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VALUING WORKER AUTHENTICITY

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ABSTRACT

Title VII of the Civil Rights Act of 1964 protects workers from discrimination because of their race, color, religion, sex, or national origin. Controversially, courts do not typically extend this protection to individual expression tied to a protected trait, such as a Black employee who wears their hair in dreadlocks or a Latino employee who speaks Spanish on the job. Judicial unwillingness to protect employee self-expression tied to a protected trait causes employees who identify with marginalized groups to suppress their identities to conform with mainstream culture—often at tremendous costs to themselves and the organizations they work for.

This Article argues that regardless of how courts interpret Title VII, employers generally should encourage employees to express their authentic selves at work. This is because we now live in an age when many employees, especially millennials and Generation Z, are no

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longer content to check their personal lives at the workplace door; instead, they expect to bring their whole, authentic selves to work. Research confirms that employees who are free to display their authentic selves are better engaged, harder working, more satisfied, and less likely to quit—outcomes that boost productivity, and ultimately, profitability. Given these known benefits, employers would be wise to embrace, not suppress, worker authenticity in most instances.

*Of course, worker authenticity cannot go unchecked. Self-expression may be counterproductive or even dangerous in some instances. In determining the reasonable limits of worker self-expression, employers should look to the Supreme Court's recent decision in *Groff v. DeJoy* for guidance. There, the Court held that employers must accommodate employees with religious conflicts unless doing so would result in "substantial increased costs" to their business. Just as this test allows employers to ascertain the proper limits to religious expression in the workplace, so too can it help them determine the appropriate scope of worker authenticity. Encouraging employees to express their authentic selves within *Groff's* parameters would benefit employees and employers alike, while safeguarding workplaces from potential abuses that could occur if self-expression goes unchecked.*

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INTRODUCTION

When Chastity Jones, a Black woman, interviewed for a customer service representative position at a Mobile, Alabama, call center, she impressed Catastrophe Management Solutions (CMS) enough to receive a job offer on the spot.¹ But moments later, the company rescinded its offer after Ms. Jones indicated she was unwilling to cut her hair, which was in short dreadlocks, to conform with the company's policy that hairstyles "should reflect a business/professional image."² "[T]hey tend to get messy," the human resources manager explained, "although I'm not saying yours are, but you know what I'm talking about."³

The Equal Employment Opportunity Commission (EEOC) sued on Ms. Jones's behalf, alleging the company discriminated against her because of her race in violation of Title VII of the Civil Rights Act of 1964.⁴ The district court dismissed the Commission's complaint for failure to state a claim,⁵ and the Eleventh Circuit affirmed.⁶ For these courts, the case was easy: the company's refusal to hire Ms. Jones could not possibly constitute race discrimination because it based its decision on self-expression associated with race—her dreadlocks—rather than on race itself.⁷ Thus, while Ms. Jones could not have her job offer rescinded for being Black, the moment she dared to "perform" her blackness by wearing her hair in dreadlocks,⁸ all bets were off.

1. EEOC v. Catastrophe Mgmt. Sols., 852 F.3d 1018, 1021 (11th Cir. 2016).

2. *Id.* at 1021-22 (citing CMS Company Policy).

3. *Id.* at 1021.

4. *Catastrophe Mgmt. Sols.*, 11 F. Supp. 3d 1139, 1140 (S.D. Ala. 2014), *aff'd*, 852 F.3d 1018 (11th Cir. 2016).

5. *Id.* at 1144.

6. *Catastrophe Mgmt. Sols.*, 852 F.3d at 1035.

7. *See id.* at 1026-35.

8. *See* Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1139-40 (2004) ("Race/ethnicity performance is defined as any behavior or voluntarily displayed attribute which, by accident or design, communicates racial or ethnic identity or status. It covers racially and ethnically coded indicia such as hairstyles and other aesthetic choices, as well as dialect, language choice, and accent." (footnote omitted)).

Title VII protects employees from discrimination based on their “race, color, religion, sex, [and] national origin.”⁹ However, courts typically do not extend this protection to individual expression tied to a protected trait, such as Ms. Jones wearing her hair in dreadlocks, a Latino employee speaking Spanish on the job, or a gay employee displaying a pride flag at their workstation.¹⁰ To proponents of workplace equality, this is distressing because “[t]rait discrimination of this sort is increasingly at the core of Title VII litigation.”¹¹ Professor Kimberly Yuracko explains that the blatant, status-based discrimination of the past has largely given way to a new form of discrimination driven “not by ... status per se, but by traits and attributes that are culturally or statistically associated with [a status].”¹² Thus, “[a]n employer may be perfectly willing, perhaps even eager, to hire blacks who dress, talk, and act in a particular way, but unwilling to hire blacks who deviate from the employer’s cultural norm.”¹³

Despite repeated calls from litigants,¹⁴ academics,¹⁵ and the EEOC,¹⁶ most courts have remained steadfast in their unwillingness to extend Title VII’s protection to employee self-expression tied to a protected trait.¹⁷ Consequently, employees who are afraid they will lose their jobs if they express their true selves often resort to “identity covering,” a behavioral phenomenon in which individuals who identify with marginalized groups downplay their identities to conform with mainstream culture.¹⁸ The negative effects of identity covering are well documented: for employees, it diminishes “well-being, focus, and sense of self;” lowers “performance and commitment at work;” and results in “a general feeling of needing to

9. 42 U.S.C. § 2000e-2(a)(1).

10. *See infra* Part I.B.

11. Kimberly A. Yuracko, *Trait Discrimination as Race Discrimination: An Argument About Assimilation*, 74 GEO. WASH. L. REV. 365, 366 (2006).

12. *Id.*

13. *Id.*

14. *See infra* Part I.B.

15. *See infra* Part I.C.

16. *See infra* Part I.A.

17. *See infra* Part I.B.

18. *See* Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002) (explaining that “[c]overing means the underlying identity is neither altered nor hidden, but is downplayed,” and contrasting it with “passing,” in which one’s “underlying identity is not altered, but hidden”).

sacrifice authenticity to succeed.”¹⁹ For organizations, covering not only hurts productivity and profitability,²⁰ but it also undermines diversity, equity, and inclusion (DEI) efforts “by silencing the very plurality and richness of perspectives diversity is supposed to promote.”²¹

This Article argues that regardless of how courts interpret Title VII, employers should not only tolerate but encourage employees to express their authentic selves in most instances. This is because we now live in an age when many workers, particularly millennials and Generation Z, are no longer content to check their personal lives at the workplace door.²² Instead, they “want to work in diverse environments” where they can “express themselves authentically.”²³ They want the freedom and space “to express their ever-evolving identities on their own terms.”²⁴ They seek out workplaces where it is safe to be themselves; where they are “seen, heard, and valued—not just for what [they] do, but for who [they] are.”²⁵ Organizational scholars describe this phenomenon as bringing one’s whole self to work,²⁶ this Article refers to it as “whole-self” employment.

19. JOANNE STEPHANE, HEATHER MCBRIDE LEEF, SAMEEN AFFAF, KENJI YOSHINO & DAVID GLASGOW, DELOITTE, UNCOVERING CULTURE: A CALL TO ACTION FOR LEADERS 9 (2024), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/dei/us-uncovering-culture-a-call-to-action-for-leaders.pdf> [<https://perma.cc/6VZK-FLZG>].

20. See Gbolahan Solomon Osho, Carolyn Ashe & Jennifer Wickramatunge, *Correlation of Morale, Productivity and Profit in Organizations*, 26 NAT’L SOC. SCI. J., no. 1, 2006, at 108, 108 (“The results revealed a direct relationship between job performance and morale. When morale is low, productivity is low and in turn, profits may be affected.”).

21. Eli Wald, *The Visibility of Socioeconomic Status and Class-Based Affirmative Action: A Reply to Professor Sander*, 88 DENV. U. L. REV. 861, 884 (2011).

22. See *infra* Part II.B; Jessica A. Moldovan, *Authenticity at Work: Harmonizing Title VII with Free Speech Jurisprudence to Protect Employee Authenticity in the Workplace*, 42 N.Y.U. REV. L. & SOC. CHANGE 699, 700-01 (2019) (“Many of today’s workers, particularly ascending millennial employees, want to work in diverse environments and have more freedom in the workplace; they want to express themselves authentically.” (footnote omitted)).

23. Moldovan, *supra* note 22, at 700-01.

24. *Id.* at 701.

25. Annabel J. Coxon, *The Millennial View: How to Bring Your ‘Whole Self’ to Work*, GLOB. WOMEN (Oct. 23, 2018), <https://www.globalwomen.org.nz/inclusive-cultures/the-millennial-view-how-to-bring-your-whole-self-to-work/> [<https://perma.cc/VD65-6YYH>].

26. See, e.g., David N. Berg, *Bringing One’s Self to Work: A Jew Reflects*, 38 J. APPLIED BEHAV. SCI. 397, 412 (2002); Neal Chalofsky, *An Emerging Construct for Meaningful Work*, 6 HUM. RES. DEV. INT’L 69, 77 (2003); Bernardo M. Ferdman & Laura Morgan Roberts, *Creating Inclusion for Oneself: Knowing, Accepting, and Expressing One’s Whole Self at Work*, in DIVERSITY AT WORK: THE PRACTICE OF INCLUSION 93, 95 (Bernardo M. Ferdman & Barbara R. Deane eds., 2014); TODD B. KASHDAN & ROBERT BISWAS-DIENER, THE UPSIDE OF YOUR DARK

Just as identity covering has negative consequences, allowing employees to express their authentic selves can have tremendous benefits, not just at the individual level but at the organizational level, too. Research confirms that employees who are free to express themselves at work are better engaged, harder working, more satisfied, and less likely to quit—outcomes that boost productivity and, ultimately, profitability.²⁷ Thus, worker authenticity is not a zero-sum proposition in which the employee's gain must come at the employer's loss. Rather, both parties benefit: the employee, because they can be their true self; and the employer, because the worker is more productive and profitable.

Some of the world's most powerful companies are beginning to recognize the mutual benefits of "whole-self" employment and are leveraging this concept to attract and retain talent. Amazon proclaims on its job hiring webpage, "We seek diverse builders from all walks of life to join our teams, and we encourage our employees to bring their authentic, original, and whole selves to work."²⁸ Meta bills its workplace culture as "Move Fast. Be Yourself," and promises jobseekers, "At Meta, you'll have the opportunity to work with great people, tackle big challenges and make a real impact, wherever you work—while being your unique, authentic self."²⁹ Likewise, Google boasts, "[W]e don't just accept difference—we celebrate it, we support it, and we thrive on it for the benefit of our employees, our products and our community."³⁰ It further declares, "When we can be ourselves, more becomes possible."³¹

SIDE: WHY BEING YOUR WHOLE SELF—NOT JUST YOUR "GOOD" SELF—DRIVES SUCCESS AND FULFILLMENT 207 (2014); MIKE ROBBINS, BRING YOUR WHOLE SELF TO WORK: HOW VULNERABILITY UNLOCKS CREATIVITY, CONNECTION, AND PERFORMANCE 1 (2018).

27. See *infra* Part III.A-C.

28. *Diversity, Equity and Inclusion at Amazon*, AMAZON (Apr. 18, 2018), <https://www.aboutamazon.co.uk/news/working-at-amazon/diversity-equity-and-inclusion-at-amazon> [<https://perma.cc/RF29-UWD3>].

29. *Our Culture*, META CAREERS, <https://www.metacareers.com/facebook-life/> [<https://perma.cc/4279-TH7Q>].

30. *Equal Opportunity*, GOOGLE CAREERS, <https://careers.google.com/eo/> [<https://perma.cc/2MC7-YN6Z>].

31. *Belonging*, GOOGLE, <https://about.google/belonging/> [<https://perma.cc/LZ5E-F8MS>]. Amazon, Meta, and Google are hardly alone in encouraging employees to bring their whole selves to work. Former Facebook Chief Operating Officer Sheryl Sandberg remarked to Harvard Business School graduates, "I don't believe we have a professional self from Mondays through Fridays and a real self for the rest of the time. That kind of division probably never

Despite its known benefits, worker authenticity cannot go unchecked. Employers must safeguard against employees bringing too much of themselves to work. It is not hard to envision a scenario in which an employee's self-expression could be counterproductive, highly offensive, or even dangerous, such as a white supremacist employee who wishes to hang a swastika in their cubicle. Drawing the line between acceptable and unacceptable self-expression may seem daunting, but it can be done in a principled, consistent way that appropriately weighs the costs and benefits of allowing an employee to express their authentic self. The Supreme Court provided the framework for how to accomplish this in its recent decision in *Groff v. DeJoy*.³² There, the Court considered the extent to which an employer must accommodate an employee whose religious beliefs conflict with a work requirement.³³ The appropriate test, according to the unanimous Court, is whether "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of [the employer's] particular business."³⁴ The Court instructed that the test be applied "in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'"³⁵

Although the Supreme Court developed this test specifically for religious accommodations, it provides a useful, judicially endorsed standard that employers can adopt in determining the appropriate limits of worker authenticity. Applying this test to the aforementioned white supremacist, the employer should not permit the

worked, but in today's world, with a real voice, an authentic voice, it makes even less sense." Jay Yarow, *Sheryl Sandberg's Full HBS Speech: Get on a Rocketship Whenever You Get the Chance*, BUS. INSIDER (May 25, 2012, 5:00 PM), <https://www.businessinsider.com/sheryl-sandbergs-full-hbs-speech-get-on-a-rocketship-when-ever-you-get-the-chance-2012-5> [<https://perma.cc/DJ62-547J>]. Likewise, Danroy T. Henry, Chief Human Resources Officer for Bright Horizons Family Solutions, distinguished "having employees who do the work" from "having people who do the work," explaining that "employees only bring a piece of themselves to work, [but] people bring their whole selves to work." Claire Hastwell, *How Best Companies Ensure People Can Bring Their Whole Selves to Work*, GREAT PLACE TO WORK (Sept. 13, 2019), <https://www.greatplacetowork.com/resources/blog/4-ideas-to-encourage-people-to-bring-their-whole-self-to-work> [<https://perma.cc/3662-6RZT>].

32. 143 S. Ct. 2279 (2023).

33. *Id.* at 2286-87.

34. *Id.* at 2295.

35. *Id.* (alteration in original) (citation omitted).

employee to display a swastika because it would result in substantial increased costs to the business due to how disruptive and offensive it would be to others. By contrast, CMS almost certainly should have allowed Ms. Jones to wear her hair in short dreadlocks, as doing so would have imposed virtually no cost on the company.

This Article proceeds in four Parts. Part I examines how courts have addressed claims of discrimination based on self-expression tied to a protected trait, as well as the arguments for expanding judicial interpretation of Title VII to include trait-based self-expression. Part II details the rise of “whole-self” employment. It explains how younger workers view employment differently than older workers do, and attributes part of this difference to younger workers’ expectations that they will be able to express their authentic selves in the workplace. Part III examines the science behind why employers should allow employees to express their authentic selves, regardless of what Title VII may or may not require. Drawing on organizational behavior research, it explores how allowing employees to express their true selves generates positive outcomes for employees and employers alike. Part IV demonstrates how employers can use *Groff’s* “substantial increased costs” test to ascertain the appropriate limits of self-expression in the workplace.

I. TITLE VII AND THE “RIGHT” TO SELF-EXPRESSION

This Part examines how judicial interpretation of Title VII makes it risky for employees to express their authentic selves in the workplace. Neither the statutory text nor the corresponding legislative history offers much guidance on whether Title VII was intended to cover trait-based self-expression. While the EEOC has not hesitated to say that it does, the courts have largely rejected this view based on the longstanding notion Title VII protects only immutable characteristics, not voluntary behaviors. Antidiscrimination scholars largely criticize this narrow interpretation, arguing it fails to account for how workers often experience discrimination today. Although there are openings within the extant case law for courts to reverse course, so far they have shown no appetite to do so. Consequently, workers who dare to express themselves at work run

the very real risk of suffering an adverse employment action. For many, this risk simply is not worth it; they opt instead to cover their identities—often at great expense to themselves and the organizations they work for.

A. Statutory Text, Legislative History, and EEOC Guidance

Although Title VII's prohibition against employment discrimination "because of ... race, color, religion, sex, or national origin"³⁶ seems straightforward enough, courts have struggled for decades to define the contours of this proscription. The statute clearly forbids an employer from terminating a Black employee because of their skin color, but what if the termination decision is based on the employee speaking Ebonics, wearing their hair in cornrows, or otherwise expressing themselves in ways associated with their race? Has the employer discriminated against the employee because of race?

The answer to this question is unclear because neither the statutory text nor the corresponding legislative history provides much guidance. When Title VII was enacted in 1964, it did not define race, color, religion, sex, or national origin.³⁷ Thus, whether the meaning of race extended beyond physical characteristics to encompass behavioral traits could not be determined from the text alone. Since its enactment, Congress twice amended Title VII, first to provide that "religion" includes all aspects of religious observance and practice,³⁸ and later to provide that "because of sex" includes "pregnancy, childbirth, or related medical conditions."³⁹ These amendments are significant because they signify congressional willingness to extend Title VII's protections beyond immutable physical characteristics to expressive conduct. Religious observance and practice, as well as pregnancy and pregnancy-related conditions, are behavioral extensions of religion and sex, respectively, such that a person who expresses their religion by wearing a headscarf or their sex through pregnancy cannot be discriminated

36. 42 U.S.C. § 2000e-2(a)(1).

37. 42 U.S.C. § 2000e.

38. 42 U.S.C. § 2000e(j).

39. 42 U.S.C. § 2000e(k).

against on those grounds. But while these amendments indicate some recognition that Title VII can apply to expressive behaviors, it is uncertain whether expressive behaviors are inherently included in the meaning of each protected trait, if only certain types of behaviors are included in the meaning of specific protected traits, or if the inclusion of expressive behaviors must always be accomplished via legislative amendment.

