REED V. UAW: AN ADVERSE RULING ON ADVERSE ACTION

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INTRODUCTION

The United States of America is a country that is famously known for, among other laudable virtues, its commitment to the religious freedom of its citizens.[1] It is the dedication to this commitment that was partly the inspiration for Sections 701(j) and 703 of Title VII of the Civil Rights Act of 1964.[2] These provisions, which are at the center of this Article, contain language that protects an individual's ability to practice his religion without fear of discrimination by an employer[3] or labor union.[4] The law also ensures that an individual will not face reduction in pay, firing, or other discriminatory actions simply because he is dedicated to following the dictates of his religion.[5] The United States Court of Appeals for the Sixth Circuit's decision in *Reed v. International Union, UAW*[6] sets dangerous precedent, which—if not abandoned by the Sixth Circuit and other circuits that similarly interpret Section 703—will allow labor unions to target employees of faith, without fidelity to Title VII.

Part I of this Article describes the background and facts of *Reed*. Part II explains that the Sixth Circuit applied the incorrect standard for determining whether Reed had established a prima facie case of discrimination due to lack of religious accommodation. Section II.A describes the split among the U.S. Courts of Appeals and explains why the standard for a prima facie case used by half of the circuit courts is incorrect. Section II.B defines two canons of statutory interpretation that the Sixth Circuit should have applied when it decided the standard for the third element of the prima facie case. Finally, Part III concludes the Article with a recommendation that the Supreme Court resolve the

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[1] The Founders of the United States ensured that religious freedom would be a key characteristic of the American government by adopting the First Amendment to the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I.

[2] 42 U.S.C. §§ 2000e(j), 2000e-2 (2006).

[3] *See id.* § 2000e-2(a).

[4] *See id.* § 2000e-2(c).

[5] *See id.* §§ 2000e-2(a), (c).

[6] 569 F.3d 576 (6th Cir. 2009).

circuit split over the proper interpretation of Title VII Section 703(c) to include all discriminatory actions by a union against an employee that are not narrowly limited to situations in which an employee has been "discharged" and "disciplined."

I. BACKGROUND OF *REED V. UAW*

Jeffrey Reed, the appellant in *Reed v. UAW*, was hired by AM General and became a member of the United Auto Workers Union ("UAW") shortly thereafter.[7] The collective bargaining agreement between the UAW and AM General required non-management employees to become members of the labor union or, in the alternative, they were required to pay an agency fee to the union, equal to union membership dues.[8] The UAW Constitution granted both UAW members and non-members the right to object to paying the UAW the portion of dues used by the UAW for political purposes.[9]

After reading UAW materials, Reed determined that financially supporting the UAW would conflict with his religious beliefs, and as a result, he terminated his membership.[10] Upon receiving notification of Reed's membership termination, the UAW informed Reed that he was an "objecting member" and was only required to pay an agency fee equal to the amount used for representation purposes, and not UAW's political activities.[11] In effect, Reed's objection was treated as a political objection.[12]

UAW and AM General had entered into an agreement to allow bona fide religious objectors to pay an amount equal to the payment of *full union dues* to one of three charities chosen by UAW and AM General."[13] When Reed learned of his opportunity to request a religious accommodation, he filed the necessary form with the UAW.[14] The UAW granted Reed's request to be treated as a religious objector once it received from Reed's pastor confirmation of his sincere religious beliefs.[15]

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7 *Id.* at 578.

8 *Id.* at 577–78.

9 *Id.* at 578.

10 *Id.*

11 *Id.*

12 In *Communications Workers of America v. Beck*, the Supreme Court held that objecting employees (like Reed) would be obligated to pay union fees only for collective bargaining costs and not for union politics. *See* 487 U.S. 735, 762–63 (1988). This reduced fee paid by *Beck* objectors is sometimes referred to as the *Beck* amount. *See* 48 AM. JUR. 2D *Labor and Labor Relations* § 831 (2005); *see also Reed*, 569 F.3d at 587 (McKeague, J., dissenting). This Article uses the terms "*Beck* objector" and "political objector" interchangeably.

13 *Reed*, 569 F.3d at 578.

