

CLIMATE CHANGE PROTECTION ADVOCACY AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

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ABSTRACT:

In December 2022, earth scientist Rose Abramoff was dismissed from her position at Oak Ridge National Laboratory after publicly protesting institutional inaction on climate change. Her termination raises a pressing question: does federal employment law protect workers who lose their jobs because of deeply held climate change beliefs? This Article examines that question under Title VII of the Civil Rights Act of 1964 and argues that scientific belief in climate change is akin to a strongly held moral belief already protected under Title VII, and therefore merits similar employment protection. Following this Introduction, Part II surveys the history of civil rights protections generally and the statutory protections Title VII provides against employment discrimination. Part III analyzes the current legal landscape governing “personal beliefs” in the workplace and evaluates two paths for extending Title VII protection to climate change science: expanding the existing definition of religion through case law, or amending the statute to add “belief” as a protected category alongside religion. Part IV concludes that adding a distinct category of employment protection for climate change advocates offers a robust and effective solution for employees like Abramoff, and aligns with broader societal and international trends toward recognizing science-based moral conviction.

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I. INTRODUCTION

After advocating for action on climate change, earth scientist, Rose Abramoff,¹ was dismissed from an employed position at Oak Ridge National Laboratory (ORNL).² It all began, when at a conference held by the American Geophysical Union (AGU)³ in December 2022, she

and her colleague, climate scientist Peter Kalmus,⁴ unveiled a banner stating, “Out of the lab & into the streets.”⁵ Shortly after that brief act of protest, the AGU – an organization consisting of 60,000 individuals in the earth and space sciences – expelled Abramoff from the conference and removed her research from the program. The AGU then initiated an ongoing investigation into Abramoff’s professional conduct and then her employer, ORNL terminated her employment on January 3, 2023.⁶ She appears to be the first earth scientist to lose a job due to climate protection advocacy. ORNL claimed it was compelled to fire Abramoff because she misused government resources by engaging in a personal activity during a work-related trip and because she did not adhere to their code of business ethics and conduct. ORNL’s code emphasizes

¹ Rose Abramoff, Phd. is an activist and earth scientist. She started as a forest ecologist and now studies the effect of climate change and land use change on the land carbon cycle, with a focus on plants and soil. As an activist, she works on a variety of environmental justice issues with Scientist Rebellion and other groups. She has engaged in nonviolent civil disobedience targeting colonial resource extraction, luxury emissions, and fossil fuel expansion and funding. <https://www.climateone.org/people/rose-abramoff>. <https://geographical.co.uk/climate-change/im>

-a-geographer-rose-abramoff. Her protest was part of a coordinated effort by scientists from the group Scientist Rebellion to which Abramoff belonged. <https://scientistrebellion.org/>. She is on the board of directors for the Climate Emergency Fund. <https://www.climateemergencyfund.org/rose-zheng-abramoff-1>.

² Oak Ridge National Laboratory (ORNL) is a federally funded research and development center in Oak Ridge, Tennessee, United States. Founded in 1943, the ORNL is the largest science and energy national laboratory in the Department of Energy system and third largest by annual budget. Its scientific programs focus on materials, nuclear science, neutron science, energy, high-performance computing, systems biology and national security. See, <https://www.ornl.gov/>.

³ The American Geophysical Union is a 501 nonprofit organization of Earth, atmospheric, ocean, hydrologic, space, and planetary scientists and enthusiasts that according to their website includes 130,000 people. <https://www.agu.org/>

⁴ Peter Kalmus is an American scientist and writer based in Altadena, California. He is a data scientist at NASA's Jet Propulsion Laboratory as an associate project scientist at UCLA's Joint Institute for Regional Earth System Science & Engineering. <https://peterkalmus.net/>.

⁵ Julia Rosen, Climate change fears propel scientists out of the lab and into the world, <https://www.latimes.com/environment/story/2019-12-17/scientists-become-advocates-on-climate-change> (last visited Oct. 24, 2023).

⁶ <https://www.wfae.org/energy-environment/2023-01-13/for-her-climate-protests-and-arrests-a-scientist-loses-her-job>.

scientific integrity, protecting the institution's reputation, and using government resources only as authorized, appropriate, and with integrity, responsibility, and care.⁷

The case of Rose Abramoff's job termination due to climate change science raises a question about the adequacy of employment law protections available under the current version of Title VII of the 1964 Civil Rights Act. This paper examines the question and advocates a Title VII expansion to include climate change scientific belief⁸ on the basis of the issue's pressing nature for humanity's future. We argue that climate change science belief protection in the workplace is akin to a strongly held moral belief already protected under Title VII, and, therefore, deserves employment protection. The paper is structured in the following manner:

Part I provides the background of civil rights protections in general and the Title VII statutory protections against employment discrimination in particular. Part II analyzes the current landscape for employment protections regarding "personal beliefs" and evaluates two options for expanding these protections to cover climate change science. Part III concludes that adding a separate category of employment protection for climate change advocates is a robust and effective solution to situations like that of Rose Abramoff.

⁷ Research Integrity, [https://www.ornl.gov/content/research-integrity#:~:text=Conduc](https://www.ornl.gov/content/research-integrity#:~:text=Conduct%20manage%20judge%20and,the%20limitations%20of%20my%20knowledge.)

t%2C%20manage%2C%20judge%2C%20and,the%20limitations%20of%20my%20knowledge.; What really happened at AGU? Arielle Samuelson. January 27, 2023. <https://heated.world/p/what-really-happened-at-agu>.

⁸ The authors use the term "climate protection advocacy" to apply to any political or social movement focused on pressuring governments, industry and individuals to take action to address the causes and impacts of human-driven climate change. According to the United Nations, "Climate change refers to long-term shifts in temperatures and weather patterns. These shifts may be natural, such as through variations in the solar cycle. But since the 1800s, human activities have been the main driver of climate change, primarily due to burning fossil fuels like coal, oil and gas. Burning fossil fuels generates greenhouse gas emissions that act like a blanket wrapped around the Earth, trapping the sun's heat and raising temperatures." What Is Climate Change?, UNITED NATIONS, <https://www.un.org/en/climatechange/what-is-climate-change> [https://perma.cc/4XP6-8F3R] (last visited Oct. 24, 2022).

II. BACKGROUND

A. A BRIEF HISTORY OF CIVIL RIGHTS PROTECTIONS

1. *International and Domestic Goals*

When the United Nations drafted the Universal Declaration of Human Rights (UDHR), Eleanor Roosevelt chaired the committee, representing the United States.⁹ On December 10, 1948 the United Nations General Assembly adopted the UDHR which states that each person is “entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁰ Specific to employment, Article 23 declares that each person “has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment,” as well as equal pay for equal work “without any discrimination.”¹¹

Through treaties and other mechanisms, the United Nations encouraged nations to promote and protect these human rights. The United States supported this endeavor and committed to working toward providing these human rights protections within its borders.¹² As the United Nations continued its progress in establishing international human rights law through a series of conventions,¹³ the United States made parallel efforts to protect civil rights, including in the area

⁹ See *History of the Document*, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited July 13, 2020) for more information on how the document was drafted in record time as the international world united in its recognition of human rights after World War II.

¹⁰ Universal Declaration of Human Rights, Article 2, U.N. Doc (1948).

¹¹ *Id.* Article 23.

¹² For example, in July of 1948 President Harry S. Truman signed Executive Order 9981 declaring it “to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.” Six months later, in his remarks to the Committee on Equality of Treatment and Opportunity in the Armed Services, President Truman stated “it is my profound desire that the work of this Committee shall yield results which will be not simply a report, but a set of operable plans, a blueprint, for constructive action.” On October 39, 1954, Truman’s goal was realized as “the armed services announced the integration of all of its branches.” See Establishing the President’s Committee on Equality of Treatment and Opportunity in the Armed Services, 13 Fed. Reg. 4313 (July 26, 1948); *Remarks to President’s Committee on Equality of Treatment and Opportunity in the Armed Services*, NAT. ARCHIVES (Jan. 12, 1949), <https://www.trumanlibrary.gov/library/research-files/remarks-presidents-committee-equality-treatment-and-opportunity-armed?documentid=NA&pagenumber=2>; *Desegregation of the Armed Forces*, NAT. ARCHIVES, <https://www.trumanlibrary.gov/library/online-collections> (last visited Jul. 10, 2020).

¹³ See *Human Rights*, UNITED NATIONS, <https://www.un.org/en/sections/issues-depth/human-rights/> (last visited July 13, 2020) (listing “the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), . . . and the Convention on the Rights of Persons with

of employment law.¹⁴

2. *Civil Rights Act of 1964*

The Civil Rights Act provided one of the nation's first federal employment protection laws.¹⁵ As indicated in Hood's Treatise, contract law determines the duties and protections of the employer-employee relationship. Although Congress enacted a law prohibiting racial discrimination in contracting in 1870,¹⁶ the law was largely ignored. However, the Civil Rights movement brought forward renewed focus on racial discrimination, and the eventual enactment of Title VII (also known as Equal Employment Opportunity), was considered a watershed moment.

President John F. Kennedy, who initiated the Civil Rights Act, addressed the nation in a televised speech in June 1963, and declared that "the heart of the question is whether all Americans are to be afforded equal rights and opportunities."¹⁷ The Civil Rights Act of 1964 made it illegal to discriminate on the bases of race, color, religion, sex, and national origin.¹⁸ Although the

Disabilities (2006), among others.").

¹⁴ See, e.g., The Equal Pay Act of 1963, 29 U.S.C.S. § 206 (Lexis 2020); Age Discrimination Act of 1967, 29 U.S.C.S. §§ 621–634; the Americans with Disabilities Act of 1990, 42 U.S.C.S. §§ 12101–12213.

¹⁵ See William R Corbett, *The Need for a Revitalized Common Law of the Workplace*, 69 BROOKLYN L. REV. 91, 91 (2003) for a list of the major pieces of federal legislation governing employment law. Prior to 1960, Congress enacted two federal statutory laws: the National Labor Relations Act in 1935 and the Fair Labor Standards Act in 1938. The first governed labor union activities while the second established fair wage minimums for employees. In 1963, Congress passed the Equal Pay Act to prohibit wage discrimination based on sex. However, these laws did not address protections preventing discrimination in decisions to hire, promote, or dismiss employees. *Id.* at 127–28.

¹⁶ See 42 U.S.C.S. § 1981 ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.") This section of U.S. Code was based on a statute passed in 1870 by the forty-first Congress that became the Fifteenth Amendment to the Constitution establishing the right to vote regardless of "race, color, or previous conditions of servitude." Section 16 of this 1870 Act states "And be it further enacted, that all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts . . . as is enjoyed by white citizens . . ." See Act of May 31, 1870, ch. 114, 16 Stat. 140, 140–44.

¹⁷ See *JFK and Civil Rights*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/jfk-domestic-politics/> (last visited July 17, 2020).

¹⁸ See Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, 241.

government centered much of its discussion on racial discrimination, the act included these other inherent or immutable UDHR protected classes, as well as religion.¹⁹

Subsequently, Congress enacted the Equal Employment Opportunities Act of 1972 to “further promote equal employment opportunities for American workers” by expanding the enforcement authority of the Equal Employment Opportunity Commission (EEOC).²⁰ In 1991, Congress amended²¹ the Civil Rights Act “to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.”²² Key provisions allowed employees to recover damages when the employer intentionally discriminated and established that employment practices having a disparate impact on a protected class could also be unlawful.²³

These amendments and legislative additions expanded the scope of civil rights protections for employees.²⁴ Outside of civil rights provisions prohibiting discriminatory practices that denied a person employment, training opportunities or promotions, Congress enacted labor protections regarding an employee’s wages, health care, retirement, unemployment, and safety.²⁵ In addition, a person may be protected from retaliation for certain activities such as “whistleblowing” on specific wrongdoing by her employer or organizing a union at her place of employment. Many states have passed statutes regulating fair employment practices to further protect the civil rights of employees or to strengthen enforcement measures.²⁶

B. TITLE VII: EQUAL EMPLOYMENT OPPORTUNITY

¹⁹ *Id.*

²⁰ See Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103.

²¹ Here, Congress found that “additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace” and to modify a 1989 Supreme Court holding that had “weakened the scope and effectiveness of Federal civil rights protections.” See Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071, § 3.

²² *Id.*

²³ *Id.*

²⁴ Since enacting the Civil Rights Act, Congress has provided additional protections against discrimination on the basis of a person’s pregnancy or disability. Disability resides, like age discrimination, in a different area of the U.S. Code, while the Pregnancy Discrimination Act added a new subsection to the Civil Rights act clarifying that the term “on the basis of sex” includes pregnancy. See 95 P.L. 555, 92 Stat. 2076, 95 P.L. 555, 92 Stat. 2076

²⁵ For example, the Fair Labor Standards Act specifies the minimum wage that employees receive, and the Occupational Safety and Health Act requires an employer to meet minimum safety standards in its work environment.

²⁶ Unfortunately, the result is that “[t]he current landscape of labor and employment law in the United States is a patchwork of federal legislation and related case law, as well as state legislation and common law tort and contract theories. See Corbett, *supra* note 15, at 127; See also Stephen F. Befort, *Labor and Employment Law at the Millennium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351 (2002) (providing an in-depth discussion of the evolution of employment law).

Title VII of the Civil Rights Act of 1964 is the federal code that addresses employment discrimination. Its protections could be extended to cover “climate belief” and it is, therefore, the focus of this Article.²⁷

1. Purpose

Unlike other anti-discrimination legislation, which often contain a “Findings and Purpose” introductory section,²⁸ neither the Civil Rights Act itself nor the Title VII Equal Employment Opportunity code therein outline a specific purpose for the act.²⁹ Instead the language of the Civil Rights Act of 1964 introduction addresses employment discrimination obliquely, proclaiming it “an Act . . . to establish a Commission on Equal Employment Opportunity, and for other purposes,”³⁰ while Title VII launches straight into definitions.

However, an evaluation of the purpose of other acts prohibiting discrimination may reveal congressional intent for the Civil Rights Act as well. In congressional acts addressing sex discrimination in pay, age discrimination, and discrimination against Americans with disabilities, Congress included a description of the negative impact on the employees, commerce, and the public.³¹ For employees, the impacts included depressed wages, lower living standards, disadvantages in retaining and regaining employment, and limited chance “to pursue those opportunities for which our free society is justifiably famous.”³² The acts state a finding that discrimination “burdens commerce and the free flow of goods in commerce.”³³ Regarding societal or public findings, the acts noted that discriminatory practices are unfair, prevent “the maximum utilization of the available labor resources,”³⁴ and cause unnecessary expense to the country when

²⁷ See Civil Rights Act of 1964, 42 U.S.C.S. §§ 2000e–2000e-17 (Lexis 2020).