Title VII's legislative history is equally unilluminating. The record is devoid of virtually any discussion or debate over what Congress intended race, color, religion, sex, or national origin to mean.⁴⁰ In fact, with the obvious exception of race and color,⁴¹ little is known about how Congress decided which traits to include and which traits to exclude from coverage. Why did Congress opt to prohibit religious, sex, and national origin discrimination, but not discrimination based on marital status, political affiliation, criminal record, appearance, or other factors that have subsequently received protection at state and local levels?⁴² Regarding Title VII's inclusion of religion, Russell Post observed, “[t]his pervasive silence suggests that religion was included in Title VII as boilerplate language to ensure uniformity of the antidiscrimination principle,” as the New Deal employment measures that preceded Title VII “often included

40. See Navah C. Spero, Note, *Transgendered Plaintiffs in Title VII Suits: Why the Schroer v. Billington Approach Makes Sense*, 9 CONN. PUB. INT. L.J. 387, 402 (2010) (“[T]here is no legislative history about the definition of either sex or race.”); Susannah P. Mroz, Note, *True Believers?: Problems of Definition in Title VII Religious Discrimination Jurisprudence*, 39 IND. L. REV. 145, 151 (2005) (explaining that in the absence of legislative history, “courts have been left to develop a definition of religion which accords with the policies behind Title VII”); Juan F. Perea, *Ethnicity and Prejudice: Reevaluating “National Origin” Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805, 807 (1994) (“[T]he legislative history of the ‘national origin’ term consists of a few unilluminating paragraphs of the House debate.”).

41. The statute’s prohibition against race and color discrimination stems from the fact that the primary purpose of the Civil Rights Act of 1964 was to eradicate race discrimination across various facets of social life. See Julia Bruzina, Note, *Erickson v. Bartell: The “Common Sense” Approach to Employer-Based Insurance for Women*, 47 ST. LOUIS U. L.J. 463, 474 (2003) (explaining how the legislative history of the Civil Rights Act of 1964 shows Congress’s focus “was primarily, if not solely, on race”).

42. See, e.g., WASH. ADMIN. CODE § 162-16-250 (2024) (prohibiting employment discrimination based on marital status); N.Y. CORRECT. LAW § 752 (McKinney 2007) (limiting an employer’s ability to discriminate based on previous criminal convictions); D.C. CODE § 2-1401.02(22) (2024) (prohibiting employment discrimination based on appearance); SEATTLE MUN. CODE § 14.04.040(C) (2024) (prohibiting employment discrimination based on political ideology).

prohibitions against discrimination on account of ‘race, color, or creed,’ offering easy templates for the drafters of Title VII to adopt verbatim.”⁴³ Professor Juan Perea suggests national origin similarly “ended up in Title VII because it was part of the ‘boilerplate’ statutory language of fair employment in executive orders and legislation preceding the Civil Rights Act of 1964.”⁴⁴ The inclusion of sex as a protected trait came about not as a result of any spirited debate or advocacy. Rather, it was hastily added by a floor amendment the day before the House approved Title VII by a congressman who sought to thwart the adoption of the Civil Rights Act based on his calculation that Congress would find a prohibition against sex discrimination ludicrous.⁴⁵

Without defined statutory terms or a robust legislative history, the EEOC has stepped in to provide courts with guidance on a variety of interpretive issues relating to Title VII, including whether the statute prohibits expression-based discrimination. In its Compliance Manual, the Commission takes the position that “race” includes cultural characteristics related to race or ethnicity:

Title VII prohibits employment discrimination against a person because of cultural characteristics often linked to race or ethnicity, such as a person’s name, cultural dress and grooming practices, or accent or manner of speech. For example, an employment decision based on a person having a so-called “Black

43. Russell S. Post, Note, *The Serpentine Wall and the Serpent’s Tongue: Rethinking the Religious Harassment Debate*, 83 VA. L. REV. 177, 181 (1997) (footnote omitted) (quoting HUGH DAVIS GRAHAM, *THE CIVIL RIGHTS ERA: ORIGINS AND DEVELOPMENT OF NATURAL POLICY, 1960-1972*, at 9-10 (1990)); see also Harry T. Edwards & Joel H. Kaplan, *Religious Discrimination and the Role of Arbitration Under Title VII*, 69 MICH. L. REV. 599, 602 (1971) (stating that religious discrimination received “scant legislative consideration” in the debates that led to the enactment of Title VII).

44. Perea, *supra* note 40 (citing Exec. Order No. 10,590, 20 Fed. Reg. 409 (1955) and Exec. Order No. 9,980, 13 Fed. Reg. 4311 (1948) as examples); see also Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88-89 (1973) (considering the comments about national origin discrimination made during the House debate and characterizing the legislative history as “quite meager”).

45. See *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 1085 (7th Cir. 1984) (“Sex as a basis of discrimination was added as a floor amendment one day before the House approved Title VII, without prior hearing or debate.” (quoting *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 662 (9th Cir. 1977)). “This sex amendment was the gambit of a congressman seeking to scuttle adoption of the Civil Rights Act. The ploy failed and sex discrimination was abruptly added to the statute’s prohibition against race discrimination.” (citing *Bradford v. Peoples Natural Gas Co.*, 60 F.R.D. 432, 434-35 & n.1 (W.D. Pa. 1973))).

accent,” or “sounding White,” violates Title VII if the accent or manner of speech does not materially interfere with the ability to perform job duties.⁴⁶

The EEOC takes a similar approach to national origin discrimination, defining the term to include “[e]mployment discrimination against an individual because she has physical, linguistic, and/or cultural characteristics closely associated with a national origin group. For example, subjecting an individual to an adverse employment action because of her African-sounding accent or traditional African style of dress could constitute discrimination based on African origin.”⁴⁷ Moreover, the EEOC counsels that discrimination against an individual because of their association with a person of a particular race or national origin likewise violates the law.⁴⁸ To the extent association is a form of expression, the EEOC’s view on associational discrimination further supports the Commission’s position that Title VII protects behaviors tied to protected traits.

B. Judicial Interpretation

The courts have largely rejected the EEOC’s guidance on expression discrimination in favor of a narrower, more conservative approach that relies on the distinction between immutable and mutable characteristics. What each of Title VII’s protected traits has in common is that it is immutable, either because it is an “accident of birth” that is unchangeable in absolute terms,⁴⁹ or in the sense that it is so fundamental to identity or conscience that a person cannot and should not be required to change it.⁵⁰ Thus, under this

46. U.S. EQUAL EMP. OPPORTUNITY COMM’N, SECTION 15 RACE AND COLOR DISCRIMINATION (2006) (footnotes omitted).

47. U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC ENFORCEMENT GUIDANCE ON NATIONAL ORIGIN DISCRIMINATION (2016) (footnote omitted).

48. *Id.*; U.S. EQUAL EMP. OPPORTUNITY COMM’N, *supra* note 46.

49. *See* *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (“[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth.”).

50. *See* *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (holding that a “particular social group” under the Immigration and Naturalization Act “is one united by a voluntary association ... or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it”); *Zavaleta-Lopez v. Att’y Gen. of U.S.*, 360 F. App’x 331, 333 (3d Cir. 2010) (“[I]mmutable characteristics [are those] such as race, gender, or a prior position, status, or condition, or

broad conception of immutability, religious belief, the only protected trait not based on a physical characteristic, qualifies as immutable, not because it cannot be changed but rather because it is so fundamental to individual identity that a person should not be required to change it.⁵¹

In theory, defining immutability to include aspects of behavior that are fundamental to personal identity creates space for courts to extend Title VII's protections to voluntary expressions of protected traits. And yet, in practice, most courts are unwilling to do so, rejecting the notion that such expression is immutable; it is neither unchangeable, nor is it fundamental to personal identity. Instead, courts tend to view trait-based expression as a matter of preference that does not warrant the protection of law.

Three appellate decisions illustrate this view. First, in the early case of *Earwood v. Continental Southeastern Lines, Inc.*, a male bus driver challenged his employer's sex-differentiated hair length policy.⁵² In reversing the lower court's judgment for the employee, the Fourth Circuit relied on the concept of immutability, reasoning that "discrimination based on either immutable sex characteristics or constitutionally protected activities ... violate the Act because they present obstacles to employment of one sex that cannot be overcome. On the other hand, discrimination based on factors of personal preference does not necessarily restrict employment opportunities and thus is not forbidden."⁵³ The appellate court concluded that "[h]air length is not an immutable characteristic for it may be changed at will" and "does not affect a fundamental

characteristics that are capable of being changed but are of such fundamental importance that persons should not be required to change them, such as religious beliefs." (citing *Escobar v. Gonzales*, 417 F.3d 363, 366-67 (3d Cir. 2005)); *Njenga v. U.S. Att'y Gen.*, 216 F. App'x 963, 966-67 (11th Cir. 2007) (per curiam) (finding that immutable characteristics are fundamental to individual identities or consciences).

51. See Debbie N. Kaminer, *Religious Accommodation in the Workplace: Why Federal Courts Fail to Provide Meaningful Protection of Religious Employees*, 20 TEX. REV. L. & POL. 107, 125 (2015) (noting that in *Ansonia Board of Education v. Philbrook*, 479 U.S. 60 (1986), the Supreme Court "implied that religion met one definition of immutability, since it is a trait that is so fundamental to one's identity that an employee should not be expected to change it").

52. 539 F.2d 1349, 1350 (4th Cir. 1976).

53. *Id.* at 1351 (citing *Willingham v. Macon Tel. Publ'g Co.*, 507 F.2d 1084, 1091 (5th Cir. 1975)).

right.”⁵⁴ Thus, the court was unwilling to entertain the possibility that the employee’s hair length was immutable, characterizing it instead as a “personal preference” that could be “changed at will.”⁵⁵

In *Garcia v. Spun Steak Co.*, the Ninth Circuit exhibited similar hostility toward expression-based behavior.⁵⁶ The case involved a group of Spanish-speaking employees, who alleged their employer’s English-only policy violated Title VII’s prohibition against national origin discrimination.⁵⁷ The employer did not contest that the plaintiffs were disproportionately impacted by the policy, but rather maintained that the plaintiffs had not suffered an adverse action by having to speak English at work.⁵⁸ The plaintiffs disputed this claim, arguing that one of the adverse effects of the policy was to deny them “the ability to express their cultural heritage on the job.”⁵⁹ While the district court granted summary judgment to the plaintiffs, the Ninth Circuit reversed and remanded.⁶⁰ It acknowledged that “an individual’s primary language can be an important link to his ethnic culture and identity,” but rejected the notion that Title VII “protect[s] the ability of workers to express their cultural heritage at the workplace.”⁶¹ The appellate court did not see this as a particularly close question, deeming it “axiomatic that an employee must often sacrifice individual self-expression during working hours. Just as a private employer is not required to allow other types of self-expression, there is nothing in Title VII which requires an employer to allow employees to express their cultural identity.”⁶²

Finally, in *EEOC v. Catastrophe Management Solutions*, the Eleventh Circuit directly addressed whether Title VII protects an employee’s individual expression of a protected trait.⁶³ Consistent with its Compliance Manual, the EEOC urged that “if [] individual expression is tied to a protected trait, such as race, discrimination

54. *Id.*

55. *Id.*

56. 998 F.2d 1480, 1487 (9th Cir. 1993).

57. *Id.* at 1483-84.

58. *Id.* at 1486.

59. *Id.* at 1486-87.

60. *Id.* at 1490.

61. *Id.* at 1487.

62. *Id.*

63. 852 F.3d 1018 (11th Cir. 2016).

based on such expression is a violation of the law.”⁶⁴ In its view, the company’s decision to rescind its job offer to Ms. Jones because of her hairstyle constituted unlawful discrimination because dreadlocks are an expression of race.⁶⁵ The appellate court disagreed, relying on the distinction between mutable and immutable traits to justify its position.⁶⁶ Based on its interpretation of prior decisions, it concluded that “Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices.”⁶⁷ The court recognized “the distinction between immutable and mutable characteristics of race can sometimes be a fine (and difficult) one”; nevertheless, “it is a line that courts have drawn.”⁶⁸ To illustrate where this line lies, the court observed that discrimination based on hair texture would be impermissible because hair texture is immutable, whereas discrimination based on hairstyle is permissible because it is a mutable choice.⁶⁹

The court then took aim at the EEOC’s Compliance Manual provision that states that “Title VII prohibits employment discrimination against a person because of cultural characteristics often linked to race or ethnicity, such as a person’s name, cultural dress and grooming practices, or accent or manner of speech.”⁷⁰ The court noted that this provision not only contravened the case law but also ran counter to the position the EEOC took in an administrative appeal years earlier.⁷¹ In that proceeding, the EEOC argued that a grooming policy that prohibited dreadlocks and similar hairstyles lay outside the reach of federal antidiscrimination law even though the policy targeted hairstyles generally associated with a particular race.⁷² The Eleventh Circuit went on to highlight potential problems with interpreting Title VII to encompass trait-expression discrimination. It noted that even if definitional consensus could be reached regarding the meaning of race and culture, “that would only be the

64. *Id.* at 1026 (alteration in original) (citation omitted).

65. *See id.* at 1030, 1030 n.5.

66. *Id.* at 1028-30.

67. *Id.* at 1030 (first citing *Willingham v. Macon Tel. Publ’g Co.*, 507 F.2d 1084, 1092 (5th Cir. 1975); and then citing *Garcia v. Gloor*, 618 F.2d 264, 269 (5th Cir. 1980)).

68. *Id.*

69. *Id.*

70. *Id.* at 1031 (citation omitted).

71. *Id.* at 1031-32.

72. *See id.*

beginning of a difficult interpretive battle.”⁷³ Courts would have to confront “other very thorny issues,” such as which cultural characteristics to protect, what cultural practices are associated with a particular race, and whether there is a principled way to determine which cultural characteristics to include and which to exclude from Title VII’s protection.⁷⁴ Ultimately, the court concluded, this would be a task better left to legislatures to decide.⁷⁵

C. Scholarly Arguments

Scholars have largely pushed back against judicial unwillingness to protect trait-based expression.⁷⁶ Professor Camille Gear Rich argues that courts should abandon the distinction between immutability and mutability and “redefine Title VII’s definition of race and ethnicity to include both biological, visible racial/ethnic features and performed features associated with racial and ethnic identity.”⁷⁷ She reasons that whether an employer discriminates based on a biologically fixed trait or a voluntarily chosen physical trait or performed behavior that communicates racial identity, its motives and the effects of its behavior are equally invidious.⁷⁸ Furthermore, to the layperson, it seems irrelevant whether the conduct at issue is voluntary; thus, there is a disconnect between a layperson’s understanding of discrimination and how courts have construed it.⁷⁹ Rich contends that such disconnect “is more disturbing because the decision turns on a judicially constructed definition of race that has never faced congressional scrutiny.”⁸⁰ There is no evidence in the legislative history that Congress intended to bar claims concerning

73. *Id.* at 1033-34.

74. *Id.*

75. *See id.* at 1035.

76. *See, e.g.,* Rich, *supra* note 8, at 1142. One notable exception is Professor Richard Thompson Ford, who argues that expanding antidiscrimination law to protect cultural traits may reify traditionally marginalized status groups by defining them in terms of a particular set of presently existing traits and attributes, making change, for both individuals and the group as a whole, difficult. *See* RICHARD THOMPSON FORD, RACIAL CULTURE: A CRITIQUE 78-79, 103 (2005).

77. Rich, *supra* note 8, at 1142.

78. *See id.* at 1141-42.

79. *Id.* at 1137.

80. *Id.* at 1138.

voluntary aspects of racial identity.⁸¹ Moreover, she argues, “[t]hese judicially constructed definitions ... contradict prevailing sociological scholarship and biological studies on race and ethnicity and fundamentally contradict prevailing scholarship on the cognitive processes that inform discrimination.”⁸²

Rich likewise asserts that the courts’ emphasis on biology to the exclusion of performative traits is rooted in an assimilationist worldview wherein “Americans were encouraged to believe that status equality merely required us to tolerate biological, visible markers of race and ethnicity, but that we could and should require, in less formal ways, that voluntary racial and ethnic markers be surrendered.”⁸³ Moreover, this paradigm is dependent on the idea that “only the truly assimilated will be able to participate fully in civil life, and that employers can be trusted to facilitate that process.”⁸⁴ To Rich, this regime “seems disturbingly outdated” and is “blind to a large swath of behavior we now recognize as discrimination.”⁸⁵ Furthermore, it allows employers to discriminate by proxy by imposing dress and grooming policies that penalize employees from minority groups based on aesthetics.⁸⁶ It also “devalues the psychological and dignitary interests that employees have in race/ethnicity performance” by affording them “no protection from workplace rules that are intended by design to communicate and reinforce their employer’s antipathy for their individual racial/ethnic group.”⁸⁷

Like Professor Rich, Professor Kimberly A. Yuracko argues that courts should abandon the mutability/immutability distinction because it is “too fragile to bear the weight that courts put on it.”⁸⁸ Professor Yuracko bases her argument on the notion that “second generation” discrimination, which is discrimination based on racial and cultural traits, has largely replaced “the open ontological discrimination so common at Title VII’s inception.”⁸⁹ She cautions

81. *Id.*

82. *Id.* at 1138-39 (footnote omitted).

83. *Id.* at 1142.

84. *Id.*

85. *Id.* (footnote omitted).

86. *Id.* at 1140-41.

87. *Id.* at 1141.

