired.[202] Therefore, the court held that Centura demonstrated the requested accommodation would have required it to "bear more than a *de minimis* cost . . . creat[ing] an undue burden."[203]

If this case had been decided applying *Groff*'s "substantial increased costs" standard,[204] the court may have ruled in favor of the plaintiff. As discussed *supra*,[205] *Groff* demands the court consider the religious accommodation's "practical impact" upon the overall business.[206] In this context, a court may not consider the additional cost of a substitute instructor "substantial," as the estimated cost of a substitute teacher was relatively

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not cause undue hardship to an employer or does not result in more than a *de minimis* cost to an employer.").

196. *See* Carter v. Centura Coll., No. 2:10-00907-CWH, 2012 WL 638800, at *18 (D.S.C. Feb. 27, 2012).

197. *See id.* at *1, *4.

198. *See id.* at *2.

199. *See id.* at *3.

200. *Id.* at *17.

201. *Id.*

202. *Id.* at *17–18.

203. *Id.* at *18.

204. Groff v. DeJoy, 600 U.S. 447, 470 (2023) (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 83 n.14 (1977) (emphasis added)).

205. *See* discussion *supra* Section III.A.3.

206. *Groff*, 600 U.S. at 470–71..

low.[207] Further, as Carter's primary role was to serve as a program coordinator rather than an instructor,[208] a "common sense"[209] inquiry would likely give weight to Carter's preexisting obligations as a minister.[210] Thus, under *Groff* the provision of the accommodation may not be considered a significant cost, rendering Centura liable for religious discrimination under Title VII. *Carter* portrays the legal and practical implications of *Groff*'s undue hardship analysis in South Carolina.

It is important to note a South Carolina District Court case that does not cite the *de minimis* standard, but perhaps *still* misaligns with *Groff*'s reinterpretation of *Hardison.* In *Newton v. Potter*, the South Carolina District Court granted summary judgment to the defendant, holding that the religious accommodation was an undue hardship due to a collective-bargaining agreement.[211] Strikingly similar to the facts of *Groff,* Newton filed an action against Potter, the Postmaster General, alleging that USPS violated Title VII by denying Newton's transfer request to avoid working on Saturdays, pursuant to her observance of the Sabbath.[212] Here, the court asserted that its decision was controlled by *Hardison.*[213] However, instead of invoking the opinion's *de minimis* language*,* the court rendered its decision by focusing on the collective-bargaining agreement that limited employee transfers based on staffing levels.[214]

The district court asserted that pursuant to *Hardison*, "the duty to accommodate d[oes] not require an employer to take steps inconsistent with a collective-bargaining agreement."[215] Further, the court held that under *Hardison,* requiring USPS to pay overtime wages to employees to substitute on Saturdays was considered an undue hardship.[216] As a result, the court granted summary judgment for Potter and USPS, holding that Newton's transfer could not be accommodated "without violating the collective-bargaining agreement," which would constitute an undue hardship.[217]

However, in *Groff,* the Supreme Court clarified the holding of *Hardison,* asserting that although *Hardison* expressly protects "seniority rights" outlined in collective-bargaining agreements, the cost of other accommodations *must*

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207. *See id.* at 470 (citing *Hardison*, 432 U.S. at 83 n.14); *Carter*, 2012 WL 638800, at *17 ("Centura could have hired an instructor . . . for between $40 and $60 a week.").

208. *See Carter*, 2012 WL 638800 at *2.

209. *Groff,* 600 U.S. at 471.

210. *See Carter*, 2012 WL 638800 at *4.

211. Newton v. Potter, No. 9:05-3165-PMD, 2007 WL 1035002, at *3 (D.S.C. Mar. 29, 2007).

212. *Id.* at *1.

213. *Id.* at *3.

214. *See id.* at *4.

215. *Id.* at *3.

