No. 22-174

IN THE

Supreme Court of the United States

GERALD E. GROFF,

Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,

Respondent.

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

BRIEF OF THE FREEDOM FROM RELIGION FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

ELIZABETH CAVELL
Counsel of Record
PATRICK ELLIOTT
FREEDOM FROM RELIGION FOUNDATION
P.O. Box 750
Madison, WI 53701
(608) 256-8900
ecavell@ffrf.org

Counsel for Amicus Curiae

319754

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 4

I. Employers may establish undue hardship by showing a negative impact on co-workers and other persons 4

II. Essential to the ADA framework is the requirement that the employee requesting accommodation can perform the essential functions of the position. 7

III. Employers must consider the hardships of a proposed religious accommodation prior to implementation 12

CONCLUSION 16

TABLE OF CITED AUTHORITIES

Page

Cases

Alexander v. Northland Inn,
321 F.3d 723 (8th Cir. 2003) 9

Anderson v. U.S.F. Logistics (IMC), Inc.,
274 F.3d 470 (7th Cir. 2001) 6, 14

Barber v. Nabors Drilling U.S.A., Inc.,
130 F.3d 702 (5th Cir. 1997) 10

Chalmers v. Tulon Co. of Richmond,
101 F.3d 1012 (4th Cir. 1996) 6, 15

Matthews v. Wal-Mart Stores, Inc.,
417 F. App'x 552 (7th Cir. 2011) 6, 7

Moritz v. Frontier Airlines,
147 F.3d 784 (8th Cir. 1998) 11

Peters v. City of Mauston,
311 F.3d 835 (7th Cir. 2002) 9

Peterson v. Hewlett-Packard Co.,
358 F.3d 599 (9th Cir. 2004) 7

Robertson v. Neuromedical Center,
161 F.3d 292 (5th Cir. 1998) 10

Page

Toledo v. Nobel-Sysco, Inc.,
892 F.2d 1481 (10th Cir. 1989). 14

Vargas v. DeJoy,
980 F.3d 1184 (7th Cir. 2020) 10

Wilson v. U.S. W. Commc'ns,
58 F.3d 1337 (8th Cir. 1995) 6, 13

Statutes & Other Authorities

42 U.S.C. § 2000e(j). 4

42 U.S.C. § 12111(10)(A) 8

29 C.F.R. § 1630.2(m) 3, 9

29 C.F.R. § 1630.2(n)(2). 9

29 C.F.R. § 1630.2(n)(3). 9

29 C.F.R. § 1630.2(p)(2)(v). 10

Curt Brown, *Cabbies Ordered to Pick Up All Riders; A Court Fight is Likely as MAC Cracks Down on Muslims Who Decline Alcohol-Carrying Riders*, Star Tribune (Minneapolis, MN), Apr. 17, 2007 . . .13

EEOC, Compliance Manual § 12-IV(B)(4) 5

Cited Authorities

Page

Join Our Team! Rural Carrier Associate, USPS PUBLICATION 181, January 2021, https://about.usps.com/publications/pub181/welcome.htm. 11

Justin Wm. Moyer, *Muslim flight attendant suspended for refusing to serve alcohol files federal complaint*, WASH. POST (Sept. 8, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/09/08/muslim-flight-attendant-suspended-for-refusing-to-serve-alcohol-files-federal-complaint/ 13

Marisa Iati, *A court will decide if a sheriff's deputy can be fired for refusing to work alone with a woman*, WASH. POST (Aug. 22, 2019), https://www.washingtonpost.com/religion/2019/08/22/court-will-decide-if-sheriffs-deputy-can-be-fired-refusing-work-alone-with-woman/ 15

Molly Jackson, *Muslim Truck Drivers Refuse to Deliver Beer, Win $240,000 Lawsuit*, THE CHRISTIAN SCIENCE MONITOR (October 27, 2015), http://www.csmonitor.com/USA/Society/2015/1027/Muslim-truck-drivers-refuse-to-deliver-beer-win-240-000-lawsuit 13

INTEREST OF AMICUS CURIAE[1]

The Freedom From Religion Foundation is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason, rather than faith, tradition, or authority. Founded nationally in 1978 as a 501(c)(3) nonprofit, FFRF has more than 39,000 members, including members in every state and the District of Columbia. FFRF's primary purposes are to educate about nontheism and to preserve the cherished constitutional principle of separation between religion and government.