88. Yuracko, *supra* note 11, at 376.

89. *Id.* at 434. Research consistently shows that verbal, written, and visual markers

against banning all employment discrimination based on expression tied to a protected trait, instead calling for a more nuanced approach.⁹⁰ Yuracko believes Title VII should prohibit employers from prohibiting trait-based requirements that have no relevance to job performance, such as a prohibition on cornrows or piercings for a data entry clerk, whose “sole responsibility is to type information into a computer.”⁹¹ On the other hand, some forms of trait discrimination tend to flow naturally from technical job requirements.⁹² Sometimes trait discrimination imposes “heavy burdens” on traditionally marginalized groups, whereas other times it seems to impose burdens that are “insignificant or not group-specific.”⁹³ Yuracko proposes a framework for how Title VII should respond to the complexities.⁹⁴

Other scholars have advanced similar arguments for expanding Title VII's reach. Professor Barbara J. Flagg argues that anti-discrimination law should protect racial minorities from having to adopt “behaviors and characteristics associated with whites.”⁹⁵ Professors Devon W. Carbado and Mitu Gulati, drawing on intersectionality theory and identity-performance theory, assert that courts should interpret Title VII to protect Black employees from having to adopt white norms of behavior and downplay their racial identity.⁹⁶ And Professor Juan Perea advocates for amending Title VII to prohibit discrimination based on ethnic traits, such as

associated with a minority identity tend to result in worse professional evaluations and fewer job opportunities. See John F. Dovidio, Samuel L. Gaertner & Tamar Saguy, *Another View of “We”: Majority and Minority Group Perspectives on a Common Ingroup Identity*, 18 EUR. REV. SOC. PSYCH. 296 (2007); Cheryl R. Kaiser & Jennifer S. Pratt-Hyatt, *Distributing Prejudice Unequally: Do Whites Direct Their Prejudice Toward Strongly Identified Minorities?*, 96 J. PERSONALITY & SOC. PSYCH. 432, 432-45 (2009); Sonia K. Kang, Katherine A. DeCelles, András Tilcsik & Sora Jun, *Whitened Résumés: Race and Self-Presentation in the Labor Market*, 61 ADMIN. SCI. Q. 469 (2016); Tina R. Opie & Katherine W. Phillips, *Hair Penalties: The Negative Influence of Afrocentric Hair on Ratings of Black Women's Dominance and Professionalism*, FRONTIERS PSYCH., Aug. 2015, at 1, 1-14.

90. Yuracko, *supra* note 11, at 369.

91. *Id.* at 369-70.

92. See *id.* at 393-94.

93. *Id.* at 434.

94. See *id.* at 410-12.

95. See Barbara J. Flagg, *Fashioning a Title VII Remedy for Transparently White Subjective Decisionmaking*, 104 YALE L.J. 2009, 2013-15 (1995).

96. See Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 720-21 (2001).

“language, accent, surname, membership in ethnic associations, and ... height differences among ethnic groups.”⁹⁷ Despite their logical appeal, however, these arguments have largely fallen on deaf ears in the courts.

D. A Way Forward?

Despite judicial resistance toward expression-based discrimination claims, the Supreme Court has created at least two openings for the courts to reverse course. In *Price Waterhouse v. Hopkins*, the Court recognized that discrimination based on a person’s failure to conform to sex stereotypes constitutes sex discrimination.⁹⁸ Ann Hopkins was passed over for promotion to partner in an accounting firm, in part because she did not express herself femininely enough.⁹⁹ “One partner described her as ‘macho,’ another suggested that she ‘overcompensated for being a woman,’ [and] a third advised her to take ‘a course at charm school.’”¹⁰⁰ After placing Hopkins’s candidacy on hold, a partner advised her that she could improve her chances for partnership if she were to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”¹⁰¹ In this case, the employer did not discriminate against the employee because of her status as a woman. Instead, it discriminated against her because of how she chose to express herself in relation to her sex—a mutable characteristic associated with a protected trait.¹⁰² This stereotype theory of discrimination could easily be applied to expression-based discrimination. In *Price Waterhouse*, the problem was not that Ms. Hopkins failed to conform to sex stereotypes; it was that her employer disliked how she performed her sex and allowed it to influence the promotion decision.¹⁰³ Analytically, this is no different from CMS telling Ms. Jones it would not hire her unless she changed the way

97. Perea, *supra* note 40, at 857-62 (footnote omitted).

98. *See* 490 U.S. 228, 251 (1989).

99. *Id.* at 234-35.

100. *Id.* at 235 (citations omitted).

101. *Id.* (quoting *Hopkins v. Price Waterhouse*, 618 F. Supp. 1109, 1117 (D.D.C. 1985)).

102. *See id.* at 251.

103. *See id.* at 233, 250-51.

she performed her race.¹⁰⁴ In both cases, the employee lost out because of how they expressed a protected trait.

More recently, in *Bostock v. Clayton County*, the Supreme Court held that discrimination based on sexual orientation or gender identity is a form of unlawful sex discrimination under Title VII.¹⁰⁵ Aside from delivering a monumental civil rights victory to the LGBTQ community, the decision is noteworthy for what it says about self-expression. Professor Henry L. Chambers, Jr. argues that *Bostock* “may provide the foundation for a burgeoning right to self-expression in the workplace.”¹⁰⁶ This is because in holding that sexual orientation and gender identity discrimination necessarily involve sex discrimination, the Court opted to “expand[] Title VII sex discrimination to address all employer practices that consider an individual employee’s sex, rather than limiting the statute’s coverage to employer practices that more generally discriminate against women because they are women or against men because they are men.”¹⁰⁷ This opens the door to an argument that if sexual orientation and gender identity discrimination constitute sex discrimination because they are expressions of sex, other expressions of protected traits, such as manner of dress and speech, must similarly be protected.

Judicial willingness to take these openings to extend Title VII’s reach could be hastened by growing public momentum to protect employee expression tied to protected traits. The *Catastrophe Management Solutions* decision seemed to strike a nerve, both in the Eleventh Circuit and beyond, as the notion that an employer is forbidden from discriminating based on hair texture but not hairstyle makes little sense. The case has sparked a fury of legislative activity at the local, state, and federal levels to protect employees from discrimination based on race and ethnic-based hairstyles, such as cornrows, locs, twists, braids, Bantu knots, and Afros.¹⁰⁸ These

104. See *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1021-22 (11th Cir. 2016).

105. See 590 U.S. 644, 649-52 (2020).

106. Henry L. Chambers, Jr., *Bostock, The CROWN Acts, and a Possible Right to Self-Expression in the Workplace*, 25 EMP. RTS. & EMP. POL’Y J. 53, 53 (2021).

107. *Id.*

108. See, e.g., H.R. 2116, 117th Cong. § 2(a)(10) (2022) (“In 2019 and 2020, State legislatures and municipal bodies throughout the U.S. have introduced and passed legislation that rejects certain Federal courts’ restrictive interpretation of race and national origin, and expressly classifies race and national origin discrimination as inclusive of discrimination on

so-called CROWN laws (Creating a Respectful and Open World for Natural Hair) have gained remarkable traction. California was the first state to enact such a law in 2019.¹⁰⁹ By the end of 2024, twenty-seven states and numerous cities, including Austin and St. Louis, had passed hair discrimination laws.¹¹⁰ At the federal level, the Democratic-controlled House of Representatives passed the CROWN Act in early 2022,¹¹¹ but the bill did not receive enough support from Republican senators to override a filibuster from Kentucky Senator Rand Paul.¹¹² Nevertheless, the proliferation of CROWN laws at the state and local levels may mark a key shift in public perception toward more expansive protections for employee self-expression associated with protected traits.

E. Until Then

Until courts extend Title VII's protections to self-expression associated with protected traits, employees for marginalized groups will continue to engage in identity covering. Sociologist Erving Goffman is credited with coining the term to describe how people from marginalized groups sometimes take action to distance themselves from those groups in an effort to fit in with mainstream culture.¹¹³ Professor Kenji Yoshino catalogues four ways in which individuals cover: by altering their appearance and the way they present themselves, by concealing certain affiliations, by choosing

the basis of natural or protective hairstyles commonly associated with race and national origin.”).

109. CAL. GOV'T CODE § 12926(w)-(x) (West 2023); Phil Willon & Alexa Díaz, *California Becomes First State to Ban Discrimination Based on One's Natural Hair*, L.A. TIMES (July 3, 2019, 1:15 PM), <https://www.latimes.com/local/lanow/la-pol-ca-natural-hair-discrimination-bill-20190703-story.html> [<https://perma.cc/8RVA-MRKC>].

110. See *About*, CROWN COAL., <https://www.thecrownact.com/about> [<https://perma.cc/MBD3-RGQ8>].

111. H.R. 2116.

112. See Jayla Whitfield-Anderson, *Senate Republicans Block CROWN Legislation Again. But Advocates Aren't Deterred*, YAHOO! NEWS (Dec. 21, 2022), <https://news.yahoo.com/senate-republicans-block-crown-legislation-again-but-advocates-arent-deterred-200840509.html> [<https://perma.cc/9CUM-T36A>].

113. See ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 102-04 (1963) (“[P]ersons who are ready to admit possession of a stigma ... may nonetheless make a great effort to keep the stigma from looming large.”).

not to advocate for a group they identify with, and by avoiding contact with others who share their identity.¹¹⁴

In 2013, Deloitte, in collaboration with Professor Yoshino, published a landmark study exploring the prevalence of covering within corporate America.¹¹⁵ Their finding that a staggering 61 percent of respondents engaged in at least one form of identity covering at work sounded alarm bells over the pressures workers with marginalized identities face to conceal their true selves in the workplace.¹¹⁶ A follow-up study they conducted ten years later found that little had changed, as 60 percent of respondents reported covering at work during the prior twelve months.¹¹⁷ They called this finding “sobering,” noting that “[d]espite the increased attention paid to issues of diversity, equity, and inclusion over the past ten years, covering is ubiquitous and continues to have a significant negative impact.”¹¹⁸ Covering was especially high among nonbinary and/or transgender respondents (68 percent), non-heterosexuals (69 percent), cisgender women (64 percent), persons with disabilities (71 percent), and people of color (66 percent of Asians, 65 percent of Blacks, and 62 percent of Hispanics/Latinos).¹¹⁹ It may also be the case that covering is more prevalent among low-wage workers, who tend to have less flexibility and leverage.¹²⁰

The costs of covering are felt at both the individual and organizational levels. In the 2023 survey, 74 percent of respondents reported being negatively impacted by the need to cover at work.¹²¹ “Such consequences include negative effects on well-being, focus, and sense of self; negative effects on performance and commitment at work; and a general feeling of needing to sacrifice authenticity to

114. See KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 79 (2006).

115. CHRISTIE SMITH & KENJI YOSHINO, *DELOITTE, UNCOVERING TALENT: A NEW MODEL OF INCLUSION 1* (2013), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-about-deloitte-uncovering-talent-a-new-model-of-inclusion.pdf> [<https://perma.cc/4BWV-QA8S>].

116. *Id.* at 3; see, e.g., Dorie Clark & Christie Smith, *Help Your Employees Be Themselves at Work*, *HARV. BUS. REV.* (Nov. 3, 2014), <https://hbr.org/2014/11/help-your-employees-be-themselves-at-work> [<https://perma.cc/W7CR-LDYR>].

117. STEPHANE ET AL., *supra* note 19, at 1.

118. *Id.*

119. *Id.* at 5.

120. See *id.* at 10.

121. *Id.* at 9.

succeed.”¹²² These costs “extend beyond the individual, preventing the organization from realizing the gains that a culture of authenticity and belonging provides.”¹²³ Individual decreases in well-being, purpose, and authenticity cause organizations as a whole to suffer wide-ranging losses, including lost profits.¹²⁴

In sum, although there appears to be room within Title VII to extend its protections to self-expression tied to protected traits, courts have largely refrained from doing so. This could change, as public momentum around CROWN Act legislation signals a growing recognition that antidiscrimination law should protect at least some expressive behaviors tied to protected traits. But until that happens, many employees from marginalized groups will continue to downplay or altogether hide key parts of their identities in an effort to fit in at work. This not only adversely impacts individual employees, but also the organizations they work for.

II. THE RISE OF “WHOLE-SELF” EMPLOYMENT

Over the past century, how employers think about the workforce—and how workers think about themselves in relation to their jobs—has changed dramatically. This Part traces that evolution. It begins by examining the role of workers during the Industrial Revolution, when uniformity and efficiency ruled the day and employees were required to check their personal lives at the workplace door. It then considers the shift toward employers valuing workers for their individual traits, and how this in turn has transformed how employees think about their work and personal lives. This Part concludes by examining the rise of “whole-self” employment and how this phenomenon has resulted in workers having greater expectations that they will be able to express their personal identity in the workplace.

122. *Id.*

123. *Id.* at 10.

124. *Id.*

A. Workers of the Past

Employers “have long struggled with the question of which aspects of the individual to allow inside the [workplace door].”¹²⁵ The answer has depended in large part on which aspects of the individual employers believe are most beneficial to their organizations.¹²⁶ “During the Industrial Revolution, entrepreneurs discovered that it was often cheaper and more efficient to bring large numbers of workers together in firms in order to produce ... goods by dividing labor into manageable units arranged around uniform systems and processes.”¹²⁷ By the early 1900s, scientific management theorists such as Frederick Winslow Taylor argued that the human body was all that was necessary for an organization to accomplish its objectives.¹²⁸ “‘Bring your body, but not your mind,’ was the message.”¹²⁹ In the division of labor that theorists such as Taylor envisioned, “managers would use their brains to do the logical thinking-through and planning of organizational goals, and workers would use their bodies to implement them.”¹³⁰ “Thinking [workers] would only mess up the scientifically engineered workplace.”¹³¹ Professor Warren Bennis explains that this “old fashioned ... philosophy of management could be summed up by this phrase: ‘DON’T THINK, DUMMY—DO WHAT YOU’RE TOLD!’”¹³² This focus on the worker’s physical attributes gave rise to the view that “workers were mindless embodiments of physical power best subject

125. Berg, *supra* note 26, at 398.

126. Arup Varma & Sushanta Kumar Mishra, *Workplace Spirituality: An Agenda for Future Research*, in SPIRITUALITY IN MANAGEMENT: INSIGHTS FROM INDIA 195, 196 (Sushanta Kumar Mishra & Arup Varma eds., 2019).

127. Michael L. Nadler, *Independent Employees: A New Category of Workers for the Gig Economy*, 19 N.C. J.L. & TECH. 443, 448 (2018).

128. Berg, *supra* note 26, at 398.

129. *Id.*

130. Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2072 (2003). According to Taylor, “the workman who is best suited to actually doing the work is incapable of fully understanding th[e] science [underlying it], without the guidance and help of those who are working with him or over him.” FREDERICK WINSLOW TAYLOR, THE PRINCIPLES OF SCIENTIFIC MANAGEMENT 26 (W. W. Norton & Co., Inc. 1967) (1911).

131. Berg, *supra* note 26, at 398.

132. Warren Bennis, *Foreword to the Twenty-Fifth Anniversary Printing* of DOUGLAS MCGREGOR, THE HUMAN SIDE OF ENTERPRISE: ANNOTATED EDITION, at xx (Joel Cletcher-Gershenfeld ed., McGraw-Hill 2006) (1960).

to exacting managerial control.”¹³³ As expendable “cog[s] in an industrial machine,” employees were “best governed by rigid, autocratic rules.”¹³⁴ Theorists such as Taylor “saw managers as rational ‘heads’ who would control the unruly ‘hands’ and irrational ‘hearts’ of those who assumed their places as workers in the modern organization.”¹³⁵

In a world in which work was considered “the realm of rational order,”¹³⁶ there was no need or even place for workers to express themselves authentically in the workplace. Indeed, a worker’s individual traits were unimportant. Author Jacob Morgan explains:

Employees used to be thought of as expendable and they didn’t have a voice. They all came to work at around the same time, wearing similar clothing, doing similar tasks, and reporting to similar people. They worked in similar cubes, took lunch breaks at similar times, and worked in perpetual homogeneity.... They did what they were told and didn’t have the opportunity to engage with each other or build communities.... These employees were essentially supposed to work like robots.¹³⁷

Professor Vicki Schultz adds, “[j]ust as the proper use of the assembly line and time motion studies would help management harness workers’ bodily capacities to the ends of production, so too could proper organizational structure suppress the personal elements of people’s lives that threatened the smooth functioning of the firm.”¹³⁸ Regarding bureaucracy, social theorist Max Weber explained: “[Bureaucracy] develops the more perfectly the more the bureaucracy is ‘dehumanized,’ the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation. This is the specific nature of bureaucracy and it is appraised as its special virtue.”¹³⁹ Within the bureaucracy, workers “are

133. Matthew W. Finkin, *Disloyalty! Does Jefferson Standard Stalk Still?*, 28 BERKELEY J. EMP. & LAB. L. 541, 558 (2007).

134. See Today’s Worker, 13 EMP. COORDINATOR PERS. MANUAL § 6:11 (West 2024).

135. Schultz, *supra* note 130, at 2064.

136. Tristin K. Green, *Racial Emotion in the Workplace*, 86 S. CAL. L. REV. 959, 998 (2013).

137. JACOB MORGAN, THE FUTURE OF WORK: ATTRACT NEW TALENT, BUILD BETTER LEADERS, AND CREATE A COMPETITIVE ORGANIZATION 23 (2014).

138. Schultz, *supra* note 130, at 2073.

139. Max Weber, *Technical Advantages of Bureaucratic Organization*, in FROM MAX WEBER:

conditioned to conform their conduct and constrict their initiatives according to the needs of the organization.”¹⁴⁰ Sociologist Robert K. Merton observed, “[t]he bureaucrat’s official life is planned for him in terms of a graded career, through the organizational devices of promotion by seniority, pensions, incremental salaries, *etc.*, all of which are designed to provide incentives for disciplined action and conformity to the official regulations.”¹⁴¹

In the 1930s, the Human Relations School, spearheaded by Elton Mayo, Fritz Roethlisberger, and others at Harvard Business School, made the managerial discovery that workers are, in fact, human beings;¹⁴² as such, they are neither “inert [nor] passive” but have a “dynamism” of their own.¹⁴³ Professor Matthew W. Finkin explained that “[t]he general realization that workers had minds as well as emotions, that they might have something to contribute to the firm other than labor and docility, was relatively late in arrival,” not reaching corporate consciousness until the 1980s.¹⁴⁴ As global competitiveness increased, “[t]he mind, long excluded from many organizational roles, was finally invited into organizations.”¹⁴⁵ Since then, the “‘human capital, knowledge-based’ approach to management” has evolved rapidly, as “American management has learned that a company is well advised to organize work in such a way as to take advantage of its employees knowledge and creativity.”¹⁴⁶ As employers realized the potential contributions workers could make with their minds, regardless of their place in the workplace hierarchy, “[w]hat organizations had once asked employees to leave

ESSAYS IN SOCIOLOGY 214, 216 (H.H. Gerth & C. Wright Mills eds., 2009).