216. *Id.*

217. *Id.*

still be considered—highlighting the *Hardison* court's failure to adequately address the proposed recommendations made by Justice Marshall in his dissenting opinion.[218] Therefore, it is likely that in view of *Groff,* USPS would be required to consider the cost of alternative accommodations that could possibly relieve Newton of working on Saturdays.[219] Following Justice Marshall's reasoning,[220] is likely that other reasonable accommodations would *not* have resulted in a "substantial additional costs" for USPS.[221] Therefore, under *Groff*, even failure-to-accommodate claims featuring collective-bargaining agreements could result in liability for employers.[222]

In conclusion, like the Fourth Circuit, the South Carolina District Court has adhered to the faulty[223] interpretation of *Hardison*, determining that a religious accommodation was not required where it would result in "more than a *de minimis* cost" to an employer.[224] Additionally, many other districts courts within the Fourth Circuit have adhered to this interpretation of *Hardison*—also relying upon *Philbrook* and *Firestone—*and further emphasizing the importance of the Supreme Court's decision in *Groff.*[225]

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218. *See* Groff v. DeJoy, 600 U.S. 447, 463 (2023) (finding that although the *Hardison* court claimed Justice Marshall's proposed recommendations were "not feasible," it failed to address *why*).

219. Importantly, in this case, Newton received an accommodation in that she was transferred to Charleston, where she could be excused from working on Saturdays without violating the collective-bargaining agreement. *Newton*, 2007 WL 1035002, at *2. However, Newton asserted this accommodation was not reasonable as it required a longer commute. *Id.* at *4. The court did not address the issue of reasonableness. *Id.*

220. Justice Marshall's proposed accommodations included "paying other workers overtime wages to induce them to work on Saturdays and . . . requiring Hardison to work overtime for regular wages at other times," as well as "forcing TWA to pay overtime for Saturday work for three months." *Groff*, 600 U.S. at 463. In *Groff,* the court highlighted Justice Marshall's calculation of the cost for temporary overtime pay to employees that substituted for Hardison's Saturday shifts, insinuating that it should have been considered. *Id.*

221. *Id.* at 470 (citing Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 83 n.14 (1977)).

222. Cary v. Anheuser-Busch, Inc., 116 F.3d 472 (4th Cir. 1997) (unpublished opinion) ("Even if appellant had established a prima facie case of religious discrimination, exempting appellant from the requirements of the collective-bargaining agreement would be an undue burden within the meaning of Title VII.").

223. *See Groff*, 600 U.S. at 471 ("The erroneous *de minimis* interpretation of *Hardison* . . . .").

224. *See, e.g.*, *Rexam Beverage*, 2012 WL 2501994, at *7; *see also Groff*, 600 U.S. at 468 ("We hold that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII.").

225. *See, e.g.*, Baltgalvis v. Newport News Shipbuilding Inc., 132 F. Supp. 2d 414, 420 (E.D. Va. 2001) (describing Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 67 (1986), as "stating that an accommodation causes undue hardship whenever it results in more than de minimis cost to the employer."); Perkins v. Town of Princeville, No. 404-CV-168 H 2, 2006 WL 4694727, at *3 (E.D.N.C. Apr. 19, 2006) (citing Trans World Airlines v. Hardison*,* 432 U.S. 63, 84 n.15 (1977)) ("The employer must show that it would have been forced 'to bear

IV. EVALUATING SUBSTANTIAL INCREASED COSTS

Considering the significant shift in the authoritative interpretation of "undue hardship," it is likely that many South Carolina employers will be concerned with how to ensure compliance for the provision of religious accommodations under Title VII. Although the future remains uncertain (as the District Court of South Carolina has not yet been presented with a failure-to-accommodate claim following *Groff*) there are several sources of authority South Carolina employers can reference in attempt to conform to the heightened standard.

A. Americans With Disabilities Act

In *Groff*, the Supreme Court distinguished the new "substantial increased costs" standard from the Americans with Disabilities Act's (ADA) "significant difficulty or expense" definition for undue hardship.[226] Specifically, the Court asserted that the use of ADA case law to interpret religious accommodations "go[es] too far."[227] As a result, the "substantial increased costs" standard is likely less burdensome than the ADA's "significant difficulty or expense" requirement.[228] Therefore, South Carolina District Court opinions interpreting the undue hardship standard under the ADA may provide a statutory requirement "ceiling" for religious accommodation jurisprudence.