²⁸ See, e.g., 29 U.S.C.S. § 621 (describing “congressional statement of findings and purpose”) and 42 U.S.C.S. § 12101 (enumerating eight findings and four purposes of the act).

²⁹ See generally Chuck Henson, *The Purposes of Title VII*, 33 ND J. L. Ethics and Public Policy 221, 226-230 (2019) (discussing the largely symbolic domestic and foreign policy purposes for prohibiting racial discrimination in the Civil Rights Act precluding a more concrete purpose for the Act).

³⁰ Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, 241.

³¹ See Equal Pay Act of 1963, Pub. L. No. 88-38, § 2, 77 Stat. 56, 56; Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, § 2, 81 Stat. 602, 602; Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 2, 104 Stat. 327, 328–29.

³² Americans with Disabilities Act of 1990, § 2.

³³ Age Discrimination in Employment Act of 1967, § 2. This wording was likely intended to establish congressional authority to prohibit discrimination utilizing the enumerated congressional power to regulate commerce granted under Article I, Section 8 of the Constitution.

³⁴ Equal Pay Act of 1963, § 2.

its citizens are dependent or nonproductive.

Based on these findings, the anti-discrimination acts declare a purpose of promoting employment and prohibiting discrimination based on a particular employee characteristic. The Americans with Disabilities Act of 1990 explains its purpose most clearly: “(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 disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities.”³⁵

Although not explicitly stated, these three objectives apply to Title VII Equal Employment Opportunity when the language “individuals with disabilities” is replaced with language to cover discrimination against employees “because of such individual's race, color, religion, sex, or national origin.”³⁶ The statutory protections under Title VII work to provide a clear national mandate to eliminate discrimination, to provide consistent and enforceable standards addressing discrimination through the EEOC, and to ensure the federal government is central to enforcing those standards.

Additionally, by 1971, the Supreme Court spoke to the purpose of Title VII in *Griggs v. Duke Power Co.*,³⁷ noting that “the objective of Congress in the enactment of Title VII is plain from the language of the statute.”³⁸ The Court explicitly found congressional intent “was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees.”³⁹ Two years later, in *McDonnell Douglas Corp. v. Green*,⁴⁰ the Supreme Court illuminated the rationale behind the objective: “The broad, overriding interest, shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions.”⁴¹

2. Title VII Statutory Protections Provided

³⁵ Age Discrimination in Employment Act of 1967, § 2.

³⁶ See 42 U.S.C.S. § 2000e-2 (Lexis 2020).

³⁷ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

³⁸ *Id.* at 429.

³⁹ *Id.* at 429-30.

⁴⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁴¹ *Id.* at 801.

Title VII's key provision prohibits an employer from denying employment or otherwise discriminating "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."⁴² However, nowhere is a definition of discrimination found in Title VII of the Civil Rights Act.⁴³ Title VII focuses instead on defining "unlawful employment practices," allowing the judicial branch and the EEOC, an administrative agency, to determine whether or not an employer's activities constitute unlawful discrimination.

Consequently, scholars debated whether the prohibited activities were sufficient to achieve Civil Rights equality goals, and the courts initially concluded that discrimination was found narrowly and only when intentional.⁴⁴ In 1989, in reaction to a series of Supreme Court decisions adverse to employees, Congress drafted legislation to strengthen Title VII's protections against discrimination.⁴⁵ Additionally, Congress recognized that the legislative attention had been on racial discrimination, leaving employees who suffered sex-based or religious discrimination with less protection and recourse.⁴⁶ When the Civil Rights Act of 1991 passed, it modified the U.S. Code to improve consistency of available remedies across the protected classes, expanding damages for intentional discrimination as well as clarifying the burden of proof for disparate impact cases.⁴⁷

Title VII of the Civil Rights Act not only protected employees from discrimination based on their race, religion, and sex, but also established the Equal Employment Opportunity Commission (EEOC) to oversee education efforts and enforcement of its provisions.⁴⁸ The EEOC

⁴² See 42 U.S.C.S. § 2000e-2 (Lexis 2020).

⁴³ See generally Chuck Henson, *The Purposes of Title VII*, 33 NOTRE DAME J. L. ETHICS AND PUB. POLICY 221, 231-32 (2019) ("When the House reported out its version of Title VII to what would become the Civil Rights Act of 1964, it described Title VII as 'prohibiting and providing the means of terminating the most serious types of discrimination.'") This article further argues that discrimination that was "insignificant, hidden, or inadvertent" was not considered the worst form of discrimination and was thus not prohibited by the initial legislation.

⁴⁴ *Id.* at 237-66 (describing the evolving concept of unlawful discrimination from 1966 to 1972).

⁴⁵ See H.R. REP. NO. 101-644, pt. 2, Background and Need.

⁴⁶ H.R. REP. NO. 101-644, pt. 2, Section-by-Section Analysis, § 8 ("A serious gap exists in Title VII, one that leaves victims of intentional discrimination on the basis of sex or religion without an effective remedy for many forms of bias on the job, while victims of intentional race discrimination in employment have such a remedy.").

⁴⁷ See Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991).

⁴⁸ See 42 U.S.C.S. §§ 2000e–2000e-17 (Lexis 2020); see also *Title VII of the Civil Rights Act of 1964*, EEOC, <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964> (showing Title VII of the Civil Rights Act as amended with cross references as enacted to better illustrate its evolution) (last visited July 18, 2020).

issues its own guidelines to assist employers in ensuring that their practices are not discriminatory.⁴⁹ If an employee files charges of discrimination under Title VII, the EEOC investigates whether reasonable cause exists and, if so, attempts to “eliminate [the] unlawful employment practice by informal methods of conference, conciliation, and persuasion.”⁵⁰ If those methods are unsuccessful, the EEOC may bring legal action against the employer for violating a provision of Title VII.⁵¹

In practice, while the decisions of the EEOC have helped clarify the extent of acceptable practices, at times they also diverge from the interpretation of the Supreme Court.⁵² Particularly in the area of religion, as explored below, the discussion of criteria for protected practices and beliefs continues to evolve. Thus, the EEOC promotes the guidelines and regulations in Title 29, Chapter XIV of the Code of Federal Regulations⁵³ and enforces those provisions along with the provisions of Title VII to prevent employer discrimination.

3. Religion as a Separate Class

As a protected class under Title VII, religion is unique. Unlike the other classes, religion is not an immutable trait established at birth. While many people are born and raised within a particular religion, at least 20% of them later abandon that religion and no longer define themselves as believers in their “native” religion.⁵⁴ Because religious freedom is an important right protected

⁴⁹ See *Prohibited Employment Policies/Practices*, EEOC, <https://www.eeoc.gov/prohibited-employment-policiespractices> (last visited July 18, 2020).

⁵⁰ See 42 U.S.C.S. §§ 2000e–5.

⁵¹ *Id.*

⁵² See *Friedman v. S. Cal. Permanente Med. Grp.*, 102 Cal. App. 4th 39, 68, (2002) (exploring language differences between Supreme Court rulings and EEOC decisions and concluding that Supreme Court cases “*Seeger* and *Welsh* are more restrictive than the EEOC’s administrative construction” for religious beliefs). But see *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971) (“The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § [2000e-2] The administrative interpretation of the Act by the enforcing agency is entitled to great deference.”).

⁵³ See, e.g., EEOC Guidelines on Discrimination, 29 C.F.R. §§ 1604–1606 (2020).

⁵⁴ See *One-in-Five U.S. Adults Were Raised in Interfaith Homes*, PEW RESEARCH CENTER (Oct. 26, 2016), <https://www.pewforum.org/2016/10/26/links-between-childhood-religious-upbringing-and-current-religious-identity/> (finding 13 to 34 % of people raised by at least one protestant parent later define themselves as unaffiliated, and 19 to 42% of people raised by at least once Catholic parent later define themselves as unaffiliated). Even families where both parents were the same religion, 13-19% of the children are unaffiliated as adults, and a similar percentage switches to a different religion from the one in which they were raised.

in the constitution⁵⁵ and religious status is not a fixed characteristic, legislators and courts have chosen not to establish a rigid, narrow definition of religion.⁵⁶

In the context of employment, under Title VII Section 2000e(j), “religion” is defined to include “all aspects of religious observance and practice, as well as belief.”⁵⁷ In other words, the protected class of religion adds a second layer of complexity by asking courts to determine not just whether a person falls into a protected class but whether her beliefs and practices create a class meriting protection. Courts have found that the definition of religion encompassing religious beliefs and practices “must be read in conjunction with 42 U.S.C. § 2000e-2.”⁵⁸ Thus, employers are prohibited from discriminating against an employee on the basis of religion which encompasses the employee’s religious beliefs and practices.

a. Definition of Religion as Interpreted by Courts and the EEOC

In 1948, the Supreme Court affirmed the United States’ commitment “to cooperate with the United Nations to ‘promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or *religion*.’”⁵⁹ Before

⁵⁵ U.S. CONST. amend. 1 (forbidding Congress from establishing or prohibiting the free exercise of religion through its legislation). Related to Title VII, “[e]very appellate court which has considered the constitutionality of the ‘reasonable accommodation’ requirement of 42 U.S.C. § 2000e(j) has held that it does not violate the establishment clause of the first amendment. . . . To meet the requirements of the establishment clause, the Nyquist court held that a law must: (1) reflect a clearly secular purpose; (2) have a primary effect that neither inhibits nor advances religion; and (3) avoid excessive government entanglement with religion. Section 2000e(j) clearly meets this test.” EEOC v. E. I. Du Pont de Nemours & Co., 623 F. Supp. 15, 16 (E.D.N.C. 1985) (referencing *Committee for Public Education v. Nyquist*, 413 U.S. 756, 772-72 (1973)).

⁵⁶ See *Cooper v. Gen. Dynamics, Convair Aerospace Div., Fort Worth Operation*, 533 F.2d 163, 168-69 (5th Cir. 1976) (“The language chosen [in Title VII] is broad -- broader can hardly be imagined . . . [T]he definition is what may be termed an operative one: *all* forms and aspects of religion, however eccentric, are protected except those that cannot be, in practice and with honest effort, reconciled with a businesslike operation.”).

⁵⁷ 42 U.S.C.S. § 2000e. However, an exception exists when “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.” *Id.*

⁵⁸ *Nottelson v. A. O. Smith Corp.*, 423 F. Supp. 1345, 1347 (E.D. Wis. 1976).

⁵⁹ *Oyama v. California*, 332 U.S. 633, 649-50 (1948) (emphasis added) (quoting U.N. Charter, articles 55c & 56; 59 Stat. 1045, 1046 (1945)).

Title VII, Supreme Court discrimination cases frequently referred to “race, color, or *creed*,”⁶⁰ where *creed* could arguably mean either religious belief or a set of fundamental beliefs used as a guiding principle.⁶¹ In 1965, the Court had opportunity to interpret the meaning of “religious training and belief” in the context of the Universal Military Training and Service Act.⁶² The Court declared in *United States v. Seeger* that the test of religious belief is “whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God” for a traditionally religious person.⁶³

In *Torcaso v. Watkins*,⁶⁴ the Supreme Court affirmed that laws cannot favor the religious over the nonreligious and that religions may be founded on beliefs other than a belief in God.⁶⁵ In

⁶⁰ See, e.g., *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 209 (1944) (J. Murphy concurring) (expressing disapproval “whenever economic discrimination is applied under authority of law against any race, creed or color”); *Ry. Mail Ass’n v. Corsi*, 326 U.S. 88, 94, (1945) (establishing that a state may “protect workers from exclusion solely on the basis of race, color or creed by an organization”); *Estep v. United States*, 327 U.S. 114, 121 (1946) (forbidding discriminatory classification because of “race, creed, or color”); *Oyama v. California*, 332 U.S. 633, 650 (1948) (J. Murphy concurring) (noting that “nowhere in the statute is there a single mention of race, color, creed or place of birth or allegiance as a determinant of who may not own or hold farm land”); *Colo. Anti-Discrimination Com. v. Cont’l Air Lines, Inc.*, 372 U.S. 714, 716 (1963) (citing the Colorado Anti-Discrimination Act of 1957 defining an unfair employment practice for an employer “to refuse to hire, to discharge, to promote or demote, or to discriminate . . . against, any person otherwise qualified, because of race, creed, color, national origin or ancestry.”); *McNeese v. Bd. of Educ.*, 373 U.S. 668, 675 (1963) (referencing Illinois law prohibiting discrimination against students “on account of color, creed, race or nationality”); *Bell v. Maryland*, 378 U.S. 226, 255, (1964). (The right of any person to travel interstate irrespective of race, creed, or color is protected by the Constitution.”).

⁶¹ Compare *Everson v. Bd. of Educ.*, 330 U.S. 1, 31, 67 (1947) (stating that the First Amendment’s purpose was “not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation”), and *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 271 (1963) (noting that Scripture reading practices “were unambiguously religious, even where the educator’s aim was not to win adherents to a particular creed or faith”), with *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943)

(discussing “patriotic creed” in the context of a flag saluting ritual), *Schneiderman v. United States*, 320 U.S. 118, 164 (1943) (discussing “political creeds” such as anarchy and communism), and *NAACP v. Button*, 371 U.S. 415, 444-45, (1963) (“For the Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered.”).

⁶² Compare Universal Military Training and Service Act, 50 U.S.C. § 3806(j) (2018) (“As used in this subsection, the term ‘religious training and belief’ does not include essentially political, sociological, or philosophical views, or a merely personal moral code.”), with Selective Service Act of 1948, Pub. L. No. 80-759, § 6, 62 Stat. 604, 613 (“Religious training and belief in this connection means an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.”).

⁶³ *United States v. Seeger*, 380 U.S. 163, 166 (1965).

⁶⁴ *Torcaso v. Watkins*, 367 U.S. 488 (1961).

