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Muslim Reasonable Accommodations in the Workplace: A Comparison of the Title VII and ADA Undue Hardship Standards

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ABSTRACT

For centuries Islam has been one of the world's most controversial religions. Most of this debate stems from many followers' decision to dress in modest Muslim garb to demonstrate their submission to Allah. This controversy has found its way into the workplace, flooding the courts with an endless stream of Title VII employment discrimination claims based on employers' failure to accommodate Muslim employees.

This paper focuses on the efficacy of the Title VII reasonable accommodation standard for Muslim employees. The goal of this paper is not only to analyze the Title VII standard independently, but also in tandem with the ADA's much steeper reasonable accommodation standard. Under Title VII, employers are not required to bear more than a "de minimis cost" to accommodate employees' religious needs. In contrast, under the ADA, employers are required to show that the requested accommodation imposes "significant difficulty or expense." The case law indicates that the Title VII standard is in desperate need of amendment to hold employers more accountable.

I. Introduction

For centuries, Americans have set their alarm clocks on weekday mornings. For centuries, Americans have gotten dressed and left their homes to report to work. For centuries, Americans have worked in fields and factories and offices. For centuries, Americans have received paychecks in return for their honest work. Unfortunately, for centuries, Americans have also faced employment discrimination. For most of this history, Congress failed to provide a comprehensive remedy for employees who faced such prejudice, until the enactment of two statutes.

In 1964, through the advocacy of President Lyndon B. Johnson, Congress voted in favor of the Civil Rights Act of 1964 ("Act"). Title VII of the Act provides that employers cannot "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[1] Congress limited this protection by defining religion as "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[2]

Therefore, under Title VII, employers are not required to accommodate an employee's religious needs if they impose an undue hardship, which is defined by the Supreme Court as anything more than a "*de minimis* cost" on the employer.[3] On January 13, 2023, the Supreme

[1] 42 U.S.C. § 2000e-2(a).
[2] 42 U.S.C. § 2000e-2(j).
[3] *TWA v. Hardison*, 432 U.S. 63, 84 (1977).

Court granted certiorari in *Groff v. DeJoy* to review the "more-than-de-minimis-cost" test for refusing Title VII religious accommodations as established in *TWA v. Hardison*.[4]

Although Title VII is undoubtedly a piece of sweeping civil rights legislation, it does not prohibit employment discrimination based on disability. In response, Congress enacted the Americans with Disabilities Act ("ADA") in 1990, which was later amended in 2008. Title I of the ADA addresses employment discrimination and requires employers to reasonably accommodate an employee's disability-related needs unless they impose an "undue hardship," which the statute defines as "an action requiring significant difficulty or expense."[5]

Today, many courts and legislators argue that *Hardison*'s low reasonable accommodation standard should be amended. Through a thorough examination of case law, it is clear that *Hardison* left much to be desired as it places a disappointingly low obstacle between employers and permissible employment discrimination on the basis of religion. The Title VII reasonable accommodation standard should be revised to more closely resemble and even exceed the ADA's in hopes of better protecting the sincerely held religious beliefs of employees.

This paper will proceed as follows. Section II will explain the historical and legal background of the Act and Title VII. Section III will proceed to explain Title I of the ADA. Section IV will discuss Islam and relevant Muslim practices that are the source of conflict in the case law. Section V will delve into Title VII case law in which the proposed accommodations were either granted or denied. Section VI will explore ADA case law interpreting reasonable accommodation to demonstrate that the higher legal standard does not always provide an easy

[4] *Groff v. DeJoy*, 143 S. Ct. 646 (2023); Petition for Writ of Certiorari, Groff v. DeJoy, 143 S. Ct. 646 (2023) (No. 22-174).
[5] 42 U.S.C. § 12111(10)(A).

win for litigants. Section VII will analyze the cases from Sections V and VI and suggest how the Title VII standard should be modified. Section VIII will conclude this paper.

II. Title VII Reasonable Accommodation Standard

The Act was the result of the longest continuous debate in Senate history.[6] The Act was first proposed by President John F. Kennedy, but following his assassination it was strongly championed by his successor, Lyndon B. Johnson, and enacted on July 2, 1964.[7] In his address to a joint session of Congress, Johnson said, "We have talked long enough in this country about equal rights. We have talked for one hundred years or more. It is time now to write the next chapter, and to write it in the books of law."[8] For the first time in its history, the Senate voted to codify the most sweeping civil rights bill in American history to date.[9]

The Act contains eleven titles. Title VII "prohibits employment discrimination based on race, color, religion, sex and national origin."[10] Sec. 2000e-2 addresses unlawful employer practices and provides claimants with two distinct causes of action based on two distinct categories of discrimination.[11] The first cause of action is often referred to as the "disparate impact" or "unintentional discrimination" provision. A seemingly neutral employment policy

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[6] United States Senate, https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1964.htm.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] 42 U.S.C. § 2000e-2(b).
[11] "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

with a proven disproportionate impact on a certain group constitutes unintentional yet actionable discrimination.

In contrast, the second cause of action is often referred to as the "disparate treatment" or "intentional discrimination" provision. For example, an employer who tests only a certain minority of applicants on a certain skill has likely opened himself up to a disparate treatment action. As part of the intentional discrimination considerations in the statute, Title VII "affirmatively obligates" employers to disrupt neutral employment policies to accommodate employees' religion.[12] Any employer that does not make such exceptions will be guilty of intentional discrimination based on religion.[13]

This paper will focus on Sec. 2000e-2's prohibition on employer discrimination on the basis of "religion."[14] Congress defines religion as "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[15] The foregoing definition confirms that employers only have a duty to accommodate employees' religious needs if they can be satisfied with a "reasonable accommodation." The legislature defines "reasonable accommodation" as one that does not pose an "undue hardship" on the employer or the

[12] *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015).
[13] *Id.*
[14] Sec. 2000e(b) defines "employer" as a "person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person…" The United States is not an "employer" under Title VII. Sec. 2000e(f) defines "employee" as "an individual employed by an employer, except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office."
[15] 42 U.S.C. § 2000e(j).

employer's business.[16] Whether an accommodation is reasonable is a fact-specific question.[17] Reasonable accommodations may take many forms as long as they are effective.[18]

Courts apply a burden-shifting framework in religious accommodation cases. "The analysis of any religious accommodation begins with the question of whether the employee has established a prima facie case of religious discrimination."[19] In order to establish a prima facie failure to accommodate case, the employee must show that "(1) she holds a sincere religious belief that conflicts with a job requirement; (2) she informed her employer of the conflict, and (3) she was disciplined for failing to comply with the conflicting requirement."[20] Once the employee has established a prima facie case, the burden then shifts to the employer to show that "it has made a good faith effort to reasonably accommodate the belief" or that "such an accommodation would work an undue hardship upon the employer and its business."[21] While Title VII does not define undue hardship, the courts have.