140. James O. Freedman, *Crisis and Legitimacy in the Administrative Process*, 27 STAN. L. REV. 1041, 1059 n.90 (1975).

141. ROBERT K. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE 254 (1968).

142. Finkin, *supra* note 133, at 558.

143. PHILIP SELZNICK, LAW, SOCIETY, AND INDUSTRIAL JUSTICE 115 (1969).

144. Finkin, *supra* note 133, at 559.

145. Berg, *supra* note 26, at 398.

146. Finkin, *supra* note 133, at 559-60 (citations omitted). Professor Tristin K. Green notes that “since the early 1980s, management theory has taken a marked turn toward attending to the human side of workers,” thanks in part to the publication of William Ouchi’s *Theory Z: How American Business Can Meet the Japanese Challenge* and Thomas J. Peters & Robert Waterman, Jr.’s *In Search of Excellence: Lessons from America’s Best-Run Companies*. Green, *supra* note 136, at 998-99. Green explains, “These books predicted that more emotionally committed workers would exhibit more organizational citizenship behavior, which would lead to a better bottom line. The authors emphasized that humans, and not just businesses, must be managed.” *Id.* at 999 (footnote omitted).

outside the work boundary was now being ushered in.”¹⁴⁷ To excel in an increasingly competitive business world, organizations looked for ways to “engage not only the body but the mind and soul of every employee.”¹⁴⁸

B. Workers Today

Today, not only do employers think about their workforce much differently than they once did, but the way in which workers think about their jobs has evolved rather dramatically. What primarily motivated employees in the past—paychecks and promotions—seems less important to workers today, particularly among younger generations. Glassdoor’s 2019 survey of over 5,000 adults in four countries (including the United States) showed that many workers care more about an organization’s culture and mission than about high salaries and unique perks.¹⁴⁹ Over half of the respondents reported that “company culture is more important than salary when it comes to job satisfaction,” and more than three-fourths said they would consider a company’s mission and purpose before applying.¹⁵⁰ The emphasis on culture was most pronounced among younger workers. Among U.S. respondents, 65 percent of those under age forty-five valued culture over salary when it comes to job satisfaction, compared to 52 percent of those age forty-five and older.¹⁵¹ The study found that organizational culture not only draws workers in but also helps ensure they stay. Nearly two-thirds of respondents said their company’s culture was “one of the main reasons for staying in their job,” and 71 percent reported they would look elsewhere for a job if “their current company’s culture deteriorates.”¹⁵² The results of the survey led Glassdoor president and COO Christian

147. Berg, *supra* note 26, at 399.

148. DAVE ULRICH, HUMAN RESOURCE CHAMPIONS: THE NEXT AGENDA FOR ADDING VALUE AND DELIVERING RESULTS 125 (1997).

149. Glassdoor, *Culture Over Cash? Glassdoor Multi-Country Survey Finds More Than Half of Employees Prioritize Workplace Culture Over Salary*, PR NEWSWIRE (July 11, 2019, 8:03 AM), <https://www.prnewswire.com/news-releases/culture-over-cash-glassdoor-multi-country-survey-finds-more-than-half-of-employees-prioritize-workplace-culture-over-salary-300883059.html> [https://perma.cc/B3XF-R9AD].

150. *Id.*

151. *Id.*

152. *Id.*

Sutherland-Wong to conclude, “it’s clear that job seekers are seeking more meaningful workplace experiences.... Job seekers want to be paid fairly but they too want to work for a company whose values align with their own and whose mission they can fully get behind.”¹⁵³

Along with organizational culture and mission, workers today overwhelmingly want to work for organizations that prioritize diversity and inclusion. In a 2021 CNBC | SurveyMonkey Workforce Survey of more than 8,200 employed adults in the United States, 78 percent reported it was important to them to work for an organization that prioritizes diversity and inclusion, with 53 percent indicating it was “very important” to them.¹⁵⁴ Similarly, a 2019 Quantum Workplace study found that “61 [percent] of employees believe diversity and inclusion strategies are beneficial and essential.”¹⁵⁵ The same study found that an organization’s commitment to diversity and inclusion significantly impacts employee engagement.¹⁵⁶ A 2020 survey of 2,000 workers in the United Kingdom found broad acceptance of the importance of diversity and inclusion across all groups, but it was particularly strong among Generation Z, who “would be hesitant to take a job from a company that does not have diverse representation in senior leadership roles.”¹⁵⁷ To Generation Z workers, diversity and inclusivity were almost as important as pay offered (34 percent versus 36 percent), with more than one-third indicating they would choose between similar jobs based on which is more diverse and inclusive.¹⁵⁸ The authors of the

153. *New Survey: Company Mission & Culture Matter More Than Salary*, GLASSDOOR (July 11, 2019), <https://www.glassdoor.com/blog/mission-culture-survey/> [<https://perma.cc/8DEZ-EEBX>].

154. Laura Wronski, *CNBC | SurveyMonkey Workforce Happiness Index: April 2021*, SURVEYMONKEY, <https://www.surveymonkey.com/curiosity/cnbc-workforce-survey-april-2021/> [<https://perma.cc/RC23-EVUH>].

155. Kristin Ryba, *What Employees Think About Inclusion in the Workplace [New Research]*, QUANTUMWORKPLACE (Oct. 10, 2019), <https://www.quantumworkplace.com/future-of-work/inclusion-in-the-workplace-research> [<https://perma.cc/3EUQ-8665>].

156. *Id.* Just one-third of respondents rated themselves as engaged when they perceived their employer was very or moderately weak on inclusion, whereas 85 percent of respondents rated themselves as engaged when they considered their employer very or moderately strong on inclusion. *Id.*

157. *For Businesses to Succeed in 2030, Gen Z Says No One Can Be Left Behind*, INTEL (Aug. 4, 2020), <https://www.intel.com/content/www/us/en/newsroom/news/businesses-succeed-2030-gen-z.html> [<https://perma.cc/6WMM-79FE>].

158. *Id.*

study concluded, “[c]ompanies must accelerate their efforts to create diverse, inclusive workplaces to meet the expectations of a generation who will be making career choices as much on values and sense of purpose as pay and progression.”¹⁵⁹ A combined NEW and Deloitte study reached a similar conclusion about the importance of diversity among younger workers: “Diversity is the watchword for Gen Z: Diversity matters to them through many dimensions, not just isolated to race and gender, but also related to identity and orientation. Gen Z prioritizes diversity—across race, gender, and orientation—more than any other generation and companies should as well.”¹⁶⁰

Increasingly, workers no longer view their work and personal lives as separate entities. A 2016 Gallup study found that “millennials increasingly see life and work as one entity and are drawn to companies that care about their individual well-being and encourage them to focus on their whole selves.”¹⁶¹ The report explains that in the past:

Workers did what their bosses told them to do and many likely felt rather unattached to their job, leaving it behind at 5 p.m. without much of an afterthought. That scenario does not reflect the workplace today. Employees choose careers for more than a paycheck—they want a sense of purpose. They see their jobs and lives as closely integrated.¹⁶²

Because of this integration, millennials increasingly want to work for organizations that invest in them—not only as employees but also as people.¹⁶³ “Millennials are not willing to sacrifice life for work. They look to companies that enable them to integrate the two and value and honor them as people, accounting for all of their well-

159. *Id.* (statement of Megan Stowe, Director, EMEA Strategic Sourcing and International Supplier, Diversity & Inclusion at Intel).

160. KARIANNE GOMEZ, TIFFANY MAWHINNEY & KIMBERLY BETTS, DELOITTE, NETWORK EXEC. WOMEN, WELCOME TO GENERATION Z, 15 (2019), <https://www2.deloitte.com/us/en/pages/consumer-business/articles/understanding-generation-z-in-the-workplace.html> [<https://perma.cc/PZ3Z-UFJ5>].

161. GALLUP, HOW MILLENNIALS WANT TO WORK AND LIVE 17 (2016), <https://www.gallup.com/workplace/238073/millennials-work-live.aspx> [<https://perma.cc/F523-3WVV>].

162. *Id.* at 14.

163. *Id.* at 30.

being needs.”¹⁶⁴ Millennials do not want bosses; they want managers who value them both as people and as employees.¹⁶⁵ Unlike older generations, millennials lack attachment to institutions and traditions and thus behave more as “consumers of workplaces” who are continually weighing their options and looking for roles and organizations that “best align with their needs and life goals.”¹⁶⁶ Gallup warns that “[m]illennials are a flight risk, making it absolutely vital for organizations to understand how to engage and retain these employees.”¹⁶⁷ Accordingly, “organizations should be cautious of how much they emphasize a fun, entertaining work environment. Millennials would much rather know that a potential employer wants to invest in their ... holistic well-being.”¹⁶⁸

1. Bringing One’s Whole Self to Work

For younger workers in particular, “a job is no longer just a job—it’s their life as well.”¹⁶⁹ As such, the line between work and personal life has become increasingly blurred to the point that employees expect to be able to bring their personal life into the workplace—a phenomenon often referred to as bringing one’s whole self to work. Author and business consultant Mike Robbins explains that “[b]ringing our whole selves to work means showing up authentically” and “having the courage to ... allow ourselves to be truly seen.”¹⁷⁰ Professors Bernardo M. Ferdman and Laura Morgan Roberts add, “when we speak of our whole self, we include and highlight our various identities—the labels and categories that situate us in a social world through the construction of defining characteristics and relationships with other entities—as well as the

164. *Id.* at 31.

165. *Id.* at 33.

166. *Id.* at 21.

167. *Id.*

168. *Id.* at 33.

169. *Id.* at 4; *see also* Sherry E. Sullivan, Monica L. Forret, Shawn M. Carraher & Lisa A. Mainiero, *Using the Kaleidoscope Career Model to Examine Generational Differences in Work Attitudes*, 14 CAREER DEV. INT’L 284, 295 (2009) (analyzing survey data from 982 professionals showed that Generation Xers have a “significantly higher desire” for authenticity at work than do baby boomers, leading the researchers to conclude that “it seems while Boomers live to work, Xers work to live”).

170. ROBBINS, *supra* note 26, at 1.

associated thoughts, feelings, and intentions.”¹⁷¹ Of course, “whole-self” employment does not entitle workers to express the totality of their various identities at work, particularly if doing so will be detrimental to themselves or to other people in that environment.¹⁷² Bringing one’s whole self to work requires “a more strategic approach to self-inclusion, in which individuals increase alignment between internal experiences and external expressions of the most valued and valuable aspects of their identities at work.”¹⁷³

According to leading work-life scholar David W. Miller, “[c]ommon to both [millennials and Generation Z] is an embrace of this expanded view of diversity and inclusion that includes idea, religious, and worldview diversity. The idea of not bringing their whole self to work is inconceivable to them.”¹⁷⁴ He further explains:

[E]mployees of all ages, and particularly the Millennial and Z generations, are no longer content to live a bifurcated life. They want to bring their whole self to work and not leave an essential part of their identity or important aspects of themselves in the parking lot. They do not want to feel ashamed or hide who they are or what they believe. This applies to visible parts of their humanity ... [a]nd ... to often hidden or less visible parts of their identity such as gender orientation and faith.¹⁷⁵

This shift in how employees view the relationship between their work and personal lives led commenter Claire Hastwell to declare that “[t]he days of leaving your personal life at the company doorstep are over.”¹⁷⁶ In her view, the COVID-19 pandemic and concurrent new wave of racial justice movements have hastened the shift from desiring work-life balance to work-life integration and have “also sparked further discussions of how individual identity ...

171. Ferdman & Roberts, *supra* note 26, at 98.

172. *See id.* at 111.

173. *Id.* at 112.

174. David W. Miller, *Faith and Work: Brave New World?*, in FAITH, FINANCE, AND ECONOMY: BELIEFS AND ECONOMIC WELL-BEING 197, 207 (Tanweer Akram & Salim Rashid eds., 2020) [hereinafter Miller, *Faith and Work*].

175. *Id.* at 199.

176. Claire Hastwell, *Employee Engagement Involves Bringing the Whole Self to Work*, GREAT PLACE TO WORK (June 23, 2020), <https://www.greatplacetowork.com/resources/blog/employee-engagement-involves-bringing-the-whole-self-to-work> [<https://perma.cc/3682-QQGE>].

is experienced by everyone in a personal way in the workplace.”¹⁷⁷ Hastwell insists, “[y]our team can’t bring their 100 percent if only 50 percent of their selves are allowed to show up. The way to attract, engage and retain talent involves building a culture that encourages employees to bring their whole selves to work.”¹⁷⁸

A growing chorus of commenters is urging employers to empower their workers to show more of their whole selves at work. Dr. Rohini Anand, a former senior executive at Sodexo, warns that forcing employees to cover their true identities can lead to “burnout and resentment.”¹⁷⁹ She calls on employers to let workers “bring their true, authentic, and whole self to work and notes that ‘in order to be effective, a leader must seek engagement from each person on the team and that requires a strong awareness of everything that makes that person an individual.’”¹⁸⁰ Kathy Martinez, former Assistant Secretary of Labor for Disability Employment Policy, explains that “[e]mployers want the best from their employees, and a key strategy is to adopt workplace policies and practices that encourage people to bring their best selves—their whole selves—to work.”¹⁸¹ When former President Obama signed an executive order in 2014 that prohibited federal contractors from sexual-orientation-based discrimination, then-Labor Secretary Thomas E. Perez remarked, “[t]his isn’t just the right thing to do; it’s the profitable thing to do.... [N]one of us can perform our best when we fear for our livelihood and economic security. A workplace culture based on tolerance and acceptance allows us to bring our whole selves to work.”¹⁸² Robbins agrees, noting that:

177. *Id.*

178. *Id.*

179. Syeda Raza & Cara Patton Liu, *Bringing Your Whole Self to Work, Unapologetically-Temperaments and the Role of a Leader*, ACC DOCKET (July 1, 2018) (statement of Rohini Anand, former senior executive at Sodexo), <https://docket.acc.com/bringing-your-whole-self-work-unapologetically-temperaments-and-role-leader> [<https://perma.cc/PMZ5-BEWF>].

180. *Id.*

181. News Release, U.S. Dep’t of Lab., Off. of Disability Emp. Pol’y, *\$1.85M in Funding Now Available to Improve Employment Outcomes for Individuals with Disabilities from US Labor Department* (June 26, 2014), <https://www.dol.gov/newsroom/releases/odep/odep20140626> [<https://perma.cc/L2KE-R2KA>].

182. Thomas E. Perez, *Equality, Fairness and Opportunity*, U.S. DEP’T OF LAB. BLOG (Dec. 3, 2014), <https://web.archive.org/20150310032230/https://blog.dol.gov/2014/12/03/equality-fairness-and-opportunity/> [<https://perma.cc/R4B8-8H7F>] (issuing rule to prevent discrimination against employees and applicants based on sexual orientation or gender identity in accordance

[O]ne of the most important aspects of being engaged, fulfilled, and successful in our work is the ability to be ourselves. Organizations that have environments where people are more likely to engage, collaborate, and perform, do what they can to encourage people to fully show up and be all of who they are at work.¹⁸³

Behavioral scientists likewise see value in employers embracing “whole-self” employment. Ferdman and Roberts argue that inclusion at the organizational level “starts with ... knowing, accepting, and expressing one’s whole self;” thus, “how we show up and express our full selves at work—is a key part of the dynamic process of inclusion.”¹⁸⁴ Professor Anna Sutton’s meta-analysis of seventy-five studies on authenticity, well-being, and engagement led her to conclude that worker “authenticity is a worthwhile goal with positive connotations for both individual well-being and work engagement.”¹⁸⁵ She further observed that “creating the space and encouragement for diverse authentic expressions of self is therefore likely to have wide reaching positive impacts at work and in wider society.”¹⁸⁶ Yale psychologist David N. Berg has similarly concluded, “organizations of the future have a better chance of flourishing if they can encourage their members to bring their whole selves to work and manage the resulting array of differences in a collaborative way.”¹⁸⁷ He warns, “[i]f organizations cannot allow whole selves in, they impoverish themselves by limiting their access to crucial sources of creativity and innovation within individuals.”¹⁸⁸

2. “Whole-Self” Employment and Title VII’s Protected Traits

Title VII’s protected traits—race, color, religion, national origin, and sex—can be key components of individual identity. In this age of “whole-self” employment, many workers want—indeed, expect—to be able to express these dimensions of who they are in the

with Executive Order 13672).

183. ROBBINS, *supra* note 26, at 2-3.

184. Ferdman & Roberts, *supra* note 26, at 95.

185. Anna Sutton, *Living the Good Life: A Meta-Analysis of Authenticity, Well-Being and Engagement*, PERSONALITY & INDIVIDUAL DIFFERENCES, Jan. 2020, at 1, 11.

186. *Id.* at 12.

187. Berg, *supra* note 26, at 413.

188. *Id.*

workplace. Such expression can take countless forms, such as a Black employee who styles her hair in dreadlocks, a Muslim employee who wears a headscarf, an Indian-American employee who dresses in a saree, and a gay employee who displays a picture of his partner at his workstation. While some organizations resist such expressions of personal identity as unprofessional or inappropriate, others are leaning into “whole-self” employment, such as by creating more inclusive dress and grooming standards¹⁸⁹ and by offering a greater variety of paid holidays.¹⁹⁰

The growing expectation of workers to be able to express their protected traits in the workplace is typified by how many employees of faith now seek to exhibit their religious identities at work. For most of modern history, there was a “wall of separation” between religion and work.¹⁹¹ Corporate America traditionally frowned on religious expression in the workplace based on the prevailing assumption that because not everyone shares the same faith-based worldview, there must be a wall of separation between work and religion.¹⁹² In the twenty-first century, that wall has largely crumbled. “Today, ... growing numbers of businesspeople of all levels are attending conferences and management seminars on spirituality and work, participating in small prayer and study groups on faith and leadership, and reading books, magazines, and newsletters for

189. See, e.g., Heidi Lynne Kurter, *Companies Striving for Diversity and Inclusion Are Rethinking Their Dress Code Policy*, FORBES (June 24, 2019, 6:32 AM), <https://www.forbes.com/sites/heidilynnekurter/2019/06/23/2-simple-ways-to-cultivate-a-culture-of-diversity-and-inclusion-through-self-expression/> [<https://perma.cc/6C4B-ZSCV>] (reporting that Air New Zealand ended its ban on employees having visible tattoos in an effort to allow them to express their cultural heritage and individuality).