B. Equal Employment Opportunity Commission

Similarly, in *Groff,* the Supreme Court refrained from adopting the EEOC's guidance to give further meaning to the undue burden standard for

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more than a *de minimis* cost' to accommodate an employee's religious beliefs."); Jacobs v. Scotland Mfg., Inc., No. 1:10CV814, 2012 WL 2366446, at *8 (M.D.N.C. June 21, 2012) (quoting *Philbrook,* 479 U.S. at 67) ("An accommodation causes an undue hardship 'whenever that accommodation would result in "more than a *de minimis* cost" to the employer.'"); Dale v. TWC Admin. LLC, No. 5:14-CV-169-FL, 2016 WL 11430762, at *7 (E.D.N.C. Aug. 11, 2016) ("An accommodation is deemed to be one causing undue hardship whenever that accommodation would result in 'more than a *de minimis* cost' to the employer."); EEOC v. Greyhound Lines, Inc., No. ELH-19-1651, 2021 WL 5233754, at *9 (D. Md. Nov. 9, 2021) (quoting *Hardison,* 432 U.S. at 84) ("Of relevance here, an accommodation constitutes an undue hardship if it would impose more than 'a *de minimis* cost' on the employer.").

226. *Groff*, 600 U.S. at 471 ("Groff would not simply borrow the phrase 'significant difficulty or expense' from the Americans with Disabilities Act (ADA) but would have us instruct lower courts to draw upon decades of ADA caselaw . . . [this] suggestion[] go[es] too far.").

227. *Id.*

228. *See id.*

religious accommodations.[229] However, in making this distinction, the court specified that *Groff* "may prompt little, *if any*, change in the agency's guidance explaining why *no undue hardship is imposed* by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs."[230] This statement aids in shaping the meaning of "substantial increased costs" by giving credence to the EEOC's assertion that employers must provide such accommodations to avoid liability.[231] Thus, South Carolina employers may anticipate that under *Groff*, the District Court or the Fourth Circuit Court of Appeals will hold them liable under Title VII if they fail to follow the EEOC's guidelines, and employers must give greater deference to such recommendations. Specifically, South Carolina employers can look to EEOC resources, such as the EEOC's *Compliance Manual*,[232] for practical guidance in evaluating their compliance with Title VII.

C. South Carolina Human Affairs Commission

Similarly, the South Carolina Human Affairs Commission's (SCHAC) guidance for religious accommodations under Title VII provides that "[a]n accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work."[233] Although the SCHAC remains a valuable source for South Carolina employers, they must be cognizant that under *Groff,* what is considered "costly" has changed significantly, and cost must be evaluated considering all other factors relevant to business operations.[234] Furthermore, it is likely that pursuant to *Groff*, "requir[ing] other employees to do more than their share" may be required.[235] For this reason, the accommodations that SCHAC cited as creating an "undue hardship" may not be sufficient to avoid liability under *Groff*'s "substantial

229. *Id.* ("The Government, on the other hand, requests that we opine that the EEOC's construction of *Hardison* has been basically correct. . . . [This] suggestion[n] go[es] too far. . . . [I]t would not be prudent to ratify *in toto* a body of EEOC interpretation that has not had the benefit of the clarification we adopt today.").

230. *Id.* (emphasis added) (citing 29 C.F.R. § 1605.2(d) (2022)).

231. *See id.*

232. *See Compliance Manual on Religious Discrimination*, *supra* note 18.

233. *Religious Discrimination,* S.C. HUM. AFFS. COMM'N, https://schac.sc.gov/employment-discrimination/prohibited-practices-discrimination-types/religious-discrimination [https://perma.cc/5Z5T-L6F2].

234. *See supra* Section III.C.

235. *Religious Discrimination, supra* note 233. *See generally supra* Section III.C233.

increased costs" standard.[236] Rather, South Carolina employers may be required to meet, if not exceed, such accommodations.[237]

D. Stroup v. Coordinating Control

Lastly, South Carolina employers can consider a very recent judicial opinion applying *Groff.* In September 2023, the first decision in the Fourth Circuit citing the *Groff* standard, *Stroup v. Coordinating Center*, was published by the District Court of Maryland.[238] In pertinent part, the district court denied the Coordinating Center's motion for summary judgment and motion to dismiss, holding that there was not sufficient evidence of an undue hardship to relieve the Coordinating Center of liability under Title VII.[239] In this case, Stroup filed a religious discrimination claim against her employer, alleging that Coordinating Center failed to accommodate her religion after terminating her for failing to receive a COVID-19 vaccine.[240] Stroup worked as a Nurse Consultant for Coordinating Center's Community First Choice Program.[241] After Coordinating Center notified all of its employees of its COVID-19 vaccination requirement, Stroup submitted an Accommodation Form, requesting a religious exemption as an adherent of Catholicism.[242] Stroup's accommodation request was denied, and she was subsequently fired after failing to receive the vaccine.[243]

