

The Sleevegate Controversy: The Impact of Title VII's "Because of Sex" Clause on Dress

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Abstract: The 1964 Civil Rights Act introduced Title VII to combat workplace discrimination, including that based on sex. Title VII's intricate history particularly affects employee attire in the workplace. Beyond functionality, clothing holds historical and cultural significance. Dress codes affect domains like Congress, where colors and symbols sway political outcomes. Notably, workplace dress codes have perpetuated conventional heterosexual norms, reflecting the amalgamation of societal norms that dictate "acceptable" attire. Uncomfortable dress codes pose a dilemma for employees—risking termination or sacrificing self-expression. However, legal trends are progressively shifting to safeguard diverse identities. In this context, the response of legislators, employers, and the public is crucial for addressing identity expression, a deeply ingrained and divisive issue. The addition of "sex" to Title VII brought unforeseen legal complexities that no one could have anticipated, but the question remains: how will these stakeholders address diversifying personal expression in the workplace and where does it fall under the legal jurisdiction?

Introducing Title VII

In 1992, more than two women served simultaneously in the Senate for the first time (Sears 2017). Following the controversial Supreme Court nomination of Clarence Thomas, more women ran for Senate than ever before, and the media labeled 1992 the "Year of the Woman." With more diversity in the Senate, professional dress expectations shifted as women entered previously male-dominated spaces. No specific guidelines detail the House and Senate floor dress code, only an expectation to dress professionally. In the 1990s, the expectation mandated that women wear only skirts and dresses on the Senate Floor, reflecting the Senate's more conservative nature than the House (Euse 2016).

Senator Barbara Mikulski, only the second woman to ever serve in both the House and the Senate, challenged this unspoken rule. Mikulski warned the president pro-tempore¹ at the time of her intention to break the expectation. Then, Mikulski and other female senators and staffers walked onto the Senate floor wearing pantsuits, causing audible gasps, and the Pantsuit Rebellion of 1993 was born (Euse 2016). When Senator Mikulski gave interviews about that day, she compared the novelty of the men's reactions to women "walking on the moon" (Sears 2017, n.p.). Their act of defiance rewrote the professional expectations for women in the legislature. As a result

¹ The Senate elects a president pro-tempore to serve as a presiding officer in the absence of the vice president. This position is traditionally dictated to the most senior member of the majority party, which at this time was Democrat Robin Byrd.

of their push for gender inclusion, the first woman elected to serve as the Sergeant at Arms² codified that every member of the legislature could wear slacks, formalizing the importance of this accomplishment (Sears 2017). While these women did not break formal policy, their challenges to the Congressional dress code ignited discussions on workplace expectations and gender discrimination.

Title VII is the law that addresses workplace discrimination, including dress code discrimination. This statute can be found in the Civil Rights Act of 1964. Following the 1954 Supreme Court decision *Brown v Board of Education* that ended racial segregation in public schools, a conversation on how to force integration in the workplace began. Legislators extensively debated the act's scope of protection, with individuals attempting to enact personal agendas about different degrees of discrimination in the workplace. Representative Howard Smith added "sex" in an attempt to stop the bill from passing. At the same time, Representative Katherine St. George lobbied for adding the word "sex" because women deserved that "crumb of equality" (PLC Labor and Employment 2013, n.p.). She argued for protections based on sex, alluding to the fact that women outlive men and therefore contribute more to the workforce. She further reasoned that adding the word "sex" would in no way hurt the legislation, only improve it by making it right (PLC Labor and Employment 2013, n.p.). When Title VII passed in 1964, including the word "sex," it became illegal to discriminate against women in the workplace. Ultimately, this new statute prohibited discrimination based on race, color, religion, sex, and national origin (Civil Rights Act 1964).

This piece of legislation intends to root out discrimination based on arbitrary characteristics and classifications irrelevant to one's qualifications for employment (Abney Law 2018). The protections this statute provides may appear self-explanatory, but the meaning of "because of sex" has been extensively debated in academic and judicial spheres (Harrison 2018, 103). Title VII does not explicitly incorporate language about sexual orientation or sex stereotyping, nor does Title VII define "discriminate" or "sex" (Harrison 2018, 103). "Sex" was added to the bill only two days before it went to vote. Legislators hardly discussed sex-based discrimination on the House floor and had limited understanding of the extent of discrimination that could be associated with the clause (Harrison 2018, 104). Title VII recognizes the significance of equal opportunity and questions the legality of gender-based discrimination in the workplace. However, the application of the law becomes convoluted in practical application. In recent years, debates over Title VII's influence on workplace dress codes heightened as societal norms and expectations changed.