⁶⁵ See *id.* at 495. (affirming that the government cannot constitutionally “impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs”). “Among religions in this country which do not teach what would generally be considered a belief in the

United States v. Seeger, the Court noted that the “truth” or “validity” of a belief is not open to question, and when a person professes a belief to be religious, that claim “must be given great weight.”⁶⁶ Moral and ethical beliefs about “what is right and wrong” meet the test if “held with the strength of traditional religious convictions.”⁶⁷ As long as the belief is “sincerely held” and, in the person’s “own scheme of things, religious,”⁶⁸ the “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others.”⁶⁹ However, Courts acknowledge that it is “more often than not a difficult and delicate task” to determine whether or not a person’s beliefs constitute religion.⁷⁰

To help address this problem, Judge Adams devised a test in his concurrence to *Malnak v. Yogi*.⁷¹ The first of his three indicia is whether the concepts in question “are of the greatest depth and utmost importance.” Referencing theologian Dr. Paul Tillich’s idea of the “ultimate concern,” Judge Adams noted that qualifying beliefs address weighty topics such as “the meaning of life and death, man’s role in the Universe, the proper moral code of right and wrong.”⁷² The second is whether the beliefs have “the element of comprehensiveness,” addressing a broader scope than a single question or teaching.⁷³ The final indication is whether the beliefs have “any formal, external, or surface signs that may be analogized to accepted religions.”⁷⁴ Other courts have taken a similar approach, examining the function that the belief system has in a person’s life rather than

existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others.” *Id.* at 495 n.11.

⁶⁶ *United States v. Seeger*, 380 U.S. 163, 184–85 (1965).

⁶⁷ *Welsh v. United States*, 398 U.S. 333, 340 (1970).

⁶⁸ *United States v. Seeger*, 380 U.S. 163, 185 (1965).

⁶⁹ *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981).

⁷⁰ *See Peterson v. Wilmur Communs., Inc.*, 205 F. Supp. 2d 1014, 1018 (E.D. Wis. 2002) (quoting *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981)).

⁷¹ *See Redmond v. GAF Corp.*, 574 F.2d 897, 901 n.12 (7th Cir. 1978) (citing *United States v. Seeger*, 380 U.S. 163 (1965)). *See also Malnak v. Yogi*, 592 F.2d 197, 200–15 (3d Cir. 1979). In his concurring opinion, Judge Adams offers an extensive history of the precedent for religion in the context of traditional definitions, school prayer cases, conscientious objector cases, and newer constitutional definitions beginning with *Torcaso v. Watkins*, 367 U.S. 488 (1961). Part II of his opinion details the three indicia he identifies for the modern definition, while Part III reconciles the establishment clause with the free exercise clause, arguing to read religion broadly in both. Part IV applies the indicia to Science of Creative Intelligence/Transcendental Meditation, concluding that “SCI/TM is not a Theistic religion, but it is nonetheless a constitutionally protected religion.” *Id.* at 213. Only then does the opinion apply the conclusion to the case at hand. The Third Circuit summarized J. Adams’ three indicia as “Fundamental and ultimate questions,” “comprehensiveness,” and “structural characteristics” when the court adopted and applied them in *Africa v. Com. Of Pa.* *See Africa v. Com. of Pa.*, 662 F.2d 1025, 1032–36 (3d Cir. 1981).

⁷² *Malnak v. Yogi*, 592 F.2d 197, 208 (3d Cir. 1979).

⁷³ *Id.* at 209.

⁷⁴ *Id.* As examples of specific signs analogous to religion, Judge Adams suggested “formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions.” *Id.*

using a strict definition of religion to determine whether the belief system qualifies.⁷⁵ The general conclusion is that “purely personal, political, ideological, or secular beliefs probably would not satisfy enough criteria for inclusion,”⁷⁶ but that Title VII protects those who hold and “refuse to hold . . . specific religious beliefs.”⁷⁷

In the Code of Federal Regulations, the EEOC similarly defines religious practices “to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”⁷⁸ Following the Supreme Court’s holding in *Seeger*, the EEOC affirmed that the test for determining what is “religion” within meaning of Title VII is whether employee’s sincere and meaningful beliefs occupy in the employee’s life a place parallel to that filled traditionally by religion.⁷⁹ Accordingly, the EEOC acknowledges that “religion” does not mean only organized and well-known religions, but may include “intensely personal convictions which some may find incomprehensible or incorrect.”⁸⁰ Thus, Title VII religious

⁷⁵ See, e.g., *Fallon v. Mercy Catholic Med. Ctr. of Se. Pennsylvania*, 877 F.3d 487, 492 (3d Cir. 2017) (finding an anti-flu vaccine belief did not address fundamental and ultimate questions and was not comprehensive in nature); *U.S. Equal Employment Opportunity Comm’n v. Consol Energy, Inc.*, 860 F.3d 131, 137 (4th Cir. 2017) (finding use of a biometric hand-scanner system could threaten an employee’s core religious commitments, even when his beliefs contradicted his religious leader’s interpretation); *Davis v. Fort Bend Cty.*, 765 F.3d 480, 486 (5th Cir. 2014) (finding that attendance at a community service event was a protected practice when an employee sincerely believed it to be religious in her own scheme of things); *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 449-52 (7th Cir. 2013) (finding that attendance at a funeral to perform specific rites, traditions, and customs was based upon personally and sincerely held religious beliefs); *Seshadri v. Kasraian*, 130 F.3d 798, 800 (7th Cir. 1997) (finding that a “creed that requires scrupulous honesty . . . in the scholarly pursuit of scientific knowledge” does not constitute religion absent a more complete belief system); *Wilson v. U.S. W. Commc’ns*, 58 F.3d 1337, 1340 (8th Cir. 1995) (finding an employee’s vow to wear a button was a protected practice, but the employer could require it to be covered when covering did not violate the employee’s professed beliefs); *Tiano v. Dillard Dep’t Stores, Inc.*, 139 F.3d 679, 682 (9th Cir. 1998) (finding that the timing of a particular pilgrimage was not a protected practice when the bona fide religious belief allowed a flexibility in the schedule). The Tenth Circuit, *United States v. Meyers*, noted that the “threshold for establishing the religious nature of his beliefs is low” and listed a more extensive set factors for consideration than *J. Adams* indicia, as follows: 1. Ultimate Ideas, 2. Metaphysical Beliefs, 3. Moral or Ethical System, 4. Comprehensiveness of Beliefs, 5. Accoutrements of Religion, including a. Founder, Prophet, or Teacher, b. Important Writings, c. Gathering Places, d. Keepers of Knowledge, e. Ceremonies and Rituals, f. Structure or Organization, g. Holidays, i. Appearance and Clothing, and j. Propagation. See *United States v. Meyers*, 95 F.3d 1475, 1482–84 (10th Cir. 1996).

⁷⁶ *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996) (referencing *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972)).

⁷⁷ *Shapolia v. Los Alamos Nat’l Lab.*, 992 F.2d 1033, 1036 (10th Cir. 1993).

⁷⁸ 29 C.F.R. § 1605.1 (2020).

⁷⁹ See EEOC Decision No. 71-779 (1970); EEOC Decision No. 71-2620 (1971).

⁸⁰ *Id.* For example, the EEOC has found “religion” to include “Old Catholic” religion, which required keeping the head covered with a close-fitting scarf, as well as eating only Kosher food and keeping the legs covered at all times, and the Black Muslim faith. See EEOC Decision No. 71-779 (1970); EEOC Decision No. 71-2620 (1975). The meaning of “religion” also includes “faith in humanity being” explained by an employee-authored book, which contained views that could be considered “novel or arguably offensive” or “in questionable taste.” EEOC Decision No. 72-1301 (1972).

discrimination cases look at how sincerely the employee holds her beliefs, the function that those beliefs serve in her life, and whether those beliefs are sufficient to constitute a religion as a matter of law.

b. Explicit Exclusions

For contrast, it is useful to see which belief systems have fallen outside this test for religion. In *Slater v. King Soopers*, the District of Colorado affirmed the Eastern District of Virginia's statement that "the proclaimed racist and anti-semitic ideology of [United Klans of America] takes on . . . a narrow, temporal and political character inconsistent with the meaning of 'religion'"⁸¹ It then referenced an EEOC decision from 1978 that "KKK is not a religion under Title VII."⁸² Finally, the court concluded "KKK is not a religion for purposes of Title VII. Rather the KKK is political and social in nature."⁸³

In addition to political and social beliefs, "unique personal moral preferences" are excluded from being characterized as religious beliefs.⁸⁴ In *Brown v. Pena*, the Florida Southern District Court applied the Fifth Circuit test which included the criteria that the religious belief "is not merely a personal preference but has an institutional quality about it."⁸⁵ The court found that a belief that a certain cat food was "contributing significantly to [a person's] state of well being . . . and overall work performance" fell "beyond the parameters of the concept of religion as protected by the constitution" or Title VII.⁸⁶ Because such a belief is based on personal preference, rather than on moral or ethical grounds, it does not qualify legally as a religion.

⁸¹ *Bellamy v. Mason's Stores, Inc.*, 368 F. Supp. 1025, 1026 (E.D. Va. 1973).

⁸² *Slater v. King Soopers*, 809 F. Supp. 809, 810 (D. Colo. 1992) (referencing EEOC Decision No. 79-6 (1978)).

⁸³ *Id.* Although "political and social" beliefs are excluded, it is interesting to note that in 2002, the 7th District determined that Creativity, which "shares some of the white supremacist beliefs of the KKK" functioned as a religion for the Plaintiff and thus his beliefs constituted a "religion" for purposes of Title VII. *See Peterson v. Wilmur Communs., Inc.*, 205 F. Supp. 2d 1014, 1022–23 (E.D. Wis. 2002). Nevertheless, at least six courts subsequently distinguished their cases from *Peterson v. Wilmur Communs.*, arguing that Creativity was not a religion under First Amendment claims or that, even if a religion, the practice of it might be constrained.

⁸⁴ *Brown v. Pena*, 441 F. Supp. 1382, 1385 (S.D. Fla. 1977).

⁸⁵ *Id.*

⁸⁶ *Id.* at 1384–85.

In *Friedman v. Southern California Permanente Medical Group*,⁸⁷ the appellate court concluded that veganism was not protected because it failed to satisfy Adams three indicia.⁸⁸ Even as the court implied that the vegan lifestyle might be protected as a practice under the umbrella of a religious belief, a person's sincerely held belief "that it is immoral and unethical for humans to kill and exploit animals even for food, clothing and the testing of product safety for humans" was not sufficient by itself.⁸⁹ The court found that veganism did not answer larger "ultimate questions" about life, was not comprehensive, and was not exhibited through formal or external signs that a religion was present, such as vegan services.⁹⁰

4. Exception for Bona Fide Job Qualification

Even where an employee is a member of a protected class, an employer is permitted to discriminate on the basis of a protected trait where the trait is a bona fide occupational qualification (BFOQ). According to a 50-state survey, the BFOQ exception is "[t]he most important exception to the Title VII antidiscrimination provisions," permitting "distinctions among protected classes where it is reasonably necessary for the job."⁹¹ Codified under 42 U.S.C. § 2000e-2(e), the subsection was intended "to make clear that business necessity is never a defense to racial discrimination or disparate treatment on the basis of race, color, gender, national origin or religion in violation" of Title VII.⁹² However, the provision grants flexibility to employers to hire based on protected traits where the trait is a legitimate occupational qualification "reasonably necessary to the normal operation of that particular business or enterprise."⁹³

⁸⁷ *Friedman v. S. Cal. Permanente Med. Grp.*, 102 Cal. App. 4th 39 (2002).

⁸⁸ *Id.* at 70.

⁸⁹ *Id.* ("[P]laintiff's veganism is a personal philosophy, albeit shared by many others, and a way of life. . . . Therefore, plaintiff's veganism is not a religious creed within the meaning of the FEHA. We quite obviously do not resolve the question of whether a vegan lifestyle that results from a religious belief otherwise meeting the standard in regulation 7293.1 is subject to FEHA coverage.").

⁹⁰ *Id.*; see also Donna D. Page, Note, *Veganism and Sincerely Held "Religious" Beliefs in the Workplace: No Protection Without Definition*, 7 U. Pa. J. Lab. & Emp. L. 363, 386 (2005) (arguing that veganism should be protected as a religious belief).

⁹¹ *Labor & Employment Law – Discrimination: Employment Discrimination*, LEXISNEXIS (September 2018), <https://advance.lexis.com/document/?pdmfid=1000516&crd=843803eb-130f-487f-bece-bb97cad6ab6c&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A599T-DMP1-JBM1-M3W8-00000-00&pdcontentcomponentid=312774&pdteaserkey=sr0&pditab=allpods&ecompg=gdsk&earg=sr0&prid=350382e5-f5fb-492b-aa2d-e9544f60d279>.

⁹² See H.R. REP. NO. 101-644, pt. 1, at 63 (1990).

⁹³ 42 U.S.C. § 2000-e(2)(e) (2018).

III. ANALYSIS

The following sections begin in Section A with an examination of the changes in American society related to science and religion. It continues in Section B with an assessment of the broadening scope of protections for employees facing discrimination and the increased application of religious protections, even into nonreligious arenas. Section C builds on this groundwork to evaluate whether employees can be protected from discrimination based on climate change science belief under an expanded definition of religion. In contrast, Section D explores whether climate change science belief should be protected as a separate category. Finally, Section E addresses the timeliness of the issue to argue for active measures to provide employment protections for climate change science belief.

A. SOCIETAL CHANGES REGARDING SCIENCE AND RELIGION

1. *Declining Numbers of Religious Americans*

Religion is a waning influence in the United States, reflected in a decreasing percentage of Americans who identify with a particular religion.⁹⁴ From 2007 to 2014, the percentage of Americans unaffiliated with any religion rose by 6.7%, resulting in more than one in five Americans not belonging to or following a particular religion.⁹⁵ By 2019, the percentage of Americans describing their religious identity as “atheist, agnostic, or ‘nothing in particular’” rose to 26%, a full quarter of the population.⁹⁶ In addition, there is no majority religion to which 50% or more of Americans belong, leaving the religious, the agnostic, and the atheistic populations all in minority positions in America.⁹⁷

Instead, each category of non-religious, whether atheist, agnostic, or “nothing in particular,” is growing as a percentage of the American population.⁹⁸ The latest data show a continuing steady trend away from recognized religions to “no religion” beginning in the 1970s.⁹⁹

⁹⁴ See *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), <https://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>.

⁹⁵ *Id.*

⁹⁶ See *U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

The diminishing number of Americans who attend church regularly reflects the declining importance of religion in their daily lives. The majority of Americans now attend church “a few times a year or less,” indicating that religious practices may now be less likely to interfere with or be cause for discrimination in the workplace than in past decades.¹⁰⁰

Because millennials, born between 1981 and 1996, are both the largest and fastest growing percentage of religiously-unaffiliated adults (40% claim no religion), the population trends toward an increasingly non-religious workforce are likely to continue over time. Furthermore, millennials who are non-religious are also likely to raise children without any religion in particular, perpetuating the trend in next generation.¹⁰¹

2. *Religion as a Declining Influence*

Most Americans (78%), regardless of age or sex, believe religion is losing influence in American life.¹⁰² In addition, 63% of Americans “believe that churches and houses of worship should keep out of political matters (rather than express their views on day-to-day social and political questions).”¹⁰³ Even as Americans believe that generally religion has a positive impact on society, they believe it is a private concern that should not have an outsized influence on government or public policy.