In *TWA v. Hardison*, the Court defined undue hardship as more than a "*de minimis* cost."[22] Trans World Airlines (TWA) operated a maintenance and overhaul base in Missouri, where it hired Hardison to work as a clerk in the Stores Department.[23] This department played a critical role in the base's operation, forcing it to operate 24 hours a day, 365 days a year.[24] As a TWA employee, Hardison was subject to a seniority system that gave senior employees first choice regarding scheduling preferences, while junior employees like Hardison were required to

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[16] *Id.*
[17] *Wernick v. FRB*, 91 F.3d 379, 385 (2d Cir. 1996).
[18] *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002).
[19] *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987).
[20] *Webb v. City of Phila.*, 562 F.3d 256, 259 (3d Cir. 2009).
[21] *Id.*
[22] *Hardison*, 432 U.S. at 84.
[23] *Id.* at 67.
[24] *Id.*

work when others could not, including weekends.[25] About a year after TWA hired him, Hardison began to study the Worldwide Church of God, a religion that required its believers to observe the Sabbath from sunset on Friday to sunset on Saturday by refraining from all work.[26] TWA attempted to accommodate Hardison by holding many meetings with him, accommodating his religious holidays, swapping his shift within the parameters of the seniority system, and even helping him find another job.[27] After TWA denied his proposal to work four days a week, Hardison stopped reporting to work on Saturdays completely, leading TWA to fire him for insubordination.[28] Hardison brought suit alleging that the company violated Title VII by failing to reasonably accommodate his religion.[29]

The Supreme Court held that TWA had met its burden of reasonable accommodation short of undue hardship under Title VII.[30] The Court reasoned that requiring TWA to do more to accommodate Hardison at the expense of other employees and the company's seniority system would require it to bear more than a *de minimis* cost.[31] The Court explained that seniority systems and other collective bargaining agreements ("CBAs") are given special treatment under Title VII, therefore, modifying this agreement would far exceed TWA's obligations.[32] The Court was unwilling to modify the CBA because these agreements are "at the core of our national labor policy" and because the seniority system was not designed to discriminate.[33] After several

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[25] *Id.*
[26] *Id.*
[27] *Id.* at 77.
[28] *Id.* at 69.
[29] *Id.*
[30] *Id.* at 84.
[31] *Id.* at 78.
[32] *Id.* at 81. "Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system… provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin…" 42 U.S.C. § 2000e-2(h).
[33] *Id.* at 79.

attempts to accommodate Hardison, the Court held that TWA "cannot be faulted" for failing to find a solution.[34]

Justice Alito's concurrence in *Patterson v. Walgreen* reveals how poorly the *Hardison* standard has been received.[35] Although the Court denied certiorari, Justice Alito, joined by Justice Thomas and Justice Gorsuch, emphasized the need to "reconsider the proposition… that Title VII does not require an employer to make any accommodation for an employee's practice of religion if doing so would impose more than a *de minimis* burden."[36] Justice Alito explained that not only is *Hardison*'s interpretation of "undue hardship" an unlikely one, but also one that is put forth without much explanation.[37] Although Justice Alito agreed that certiorari was properly denied in *Patterson*, he urged that *Hardison*'s standard be overruled in an appropriate case.[38]

III. ADA History and Reasonable Accommodation Standard

The ADA prohibits disability discrimination in the workplace. Pursuant to 42 U.S.C. § 12101(b) "it is the purpose of this chapter (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with

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[34] *Id.* at 78. This outcome likely would have been the same under the ADA because of its deference to CBAs. *See Huber v. Wal-Mart Stores, Inc.*, 486 F.3d 480, 483 (8th Cir. 2007) (holding that the ADA does not require employers to give preference to disabled employees over better-qualified applicants because the ADA is not "an affirmative action statute"); *Barnett*, 535 U.S. at 406 (2002) (holding that absent special circumstances, an employer is not ordinarily required to offer accommodations that violate seniority rules under the ADA); *United States v. Woody*, 220 F. Supp. 3d 682 (E.D. Va. 2016) (holding that the employer did not have an obligation to deviate "from an established, non-discriminatory seniority system" to accommodate an employee with familial cardiomyopathy and supraventricular tachycardia).

[35] *Patterson v. Walgreen*, 140 U.S. 685 (2020).

[36] *Id.*

[37] *Id.* at 686.

[38] *Id.*

disabilities." Sec. 12112(a) provides that "no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."[39] This section protects "qualified individuals," whom the ADA defines as "individual[s] with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."[40] If the employee would not be able to perform his or her job even with a reasonable accommodation, they are no longer a qualified individual and lose standing under the ADA.[41]

The ADA requires more than just nondiscrimination. It requires reasonable accommodations, which may include: "(a) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities."[42] While the ADA requires reasonable accommodations, it does not require employers to take on undue hardship, which is defined in the statute itself unlike Title VII. The ADA defines undue hardship as "action[s] requiring

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[39] 42 U.S.C. § 12112(a). The ADA defines a disability as "(a) a physical or mental impairment that substantially limits one or more major life activities of such individual; (b) a record of such impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102(1). Major life activities are "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2). The ADA defines a covered entity as "an employer, employment agency, labor organization or joint labor-management committee." 42 U.S.C. § 12111(2).

[40] 42 U.S.C. § 12111(8). The ADA defines essential functions as "the fundamental job duties of the employment position of the individual with a disability." 29 C.F.R. § 1630.2(n)(1).