A Review of Title VII

Before Title VII, employers could regulate their workplaces as they saw fit (Abney Law 2018). Few workplace discrimination laws existed during the early twentieth century; therefore, employers had the discretion to hire and fire as they pleased rather than considering the legal ramifications. In response to massive unemployment during the Great Depression, Congress passed the Unemployment Relief Act of 1933, which barred employers from discriminating based on "race, color, or creed" (U.S. Equal Employment Opportunity Commission n.d.). On its face, Title VII appeared as a landslide piece of legislation, but no institution could enforce the parameters of the law, rendering the policy largely ineffective. President Roosevelt's establishment of the Fair Employment Practice Committee (FEPC) in 1941 gave this institution the power to investigate workplace discrimination claims, but a Southern-led Congress in 1945 dissolved the

² The Sergeant at Arms serves the Senate as the chief law enforcement officer and protocol officer. This person will be the administrative manager and host for Senate activity and is elected by the members of the Senate.

funding for the FEPC (Abney Law 2018). More than twenty years after the passing of the Civil Rights Act in 1964, Congress established the Equal Employment Opportunity Commission (EEOC) in 1965 to enforce Title VII and work to eliminate unlawful discrimination in the workplace.

The EEOC established itself by addressing many of the same issues as the FEPC. Operating under an entirely new framework and government, the EEOC began as a smaller institution with only a \$2 million budget and approximately 100 employees (U.S. Equal Employment Opportunity Commission n.d.). As the 1960s continued, four field offices opened in Austin, Cleveland, Chicago, and Atlanta. While the EEOC enforced the policies outlined in Title VII, the institution did not have the power to file lawsuits directly against an employer, but in 1968, they began submitting amicus briefs³ when individuals filed lawsuits against employers. The EEOC offered their expertise and knowledge of US employment protections for individuals fighting against discrimination.

As a result of the institution's importance and success during employment disputes, Congress voted in 1972 in favor of the EEOC filing lawsuits directly against employers. Thus, the EEOC could sue employers, including the federal government, state and local governments, and any agency with more than 15 employees (U.S. Equal Employment Opportunity Commission n.d.). However, following several unsuccessful employment discrimination suits in the courts, Congress amended Title VII and passed the Civil Rights Act of 1991. The new amendment signaled that employees now held the power to sue for discrimination based on dress. Employees could request a trial in Title VII lawsuits and recover compensatory and punitive damages in intentional employment discrimination cases.

Societal and cultural changes motivated consistent reassessments by the judicial branch of the definition of sex discrimination and how legislation defined it. The first case that considered dress code an area of discrimination under Title VII was *Carroll v Talman Federal Savings and Loan Association*. In 1979, Mary Carroll filed suit against her employer, Talman Federal Savings and Loan Association, on behalf of herself and the other similarly situated female employees working at Talman (Reilly 1995, 266). Company policy required all female employees to wear a uniform, while male employees could wear any customary business attire. Carroll filed a discrimination suit under Title VII because the dress code imposed restrictions on female employees without enforcing comparable restrictions on their male counterparts. The employer treated the uniform cost as part of the female employee's income. The women were also required to personally clean and replace the uniform if any piece was lost with no additional compensatory aid from their employer. Rules indicated that the employer would suspend those not adhering to the dress code. Then, when the EEOC investigated the claim, they found that the employer's female dress policy constituted "disparity in the terms and conditions of females as a class" ("Carroll" 1979, n.p.). The United States District Court for Northern Illinois considered this dress code requirement a sex discrimination violation under Title VII. This ruling set the precedent that dress code lawsuits must apply to a group or class of employees rather than affecting one specific individual, beginning decades of unclear precedent.

Application of Title VII: "Sex" and "Sex Plus"

Despite the lack of a clear definition associated with "sex," Supreme Court rulings played a crucial role in interpreting the meaning and application of Title VII. *Price Waterhouse v Hopkins*

³ A legal document supplied to a court of law containing case-specific advice or information from a person or organization that is not directly involved in the case.

better defined sex discrimination in the workplace. Ann Hopkins worked at the large business firm Pricewaterhouse Cooper (PwC) as a senior project manager for five years when she received a nomination to become a partner. Hopkins brought significant profits to the company, including a \$25 million government contract. The lengthy approval process to become a partner included recommendations from other partners, performance reviews, and interviews. Of the 622 partners at PwC, only 7 were women (Oyez “Price Waterhouse v Hopkins” 1988). Some partners openly opposed women in leadership positions, but most negative reviews associated with Hopkins mentioned her lack of interpersonal skills and aggressive personality in the workplace. The firm decided to postpone her consideration for the partnership to the following year, but when the partners refused to reconsider her the next year, she sued for discrimination based on sex. The lower courts grappled with determining whether PwC would have made the same decision if she had been a man (Oyez “Price Waterhouse v Hopkins” 1988). The majority decision ultimately clarified in 1989 that employers may not lawfully discriminate based on the stereotypical characterizations of one specific sex (Raskin 2006, 255). If PwC could prove that the partners would have denied Hopkins partnership even if she were not a woman, they would not have been at fault. (Oyez n.d.). The court ruled that just because Hopkins did not conform to traditional expectations of femininity, the firm could not deny her the position of leadership she earned.