FFRF's interest in this case arises from its position that expansive religious exemptions from workplace rules will harm the nonreligious as well as many other Americans, by setting up a two-tiered system that rewards some workers and penalizes others. The Supreme Court will create discord and increase disruption to co-workers and businesses if it requires co-workers to shoulder the burden of someone else's claimed religious beliefs and practices.

SUMMARY OF ARGUMENT

Matters of conscience, such as religious belief or nonbelief, are deeply personal and not something that an employer may interfere with or mandate when it comes

1. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

to employees. At the same time, religious employees do not have the legal right to dictate that an employer must impose disruptive conditions on co-workers. It is improper under Title VII for religious employees to claim a right to interfere with the lives and working conditions of their co-workers because they claim to have religious obligations.

In this case, Petitioner Groff was employed as a U.S. Postal Service Rural Carrier Associate—a part-time worker hired to fill in for career mail carriers on their scheduled days off or vacation days, which includes holidays and weekends. As an evangelical Christian who believes that Sundays are "meant for worship and rest," Groff asked to never be scheduled to work on Sundays. Brief for Petitioner at 6. After Sunday deliveries became commonplace due to USPS contracts with Amazon, USPS initially accommodated Groff's request by scheduling co-workers to swap or cover Groff's Sunday shifts. This became increasingly difficult at a small station with few employees, and his continued refusal to show up for his Sunday shifts contributed to one employee transferring, one quitting, and one filing a union grievance. USPS ultimately determined that continuing to accommodate Groff by reallocating his Sunday shifts was causing undue hardship. Courts below agreed and found for USPS because Groff's chosen accommodation—never being scheduled to work any part of any Sunday—placed an undue hardship on USPS in part because of how burdensome it became for the other employees at Groff's station.

Groff seeks to overturn this Court's precedent and tip the scales in favor of religious workers to the detriment of workers who do not engage in the same religious practices.

Under the religious accommodation framework of Title VII, employers may establish an undue hardship by showing a negative impact on co-workers or other persons. Changes to the work schedules of co-workers, their job duties, and their conditions of employment may constitute substantial disruptions. Amicus FFRF is especially concerned that religious employees will make claims that they have a right to alter working relationships between themselves and co-workers, customers, or subordinates.

Groff seeks to upend the current Title VII religious accommodation framework and supplant it with how accommodations are treated under the Americans with Disabilities Act. However, under the ADA, before the burden on an employer is considered, an employee must show that they are able to perform the essential tasks of the job, either with or without a reasonable accommodation. 29 CFR § 1630.2(m). Courts analyzing this question have found that an accommodation that requires another employee to perform an essential function of the job is not reasonable. That means that under a true ADA-like framework, Groff would have a burden to meet the essential function threshold. Groff is unlikely to be able to do so because the entire reason for the Rural Carrier Associate position is to have rural carriers available to work when regular carriers have scheduled days off, which explicitly involves work on weekends.

Finally, Title VII does not mandate that employers spend money and disrupt other employees by testing religious accommodations that are doomed to fail the undue hardship test. Groff and amici supporting him claim that employers cannot decline a proposed religious accommodation when the undue hardship is "too

speculative." But it is hardly speculative or improper for an employer to consider the natural consequences of a disruptive religious accommodation. Claims under Title VII do not just relate to work schedules, breaks, and workplace attire. They run the gamut of anything related to a religious belief or practice. This includes religious claims related to employees denigrating LGBTQ+ persons, ingesting controlled substances, proselytizing in the workplace, sharing opinions on abortion, transporting alcohol, and working with someone of the opposite sex. The list is endless and will continue to evolve over time. But this Court must be steadfast in holding that employers do not have to first implement harmful proposed religious accommodations in order to meet the undue hardship test.