14 *See id.*

15 *Id.*

After the UAW received confirmation of said beliefs, the union directed Reed to pay $439.44 to one of the three charities chosen by UAW and AM General.[16] This resulted in Reed being required to pay approximately $100 more in fees as a religious objector than he had previously paid as a political objector.[17] Thus each month thereafter, Reed was required to pay a premium greater than the amount that he had been paying as a political objector.[18] Meanwhile, the *Beck* amount[19] Reed was previously paying as a political objector was available to any other employee in the bargaining unit.[20] Because the UAW allowed its voluntary members to object to paying the portion of its dues devoted to politics, all employees in the bargaining unit, union members and non-members alike, were allowed to pay compulsory union fees in an amount substantially less than that required of Reed (or other religious objectors).[21]

Reed initially filed his complaint against the UAW with the Equal Employment Opportunity Commission ("EEOC"), alleging that the union had "refused to make a non-discriminatory reasonable accommodation to his sincerely held religious beliefs."[22] After an investigation, the EEOC concluded in its Determination Letter that "there [was] reasonable cause to believe that a violation of Title VII [had] occurred."[23]

Reed then filed suit against the UAW, alleging that the labor union had "failed reasonably to accommodate his religious objections to supporting the union."[24] Reed's claim alleged that the UAW had unreasonably failed to accommodate him because non-religious objectors paid an amount equivalent to seventy-eight percent of union dues,[25] while Reed as a religious objector was forced to pay an amount to charity that was equal to full union dues, including the percentage equivalent to the labor union's political expenses—an amount Reed would not have paid if he had been a non-religious objector or an objecting union member.[26]

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16 *Id.*

17 *Id.*

18 *Id.*

19 *See supra* note 12.

20 *Reed*, 569 F.3d at 578.

21 *Id.* ("Reed's ongoing union security obligation requires him to make a monthly charity payment approximately *22% greater than what he would pay UAW as an objecting member or non-member*.") (emphasis added).

22 Reed v. Int'l Union, UAW, 523 F. Supp. 2d 592, 595 (E.D. Mich. 2007).

23 *Id.* (quoting Brief for Plaintiff at 5, *Reed*, 523 F. Supp. 2d 592 (No. 06–14233)).

24 *Reed*, 569 F.3d at 578.

25 *Id.* at 578, 580; *see also* Brief of Appellant at 5–6, *Reed*, 569 F.3d 576 (No. 07-2505).

26 Brief of Appellant, *supra* note 25, at 6.

The district court held that "(1) Reed had failed to establish his prima facie case because he had not shown that he had been discharged or disciplined; and (2) even if Reed had established a prima facie case, UAW's accommodation of Reed's religious objection was reasonable."[27]

Reed appealed the district court's decision to grant summary judgment in favor of the UAW to the United States Court of Appeals for the Sixth Circuit.[28] In a split decision, the Sixth Circuit affirmed the ruling of the lower court on the ground that Reed failed to establish a prima facie case of religious discrimination.[29]

II. THE SIXTH CIRCUIT INCORRECTLY DECIDED THAT NO PRIMA FACIE CASE WAS ESTABLISHED AGAINST THE UAW

The Sixth Circuit applied the incorrect standard when determining whether Reed had established a prima facie case of discrimination due to lack of religious accommodation against the UAW. First, the court incorrectly applied the elements for a prima facie case in a discrimination action between an *employer* and an employee based on Section 703(a), instead of the correct elements as articulated by Section 703(c) in a dispute between a *union* and an employee; the majority erred by treating dissimilar language in the two provisions as having similar legal effect. Second, the majority failed to apply sound theories of statutory interpretation and failed to give weight to Congress' specific language in treating employer and union cases differently.

A. Misapplied Prima Facie Elements Led to a Split in the Circuits and an Incorrect Application of Law

1. The Opposing Standards That Split the Circuits in Their Determination of Whether an Employee Has Established a Prima Facie Case

The United States Courts of Appeals have acquired a nearly equal split among themselves as to the required standard for an employee to establish a prima facie case for unreasonable accommodation of the employee's religious beliefs under Title VII.[30] As a result, there is an inconsistency among the circuits that the Supreme Court has yet to resolve. The specific question, treated differently by the circuits, is how an employee may establish a prima facie case and thus acquire standing to pursue a religious accommodation claim.[31]

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[27] *Reed*, 569 F.3d at 578.

[28] *Id.*

[29] *Id.* at 577, 582.

[30] *See infra* notes 32–34 and accompanying text.