Here, Coordinating Center filed a motion for summary judgment, raising the affirmative defense of undue hardship against Stroup's COVID-19 vaccine exemption.[244] Coordinating Center asserted that allowing Stroup to meet with clients unvaccinated would create a health risk, and that requiring other employees to fulfill Stroup's job duties to mitigate such risk would result in an undue burden.[245] Specifically, Coordinating Center cited *Hardison,* asserting that "undue hardship for purposes of Title VII is that which imposes more than a *de minimis* cost."[246] In rendering its decision, the district court cited *Groff*'s new standard and held that "showing 'more than a *de minimis* cost'" no longer "suffice[s] to establish 'undue hardship' under Title VII."[247]

236. *See supra* Section III.A.4III.C; *Religious Discrimination, supra* note 233.
237. *See supra* Section III.A.4.
238. *See* No. MJM-23-0094, 2023 WL 6308089 (D. Md. Sept. 28, 2023).
239. *Id.* at *9.
240. *Id.* at *1.
241. *Id.* at *3.
242. *Id.* at *1–2.
243. *Id.* at *2.
244. *Id.* at *1–2.
245. *Id.* at *2.
246. *Id.* at *8 (internal quotations omitted).
247. *Id.* (quoting Groff v. DeJoy, 600 U.S. 447, 468 (2023)).

In conclusion, the court held that the evidentiary record was insufficient to determine if Stroup's vaccine exemption "would result in 'substantial increased costs'" in Coordinating Center's business operations.[248] Therefore, Coordinating Center's motion for summary judgment was denied.[249]

Conversely, considering prior case law, it is likely the motion would have been granted upon application of the '*de minimis*' standard.[250] For example, applying the Fourth Circuit's reasoning in *Thompson Contracting*, such an accommodation could be considered "unacceptable," as requiring other employees to substitute for Stroup would impose a burden directly upon them.[251] Thus, the inherent health risks and related economic costs of maintaining unvaccinated employees would likely be considered a *de minimis* cost for the business, resulting in summary judgment for Coordinating Center.[252] *Stroup* further exemplifies the consequences of *Groff* and demonstrates how the Fourth Circuit and the District Court of South Carolina may apply the heightened standard for religious accommodations going forward—granting significant deference to religious accommodation requests.

V. CONCLUSION

The impact of the Supreme Court's decision in *Groff v. DeJoy* cannot be understated. For South Carolina employers, the "authoritative interpretation of the statutory term undue hardship"[253] has been completely altered, significantly increasing the burden on employers in the provision of religious accommodations for their employees.[254]

Conversely, the heightened standard for the provision of religious accommodations under Title VII may empower workers to make accommodation requests without fearing retaliation or subsequent economic loss.[255] Thus, the standard may help ensure that workers from all religious backgrounds receive the accommodations they need to achieve equality in employment.[256] As the Supreme Court has opined, Title VII "'does not demand *mere neutrality* with regard to religious practices' but instead 'gives

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248. *Id.* at *9.
249. *Id.*
250. *See* discussion *supra* Section III.C.
251. *See supra* text accompanying notes 171–79. III.C.1
252. *Id.*
253. Groff v. DeJoy, 600 U.S. 447, 464 (2023) (internal quotations omitted).
254. *See id.* at 470 (citing Trans World Airlines v. Hardison, 432 U.S. 63, 83 n.14 (2023)).
255. *See id.* at 465 ("[A] bevy of diverse religious organizations ha[ve] told this Court that the *de minimis* test has blessed the denial of even minor accommodation in many cases, making it harder for members of minority faiths to enter the job market.").
256. *See id.*

them *favored treatment*' in order to ensure religious persons' full participation in the workforce."[257] In line with this objective, *Groff v. DeJoy* has substantially increased Title VII's protections for employees regarding their religious beliefs and practices, for better or worse.

257. *Id.* at 461 n.9 (emphasis added) (quoting EEOC v. Abercrombie & Fitch Stores, Inc., 575 U. S. 768, 775 (2015)).