¹⁰⁰ *Id.*

¹⁰¹ *Links Between Childhood Religious Upbringing and Current Religious Identity*, PEW RESEARCH CENTER (Oct. 26, 2016), <https://www.pewforum.org/2016/10/26/links-between-childhood-religious-upbringing-and-current-religious-identity/> (finding that more than a third of the children raised with a religiously unaffiliated parent are unaffiliated as an adult and when both parents are unaffiliated, 63% of children are similarly unaffiliated).

¹⁰² *Many in U.S. see Religious Organizations as Forces for Good, but Prefer Them to Stay out of Politics*, PEW RESEARCH CENTER (Nov. 15, 2019), November 15, 2019, <https://www.pewforum.org/2019/11/15/many-in-u-s-see-religious-organizations-as-forces-for-good-but-prefer-them-to-stay-out-of-politics/>.

¹⁰³ *Americans Have Positive Views About Religion's Role in Society, but Want It Out of Politics*, PEW RESEARCH CENTER (Nov. 15, 2019), <https://www.pewforum.org/2019/11/15/americans-have-positive-views-about-religions-role-in-society-but-want-it-out-of-politics/>.

3. *Science as a Growing Influence*

In balance, 73% of Americans say that science has had a mostly positive effect on society.¹⁰⁴ “Six-in-ten U.S. adults believe that scientists should take an active role in policy debates about scientific issues, while about four-in-ten (39%) say, instead, that scientists should focus on establishing sound scientific facts and stay out of such debates.”¹⁰⁵ Additionally, “Public confidence in scientists to act in the public interest tilts positive and has increased over the past few years. As of 2019, 35% of Americans report a great deal of confidence in scientists to act in the public interest, up from 21% in 2016.”¹⁰⁶

Specific to climate change, “six-in-ten Americans said global climate change is a major threat to the country, up from 44% in 2009.”¹⁰⁷ “In the October 2019 survey, two-thirds of Americans (67%) said the federal government wasn’t doing enough to reduce the effects of global climate change. But there were wide political divides over the effects of climate policy. For example, 71% of Democrats said policies aimed at reducing climate change generally provide net benefits for the environment, compared with roughly a third of Republicans (34%). Instead, 43% of Republicans said such policies make no difference and about two-in-ten (22%) said they do more harm than good for the environment.”¹⁰⁸

None of this is to say that religious Americans should not be protected from discrimination in the workplace, but it suggests the importance of providing the non-religious with similar protections. In particular, society now recognizes scientific beliefs as a valid and positive contribution to society. In keeping with this changed landscape for science and religion, Americans might generally accept that climate change science belief is also a class worthy of

¹⁰⁴ See Cary Funk, *Key Findings About Americans’ Confidence in Science and Their Views on Scientists’ Role in Society*, PEW RESEARCH CENTER (Feb. 12, 2020), <https://www.pewresearch.org/fact-tank/2020/02/12/key-findings-about-americans-confidence-in-science-and-their-views-on-scientists-role-in-society/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Cary Funk and Brian Kennedy, *How Americans See Climate Change and the Environment in 7 Charts*, PEW RESEARCH CENTER (Apr. 12, 2020), <https://www.pewresearch.org/fact-tank/2020/04/21/how-americans-see-climate-change-and-the-environment-in-7-charts/>; *See also As Economic Concerns Recede, Environmental Protection Rises on the Public’s Policy Agenda*, PEW RESEARCH CENTER (Feb. 13, 2020), <https://www.pewresearch.org/politics/2020/02/13/as-economic-concerns-recede-environmental-protection-rises-on-the-publics-policy-agenda/> (indicating that while the importance of climate change shows the greatest discrepancy between Republicans and Democrats, a majority (52%) of Americans still believe that climate change should be the top priority for Congress and the current administration).

¹⁰⁸ Funk, *supra* note 107.

protection from discrimination in employment.

B. TRENDS IN EMPLOYMENT’S PROTECTED CLASSES

It may be tempting to think of each trait protected from discrimination as clear and self-explanatory; however, race, sex, and religion have undergone changes in definition and classification during the history of Title VII. Each of these areas is considered separately below.

1. Changing Definitions of “Race”

During the drafting of the Civil Rights Act, Congress intended the legislation to prevent discrimination against black people in particular, but the term race was also designed to be inclusive. Some ethnic groups are now considered to be “within the Caucasian race” although the original understanding of “race” was different.¹⁰⁹ “Plainly, all those who might be deemed Caucasian today were not thought to be of the same race at the time §1981 became law.”¹¹⁰ In *Saint Francis Coll. v. Al-Khazraji*, the Supreme Court concluded “that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.”¹¹¹ The court held that “whether or not it would be classified as racial in terms of modern scientific theory,” the identifiable classes of persons were protected to correspond with congressional intentions.¹¹²

Most recently, the California Department of Fair Employment and Housing filed a lawsuit against Cisco Systems, Inc. for “workplace discrimination, harassment, and retaliation violations” on the basis of India’s caste system.¹¹³ Although caste is not specifically mentioned as a protected class, the suit explains that the caste into which a person is born “defines a person’s status based on their religion, ancestry, national origin/ethnicity, and race/color.”¹¹⁴ As a Dalit Indian, formerly known as the Untouchable Caste, the complainant was born at the bottom of the Indian caste hierarchy.

¹⁰⁹ See *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 610 (1987).

¹¹⁰ *Id.* (referring to Arabs).

¹¹¹ *Id.* at 613.

¹¹² *Id.*

¹¹³ See Cal. Dep’t of Fair Emp’t & Hous. v. Cisco Systems, Inc., No. 5:20cv4374 (N.D. Cal. filed June 30, 2020).

¹¹⁴ *Id.*

The complainant alleges that he “was expected to accept a caste hierarchy within the workplace where [he] held the lowest status.”¹¹⁵ Consequently, he “received less pay, fewer opportunities, and other inferior terms and conditions of employment because of” his protected traits, including his race/color.¹¹⁶ When he first submitted a written complaint to Cisco, its Employee Relations Manager did not recommend any corrective action and “indicated that caste discrimination was not unlawful.”¹¹⁷ It remains to be seen which argument the court will find persuasive and whether it will expand the current list of protected classes to include caste.

2. Expanded Protections Under “Sex”

The definition of “sex” has arguably changed more than any other class. When the word “sex” was added to the Title VII language, opponents “regarded it as either a prank intended to expose the limits of liberal egalitarianism or a poison pill that would make the bill more difficult to pass.”¹¹⁸ Despite the humorous debate at the time, there is evidence that the addition was the result of carefully lobbying and maneuvering for its inclusion.¹¹⁹ In any case, the word at the time simply meant “women,” even as legislators acknowledged it would also apply to protect men from discrimination in employment positions that were traditionally occupied by women. Recently, the Supreme Court noted that “thanks to the broad language Representative Smith introduced, many, maybe most, applications of Title VII’s sex provision were ‘unanticipated’ at the time of the law’s adoption.”¹²⁰

Since 1964, the word “sex” has been defined to include “pregnancy, childbirth, or related medical conditions,”¹²¹ sexual harassment,¹²² sexual harassment when both parties are the same sex,¹²³ and gender stereotypes.¹²⁴ In 2020, the Supreme Court heard three cases that asked

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Louis Menand, *How Women Got in on the Civil Rights Act*, THE NEW YORKER (July 14, 2014), <https://www.newyorker.com/magazine/2014/07/21/sex-amendment>.

¹¹⁹ *Id.* See also Joe Freeman, *How Sex Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 LAW & INEQUALITY: A JOURNAL OF THEORY AND PRACTICE 163-64 (1991) (relating the factors suggesting an attempt to influence and the conclusion that the addition was not an “accidental breakthrough”).

¹²⁰ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1752 (2020).

¹²¹ 42 U.S.C. §2000e(k). This language was added by the Pregnancy Discrimination Act of 1978.

¹²² See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64-67 (1986).

¹²³ See *Oncale v. Sundowner Offshore Servs., Inc.* 523 U.S. 75, 76-80 (1998).

¹²⁴ See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 233-44 (1989) (superseded by statute).

whether prohibited discrimination on the basis of sex applied also to the homosexual and transgender individuals.¹²⁵ The court found in *Bostock v. Clayton County*¹²⁶ that “when an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex.”¹²⁷ In other words, “homosexuality and transgender status” are also now included under the umbrella of “sex.” Because sex is always a factor in the discrimination a homosexual or transgender person faces, “an employer who fires an individual merely for being gay or transgender defies the law.”¹²⁸

In considering these cases, the Court also defined key basic principles for the interpretation of employment discrimination. First, the employer’s description of or motivation for its discrimination is irrelevant; the determination is whether the employer discriminated against the employee on the basis of the trait.¹²⁹ Second, the trait “need not be the sole or primary cause of the employer’s adverse action.”¹³⁰ Even if the trait is a smaller factor in the final decision or another unprotected trait is more important to the employer’s decision, if the employee would not have suffered discrimination but for the protected trait, the discrimination is unlawful. Finally, the discrimination is against the person individually and is not evaluated by considering how the employer treats a group or class of people.¹³¹

3. Broadened Scope for “Religion”

Like “sex,” the term “religion” has changed in concept over time to become more inclusive. The changing definition of religion was discussed earlier in this Article, concluding that religion includes sincerely held beliefs that perform the same function as religion in a person’s life, particularly if the belief system meets a test of indicia or characteristics. In addition, the Supreme Court has affirmed that protection for discrimination on the basis of religion includes

¹²⁵ The cases were originally decided in *Bostock v. Clayton Cty. Bd. of Comm’rs*, 723 F. App’x 964 (11th Cir. 2018), *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) and heard together for the Supreme Court’s June 15, 2020 decision. Gerald Bostock worked for Clayton County, Georgia for ten years when was fired for conduct unbecoming a county employee after it became known that he was gay. Donald Zarda worked as a skydiving instructor for Altitude Express for several seasons and was fired a few days after he mentioned he was gay. Aimee Stephens worked at R.G. & G.R. Harris Funeral Homes for six years presenting as a male and was fired when she explained that she planned to live and work as a woman. See *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1737-38 (2020).

¹²⁶ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

¹²⁷ *Id.* at 1744.

¹²⁸ *Id.* at 1754.

¹²⁹ *Id.* at 1744.

¹³⁰ *Id.*

¹³¹ See *id.* at 1742–44.

discrimination against *disbelief* in religion.¹³² Beyond the definition of religious belief, the legislative and executive branches have expanded religion into formerly uncharted areas, as explored below.

a. Legislative Expansion

In conjunction with broadening definition of religion, the last thirty years have seen an expansion of religion freedoms and protections into new arenas. In 1993, Congress passed the Religious Freedom Restoration Act (RFRA), codified in 42 U.S.C §§ 2000bb–2000bb-4, which states that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability. . . .”¹³³ An exception applies when “application of the burden . . . is in furtherance of” and “the least restrictive means of furthering [a] compelling governmental interest.”¹³⁴ The effect of this act is to change the focus of generally applicable laws from treating everyone the same, without discrimination, to allowing each person’s exercise of religion, unless an infringement can be justified under the act’s restrictive test.

Seven years later, Congress followed with the Religious Land Use and Institutionalized Persons Act (RLUIPA), codified in 42 U.S.C. §§ 2000cc–2000cc-5, which protects religious assemblies and institutions by prohibiting “land use regulation” that discriminates against or imposes a burden on them¹³⁵ and which protects a person held in an institution.¹³⁶ As noted by the Supreme Court, “RFRA was designed to provide very broad protection for religious liberty. By enacting RFRA, Congress went far beyond what this Court has held is constitutionally required.”¹³⁷ In RLUIPA, Congress went a step further, redefining the definition of the “exercise of religion” for both acts to “include any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”¹³⁸ Most tellingly, Congress mandated that the RLUIPA

¹³² *Torcaso v. Watkins*, 367 U.S. 488, 493, (1961) (Affirming that “no person can be punished for entertaining or professing religious beliefs or disbeliefs”) (quoting *Everson v. Bd. of Educ.*, 330 U.S. 1, 15–16 (1947)).

¹³³ 42 USCS § 2000bb-1(a).

¹³⁴ *Id.* § 2000-bb-1(b).

¹³⁵ *See id.* § 2000-cc (“No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless [the least restrictive means of furthering a compelling government interest]. . . [or] that discriminates against any assembly or institution on the basis of religion or religious denomination.”).

¹³⁶ *Id.* § 2000-cc-1(a). (“No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless [the least restrictive means of furthering a compelling government interest].”).

¹³⁷ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

¹³⁸ *Id.* at 696. *See also* 42 U.S.C.S. § 2000cc-5(7)(A). The original definition in the RFRA was “exercise of religion under the First Amendment.” *See id.* §2000bb-2(4) (1994). However, the Supreme Court held that “‘the stringent test RFRA demands’ ‘far exceed[ed] any pattern or practice of unconstitutional conduct under the Free Exercise Clause,’” and Congress then removed the reference to the First Amendment from the definition. *See Burwell*, 573 U.S. at 695 (quoting *City of Boerne v.*

“be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution,” confirming its intention to expand religious protections through this legislation.¹³⁹

b. Religion in Corporations and Health Care Protections

Armed with RFRA, private-sector employers have sought to overturn government regulation that interferes with their exercise of religion. In *Burwell v. Hobby Lobby Stores, Inc.*,¹⁴⁰ the Supreme Court answered the question of whether the RFRA applied to for-profit corporations when the corporate owners had sincerely held religious beliefs. The Court held that “corporations” were within the definition of “persons,”¹⁴¹ and were thus also protected from generally applicable laws that burdened their exercise of religion. By this holding, the Supreme Court established that the government cannot impose a generally applicable mandate on closely held corporate employers to provide health care insurance for contraception to employees when the owners of the corporation object to the health care services based on religious beliefs.¹⁴²

Similarly in the field of health care, an employee’s personal beliefs may exempt her from providing services to patients that she considers morally objectionable.¹⁴³ A pharmacist, doctor, or other health care worker may refuse “on religious or moral grounds” to fill a prescription, perform a service, or discuss certain treatment options.¹⁴⁴ In addition, a hospital may decline to admit a patient and an HMO or insurance company may decline to pay for services the patient receives, again based on “religious, moral or ethical principles.”¹⁴⁵ These provisions protect

Flores, 521 U.S. 507, 534 (1997).