While the *Price Waterhouse* ruling solidified the synonymous nature of gender and sex in the workforce, individuals within the LGBTQIA+ community still encountered uncertainties regarding discrimination based on sexual orientation. A decision heard in the Seventh Circuit Court in 2017 focused on the difference between sex and assumptions of the proper behavior associated with each gender. In *Hively v Ivy Tech Community College of Indiana*, Hively, who worked as a part-time professor at Ivy Tech Community College, and identified as openly lesbian, sued her employer for discrimination based on sexual orientation. She submitted numerous applications for several full-time positions, but the community college ultimately did not renew her part-time contract. Hively believed the institution blocked her applications because of her queer identity (Justia 2017). The employer moved to dismiss the case because they stated that Title VII did not protect sexual orientation. During the Seventh Circuit Court hearing, however, the justices concluded that the definition of sex discrimination encompasses sexual orientation. The court’s decision concluded that Hively’s lesbian identity played a significant role in her being denied employment, thus constituting discrimination under Title VII (Justia 2017). Hively challenged the conventional notion that employers could only discriminate based on gender identity without regard to sexual orientation. By interpreting sexual orientation as a protected characteristic under Title VII’s “sex” provision, employers were prohibited from discriminating against individuals who deviated from traditional gender norms in their personal lives. This ruling provided an essential foundation for the Supreme Court decision—*Bostock v. Clayton County*. In this decision, the Supreme Court confirmed that one cannot discriminate based on sex without indirectly discriminating based on sexual orientation.

Since courts continue to interpret Title VII differently, employers and employees are still determining their rights and responsibilities in the workplace (Penta 2010, 21). Before 2020, Title VII only protected immutable characteristics that could prevent equal employment opportunities, therefore Title VII did not protect features such as hair length, considering them matters of personal preference (Blount 2021, 231). Today, however, the law prohibits discrimination against chosen preferences like one’s romantic partner. Senator Mikulski understood that wearing pants on the Senate floor, a personal preference, could cost her reputation; for others, it could cost their jobs. Following *Carroll*, which set the precedent that dress code applies to groups of employees rather

than individuals, courts determined dress code discrimination associated with self-expression as “sex plus,” meaning it involved sex plus another characteristic. The Supreme Court ruled that Title VII discrimination could apply to “sex plus” cases, but a decision regarding workplace dress codes has never been handed down (Blount 2021, 231). Thus, employers still had the discretion to distinguish between genders when implementing dress codes. Until 2020, an employer could establish rules prohibiting self-expression, regardless of its relevance to an employee’s job performance (Chambers Jr. 2021, 54). Title VII covers several discriminatory characteristics, but the Supreme Court’s previous rulings did not define specific guidelines for interpreting the statute on workplace dress codes. This confusion opened an avenue for employers and authority figures to restrict workplace attire and self-expression that challenged heterosexual societal norms.

The Influence of Dress

The relevance of dress standards began with the birth of fashion in 1300. Kings and queens determined the trends as fabrics and gemstones signaled their wealth. Nobility and court members often emulated their style, accessory choices, and overall appearance. Through the 1800s, revolutionary moments like the Bill of Rights in England and the French Revolution inspired dress by causing shifts in silhouettes and the abandonment of the opulence of previous eras. The tumultuous times of the 1900s due to wars and societal clashes led to the banning of flapper fashion and the Zoot Suit Riots (Ford 2021). The 2000s introduced influential characters like Elena Kagan and Barack Obama, whose gender-neutral and casual elegant styles impacted acceptable political attire (Ford 2021). The transition from using fashion to indicate social class to embracing a wider variety of trends has deepened the perplexity linked to dressing in today’s culture.

Dress can silently implicate one’s political stance, opinions, or gender identity. The recent diversity of women’s clothing accepted in the workplace stemmed from the second-wave feminist movement of the twentieth century when women entered social, economic, and political spaces previously reserved for men (Ford 2021). During the Women’s Suffrage Movement, clothing colors united women as they marched for the right to vote. Purple, white, and green symbolized loyalty to the cause, the quest for freedom, purity, and hope. As the decades continued, white proved particularly useful as the notion of purity countered the anti-suffrage accusation that women who wished to vote were morally corrupt (Grechko 2020). Thus, people have regarded clothes as tools women utilize to communicate social justice and self-actualization. As decades passed, white became a symbolically important color to movements like the Civil Rights movement. Manufacturers commonly used cotton to make clothes, which did not require any other dye, making it affordable for anyone; white clothing, thus, united the socioeconomic classes (Grechko 2020). Also, Blacks donned “Sunday Best” to play into the respectability politics associated with white-dominated spaces during the fight for racial equality. Black Civil Rights leaders understood critics would associate more common attire with the inability to conform to “white norms” and dressed up to shift focus to their political message and advocate for integration (Grechko 2020). These activists understood the social and psychological implications of clothing in the fight for their beliefs.