190. See, e.g., Priya Mann & Elizabeth Washington, *Michigan Community First in United States to Offer Eid as Paid Holiday for City Employees*, CLICKONDETROIT (Apr. 17, 2023, 6:38 PM), <https://www.clickondetroit.com/news/local/2023/04/17/michigan-community-first-in-united-states-to-offer-eid-as-paid-holiday-for-city-employees/> [<https://perma.cc/9LVS-9VKZ>] (reporting that Dearborn, Michigan, became the first U.S. city to offer Eid, a Muslim holiday, as a paid holiday for city employees).

191. LAKE LAMBERT III, *SPIRITUALITY, INC.: RELIGION IN THE AMERICAN WORKPLACE 2* (2009) (“[T]here had traditionally been a ‘firewall’ between spirituality and business, but it was a barrier that was breaking down as both individuals and organizations undergo a spiritual awakening.”).

192. Eileen P. Kelly, *Accommodating Religious Expression in the Workplace*, 20 EMP. RESPS. & RTS. J. 45, 46 (2008); JAMES L. NOLAN, *DOING THE RIGHT THING AT WORK: A CATHOLIC’S GUIDE TO FAITH, BUSINESS AND ETHICS 20* (2006).

self-help as regards integrating biblical teachings with marketplace demands.”¹⁹³

In the twenty-first century, many employees of faith want and expect to be able to express their religious identities in the workplace.¹⁹⁴ “The growing need to express one’s religious identity in the workplace may reflect a person’s desire for self-verification and to act in accord with his or her ideal self through the alignment of thought and action in all spheres.”¹⁹⁵ Columnist Boyd Matheson

193. DAVID W. MILLER, *GOD AT WORK: THE HISTORY AND PROMISE OF THE FAITH AT WORK MOVEMENT* 3 (2007) [hereinafter MILLER, *GOD AT WORK*]. This shift is attributable to a variety of demographic and cultural factors. See Dallan F. Flake, *Image is Everything: Corporate Branding and Religious Accommodation in the Workplace*, 163 U. PA. L. REV. 699, 706-08 (2015) (explaining that increased religious expression in the workplace is attributable to demographic factors such as the aging baby boomer generation, cultural factors such as workers’ expectation of being able to express their whole selves in the workplace, religious factors such as increased public evangelism, and reimagined workplaces in which employees are free to express themselves). Chief among such factors are “the dramatic changes over the past few decades in the religious profile and practices of the United States workforce,” including the rise in non-Christian traditions and those who self-identify as spiritual-but-not-religious, agnostic, atheist, or as having no religious belief. See Miller, *Faith and Work*, *supra* note 174, at 200; see also MILLER, *GOD AT WORK*, *supra* note 193, at 6 (“The changing societal, economic, and ecclesiastical environments of the late twentieth and early twenty-first centuries are together driving this fresh interest in faith and work.”). The increasing diversity of religious beliefs and practices, coupled with workers’ growing desire to bring their whole selves to work, “have almost forced the conversation [of religion] upon the business world, making it a topic they can no longer avoid or consider taboo.” Miller, *Faith and Work*, *supra* note 174, at 200.

194. See LAMBERT, *supra* note 191, at 2 (“Individuals are seeking to bring their whole selves to the workplace, including their spirituality, and businesses today are dependent upon the creativity that only ‘consciousness’ and spirituality can provide.”). A 2013 Tanenbaum study found that workplace conversations about religion have become commonplace, as 22 percent of American workers reported sharing their religious beliefs with a coworker at least once a month. TANENBAUM CTR. FOR INTERRELIGIOUS UNDERSTANDING, *WHAT AMERICAN WORKERS REALLY THINK ABOUT RELIGION: TANENBAUM’S 2013 SURVEY OF AMERICAN WORKERS AND RELIGION* 16 (2013), <https://tanenbaum.org/wp-content/uploads/2014/02/Tanenbaums-2013-Survey-of-American-Workers-and-Religion.pdf> [<https://perma.cc/42P7-R2KC>]. The study further found that “religious ... conversations at work do not seem to generate a great deal of discomfort,” as 77 percent of workers feel “somewhat” or “very comfortable” when the topic of religion arises, compared to just 22 percent who feel “somewhat” or “very uncomfortable.” *Id.* at 16-17.

195. Diether Gebert, Sabine Boerner, Eric Kearney, James E. King, Jr., Kai Zhang & Lynda Jiwen Song, *Expressing Religious Identities in the Workplace: Analyzing a Neglected Diversity Dimension*, 67 HUM. RELS. 543, 545 (2014) (citation omitted); see also James F. Morgan, *In Defense of the Workplace Religious Freedom Act: Protecting the Unprotected Without Sanctifying the Workplace*, 56 LAB. L.J. 68, 80 (2005) (“An individual’s perception of self-worth is often associated with one’s employment. For many, the only other factor capable of equaling or surpassing the impact work has on people’s notion of significance is their faith.

argues that “[w]e should be bringing our whole, authentic self to work and to our communities—that includes our religious beliefs. Leaving our deeply held beliefs at home, in the mosque, synagogue, or church is to leave a portion of self behind.”¹⁹⁶ According to Stew Friedman, Director of the Wharton School’s Work/Life Integration Project, “[t]he old paradigm of leaving your beliefs behind when you go to work is no longer satisfying More than ever, people want work that fits in with a larger sense of purpose in life. For many people, that includes a concept of God, or something like it.”¹⁹⁷

Requiring religious employees to leave their religion at the factory door, store, or office is an unnecessary sacrifice.”).

196. Boyd Matheson, *Liberty Without Morality and Religious Freedom Is but 'Window Dressing,'* DESERET NEWS (Oct. 29, 2019, 7:00 AM), <https://www.deseret.com/opinion/2019/10/29/20937522/elder-cook-liberty-without-morality-and-religious-freedom-is-but-window-dressing> [<https://perma.cc/6KJH-P44Q>].

197. Peter Walker, *Balancing Faith and Business*, CNN (Feb. 12, 2007, 5:39 PM) (statement of Stew Friedman, Director of the Wharton School’s Work/Life Integration Project), <https://edition.cnn.com/2007/BUSINESS/01/31/execed.religion/index.html> [<https://perma.cc/KT8C-NSL9>]. As workers increasingly expect to be able to express their religious identity in the workplace, an interesting phenomenon is playing out in the religious accommodation case law. Early on, almost all of the reported religious accommodation cases involved employees who sought time away from work to observe their Sabbath or religious holidays. *See, e.g.*, *Claybaugh v. Pac. Nw. Bell Tel. Co.*, 355 F. Supp. 1 (D. Or. 1973) (involving an employer that made no attempt to accommodate an employee who joined a church requiring Sabbath observance). These employees did not seek to bring their religious beliefs into the workplace but rather desired to be free from work obligations so they could perform their religious duties outside the workplace. While these types of cases remain common, *see, e.g.*, *Grooms v. Walden Sec.*, No. 3:21-cv-00363, 2021 WL 2292305 (M.D. Tenn. June 3, 2021) (involving a Seventh-day Adventist employee who sought a scheduling accommodation so she would not have to work on her Sabbath), many of the more recent cases involve employees seeking accommodations that would allow them to express their religious identity inside the workplace, such as by proselytizing to coworkers or customers, *see, e.g.*, *Mial v. Foxhoven*, 305 F. Supp. 3d 984 (N.D. Iowa 2018) (seeking an accommodation to sign emails with the valediction “In Christ”), displaying religious symbols at their workstations, *see, e.g.*, *Schwengel v. Elite Prot. & Sec., Ltd.*, No. 11-C-8712, 2015 WL 7753064 (N.D. Ill. Dec. 2, 2015) (seeking an accommodation to display a handmade sign quoting a verse from the Old Testament), praying or performing other religious rituals, *see, e.g.*, *Zaghia v. Costco Wholesale Corp.*, No. 20-619, 2020 WL 4676348 (E.D. La. Aug. 12, 2020) (involving a Muslim employee who sued after his employer prohibited him from praying at work), wearing religious garb, *see, e.g.*, *Bailey v. Metro Ambulance Servs., Inc.*, 992 F.3d 1265 (11th Cir. 2021) (involving a Rastafarian EMT who sought a religious exemption from his employer’s facial hair policy), and receiving exemptions from job-related tasks that conflict with their religious beliefs, *see, e.g.*, *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814 (S.D. Ind. 2021) (seeking a religious exemption from the school’s requirement that teachers call transgender students by their preferred name and pronouns).

Human resources best practices are moving toward including religious diversity recognition in employment policies, as more employers recognize that for many employees, religion helps define them as people; thus, they cannot bring their whole selves to work if they “are worried about hiding an essential element of who they are, such as their deeply held religious beliefs.”¹⁹⁸ Although many employers continue to stifle or prevent any manifestation of faith at work, what Miller terms “faith-avoiding,” others have chosen to adapt by becoming “faith-tolerant” or even “faith-friendly.”¹⁹⁹ This latter type of employer does not avoid or merely tolerate faith at work but rather “embrace[s] faith identities as a whole, welcoming and respecting people of all faith traditions, including worldviews such as atheism and agnosticism.”²⁰⁰ Faith-friendly companies not

198. Dori Meinert, *How to Make Holiday Celebrations More Inclusive*, SOC. FOR HUM. RES. MGMT. (Oct. 31, 2018), <https://www.shrm.org/hr-today/news/hr-magazine/1118/pages/how-to-make-holiday-celebrations-more-inclusive.aspx> [<https://perma.cc/XD2V-ZZDT>]; see also Brenda Bauges, *Balancing Religious Liberties and Antidiscrimination Interests in the Public Employment Context: The Impact of Masterpiece Cakeshop and American Legion*, 54 U. RICH. L. REV. 943, 966 (2020) (“Many religious citizens cannot divorce the practice of their religion from their daily tasks, including their vocations. Those with sincerely held religious beliefs may view their religion as ingrained in their personhood such that their work lives are integral to their religious identities, and therefore central to their religious practice.” (footnote omitted)).

199. Miller, *Faith and Work*, *supra* note 174, at 204-05; see also Eugene J. Kutcher, Jennifer D. Bragger, Ofelia Rodriguez-Srednicki & Jamie L. Masco, *The Role of Religiosity in Stress, Job Attitudes, and Organizational Citizenship Behavior*, 95 J. BUS. ETHICS 319, 319 (2010) (“[S]ome organizations proactively support and encourage the expression of religion and faith at work ... beyond the legal requirement for employers to provide reasonable accommodations.”).

200. Miller, *Faith and Work*, *supra* note 174, at 205. For example, “Tyson Foods openly welcomes what they call ‘the whole person,’ when it comes to matters of faith ... [employing] ninety-eight dedicated chaplains that can provide compassionate pastoral care to team members and their families, no matter what their religious affiliation or beliefs.” Religious Freedom & Bus. Found., *Google Tops New Religious Inclusion Rankings; Most Fortune 100 Companies Neglect Faith-Friendly Workplace Initiatives*, PR NEWswire (Jan. 30, 2020, 8:38 AM), <https://www.prnewswire.com/news-releases/google-tops-new-religious-inclusion-rankings-most-fortune-100-companies-neglect-faith-friendly-workplace-initiatives-300995579.html> [<https://perma.cc/QW7V-HNAM>]. Other prominent companies such as Google, PayPal, and Walmart have established “faith-oriented employee resource groups.” Brian Grim, *How Corporate America Is Becoming Faith-Friendly*, RELIGIOUS FREEDOM & BUS. FOUND. (Dec. 9, 2020), <https://religiousfreedomandbusiness.org/how-corporate-america-is-becoming-faith-friendly-brian-grim> [<https://perma.cc/P8N7-2VNT>]. Brian Grim, president and founder of the Religious Freedom & Business Foundation, remarked that these businesses “recogniz[e] that for many people, trying to separate their faith from them while at work is as difficult as expecting a person to separate themselves from their race or gender or age. Their faith is as

only believe that embracing faith is the “right thing to do” but also recognize the potential business and bottom-line benefits they are likely to accrue from doing so.²⁰¹

Of course, religion is not the only protected trait that some employers are encouraging employees to express in the workplace. Pharmaceutical giant AstraZeneca recently launched a “This is Me” campaign to encourage employees to share their stories as members of and allies to the LGBTQ community.²⁰² Staffing consultant The Hollister Group hosted a multicultural potluck, in which employees were encouraged to “share their ancestral cultures and family traditions.”²⁰³ Amazon has established a number of affinity groups for employees, including “Indigenous at Amazon” and the “Black Employee Network.”²⁰⁴ And Starbucks has held forums where employees of various races and ethnicities are able to share their personal experiences with discrimination.²⁰⁵ Initiatives such as these undoubtedly are intended to help employees feel more comfortable bringing to work the parts of themselves they may otherwise be inclined to cover.

In sum, the American worker has undergone a radical transformation over the past century. Once content to leave their personal lives at home in order to collect a paycheck, employees today seek job opportunities that allow them to integrate their work and personal lives in a way that allows them to bring their whole selves to work. For many workers, the traits that Title VII protects are key components of who they are. In this age of “whole-self” employment, they are unwilling to check the dimensions of their identities at the workplace door. While some employers have embraced this shift by implementing policies that allow workers to express this crucial

baked into their personhood as these other characteristics, and for some people, even more so.” *Id.*

201. Grim, *supra* note 200.

202. ASTRAZENECA, SUSTAINABILITY REPORT 2019, at 51 (2019), https://www.astrazeneca.com/content/dam/az/Sustainability/2020/pdf/Sustainability_Report_2019.pdf [<https://perma.cc/KEA7-B4J9>].

203. *Hollister’s Multicultural Office Potluck*, HOLLISTER GRP., <https://hollistergroup.com/community-posts/multicultural-office-potluck/> [<https://perma.cc/5848-SQSB>].

204. *Affinity Groups*, AMAZON, <https://www.aboutamazon.com/affinity-groups> [<https://perma.cc/DSL6-D8JV>].

205. *Discussing Race Relations in America at Starbucks*, STARBUCKS (Mar. 13, 2015), <https://stories.starbucks.com/stories/2015/discussing-race-relations-in-america-at-starbucks/> [<https://perma.cc/9EEX-4FB4>].

dimension of their selves, others have yet to realize the benefits of encouraging employees to express their authentic selves.

III. THE MUTUAL BENEFITS OF WORKER AUTHENTICITY

This Part examines the science behind the benefits of worker authenticity. It begins by reviewing numerous well-regarded studies that show that worker authenticity in general improves well-being, job satisfaction, engagement, and performance, while reducing the risk of burnout. It then examines studies that focus on trait-specific authenticity, including religious and cultural authenticity. This Part concludes with a review of social science research that links the aforementioned benefits of authenticity to organizational outcomes such as productivity and profitability. From this review of the literature, a compelling case emerges for employers to not merely tolerate but actively encourage worker authenticity in many instances.

A. How Employees Benefit from Authenticity in the Workplace

In one of the most famous passages from Shakespeare's *Hamlet*, Polonius exhorts his departing son, Laertes, to live authentically: "This above all: to thine own self be true ... Thou canst not then be false to any man."²⁰⁶ The desire for authenticity "is a defining characteristic of the human experience."²⁰⁷ Broadly defined in Western thought as "the degree to which a person acts in agreement with one's true self,"²⁰⁸ the concept of authenticity is rooted in "Greek philosophers' concern with examining and knowing ourselves," so we can "live in a way which reflects our true calling."²⁰⁹

206. WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 3, ll. 78, 80.

207. Daniel M. Cable, Francesca Gino & Bradley R. Staats, *Breaking Them In or Eliciting Their Best? Reframing Socialization Around Newcomers' Authentic Self-Expression*, 58 *ADMIN. SCI. Q.* 1, 2 (2013); see also Alex M. Wood, P. Alex Linley, John Maltby, Michael Baliousis & Stephen Joseph, *The Authentic Personality: A Theoretical and Empirical Conceptualization and the Development of the Authenticity Scale*, 55 *J. COUNSELING PSYCH.* 385, 385 (2008) ("To know yourself and to act accordingly has been seen as a moral imperative throughout history.").

208. Ralph van den Bosch, Toon W. Taris, Wilmar B. Schaufeli, Maria C. W. Peeters & Gaby Reijseger, *Authenticity at Work: A Matter of Fit?*, 153 *J. PSYCH.* 247, 247 (2019).

209. Sutton, *supra* note 185, at 2.

Thus, authenticity “refers to the thoughts, emotions, needs, desires, preferences, and beliefs about oneself, which are translated into actions that are consistent with those experiences.”²¹⁰ It is widely believed that “authentic living allows individuals to achieve the most fulfilling and satisfying life possible.”²¹¹ Unlike trait-based conceptualizations of authenticity, which construe authenticity as a stable personality dimension, state-based conceptualizations of authenticity assert that “the feeling of being authentic is contingent upon the degree to which a person and the environment in which they operate are in agreement.”²¹² Professor Alex M. Wood and colleagues’ triple-dimension model of authenticity posits that a person experiences authenticity when they feel in touch with their true self; when they behave in accordance with their own values, interests, and beliefs; and when they are able to ward off the external influences of others that run contrary to their own will and to stand by their own convictions.²¹³ In the context of work, authenticity is “a subjectively experienced phenomenon that emerges when there is a strong congruence ... between a person and his/her work environment.”²¹⁴ The better a work environment fits with a worker’s core self, the more authentic the worker will feel.²¹⁵ By contrast, “lack of authenticity is an expression of a person’s awareness that their true or actual self does not fit well with the way they feel or act at work and that others, rather than they themselves, determine how they behave.”²¹⁶

Many researchers consider authenticity “the most fundamental aspect of well-being ... not simply ... an aspect or precursor to well-being but rather the very essence of well-being and healthy

210. Antonio Ariza-Montes, Gabriele Giorgi, Antonio Leal-Rodríguez & Jesús Ramírez-Sobrinó, *Authenticity and Subjective Wellbeing Within the Context of a Religious Organization*, FRONTIERS PSYCH., July 2017, at 1, 3.