[41] I will revisit this basis for denial in Section VI(B).

[42] 42 U.S.C. § 12111(8).

significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B)."[43] In contrast, the Title VII definition of undue hardship as defined in *Hardison* and noted above is "more than a *de minimis* cost."[44] On its face the ADA has a much stronger undue hardship standard than Title VII; however, Section VI will explore how better legislation does not always mean better results.

IV. Islamic Practice and Muslim Modesty

To understand the significance of the requested religious accommodations that this paper will analyze, it is first important to understand Islam and its central beliefs. To devout Muslims, the following tenets are non-negotiable parts of everyday life. The Five Pillars of Islam encapsulate the acts of worship that Muslims are called to perform as a demonstration of their devotion to God, or *Allah*.[45] The first of the five pillars is the *shahadah*, or profession of faith, which Muslims are required to repeat with every prayer.[46] The *shahadah* demonstrates a belief in God's oneness or *tauhid*, and reads, "I bear witness that there is no god but God, and Muhammad is God's Messenger."[47]

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[43] 42 U.S.C. § 12111(10)(A). Those factors are set forth in the statute as follows: "In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include (i) the nature and cost of the accommodation needed under this chapter; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity." 42 U.S.C. § 12111(10)(B).

[44] *Hardison*, 432 U.S. at 78.

[45] The Pluralism Project, *The Five Pillars*, Harv. U., (2020), https://hwpi.harvard.edu/files/pluralism/files/the_five_pillars_1.pdf

[46] *Id.*

[47] *Id.*

Second, Muslims must perform *salat*, or prayer, five times a day.[48] *Salat* is performed at dawn, midday, afternoon, sunset, and nightfall in the direction of the Kaaba, Islam's most important mosque, in Mecca, Saudi Arabia.[49] *Salat* is a commonly requested employment accommodation that poses a conflict between religious and corporate needs. Third is *zakat*, or charity, which requires Muslims to donate a portion of their annual wealth in hopes of purifying others and creating a more just society.[50]

The fourth pillar is *sawm*, or fasting, during each day of Ramadan, the lunar month when Muhammad received the first revelation from God.[51] For each day of this month, Muslims cannot eat or drink during daylight hours as this is a time of discipline and patience.[52] The fifth and final pillar of Islam is *hajj*, or pilgrimage, to the Kaaba.[53] Extremely devout Muslims make an annual trip to Mecca, during which all participants dress modestly and equally to show that we are all the same before God.[54]

Although not a formal pillar, many Muslims also practice *hay'a* or modesty.[55] The Quran reads:

> And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments except what normally appears. Let them draw their veils over their chests, and not reveal their 'hidden' adornments except to their husbands, their fathers, their fathers-in-law, their sons, their stepsons, their brothers, their brothers' sons or sisters' sons, their fellow women, those 'bond women' in their possession, male attendants with no desire, or children who are still unaware of women's nakedness. Let them not stomp their feet, drawing attention to their hidden adornments. Turn to Allah in repentance all together, O believers, so that you may be successful.[56]

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[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Aisha Wood Boulanouar, *The Notion of Modesty in Muslim Women's Clothing: An Islamic Point of View*, 8 New Zealand J. of Asian Stud. 134 (2006).
[56] Quran.com, https://quran.com/an-nur/31 (last visited Dec. 15, 2022).

A*wra'* means "what must be covered," which differs for men and women.[57] Men must cover the "navel to the knee" and some men also grow a beard as an additional form of modesty.[58] In contrast, the standard elements of women's *awra'* are "a head covering and loose-fitting, non-transparent clothing that covers the whole body, maybe with the exception of the hands and face" when in the presence of men outside of her family.[59] Although these specific dress requirements vary between countries, generally "… Islam makes it *haram* (prohibited) for women to wear clothes that fail to cover the body and which are transparent, revealing what is underneath."[60] It is likewise *haram* to wear tightly fitting clothes which delineate the parts of the body, especially those parts which are sexually attractive…"[61] As seen below, the headscarf is often at the center of employment accommodation litigation, making it arguably one of the most controversial elements of female Islamic dress.

V. Title VII Case Law Interpreting Accommodation

Whether an accommodation is reasonable or unreasonable by imposing an undue hardship is a highly fact-sensitive inquiry that requires a thorough examination of several case-specific factors including the request itself, employee-employer conversations, and company policy. A common employer defense is that deviation from an established company dress code would negatively affect business. A comparison of the case law shows that practical, tangible concerns like production rates, efficiency, and decreased income are more persuasive to courts than speculative guesses about what a dress code modification could mean for business. The

[57] Boulanouar, *supra* note 55, at 135.
[58] *Id.* at 135
[59] *Id.* at 139.
[60] *Id.*
[61] *Id.*

effect of the *Hardison* standard is that employers are legally able to deny many religious accommodation requests. But first, the successful accommodations.

A. Accommodation Granted

Despite frequent denial of religious accommodations, the Title VII standard has proven to be effective for some plaintiffs whose employers failed to expend even a *de minimis* cost. The Supreme Court has recently weighed in on the issue of hijabs, a frequent topic of litigation. In *EEOC v. Abercrombie & Fitch Stores, Inc.*, Samantha Elauf, a practicing Muslim, interviewed for a retail position at Abercrombie.[62] Although her interviewer, Heather Cooke, found Elauf to be qualified for the job, Cooke worried that Elauf's hijab would conflict with the company's "Look Policy," which governed employees' dress and prohibited "caps."[63] The District Manager instructed Cooke not to hire Elauf based on such concerns, and the EEOC brought this claim on Elauf's behalf alleging a Title VII violation.[64]

Abercrombie argued that it had not violated Title VII because it did not have knowledge of Elauf's need for an accommodation.[65] The Court disagreed, finding that an applicant must only demonstrate that his or her need for an accommodation was a motivating factor in the employer's decision.[66] The Court relied on the statutory language of Title VII that clearly does not impose a knowledge requirement.[67] The Court emphasized the distinction between motive and knowledge by contrasting Title VII with the ADA's explicit knowledge requirement.[68] The ADA defines discrimination as an employer's failure to make 'reasonable accommodations to

