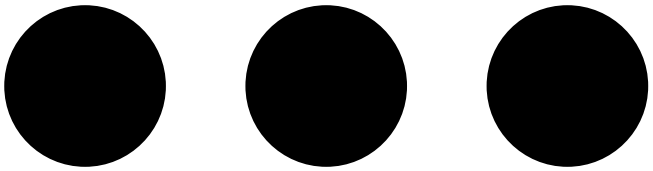
Written by **Bob Adelmann** on January 20, 2023

Supreme Court Has Another Opportunity to Reverse a Poor Prior Decision

In agreeing to take under review a lower court's decision in *Groff v. DeJoy*, the Supreme Court has another opportunity to right two wrongs simultaneously.

Gerald Groff, a Sabbatarian Christian, started work for the United States Postal Service (USPS) in 2012. His job description allowed him to take Sundays off. Even though the local post office grew over time, the service accommodated his religious commitments.



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But then that office withdrew the accommodation and, when he couldn't come to terms with the local postmaster, Groff moved to another location that allowed him to have his Sundays off.

When that second location's rules changed, requiring Groff to work on Sundays, he tried to work out an accommodation, without success. He was forced to resign rather than violate his religious beliefs and, with the help of three public-interest law firms, filed suit against the USPS in 2016.

He was rebuffed at both the district and appeals court levels. The most recent decision claimed that "exempting Groff from working on Sundays caused more than a de minimis cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale…."

The 1964 Civil Rights Act, as amended, makes it an unlawful employment practice for an employer to discriminate against an employee on the basis of his religion. It requires that an employer make "reasonable accommodations" to the religious needs of its employees.

In the recent decision, the appeals court based its ruling on *TWA v. Hardison*, decided in 1977, which tilted the equation heavily in favor of employers and against employees seeking similar accommodations.

The dissenting opinion in *TWA v. Hardison* exposes that "tilt":

> Today's decision deals a fatal blow to all efforts under Title VII to accommodate work requirements to religious practices.
>
> The Court [majority] holds, in essence, that although the EEOC regulations and the Act state that an employer must make reasonable adjustments in his work demands to take account of

> religious observances, the regulation and Act do not really mean what they say.
>
> An employer, the Court [majority] concludes, need not grant even the most minor special privilege to religious observers to enable them to follow their faith.
>
> As a question of social policy, this result is deeply troubling, for a society that truly values religious pluralism cannot compel adherents of minority religions to make the cruel choice of surrendering their religion or their job.

A lawyer from the Independence Law Center (ILC), one of the three pro-bono law firms assisting Groff, said, "Observing the Sabbath day is critical to many faiths — a day ordained by God. No one should be forced to violate the Sabbath [in order] to hold a job."

A lawyer from the Church State Council, another firm representing Groff, added:

> Workers have suffered too long with the Supreme Court's interpretation [in *TWA v. Hardison*] that disrespects the rights of those with sincere faith commitments to a workplace accommodation.
>
> It's long past time for the Supreme Court to protect workers from religious discrimination.

Kelly Shackelford, president, CEO, and chief counsel for First Liberty Institute (also assisting in the case), added: "It's time for the Supreme Court to reconsider a decades-old case [*TWA v. Hardison*] that favors corporations and the government over the religious rights of employees."

Groff is hardly alone in fighting to keep both his religion and his job. As Nathan Lewin, a writer for *Newsweek*, noted:

> Countless committed believers have been demoted or denied employment since the *Hardison* [decision] because their … employers were unwilling to make more than *de minimis* adjustments in their working conditions and schedules.

The importance of this case is reflected in the fact that fourteen amicus briefs were filed by religious liberty advocates with the Supreme Court, along with 17 state attorneys general and members of Congress.

As ILC attorney Jeremy Samek noted:

> At the end of the day, Mr. Groff wants his job back. It's important for him, but it's also important for lots of other people who work for the federal government or the post office that they be able to continue their employment and to continue to observe their religious beliefs.

Oral arguments in *Groff v. DeJoy* (the postmaster general) will begin in a couple months. As noted earlier, the high court has another chance to right two wrongs simultaneously in this case.