¹³⁹ 42 U.S.C. § 2000cc-3(g).

¹⁴⁰ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

¹⁴¹ In the decision, the Court referenced the Dictionary Act definition of person which “include[s] corporations, . . . as well as individuals.” See *id.* at 684 (referencing 1 U.S.C. § 1). The definition of “person” within Title VII is also broad and includes “partnerships, associations, corporations” among other organizations and agencies. See 42 USCS § 2000e. However, the unlawful employment practices under Title VII are limited to discriminatory employer acts against *individuals*, rather than persons.

¹⁴² See *Burwell*, 573 U.S. at 690–93.

¹⁴³ See Maxine M. Harrington, *The Ever-Expanding Health Care Conscience Clause: The Quest for Immunity in the Struggle Between Professional Duties and Moral Beliefs*, 34 FLA. ST. U.L. REV. 779 (2007) (addressing the increasing right to refuse to provide a broad spectrum of health care service on the basis of religious or moral belief).

¹⁴⁴ For example, a pharmacist in Georgia may refuse to fill a prescription to terminate a pregnancy on “moral or religious” grounds. GA. CODE ANN. § 16-12-142(b) (2019). A doctor in Utah may refuse “on religious or moral grounds” to perform a procedure that is likely to result in the termination of a pregnancy. UTAH CODE ANN. § 76-7-306(2) (2020). A health care worker providing services under the Federal Employers Health Program is not required to discuss treatment options that are inconsistent with her “ethical, moral or religious beliefs.” Harrington, *supra* note 143, at 784. See also 48 C.F.R. 1609.7001(c)(7) (2020).

¹⁴⁵ For example, Utah’s code generally allows a health care facility to refuse “on religious or moral grounds” to admit a patient

employers and employees alike from performing actions that are contrary to their religious beliefs, despite the potentially harmful effect on the patient.

c. Judicial Favoring of Religion

Although the Constitution clearly prohibits the establishment of religion, and the Supreme Court has followed the principle that government cannot favor religion over irreligion,¹⁴⁶ some justices have argued to the contrary. When Justice Scalia first began questioning this principle in 1987, he was joined by Chief Justice Rehnquist.¹⁴⁷ By 2005, Justice Scalia's more pointed argument asserting that religion could be generally favored by a display of the Ten Commandments was supported by two justices and in part by a third.¹⁴⁸ In a concurring opinion that same session, Justice Scalia stated "I would prefer to reach the same result by adopting an Establishment Clause jurisprudence that . . . can be consistently applied--the central relevant feature of which is *that there is nothing unconstitutional in a State's favoring religion generally, honoring God through public prayer and acknowledgment . . .*."¹⁴⁹ Most recently, in 7-2 decision holding that the historical Bladensburg Cross is constitutional despite being a Christian religious symbol, Justice Thomas concurred, arguing that state governments should be free to establish religion.¹⁵⁰

for a procedure that is likely to result in the termination of a pregnancy. UTAH CODE ANN. § 76-7-306 (2020)(3). Mississippi's code allows a health care insurance company to decline to pay for a service that "violates its conscience," where "conscience" means "the religious, moral or ethical principles held by" the company. *See* MISS. CODE ANN. § 41-107-9; MISS. CODE ANN. § 41-107-3(h).

¹⁴⁶ *See* *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) ("Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.").

¹⁴⁷ *See* *Edwards v. Aguillard*, 482 U.S. 578, 616, 107 S. Ct. 2573, 2595 (1987) (J. Scalia dissenting) ("[O]ur cases indicate that even certain kinds of governmental actions undertaken with the specific intention of improving the position of religion do not :advance religion" as that term is used in [the *Lemon* test from *Lemon v. Kurtzman*, 403 U.S. 602 (1971)]. Rather, we have said that in at least two circumstances government *must* act to advance religion, and that in a third it *may* do so.").

¹⁴⁸ *See* *McCreary Cty. v. ACLU*, 545 U.S. 844, 893, 125 S. Ct. 2722, 2752 (2005) (J. Scalia dissenting) ("Besides appealing to the demonstrably false principle that the government cannot favor religion over irreligion, today's opinion suggests that the posting of the Ten Commandments violates the principle that the government cannot favor one religion over another.").

¹⁴⁹ *Van Orden v. Perry*, 545 U.S. 677, 692 (2005) (J. Scalia concurring) (emphasis added).

¹⁵⁰ *See* *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2071 (2019) (J. Thomas concurring) ("The text and history of the Clause--which reads 'Congress shall make no law respecting an establishment of religion'--suggest that it should not be incorporated against the States. When the Court incorporated the Clause . . . , it apparently did not consider that an incorporated Establishment Clause would prohibit exactly what the text of the Clause seeks to protect: state establishments of religion.").

While none of these are majority opinions, they show a progression in thinking by the Supreme Court away from the idea that government motives must be entirely secular and toward the idea that in some circumstances the government may favor religion. By favoring religion, the government may allow increased protections for displays, prayers, and other symbols of religious practice in public and private-sector areas that are not traditional places of worship. This trend is somewhat balanced by a concern that religious exemptions and greater accommodation of religious beliefs may “permit every citizen to become a law unto himself.”¹⁵¹ Yet, combined with the legislative expansion and precedent for allowing the religious beliefs of both individuals and companies, employees and employers, to supersede professional or legal obligations, the overall trend is for greater religious protection.

4. Inclusion of “Personal Beliefs” and Nontraditional Religions

A final trend worthy of its own discussion is the inclusion of personal and other nontraditional beliefs under the umbrella of “religion.” Although they do not directly address the topic of employment discrimination, the following categories are particularly relevant to a discussion of whether climate change science belief could be included as a protected belief under the definition of religion.

a. Religions Outside the Founders’ Contemplation

In early Supreme Court cases, when the Court questioned the effect of law on religious practices, religion was understood to be “Christian,” the “duty we owe the Creator,” and “a matter which lies solely between man and his god.”¹⁵² By the 1940s, the Court specifically protected the

¹⁵¹ *Emp’t Div. v. Smith*, 494 U.S. 872, 879 (1990) (quoting *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878), a case which argued against plural marriage asking “Can a man excuse his practices to the contrary [of law] because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land . . .”). Interestingly, however, the *Smith* decision was the impetus for Congress’ Religious Freedom Restoration Act.

¹⁵² See *Reynolds v. United States*, 98 U.S. 145, 163-64 (1878). In this case, the Supreme Court recounted the history of a Virginia bill in 1784 “establishing provision for teachers of the Christian religion,” which Mr. Madison opposed, arguing “that religion, or the duty we owe the Creator,” was not within the cognizance of civil government. An address of Mr. Jefferson was also quoted in which he said “Believing with you that religion is a matter which lies solely between man and his god; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions . . . I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State.” See also *Davis v. Beason*, 133 U.S. 333, 342, (1890) (“The term ‘religion’ has reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”).

rights of non-Catholic and non-Protestant religions, finding that the validity of religious practices should not be determined by the state,¹⁵³ and that religions with more unorthodox services or “conventions that are different from the practices of other religious groups” were still protected.¹⁵⁴ However, the unspoken rule of the era still generally required that belief in religion be based on belief in a single god.¹⁵⁵

In 1961 *Torcaso v. Watkins*, the Court found that, despite historical precedence, a Maryland requirement that state officials declare their “belief in the existence of God” created an unconstitutional religious test.¹⁵⁶ In affirming religious protections for both believers and nonbelievers, the Court identified an expanded list of protected religions that, unlike the Founding Fathers’ concept of religion, included those without a belief in the existence of god.¹⁵⁷ By encompassing traditional Eastern religions in its religious protections, the courts opened the door for claims of new or nontraditional religions, such as Science of Creative Intelligence & Transcendental Meditation (SCI/TM), the Ethiopian Zion Coptic Church which incorporates marijuana usage, and Creativity, the central tenet of which is white supremacy.¹⁵⁸ Courts are now willing to consider whether a belief system serves as a religion whether or not it rests on a belief in god and whether or not it originates from a Judeo-Christian heritage.

¹⁵³ See *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940) (“Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.”).

¹⁵⁴ See *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953) (“But apart from narrow exceptions not relevant here . . . it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment.”).

¹⁵⁵ See *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947) (listing religious citizens who could not be excluded as “Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith”).

¹⁵⁶ *Torcaso v. Watkins*, 367 U.S. 488, 489–96 (1961).

¹⁵⁷ *Id.* at 495 n. 11 (“Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others.”).

¹⁵⁸ See *Malnak v. Yogi*, 592 F.2d 197, 199 (3d Cir. 1979) (holding that a school course in SCI/TM was religious in nature); *United States v. Middleton*, 690 F.2d 820 (11th Cir. 1982) (holding that “the compelling government interest in regulating and controlling the use of marijuana” outweighed any free exercise of religion protections); *Peterson v. Wilmur Communs., Inc.*, 205 F. Supp. 2d 1014, 1022-23 (E.D. Wis. 2002) (holding that “Creativity functions as a religion” in the life of the plaintiff, “regardless of whether it espouses goodness or ill”). See also *Dettmer v. Landon*, 799 F.2d 929, 932 (4th Cir. 1986) (affirming Wicca is a religion); *Cavanaugh v. Bartelt*, 178 F. Supp. 3d 819, 825–30 (D. Neb. April 12, 2016) (evaluating the Gospel of the Flying Spaghetti Monster (FSM) and concluding that FSMism is satire rather than a religion).

b. Conscientious Objectors

Two important cases, *United States v. Seeger* and *Welsh v. United States*,¹⁵⁹ established the definition of the conscientious objector, whose moral or ethical objection to war served a purpose parallel to “religion.” In *Seeger*, lower courts found the objectors did not qualify for the exemption from military service because their beliefs were a “personal moral code” rather than a “belief in a relation to a Supreme Being.”¹⁶⁰ The Supreme Court modified the test, finding that because each objector’s beliefs were sincerely held and “in his own scheme of things, religious,” the objector qualified for the exemption.¹⁶¹

In *Welsh*, the Court went a step further when the objector specifically excluded “religious training” as the source of his beliefs and the appellate court “could find no religious basis for the registrant’s beliefs, opinions and convictions.”¹⁶² The Supreme Court acknowledged that its difficult task of “determining which beliefs were ‘religious’ within the meaning of the statute” was informed by its previous conclusion that *Seeger*’s “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed” were sufficient.¹⁶³ The Court then clarified that when an objector had deeply held beliefs, the exemption would apply when the objection to war was based upon a “moral, ethical, or religious principle,” provided that it did not rest “solely upon considerations of policy, pragmatism, or expediency.”¹⁶⁴

¹⁵⁹ *United States v. Seeger*, 380 U.S. 163 (1965); *Welsh v. United States*, 398 U.S. 333 (1970).

¹⁶⁰ See *United States v. Seeger*, 380 U.S. 163, 166–69 (1965). “[I]n 1948 the Congress amended the language of the [Selective Training and Service Act] and declared that “religious training and belief” was to be defined as “an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code.” *Id.* at 172.

¹⁶¹ *Id.* at 185–88.

¹⁶² *Welsh v. United States*, 398 U.S. 333, 337–38 (1970). See also *id.* at 341.

¹⁶³ *Id.* at 338. The Court stated that an individual who “deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience” qualifies for a “‘religious’ conscientious objector exemption,” even without a religious component to the beliefs because “his beliefs function as a religion in his life.” *Id.* at 340.

¹⁶⁴ *Id.* at 342–343 (emphasis added). For additional discussion of these cases, see Jesse H. Choper, *Defining “Religion” in the First Amendment*, 1982 U. ILL. L. REV. 579, 588–89 (1982) (discussing statutory interpretation to broaden the definition of religion); Stanley Ingber, *Religion or Ideology: A Needed Clarification of the Religion Clauses*, 41 STAN. L. REV. 233, 258–62 (1989) (discussing both “the transformation of religion from a theistic conception to a sincere and meaningfully held belief system” and “suggestions of a judicial retreat from a concept of religion broad enough to cover all aspects of individual conscience”); Steven G. Gey, *Why Is Religion Special?: Reconsidering the Accommodation of Religion Under the Religion Clauses of the First Amendment*, 52 U. PITT. L. REV. 75, 158–61 (1990) (discussing the development and later revision of the *Seeger* rationale).

C. INCLUSION OF “CLIMATE CHANGE ADVOCATE AS A STRONGLY HELD MORAL BELIEF UNDER TITLE VII.

Scientific belief is not currently protected under Title VII’s unlawful practices, as shown in Part II above. However, the broadened protections under Title VII’s listed classes suggest that protection for “scientific belief” might be included under religion. In addition, the increased application of religious protections to previously unprotected areas could support extending those protections to scientific beliefs.

1. *Distinguished from Excluded Beliefs*

While firmly stating that religious belief may be morally or ethically based, the Supreme Court has supported congressional intent to exclude “essentially political, sociological, or philosophical views” from religion.¹⁶⁵ In *Wisconsin v. Yoder*, the Supreme Court noted that “contemporary secular values” and “philosophical and personal” choices do not rise to the level of religious beliefs.¹⁶⁶ The question then is whether scientific beliefs must be considered purely personal, political, or philosophical in nature.

By definition, science relates to “knowledge covering general truths or the operation of general laws esp[ecially] as obtained and tested through scientific method.”¹⁶⁷ Because climate change science begins with scientifically demonstrated facts, studies, and other objective evidence of the truth underpinning the belief,¹⁶⁸ it is objective in nature; it cannot be considered merely personal or subjective, as the preference for cat food was in *Brown v. Pena*. Likewise, the study of science is a separate field from politics, sociology, and philosophy.¹⁶⁹ While scientific study

¹⁶⁵ *United States v. Seeger*, 380 U.S. 163, 165 (U.S. March 8, 1965).

¹⁶⁶ *See Wis. v. Yoder*, 406 U.S. 205, 216 (U.S. May 15, 1972) (retreating somewhat from the *Welsh*’s more expansive conclusion and comparing Thoreau’s non-religious rejection of “the social values of his time” with the Amish “traditional way of life” based on deep religious conviction).

¹⁶⁷ WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 1051 (Frederick C. Mish et al. eds., 1987).

