



July 5, 2023

VIA E-FILING

Office of the Clerk
U.S. Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

Re: *Kluge v. Brownsburg Community School Corp.*, No. 21-2475

Dear Sir or Madam:

On April 25, 2023, this Court stayed Mr. Kluge's en banc petition pending the Supreme Court's decision in *Groff v. DeJoy*, No. 22-174. Two months later, the Supreme Court issued a unanimous decision that agrees with Mr. Kluge's arguments and necessitates en banc review.

The panel majority grounded its adverse ruling on the "more than a *de minimis* cost" language from *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977), and the variant adopted in *EEOC v. Walmart Stores East, L.P.*, 992 F.3d 656 (7th Cir. 2021). Pet.4, 7. But *Groff* held that nothing "supports reducing *Hardison* to its 'more than a *de minimis* cost' line," No. 22-174, 2023 WL 4239256, at *11 (U.S. June 29, 2023), and disapproved *Walmart Stores, id.* at *9 & n.12.

Instead, the Supreme Court—like Mr. Kluge—focused on Title VII's "undue hardship" language, which requires an employer to show that the "burden, privation, or adversity" caused by a religious accommodation "rise[s] to an 'excessive' or 'unjustifiable' level." *Id.* at *10; accord Pet.7; OpeningBr.26–27. And it approved *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444 (7th Cir. 2013), on which Mr. Kluge relied. *Groff*, at *10; accord Pet.7; OpeningBr.26–27.

So the panel majority erred. Title VII requires a religious accommodation unless an employer shows the "burden is *substantial* in the overall context of an employer's business." *Groff*, at *10 (emphasis added); accord *id.* at *11. Raising "some sort of additional costs" is not enough. *Id.* at *10.

Crucially, the panel majority also held that ideological complaints—mainly at Equality Alliance meetings—justified stripping Mr. Kluge’s accommodation away, despite the lack of any meaningful disruption at school. Pet.4. *Groff* abrogates that conclusion, holding that the “only coworker impacts that go on to affect the conduct of the [employer’s] business” are relevant to undue hardship. *Groff*, at *12 (cleaned up). Some impacts are “off the table,” including “animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice.” *Id.* (cleaned up). And those are the only burdens Brownsburg showed here. Pet.4–5.

Sincerely,

s/ Rory T. Gray

Rory T. Gray

Counsel for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I certify that the body of this letter contains 347 words and complies with Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28(e).

s/ Rory T. Gray

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I certify that this letter was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit on July 5, 2021 using the appellate CM/ECF system, all participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Rory T. Gray

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