ARGUMENT

I. Employers may establish undue hardship by showing a negative impact on co-workers and other persons.

A determination of whether an employer suffers an undue hardship "on the conduct of the employer's business" under 42 U.S.C. § 2000e(j) necessarily requires consideration of the impact on other employees. Groff offers a novel interpretation of religious accommodations that is untethered from the reality of business and employment. Groff asks the Court to single out impact on co-workers from the factors to be considered in analyzing undue hardship and find as a matter of law that these effects alone can never establish undue hardship on the conduct of a business. Brief for Petitioner at 38-43. Likewise, many amici supporting Groff seek to disregard how accommodations affect the people who actually

conduct the business of the employer—the workers. Brief of Citizens United et. al. at p. 23-25; Brief For The Church of Jesus Christ of Latter-Day Saints et al. at 20-25; Brief of Founders' First Freedom, Inc. at 9-10; Brief for Robert P. Roesser at 27. Whether or not an accommodation's impact on co-workers *alone* may rise to the level of undue hardship on the conduct of a business depends on the particular circumstances, but burdens on co-workers are more than just a "heckler's veto," they are burdens on the business.

A requested religious accommodation that alters the duties, hours, and conditions of employment for co-workers in a disruptive manner are burdens on how business is conducted. This is the case even when religious employees claim that other employees will pick up the slack when they are unable to complete workplace assignments due to their religious beliefs. In the context of accommodations, the Equal Employment Opportunity Commission recognizes that accommodations that violate the rights of co-workers or cause disruption of work constitute an undue burden. EEOC, *Compliance Manual* § 12-IV(B)(4).

Not all workplace accommodations impact co-workers, but those that do often substantially affect other employees and ultimately the conduct of business. Workplace accommodations to grooming and dress policies for an employee are unlikely to dramatically affect co-workers. Similarly, the mere disagreement by co-workers when an employee is provided a religious accommodation may not necessarily rise to the level of undue hardship. However, changes to work schedules of co-workers, changes to the job duties of co-workers, and changes to the conditions of the employment of co-workers are substantial disruptions.

At a broad level, accommodations that interfere with the conditions of employment of co-workers or customer relationships will often pose an undue hardship. Courts have denied Title VII religious discrimination cases when the employee seeks an accommodation that would harass or cause distress to customers, co-workers, or subordinates. *See Matthews v. Wal-Mart Stores, Inc.*, 417 F. App'x 552, 553–54 (7th Cir. 2011) (Apostolic Christian employee's Title VII suit claimed that her faith required her to tell a lesbian co-worker that she was going to hell. The employee "was 'screaming over her' that God does not accept gays, they should not 'be on earth,' and they will go to hell because they are not 'right in the head.'"); *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470 (7th Cir. 2001) (Employee brought Title VII claim asserting that employer was required to accommodate employee's desire to engage in religious speech directed at customers); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1021 (4th Cir. 1996) (Finding that employer would not be able to accommodate Christian employee's desire to send religiously critical letters to co-workers and subordinates); *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1341 (8th Cir. 1995) (Roman Catholic employee who desired to be a "living witness" and wear a graphic anti-abortion button at work failed to accept employer's proposed accommodation to cover up the button while outside her cubicle).

Contrary to what Groff argues, courts have not struggled to strike an appropriate balance between Title VII's protection against religious discrimination and the employer's need to fulfill obligations to other employees. While employers "must tolerate some degree of employee discomfort in the process of taking steps required by

Title VII to correct the wrongs of discrimination, it need not accept the burdens that would result from allowing actions that demean or degrade, or are designed to demean or degrade, members of its workforce." *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607-08 (9th Cir. 2004). A sweeping decision from this Court, ruling that burdens on co-workers are never sufficient to establish undue hardship on a business, will disempower courts that have rightly allowed employers to refuse accommodations that would disparage or harass their employees.