In the 60s, activists utilized clothing as a powerful tool to combat racial oppression, and today, it remains instrumental in challenging gender stereotypes, especially in settings like the legislature. When Hilary Clinton secured the Democratic nomination for president, her pantsuit style became an identifier with women nationwide, and the trending hashtag #PantsuitNation rallied supporters for Clinton in 2016. Pantsuits have historically been seen as men’s attire; Clinton’s choice symbolized women’s fight for equality (Grinberg 2016). This change highlights

the significant gender associations that exist historically in fashion; men wear a simple dark suit and demand attention, while critics may label women as unprofessional for their bold colors, deep neckline, or tight clothing (Lang 2019). Even if women adhere to the written guidelines of a traditional dress code, men's attire does not undergo the same scrutiny (Lang 2019).

With increasing diversity in Congress, dress can also acknowledge one's heritage or pay homage to those who came before. Democratic Rep. Debra Haaland, one of the first Native American women elected to Congress, wore turquoise jewelry and traditional dress for her swearing-in. Alexandria Ocasio-Cortez (AOC) wore white to honor Shirley Chisholm, the first black woman elected to Congress, and hoop earrings and red lipstick as Supreme Court Justice Sonia Sotomayor did (Lang 2019). In defense of her decision to wear bold pieces, AOC tweeted, "Sonia Sotomayor was advised to wear neutral-colored nail polish to avoid scrutiny. She kept her red. Next time someone tells Bronx girls to remove their hoops, they can just say they're dressing like a Congresswoman" (Ocasio-Ortez 2019, n.p.). Women even use their style as a bipartisan political tool (Medina 2020). At Kamala Harris's swearing-in ceremony, she wore a purple jacket symbolizing unity (George-Parkin 2021). Harris fashioned a Black, queer designer from Louisiana, exemplifying how a diverse Congress helps recognize the diverse voices of the nation (George-Parkin 2021).

Unlike women, established male professional dress limits men's opportunities to express their views symbolically. Lapel pins allow men to accessorize and support a cause or political agenda. Namely, the American flag lapel pin has been a continuing point of controversy. First worn by Richard Nixon as a statement against anti-war protestors during the Vietnam War, the American flag pin symbolized patriotism and love of the country (Keefe 2016). Nixon's sordid actions during his office sullied the reputation of wearing the pin. Not until the September 11th terrorist attacks, when George W. Bush required all his staff to wear American flag pins, did they become a staple for men in politics. In October of 2007, during Obama's presidential campaign, he openly stated he would not be wearing an American flag pin because he did not support the actions of those that wore it—referring to politicians voting against protection for veterans—but by May 2008, Obama again fashioned an American pin (Associated Press 2007). While flag pins may be small emblems, today, they hold significant meaning in the eyes of the public.

Clothing is political. Even within professional dress standards, these national figures have found ways to make dress symbolize more than meets the eye. According to Title VII, clothing is not about the individual; the law only reflects the black-and-white image of what it means to dress like a man or a woman. While Title VII provides a narrow legal perspective on attire, the scientific implications reveal a more nuanced understanding of how individuals and dress intertwine. Beyond the parameters set by the law, scientific research explores the intricate relationship between clothing choices and various aspects of human behavior and perception.

Scientific Implications of Dress Codes

When gender was added to Title VII, lawmakers hesitated to even acknowledge it as an area for workplace discrimination, including the impact of attire on performance. Employers have since learned to leverage the relationship between dress and performance. Employers implement formal codes to encourage a professional environment and serve as a way for the company to present its external image. Born in tech firms in Silicon Valley in the 1980s, business casual dress signaled the societal shift from traditional formality to a less structured way of life (Clemente 2017). The development of this cultural change illustrated how different industries valued formality, with West Coast tech firms readily adopting the new practice and East Coast client-

centered businesses slow to change. These differences represent that “dress standards are a product of their environment,” following the societal shifts of a new generation (Clemente 2017, n.p.).

Researchers have explored the impact of implicit bias associated with attire; specifically, how attire affects physical behaviors. In 2015, Slepian et al. conducted lab experiments studying how dress correlates with psychological behavior and decision-making. Formal clothing correlates with psychological formality and social distance, whereas casual clothing elicits feelings of familiarity and intimacy (Slepian et al. 2015). A newly derived concept known as “enclothed cognition” studies the co-occurrence of these two independent factors: the symbolic meaning of clothes and the physical experience of wearing them (Adam and Galinsky 2013, 919). Hajo Adam and Adam Galinsky (2013) discovered that the participant’s behavior only changed when they added a symbolic meaning to the piece of clothing. In the study, participants wore a lab coat. When the coat was worn but not associated with being a doctor’s coat, and when the coat was associated with a doctor and not worn, no changes in sustained attention occurred. Only when participants wore the coat *and* associated it with being a doctor’s coat did the participants’ behavior change (Adam and Galinsky 2013, 922).

Adam and Galinsky’s research examine how the symbolic meaning of clothing affects how people think and creates the possibility for an explicit link between physical experiences, like performance outcomes, and symbolic meanings. Thus, companies can utilize the psychological implications of written dress codes to elicit certain behaviors at work, such as competence, trustworthiness, and leadership authority (Reddy-Best 2017, 619). These scientific findings underscore that while debates persist on avoiding illegality, arbitrariness, or stereotype reinforcement through dress codes, companies can significantly influence the curation of professional and productive atmospheres.