¹⁶⁸ The scientific method used to develop scientific knowledge involves “the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses.” *Id.*

¹⁶⁹ Politics is concerned with “government . . . guiding or influencing governmental policy . . . or winning and holding control over a government.” *Id.* at 911. Sociology is the study of “society, social institutions and social relationships” and “sociological,” as used in *Seeger*, means “oriented or directed toward social needs and problems” *Id.* at 1119. Philosophy is defined as “a pursuit of wisdom [and] general understanding of values and reality by chiefly speculative rather than observational means.” *Id.* at 883. It should also be noted that although philosophical beliefs have been excluded, Indian philosophy addresses the Supreme Being, where “the Supreme Being is the transcendental Reality which is Truth, Knowledge, and Bliss. It is the source of the entire universe,” possibly qualifying as religion. *See United States v. Seeger*, 380 U.S. 163,

and belief might encourage a person to take political action or to develop a philosophical view, the climate change science belief is not inherently political or philosophical in and of itself. Thus, it has not been specifically excluded from consideration under the meaning of “religion.”

2. *Meeting the Criteria for Religion*

Although not specifically excluded from religion, climate change science belief is certainly secular, and the courts have been mixed in their conclusions related to secular belief.¹⁷⁰ Therefore, it is necessary to evaluate whether climate change science belief and its associate beliefs meets the tests that that Supreme Court has devised for inclusion. The threshold question of whether a belief in climate change science belief can be sincerely held, just as a religious belief can, is answered affirmatively. One only need look at the activities of Greta Thunberg, a young Swedish environmental activist and Time Magazine’s 2019 Person of the Year, for confirmation.¹⁷¹

A second question, which does not always sit well with the scientific community, is whether a climate change science belief system can comprise religion. Under the Adams test, a belief must meet three indicia summarized as addressing “fundamental and ultimate questions,” having “comprehensiveness,” and showing “structural characteristics” typical of religion.¹⁷² Climate change science beliefs, as they relate to man’s place in the world, addresses larger and ultimate questions. When climate change science identifies an existential threat to humanity, those concepts are, arguably, “of the greatest depth and utmost importance.”¹⁷³ Justice Adams noted that scientific study “may touch on many ultimate concerns” but cautioned that “it is unlikely to proffer a systematic series of answers to them that might begin to resemble a religion.”¹⁷⁴ Yet, the component of comprehensiveness might be met when climate change science beliefs together create a worldview, an integrated picture of scientific cause and effect for multiple elements of

189-90 (1965) (J. Douglas concurring).

¹⁷⁰ Compare *Welsh v. United States*, 398 U.S. 333, 353 (1970) (J. Harlan concurring) (acknowledging the Court’s finding “that Congress was embracing a secular definition of religion”), with *Wis. v. Yoder*, 406 U.S. 205, 215 (U.S. May 15, 1972) (“A way of life, however virtuous and admirable, may not be interposed . . . if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.”).

¹⁷¹ See Charlotte Alter, Suyin Haynes & Justin Worland, Time 2019 Person of the Year – Greta Thunberg, TIME, <https://time.com/person-of-the-year-2019-greta-thunberg/> (last visited July 31, 2020). Ms. Thunberg’s sincere belief that humanity is facing an existential crisis arising from climate change compels her to action. Noted for her great “moral clarity,” she has also been compared to Joan of Arc. *Id.*

¹⁷² See *Africa v. Com. of Pa.*, 662 F.2d 1025, 1032–36 (3d Cir. 1981) (referencing *Malnak v. Yogi*, 592 F.2d 197, 200–15 (3d Cir. 1979)).

¹⁷³ *Malnak v. Yogi*, 592 F.2d 197, 208 (3d Cir. N.J. 1979) (J. Adams concurring).

¹⁷⁴ *Id.* at 209.

observable life.

The parallels between “structural characteristics” of religion and the pursuit of science appear to meet the third indicia. Scientists gather at conferences that act as “formal services” for those with similar fields of study. “Ceremonial functions” may include bestowing awards on selected attendees, as well as awarding honors and degrees within academia. Leaders in the field of science perform a similar function to clergy, helping to guide inquiries and insights. Scientist are encouraged to “propagate” their beliefs through published studies and presentations. While these activities may not be coordinated as fully as some religions, the manifestations of a structure are at least as complete as other recognized religions

Finally, if a person sincerely holds a climate change science belief, and the belief system exhibits the characteristics of a religion under the Adams test, then the addition of a moral or ethical component should remove final doubts about whether the belief can qualify as religion. In *United States v. Kauten*,¹⁷⁵ the court expounded on the characteristics of religious belief, highlighting the idea of “a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest.”¹⁷⁶ In other words, a religious belief creates a moral imperative. As noted with the example of Ms. Thunberg, climate change belief encourages many adherents to change their lives, embracing practices to reduce their carbon footprint, recycle and compost, or eliminate meat consumption, because they feel it is morally or ethically wrong to contribute to climate change. By these criteria, although climate change science belief is undoubtedly a nontraditional religion, it does, in our view, qualify under Title VII.

3. *Freedom from religion*

In *Torcaso*, the court stated that “[n]o person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance.”¹⁷⁷ If, contrary to the

¹⁷⁵ *United States v. Kauten*, 133 F.2d 703 (2d Cir. 1943).

¹⁷⁶ *Id.* at 703 (“It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe - a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets. A religious obligation forbade Socrates, even in order to escape condemnation, to entreat his judges to acquit him, because he believed that it was their sworn duty to decide questions without favor to anyone and only according to law. Such an obligation impelled Martin Luther to nail his theses on the door of the church at Wittenberg . . .”).

¹⁷⁷ *Torcaso v. Watkins*, 367 U.S. 488, 492-93 (1961); *see also* *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377, 391-92 (E.D.N.Y. 2016) (“Title VII has been interpreted to protect against requirements of religious conformity and as such protects those who refuse to hold, as well as those who hold, specific religious beliefs. . . . Aside from protecting employees from discrimination on the basis of *their* religion, Title VII also protects employees from discrimination because they do not share their employer's religious beliefs.”).

argument in the subsection above, climate change science belief cannot be classified as a religious belief, it may still be covered under the religious protections of Title VII as a “disbelief.” Particularly in workplaces where the employer is religious, an employee who is guided by a climate science belief rather than religion may suffer discrimination. If the employee could prove that she experienced a harmful and discriminatory decision because of her nonbelief (i.e. her belief in science), then she should be afforded protection from that unlawful discriminatory practice. However, a court decision in favor of the employee in this scenario would likely provide only a partial protection to other employees in similar situations. Only the disbelief in religion that was the basis of the unlawful discriminatory practice, and not the scientific belief per se, would be protected.

4. *Imperfect Fit*

In *Edwards v. Aguillard*,¹⁷⁸ the Supreme Court determined that the Louisiana Creationism Act, which required creationism to be taught alongside evolution in the classroom, violated the Establishment clause because it “advance[d] a religious doctrine” and lacked a secular, scientific purpose.¹⁷⁹ If climate change science belief is included under the umbrella of religion, it creates a conundrum: can scientific study and belief be secular for the purpose of schools, thus maintaining separation of church and state, but religious for the purpose of protection from employment discrimination? The counterintuitive broadening of religion to include secular belief creates potential legal difficulties, as the law must determine which role the climate change science belief plays in a given circumstance.¹⁸⁰

Secondly, just as *Welsh* and *Seeger* refused to state that their objection to war was based on “religious training and belief,” people with scientific beliefs are unlikely to be comfortable identifying their beliefs as religious. Clearly, an individual may hold both scientific and religious beliefs, but when the source of discrimination is a belief based in science, it would appear oxymoronic to call it a protected belief based on religion. Further, if an individual is an atheist or agnostic, asserting employment rights based on religious belief may serve as a form of religious test that has been prohibited in other contexts.¹⁸¹ Requiring an employee to claim her climate

¹⁷⁸ *Edwards v. Aguillard*, 482 U.S. 578 (1987).

¹⁷⁹ *Id.* at 596.

¹⁸⁰ Including “scientific belief” under the meaning of “religious belief” is somewhat like including “fish” under the definition of “birds.” While a broader category of “animals” can include both fish and birds, our general understanding of “fish” and “bird” is that they are mutually exclusive. Thus, an expansive definition of “birds” to include “fish” creates a strange situation where we must imagine the flying fish. Although the flying fish can and sometimes does perform as a bird, it remains a fish and calling it a “bird” is an awkward legal fiction.

¹⁸¹ See, e.g., *Torcaso v. Watkins*, 367 U.S. 488, 496 (1961) (“This Maryland religious test for public office unconstitutionally invades the appellant’s freedom of belief and religion . . .”).

change science belief is protected “on the basis of religion” may force her to violate her conscience or be in conflict with her protection against discrimination for “refus[ing] to hold . . . specific religious beliefs.”¹⁸² In short, climate change science belief may fit under the meaning of “belief” which provides protection from discrimination based on religion, but it is an imperfect fit.

5. *Path to Expanded Definition*

When Congress enacted the Americans with Disabilities Act, it justified the legislation in part by finding that Americans who have disabilities had “no legal recourse to redress” the discrimination they faced.¹⁸³ A similar situation currently exists for Americans who have climate change beliefs because they can be discriminated against and fired without recourse. An individual who experiences such workplace discrimination could bring a lawsuit claiming her climate change science belief falls under the broad definition of religion and arguing that without expanded protection, she is left with no legal recourse to redress wrongdoing.

Before bringing legal action for a violation of Title VII of the Civil Rights Act of 1964, the employee should be certain that she meets all the requirements for “religion”: sincerely held beliefs, a belief system that functions in her life as a religion, and the indicia of religion for those beliefs. As explored above, climate change beliefs could likely satisfy each of these requirements, and an employee could build a compelling case by drawing analogies to the various decisions that previously expanded the definition of religion. Such an employment discrimination case, brought in a U.S. District Court and holding that the discrimination was an unlawful employment practice, would establish the precedence needed to expand employee protections to cover climate change belief.

Similarly, if an appeal or a split in circuit court decisions led to the case being heard by the Supreme Court, a pro-employee decision would provide the caselaw to include climate change beliefs in the protected beliefs under “religion.” The Supreme Court might draw the holding narrowly, limiting it to “climate change beliefs” to differentiate the protected climate change belief from more controversial beliefs without a strong scientific foundation. Even so, a Supreme Court ruling would be influential in lower court decisions for similar “ultimate concern” climate change beliefs that are comprehensive in nature.¹⁸⁴ Even if the Supreme Court took the unusual step of

¹⁸² Equal Opportunity Emp’t Comm’n v. United Health Programs of Am., Inc., 213 F. Supp. 3d 377, 391–92 (E.D.N.Y. 2016).

¹⁸³ See Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 2(a)(4), 104 Stat. 327, 329 (1990).

¹⁸⁴ *Supra* note 75 (referencing numerous cases making distinctions based on the nature of the belief).

noting that its holding was limited strictly to the facts of the given case,¹⁸⁵ other courts might still be persuaded by its holding.¹⁸⁶

D. SEPARATE CATEGORY OF “BELIEF”

An alternative to a judicial decision adding climate change belief to the protected class of religion is a legislative solution that adds “belief” as a separate Title VII protected class. This option would likely be more difficult to implement because it requires Congress to enact changes to the Civil Rights Act. However, it would be in keeping with international precedent for the legal protection of belief, separate from religion, demonstrating congressional intent to protect belief from employment discrimination and eliminating the need to interpret climate change belief as a component of an existing protected class.

1. *The English Model*

In the United Kingdom in December 2003, The Employment Equality (Religion or Belief) Regulations came into effect, prohibiting discrimination by employers based on religion *or belief*.¹⁸⁷ The Regulations made it unlawful for employers to discriminate against employees or contract workers by treating the person “less favourably” on the grounds of “any religion, religious belief, or similar philosophical belief.”¹⁸⁸ In a parallel to the U.S. interpretation of disparate impact, the regulations also applied when “a provision, criterion, or practice” applied equally to all persons put an individual of a particular religion or belief at a disadvantage without being a

¹⁸⁵ See *Bush v. Gore*, 531 U.S. 98, 109 (2000) (“Our consideration is limited to the present circumstances . . .”); see also Chad Flanders, Forum, *Please Don’t Cite This Case! The Precedential Value of Bush v. Gore*, Yale L.J. (Nov. 7 2006) <https://www.yalelawjournal.org/forum/please-dona8217t-cite-this-case-the-precedential-value-of-bush-v-gore>

(“But *Bush v. Gore* is wholly unique in using limiting language to (apparently) nullify the principle of an opinion, not in a concurrence to the opinion, but in the majority opinion of the very case.”).

¹⁸⁶ See *Stewart v. Blackwell*, 444 F.3d 843 (6th Cir. Ohio 2006) (quoting extensively from *Bush v. Gore*), vacated en banc, No. 05-3044, (6th Cir. 2006). The 6th Circuit noted that “the main basis for the dissent is some ‘question [over] the precedential value of *Bush v. Gore*.’” *Id.* at 873. It answers this dissent in a footnote; “Respectfully, the Supreme Court does not issue non-precedential opinions. Moreover, the basis for the dissent’s questioning of the precedential value of *Bush v. Gore* is based on a single law review article. . . . We would note that there are at least 116 law review articles with “*Bush v. Gore*” in the title, accessible on Westlaw . . .” *Id.* at n.22.

¹⁸⁷ See Employment Equality (Religion or Belief) Regulations 2003, UK Statutory Instruments, 2003 No. 1660 (U.K.) (as enacted) (emphasis added).

¹⁸⁸ *Id.* at Part I, Regs. 2-3.

“proportionate means of achieving a legitimate aim.”¹⁸⁹ Similarly, the regulations created an exception where “being of a particular religion or belief is a genuine and determining occupational requirement,” corresponding to the American “bone fide occupational requirement.”¹⁹⁰

Justice Michael Burton applied the U.K. Regulations in 2008 to rule that “[a] belief in man-made climate change, and the alleged resulting moral imperatives, is capable if genuinely held, of being a philosophical belief for the purpose of the 2003 Religion and Belief Regulations.”¹⁹¹ In his written judgment, Justice Burton outlined five criteria for determining whether a belief was a protected philosophical belief, similar to the criteria American courts have established for protected religious belief.¹⁹² He cited humanism as an example meeting the criteria, while belief in “a political party or a belief in the supreme nature of Jedi knights,” from the Star Wars movies, would not meet the criteria.¹⁹³

In 2010, the Equality Act, which now governs employment discrimination in the United Kingdom, expanded and clarified the original U.K. Regulations.¹⁹⁴ The currently “protected characteristics” under this act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.¹⁹⁵ By positioning religion and belief together, the act views them as a single type of characteristic, where “belief means any religious or philosophical belief and a reference to belief includes a reference

¹⁸⁹ *Id.*

¹⁹⁰ Compare *id.* at Part II, Reg. 7 (allowing discrimination “where an employer has an ethos based on religion or belief and . . . being of a particular religion or belief is a genuine occupational requirement for the job . . .”), with 42 USCS § 2000e-2 (allowing discrimination “in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”).