211. Cable et al., *supra* note 207, at 2.

212. Ralph van den Bosch & Toon W. Taris, *Authenticity at Work: Its Relations with Worker Motivation and Well-Being*, FRONTIERS COMM’N, May 2018, at 1, 2.

213. See Wood et al., *supra* note 207, at 386.

214. van den Bosch et al., *supra* note 208.

215. van den Bosch & Taris, *supra* note 212.

216. van den Bosch et al., *supra* note 208, at 249; see also YingFei Hélot, Ilka H. Gleibs, Adrian Coyle, Denise M. Rousseau & Céline Rojon, *Religious Identity in the Workplace: A Systematic Review, Research Agenda, and Practical Implications*, 59 HUM. RES. MGMT. 153, 155 (2020) (“In the context of the religious self in the workplace, to be authentic employees must experience congruence between their internal values and external expressions.”).

functioning.”²¹⁷ Employees “who experience being true to their selves feel more comfortable and do not lose energy in pretending to be someone else.”²¹⁸ On the other hand, workers who feel they must behave inauthentically to conform to organizational norms often experience identity conflict.²¹⁹ Conforming to an employer’s expectations requires what sociologist Arlie Russell Hochschild famously termed “emotional labor”—the “management of feeling to create a publicly observable facial and bodily display.”²²⁰ Emotional labor often takes the form of surface acting, whereby a worker displays an identity that is not true to their self.²²¹ The resulting sense of inauthenticity the worker experiences not only leads to feelings of depersonalization and alienation, but is also cognitively exhausting because the worker must constantly monitor their behavior to ensure it matches the fake identity they feel they must portray.²²²

The benefits of authenticity are well established. In the general population, authenticity is negatively related to anxiety,²²³ stress,²²⁴

217. Wood et al., *supra* note 207, at 386.

218. Ralph van den Bosch & Toon W. Taris, *The Authentic Worker’s Well-Being and Performance: The Relationship Between Authenticity at Work, Well-Being, and Work Outcomes*, 148 J. PSYCH. 659, 660 (2014).

219. See Isis H. Settles, Robert M. Sellers & Alphonse Damas, Jr., *One Role or Two? The Function of Psychological Separation in Role Conflict*, 87 J. APPLIED PSYCH. 574, 574 (2002); Wood et al., *supra* note 207, at 387 (“Social psychological research has demonstrated that the extent to which people feel their personality varies between roles is related to their levels of well-being, with less role variation being correlated with higher well-being.”).

220. ARLIE RUSSELL HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* 7 n.1 (1983).

221. See Blake E. Ashforth & Ronald H. Humphrey, *Emotional Labor in Service Roles: The Influence of Identity*, 18 ACAD. MGMT. REV. 88, 92 (1993).

222. Ronald H. Humphrey, Blake E. Ashforth & James M. Diefendorff, *The Bright Side of Emotional Labor*, 36 J. ORGANIZATIONAL BEHAV. 749, 751 (2015) (explaining that in the context of emotional dissonance, faking emotions can “lead to feelings of depersonalization and alienation from one’s job” and is “cognitively taxing because ... [a]ctors need to check if their words, facial expressions, and vocal tones match their true emotions or the fake ones they want to portray”).

223. See Kennon M. Sheldon, Richard M. Ryan, Laird J. Rawsthorne & Barbara Ilardi, *Trait Self and True Self: Cross-Role Variation in the Big-Five Personality Traits and Its Relations with Psychological Authenticity and Subjective Well-Being*, 73 J. PERSONALITY & SOC. PSYCH. 1380, 1386 (1997); Richard M. Ryan, Jennifer G. LaGuardia & Laird J. Rawsthorne, *Self-Complexity and the Authenticity of Self-Aspects: Effects on Well Being and Resilience to Stressful Events*, 7 N. AM. J. PSYCH. 431, 437 (2005); Wood et al., *supra* note 207, at 387.

224. See Michael H. Kernis & Brian M. Goldman, *A Multicomponent Conceptualization of*

and depression,²²⁵ and is positively associated with life satisfaction,²²⁶ psychological functioning,²²⁷ well-being,²²⁸ and positive affect.²²⁹ The health-promoting role of authenticity also holds true in the workplace. Professor Anna Sutton's meta-analysis of seventy-five authenticity studies concluded that "the more authentic people are, the greater their well-being and engagement."²³⁰ Sutton's analysis found "significant medium to large positive relationships between authenticity and well-being ... as well as authenticity and engagement."²³¹ These relationships were "remarkably robust," remaining unaffected by gender, age, or sample type.²³² Sutton deduced that "[t]he size of these effects indicates that authenticity makes a substantial contribution to individual well-being and engagement and may provide a key intervention point for work organisations seeking to improve these outcomes for their workforce."²³³

In perhaps the most comprehensive and well-regarded study of worker authenticity to date, Dutch researchers Ralph van den Bosch

Authenticity: Theory and Research, 38 ADVANCES EXPERIMENTAL SOC. PSYCH. 283, 320 (2006); Ryan et al., *supra* note 223, at 437, 444; Sheldon et al., *supra* note 223, at 1386; Wood et al., *supra* note 207, at 387.

225. See William S. Ryan & Richard M. Ryan, *Toward a Social Psychology of Authenticity: Exploring Within-Person Variation in Autonomy, Congruence, and Genuineness Using Self-Determination Theory*, 23 REV. GEN. PSYCH. 99, 102 (2019); Sheldon et al., *supra* note 223, at 1386.

226. See Annamaria Di Fabio & Maureen E. Kenny, *From Decent Work to Decent Lives: Positive Self and Relational Management (PS&RM) in the Twenty-First Century*, FRONTIERS PSYCH., Mar. 2016, at 1, 4-5; Kernis & Goldman, *supra* note 224, at 326; Wood et al., *supra* note 207, at 387.

227. Brian M. Goldman, *Making Diamonds Out of Coal: The Role of Authenticity in Healthy (Optimal) Self-Esteem and Psychological Functioning*, in SELF-ESTEEM ISSUES AND ANSWERS: A SOURCEBOOK OF CURRENT PERSPECTIVES 132, 137 (Michael H. Kernis ed., 2006).

228. See Kernis & Goldman, *supra* note 224, at 310; Oliver C. Robinson, Frederick G. Lopez, Katherine Ramos & Sofya Nartova-Bochaver, *Authenticity, Social Context, and Well-Being in the United States, England, and Russia: A Three Country Comparative Analysis*, 44 J. CROSS-CULTURAL PSYCH. 719, 726 (2013); Ryan et al., *supra* note 223, at 431; Yi Nan Wang, *Balanced Authenticity Predicts Optimal Well-Being: Theoretical Conceptualization and Empirical Development of the Authenticity in Relationships Scale*, 94 PERSONALITY & INDIVIDUAL DIFFERENCES 316, 322 (2016).

229. See Di Fabio & Kenny, *supra* note 226, at 5; Kernis & Goldman, *supra* note 224, at 326; Wood et al., *supra* note 207, at 390, 396.

230. Sutton, *supra* note 185, at 10.

231. *Id.*

232. *Id.*

233. *Id.*

and Toon W. Taris examined the relationship between authenticity at work, well-being, and work-related outcomes.²³⁴ The measures of well-being included “work engagement,” “burnout,” and “job satisfaction.”²³⁵ The work-outcome measures included “in-role performance” and “turnover intention.”²³⁶ Analyzing data from 685 participants, they found (after controlling for working conditions and demographic variables) that authenticity at work accounted for 11.5 percent of the variance in the well-being variables and 7 percent of the variance in work-outcome variables.²³⁷ The researchers concluded that these findings “clearly demonstrate[.]” that authenticity at work is an important correlate of well-being at work and to other work outcomes.²³⁸

In a fascinating field experiment that garnered widespread attention, Professor Daniel Cable and colleagues tested the effects of an organization encouraging new employees to “express their personal identities,” as opposed to enculturating them to “develop pride in their new organization and internalize its values.”²³⁹ They found that initial worker socialization that focused on personal identity led to greater customer satisfaction and employee retention after six months than did socialization that focused on organizational identity.²⁴⁰ To confirm causation and explore the mechanisms underlying the effects, they replicated the results in a laboratory experiment, where they found that individuals working temporarily as part of a research team were more engaged and satisfied with their work, performed their tasks more effectively, and were less likely to quit when initial socialization focused on personal identity rather than on organizational identity.²⁴¹ The researchers concluded that “making authenticity a core value ... may not only inspire greater workforce contributions but may also enable positive deviance that keeps [workers] fresh and agile.”²⁴² Indeed, strategically investing in individualized socialization tactics that facilitate

234. van den Bosch & Taris, *supra* note 218, at 659.

235. *Id.* at 663-65.

236. *Id.* at 665-66.

237. *Id.* at 674.

238. *Id.* at 677.

239. Cable et al., *supra* note 207, at 1.

240. *Id.* at 14-16.

241. *See id.* at 20-21.

242. *Id.* at 24.

expression of employees' best selves can have beneficial outcomes for employers and employees alike.²⁴³

Researchers Anne Wilson and Vanessa Buote surveyed 213 employees on the importance of authenticity at work.²⁴⁴ The questionnaire asked participants to respond to statements such as "My workplace environment encourages all employees to express who they really are," "When I'm at work, I don't show 'the real me,'" and "I would like my coworkers to show more of their true selves at work."²⁴⁵ The "findings indicated that authentic employees fared better than inauthentic employees, reporting significantly higher job satisfaction and engagement, greater happiness at work, stronger sense of community, more inspiration, and lower job stress."²⁴⁶ The researchers also asked respondents how they thought "authenticity affects workplace culture."²⁴⁷ "Of the employees who reported being authentic ... 80 percent believed that it improves the workplace."²⁴⁸ Comments centered on how authenticity "improves productivity, increases performance and success, and allows employees to exert less energy and time censoring or hiding themselves" (thus freeing up more time and energy to focus on the task at hand).²⁴⁹ Employees also believed that being themselves facilitated "a more positive working environment" and created stronger relationships with clients and coworkers because of "a greater understanding of one another and higher levels of trust."²⁵⁰

The foregoing studies are hardly alone in finding positive relationships between authenticity and work-related outcomes. Although a comprehensive review of the literature is beyond this Article's scope, it is worth highlighting some of the other significant studies that have examined the link between worker authenticity and key work-related outcomes, including job satisfaction, engagement, commitment, well-being, performance, and burnout.

243. *See id.* at 27.

244. Vanessa Buote, *Most Employees Feel Authentic at Work, but It Can Take a While*, HARV. BUS. REV. (May 11, 2016), <https://hbr.org/2016/05/most-employees-feel-authentic-at-work-but-it-can-take-a-while> [<https://perma.cc/K6C3-Q44N>].

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

1. *Job Satisfaction*

Researchers theorize that overall job satisfaction is positively associated with authenticity because the ability of workers to conduct tasks and express their identities in ways that are congruent with their core values and ideas contributes to satisfaction with their jobs.²⁵¹ Several studies have found a positive association between worker authenticity and job satisfaction. In an analysis of survey data from 680 Dutch bank employees, psychologist U. Baran Metin and colleagues found that job resources (for example, autonomy, supervisory support, and colleague support) were positively associated with authenticity, and, in turn, that authenticity was positively related to job satisfaction.²⁵² Their study showed that “not only the characteristics of a job, but also the experience of one’s true self is a good indicator of occupational well-being.”²⁵³ In their study of 646 Dutch employees who worked for a variety of organizations, researchers van den Bosch and Taris similarly found authenticity to be positively associated with positive work outcomes, including job satisfaction, and negatively associated with negative work outcomes, such as stress and negative affect.²⁵⁴ Although data limitations prevented the researchers from determining causality, they noted it “seem[s] plausible that authenticity is an antecedent of work engagement and, possibly ... job satisfaction.”²⁵⁵ They further explained that because lack of authenticity is associated with a range of adverse outcomes, including job dissatisfaction, “at the very least low scores on authenticity constitute a warning sign for an unfavorable work situation.”²⁵⁶

251. See, e.g., Ralph van den Bosch & Toon W. Taris, *Authenticity at Work: Development and Validation of an Individual Authenticity Measure at Work*, J. HAPPINESS STUD., Feb. 2014, at 1, 5 (hypothesizing a positive relationship between authenticity and job satisfaction because “the possibility for workers to conduct tasks that are congruent with one’s core values and ideas will surely contribute to their satisfaction with their job”).

252. See U. Baran Metin, Toon W. Taris, Maria C.W. Peeters, Ilona van Beek & Ralph van den Bosch, *Authenticity at Work—A Job-Demands Resources Perspective*, 31 J. MANAGERIAL PSYCH. 483, 483 (2016).

253. *Id.* at 494.

254. van den Bosch & Taris, *supra* note 251, at 12.

255. *Id.* at 14.

256. *Id.* at 15.

2. Engagement

In general, work engagement is “a positive, fulfilling, work-related state of mind that is characterized by vigor, dedication, and absorption.”²⁵⁷ Authenticity is thought to be an antecedent of engagement because “the more that work can allow for employees to show their real self, the more engaged they will be.”²⁵⁸ Professor William A. Kahn suggests that individuals are more likely to feel engaged in activities when they are able to express their full and personal self at work.²⁵⁹

Professor Ante Glavas tested the relationship between employees’ perceptions of their organization’s corporate social responsibility (CSR) that allow employees to bring more of their whole selves to work and employee engagement.²⁶⁰ Using survey data from over 15,000 employees in a large professional service firm in the United States, Glavas found that worker authenticity “positively and significantly mediates the relationship between CSR and employee engagement.”²⁶¹ The other mediating variable, perceived organizational support, “did not significantly mediate the CSR-engagement relationship,” leading Glavas to conclude that “perceived CSR has the strongest impact on employees when it allows for them to show their whole selves at work.”²⁶²

Professor Hannes Leroy and colleagues tested whether authenticity mediates the relationship between employee mindfulness and engagement.²⁶³ They collected survey data on these variables before, directly after, and four months after six mindfulness trainings.²⁶⁴

257. Wilmar B. Schaufeli, Marisa Salanova, Vicente González-Romá & Arnold B. Bakker, *The Measurement of Engagement and Burnout: A Two Sample Confirmatory Factor Analytic Approach*, 3 J. HAPPINESS STUD. 71, 74 (2002).

258. Ante Glavas, *Corporate Social Responsibility and Employee Engagement: Enabling Employees to Employ More of Their Whole Selves at Work*, FRONTIERS PSYCH., May 2016, at 1, 4.

259. See William A. Kahn, *Psychological Conditions of Personal Engagement and Disengagement at Work*, 33 ACAD. MGMT. J. 692, 700 (1990).

260. Glavas, *supra* note 258, at 1.

261. *Id.*

262. *Id.* at 7.

263. Hannes Leroy, Frederik Anseel, Nicoletta G. Dimitrova & Luc Sels, *Mindfulness, Authentic Functioning, and Work Engagement: A Growth Modeling Approach*, 82 J. VOCATIONAL BEHAV. 238, 238 (2013).

264. *Id.* at 241.

Results showed that authentic functioning mediated the relationship between mindfulness and work engagement.²⁶⁵ “This is important,” the researchers concluded, “as staying true to one’s core sense of self clarifies how mindful employees attain more stable work-related well-being.”²⁶⁶

Professor Germano Reis and colleagues examined how authenticity mediates the relationship between perceived organizational culture and worker engagement.²⁶⁷ Analyzing survey data from 208 professional workers in Brazil, the researchers found that “perceived control-oriented organizational cultures (that is, hierarchy and market) are negatively associated with authenticity at work,” that authenticity was “positively associated with work engagement,” and that authenticity “mediated the relationship between individual ratings of perceived market and hierarchy cultures and work engagement.”²⁶⁸ The results showed that “when individuals perceive that they have more opportunities to behave authentically at work, they tend to feel more engaged with their jobs.”²⁶⁹

3. *Burnout*

The flipside of engagement is burnout, which is characterized by the subdimensions of emotional exhaustion, cynicism, and lack of personal accomplishment.²⁷⁰ Researchers van den Bosch and Taris theorize that workers who lack authenticity at work are more cynical because they feel “detached from their own values and beliefs,” and they are more emotionally exhausted because the “misfit” between their job and their true self “deplete[s] one’s energy and ... reduce[s] their level of pride and identification with their job.”²⁷¹ In their own study of authenticity and burnout, van den Bosch and

265. *Id.* at 243-44.

266. *Id.* at 246.

267. See Germano Reis, Jordi Trullen & Joana Story, *Perceived Organizational Culture and Engagement: The Mediating Role of Authenticity*, 31 J. MANAGERIAL PSYCH. 1091, 1092, 1095 (2016).

268. *Id.* at 1091, 1099.

269. *Id.* at 1100.

270. Wilmar B. Schaufeli, Michael P. Leiter, Christina Maslach & Susan E. Jackson, *The MBI—General Survey*, in THE MASLACH BURNOUT INVENTORY 19, 22-26 (Christina Maslach, Susan E. Jackson & Michael P. Leiter eds., 3d ed. 1996).

271. van den Bosch & Taris, *supra* note 212, at 3.

Taris surveyed 546 financial services professionals and found that low levels of authenticity were associated with higher levels of burnout.²⁷² “Thus, not knowing who one is at work and not working in accordance with one[s] own values and beliefs is indeed associated with higher levels of exhaustion and a larger mental distance from work.”²⁷³ Because inauthentic workers in the study showed signs of amotivation, burnout, and low levels of work engagement, the researchers urged employers to “find[] or shap[e] a job in such a way that [workers] feel authentic at work.”²⁷⁴

Organizational psychologist Alicia Grandey and colleagues examined the link between authenticity and emotional exhaustion, a key component of burnout, by surveying 359 health care providers at an Australian hospital.²⁷⁵ They found that a climate of authenticity (defined as a shared perception that the workgroup valued and accepted self-expression of its members) mitigated the negative relationship between engaging in emotion work and emotional exhaustion.²⁷⁶ If employees engaged in surface acting and worked in a group with a high climate of authenticity, they experienced less burnout than did employees who worked in groups with lower levels of authenticity.²⁷⁷

4. Job Performance

Given the positive association between authenticity and job satisfaction and engagement, it is unsurprising that individuals who experience elevated levels of authenticity in the workplace are also likely to perform better on the job. Self-determination theory posits that “authenticity contributes to job performance by boosting autonomous motivation.”²⁷⁸ Professor Jie (Yonas) Ma and colleagues

272. *Id.* at 8-9.