Dress in the Workplace

Employers enforce dress restrictions to shape the presentation of their business to clients while also managing the individual freedoms their employees may express through dress (Martin 2019). The courts interpret the laws passed in Congress, but employers put these laws into practice daily. Since workplace dress codes are controversial, what responsibility do employers bear when carrying out the law? Should these employers have a higher ethical commitment to address societal norms and gender-related issues in the workplace, or is that out of the scope associated with workplace dress codes? Rulings on Title VII before 2020 indicated dress code norms are absent the influence of societal changes; so, employers face the challenge of finding the proper equilibrium between these personal considerations, the practical requirements of a working atmosphere, and Title VII legislation.

Dress codes may perpetuate biases and discrimination by enforcing conformity and encouraging the concealment of one’s true identity by following unspoken heterosexual norms of professionalism (Reddy-Best 2017, 627). Women, members of the LGBTQIA+ community, and marginalized groups identified dress codes as harmful to their self-perception, identity, expression, and self-worth (Reddy-Best 2017, 636). Representative Alexandria Ocasio-Cortez details the challenge of affording Hill-appropriate attire as a middle-class person from the Bronx. She advocates for thrifting and buying second-hand clothing online. Still, when she dresses the part, other congress members, such as Eddie Scarry, criticized her for wearing clothing too nice to match her working-class persona (Al-Arshani 2020).

Some believe that societal expectations surrounding professional dress have created undue responsibility and pressure on women and their attire. Tamara Belinfanti, a law professor at NYU,

wrote that her untailored department store suits made her feel self-conscious rather than self-assured. Only when she purchased a tailored Calvin Klein pencil skirt suit, outspending her credit card budget, did others respect her credibility (Belinfanti 2021). Societal norms often mandate professional attire to earn respect, even though the quality of an individual's work should not be linked to their clothing (Rios 2015). Johnson, Crutsinger, & Workman discovered that women who wore a scarf instead of a necktie had a higher likelihood of promotion because the conservative appearance of the scarf suggested to employers that she possessed superior managerial qualities. Women labeled aggressive were instructed to adopt a more feminine appearance and mannerisms (Reddy-Best 2017, 619). Formalized dress codes present a trade-off that those who do not conform to heteronormative expectations must grapple with daily.

Informal societal norms are as important as professional expectations dictating what people wear. While not written and formally enforced, social pressures still control societal expectations. Sex stereotypes for men and women create and reinforce gender-based standards and expectations that inevitably manifest in the workplace. In Kelly Reddy-Best's (2017) study examining how workplace dress codes impact women who identify as lesbian, many participants felt that written dress codes limited their self-expression not because of the attire mandated but because of the differences between their preferred clothing and traditional feminine attire accepted in the workplace. Additionally, since men in the workplace expect a suit-and-tie dress standard, they have less leeway regarding self-expression. Women can wear makeup, jewelry, cropped pants, skirts, and dresses and wear their hair any length. Most professional spaces prohibit men from partaking in these similar practices, enforcing typical masculine norms that society deems acceptable (Wilkie 2019). The New York City Commission on Human Rights even declared in 2015 that requiring men to wear ties to dine in restaurants to maintain professionalism was unlawful sex discrimination (Ford 2021, 304).

Conformity hinders those unable to express their true identities, but nonconformity often comes with a social cost for those not in a position of power (Bellezza 2014, 35). In familiar situations, high-status individuals can defy social norms, signaling their power by disregarding the anticipated disapproval from society. This departure, referred to as the "red sneakers effect," illustrates that people's quest for uniqueness can contribute to the perception of higher status (Bellezza et al. 2014, 36). These high-status individuals earn and maintain increased status through an accumulation of positive impressions in the minds of the rest of the group. Chief executive officers (CEOs) like Bill Gates and Mark Zuckerberg have worn sweatshirts at formal gatherings such as the World Economic Forum, a luxury low-status individuals do not have (Bellezza et al. 2014, 37). By adopting behaviors that differ from the social norm, these individuals change when and how they attain status and competence in the eyes of others (Bellezza et al. 2014, 49). Initially, the court handed down conflicting rulings on workplace dress codes and favored traditional heterosexual expectations. Title VII now protects every type of gender presentation in the workplace, but despite societal evolution, slow legal changes leave businesses with unclear guidelines, leading to favoritism based on perceived norms. While laws lag, influential figures today, such as Congressmen, leverage their positions to shape more inclusive workplace norms.