[31] *Reed*, 569 F.3d at 585 (McKeague, J., dissenting) ("This case is the first in our circuit to squarely present the question of whether a plaintiff can satisfy the prima facie

Half of the circuit courts, in one form or another, have held that a prima facie case is proven only when an employee shows that (1) he has a bona fide religious belief that conflicts with an employment requirement, (2) he has given notice to the labor union or employer of the belief so that it can attempt to accommodate it, and (3) the employee, due to his religious belief, was either "disciplined" or "discharged."[32] For the purpose of this Article, this standard is referred to as "Standard One." The significance of this standard will become clear later in this Article, but it is important to note at the outset that the third element of the above-articulated prima facie case is derived from the language of Section 703(a), which is the section specifically addressed to employer obligations—not union obligations.[33]

The second standard, or "Standard Two," from rulings of the circuits, articulates a lower and arguably more accurate standard for an employee establishing a prima facie case of religious discrimination: (1) a bona fide religious belief, (2) notice to the union or employer of that belief so that it can attempt to accommodate the employee, and (3) an adverse employment action suffered by the employee based upon the employee's religious belief.[34] This standard differs from the previously

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case for a religious accommodation claim by showing an adverse employment action without showing discharge or discipline.").

[32] *Id.* at 580 (majority opinion) (requiring an employee be either "discharged" or "disciplined" in the Sixth Circuit). In both the Third and Fourth Circuits, the term "disciplined" was referred to as the adverse action element when the employees were fired. *See* EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307, 311–12 (4th Cir. 2008); Shelton v. Univ. of Med. & Dentistry of N.J., 223 F.3d 220, 224 (3d Cir. 2000).

The Fifth Circuit has used both "discharged" and "disciplined" to describe the adverse action element in the prima facie standard. *See* Weber v. Roadway Express, Inc., 199 F.3d 270, 273 (5th Cir. 2000) (requiring an employee be "discharged"); *see also* Turpen v. Mo.-Kan.-Tex. R.R., 736 F.2d 1022, 1026 (5th Cir. 1984) (requiring an employee be "disciplined" as part of establishing a prima facie case).

The Tenth Circuit has used the terminology of "fired" and "not hired" to describe the adverse action standard. *See* Thomas v. Nat'l Ass'n of Letter Carriers, 225 F.3d 1149, 1155 (10th Cir. 2000); Toledo v. Nobel-Sysco, Inc., 892 F.2d 1481, 1486 (10th Cir. 1989).

Finally, the Eleventh Circuit has used the term "discharged" as the standard by which adverse action was shown. *See* Morrissette-Brown v. Mobile Infirmary Med. Ctr., 506 F.3d 1317, 1321 (11th Cir. 2007); Beadle v. Hillsborough Cnty Sherriff's Dep't., 29 F.3d 589, 592 n.5 (11th Cir. 1994). Despite these rulings, it is yet to be seen in the Eleventh Circuit if anything less than being "discharged" would qualify as meeting the standard for adverse action.

[33] See 42 U.S.C. § 2000e-2(a), which is entitled "*Employer* practices" (emphasis added).

[34] *See* Berry v. Dep't of Soc. Servs., 447 F.3d 642, 655 (9th Cir. 2006); Peterson v. Hewlett-Packard, Co., 358 F.3d 599, 606 (9th Cir. 2004); Cruzan v. Special Sch. Dist., No. 1, 294 F.3d 981, 983 (8th Cir. 2002) (the third element of the prima facie standard only requires an "adverse employment action"); EEOC v. Unión Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49, 55 (1st Cir. 2002); Knight v. Conn. Dep't. of Pub. Health, 275 F.3d 156, 167–68 (2d Cir. 2001) (holding that even though

described Standard One because the third element of Standard Two is more inclusive, not specifically requiring discharge or discipline.

2. It Is Improper to Require Discharge or Discipline as the Third Element of a Prima Facie Case Against a Labor Union

When the courts force an employee to show that a labor union discharged or disciplined the employee to establish a prima facie case of religious discrimination, the result is a narrowing effect that limits the scope of protection afforded by Title VII. A closer review of the statutory language, particularly that of Section 703(c), reveals that "discharge" and "discipline," the actions that an employee must show to satisfy the third element of Standard One (at least according to the courts that subscribe to this standard),[35] are not exclusive grounds for an employee to sue a labor union for an adverse employment action.[36] Unlike in Section 703(a), where the term "discharge" appears in the list of unlawful employment practices for *employers*,[37] in Section 703(c), the term "discipline" does not appear in the list of unlawful employment practices for *unions*.[38]

Contrary to the Sixth Circuit's misguided standard, Section 703(c) simply provides that labor unions may not "otherwise . . . discriminate against" an employee based upon the employee's religious beliefs.[39] By applying a Standard One analysis, courts like the Sixth Circuit in *Reed* have injected requirements that simply do not exist into the language of Title VII's union provision, forcing employees to undertake an added litigation burden beyond that legislated by Congress. The Sixth Circuit's application of Standard One to a union discrimination case only allows the showing of a prima facie case when the employee shows evidence of "discharge" or "discipline,"[40] thus narrowing the protection afforded to the employee by the broad language Congress penned when it authored Section 703(c).

