

# CASTEISM AND THE HINDU FAR-RIGHT: A STATUTORY PROPOSAL FOR ADDING CASTE AS A PROTECTED CLASS TO TITLE VII OF THE CIVIL RIGHTS ACT

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## ABSTRACT

This Note proposes statutory language for a legislative amendment to Title VII of the Civil Rights Act of 1964 that would add “caste” as a protected class. In light of the injustices caused by caste discrimination and the rapid growth of the South Asian American population, a federal response to caste-based employment discrimination is necessary. At the same time, conservative Hindu organizations, such as the Hindu American Foundation, have devoted significant resources to challenging state and local measures addressing caste discrimination, including through legal claims grounded in the First Amendment. While these claims have yet to prove successful, the alignment of far-right Hindu organizations with the Trump administration and freedom of religion claims supported by the current U.S. Supreme Court majority make careful consideration of these arguments particularly important.

Accordingly, this Note conducts a case study of city, state, and university initiatives that prohibit caste-based discrimination. It evaluates these measures according to two criteria: historical and factual accuracy, and resilience to First Amendment challenges. After identifying the linguistic features necessary to satisfy these criteria, this Note proposes statutory language to amend Title VII.

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## TABLE OF CONTENTS

INTRODUCTION .....	469
I. BACKGROUND: THE ORIGINS AND CONSEQUENCES OF CASTE AND ITS EVOLUTION IN THE UNITED STATES.....	472
II. THE INADEQUACY OF TITLE VII IN ADDRESSING CASTE DISCRIMINATION AND THE NEED FOR A NOVEL FEDERAL SOLUTION .....	479
III. METHODOLOGY: DESCRIPTION OF CASE STUDY APPROACH.....	483
A. Historical and Factual Accuracy.....	483
1. Connection to Hinduism, South Asia, and the South Asian Diaspora .....	484
2. Impact on non-Hindu South Asians and non-South Asian Communities .....	486
B. Protection from First Amendment Challenges .....	487
IV. CASE STUDY: AN ANALYSIS OF SEVEN LOCAL APPROACHES TO ADDRESSING CASTE DISCRIMINATION.....	492
A. Seattle vs. Fresno: Statutory Language for Defining Caste .....	493
B. California State University, University of California, Davis, Colby College, and Brown University: History and Data for Defining Caste.....	495
C. A Final Consideration: the California Veto.....	499
V. STATUTORY RECOMMENDATIONS.....	500
CONCLUSION .....	510

## INTRODUCTION

“We are good at our jobs[,] and we are good engineers. We are role models for our community[,] and we want to continue to work in our jobs. But it is unfair for us to continue in hostile workplaces, without protections from caste discrimination.”<sup>1</sup> These are the words of thirty female Dalit engineers working for various U.S. technology companies who shared an anonymous statement with *The Washington Post*.<sup>2</sup> Their statement followed the announcement of the California Civil Rights Department’s (CRD) lawsuit against Cisco Systems, a tech company, alleging caste discrimination (*California Department of Fair Employment and Housing v. Cisco Systems*).<sup>3</sup> These women immigrated to the United States not just in search of job opportunities but for an escape from the torment they faced at the hands of upper-caste elites at India’s top engineering schools.<sup>4</sup>

Contrary to their expectations, many of the same issues surfaced in America. The women described sexual harassment, exclusion from promotions, comments about affirmative action for Dalits, and inappropriate jokes aimed at Dalit and Muslim women in their workplaces.<sup>5</sup> The women hoped that their Dalit identities would not be as “obvious” outside of India, only to find that vegetarianism, choice of partner, sacred threads, and linguistic style all operated as “caste locaters” to dominant-caste supervisors and employers.<sup>6</sup> Advocacy groups, individual testimony, lawsuits, academic studies, internal emails from tech companies, as well as the profound piece by Nitasha Tiku in *The Washington Post* consolidating this information, all confirm that the oppression faced by the female Dalit engineers is no anomaly; it is descriptive of the rampant caste discrimination in U.S. workplaces.<sup>7</sup>

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1. Nitasha Tiku, *India’s Engineers Have Thrived in Silicon Valley. So Has Its Caste System*, WASH. POST (Oct. 27, 2020), <https://www.washingtonpost.com/technology/2020/10/27/indian-caste-bias-silicon-valley/> (on file with the *Columbia Human Rights Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Many have reported personal accounts of caste-based hiring bias; one man reports that in twenty years of contract work, he has only received one job offer when interviewed by another Indian in person, and noted facing personal questions that “seem to be used to suss out whether he’s a member of an upper caste, like most Indians working in the tech industry.” *Id.* Hundreds of allegations