Dress in the Legislature

Since the entry of women into politics, commentary about female presence in Congress often centers around women's appearances, including the clothes they wear, the designers they choose, and whether they follow current fashion trends. In 1917, the first congresswoman, Jeannette Rankin, took office. She focused her time in office on expanding women's right to vote

and ensuring better working conditions for laborers across the United States. Despite her accomplishments, the *Washington Post* headlined her arrival in Congress as “Congresswoman Rankin Real Girl; Likes Nice Gowns and Tidy Hair,” with the article proclaiming how “thoroughly feminine” and charming the newly elected congresswoman was (North 2018, n.p.). Representative Katherine Langley from Kentucky served time in office in the late 1920s and early 1930s. In 1930, she became the most senior member of the Kentucky Republican Caucus. Yet, reporters singled her out for her bold style, commenting, “She offends the squeamish by her unstinted display of gypsy colors on the floor and the conspicuousness with which she dresses her bushy blue-black hair” (North 2018, n.p.).

Today, headlines persist in emphasizing the attire of influential individuals rather than their accomplishments. In 2009, First Lady Michelle Obama attended her husband’s first formal presidential address in a sleeveless dress, causing news outlets to boast headlines such as “Up in Arms” and “Sleevegate” (Heil 2011). News outlets and other representatives continue to scrutinize what women wear on a national level. In 2011, fashion icon Tim Gunn criticized Hilary Clinton for choosing to wear a pantsuit, proclaiming, “Why must she dress that way? I think she’s confused about her gender” (North 2018, n.p.). Women are not the only people judged for their clothing. President Obama was known for wearing blue and gray suits, but when he deviated from his usual wardrobe and donned a tan suit, he was the target of scrutiny from Representatives, stating that his color choice showed he did not care about foreign policy because the color tan signifies a lack of seriousness. (North 2018). The variety of women’s professional clothing, although, garners more attention. It also demonstrates the challenge women face in being taken seriously as elected politicians, but as more women assume positions of power, the dynamics have shifted.

In the last five years, the increased presence of women and diverse candidates has actively contributed to significant changes in Congress. In July 2017, the Sergeant at Arms, Frank J. Larkin, denied a reporter entry to the Speaker’s Lobby⁴ for wearing a sleeveless dress (Trimble 2017). The reporter then ripped pages out of her notebook and stuffed them under her dress to cover her shoulders to ameliorate the request, but the Sergeant at Arms still denied her entry. The summer of 2017 was scorching. The Sergeant at Arms began regularly enforcing the congressional dress code for reporters and representatives as they shed layers to avoid the heat. The strict guidelines for the Speaker’s Lobby, stifling like the heat outside, added to the air of professionalism surrounding the seriousness of debating topics like healthcare, abortion, and social security on the House floor.

In response, women across the board challenged the dress code norms in the legislature, such as Democratic Representative Jackie Speier, who circulated flyers in July 2017 urging lawmakers to wear sleeveless dresses to showcase that women can still be professional even if their shoulders show (Zengerle 2017). The issue of dress even crossed party lines. Republican representative Martha McSally said before she began a speech to Congress in July 2017 that she was “standing...in [her] professional attire, which happen[ed] to be a sleeveless dress and open-toed shoes,” illuminating the need for progressive reform in the legislature (Zengerle 2017, n.p.).

On July 7th, following the publication of a viral CBS news story regarding the incident, Republican Speaker of the House Paul Ryan received intense scrutiny from the public for enforcing the same decorum policy his predecessors had enforced. A week later, on July 13th, he made a statement, claiming that “decorum is important, especially for this institution, and a dress code in the chamber and the lobby makes sense. But we also do not need to forbid otherwise

⁴ The Speaker’s Lobby is situated outside the House Chamber in the U.S. Capitol. This corridor serves as an area of where reporters gather to informally interview lawmakers following House floor debate.

accepted contemporary business attire” (Abramson 2017, n.p.). In 2018, at the beginning of the next congressional session, Ryan implemented these changes, allowing female representatives to wear professional sleeveless dresses and opened-toed shoes. Nevertheless, men are still required to wear a suit and tie, with the Sergeant at Arms providing an actual tie of shame for men who forget their own (Shabad 2017). Standards for women are more highly scrutinized, so they are progressively evolving; male expectations are slower to change as a suit-and-tie is much more easily defined. The leaders of Congress must figure out how to balance whether dress code reforms are simply about dress or aid the core values of decorum in the House.

So, how do figures in positions of power grapple with these different expectations? In January 2023, when Republican state Representative Ann Kelley proposed an amendment to clarify the language in the Missouri House rules regarding floor dress code for representatives, the media and public were quick to scorn her for implementing a harsher dress code. In the House, men were already required to wear a jacket, shirt, or tie, and women were required to wear “dresses, skirts or slacks worn with a blazer,” so Kelley proposed the amendment to solidify the language, making the blazer requirement equal for the men and women serving in the House (Funk 2023). Feminist outlets and Democratic Representatives condemned Kelley for bringing this discussion to the floor since they felt it reinforced the notion that women are only valued for their appearance (Associated Press 2023). They criticized that her message conveyed that men have the right to police women’s bodies. Republican state Representative Doug Richey voiced this double bind, stating that “It’s a normal process for any entity regarding a professional work environment; we just happen to have a political context that we have to navigate and, because of that, it is ripe for some members to grandstand and try to make it into something that it’s not” (Associated Press 2023, n.p.). Title VII focuses solely on workplace discrimination, but the significance of dress highlights that sex discrimination goes beyond overt instances like a woman being passed up for a promotion. Workplace dress codes reflect the cultural and societal context, revealing a need for the law to evolve.