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[62] *Abercrombie*, 575 U.S. at 770.
[63] *Id.*
[64] *Id.* at 771.
[65] *Id.* at 772.
[66] *Id.*
[67] *Id.*
[68] *Id.* at 773.

the known physical or mental limitations of an applicant."[69] The Court remanded the case to the Tenth Circuit for reconsideration consistent with the opinion that an employer cannot use an applicant's religious practice as a factor in hiring decisions.[70]

In a much earlier era, the EEOC brought a headscarf accommodation claim on behalf of an elementary school teacher. In *EEOC v. Reads, Inc.*, the United States District Court of the Eastern District of Pennsylvania held that Remedial Educational and Diagnostic Services ("READS") discriminated on the basis of religion and failed to meet its undue hardship defense.[71] Cynthia Moore interviewed with READS for a position as a third-grade counselor at two Catholic elementary schools.[72] On the day of her interview she wore a two-toned green scarf that she tied to the side.[73]

Joseph Lavoritano, the Coordinator of Counseling and Psychological Services, interviewed Moore and was "struck" by her head covering, which Moore explained was an expression of her Muslim faith.[74] Lavoritano and his supervisor determined that hiring Moore would violate READS' duty to prohibit teachers from wearing "religious garb" pursuant to Pennsylvania Garb Law, § 11-1112.[75] Moore argued that her scarf was not "religious garb" because while modest, it did not comply with Quranic requirements.[76] Moore rejected READS'

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[69] *Id.*
[70] *Id.* at 775.
[71] *EEOC v. Reads, Inc.*, 759 F. Supp. 1150, 1162 (E.D. Pa. 1991).
[72] *Id.* at 1153.
[73] *Id.*
[74] *Id.*
[75] *Id.* at 1153-1154. The Pennsylvania Garb Law states "(a) that no teacher in any public school shall wear in said school or while engaged in the performance of his duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination; (b) any teacher employed in any of the public schools of this Commonwealth, who violates the provisions of this section, shall be suspended from employment in such school for the term of one year and in case of a second offense by the same teacher he shall be permanently disqualified from teaching in said school…" 24 Pa. Stat. Ann. § 11-1112.
[76] *Id.* at 1154.

initial job offer that was contingent upon removing her scarf.[77] In 1986, READS denied her the position and Moore filed this complaint with the EEOC alleging religious discrimination.[78]

The court reasoned that although READS and its employees were subject to the Garb Law, it failed to demonstrate that Moore's scarf constituted garb under that statute, as there was no evidence that Moore's scarf identified her as a Muslim or as a member of any other religion.[79] READS also failed to show that the statute eliminated its duty to accommodate Moore's religion.[80] Lavoritano decided not to hire Moore almost immediately without consulting counsel or considering her suggested accommodations, which included wearing a crochet cap or differently tied scarves.[81] The record revealed that READS did not look into possible solutions before making its decision.[82] For these reasons, the court ordered that READS hire Moore as a counselor as soon as a position became available and awarded back pay with interest.[83]

Fifteen years later, the United States District Court for the District of Arizona re-examined the issue of hijabs in the workplace in *EEOC v. Alamo Rent-A-Car LLC*.[84] Bilan Nur, a Muslim Somalian immigrant and Alamo rental agent, requested to wear her hijab at work during the month of Ramadan.[85] The company enforced a "Dress Smart Policy" that did not expressly allow or prohibit hijabs.[86] Alamo's Human Resources Manager for the Western Region informed Nur that she could wear her hijab while in the back office, but not while interacting with clients

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[77] *Id.*
[78] *Id.*
[79] *Id.* at 1157.
[80] *Id.* at 1156.
[81] *Id.* at 1160-1161.
[82] *Id.* at 1161.
[83] *Id.* at 1162.
[84] *EEOC v. Alamo Rent-A-Car LLC*, 432 F. Supp. 2d 1006 (D. Ariz. 2006).
[85] *Id.* at 1008.
[86] *Id.*

at the front desk.[87] When Nur continued to wear the hijab she was suspended and later terminated.[88]

The court granted summary judgment in favor of the EEOC as Alamo did not raise genuine issues of material fact as to the issue of reasonable accommodation or undue burden.[89] After finding that the EEOC proved a prima facie case of discrimination, the burden shifted to Alamo to either show that (1) it used good faith efforts to reasonably accommodate Nur; or (2) that it could not reasonably accommodate Nur without undue hardship.[90] First, the court explained that Alamo's offer to accommodate Nur by allowing her to wear the hijab only when she was not actually performing her job did not constitute a good faith effort to accommodate.[91] On the undue hardship issue, the court found that Alamo only posed speculation about possible undue hardships such as increased costs from similar future litigation and negative effects on the company's image.[92] Therefore, the court held in favor of the EEOC because Alamo did not establish that the requested accommodation posed an undue hardship and was thus required to reasonably accommodate Nur.[93]

B. Accommodation Denied

Unfortunately, some litigants' headscarf claims have not been so successful. In *Webb v. City of Phila.*, practicing Muslim Kimberlie Webb requested to wear a headscarf while in uniform and on duty as a Philadelphia police officer.[94] The city denied her request pursuant to

[87] *Id.*
[88] *Id.* at 1009.
[89] *Id.* at 1017.
[90] *Id.* at 1013.
[91] *Id.*
[92] *Id.* at 1015.
[93] *Id.* at 1017.
[94] *Webb v. City of Phila.*, 562 F.3d 256, 258 (3d Cir. 2009).