273. *Id.* at 6.

274. *Id.* at 10.

275. Alicia Grandey, Su Chuen Foo, Markus Groth & Robyn E. Goodwin, *Free To Be You and Me: A Climate of Authenticity Alleviates Burnout from Emotional Labor*, 17 J. OCCUPATIONAL HEALTH PSYCH. 1, 1-2 (2012).

276. *See id.* at 7-9.

277. *See id.* at 7-8.

278. Jie (Yonas) Ma, Aditi Rabindra Sachdev & Xixi Gu, *Being Oneself and Doing Great: The Effect of Authenticity on Job Performance and the Role of Supportive Leadership*, 19 J. PERS. PSYCH. 75, 75 (2020). “Autonomous motivation highlights an individual’s internal reasons (e.g., interests, identification, or personal significance) for executing a behavior. In

examined the relationship between autonomy and job performance using survey data from 300 employees and 100 supervisors from a real estate developer in China.²⁷⁹ Employees rated themselves on their “authenticity at work” and “autonomous work motivation,” whereas the employees’ direct supervisors rated the employees’ job performance using “task-performance” and “work-proactivity” measures.²⁸⁰ The results showed that “authenticity benefits job performance through autonomous motivation.”²⁸¹ “[E]mployees who experience higher levels of authenticity tend to have higher levels of autonomous motivation,” and “the more [an employee] experiences authenticity, the more [the employee] experiences autonomous motivation at work.”²⁸² According to its authors, this study “highlights the value of supporting employee authenticity because authentic employees are autonomously motivated to work, which optimizes their task performance and work proactivity.”²⁸³

5. Organizational Commitment and Retention

Employees who are free to be themselves at work experience “greater feelings of connection with colleagues and more positive reactions to the employment relationship.”²⁸⁴ They likewise experience greater job satisfaction, lower stress, and less burnout—all of which help strengthen organizational commitment and increase employee retention.²⁸⁵ Professor Cable and colleagues’ aforementioned field experiment established a clear link between authenticity and employee retention.²⁸⁶ New employees whose initial socialization with their employer focused on the employer’s organizational identity or skills training and general firm awareness were a staggering 250 percent and 157 percent, respectively, more likely to have quit after six months than were employees

contrast, controlled motivation represents the external reasons (e.g., situational demand or ego-attachment) for that [behavior].” *Id.* at 76 (citations omitted).

279. *Id.* at 78.

280. *Id.* at 79.

281. *Id.* at 81-82.

282. *Id.* at 82.

283. *Id.* at 83.

284. See Cable et al., *supra* note 207, at 8.

285. *Id.* at 7.

286. See *id.* at 23.

whose initial socialization focused on the employees being their authentic best selves.²⁸⁷

Psychologist Benjamin Biermeier-Hanson and colleagues examined how employees' perceptions of their authenticity and the authenticity of their leaders affects turnover intention.²⁸⁸ Using survey data from 420 employees, the researchers found that "congruence at higher levels of leader-follower authenticity is related to lower levels of turnover intentions."²⁸⁹ Put differently, respondents were less likely to have considered leaving their job if their perceptions of their own and their leaders' authenticity was high.²⁹⁰

Despite the known benefits of authenticity at work, many employers are often hesitant, if not outright hostile, to the idea that employees should be allowed to express their true identities. Indeed, individuals tend to be less authentic at work than in other contexts.²⁹¹ Cable and colleagues explain why:

Because organizations are made up of people, many of whom spend the majority of their waking hours at work, the human drive for authenticity creates a tension for organizations. On one hand, employers can address an essential yearning for authentic self-expression, helping employees articulate, project, and exercise their "best selves" at work. On the other hand, organizations need to ensure continuity and control: they need their employees to behave in specified ways and express particular emotions in order to differentiate the organization's value production and succeed in the market.²⁹²

For employers, the tension between authenticity and uniformity can be difficult to navigate.²⁹³ But as the foregoing research shows, when employers are able to let go of antiquated notions about the value of worker uniformity and embrace "whole-self" employment, they can

287. *Id.* at 14-16.

288. See Benjamin Biermeier-Hanson, Kevin T. Wynne, Gregory Thrasher & Joseph B. Lyons, *Modeling the Joint Effect of Leader and Follower Authenticity on Work and Non-Work Outcomes*, 155 J. PSYCH. 140, 141 (2021).

289. *Id.* at 147, 154.

290. See *id.* at 154.

291. Robinson et al., *supra* note 228, at 731.

292. Cable et al., *supra* note 207, at 2 (citation omitted).

293. *Id.* at 27.

expect their workforce to be more satisfied, engaged, committed, and productive, and less likely to experience burnout.

B. The Value of Trait-Specific Authenticity

Research on the value of worker authenticity is particularly strong in the areas of religious and cultural identity. Professor Fahri Karakas's review of approximately 140 academic articles on how workplace spirituality supports organizational performance found that "spirituality enhances employee well-being and quality of life", "provides employees with a sense of purpose and meaning at work," and deepens employees' feelings of "interconnectedness and community."²⁹⁴ Other researchers have found a significant positive relationship between religiosity or spirituality and organizational commitment,²⁹⁵ ethical behavior,²⁹⁶ engagement,²⁹⁷ and job satisfaction.²⁹⁸ Professor AAhad M. Osman-Gani and colleagues found that

294. Fahri Karakas, *Spirituality and Performance in Organizations: A Literature Review*, 94 J. BUS. ETHICS 89, 89 (2010). YingFei Héliot and colleagues' analysis of fifty-three studies of work and religious identity similarly yielded several important findings about the benefits of religious expression in the workplace. Héliot et al., *supra* note 216, at 155-56. First, the expression of religious identity can "enhance one's occupational identity with benefits through increased prosocial and ethical behaviors." *Id.* at 163. Second, organizational support for religious identity expression increases congruence between employees' religious and occupational identities, which increases efficacy at work. *Id.* at 163. And third, there is "fairly strong evidence" that, overall, allowing employees to express their religious identity benefits organizations and its members, as "[s]uccessful integration of employee religious identity at work can increase contributions, belongingness and commitment." *Id.* at 166.

295. See, e.g., Hossein Khanifar, Gholamreza Jandaghi & Samereh Shojaie, *Organizational Consideration Between Spirituality and Professional Commitment*, 12 EUR. J. SOC. SCIS. 558, 567 (2010); Elzbieta Sikorsa-Simmons, *Religiosity and Work-Related Attitudes Among Paraprofessional and Professional Staff in Assisted Living*, 18 J. RELIGION, SPIRITUALITY & AGING 65 (2005) (finding a positive relationship between religiosity and job satisfaction, as well as religiosity and organizational commitment in paraprofessional staff members at an assisted living organization); M. York, *Survey Finds Religious Belief Contributes to Job Satisfaction*, 28 RISK MGMT. 56 (1981) (finding that religious beliefs affected organizational commitment more than age or income).

296. See, e.g., Peter McGhee & Patricia Grant, *Spirituality and Ethical Behavior in the Workplace: Wishful Thinking or Authentic Reality*, 13 ELEC. J. BUS. ETHICS & ORG. STUD., no. 2, 2008, at 61, 66.

297. See, e.g., Ahmad Abualigah, Julie Davies & Shelley Harrington, *Religiosity and Work Engagement: Workload as a Moderator*, 37 STRESS & HEALTH 862, 866 (2021).

298. See, e.g., Vaibhav Chawla & Sridhar Guda, *Individual Spirituality at Work and Its Relationship with Job Satisfaction, Propensity to Leave and Job Commitment: An Exploratory Study Among Sales Professionals*, 16 J. HUM. VALUES 157, 165-66 (2010).

“religiosity and spirituality have a significant positive relationship with work performance,” as measured by supervisor and peer assessments of respondents’ “quality of work, dependability, and knowledge of work.”²⁹⁹ Several studies show that religiosity can impact how employees perform their work. In the healthcare context, very religious physicians are less likely than less religious physicians to withdraw life-sustaining treatment.³⁰⁰ Religious physicians are also more likely to support the hopes of their patients and are better able to deal with the grief associated with caring for dying patients compared to nonreligious physicians.³⁰¹ Studies of Muslim nurses in Jordan³⁰² and oncology nurses in palliative care³⁰³ found that nurses’ religious identity had a positive impact on their occupational practice, such as increased frequency in providing spiritual care for patients.

Professor Eugene J. Kutcher and colleagues examined the relationship between comfort in expressing one’s religious beliefs at work and stress, burnout, work attitudes, and organizational citizenship behavior.³⁰⁴ They asked respondents to rate their comfort level in having coworkers know whether they were religious, wearing garb that revealed their religious identity in the workplace, indicating to coworkers that they regularly practice their religion, asking for scheduling flexibility to attend a religious event, and expressing values based on their religious identity.³⁰⁵ They found that the more comfortable respondents were in expressing their religious identity at work, the more likely they were to engage in organizational citizenship behavior, which is defined as “behaviors that benefit others, perhaps even to the detriment of the actor, and

299. AAhad M. Osman-Gani, Junaidah Hashim & Yusof Ismail, *Establishing Linkages Between Religiosity and Spirituality on Employee Performance*, 35 EMP. RELS. 360, 365-67 (2013).

300. Neil S. Wenger & Sara Carmel, *Physicians’ Religiosity and End-of-Life Care Attitudes and Behaviors*, 71 MT. SINAI J. MED. 335, 338 (2004).

301. See Lawrence Martis & Anne Westhues, *Religion, Spirituality, or Existentiality in Bad News Interactions: The Perspectives and Practices of Physicians in India*, 54 J. RELIGION & HEALTH 1387, 1396-1400 (2015).

302. See Ahmad S. Musa, *Spiritual Care Intervention and Spiritual Well-Being*, 35 J. HOLISTIC NURSING 53, 59 (2017).

303. See Elaine Wittenberg, Sandra L. Ragan & Betty Ferrell, *Exploring Nurse Communication About Spirituality*, 34 AM. J. HOSPICE & PALLIATIVE MED. 566, 569-70 (2017).

304. Kutcher et al., *supra* note 199, at 323.

305. *Id.* at 325.

those behaviors that, in aggregate over time, contribute to organizational effectiveness,” such as, “helping behavior and going above and beyond the call of duty.”³⁰⁶ The researchers did not find a significant relationship between religious expression and stress, burnout, or work attitudes.³⁰⁷

Like with religious authenticity, researchers have uncovered numerous benefits to employees being able to express their racial and cultural backgrounds at work. Professor Rachel D. Arnett recently conducted a fascinating study on the effects of “cultural minority employees engaging in rich and meaningful conversations about their racial, ethnic, and national backgrounds.”³⁰⁸ Through a series of experiments, Arnett found that when cultural minority employees are able to engage in such conversations, it positively influences majority group coworkers’ inclusive behaviors.³⁰⁹ Specifically, it increased majority group employees’ “status perceptions of, feelings of closeness to, and sense that they could learn from minority coworkers.”³¹⁰ By contrast, surface-level conversations or small talk that did not bring attention to a minority employee’s cultural background did not produce any of these outcomes.³¹¹ Arnett concluded that “rich cultural-identity expression facilitates opportunities, connection, and other valued outcomes” and is also “an effective means for minority employees to discuss aspects of their cultural background that are of personal importance while

306. *Id.* at 322.

307. *Id.* at 330-31. Similarly, Professor Robert W. Kolodinsky and colleagues examined how employees’ spirituality and their perceptions of the organizational culture regarding spirituality affected an array of work outcomes. Robert W. Kolodinsky, Robert A. Giacalone & Carole L. Jurkiewicz, *Workplace Values and Outcomes: Exploring Personal, Organizational, and Interactive Workplace Spirituality*, 81 J. BUS. ETHICS 465, 466 (2008). Using data collected from five samples of full-time workers taking graduate coursework, they found that employees’ perceptions of organizational-level spirituality were even more predictive of meaningful outcomes than individual-level spirituality and religiosity. *Id.* at 468-69, 471, 473-75. Specifically, “organizational spirituality was positively related to job involvement, organizational identification, and rewards satisfaction, and negatively associated with organizational frustration.” *Id.* at 475. This suggests an organization’s culture toward religious expression may have an even greater impact on work outcomes than an employee’s own religiosity. *See id.* at 475-77.

308. Rachel D. Arnett, *Uniting Through Difference: Rich Cultural-Identity Expression as a Conduit to Inclusion*, 34 ORG. SCI. 1887, 1887 (2023).

309. *See id.* at 1894-1908.

310. *Id.* at 1902.

311. *Id.*

elevating—rather than sacrificing—their professional opportunities and relationships.”³¹²

The foregoing research makes clear that employees experience an array of benefits when they are able to express their authentic selves at work. The benefits of authenticity are consequential enough to warrant greater freedom of expression in the workplace even if employers derived no benefit from doing so. But that is not the case. As the next subpart demonstrates, employers benefit tremendously when their workers are satisfied, committed, engaged, and high-performing, making worker authenticity a win-win for employees and employers alike.

C. How Employers Benefit from an Authentic Workplace

Organizations benefit when workers experience the kinds of outcomes that authentic workplace behavior is known to generate. The link between job satisfaction and performance—what psychologist Frank J. Landy dubbed the “Holy Grail”³¹³—is well established. Professor Alex Edmans examined the effect of job satisfaction on firm-level value by examining stock returns for companies listed in the “100 Best Companies to Work for in America.”³¹⁴ He found that such companies, which have high levels of employee job satisfaction, generated 2.3 percent to 3.8 percent higher stock returns per year than their peers from 1984 through 2011.³¹⁵ Edmans concluded that “job satisfaction is a valuable characteristic ... [that] causes stronger corporate performance.”³¹⁶ Professor Danica Bakotić tested the direction of the relationship between job satisfaction and organizational performance using data from over 5,800 employees in Croatia.³¹⁷ Results showed a clear “link between job satisfaction and organizational performance in both directions,” with job satisfaction

312. *Id.* at 1908, 1910.

313. FRANK J. LANDY, *PSYCHOLOGY OF WORK BEHAVIOR* 419 (1989).

314. Alex Edmans, *The Link Between Job Satisfaction and Firm Value, with Implications for Corporate Social Responsibility*, *ACAD. MGMT. PERSPS.*, Nov. 2012, at 1, 4-5.

315. *Id.* at 9.

316. *Id.* at 16.

317. Danica Bakotić, *Relationship Between Job Satisfaction and Organisational Performance*, 29 *ECON. RES.* 118, 120-21 (2016).

being a stronger determinant of organizational performance than vice versa.³¹⁸

Employee commitment, as measured through employee retention, is a vital component of organizational success. Turnover results in substantial and meaningful consequences for organizations “because it entails the loss of firm-specific human and social capital, disrupts operations and collective function, saddles remaining members with newcomer socialization and training, and increases recruitment and selection costs.”³¹⁹ According to Gallup, U.S. businesses are losing a staggering one trillion dollars every year due to voluntary turnover.³²⁰ In their analysis of 115 turnover studies, Professors John Hausknecht and Charlie Trevor found turnover negatively affects firm performance, productivity, and customer-related outcomes (for example, wait times, service quality perception, and satisfaction levels).³²¹ Professor Julie I. Hancock and colleagues’ meta-analysis of forty-eight independent studies demonstrated that “the costs and human and social capital losses associated with turnover tend to outweigh the potentially functional effects of replacing departing employees with better or less expensive ones, bringing new perspectives into the organization, or preventing human capital stagnation.”³²²

Employee engagement, which is interconnected with job satisfaction and commitment, is a critical component of organizational performance. Like employee turnover, disengagement can be extremely costly for employers. According to a 2020 Gallup report, more than half (51 percent) of U.S. workers reported they were “not engaged” at work.³²³ Gallup estimates that disengaged workers cost U.S. employers between 450 and 550 billion dollars in lost

318. *Id.* at 126.

319. John P. Hausknecht & Charlie O. Trevor, *Collective Turnover at the Group, Unit, and Organizational Levels: Evidence, Issues, and Implications*, 37 *J. MGMT.* 352, 360 (2011).

320. Shane McFeely & Ben Wigert, *This Fixable Problem Costs U.S. Businesses \$1 Trillion*, GALLUP (Mar. 13, 2019), <https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx> [<https://perma.cc/Y9X4-K78Q>].

321. Hausknecht & Trevor, *supra* note 319, at 360-63.

322. Julie I. Hancock, David G. Allen, Frank A. Bosco, Karen R. McDaniel & Charles A. Pierce, *Meta-Analytic Review of Employee Turnover as a Predictor of Firm Performance*, 39 *J. MGMT.* 573, 573, 592-93 (2011).

323. Jim Harter, *U.S. Employee Engagement Reverts Back to Pre-COVID-19 Levels*, GALLUP (Oct. 16, 2020), <https://www.gallup.com/workplace/321965/employee-engagement-reverts-back-pre-covid-levels.aspx> [<https://perma.cc/M396-PQLS>].

productivity annually.³²⁴ Researchers have lauded engagement as the key to organizational success and competitiveness,³²⁵ finding that organizations with more engaged employees have higher shareholder returns, profitability, productivity, and customer satisfaction. Gallup Senior Research Director Jim Harter and colleagues' meta-analysis of nearly 8,000 business units in thirty-six companies found that employee engagement was related to an array of business-unit outcomes, including "customer loyalty, profitability, productivity, employee turnover, and safety."³²⁶ Researcher William H. Macey and colleagues' analysis of data from sixty-five firms from different industries showed that the top quartile of an engagement index had greater return on assets, profitability, and more than double the shareholder value compared to the bottom quartile.³²⁷ Companies with engaged workers also outperform their competitors. A study of publicly traded companies found that organizations with a critical mass of engaged employees experienced 115 percent growth in earnings per share compared to their competitors' 27 percent growth over the same time period.³²⁸ Furthermore, organizations with highly engaged workers benefit from fewer absences,³²⁹ less stress,³³⁰ and lower accident rates.³³¹

324. Susan Sorenson & Keri Garman, *How to Tackle U.S. Employees' Stagnating Engagement*, GALLUP (June 11, 2013), <https://news.gallup.com/businessjournal/162953/tackle-employees-stagnating-engagement.aspx> [<https://perma.cc/WKT2-5EJB>].