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the employee had only been issued a letter of reprimand and told to stop promoting her religious beliefs, the defect was the employee's failure to notify the employer of said beliefs, not the lack of the third prima facie element); EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569, 1575 (7th Cir. 1997) (stating the standard as "discharge or other discriminatory treatment"); EEOC v. United Parcel Serv., 94 F.3d 314, 318 n.3 (7th Cir. 1996); Philbrook v. Ansonia Bd. of Educ., 757 F.2d 476, 481–82 (2d Cir. 1985), *aff'd & remanded on other grounds*, 479 U.S. 60, 66 (1986) (the employee's being forced to choose between giving up portions of pay and his religious beliefs was adequate to meet the third prima facie element); Brown v. F.L. Roberts & Co., 419 F. Supp. 2d 7, 12 (D. Mass. 2006).

35 *See* discussion *supra* Section II.A.1.

36 *See* 42 U.S.C. § 2000e-2(c) (2006) (lacking the terms "discharge" and "discipline").

37 *Id.* § 2000e-2(a).

38 *Id.* § 2000e-2(c).

39 *Id.* § 2000e-2(c)(1).

40 Reed v. Int'l Union, UAW, 569 F.3d 576, 582 (6th Cir. 2009).

Judge McKeague, who dissented from the majority and concurring opinions in *Reed*, made the keen observation that the phrase "otherwise discriminate against" included in Title VII's union provision "is similar to that in Title VII's retaliation provision, which the Supreme Court held [in *Burlington Northern & Santa Fe Railway Company v. White*] is more expansive than the language in the provision [under Section 703(a)] giving rise to disparate treatment claims."[41] By ignoring the *Burlington* approach, the Sixth Circuit majority failed to apply Title VII's language to labor unions properly.

In *Burlington*, the Supreme Court examined and compared the statutory language of the Title VII anti-retaliation and anti-discrimination provisions for employers.[42] First, the Supreme Court defined the term "discriminate against" as "refer[ring] to distinctions or differences in treatment that injure protected individuals."[43] That definition alone supports the argument that the Sixth Circuit was incorrect in specifically requiring proof of "discharge" or "discipline" when Section 703(c) provides that an unlawful employment practice happens whenever an employee is "discriminate[d] against."[44] If the Sixth Circuit had adhered to the plain meaning of the statute and applied the Supreme Court's established definition of "discriminate[d] against," the court would have found that Reed was in fact discriminated against because as a religious objector, he was required to pay twenty-two percent more in monthly dues than a non-religious objector.[45]

Secondly, the Supreme Court decided in *Burlington* that the employer provision in that case unlawfully confined discrimination to an enumerated list of actions by way of the limiting language found in the provision.[46] The Court determined that the language "discriminate against" in Title VII's anti-retaliation provision was broad language without words of limitation.[47] Section 703(c), Title VII's union provision, states it is an unlawful employment practice for a union to "exclude or . . . expel from its membership, or *otherwise to discriminate against*, any individual because of his . . . religion,"[48] and is similar in both language and scope to the anti-retaliation language that the Supreme Court has deemed to be without limiting language.[49]

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[41] *Id.* at 586 (McKeague, J., dissenting) (citing *Burlington*, 548 U.S. 53, 63–64 (2006)).

[42] *Burlington*, 548 U.S. at 56–57.

[43] *Id.* at 59.

[44] 42 U.S.C. § 2000e-2(c) (2006).

[45] *See Reed*, 569 F.3d at 578.

[46] *Burlington*, 548 U.S. at 61–62, 67.

[47] *Id.* at 67.

[48] § 2000e-2(c)(1) (emphasis added).

[49] *Burlington*, 548 U.S. at 57.