The increase in caste advocacy, however, has not come without opposition. Conservative Hindu groups, such as the Hindu American Foundation (HAF), have put significant resources into challenging state and local measures addressing caste discrimination. In response to *Cisco*, HAF filed a lawsuit against CRD alleging violations of Hindus' First Amendment rights.<sup>8</sup> HAF also launched large-scale efforts countering legislation remedying caste discrimination.<sup>9</sup> For instance, the group spent \$300,000 to lobby against S.B. 403, a California state bill which aimed to add caste to the state's antidiscrimination legislation.<sup>10</sup> Governor Newsom ultimately vetoed this bill.<sup>11</sup> The underlying claim in all these challenges is that caste-based protections portray Hindus in essentialist terms.<sup>12</sup> Conservative Hindu groups claim that by calling out caste discrimination, such laws target Hindus and South Asians as bigots in a manner amounting to "Hinduphobia."<sup>13</sup> While these legal claims are not always successful, the alignment of far-right Hindu organizations with the Trump administration, as well as the current Supreme Court majority's support of the types of freedom of religion claims made by these organizations, make a consideration of their arguments worthwhile.<sup>14</sup>

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of caste-based slurs and jokes, bullying, bias in peer reviews, sexual harassment, and more have also been reported to Dalit advocacy groups. *Id.* Evidence of caste-based discrimination in internal email chains at companies like Microsoft indicate that this has been a long-standing issue in the tech industry. *Id.*

8. Complaint at 1, 3, Hindu Am. Found., Inc. v. Kish, No. 2:22-cv-01656-DAD-JDP (E.D. Cal. filed Sep. 20, 2022), Dkt. No. 1 [hereinafter Kish Complaint].

9. POL. RSCH. ASSOCS. & SAVERA, HAF WAY TO SUPREMACY: HOW THE HINDU AMERICAN FOUNDATION REBRANDS BIGOTRY AS MINORITY RIGHTS 14 (Sep. 2024), <https://www.wearesavera.org/wp-content/uploads/2024/10/HAFWaytoSupremacy.pdf> [https://perma.cc/M9WS-XZZP] [hereinafter HAF WAY TO SUPREMACY].

10. *Id.*

11. See Letter from Gavin Newsom, Governor of Cal., to the Cal. State S. (Oct. 7, 2023) (on file with the *Columbia Human Rights Law Review*) (vetoing S.B. 403, which would define "ancestry" to include "caste" for purposes of the Fair Employment and Housing Act, the Unruh Act, and the Education Code).

12. See, e.g., Kish Complaint, *supra* note 8, at 2–3 (citations omitted) ("California law and regulations provide no definition or workable method to determine anyone's caste other than its assumption that Hindus of South Asian descent must all necessarily identify as part of a specific caste and must engage in discrimination based on caste as an 'inherent' part of their religious beliefs and practices.").

13. HAF WAY TO SUPREMACY, *supra* note 9, at 15–17.

14. See *infra* notes 134–39 and accompanying text.

A federal solution to caste-based employment discrimination is necessary given the prevalent and horrific injustices of caste discrimination among the South Asian American population.<sup>15</sup> Accordingly, this Note proposes statutory language for a legislative amendment to Title VII of the Civil Rights Act of 1964 to add “caste” as a protected class. Part I provides background information on the origins of caste and its prevalence in the United States. Part II surveys scholarly opinions on whether caste is already protected under Title VII through an existing protected class. Highlighting the diverging opinions on Title VII’s adequacy, Part II concludes that only an explicit recognition of caste as a protected class can secure protection in the face of unpredictable judicial interpretations of Title VII. While many scholars have assessed the *need* for federal caste protections, this Note takes a unique case study approach accompanied by analysis of conservative Hindu opposition. Part III describes the methodology for this Note’s case study. In determining the “optimal” statutory language for a Title VII amendment, Part III outlines two parameters: historical and factual accuracy and protection from First Amendment challenges. Historical and factual accuracy refers to caste’s connections to Hinduism, South Asia, and the South Asian diaspora, as well as caste’s impact on non-Hindu South Asians and non-South Asian communities. Protection from First Amendment challenges focuses on the legal opposition to efforts to ban caste discrimination from far-right Hindu groups, like HAF. Part IV executes a case study that explores seven approaches to addressing caste discrimination at the city, state, and university level. The benefits and drawbacks of these approaches are assessed based on the aforementioned parameters. Finally, Part V integrates the conclusions from Part IV to propose statutory recommendations and addresses counterarguments.

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15. See Brian Elzweig & Lauren Rich, *Casteism in Corporate America: Legal and Human Resources Implications of Caste Discrimination in Today’s Workplace*, 15 S. J. BUS. & ETHICS 32, 34 (2023) (discussing the increase of caste discrimination among the South Asian population in the United States in the 2010s).