325. See, e.g., Bruce Louis Rich, Jeffrey A. Lepine & Ean R. Crawford, *Job Engagement: Antecedents and Effects on Job Performance*, 53 *ACAD. MGMT. J.* 617, 628-29 (2010).

326. James K. Harter, Theodore L. Hayes & Frank L. Schmidt, *Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis*, 87 *J. APPLIED PSYCH.*, 268, 268, 274 (2002).

327. See WILLIAM H. MACEY, BENJAMIN SCHNEIDER, KAREN M. BARBERA & SCOTT A. YOUNG, *EMPLOYEE ENGAGEMENT: TOOLS FOR ANALYSIS, PRACTICE, AND COMPETITIVE ADVANTAGE 2-3* (2009).

328. See GALLUP, *STATE OF THE AMERICAN WORKPLACE 70* (2017), <https://www.gallup.com/workplace/238085/state-american-workplace-report-2017.aspx?thank-you-report-form=1> [<https://perma.cc/T9MQ-FMZ7>].

329. Corné A. M. Roelen, Petra C. Koopmans, Annette Notenbomer & Johan W. Groothoff, *Job Satisfaction and Sickness Absence: A Questionnaire Survey*, 58 *OCCUPATIONAL MED.* 567, 569 (2008); Jan F. Ybema, Peter G. W. Smulders & Paulien M. Bongers, *Antecedents and Consequences of Employee Absenteeism: A Longitudinal Perspective on the Role of Job Satisfaction and Burnout*, 19 *EUR. J. WORK & ORGANIZATIONAL PSYCH.* 102, 117 (2010).

330. DAVID BOWLES & CARY COOPER, *EMPLOYEE MORALE: DRIVING PERFORMANCE IN CHALLENGING TIMES 59* (2009).

331. Oi-ling Siu, David R. Phillips & Tat-wing Leung, *Safety Climate and Safety Performance Among Construction Workers in Hong Kong: The Role of Psychological Strains*

Employers derive substantial benefits from allowing employees to express their authentic selves at work. Authenticity improves job satisfaction, engagement, and performance while reducing burnout and turnover. These outcomes benefit organizations by boosting productivity and profitability. Beyond the bottom line, organizations with engaged workforces are able to build and maintain strong cultures that help them widen their reach and influence, increase their staying power, and strengthen their brands. In light of these benefits, employers would be wise to encourage rather than suppress worker authenticity.

IV. MANAGING WORKER AUTHENTICITY

Despite its growing popularity, the “whole-self” employment movement is not without its critics, many of whom argue that employees will bring too much of themselves to work, thereby creating distractions and undermining professionalism.³³² These concerns are not unfounded. Employers who encourage their employees to bring their whole, authentic selves to work do risk that employees will bring parts of themselves to work that are inappropriate, counter-productive, or even dangerous. This Part explores how the Supreme Court’s recently announced test for undue hardship in the religious

as *Mediators*, 36 ACCIDENT ANALYSIS & PREVENTION 359, 365 (2004).

332. See, e.g., Pamela Paul, *Do Not Bring Your ‘Whole Self’ to Work*, N.Y. TIMES (Sept. 25, 2022), <https://www.nytimes.com/2022/09/25/opinion/business-economics/work-office-whole-self.html> [<https://perma.cc/2UU9-3KXS>] (arguing that employees should “[d]efy the latest catchphrase of human resources and leave a good portion of [themselves] back home”); Stephanie Voza, *When Bringing Your ‘Whole Self’ to Work Could Be a Bad Idea*, FAST CO. (Jan. 25, 2023), <https://www.fastcompany.com/90838250/bringing-your-whole-self-work-bad-idea> [<https://perma.cc/H9ZF-28T5>] (“In a world where I am now working in my living room or kitchen and my life is happening around me, how do I create enough boundaries and space where I’m still being myself but I’m also keeping a part of myself for that other side of my life? ... When everything is blending over all the time, it’s really easy to lose yourself.”) (statement of Karina Bernacki, Vice President of People at VSCO); Gail Golden, *Why It’s a Bad Idea to Bring Your Whole Self to Work*, PSYCH. TODAY (Apr. 9, 2021), <https://www.psychologytoday.com/us/blog/curating-your-life/202104/why-it-s-bad-idea-bring-your-whole-self-work> [<https://perma.cc/SG7E-DXJY>] (“But, honestly, your whole self does not belong in the workplace. My point of view is that in the workplace, we are there to work. All the parts of ourselves that enable us to get the job done with efficiency and excellence, both through our own work and by leading others, belong in the workplace. And the rest of who we are should stay home.”).

accommodation context provides a useful tool for employers to appropriately manage worker authenticity.

Undoubtedly, there are aspects of individual identity that do not belong in the workplace. This is true even of Title VII's protected traits, despite their elevated status. Most would agree there are limits to how much an employee should be allowed to express their race, color, religion, national origin, or sex at work. For instance, in *Wilson v. U.S. West Communications*, an employee alleged her employer discriminated against her because of her religious beliefs by prohibiting her from wearing a graphic anti-abortion button at work.³³³ The employee, a Roman Catholic, made a vow to wear the button so long as abortion remained legal.³³⁴ The button, which showed a color photograph of a fetus along with the phrases "Stop Abortion" and "They're Forgetting Someone," caused significant disruptions at work.³³⁵ Not only did employees gather to talk about the button, but some even threatened to walk off their jobs.³³⁶ Coworkers found the button "offensive" and "disturbing" for personal reasons unrelated to the employee's stance on abortion or her religion, such as infertility, miscarriage, and death of a premature infant.³³⁷ The employer noted a 40 percent decline in productivity among the affected coworkers since the employee began wearing the button.³³⁸ The district court entered judgment for the employer, in part based on its determination that the employer could not accommodate the employee's request without undue hardship, given how the button had negatively impacted the work environment.³³⁹ *Wilson* illustrates the dangers that can arise from unbridled self-expression and the need for employers to impose reasonable limits.

Determining how much of themselves that employees should be allowed to bring to work is no easy task. Especially when it comes to expression related to protected traits, employers may

333. 58 F.3d 1337, 1338 (8th Cir. 1995).

334. *Id.* at 1339.

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.* at 1340. The appellate court affirmed upon determining the employer had offered the employee a reasonable accommodation by allowing her to wear the button so long as she kept it covered. *Id.* at 1340-42. Thus, it did not reach the question of undue hardship. *Id.* at 1342.

understandably feel unqualified to draw lines. But this task should not be completely foreign to employers; issues of trait-based expression arise in deciding whether to provide a religious accommodation, in establishing dress and grooming standards, and in determining when to require employees to speak English. For the most part, employers are left to their own devices in determining how much self-expression to allow. However, in June 2023, the U.S. Supreme Court decided a case that provides a useful tool to help employers decide how much self-expression to allow in the workplace.

In *Groff v. DeJoy*, the Court considered the meaning of undue hardship in Title VII's religious accommodation provision.³⁴⁰ The statute requires an employer to "reasonably accommodate to an employee's or prospective employee's religious observance or practice" unless doing so would impose "undue hardship on the conduct of the employer's business."³⁴¹ For decades, courts had interpreted a 1977 decision by the Supreme Court, *Trans World Airlines, Inc. v. Hardison*, to mean that employers did not have to provide any religious accommodation that would impose "more than a *de minimis* cost" on the employer.³⁴² This effectively gutted the religious accommodation requirement, as nearly all religious accommodations impose at least some burden on employers and therefore could be denied.³⁴³ In *Groff*, the Court held that this

340. 143 S. Ct. 2279 (2023).

341. 42 U.S.C. § 2000e(j).

342. 432 U.S. 63, 84 (1977).

343. *See id.* at 87 (Marshall, J., dissenting) ("[I]f an accommodation can be rejected simply because it involves preferential treatment, then the regulation and the statute, while brimming with 'sound and fury,' ultimately 'signif[y] nothing.'" (second alteration in original)); Bilal Zaheer, *Accommodating Minority Religions Under Title VII: How Muslims Make the Case for A New Interpretation of Section 701(j)*, 2007 U. ILL. L. REV. 497, 520 ("Employers can easily demonstrate that a requested accommodation imposes a *de minimis* cost on their operations because by definition every accommodation involves an exemption from an otherwise neutral employment rule or practice." (citing *Trans World Airlines*, 432 U.S. at 87 (Marshall, J., dissenting))); Mary Crossley, *Reasonable Accommodation as Part and Parcel of the Antidiscrimination Project*, 35 RUTGERS L.J. 861, 862 n.7 (2004) ("Title VII's religious accommodation requirement is generally viewed as fairly toothless."); J.H. Verkerke, *Disaggregating Antidiscrimination and Accommodation*, 44 WM. & MARY L. REV. 1385, 1399-1400 (2003) ("Unlike the toothless duty to accommodate employees' religious practices that is contained in Title VII, this provision [of the Americans with Disabilities Act of 1990 (ADA)] has real bite." (footnote omitted)).

longstanding interpretation was a “mistake,”³⁴⁴ and that instead, undue hardship means “substantial increased costs.”³⁴⁵ Thus, an employer must accommodate an employee whose religious belief conflicts with a work requirement unless doing so would result in substantial increased cost to the employer’s business.

While it is too soon to know exactly how lower courts will interpret this standard, the Supreme Court made two key observations that are likely to factor heavily into how questions of undue hardship are decided. First, the Court instructed that lower courts should apply the standard “in the common sense manner that it would use in applying any such test.”³⁴⁶ This means “tak[ing] into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, ‘size and operating cost of [an] employer.’”³⁴⁷ Second, the Court acknowledged that how an accommodation impacts coworkers could result in undue hardship to the employer.³⁴⁸ It cautioned, however, that “a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered ‘undue.’”³⁴⁹ Thus, in determining whether a religious accommodation would impose undue hardship, an employer can take into account how the accommodation would impact its business in light of its nature, size, and operating cost. An employer may also consider how an accommodation would affect coworkers, so long as any adverse effects are not the result of religious-based animus.

Applying this test to trait-based self-expression makes good sense. Although there is no accommodation requirement in Title VII for race, color, national origin, or sex, whenever employers allow employees to express these traits in ways that otherwise conflict

344. 143 S. Ct. at 2286.

345. *Id.* at 2295.

346. *Id.* at 2296.

347. *Id.* at 2295-96 (second alteration in original) (citation omitted).

348. *Id.* at 2296.

349. *Id.* This requirement is consistent with the Eighth Circuit’s finding in *Wilson v. U.S. West Communications* that other employees found Wilson’s button offensive not because they disagreed with her religious beliefs or views on abortion, but rather because of their personal experiences with infertility, miscarriage, and death of a premature infant. *Wilson v. U.S. W. Commc’ns*, 58 F.3d 1337, 1339 (8th Cir. 1995).

with work rules, they are, in effect, providing an accommodation.³⁵⁰ Moreover, in many ways, religious expression is akin to other forms of trait-based expression: a Jewish employee who desires to wear a yarmulke as an expression of his faith is similar to a Black employee who wishes to wear her hair in cornrows as an expression of her race, insofar as they both are seeking to display core dimensions of their identities. Thus, the test for undue hardship in the religious accommodation context is easily transferrable to other forms of trait-based expression.

While it is conceivable that allowing an employee to express a protected trait could impose substantial increased costs to an employer's business, in reality, this is much more likely to be the exception than the rule. Most expressions of personal identity impose little, if any, cost on employers. And, as the aforementioned research demonstrates, whatever costs employers may incur are likely to be far eclipsed by the benefits they reap from worker authenticity.³⁵¹ Thus, in most cases, allowing employees to express their authentic selves is a sound investment with the potential for a sizeable return.

Suppose Catastrophe Management Solutions had applied the *Groff* test in deciding whether to revoke Chastity Jones's job offer. Rather than mechanically applying its professional-image policy to exclude an otherwise qualified applicant, the company would have thoughtfully considered whether allowing Ms. Jones to wear her hair in short dreadlocks would have resulted in substantial increased cost to its business. CMS would not have incurred any financial cost by allowing Ms. Jones to maintain her hairstyle. Nor would it have required the company to expend any resources. Unlike a button depicting an aborted fetus, Ms. Jones's dreadlocks were unlikely to upset, offend, or distract coworkers. Nor would her coworkers suffer lower morale if she were allowed to keep her hairstyle. Likewise, the company's desire to maintain a "business/professional image"³⁵² (its

350. See Zaheer, *supra* note 343, at 520 ("Employers can easily demonstrate that a requested accommodation imposes a de minimis cost on their operations because by definition every accommodation involves an exemption from an otherwise neutral employment rule or practice." (citing *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 87 (1977) (Marshall, J., dissenting))).

351. See *supra* Part III.C.

352. *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1022 (11th Cir. 2016).

stated reason for revoking Ms. Jones’s job offer) would not be seriously undermined by allowing Ms. Jones to wear her hair in short dreadlocks. Not only did CMS concede at the time that her dreadlocks looked fine,³⁵³ but it also was hiring her into a call center representative position, where all of her interactions with customers would take place over the telephone.³⁵⁴ While a company certainly has the right to cultivate its corporate image how it chooses,³⁵⁵ allowing Ms. Jones to wear her hair in short dreadlocks would not have detracted from that image in any meaningful way—and certainly not to the point it would reach the type of “substantial increased cost” that would amount to an undue hardship under *Groff*.³⁵⁶

Having established that CMS had nothing to lose by allowing Ms. Jones to express her racial identity, it is worth considering what the company could have gained by allowing her to keep her hairstyle. She may have proven to be a bad worker regardless of how authentically she was able to express herself. But we know from the social science research that when employees are free to be themselves, they exhibit higher levels of satisfaction, performance, engagement, and commitment³⁵⁷—outcomes that directly boost both productivity and profitability.³⁵⁸ By refusing to give Ms. Jones the chance to prove her value, CMS shortchanged itself; it gave up an investment opportunity and gained nothing in return.

Though likely uncommon, there will be times when employee authenticity imposes too high of a cost. In such situations, the benefits to the employee and the employer are outweighed by the costs. Suppose Spanish-speaking employees on a construction crew wish to express their cultural heritage by speaking Spanish to each other throughout the workday. Non-Spanish-speaking employees on the crew threaten to quit if their coworkers’ request is granted because they are concerned worker safety could be jeopardized if they are not able to understand their crewmates. Assuming their concern is genuine and not merely a pretext for national origin

353. See *id.* at 1021 (quoting the human resources manager as saying to Ms. Jones in reference to dreadlocks, “[T]hey tend to get messy, although I’m not saying yours are, but you know what I’m talking about”).

354. *Id.*

355. See generally Flake, *supra* note 193.

356. See *Groff v. DeJoy*, 600 U.S. 447, 470 (2023).

357. See *supra* Part III.A-B.

358. See *supra* Part III.C.

discrimination, the employer could rightfully conclude that allowing its Latino employees to express their cultural heritage by speaking Spanish on the job poses too high of a safety risk. The benefits that the Spanish-speaking employees would gain by being able to express this dimension of themselves, as well as the resulting benefits the employer would accrue from having a more authentic workforce, would not outweigh the costs, including risks to safety, distraction, or loss of worker morale. Accordingly, the employer could safely deny the request based on its determination that allowing employees to speak Spanish at all times would impose substantial increased costs on the employer's business.

In short, *Groff's* undue hardship test provides a useful tool for determining how much employees should be allowed to display their authentic selves at work. The test sets the bar of exclusion high enough to allow employees to freely express themselves in many instances, thus allowing employees and employers alike to enjoy the known benefits of authenticity. At the same time, the bar of exclusion is low enough to ensure employees do not bring the parts of themselves to work that would be unduly burdensome to coworkers or to the company as a whole. As the lower courts sharpen the contours of the *Groff* test in the coming years, the test will become increasingly helpful to employers in determining the reasonable limits of worker self-expression.

CONCLUSION

This Article makes the case that employers generally should allow greater employee authenticity in the workplace. Under Title VII, there is uncertainty over whether employers can discriminate against employees for expressing themselves in ways that are closely associated with a protected trait. Despite the EEOC's insistence that such discrimination is unlawful, most courts disagree, holding that because expression is voluntary, and therefore mutable, it falls outside Title VII's purview. This leaves employees in a perpetual state of uncertainty over how much of themselves they can display at work. Faced with the threat of termination if they reveal too much of themselves, many employees resort to identity covering in order to keep their jobs.

In the past, workers were content to check their personal identities at the workplace door. But increasingly, this is no longer the case. Today's workers are different: they want—and expect—to bring their whole, authentic selves to work. While some of the world's leading companies, like Amazon, Google, and Meta, have leaned into the “whole-self” employment movement, others continue to promulgate policies and procedures that suppress rather than encourage worker authenticity. As the studies highlighted in this Article demonstrate, there is much to be gained by allowing employees to express their authentic selves. At the individual level, it increases well-being, job satisfaction, engagement, and job performance, while decreasing burnout and turnover. These outcomes are strongly correlated with productivity and profitability at the organizational level, making worker authenticity a win-win in most instances. In light of these known benefits, employers would be wise to embrace “whole-self” employment.

One of the main criticisms of “whole-self” employment is that workers will bring too much of themselves, or the wrong parts of themselves, to work. Employers can safeguard against this concern by applying the *Groff* test for undue hardship. Under this test, employers should permit employees to express their authentic selves unless doing so would result in substantial increased costs to their business. This test strikes an appropriate balance between encouraging worker authenticity and preventing the kinds of problems that can arise when employees bring too much of themselves to work.

What happened to Chastity Jones was a travesty. Regardless of what Title VII has to say about expression-based discrimination, CMS should have allowed Ms. Jones to keep her job—and her hairstyle. Its unwillingness to do so hurt not only Ms. Jones but the company as well. As employers come to recognize the mutual benefits of “whole-self” employment, hopefully cases like Ms. Jones's will become a relic of the past. Effectively managed, worker authenticity has the potential to transform the workplace and, by extension, society for the better.