Philadelphia Police Department Directive 78 that did not authorize religious garb.[95] The department also explained its responsibility to promote religious neutrality as well as the image of a "disciplined, identifiable, and impartial police force."[96] After being sent home twice for coming to work wearing the hijab, the department warned Webb that she could face disciplinary action for violation of the department directive.[97] She stopped wearing the hijab, but brought suit against the City of Philadelphia alleging a failure to accommodate under Title VII.[98]

The Third Circuit found no such violation of Title VII and denied Webb's request to wear the hijab while on duty.[99] In its decision, the court relied heavily on the police department's unwavering adherence to the directive's guidelines.[100] There was no evidence that the department had allowed for any other exceptions to the uniform.[101] Therefore, the court reasoned that the department was primarily and genuinely interested in safety, and agreed that uniform requirements contributed heavily to officer safety and public confidence in the force.[102] Allowing Webb to wear the hijab would have jeopardized these goals and imposed an undue hardship on the city.[103]

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[95] *Id.*
[96] *Id.* at 261.
[97] *Id. at 258.*
[98] *Id.*
[99] *Id.* at 264.
[100] *Id.* at 62.
[101] *Id. Contra Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (holding that a police officer's request to wear a beard while on duty was a reasonable accommodation because the department had previously granted medical exceptions allowing beards and it would violate Title VII to prioritize secular exceptions over religious ones).
[102] *Id.*
[103] *Id. See EEOC v. Geo Group, Inc.*, 616 F.3d 265 (3d Cir. 2010) (denying three Muslim female security guards' request to wear the hijab as an exception to the "zero tolerance headgear policy" in a prison because of the prison's legitimate interest in uniformity of appearance and safety); *Valdes v. New Jersey*, 313 F. App'x 499 (3d Cir. 2008) (finding that allowing a New Jersey Department of Corrections officer to grow his beard to a mutually agreed upon length was a reasonable accommodation and that it was not unlawful to prevent him from growing his beard further).

In *United States v. Board of Educ.*, the Third Circuit faced a similar set of facts.[104] Alima Reardon believed that women should cover their bodies while in public pursuant to her firmly held Islamic beliefs.[105] She had worked as a teacher in Philadelphia since 1970, but began wearing the hijab in 1982.[106] In 1984 three schools refused to let her teach, citing the same Pennsylvania Garb Statute discussed in *READS*.[107] Reardon brought one claim against the school board and another against the Commonwealth of Pennsylvania, each alleging a Title VII violation.[108]

Regarding the Commonwealth of Pennsylvania, the court held that the statute itself conflicted with Title VII and that the Commonwealth should be enjoined from enforcing it.[109] Regarding the board, however, the court denied the accommodation, holding that it would be an undue hardship to require a school board to violate a criminal statute and in turn expose its administrators to criminal prosecution.[110]

Camara v. Epps Air Serv. offers perhaps one of the judiciary's most frustrating responses to a failure to accommodate claim.[111] Epps Aviation hired Aissatou Camara in 2003 as a customer service representative ("CSR"), a position that required significant contact with customers, vendors, and the general public.[112] CSRs are described as "the face of Epps Aviation."[113] The company's dress policy generally required personal hygiene, neatness, and professionalism.[114] At its most specific, the policy stated that "some departments supply

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[104] *United States v. Board of Educ.*, 911 F.2d 882 (3d Cir. 1990).
[105] *Id.* at 884.
[106] *Id.* at 884-885.
[107] *Id.* at 885, *supra* note 75.
[108] *Id.*
[109] *Id.* at 892.
[110] *Id.* at 891.
[111] *Camara v. Epps Air Serv.*, 292 F. Supp. 3d 1314 (N.D. Ga. 2017).
[112] *Id.* at 1320.
[113] *Id.*
[114] *Id.*

employees with uniforms that are to be worn when at work."[115] CSRs like Camara were required to wear such uniforms.[116]

In 2015, Camara requested to wear the hijab with her uniform.[117] Her manager, Dale, the Epps owner, Mr. Epps, and the Human Resources Director asked Camara to take a photo in her hijab so that they "'could see what she looked like with a Hijab.'"[118] A few days later the company denied her request.[119] Mr. Epps took responsibility for the decision, explaining in his deposition that "the hijab was 'not consistent with the image [he] want[s] at [his] business.'"[120] He also conceded that "negative stereotypes and perceptions about Muslims was a factor in his decision."[121] Epps fired Camara when she rejected an offer to work as an accountant and insisted on maintaining her CSR position.[122] Camara brought this claim alleging a failure to reasonably accommodate her religious beliefs.[123]

The court cited the Eleventh Circuit's reasoning that "... the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one which the employee suggested."[124] The Court explained that Epps met this duty of reasonable accommodation by offering to transfer Camara to a non-client-facing position for which she could wear the hijab and receive the same pay, benefits, and hours.[125] The court explained that because this was a reasonable accommodation, the duty then

[115] *Id.*
[116] *Id.* at 1319.
[117] *Id.* at 1321.
[118] *Id.* at 1322.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.* at 1324.
[123] *Id.* at 1326.
[124] *Id.* at 1327.
[125] *Id.* at 1329.

shifted to Camara to accept.[126] Furthermore, the court took an approach different from the *Alamo* court by giving weight to Epps' speculative concerns about image.[127] The court found that an exemption to the uniform policy could have "potentially" cost Epps business and therefore imposed more than a *de minimis* cost.[128]

As the next case demonstrates, Muslim employees' proposed accommodations extend beyond the hijab and into prayer time. In *EEOC v. JBS*, the court engaged in a thorough analysis of a detailed fact pattern spanning from Ramadan 2007 to Ramadan 2011.[129] JBS, the world's largest beef producer, employed several hundred Muslim employees who sought shift changes at the beef processing facility.[130] JBS allowed production employees to have two scheduled breaks each shift in addition to unscheduled or restroom breaks.[131] The employees formed a committee that requested to shift one of their two scheduled breaks to coincide with the sunset prayer and breaking of the fast during Ramadan.[132] JBS supervisors were told that they could not grant employees breaks to pray pursuant to plant policy, therefore many began praying during unscheduled breaks but were disciplined for doing so.[133] Scheduled breaks quickly proved difficult to adjust as JBS maintained a strict schedule to ensure that meat was not left out on the production line for longer than was safe.[134]

The court held that JBS had met its obligation to provide reasonable accommodations during some but not all time periods.[135] Specifically, the court found that JBS provided

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[126] *Id.*
[127] *Id.* at 1331-1332.
[128] *Id.*
[129] *EEOC v. JBS USA, LLC*, 339 F. Supp. 3d 1135 (D. Colo. 2018).
[130] *Id.* at 1149.
[131] *Id.* at 1156.
[132] *Id.* at 1161.
[133] *Id.* at 1157.
[134] *Id.* at 1150.
[135] *Id.* at 1179.

reasonable accommodations by moving scheduled breaks to 7:30 pm to better coordinate with prayer times, but that it failed to provide reasonable accommodations by simply allowing employees to pray during already existing breaks.[136] The court reasoned that this was a coincidence but not an accommodation.[137] Additionally, the court held that allowing Muslim employees to pray during unscheduled prayer times, which were typically used for restroom breaks, during Ramadan 2009 and 2010 was a reasonable accommodation that did not impose an undue hardship and should have been implemented in other years.[138]

VI. ADA Case Law Interpreting Accommodation

We previously examined many Title VII cases governed under the *Hardison de minimis* cost standard. This analysis revealed that while many claims prevailed, many others were denied due to the absence of a higher, codified undue hardship standard. Although the ADA reasonable accommodations standard is much higher than that of Title VII, proposed disability accommodations are also frequently denied.