## I. BACKGROUND: THE ORIGINS AND CONSEQUENCES OF CASTE AND ITS EVOLUTION IN THE UNITED STATES

Caste is a 3,000-year-old system of social stratification which classifies individuals into hierarchical groups upon birth.<sup>16</sup> This stratification imputes a set of practices—including occupation, religious rituals, and social interaction—to each caste.<sup>17</sup> A person born into a caste is usually associated with that caste for their entire life.<sup>18</sup> The caste system has evolved in many ways, but it originates from the four-fold Hindu caste system in India.<sup>19</sup> These four groups—Brahmins, Kshatriyas, Vaishyas, and Shudras—are ranked “varnas,” or major occupational groupings.<sup>20</sup> Brahmins are the priestly caste, Kshatriyas are the princely and warrior caste, Vaishyas are the business, farmer, and merchant class, and Shudras are the servant class.<sup>21</sup> In the varna hierarchy, Brahmins, Kshatriyas, and Vaishyas are considered upper castes.<sup>22</sup> The varnas are further broken down into thousands of individual subcastes called “jatis.”<sup>23</sup> While the relationship between varnas and jatis is complex, jati is thought to be a more significant tenet of the caste system due to its specificity in community practices.<sup>24</sup> Traditional Hindu society allocated

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16. Kevin D. Brown et al., *Does U.S. Federal Employment Law Now Cover Caste Discrimination Based on Untouchability?: If All Else Fails There Is the Possible Application of Bostock v. Clayton County*, 46 N.Y.U. REV. L. & SOC. CHANGE 117, 120 (2022).

17. Guha Krishnamurthi & Charanya Krishnaswami, *Title VII and Caste Discrimination*, 134 HARV. L. REV. F. 456, 458–59 (2020).

18. Brian Elzweig, *Caste Discrimination and Federal Employment Law in the United States*, 44 U. ARK. LITTLE ROCK L. REV. 57, 60 (2021).

19. Krishnamurthi & Krishnaswami, *supra* note 17, at 459–60.

20. *Id.*; see also Elzweig & Rich, *supra* note 15, at 33 (noting that “[v]arna[s] divide the society into four classes, which, in order from the highest to lowest in societal hierarchy, include Brahmins, Kshatriyas, Vaishyas and Shudras”).

21. Elzweig & Rich, *supra* note 15, at 33. *But see* Krishnamurthi & Krishnaswami, *supra* note 17, at 464 (noting that while the hierarchy of the four varnas is typically known to be Brahmins, Kshatriyas, Vaishyas, and Shudras from top to bottom, “the ordering is complex, incomplete, and controversial” such that “[t]here is no lineal ordering, and any putative ordering is not definitive”).

22. Krishnamurthi & Krishnaswami, *supra* note 17, at 464.

23. Brown et al., *supra* note 16, at 120.

24. “Jati refers to more specific groupings, and in the actual practice of the caste system, jati is much more significant. There are thousands of jatis, and jati identity incorporates, among other things, traditional occupation, linguistic identity, geographical identity, and religious identity. . . . The relationship between varna and jati is complex. At various junctures, people have attempted to place jatis within a varna, to create a unified system of sorts. This attempted

occupations according to caste, making employment discrimination one of the core facets of the caste system's functioning from its earliest days.<sup>25</sup> In fact, lower caste folk were, and in many places still are, categorically excluded from positions of "respect."<sup>26</sup> While the caste system has strong roots in Hinduism and South Asia, the extent to which caste is formally sanctioned by Hinduism is disputed; some Hindu practices denounce caste, but others continue to perpetuate reprehensible caste injustices.<sup>27</sup>

Dalits form a "fifth caste" outside of this four-fold system, hence the historic labeling of Dalits as "outcastes" or "untouchables."<sup>28</sup> The caste system considers Dalits inferior to all other castes, including Shudras.<sup>29</sup> Caste's employment assignment function relegates ritually "impure" occupations, such as clearing human feces and cleaning bathrooms, to Dalits.<sup>30</sup> Even outside of employment, notions of purity and impurity are a key motivating factor behind the caste system. Many high-caste Hindus believe that engaging in activities historically relegated to Dalits is religious pollution.<sup>31</sup> Many Hindus also take precautions to prevent contact with Dalits, leading to explicit and implicit forms of segregation in

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fusion inevitably continues the 'tradition of dispute over whether these two hierarchies coincide, and which is the more fundamental.'" Krishnamurthi & Krishnaswami, *supra* note 17, at 461 (citations omitted).