Employers cannot simply disregard the impact that a religious accommodation will have on other workers, customers, and the overall way that they conduct business. Because religious beliefs and practices are wide-ranging and evolving, employers will face extreme difficulty in navigating a new legal paradigm that ignores fundamental business practices. Some religious persons may feel compelled to proselytize, to denigrate nonbelievers, or, for example, to lecture non-adherents that they are sinners. Employers often have good reasons to limit such conduct on the employer's dime, especially when such conduct puts the employer on the "razor's edge" of liability. *See Matthews,* 417 F. App'x 552 at 554. It is paramount that employers are permitted to take into account the potential disruption to others when considering a religious accommodation.

II. Essential to the ADA framework is the requirement that the employee requesting accommodation can perform the essential functions of the position.

The impact on co-workers is a vital factor in judging the degree of hardship an accommodation places on a

business, but disagreement over how much weight to give such burdens under Title VII bespeaks another problem—an analysis of "undue hardship" that does not include any consideration of whether, even with reasonable accommodation, the employee is able to perform the essential functions of the job.

Groff and his amici urge the Court to adopt the definition of "undue hardship" in the Americans with Disabilities Act as the controlling meaning of that term in Title VII, because the ADA is a "sister statute" to Title VII. See Brief of The Becket Fund at 6-13. Although both houses of Congress have considered exactly such an amendment to Title VII repeatedly over two decades and declined to pass it,[2] Groff urges the Court to rule that Title VII requires employers to accede to any accommodation unless the employer can prove it will result in "significant difficulty or expense" on the conduct of its business. 42 USC § 12111(10)(A).

This broader definition of undue hardship is not the only difference between the analytical frameworks of Title VII and the ADA. Under the ADA, before the more exacting standard of "significant difficulty or expense" can be considered, employees must make a showing that they meet the threshold of being "qualified" for

2. The most recent version, the Workplace Religious Freedom Act of 2013, would have amended Title VII to define undue hardship as imposing "a significant difficulty or expense on the conduct of the employer's business when considered in light of specified factors set forth in the Americans with Disabilities Act of 1990." A version of the WRFA was introduced in one or both chambers of Congress in 1994, 1999, 2002, 2003, 2005, 2010, 2012. Despite the WRFA enjoying bipartisan support, Congress has never passed it.

the position. Under the law this means in addition to possessing the required experience, skills, and education, a disabled employee must be "able to perform those tasks that are essential to the job, with or without reasonable accommodation." 29 CFR § 1630.2(m). Under the ADA, a job function may be considered essential for many reasons, including because the position exists to perform that function, the limited number of employees available among whom the performance of that job function can be distributed, or the employee is hired for their expertise or ability to perform the particular function. 29 CFR § 1630.2(n)(2). Evidence of whether a particular function is essential can include the employer's judgment, written job descriptions prepared before advertising or interviewing applicants, the amount of time spent on the job performing the function, and the consequences of not requiring the incumbent to perform the function. 29 CFR § 1630.2(n)(3). Courts have shown employers a great deal of deference in determining whether or not a job function is essential.

Once a job function has been shown to be essential, the employee must show either that they could have performed the essential functions of the job in spite of their disability, or that a reasonable accommodation would have enabled them to perform the essential functions of the job. Courts analyzing this statutory requirement have consistently held that accommodations that would require another employee to perform an essential function of the disabled employee's job are not reasonable. *Alexander v. Northland Inn*, 321 F.3d 723, 727-28 (8th Cir. 2003) (finding vacuuming to be an essential function of housekeeping supervisor and an accommodation unreasonable that assigned the task to other employees); *Peters v. City of Mauston*, 311 F.3d 835, 845-46 (7th Cir. 2002) (holding requested accommodation unreasonable because it would require another employee

to perform lifting and carrying—an essential function of plaintiff's job). It is well-established that the ADA does not require an employer to relieve an employee of any essential functions of their job, modify those duties, reassign them to other existing employees, or hire new employees to do them. *See Vargas v. DeJoy*, 980 F.3d 1184, 1188 (7th Cir. 2020); *Robertson v. Neuromedical Center,* 161 F.3d 292, 295 (5th Cir. 1998); *Barber v. Nabors Drilling U.S.A., Inc.,* 130 F.3d 702, 709 (5th Cir. 1997).

