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Will U.S. Supreme Court Place an Undue Hardship on Employers When It Decides Groff v. DeJoy?

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The U.S. Supreme Court is set to consider whether its own definition of "undue hardship" with respect to religious accommodation requests, which employers have relied upon for more than 45 years, remains valid when it hears oral argument in *Groff v. DeJoy*, No. 22-174.

The Court will also consider whether an accommodation that burdens other employees can be said to burden the employer when analyzing undue hardship.

Oral argument is scheduled for April 18.

Religious Discrimination and Reasonable Accommodation

Title VII of the Civil Rights Act requires employers to reasonably accommodate employees whose sincerely held religious beliefs or observances conflict with work requirements, unless doing so would create an undue hardship for the employer. The statute does not define "undue hardship," leaving it up to courts applying the law to determine the parameters of the term.

With no statutory definition or binding precedent, courts have come to rely on the Supreme Court's decision in *TWA v. Hardison*, 432 U.S. 63 (1977). In *Hardison*, the Supreme Court noted that requiring an employer "to bear more than a de minimis cost in order to give [an employee] Saturdays off is an undue hardship."

The *Groff* Case Factual Background

In the latest case in this area before the U.S. Supreme Court, petitioner Gerald Groff, who worked as a rural mail carrier for the United States Postal Service (USPS), challenges USPS's denial of his requested religious accommodation to not work Sundays.

In 2013, the USPS contracted with an online retailer to perform Sunday package deliveries. Groff

informed USPS that his religious beliefs prohibited him from working on Sundays. USPS tried to find other carriers to cover Groff's Sunday shifts, but because of a shortage of rural carriers, it often failed. Groff requested that USPS exempt him from Sunday work, but USPS declined, stating that his requested accommodation would lead to undue hardship for the USPS.

USPS instituted progressive discipline against Groff for missing his scheduled Sunday shifts. Groff eventually resigned in 2019, citing USPS's refusal to honor his religious beliefs as the reason for his resignation.

Third Circuit Decision

Groff brought a Title VII complaint against the USPS alleging disparate treatment and failure to accommodate. The District Court granted the defendant's motion for summary judgment on both counts.

On appeal, the U.S. Court of Appeals for the Third Circuit relied on *Hardison* and analyzed whether USPS's refusal to exempt Groff from Sunday work created "more than a de minimis cost" for the USPS. The Third Circuit majority concluded that it would, because exempting Groff from working on Sundays would burden his coworkers, disrupt the workplace and workflow, diminish morale, and damage USPS's operations.

Supreme Court

The Court's grant of *certiorari* here is unsurprising. The Court denied petitions seeking to limit the "more than a de minimis cost" definition of undue hardship in the past, with Justices Clarence Thomas, Samuel Alito, and Neil Gorsuch writing dissents urging the Court to invalidate *Hardison*'s definition of "undue hardship."

The recent history of this Court shows an eagerness to hear cases implicating religious liberty. The Court heard oral argument in *303 Creative LLC v. Elenis,* No. 21-476, last December. The issue there was whether a Colorado public accommodation law violated the First Amendment. At the heart of the case is a web designer who claims her religious beliefs prohibit her from providing certain commercial services for same-sex weddings. In effect, the Court will weigh the religious liberty and First Amendment right of one party against the right of a protected class to be free from discrimination in commercial endeavors.

Similarly, last summer the Court held that a school district infringed on a football coach's rights under the Free Exercise Clause of the First Amendment when it suspended him for continuing to pray publicly after football games in violation of its policy. *Kennedy v. Bremerton Sch. Dist*., No. 21-418, 2022 U.S. LEXIS 3218 (June 27, 2022). First Liberty Institute, the same conservative legal organization that represents Groff here, also represented Kennedy.

Upcoming Oral Argument

In his petition for writ of *certiorari,* Groff's attorneys argue that defining "undue hardship" as meaning anything incurring "more than a de minimis cost" for an employer "effectively nullifies the statute's promise of a workplace free from religious discrimination." Groff urges the Court to adopt the definition of "undue hardship" found in the Americans with Disabilities Act (ADA), which defines "undue hardship" as causing "significant difficulty or expense."

Although both statutes use the term “undue hardship,” nothing in Title VII suggests they should be interpreted the same. The ADA, which was enacted after *Hardison*, specifically defines “undue hardship” for purposes of the ADA, but it does not extend that definition to other statutes.

Congress also has not amended Title VII since *Hardison* to define undue hardship differently than the Supreme Court, even though it has amended Title VII for other purposes. Instead, Congress has allowed *Hardison’*s “more than a de minimis cost” definition to guide courts, employers, and employees for nearly half a century.

Impact on Employers

The timing of a decision by the Supreme Court on this issue is particularly challenging, since more religious accommodation requests were received over the last year due to vaccine mandates and other COVID-19 issues than at any other time in history. If the Supreme Court were to change its guidance, applying it retroactively would create significant issues for employers that relied in good faith on the Supreme Court’s earlier decisions. Until the Court’s decision, employers may want to proceed cautiously with their responses to requests for religious accommodation.

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