This section will focus on three common reasons for denial: (1) that reasonable accommodations had already been provided; (2) that the employee is not a qualified individual under the ADA because no reasonable accommodation exists that would allow the employee to perform the essential functions of their job; and (3) that the employee is not a qualified individual under the ADA because no reasonable accommodation exists that would eliminate a direct threat, which is defined as a significant risk to the health or safety of others.[139] Of course,

[136] *Id.*
[137] *Id.*
[138] *Id.* at 1183.
[139] 42 U.S.C. § 12111(3).

courts may and have addressed other issues, but the following cases represent a significant portion of ADA reasonable accommodation litigation.

A. Reasonable Accommodations Already Provided but Rejected

First, courts may find that the employer had already satisfied its burden by providing one or more reasonable accommodations, therefore denying plaintiff's claims for further relief. In other words, the court is saying that the employee has asked for too much. The Virginia Eastern District Court said exactly this in *EEOC v. Newport News Shipbuilding & Drydock Co.*: "At some point an employer's efforts to accommodate must be deemed reasonable as a matter of law."[140] The court in *Noll v. IBM* agreed.[141]

Noll, a deaf software engineer at IBM, argued that the company refused to reasonably accommodate him because only about 100 of IBM's 46,000 video files and 35,000 audio files were properly captioned.[142] During the relevant time period, however, IBM provided many reasonable accommodations such as on-site and remote ASL interpreters and video transcripts.[143] The company also employed several programs such as a communication access real-time translation, internet based real-time transcription, and video relay services.[144] Noll rejected these accommodations as insufficient and continued to request captioning on the videos themselves because it was tiring to look between the interpreter and the screen.[145]

The court reasoned that IBM had met its obligation to reasonably accommodate Noll because "employers are not required to provide a perfect accommodation or the very

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[140] *See EEOC v. Newport News Shipbuilding & Drydock Co.,* 949 F. Supp 403, 409 (E.D. Va. 1996) (holding that the company had already reasonably accommodated an employee with pre-existing allergies to airborne molds and fungi that were exacerbated by his HIV positive status by undertaking an extensive plan to improve air quality by repairing the building and changing air filters).
[141] *Noll v. IBM*, 787 F.3d 89 (2d Cir. 2015).
[142] *Id.* at 93.
[143] *Id.*
[144] *Id.* at 92-93.
[145] *Id.* at 93.

accommodation most strongly preferred by the employee… All that is required is effectiveness."[146] The court denied Noll's claim, holding that IBM's already-provided accommodations were reasonable.[147]

B. Unqualified Individuals Who Are Unable to Perform Essential Functions

While the above case involved an employee whose employer already provided reasonable accommodations, the next two cases demonstrate that some employees' claims fail because they cannot show that an effective reasonable accommodation exists that would allow them to perform the essential functions of their jobs. Therefore, the following courts found that these employees were not qualified individuals who were entitled to reasonable accommodations under the ADA.

In *Gaul v. Lucent Techs.*, Gaul suffered from depression and anxiety-related disorders that heavily impacted his ability to work.[148] Over the course of four years, he suffered a nervous breakdown, was hospitalized for three weeks, was absent from work for three months, suffered a relapse after receiving a negative performance review, and ultimately went out on disability leave.[149] Gaul requested to transfer to a role in which he would not be subjected to "prolonged and inordinate stress" by coworkers.[150]

The court found that this was unreasonable because AT&T would never be able to permanently comply with the proposed accommodation because of its subjectivity.[151] If granted, AT&T would be obligated to transfer Gaul whenever he deemed appropriate.[152]

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[146] *Id.* at 95. *See Epps* (reasoning that employers are not required to offer several accommodations to the employee to comply with Title VII).
[147] *Noll*, 787 F.3d at 97.
[148] *Gaul v. Lucent Techs.*, 134 F.3d 576, 577 (3d Cir. 1998).
[149] *Id.*
[150] *Id.* at 578.
[151] *Id.* at 581.
[152] *Id.*

Administratively, it would force supervisors to consider his condition for every scheduling and assignment decision, which is not required by law.[153] Lastly, Gaul erroneously asked the court to interfere with interoffice decisions by placing conditions on his employment which is prohibited by law.[154] Therefore, the court held that Gaul was not a qualified individual under the ADA because he failed to show that he could perform the essential functions of his job even with reasonable accommodations.[155]

Similarly, in *Pegues v. Miss. State Veterans Home*, Pegues worked as a direct care worker at a Mississippi veterans home.[156] Her job description required "heavy work" including the need to "frequently exert force equivalent to lifting up to approximately 50 pounds and or occasionally exert force equivalent to lifting up to approximately 100 pounds."[157] When Pegues injured her back in 2013, her doctor requested that she be placed on "light duty."[158] The home terminated her in 2014 for being unable to fulfill her job duties.[159] The court reasoned that her proposed accommodation of light duty was unreasonable because it exempted her from performing the essential functions of the job.[160] The court denied her accommodation as the ADA does not require other employees to work harder or longer as a form of reasonable accommodation, and Pegues failed to demonstrate that she would be able to perform otherwise.[161]