¹⁹¹ See Karen McVeigh, *Judge Rules Activist’s Beliefs on Climate Change Akin to Religion*, THE GUARDIAN (Nov. 3, 2009 15:42 EST), <https://www.theguardian.com/environment/2009/nov/03/tim-nicholson-climate-change-belief>. The article reports that U.K. citizen Tim Nicholson viewed his employer’s request for him to fly to another country to retrieve a BlackBerry device as “embod[ying] the contempt with which his boss treated his deep philosophical beliefs about climate change.” He brought legal action when he was dismissed from employment. The judge ruled in his favor, establishing that “a belief in man-made climate change” is a philosophical belief for the purpose of the Act. Interestingly the same judge previously determined that the environmental documentary *An Inconvenient Truth*, though “substantially founded upon scientific research and fact,” could not legally be shown in British secondary schools because it “promoted partisan political views.” Environmental beliefs have thus been held both philosophical and political in Great Britain.

¹⁹² The five criteria are: “(i) The belief must be genuinely held. (ii) It must be a belief and not, as in *McClintock*, an opinion or viewpoint based on the present state of information available. (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour. (iv) It must attain a certain level of cogency, seriousness, cohesion and importance. (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others” *Grainger PLC v Nicholson* [2009] UKEAT 0219/09/ZT (3 Nov. 2009) para 24.

¹⁹³ *Id.* Interestingly, in a previous case, J. Burton determined that the environmental documentary *An Inconvenient Truth*, featuring man-made climate change, could not be taught in schools because it was political and partisan. See *supra*, note 191.

¹⁹⁴ See Equality Act 2010, UK Public General Acts, 2010 ch. 15 (U.K.).

¹⁹⁵ *Id.* at Part 2, § 4.

to a lack of belief.”¹⁹⁶ Suggesting an overall purpose for the legislation, the Act creates a public sector duty for government entities to consider the desirability of “reduc[ing] the inequalities of outcome which result from socio-economic disadvantage” when exercising its functions.¹⁹⁷ In contrast, the United States currently has no such overarching purpose or consolidated protections, leading to the complicated cross-referencing when employment protections for different characteristics are addressed in U.S. Code.¹⁹⁸

2. *United States Equality Act*

In the United States, the House of Representatives passed the Equality Act in 2019 “to prohibit discrimination on the basis of sex, gender identity, and sexual orientation.”¹⁹⁹ Section 7 of the Act addressed employment discrimination, replacing the word “sex” in Title VII with the words “sex (including sexual orientation and gender identity).”²⁰⁰ The bill aimed to “explicitly and comprehensively prohibit discrimination on the basis of sexual orientation and gender identity . . . by codifying recent federal judicial and administrative decisions,” including in Title VII’s employment protections.²⁰¹ While the bill did not pass the Senate to become law, it shows a congressional willingness to amend U.S. Code, including the Civil Rights Act language, to cover additional characteristics.

Arguably, the Supreme Court’s decision in *Bostock*, arriving the year after the Equality Act, provides the clarity the Equality Act intended to achieve, holding that gender identity and sexual orientation cannot be used as a basis for employment discrimination.²⁰² Consequently, the need for the Equality Act specific to employment protections may be less compelling now than when the legislation was first introduced. However, the House used prior federal and state judicial decisions to support its argument for the legislation, recognizing that holdings in various jurisdictions regarding discrimination in distinct areas did not provide a comprehensive solution.²⁰³

¹⁹⁶ *Id.* at Part 2, § 10.

¹⁹⁷ *Id.* at Part 1, § 1.

¹⁹⁸ *See, e.g.*, 42 USCS § 2000e-16b (“All personnel actions affecting the Presidential appointees described in section 303 [former 2 USCS § 1219] or the State employees described in section 304 [42 USCS § 2000e-16c] shall be made free from any discrimination based on— (1) race, color, religion, sex, or national origin, within . . . the Civil Rights Act of 1964 (42 U.S.C. 2000e-16); (2) age, within . . . the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or (3) disability, within . . . the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).”).

¹⁹⁹ 165 CONG. REC. H3931 (daily ed. May 17, 2019) (statement of Rep. Nadler).

²⁰⁰ Equality Act, H.R. 5, 116th Cong. § 7 (2019).

²⁰¹ H.R. REP. NO. 116-56, at 8 (2019).

²⁰² *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1737 (2020).

²⁰³ *See* H.R. REP. NO. 116-56, at 9-13 (2019).

Likewise, isolated decisions that protect individuals from discrimination based on non-religious belief could be used to bolster an argument for a legislative solution to expressly add climate change belief to the list of protected traits.

3. *Challenges of Legislative Implementation*

In drafting a legislative solution to protect climate change belief from employment discrimination, the first question is how best to do it. We recommend following the model of the U.K. Equality Act and proposing changes similar to the amendment contemplated in the U.S. Equality Act. Title VII's protected practices under Section 2000e-2 could be modified to state that it is unlawful for an employer to refuse to hire or to discharge an individual "because of such individual's race, color, religion *or belief*, sex, or national origin." A separate definition of "belief" under Section 2000e would likely be required to provide appropriate limits to the beliefs that qualify for protection, as discussed below.²⁰⁴

A second question is whether including "belief" as a separate protected characteristic would conflict with precedent that specifically excludes "essentially political, sociological, or philosophical views, or a merely personal moral code" from (religious) beliefs.²⁰⁵ Significantly, the origin of this exception was legislation limiting the use of conscientious objection to military service during a time of war.²⁰⁶ Congress excluded individuals who, for non-religious reasons, decided that "war is wrong and that they will have no part of it" because such judgment is "historically . . . reserved for the Government."²⁰⁷ The Supreme Court interpreted and supported the congressional intent to prevent the "convictions of the individual" from being "permitted to override that of the state."²⁰⁸ However, such a rationale does not apply in the context of employer

²⁰⁴ Modelled from previous U.S. court interpretation of religious belief, "belief" could mean a sincerely held comprehensive belief system that addresses ultimate questions or concerns, including beliefs supported by science, morality, or philosophy, that guide one's actions, and that are not contrary the interests of the state or society. If modelled from the U.K. definition, "belief" could mean a genuinely held belief that is cogent, serious, cohesive and important, that relates to substantial aspects of human life and behavior, that is worthy of respect in a democratic society, and that does not conflict with human dignity or the fundamental rights of others.

²⁰⁵ 50 U.S.C. § 3806 (2018).

²⁰⁶ See *United States v. Seeger*, 380 U.S. 163, 169-73 (1965). While "personal scruples against war" qualified as a conscientious objection in December 1917, the 1940 Selective Training and Service Act specified that qualifying opposition to war was based on "religious training and belief." Until *Seeger*, the belief was required to be in relation to a god or a Supreme Being, with the assumption that the Supreme Being imposed duties upon the person's conduct leading to the conscientious objection. *Id.*

²⁰⁷ *Id.* at 173.

²⁰⁸ *Id.* The Act allowed religious-based conscientious objection because Congress and the courts recognized a higher-order duty to god and "in the forum of conscience, duty to a moral power higher than the State has always been maintained." *Id.* at 170 (quoting Hughes, C.J.)

discrimination because the employee's belief does not conflict with or override the state's judgment and interest.

In employment cases, the governmental interest has been to promote employment, prohibit arbitrary discrimination, and reduce the barriers that certain demographic groups face.²⁰⁹ In this context, a distinction between a religious belief and a climate change belief has no practical impact on the state. Further, while the right to religious belief "is absolute,"²¹⁰ the employer must only reasonably accommodate an employee's religious practice.²¹¹ As with religious belief, an employer's accommodation of an employee's scientific observance or practice could be reasonably constrained. For example, when an employer demonstrates that a scientific accommodation results in a more than "de minimis" cost to him, he could be spared from implementing that accommodation.²¹² As a result, the effect of protecting climate change beliefs on the employer would be no more than the current effect of religious protection.

A final question is whether extending protection to climate change belief would open the door to individuals rejecting and disregarding any law that did not fit with their personal moral code.²¹³ The risks of such overreach are small because the new protection would be placed within and limited to Title VII's employment opportunities. In addition to the structural placement, the text could explicitly and in plain language prohibit any application except to protect employees from adverse employment decisions on the basis of their climate change beliefs. Because scientific beliefs are factually based, legislators could consider the merits of language that limits beliefs to generally established or well-founded beliefs. Unlike religious protections, freedom of climate change belief is not a constitutional right and fringe beliefs could be excluded.

²⁰⁹ See, e.g., 29 U.S.C. § 621 (2018). See also 29 USCS § 2501; (finding that "women face significant barriers to their full and effective participation" and committing to study the barriers and "develop recommendations for the workplace to eliminate such barriers"); 29 U.S.C.S. § 3101 (2020) (stating its purpose "to increase, for individuals in the United States, particularly those individuals with barriers to employment," opportunities needed for success in the labor market).

²¹⁰ See *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940) (noting that the freedom to believe "is absolute" even though actions may be regulated).

²¹¹ 42 USCS § 2000e(j). See also *TWA v. Hardison*, 432 U.S. 63, 66 (1977) (noting that both U.S. Code and the EEOC agree that "an employer, short of 'undue hardship,' [must] make 'reasonable accommodations' to the religious needs of its employees).

²¹² *Hardison*, 432 U.S. at 84 ("To require [the employer] to bear more than a de minimis cost in order to give [the employee] a requested religious accommodation] is an undue hardship.").

²¹³ See *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878) ("Can a man excuse his practices to the contrary [of law] because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.").

As with *Seeger* and *Welsh*, an intention to provide protection for individuals with sincerely held beliefs opens the door to multiple interpretations. The courts both in the United States and abroad, as discussed in previous sections above, have attempted to establish criteria to test whether a belief qualifies for protection or not. Legislators drafting the amendment to Title VII and courts interpreting the law would almost certainly build on this precedent, returning to the reasons for preventing discrimination and the societal benefits that result. Consequently, it is likely that the result would expand protections to align better with Americans and their evolving belief systems without unfairly burdening employers or promoting harmful belief systems.

E. TIMELINESS OF ISSUE

The law related to employment discrimination continues to evolve, as new cases explore the previous limits of protections. Two major factors favor taking action now to protect employees from being discriminated against on the basis of their scientific beliefs: the current harm experienced by employees and the resultant harm to the public.

1. Current Discrimination Against Employees

In 1990, the Intergovernmental Panel on Climate Change completed its First Assessment Report.²¹⁴ Three years later, Vice President Gore reportedly fired a physicist for “failing to adhere to Gore’s scientific views” on climate change.²¹⁵ In 2019, the National Park Service allegedly terminated the employment of a climate change scientist because she insisted on retaining human causes of climate change in a report.²¹⁶ As noted at the beginning of this work, other climate

²¹⁴ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE: THE 1990 AND 1992 IPCC ASSESSMENTS vii (1992).

²¹⁵ Marc Morano, Press Release, *Prominent Scientist Fired by Gore Says Warming Alarm “Mistaken”*, U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS (Dec. 22, 2008), <https://www.epw.senate.gov/public/index.cfm/press-releases-all?ID=5ef55aa3-802a-23ad-4ce4-89c4f49995d2>. In 2008, Dr. Happer continued to argue that “the claim that global warming is caused by man-made emissions is simply untrue and not based on sound science,” offering a report in support of his statement. *Id.*; see also U.S. Senate Environment and Public Works Committee, U. S. Senate Minority Report: More Than 650 International Scientists Dissent Over Man-Made Global Warming Claims Scientists Continue to Debunk “Consensus” in 2008 (Dec. 11, 2008), https://www.epw.senate.gov/public/_cache/files/8/3/83947f5d-d84a-4a84-ad5d-6e2d71db52d9/01AFD79733D77F24A71FEF9DAFCCB056.senateminorityreport2.pdf. Ten years later, Dr. Happer was working for the National Security Council of the Trump administration, challenging emerging governmental research that “climate change is a national security threat.” Emily Holden, *William Happer: Trump Aide Pushing Climate Denial Inside the White House*, THE GUARDIAN (June 21, 2019 02:00 EDT) <https://www.theguardian.com/environment/2019/jun/21/william-happer-trump-white-house-climate-crisis>.

²¹⁶ See Alex Scoville, *Boulder Climate Scientist Sues Trump Administration Over Matter of “Scientific Integrity,”* CO. PUB. NEWS (July 29, 2019), <https://www.cpr.org/2019/07/29/boulder-climate-scientist-sues-trump-administration-over-matter-of-scientific-integrity/>; see also Maria Caffrey, Opinion, *I was a Climate Scientist in a Climate-denying Administration and It Cost Me My Job*, THE GUARDIAN (July 25, 2019 02:00 EDT), <https://www.theguardian.com/commentisfree/2019/jul/25/trump-administration-climate-crisis-denying-scientist>.

change scientists have similarly experienced pressure to act contrary to their climate change beliefs or face employment reassignments.²¹⁷ For an additional example, employees claim to have been fired or demoted because of climate change beliefs related to epidemiology during the COVID pandemic.²¹⁸ These instances indicate that employees face a real threat of employment discrimination based on their climate change beliefs and that the risk of discrimination may be increasing.²¹⁹

According to a survey of 4,200 federal scientists, “18 percent of respondents [said they] had been asked to omit the phrase ‘climate change’ from their work” and 20 percent “engag[ed] in self-censorship regarding climate change.”²²⁰ Some scientists now feel that they must compromise scientific integrity and act in violation of their conscience, in order to avoid adverse employment decisions.²²¹ When Dr. Caffrey filed a scientific integrity complaint regarding the attempts to censor her report, the Department of Interior’s Scientific Integrity Office concluded that “[b]ecause the report was published with references to anthropogenic climate change, there was no loss of scientific integrity.”²²² In its assessment, the Scientific Integrity Office did not address whether Dr. Caffrey’s extensive efforts to avoid censorship resulted in detrimental consequences to her employment.²²³ Dr. Caffrey and Dr. Abramoff’s cases illustrates that discrimination due to climate change belief may very well exist but that it is not considered unlawful.

²¹⁷ See Caffrey, *supra* note 216 (referencing her own situation, as well as two other federal employees, climate staffer Joel Clement and intelligence aide Rod Schoonover, who resigned in protest after experiencing censorship and reassignment due to climate change beliefs).

