

SPA Issue Brief

A Matter of Conscience:

An Argument that Title VII Protects Abortion Providers at Catholic Hospitals

INTRODUCTION

The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022) overturned *Roe v. Wade* (1973) and eliminated federal constitutional protection for abortion; this decision allowed states to individually determine whether to allow access to abortion care. As of 2026, thirteen U.S. states ban abortion care and another [six ban abortion after six or twelve weeks of pregnancy](#).

However, the question of whether abortion is available in a state is not confined to questions of state law; it is also a question of whether health care professionals are able to provide that care. Even in states where abortion is legally protected some hospitals and healthcare systems do not permit their employees--such as doctors or nurses--to provide abortion or other forms of reproductive care. These restrictions are most common at religiously affiliated hospitals, particularly hospitals associated with the Catholic faith. The impact of such restrictions is significant given the growth in the number of Catholic hospitals in the United States: Catholic hospitals [account for one-sixth of hospital beds](#) in the country, one in seven U.S. patients are treated in a Catholic hospital, and [Catholic hospitals employ nearly 700,000 workers](#).

Most Catholic hospitals do not allow their employees to perform abortions, either in the workplace or outside of working hours (for example, [working at a Planned Parenthood on the weekends](#)). These restrictions are often grounded in the U.S. Conference of Catholic Bishops' Ethical and Religious Directives for Catholic Health Care Services ("ERDs"). These ERDs prohibit Catholic hospitals from providing many forms of reproductive health care, such as contraception, abortion, sterilizations and [many forms of infertility treatment](#).

Importantly, however, not every healthcare professional employed by a Catholic hospital will share their employer's religious objections to, for example, abortion care. Instead, some doctors believe it is their religious, ethical, or spiritual duty to provide the full spectrum of reproductive health care, including abortion care. This raises the question of recourse: does a doctor have a remedy if they are fired for providing abortion care if their employer does not permit abortion care? What if a doctor believes their own faith [actually requires them to provide](#) abortion care?



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It is well settled under federal law that in many cases a health care professional may, on the basis of religious or moral beliefs, refuse to provide reproductive health care (such as abortion) and be protected from adverse employment actions (such as [being fired or demoted](#)). In a forthcoming article in the *Wisconsin Journal of Law, Gender and Society*, Jessica Waters argues that "conscience" protections should also protect doctors if they face an adverse employment action—that is, are fired or otherwise penalized—because they want to provide abortion care based on their own sincerely held religious beliefs. Waters posits that in part because of the U.S. Supreme Court's recent decision in *Groff v. DeJoy*, an employee who grounds their request to perform abortions in their religious, spiritual, or ethical beliefs may have protection under our federal employment discrimination law, Title VII of the 1964 Civil Rights Act.

GROFF V. DEJOY: A CHANGING TITLE VII LANDSCAPE

Title VII of the 1964 Civil Rights Act is a federal law that protects employees from employment discrimination, including religious discrimination. Under Title VII an employee may request a religious "accommodation" from a job requirement if that requirements conflicts with their religious beliefs. For example, an employee could request not to work on the Sabbath because it conflicted with their religious beliefs.

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To prevail on Title VII religious accommodation claim the employee must show that they have a religious belief that is “sincerely held” and that the belief conflicts with their employer’s work requirements. The employee must demonstrate they suffered an adverse employment action because they [did not comply with the conflicting employment requirement](#). Title VII requires an employer to accommodate the employee’s religious beliefs unless doing so would result in an [“undue hardship” on their business](#). The question of what poses an undue hardship is intensely fact-specific to an employer’s business and the uniqueness of the accommodation request.

Prior to 2023, employers were able to show that an accommodation posed an undue hardship by demonstrating that the requested accommodation would “impose more than a de minimis cost.” However, in 2023, the Supreme Court held in *Groff v. DeJoy* that the bar for undue hardship was higher. Now, an employer may only refuse to accommodate an employee’s religious accommodation request “when a burden is substantial in the overall context of an employer’s business.” This new standard makes it harder for employers to deny religious accommodations.

Lower federal courts are grappling with this new standard. Some guidance has emerged, with courts finding that an undue hardship exists when the requested accommodation would force employers to break the law or poses a safety risk to others. In addition, the 9th Circuit asks whether the employer provided actual evidence of the burden, such as safety costs, operational burdens, or significant financial burdens. Finally, the lower courts have considered whether the employer has considered alternative accommodations.

DOCTORS AT CATHOLIC HOSPITALS

Under a Title VII religious accommodation framework, a healthcare professional working at a Catholic hospital who wants to perform abortions because of her religious beliefs would thus need to (1) demonstrate that her reason for wanting to perform abortions was because of a “sincerely held” religious belief (2) request an accommodation from her employer to provide such care and refute any claims by her employer that the requested accommodation posed an undue hardship and (3) overcome any claims that the employer was exempt from Title VII requirements under the “religious employer” exemption.