Only once an otherwise qualified employee has identified a reasonable accommodation must an employer provide the accommodation or show that doing so would cause an undue hardship to the conduct of the business. At this point, the bar is rightfully high for an employer to prove undue hardship. Since the accommodation has already been shown to be reasonable, as a matter of law it does not reallocate an employee's essential job function to other employees. Therefore burdens on other employees are less likely to predominate undue hardship analysis under the ADA[3].

Were this case to be analyzed under a religious discrimination framework that mirrors the ADA's, Groff would have to show that he is capable of performing the essential functions of the Rural Carrier Associate position, despite being unable to work on any Sunday. The USPS describes the RCA position's "variable work hours" on

3. Still the EEOC regulations implementing the ADA list the impact on other employees as a factor to be considered in analyzing whether an accommodation poses an undue hardship. 29 CFR § 1630.2(p)(2)(v)(Listing as a factor to be considered "The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.")

its website, informing applicants, "You must be willing to work weekends and some holidays and be available for on-call employment."[4] The entire reason for the position's existence is to have rural carriers available to work "part time when regular carriers have scheduled days off or take vacation days."[5] Since courts have shown deference to an employer's determination of essential functions and have repeatedly found an accommodation is not reasonable that reallocates essential job functions to other employees, it is hard to see how Groff would be able to show that he is capable of performing the essential functions of an RCA with a reasonable accommodation.

The ADA rightly gives disabled workers robust protection against discrimination, but it also takes seriously the burdens placed on other workers by accommodations and how those burdens affect the conduct of a business. It requires individuals seeking accommodations to first show that they are qualified to perform the essential functions of the job with or without a reasonable accommodation. And "[i]t is well settled that an employer is under no obligation to reallocate the essential functions of a position that a qualified individual must perform." *Moritz v. Frontier Airlines,* 147 F.3d 784, 788 (8th Cir. 1998). Because no such analysis takes place under Title VII, expanding its undue hardship definition while minimizing the legal significance of burdens on third parties will lead to extreme disruptions to businesses that are not seen in the ADA context.

---

4. *Join Our Team! Rural Carrier Associate*, USPS Publication 181, January 2021, https://about.usps.com/publications/pub181/welcome.htm (last visited Mar. 27, 2023).

5. *Id.*

III. Employers must consider the hardships of a proposed religious accommodation prior to implementation.

Title VII does not mandate that employers spend money and disrupt the workplace to rigorously test religious accommodations that are doomed to fail the undue hardship test. Groff improperly asserts that employers cannot decline a proposed religious accommodation when the undue hardship is "too speculative." *See* Groff Brief at 46 n.8. Not only is such a practice disruptive to the workplace, it is contrary to a basic understanding of employment law.

Groff's proposed religious accommodation framework will lead to significantly more and contrived religious accommodation claims. Groff's framework would force every employer to first implement an employee's requested religious accommodation and then have it prove unduly burdensome in order to satisfy obligations under Title VII. Such a scheme would be disastrous for the workplace and free enterprise, and would require managers and employees to implement obviously problematic requested accommodations. Employers should be able to satisfy their undue hardship obligation by demonstrating that the accommodation is likely to: increase costs, decrease revenue, disrupt the work environment, create a danger to employee health and safety, increase employee turnover and dissatisfaction, increase liability related to discrimination claims by other employees, or otherwise prove unworkable.

Notably, potential religious accommodation claims under Title VII do not just relate to work schedules, breaks, and workplace attire. Because religious claims

relate to behavior, any number of problematic and disruptive claims could be brought. Consider the following hypothetical examples:

A. Muslim employees who are employed by a taxi service refuse to carry passengers who have alcohol in their luggage. The taxi service provides rides from the airport and is unable to determine ahead of time whether passengers may have alcohol to transport.[6]

B. A Jewish employee at a phone company wishes to spread her religious belief that a woman's right to have an abortion is sacred. She seeks an accommodation allowing her to wear a controversial button at work that would be visible to co-workers and customers that says, "Abortion is a blessing."[7]