Proper construction of Section 703(c) would take into account the Supreme Court's analysis of Title VII's anti-retaliation language in *Burlington* and apply its interpretation to the language of Section 703(c) in an effort to find consistency in similarly constructed statutory language. As such, the language of the union provision, which defines an unlawful employment practice, should be interpreted by the courts not as requiring discharge or discipline, but as protecting against a wide array of discriminatory actions by unions.

The Sixth Circuit should have applied Standard Two, the broader standard, for determining whether the facts of Reed's case rose to the level of meeting all three elements of the standard to establish a prima facie case for religious discrimination. The Sixth Circuit should not have limited its determination of Reed's prima facie case to whether Reed had been discharged or disciplined; other discriminatory actions by the UAW should have been considered.

As a final consideration, to maintain consistency in the law and to align with the Supreme Court's interpretation of similar statutory language, the Sixth Circuit and all other circuits that similarly interpret Section 703(c) should refrain from applying the prima facie elements meant for cases arising from alleged employer discrimination under Section 703(a)(1), and apply Section 703(c)(1) as it was intended—a purposefully broad mechanism to protect employees against discriminating labor unions.

B. Canons of Statutory Interpretation Indicate That the Language of the Employer and Union Provisions Should Not Have the Same Legal Effect

The Sixth Circuit used Standard One when it determined that Reed had not proven a prima facie case of unlawful employment practice against the UAW.[50] This standard is tolerable when applied in suits against employers, but as previously discussed, it is the incorrect standard to apply when establishing a prima facie case against a labor union.[51]

The *Reed* majority admitted that "the prima facie elements of a religious accommodation case do not always fit nicely into a case against a labor union."[52] In light of the court's admission, it is curious that the court would require Reed to show discrimination in the form of discharge or discipline when labor unions do not have the power to take those actions against an employee. Discharge and discipline are in fact employment actions reserved for an employer—not a labor union.[53]

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[50] *See* discussion *supra* Part II.

[51] *See* discussion *supra* Part II.

[52] Reed v. Int'l Union, UAW, 569 F.3d 576, 580 (6th Cir. 2009).

[53] *Id.*

The disturbing consequence of this simple fact is likely obvious, but the extreme importance of its understanding requires its mention, even if it is obvious. Logically, if a union can neither "discharge" nor "discipline" an employee in relation to his employment, then unions can flat out discriminate either by not offering accommodation, or by offering an unreasonable religious accommodation. Labor unions need not fear the consequences of their actions or inaction because an employee would not be able to establish a prima facie case against the union due to the labor union's inherent inability to discharge or discipline employees—which are indeed the only actions that can satisfy the third element of Standard One and bring about adequate proof of a prima facie case for an employee such as Reed, according to the Sixth Circuit.[54]

With that understanding, the position that there must be either an employment-related "discipline" or "discharge" can mean only one of two things: (1) the Sixth Circuit is correct, and an employee only establishes a prima facie case when a union "disciplines" or "discharges" the employee, and therefore, Congress *accidentally* drafted the union provision of Title VII to read more broadly than Section 703(a), the employer provision; or (2) the Sixth Circuit incorrectly interpreted the union provision by interpreting it too narrowly and the intent of the language was to offer greater breadth than that of Section 703(a).

The first scenario appears unlikely. The assumption of Congressional accident flies in the face of a fundamental canon of statutory interpretation: "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[55]

Applying this canon of statutory interpretation would have been of great help to the Sixth Circuit in *Reed*. The court's willingness to apply prima facie elements based upon the employer-employee statutory language of Section 703(a) is a mistake. The language used by Congress in the union provision of Section 703(c) clearly diverges from the language in the Section 703(a) employer provision.[56] Such divergence in statutory language is significant and should have signaled to the court that Congress intended a different legal meaning by the use of unique language.

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[54] *Id.* ("To establish a prima facie case, [a plaintiff] must show that . . . 'he was discharged or disciplined for failing to comply with the conflicting employment requirement.'" (alteration in original) (quoting Tepper v, Potter, 505 F.3d 508, 514 (6th Cir. 2007))).

[55] Russello v. United States, 464 U.S. 16, 23 (1983) (alteration in original) (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972)).

[56] *Compare* 42 U.S.C. § 2000e-2(a) (2006), *with id.* § 2000e-2(c).