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153 *Id.*
154 *Id.* "Indeed, nothing in the law leads us to conclude that in enacting the disability acts, Congress intended to interfere with personnel decisions within an organizational hierarchy. Congress intended simply that disabled persons have the same opportunities available to them as are available to nondisabled persons." *Id.*
155 *Id.*
156 *Pegues v. Miss. State Veterans Home*, 736 Fed. Appx. 473 (5th Cir. 2018).
157 *Id.* at 474.
158 *Id.*
159 *Id.*
160 *Id.* at 476.
161 *Id.* at 477. *See Dey v. Milwaukee Forge*, 957 F. Supp. 1043 (E.D. Wis. 1996) (holding that the employee who could no longer bend and lift as his job required was not a qualified individual under the ADA and even if he were,

C. Unqualified Individuals Who Pose a Direct Threat to Others

Third, courts may deny reasonable accommodation claims because the plaintiff poses a direct threat to others that cannot be eliminated through reasonable accommodation.[162] In *Grosso v. UPMC*, the defendant hospital hired Grosso as a staff perfusionist.[163] She was primarily responsible for operating the cardiopulmonary bypass machine which is used during open-heart surgery to sustain the life of the patient.[164] Grosso was a Type I diabetic who also suffered from Hypoglycemic Unawareness Syndrome.[165] She wore a sensor that rang when her blood sugar dropped too low, which on between thirty to thirty-five occasions caused disorientation and on six to seven occasions caused fainting.[166] One of UPMC's cardiothoracic surgeons stated that if a perfusionist became unconscious during surgery it could lead to irreversible injury or death for the patient.[167]

Grosso was terminated in 2008 after two incidents in which she appeared lethargic while administering bypass.[168] She subsequently sued alleging that the hospital could have accommodated her more without undue hardship.[169] The court reasoned that UPMC provided Grosso with reasonable accommodations for both of her conditions during her employment

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that the employer had already satisfied its duty to reasonably accommodate by offering a new, less intensive position).

[162] Under the ADA, employers are not required to provide reasonable accommodations if the employee is a direct threat to the safety of others or the employee. *Grosso v. UPMC*, 857 F. Supp. 2d 517, 535 (W.D. Pa. 2012). The ADA defines direct threat as a significant risk of harm. 42 U.S.C. §12111(3). *Sch. Bd. of Nassau Cnty. v. Arline* outlines the four factors used to analyze whether a significant risk of harm exists. The four factors are: (a) the nature of the risk; (b) the duration of the risk; (c) the severity of the risk; (d) the probabilities the disease will be transmitted and will cause varying degrees of harm. *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 288 (1987). This is an "individualized assessment" that requires "reasonable medical judgment" of the employee's ability to perform his or her essential job functions. 29 CFR § 1630.2(r). The *Arline* standard finds a home in every other ADA direct threat case.

[163] *Grosso*, 857 F. Supp. 2d at 520.

[164] *Id.*

[165] *Id.* at 521.

[166] *Id.* at 521-522.

[167] *Id.* at 524.

[168] *Id.* at 527.

[169] *Id.* at 536.

which included allowing her to take breaks or sending other staff to get her food.[170] Furthermore, the court found that she was unable to perform the essential function of her job, being the operation of the bypass machine, even with these accommodations.[171] Therefore, the court held that she was not a qualified individual under the ADA.[172] The court also held that she posed a direct threat to patients and granted summary judgment to the hospital.[173]

Although *Grosso* involved severe health risks, even more mild requests have also been denied, which demonstrates how judicial discretion can disturb the effectiveness of even a high legislative standard like the ADA's. In *Vande Zande v. Wis. Dep't of Admin.*, a wheelchair bound paraplegic employee in the housing division of Wisconsin's department of administration proposed two accommodations.[174] First, she requested a desktop to work from home for eight weeks due to pressure ulcers.[175] Her supervisor refused because he only had about fifteen to twenty hours of work for her to complete remotely and told her that the remaining hours would come from her sick or vacation time.[176]

The court reasoned that no jury would have seen working from home as a reasonable accommodation.[177] Judge Posner explained that collaboration and supervision are indispensable parts of most jobs, therefore, an employer is not required to accommodate a disabled employee by allowing remote work because it could lead to reduced productivity.[178] On this

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[170] *Id.* at 535.
[171] *Id.* at 536.
[172] *Id.*
[173] *Id.* at 537. *See Together Emples v. Mass Gen. Brigham Inc.* 573 F. Supp 3d 412, 429 (D. Mass 2021) (finding that employees who requested medical exemptions to the COVID-19 vaccine were not qualified individuals under the ADA because their conditions did not substantially limit the major life activity of working).
[174] *Vande Zande v. Wis. Dep't of Admin*, 44 F.3d 538, 542 (7th Cir. 1995).
[175] *Id.* at 544.
[176] *Id.*
[177] *Id.* Judge Posner conceded that while this perception of remote work may change in the future, at the time this case was decided in 1995 it was unreasonable to allow an individual to work from home. *Id.*
[178] *Id.*

accommodation, the court held that giving the employee a desktop to work from home would have been an unreasonable accommodation.[179]

Next, Vande Zande proposed that counter and sink heights in office kitchenettes be lowered for wheelchair access.[180] Sinks and counters were each thirty-six inches high, and the employee requested that they be lowered by two inches.[181] In response, the state installed a thirty-four-inch shelf in the kitchenette on her floor but did not modify sink heights.[182] This proposed renovation would have cost $150 to perform in the kitchen on her floor and about $2,000 to perform on all floors.[183] As a result, Vande Zande was forced to use the nearby, lower bathroom sink, which she argued stigmatized her in the workplace.[184]

First, Judge Posner reasoned that there was no legal obligation to modify the sink or counter heights because construction began before the effective date of the ADA, which is not a retroactive statute.[185] Second, the court focused heavily on the cost analysis in rejecting the employee's stigmatization claim.[186] Judge Posner stated: "But we do not think an employer has a duty to expend even modest amounts of money to bring about an absolute identity in working conditions between disabled and nondisabled workers. The creation of such a duty would be the inevitable consequence of deeming a failure to achieve identical conditions 'stigmatizing.' That

[179] *Id.* at 545.
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.* at 546.
[184] *Id.*
[185] *Id.*
[186] Judge Posner added that "If the nation's employers have potentially unlimited financial obligations to 43 million disabled persons, the Americans with Disabilities Act will have imposed an indirect tax potentially greater than the national debt. We do not find an intention to bring about such a radical result in either the language of the Act or its history." *Id.* at 543.

is merely an epithet."[187] This case demonstrates how judicial discretion can preclude a statute like the ADA from having its intended effect.