The increasing diversity of Congress also brings intersectional challenges to the forefront of American politics, with other factors like cultural significance becoming more relevant, such as wearing a hijab or traditional Native American dress. Of the women serving in the legislature today, 42 percent are women of color. Since 2014, gradual demographic change has occurred; Kamala Harris was only the second black woman elected to serve in the Senate, and the first woman of Latin American descent, Catherine Cortez Masto, was elected in 2016 (Williams 2019). In 2018, voters elected the first two women Muslim congressional representatives to serve in office. These representatives spearheaded a reform in the House to allow religious headwear on the floor, dismantling an 181-year-old rule. (Law 2019). For Muslim women, the hijab encourages modesty, reflects their strong connection with their God, and, more recently, serves as a symbol of national identity (Piela 2022). This change signals Congress’ commitment to honoring the cultural and religious significance clothes can bear. While the legislature aims for inclusiveness post-election, significant entry barriers remain for minorities and women due to persistent scrutiny of their public presentation during campaigns.

Appearance may also be a barrier to winning an election. Twenty-eight-year-old Michelle Dhansinghani planned to run for Congress in 2020 from her home state of Texas. Regarding dress, she said: “What you project is what people believe. And the standards are higher when you are a woman, and even higher if, like me, you are a woman of color, and even higher if, like me, you are a woman of color from one of the poorest parts of your state” (Friedman 2018, n.p.). The increasing diversity of the Congressional makeup allows for greater representation of different

groups in leadership positions. A more diverse group of politicians disrupt traditional notions of what it means to look like a politician. Recognizing the evolution in representation is crucial, especially considering Title VII's initial purpose of preventing workplace discrimination based on unrelated characteristics. Despite clothing not impacting job performance, the legislature serves as a national example of how attire can influence one's work and perceived status.

Consequences of “equal burden”

The addition of “sex” in Title VII aimed to ensure gender equality in the workforce. However, lawmakers did not specify how chosen characteristics like hair color or length relate to potential discrimination. Consequently, court challenges are needed to clarify the interpretation of workplace dress discrimination. Yet, the diverse contexts in each situation, like the case of Darlene Jespersen, make it challenging for the courts to establish a uniform definition of dress-based discrimination. Darlene Jespersen worked for Harrah's Casino in Reno, Nevada, in early 2000, serving customers who came to the sports bar. The casino implemented a “Personal Best” policy, including appearance and grooming standards for all bartenders. This policy outlined the necessity for women to wear makeup and barred men from wearing any at all. Jespersen did not usually wear makeup and failed to adhere to this dress code requirement, so Harrah's fired her for her inability to comply (“Jespersen” 2004). In the *Jespersen v Harrah's Operating Company Inc.* case, the United States District Court for the District of Nevada ruled that “‘an appearance standard that imposes different but essentially equal burdens on men and women is not disparate treatment,’ but that if an appearance standard ‘unreasonably burdens one gender more than another,’ then it is discriminatory” (Blunt 2021, 234). Since the new policy only impacted Jespersen's personal preferences, the overall equal burden on the male and female employees in this workplace was deemed lawful. Several district courts determined that employers could set appearance codes based on traditional gender expressions, such as requirements for men to keep their hair short and for women to wear makeup. The precedent indicates that focusing on comparative burdens makes employers' policies nondiscriminatory (Raskin 2006). Title VII intended to create an equal workplace that did not discriminate based on gender, but the initial court rulings provided a literal interpretation of Title VII when they concluded equal burden appearance as lawful. Still, equal burdens reinforced traditional heterosexual gender biases.

Due to precedents set by cases like *Carroll* and *Jespersen*, the courts ultimately dictate how dress code policies should exist in the workplace, but the courts provided flawed rulings. With appearance codes that can legally reinforce gender stereotypes, the courts failed to rule on the impact of equal burden. Unlike other sex discrimination matters, such as sexual harassment, the courts uphold equal burden standards for dress, no matter how burdensome the requirements may be (Raskin 2006, 256). If the rules are applied equally to all employees, a policy can be found nondiscriminatory in a lawsuit, even if the policy is based on stereotypical notions of femininity and masculinity. Employers could require women to wear makeup, keep their hair long, and have their fingernails painted, while they require men to wear a three-piece suit, have short hair, and have a clean-shaven face. These requirements reinforced the heterosexual interpretations of female and male public appearance. Raskin (2006) discusses how empirical research and data dictate that appearance standards are not applied equally to men and women since society scrutinizes women's appearances far more than men's. Thus, these physical burdens would be interpreted identically in a court of law even though, emotionally and mentally, their burden may be very different.