It is therefore odd that the *Reed* majority was so quick to apply the prima facie elements used in employer-employee situations to a union-employee situation. Given the aforementioned canon of statutory construction, it is reasonable to assume that Congress chose not to use duplicate language in the separate, yet related, union provisions because Congress did not intend the employee to overcome the same threshold of proof for a prima facie case in an employer-employee controversy as in a union-employee controversy. Thus, the employer provision, which has narrowing language, is in fact just that: a narrower provision than the union provision, which affords greater protection to an employee confronted by a discriminating labor union.[57] Put another way, the phrase in the union provision that a union is not to "otherwise . . . discriminate against" an employee based upon religion, among other things, is devoid of any limiting language,[58] unlike the employer provision.[59]

Another canon of statutory interpretation holds that one is to assume that Congress' intention was to say exactly what was written in the legislation it passed.[60] In other words, it is presumed that Congress drafts statutory language competently; Congress knows what terms of art to use and how to articulate its intended meaning.[61] While this is not always foolproof reliance, generally speaking, one should expect that Congress intends a statute to mean what it states.[62]

Furthermore, the Supreme Court has reasoned that it is the Court's "duty to refrain from reading a phrase into the statute when Congress has left it out."[63] Based upon that understanding, the plain language of Section 703(c), the union provision is broad and encompasses any discriminatory action taken by the union against an employee on the basis of the employee's religion.[64] Section 703(c), unlike Section 703(a), does not articulate that "discipline" or "discharge" need be present,[65] and per the Supreme Court's acknowledgement of controlled interpretation,[66]

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[57] *Id.* § 2000e-2(a), (c).

[58] *Id.* § 2000e-2(c).

[59] *Id.* § 2000e-2(a).

[60] *See* YULE KIM, CONG. RESEARCH SERV., NO. 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES & RECENT TRENDS 15 (2008), *available at* http://www.fas.org/sgp/crs/misc/97-589.pdf.

[61] *Id.*

[62] *Id.*

[63] Keene Corp. v. United States, 508 U.S. 200, 208 (1993).

[64] *See* § 2000e-2(c).

[65] *Compare* § 2000e-2(c), *with id.* § 2000e-2(a).

[66] *See Keene Corp.*, 508 U.S. at 208; KIM, *supra* note 60, at 13 ("[C]ourts should not add language that Congress has not included.").

the Sixth Circuit should not have read into the statutory language requirements that did not, and do not, exist.

In conclusion, under the first canon of statutory interpretation described above, it is logical to assume that when Sections 703(a) and 703(c) are examined side by side, the lack of parallel language is indicative of Congress' intent to provide practical and relevant protection to employees from unions, which matches the limited scope of a union's authority over an employee—which in turn is different from the protection needed from an employer, who would hold a comparatively broader authority over an employee. The difference in language could be explained by the fact that Congress recognized the different needs that are unique to each situation.

Additionally, when Section 703(c) is examined independently per the second canon, the conclusion that one must reach is that Congress intended to provide broader protection for an employee against the actions of labor unions, and that the Sixth Circuit went against the Supreme Court's instruction not to "read[] a phrase into the statute when Congress has left it out."[67]

Thus, the Sixth Circuit in *Reed* wrongly required the employee to show that the union discharged or disciplined him to satisfy the third element of a prima facie case of discrimination due to lack of religious accommodation because the Sixth Circuit's demand for such "discharge" or "discipline" is in direct conflict with sound principles of statutory interpretation.

CONCLUSION

In sum, the argument in opposition to the Sixth Circuit's use of a judicially narrowed standard for a prima facie case of discrimination due to lack of religious accommodation that requires an employee to show adverse action through being "discharged" or "disciplined" is quite simple. In *Reed*, the Sixth Circuit applied an incorrect standard for establishing a prima facie case by applying Section 703(a), the standard for employers, instead of Section 703(c), the standard for unions.[68] Further, by failing to guide its interpretation of the statute with the correct canons of statutory interpretation, the court failed to recognize the interplay and fundamental distinctions between Sections 703(a) and 703(c).[69] As a result, the Sixth Circuit incorrectly granted summary judgment in favor of the UAW.

The Supreme Court should rule in this area of law to bring stability and uniformity to the circuits. If the issue comes up before the Court, it

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[67] *Keene Corp.*, 508 U.S. at 208.

[68] *See* discussion *supra* Section II.A.

[69] *See* discussion *supra* Section II.B.

should read the statutory language of Title VII Section 703(c)'s union provision concerning unlawful employment practices to include all actions by a union against an employee that are discriminatory and not narrowly limited to situations in which an employee has been "discharged" and "disciplined."