---

6. For example, disputes over the transport or handling of alcohol by Muslim employees have arisen in recent years. See Curt Brown, *Cabbies Ordered to Pick Up All Riders; A Court Fight is Likely as MAC Cracks Down on Muslims Who Decline Alcohol-Carrying Riders*, Star Tribune (Minneapolis, MN), Apr. 17, 2007, at 1A; Justin Wm. Moyer, *Muslim flight attendant suspended for refusing to serve alcohol files federal complaint*, Wash. Post (Sept. 8, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/09/08/muslim-flight-attendant-suspended-for-refusing-to-serve-alcohol-files-federal-complaint/ ; Molly Jackson, *Muslim Truck Drivers Refuse to Deliver Beer, Win $240,000 Lawsuit*, The Christian Science Monitor (October 27, 2015), http://www.csmonitor.com/USA/Society/2015/1027/Muslim-truck-drivers-refuse-to-deliver-beer-win-240-000-lawsuit.

7. A prior Title VII lawsuit involved claims of religious expression in the workplace on the subject of abortion. *See Wilson v. U.S. W. Commc'ns,* 58 F.3d 1337, 1341 (8th Cir. 1995).

C. A Rastafarian truck driver seeks a religious accommodation that would allow him to smoke marijuana while off duty. The trucking company has liability concerns with accommodating the request.[8]

D. An employee who converts from Roman Catholicism to Protestantism sincerely believes that she is compelled to tell Roman Catholics to leave the church and that the worship of saints is a sin. She routinely tells co-workers and customers about this belief and requests an accommodation, claiming that sharing such a view is fundamental to her religion.[9]

E. A supervisor at a manufacturing facility who is a Scientologist seeks to write personal letters to subordinate employees telling them that they should refrain from taking prescription medications for their mental health disorders. The letters cause distress among affected employees, but the employer cannot demonstrate

---

8. At least one court has ruled that liability concerns are insufficient to establish undue hardship in the context of accommodating the use of controlled substances by a transport company employee. *See Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1481, 1492 (10th Cir. 1989) (Finding that permitting one day off after ingesting peyote by a member of Native American Church would accommodate the employee).

9. In one case, an employee pursued claims that Title VII required an employer to accommodate them by permitting the employee to engage in religious speech directed at customers. *See Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470 (7th Cir. 2001).

that any extra costs are associated with the practice.[10]

F. An evangelical Christian man who is a nurse at a hospital follows the "Billy Graham Rule" and refuses to work the night shift if the only other nurse on the shift is a woman. Given the hospital's need to provide nursing staff 24 hours a day, the hospital will have administrative difficulty in scheduling the man with only other male nurses or by adding an additional nurse to each of his shifts.[11]

All of these examples involve accommodations of employee behaviors that will have immense disruptive effects on the conduct of business, in whole or in large part by their effect on other employees and/or customers. It is not "too speculative"—in fact it is reasonable—for employers to predict that accommodating these behaviors will unduly burden the conduct of business *by* their effect on customers or other employees in the workplace. Employers should be permitted to anticipate and reject as unreasonable any religious accommodation which will

10. For example, a prior Title VII lawsuit involved claims that a supervisor should be permitted to write personal letters on religious matters to subordinates. *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012 (4th Cir. 1996).

11. For example, a sheriff's deputy filed a Title VII lawsuit relating to the Billy Graham Rule and his religious belief that he cannot be alone with a woman. *See* Marisa Iati, *A court will decide if a sheriff's deputy can be fired for refusing to work alone with a woman,* Wash. Post (Aug. 22, 2019), *https://www.washingtonpost.com/religion/2019/08/22/court-will-decide-if-sheriffs-deputy-can-be-fired-refusing-work-alone-with-woman/*

affect its other employees by harassing them, placing them at risk, assigning them the essential job duties of others, or subjecting them to a hostile work environment.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

Elizabeth Cavell
Counsel of Record
Patrick Elliott
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701
(608) 256-8900
ecavell@ffrf.org

Counsel for Amicus Curiae