Intense female scrutiny continues to indicate the value women's appearance holds over other skills they may offer. The courts have been unable to determine the true impact of an equal

burden since the conventional notions that women face often entrench unequal personal perceptions of the body. Women internalize opinions of their bodies as manifestations of pressures and sexism promoted by a patriarchal system (Raskin 2006). Thus, sex discrimination in the workplace often rests on the confounded notion of “equal burden.” Rather than providing guidance on improving employer-employee relationships, the courts previously ruled that discrimination is only acknowledged when every group member experiences the injustice, meaning that the law leaves individual burdens unprotected.

The judicial perspective on workplace dress codes should allow employees to understand the interpretation of Title VII. The court system deemed that employers still had the discretion to dictate employee dress requirements, regardless of whether it conforms to traditional gender stereotypes, until 2020. Contemporary sex discrimination outlines that male and female identities differ from masculine and feminine characteristics (Penta 2010, 21). The court’s distinction between sex as a biological fact and gender as a cultural expectation blurs the boundaries of sex discrimination in the workplace. Decisions like *Price Waterhouse* began to define discrimination based on sex, yet judges in cases like *Jespersion* have continued to separate sex from gender. The pre-2020 interpretation of Title VII manifested apparent unequal discrimination in gender-based dress codes, but the 2020 ruling *Bostock v Clayton County* now integrates the inseparability of sex and gender.

A New Interpretation of Title VII

In 2013, Gerald Bostock, a gay man, had been employed as a child welfare services coordinator for over ten years when he began participating in a gay softball league. Despite his numerous accolades and positive reviews during his tenure with Clayton County, following his participation in this league, Bostock was fired for “conduct unbecoming of its employees” (Oyez “*Bostock v Clayton County*” 2020, n.p.). Bostock filed a discrimination lawsuit based on sex. *Bostock v Clayton County* found that Bostock’s employer could not discriminate against the fact that he identified as homosexual because it prohibits an employer from workplace discrimination based on sexual orientation or gender identity (Oyez “*Bostock v Clayton County*” 2020).

When determining how this ruling affects the interpretation of Title VII and its impact on dress codes, Justin Blount (2021) addresses how even if an employer is willing to fire both male and female employees at the same rate for breaking workplace dress codes, this only doubles the discrimination rather than eliminates it. The *Bostock* decision determines that an employer cannot discriminate for any purpose based on the biological identification of sex or gender. Firing an employee for not complying with standard male appearance is no longer legal following the *Bostock* ruling (Blount 2021). While the *Bostock* decision may not directly pertain to workplace appearance, it elucidated that discrimination rooted in not conforming to traditional male and female stereotypes is no longer permissible at work. Consequently, discriminating against individuals who dress in a manner that does not align with typical male or female clothing is also now prohibited by law.

This decision also addresses the group-based harm logic in rulings such as *Jespersion*. The court’s opinion determined that if an employer treated similarly situated persons of the opposite sex differently, it constituted actionable discrimination. In a court of law, the notion that discrimination can only occur against a group, such as women, is no longer valid. *Bostock* made it illegal for employee dress codes to associate gendered stereotypes with an individual’s sex, rendering requirements—such as makeup, specific hair lengths, and heels—for men and women

no longer legal. This decision significantly altered Title VII's interpretation regarding workplace appearance codes.

Employers may want to give more freedom to their employees when deciding what they prefer to work in, but dress impacts more than the person doing the job. For example, lawyers must consider how what they wear affects the clients they represent or how the judges or jurors perceive them (Blount 2021). Wearing attire outside the general social norm accepted for men in professional spaces may jeopardize the client's case. Alternatively, clients may decide that having a lawyer who deviates from societal norms is not in their best interest. *Bostock* now protects males who wish to wear a skirt or heels to work since the employer can no longer impose gender-specific policies, but one must consider that social norms can still inspire prejudice. This example identifies that while *Bostock* provided a new meaningful interpretation for Title VII, due to societal expectations, sex-based dress considerations still drastically impact the workforce. Businesses must grapple with how they would encounter a scenario where an employee wishes to dress outside accepted gender expectations that create legitimate difficulties in the workplace, giving merit to a differentiable dress code (Blount 2021).

The new interpretation of Title VII indicates that the courts can no longer separate the importance of cultural and societal norms in legal discussion. The Title VII clause passed in 1964 was historic legislation, but it came with decades of unintended consequences. *Bostock v Clayton County* represents newfound protection for individuals in the workplace, but how those in the workforce choose to move forward will define the intentions of this decision. Professional dress still adheres to heterosexual societal norms, but without the workplace to enforce these expectations, will the meaning of dress continue to be relevant, or will it become obsolete as gender lines blur? Politicians are national figureheads, and what they wear matters. Will the nation's current polarized political climate foster meaningful reform in the workplace, or will dress continue to be another never-ending debate? The courts may have the power to interpret Title VII, but it is only a piece of legislation. Each actor interacting with the policy must embrace this new change or rebel against its implications.

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