Waters explores the possibility of a Title VII claim using a hypothetical plaintiff: a healthcare professional who works at a Catholic hospital in a state where abortion is legal. The plaintiff has sincerely held religious beliefs that she should provide abortion care to her patients and would like to provide that care.

Step 1: A sincerely held religious belief

The EEOC defines “religion” under Title VII to include both beliefs under an organized religion or religious beliefs that [do not formally belong to any traditional belief system](#). Individual doctors routinely explain how their religion deeply informs their practice of medicine. Catholics for Choice captures testimonials from physicians who provide conscience-based care:

- “There’s no more spiritual component of my life than practicing medicine, and that includes providing safe abortions to those in need...One of the seven principles of Unitarian Universalism is respect for the inherent worth and dignity of every individual. More than 50 percent of individuals in the world are women ...Because it respects the inherent worth and dignity of women, [providing abortion is a spiritual and moral act](#).” Cassing Hammond, OB-GYN & Associate Professor of Obstetrics and Gynecology, Northwestern University Feinberg School of Medicine.
- “I am an OB-GYN. I am also a Catholic, and I am Chicana. I’m a wife and a mother to three muchachitas. And I’m an abortion physician. So many people think of these identities as conflicting — but I’ve never seen it that way. Being Catholic and being an abortion physician are not opposed. My Catholic faith guides me to care for my patients, to meet them where they are, and support them in their journey to determine for themselves whether they can handle a pregnancy.” Dr. Josie Urbina

Each of these statements would seem to meet the bar to demonstrate that the physician had a “sincerely held” belief that would guide their decision to provide abortion care. The hypothetical plaintiff would likely succeed on the first element of the Title VII claim.

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Step 2: Requested accommodation and undue hardship

The next question is whether the requested accommodation poses an undue hardship to the employer. The hypothetical plaintiff in this scenario could ask for a range of accommodations including utilizing the employer facility for surgical abortions in emergency situations, writing a prescription for medical/non-surgical abortion (mifepristone and misoprostol), discussing options with the patient, referring someone to another entity for abortion care, or providing abortion care at a different facility outside of work. Under the new *Groff* standard, the employer has to show that any burden from an accommodation is substantial in the overall context of the employer's business.

Here, the nature of the requested accommodation matters—and today the requested accommodation is likely to simply be the ability to write a prescription for a medical abortion. Sixty-three percent of abortions today are medical abortions (the use of pills including mifepristone and misoprostol) [instead of surgical ones](#). These prescriptions can be given in person or online with the patient taking the medications [in their own homes](#). An employer would have an uphill battle to argue that the mere writing of a prescription in a state where abortion is legal—without using hospital facilities or other personnel and to be filled at an off-site pharmacy—poses a substantial hardship. Again, the hypothetical plaintiff could also potentially survive this hurdle.

Step 3: The Religious Organization exemption

Title VII provides an exemption for religious employers. It states that Title VII prohibitions on religious discrimination “shall not apply to ... religious corporation...with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation... of its activities.” Said plainly, if an organization qualifies for a religious exemption it may not have to accommodate their employees' religious beliefs. Waters acknowledges that this is a high hurdle for plaintiffs but posits that some hospitals or health care entities that are nominally religiously affiliated would not qualify for the exemption.

First, the sheer number of Catholic hospitals and patients being treated by Catholic hospitals calls into question whether these hospitals would receive an exemption—if they do, does the exemption [swallow the rule](#)? Second, the EEOC has made clear that deciding whether an employer qualifies for an exemption is made on a “[case by case basis](#).” The EEOC has outlined multiple factors to consider in this analysis; in the instant hypothetical case, several could counsel against a Catholic hospital qualifying for the exemption, including:

- Catholic hospitals provide a secular product—health care— in accordance [with state medical guidelines](#).
- Catholic hospitals do not always hold themselves out as [religious entities](#); “roughly 1 in 5 Catholic hospitals in the United States do not explicitly disclose their religious affiliation on their websites, and only a small percentage of those disclose how that affiliation might [affect patient care](#).”
- [Many patients are not aware](#) of these religious affiliations or the possible impact on services provided. “Over a third of women whose primary hospital is Catholic do not know that it is.”
- [Many OB GYNs working at Catholic hospitals oppose](#) restrictive hospital policies. One national survey of OB GYNs found that 52% of those working in Catholic hospitals answered “yes” to the question “Have you ever had a conflict with the hospital/practice over religiously-based policies for patients care.”

CONCLUSION

Does a health care professional who grounds their desire to provide abortion care in their own religious or moral beliefs have to choose between their job and their beliefs? Waters argues they should not. Title VII's prohibition against religiously-motivated employment discrimination—and its requirement that employers reasonably accommodate an employee's sincerely held religious beliefs absent a demonstrated undue hardship—must be used to protect health care professionals from adverse employment actions if they seek, as a matter of deeply held religious, moral, or ethical beliefs, to provide legal abortion care.