VII. Comparing the Effectiveness of the Title VII and ADA Standards

It is time for the *Hardison* undue hardship standard to be re-examined for two primary reasons. First, *Hardison*'s "*de minimis* cost" language is not found anywhere in Title VII itself. The determination of whether an employer has violated the United States' most sweeping civil rights statute rests on a statutorily undefined term. Such a pivotal term should not be left open for nine justices to interpret. As our nation's legislative body, Congress needs to revisit § 2000e-2 to add a statutory definition of undue hardship that resembles the ADA's. Of course, this raises the question of what this definition should look like more specifically.

In answering this question, it is helpful to realize that religious discrimination claims under Title VII and disability discrimination claims under the ADA tend to resemble each other substantively, meaning that plaintiffs will often bring similar grievances, and the court will often provide common responses. Section VI outlined three common grounds for denying proposed disability accommodations. Upon further analysis, these grounds overlap significantly with the judiciary's common reasons for denying proposed religious accommodations.

The first is that the employer had already provided a reasonable accommodation. In the religious context, this could equate to a request for days off for Ramadan or the Sabbath, or a request for prayer time during work hours that was granted but not to the employee's satisfaction. The second common ground for denial is that the employee had lost qualified individual status under the statute because no reasonable accommodation existed that would

[187] *Id.* at 546.

allow the employee to perform the essential functions of his or her job. It is easy to imagine similar issues arising in the religious context, such as Muslim or Jewish employees in a pork factory whose religion prohibited them from fulfilling any number of positions that require contact with the meat.

Third, many disability claims are denied because the employee lost qualified individual status due to the existence of a significant risk to the health or safety of others. This ground for denial is a bit more difficult to analogize to a Title VII case as it is unlikely that a religious accommodation would jeopardize another's health or safety. However, *JBS* grappled with that exact threat when a proposed shift change could have resulted in rotten meat at a massive processing facility that delivered food across the world.

Due to the sweeping similarities between Title VII and ADA accommodation claims, Title VII's undue hardship definition should mirror and then surpass the ADA's. To do so, Congress should insert another provision between what is currently § 2000e-2(j) and (k). This provision should read: "The term 'undue hardship' means an action requiring significant difficulty or expense. Significant difficulty or expense may exist when: (1) a reasonable accommodation as proscribed by this statute has already been provided; or (2) when no reasonable accommodation exists that would allow the employee to perform the essential functions of the job. Significant difficulty or expense is unlikely to exist when: (1) the accommodation would not affect the employee's ability to perform his or her job; or (2) the accommodation requires little to no change in scheduling or protocol." This definition of undue hardship would set higher expectations for employers which in time would hopefully result in more granted accommodations.

Additionally, the ADA guides the courts with four factors to consider when deciding whether an undue hardship exists.[188] These factors encourage the judiciary to focus on potential monetary burdens as disability accommodations often involve construction or renovation. In contrast, religious accommodations typically do not require such expensive undertakings. [189] To further improve Title VII, Congress should follow the above definition of undue hardship with similar factors so that judicial decisions are better aligned with legislative intent. These factors should include: "(i) the nature of the employee's job and job requirements; (ii) the nature of the covered entity involved in the provision of the reasonable accommodation; (iii) the nature and cost of the accommodation needed; and (iv) the degree and difficulty of change needed to provide the reasonable accommodation."

Second, the *Hardison* undue hardship definition needs to be overruled because of the case's weak reasoning and lack of justification for this low bar. The term "*de minimis*" does not appear until the second to last paragraph of the decision. In fact, this is the only time that the phrase appears in the majority decision at all. Furthermore, the facts of *Hardison* simply do not align with the *de minimis* standard. To accommodate Hardison would have required deviating from a long-established CBA. Under both Title VII and the ADA, CBAs are essentially untouchable because they maintain employee morale and expectations. Moreover, they are an inextricable cornerstone of American labor law. To uproot this agreement would have been anything but minimal. The facts of this case almost begged for a higher standard, but with

[188] *See supra* note 39 and accompanying text.
[189] While the claims examined in this paper do have many substantive similarities, disability accommodations and religious accommodations are inherently different in that they typically demand different degrees of modification. Accommodating a disabled employee in compliance with the ADA could and often does require construction or renovation to the covered entity's facilities to accommodate wheelchairs. In contrast, religious accommodations typically only require dress code or scheduling changes, which impose little to no financial burden on the employer. Therefore, the following factors focus less on financial burdens and more on evaluating the nature of the position and the company at large.

seemingly no explanation, the court landed on "*de minimis*." To base over four decades of Title VII litigation on one paragraph of judicial reasoning is inappropriate and deserves to be re-examined.

For these reasons, the Title VII undue hardship standard needs to be heightened and codified. However, we must consider what the practical effect of a higher legislative standard would be. Would employees really benefit, or would pro-employer judges continue to construe accommodations as unreasonable? In some cases, a higher standard would likely lead to more favorable outcomes for employees. However, *Vande Zande* proves that more comprehensive legislation does not always succeed in practice. In this case, the financial cost of accommodation was at most two-thousand dollars. While this price tag may have seemed inconsequential to some, Judge Posner found this figure unsettling. Although a higher undue hardship standard should in theory create more beneficial outcomes for plaintiffs, the ADA case law examined above warns that this is not guaranteed.

VIII. Conclusion

The previous sections have thoroughly compared two anti-discrimination statutes. We have analyzed cases in which employees have alleged that their employer either discriminated against them on the basis of religion, under Title VII, or disability, under the ADA. The Title VII cases showed that the *Hardison* standard should undoubtedly be revised and codified. Although *Patterson* was not the case to do it, the Supreme Court has since granted certiorari in *Groff v. DeJoy* to determine what the appropriate religious discrimination standard should be.[190]

[190] *See supra* note 4.

However, the question remains as to what if any impact a stricter standard would have on religious discrimination claims.