²¹⁸ Sabin Center for Climate Change Law, Silencing Science Tracker, COLUMBIA UNIVERSITY, <https://climate.law.columbia.edu/Silencing-Science-Tracker> (last visited, July 31, 2020). For example, Rebekah Jones, a data scientist working at the Florida Department of Health, claims she was dismissed after refusing to “manually change” data in the state’s online COVID-19 dashboard. Dr. Rick Bright, the scientist heading the Department of Health and Human Services’ coronavirus vaccine efforts, was reassigned after questioning the Trump administration’s push for use of chloroquine and hydroxychloroquine to treat the virus.

²¹⁹ *Id.*

²²⁰ *Science Under Trump: Voices of Scientists across 16 Federal Agencies*, UNION OF CONCERNED SCIENTISTS (Aug. 7, 2018) <https://www.ucsusa.org/resources/science-under-trump>.

²²¹ Scoville, *supra* note 216 (“‘Unfortunately, after that, I experienced a lot of retaliation in my position.’ . . . ‘This has had a significant impact on my career, on my well-being,’ she said. ‘The whole reason I went to Washington, D.C., was to try and protect other scientists out there. We need stronger scientific integrity protections.’”).

²²² CSLDF Helps Climate Scientist Maria Caffrey Fight for Scientific Integrity, CLIMATE SCI. LEGAL DEF. FUND (Aug. 22, 2019), <https://www.csldf.org/2019/08/22/csldf-helps-climate-scientist-maria-caffrey-fight-for-scientific-integrity/>.

²²³ *Id.*; See also Alex Scoville, *Boulder Climate Scientist Sues Trump Administration Over Matter of “Scientific Integrity,”* CO. PUB. NEWS (July 29, 2019), <https://www.cpr.org/2019/07/29/boulder-climate-scientist-sues-trump-administration-over-matter-of-scientific-integrity/> (“‘Unfortunately, after that, I experienced a lot of retaliation in my position.’ . . . ‘This has had a significant impact on my career, on my well-being,’ she said. ‘The whole reason I went to Washington, D.C., was to try and protect other scientists out there. We need stronger scientific integrity protections.’”).

However, the rationale for protecting such employees applies with a direct parallel to the rationale behind religious and conscientious objector protections; “both morals and sound policy require that the state should not violate the conscience of the individual.”²²⁴ An employee who is forced to compromise her beliefs suffers a hardship.²²⁵ Moreover, a congressional committee arguing for expanded protections for women noted that “the harms women and religious and racial minorities suffer as a consequence of the various types of intentional discrimination are the same,” an argument that extends equally to those with scientific beliefs.²²⁶ Where the manifestations of employer discrimination are the same, an employee who experiences the same resulting harm, even when it is due to her scientific beliefs, should have access to the same remedies.

2. *Public Policy Considerations*

On a broader scale, legislators recognized a harm to society when employees suffer discrimination. For example, when Congress found that “artificial barriers exist to the advancement of women and minorities in the workplace” in the Glass Ceiling Act of 1991, it recognized that a committee would help “focus greater attention on the importance of eliminating artificial barriers” and “promote work force diversity.”²²⁷ In recognition of the desirability of these objectives, Congress then established the Glass Ceiling Committee.²²⁸ The finding that “United States corporations . . . are increasingly aware of the advantages derived from a diverse work force” applies also to climate change viewpoints that increase diversity.²²⁹

In its congressional report for the Glass Ceiling Act, the Committee on Education and Labor endorsed the goal of “eradicating discrimination,” stating that “[s]trong protections against employment discrimination are the keys to unlock the human resources of creativity, productivity

²²⁴ *United States v. Seeger*, 380 U.S. 163, 170 (1965).

²²⁵ Civil Rights and Women’s Equity in Employment Act of 1991, H.R. Rep. No. 102-40 (Apr. 24, 1991). (“Victims of intentional discrimination often endure terrible humiliation, pain and suffering while on the job. This distress often manifests itself in emotional disorders and medical problems, which in turn cause victims of discrimination to suffer substantial out-of-pocket medical expenses and other economic losses as a result of the discrimination.”).

²²⁶ *Id.* The identified harms were: loss of employment opportunities; loss of wages and other forms of compensation; humiliation; loss of dignity; psychological (and sometimes physical) injury; resulting medical expenses; damage to the victims professional reputation and career; and other consequential injuries.

²²⁷ Glass Ceiling Act of 1991, Pub. L. No. 102-166, § 202, 105 Stat. 1071, 1081 (1991).

²²⁸ *Id.* § 203.

²²⁹ *Id.* § 202.

and loyalty prized by employers.”²³⁰ Consistent with earlier anti-discrimination legislation, the report recognized the value of a diverse workforce of productive employees contributing to the national economy. Thus, Congress should take measures to eliminate any artificial barriers that exist today, including those that hinder the advancement of Americans with climate change beliefs and reduce the diversity of perspectives in the workplace, to further these goals.

In addition to “the overriding public interest in equal employment opportunity . . . asserted through direct Federal enforcement,”²³¹ the government has an interest in ensuring that public policy is based upon solid research and established science. When scientific organizations and agencies are deprived of the differing views that stimulate discussion and robust debate, the quality of their end product suffers.²³² From free speech contributions to the “marketplace of ideas” to the peer-review process for scientific journals, a healthy competition among competing views generally allows the most compelling idea to emerge victorious.²³³ However, the best idea in the workplace may never be heard if it is silenced by discrimination against the employee who holds it.²³⁴ Allowing employment discrimination based on climate change belief deprives Americans of views that play a vital role in balancing and shaping public policy.²³⁵

²³⁰ Civil Rights and Women’s Equity in Employment Act of 1991, H.R. Rep. No. 102-40 (Apr. 24, 1991). (“America is a better country because we as a people have moved forward toward the goal of eradicating discrimination. Nowhere is that more important than in the workplace. Of almost any sector of American life, the progress toward equality has been greatest in the workplace precisely because of strong federal equal employment opportunity laws. . . . Together we can make a significant contribution to the advancement of equal employment opportunity in our nation. Strong protections against employment discrimination are the keys to unlock the human resources of creativity, productivity and loyalty prized by employers.”).

²³¹ Gen. Tel. Co. v. Eloc, 446 U.S. 318, 326, (1980) (quoting 118 Cong. Rec. 4941 (1972)).

²³² See e.g., Wes E. Henricksen, *Peddling Ignorance: A New Falsity Standard for Scientific Knowledge Fraud Cases*, 86 UMKC L. REV. 295, 320 (2017) (discussing the difficulty of determining whether scientific knowledge is “true” or “false,” adding that “[c]limate scientists would almost certainly be able to determine which data sets are objective and accurate and which are not, but judges, policymakers, and the public are much less well-equipped to make this kind of judgment call.”).

²³³ See e.g., Brant T. Lee, *The Devil in the Details: On Intelligent Design, Racial Conspiracy Theories, and the Theology of Whiteness*, 26 QUINNIPIAC L. REV. 57, 57 (2007) (exploring competing theories to “loosen frameworks of perception” and find a productive common ground);

Keith W. Rizzardi, *Sea Level Lies: The Duty to Confront the Deniers*, 44 Stetson L. Rev. 75, 95-108 (2014) (discussing sea level rise and the duty of lawyers to accurately portray the “factual, moral, economic, social, and political factors” involved).

²³⁴ See, e.g., Brad Plumer and Coral Davenport, *Scient Under Attack: How Trump is Sidelining Researchers and Their Work*, NY TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/climate/trump-administration-war-on-science.html>.

²³⁵ Generally, when an employee’s actions comply with public policy or she refuses to act in a way that would violate public policy, the employer is not permitted to retaliate against her for doing so. However, whistleblower statutes provide incomplete protection, and current high-profile examples such as the termination of Lt. Col. Alexander Vindman further weaken whistleblower protection. See Patricia Patrick, *Be Prepared before You Blow the Whistle*, FRAUD MAGAZINE (Sep./Oct. 2010) <https://www.fraud-magazine.com/article.aspx?id=4294968656> (“New research on state whistle-blower lawsuits shows it’s likely you’ll be fired and will lose your case.”); Alana Abramson, *Trump’s Attack on Vindman May Violate Whistleblower Protection Laws. But Challenging It Could Be Risky*, TIME (Feb. 12, 2020 6:03 PM EST), <https://time.com/5783160/trumps-attack-on-vindman-may-violate-whistleblower-protection-laws-but-challenging-it-could-be-risky/> (“The upshot is that the

A final consideration providing impetus for timely action is the current discrepancy in the guidelines for interpreting “belief.” The EEOC guidelines interpret “belief” more broadly,²³⁶ while courts have struggled with determining whether a belief system qualifies as religious.²³⁷ For example, despite a Supreme Court footnote classifying Secular Humanism as a religion,²³⁸ debate continues about whether Secular Humanism is a protected religion.²³⁹ A protected belief must be more than a deeply held personal belief, no matter how well-founded in scientific data it may be, yet the Supreme Court acknowledges that sincerely held religious beliefs are protected, even when “irrational” or “offensive.”²⁴⁰ Meanwhile, the EEOC has determined that Onionhead is a religion,²⁴¹ despite arguments that it is “weirder than scientology.”²⁴²

These inconsistencies create a lack of clarity for courts hearing cases on employment discrimination, increasing the risk of “arbitrary and capricious” decisions.²⁴³ Furthermore, the decisions indicate that beliefs founded on faith are of higher value than beliefs founded on science, even as Americans are generally moving away from religion and prefer that science guide public policy. For many secular Americans, it is difficult to understand why deeply held moral and ethical

whistleblower protection laws, and whistleblowers themselves, will become more vulnerable in the wake of Trump’s actions.”).

²³⁶ See 29 C.F.R. § 1605.1 (2020); See also Captain (Ret.) Drew A. Swank, *Cold Fusion Confusion The Equal Employment Opportunity Commission's Incredible Interpretation of Religion in LaViolette v. Daley*, 2002 Army Law. 74,74 (taking issue with the EEOC’s holding “that the complainant’s unusual beliefs regarding cold fusion, cryptic messages from extraterrestrials, and other ‘scientific’ beliefs are entitled to the same protection in the workplace from discrimination as religious beliefs”).

²³⁷ *Peterson v. Wilmur Communs., Inc.*, 205 F. Supp. 2d 1014, 1018 (E.D. Wis. 2002) (“Deciding how to distinguish a religion from other types of beliefs or belief systems has been a source of great controversy for courts and commentators. . . . In addition, the Supreme Court has noted the care that courts must exercise in this area to avoid making theological pronouncements that exceed the judicial ken.”).

²³⁸ *Torcaso v. Watkins*, 367 U.S. 488, 495 n. 11 (1961).

²³⁹ See *Heap v. Carter*, 112 F. Supp. 3d 402, 436-38 (E.D. Va. 2015) (noting the conflicting positions of various circuit courts before concluding that “[w]hether Humanism is protected under the Constitution either as a religion or as an equivalent belief system was not ‘clearly established’”). The Fourth Circuit and Eleventh Circuit do not interpret the *Torcaso* footnote as signifying that Humanism is a religion, the Ninth Circuit has suggested without affirmatively deciding that Humanism is a religion, and the Seventh Circuit has held that Humanism is entitled to protection under the Establishment Clause. *Id.*

²⁴⁰ *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1737 (2018) (Gorsuch J., concurring) (“[I]t must be the proudest boast of our free exercise jurisprudence that we protect religious beliefs that we find offensive.”).

²⁴¹ *Equal Opportunity Emp’t Comm’n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377, 398 (E.D.N.Y. 2016) (“[T]he court concludes that Onionhead qualifies as a religion for purposes of Title VII.”)

²⁴² See Alicia Lu, *This Religion Is Weirder Than Scientology*, BUSTLE (June 12, 2014), <https://www.bustle.com/articles/27848-onionhead-religion-has-reached-long-island-and-its-even-weirder-than-scientology>.

²⁴³ See *Willard v. Tayloe*, 75 U.S. (8 Wall.) 557, 567 (1870) for an early reference to this standard. “The discretion which may be exercised in this class of cases is not an arbitrary or capricious one, depending upon the mere pleasure of the court, but one which is controlled by the established doctrines and settled principles”

beliefs that inform practices such as veganism are not generally protected.²⁴⁴ In the context of employment discrimination, a solution that broadens protection to include secular or climate change belief would provide clarity, remove artificial distinctions that cause confusion, and create a consistent standard based on the sincerity and strength of the employee's belief.

IV. CONCLUSION

In summary, employees are currently experiencing discrimination in their jobs because of their climate change beliefs. While protections exist under Title VII for protected classes, climate change beliefs currently fall outside of these classes. As a result, discrimination against employees based on scientific beliefs is not prohibited, and an employee can be lawfully fired because of her belief in climate change. The consequences of this type of discrimination are detrimental to the employee, to society, and to public policy, providing substantial justification for protecting climate change beliefs. In addition, courts have generally favored the expansion of employment protections, furthering congressional goals of unleashing the creativity and productivity of the American workforce.

One means of protecting climate change belief is by expanding the definition of the religious protection currently available under Title VII. While it may be oxymoronic to cover secular scientific beliefs under the category of religion, an employment discrimination case with compelling circumstances could establish the precedent for climate change belief protections. Belief in the science of climate change, in particular, could fit the broad criteria that courts have established for religion if the employee's beliefs were sincerely held with the strength of traditional religious views and had a moral or ethical component. Once established, the precedent would provide protection for other scientists and employees with heartfelt climate change science beliefs that govern their sense of right and wrong.

A second and more comprehensive solution is to add to the protected classes under Title VII by changing Section 2000-e to read "religion or belief." This wording elevates climate change science belief to a category on equal footing with religion, implicitly requiring a similar level of commitment from its believer as a religion and thereby excluding the casual observer who adopts a belief for pragmatism or expediency. In addition, this solution is in keeping with long-term

²⁴⁴ See Page, *Supra* note 90 ("All sincerely held moral or ethical vegan beliefs should be protected because it is arbitrary to say that a vegan who is affiliated with an organized religion must be given protection while a vegan who holds the same beliefs - though internally derived - does not deserve the law's protection."); see also Rebecca Schwartz, Note, Employers, Got Vegan?: How Ethical Veganism Qualifies for Religious Protection Under Title VIII, 24 Animal L. 221, 242 (arguing that "ethical veganism meets the broad definition of religion under the federal employment discrimination laws").

trends in American society away from organized, traditional religion and toward a greater trust in science. While more difficult to implement, a legislative solution illuminates congressional intent and would provide greater clarity and consistency for judicial interpretation, resulting in more predictable protection for employees with climate change science beliefs. Finally, it aligns with international precedent and goals which the United States endorsed in the 1948 Universal Declaration of Human Rights.