25. Brown et al., *supra* note 16, at 120 ("In traditional Hindu society, occupations were allocated among different social groups according to Hindu law and custom that reflected the 'classic expression of inequality, viz., caste.' Thus, to a certain extent, employment discrimination based on caste is a way of life." (citation omitted)).

26. *Id.*; see also India: Official Dalit Population Exceeds 200 Million, INT'L DALIT SOLIDARITY NETWORK (May 29, 2013), <https://idsn.org/india-official-dalit-population-exceeds-200-million> [<https://perma.cc/V2FR-T3LG>] (showing that three-fourths of India's Dalit population resides in rural areas, where caste-based allocation of work is still prevalent).

27. See *infra* Part III.A.1 (articulating why caste's origins connect to Hinduism, providing examples of current Hindu practices that entrench caste-based discrimination, and outlining disputes regarding the caste system's connection to Hinduism).

28. Brown et al., *supra* note 16, at 120.

29. Elzweig & Rich, *supra* note 15, at 33.

30. "Historically, Dalits were forced into the occupations regarded as ritually 'impure', such as leather workers, manual scavenging (manually clearing human feces from public and private latrines using hand-held implements, without mechanization or protective equipment), [and] disposing of dead animal carcasses and temple prostitution (devadasi)." Brown, et al., *supra* note 16, at 120–21 (citation omitted).

31. *Id.* at 121.

Indian society.<sup>32</sup> Despite the constitutional abolition of caste in India in 1950, Dalits and other low-caste communities continue to face unconscionable oppression.<sup>33</sup> As Human Rights Watch reports, the “exploitation of low-caste laborers and the rigid assignment of demeaning occupations on the basis of caste keep lower-caste populations in a position of economic and physical vulnerability.”<sup>34</sup> This is particularly true in rural India, where many Dalits may not cross dividing lines into other villages, share wells, or visit temples with individuals of higher castes.<sup>35</sup> In some villages, “the state administration installs electricity, sanitation facilities, and water pumps in the upper-caste section, but neglects to do the same in the neighboring, segregated Dalit area.”<sup>36</sup> The caste system also contributes to the oppression of Adivasis, the indigenous peoples of India who are largely opposed to the caste system.<sup>37</sup> Like Dalits,

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32. *Id.*

33. “Discriminatory and cruel, inhuman, and degrading treatment of a vast global population has been justified on the basis of caste. In much of Asia and parts of Africa, caste is the basis for the definition and exclusion of distinct population groups by reason of their descent. Over 250 million people worldwide continue to suffer under what is often a hidden apartheid of segregation, modern-day slavery, and other extreme forms of discrimination, exploitation, and violence. Caste imposes enormous obstacles to their full attainment of civil, political, economic, social, and cultural rights.” HUM. RTS. WATCH, CASTE DISCRIMINATION: A GLOBAL CONCERN 2 (2001), <https://www.hrw.org/reports/pdfs/g/general/caste0801.pdf> [<https://perma.cc/FBM6-94ED>]. *See also id.* at 5–6 (documenting and discussing Dalit oppression, including the role of caste in labor, education, land, political representation, and marriage).

34. *Id.* at 2.

35. *Id.* at 6.

36. *See id.* (using a case study of a 2001 earthquake in Gujarat as an example, where Dalit and Muslim populations were not given the same access to recovery resources like shelter and electricity as upper-caste Hindus).

37. *See* MINORITY RTS. GRP., THE ADIVASIS OF INDIA (1999), <https://minorityrights.org/resources/the-adivasis-of-india> [<https://perma.cc/S6US-ZF89>] (discussing the plight of the Adivasis); *see generally* SURVIVAL INT’L, BRUTALIZED FOR RESISTANCE: THE ASSAULT ON INDIGENOUS WOMEN IN MODI’S INDIA, SURVIVAL (Jo Woodman ed., 2022), [https://assets.survivalinternational.org/documents/2057/Brutalized\\_for\\_resistance.pdf](https://assets.survivalinternational.org/documents/2057/Brutalized_for_resistance.pdf) [<https://perma.cc/45WY-S7CS>] (detailing the abuse faced by Adivasi women in particular); M. ZWICK-MAITREYI ET AL., EQUAL. LABS, CASTE IN THE UNITED STATES: A SURVEY OF CASTE AMONG SOUTH ASIAN AMERICANS 1, 8–9 (2018), [https://equalitylabs.wpengine.com/wpcontent/uploads/2023/10/Caste\\_in\\_the\\_United\\_States\\_Report2018.pdf](https://equalitylabs.wpengine.com/wpcontent/uploads/2023/10/Caste_in_the_United_States_Report2018.pdf) [<https://perma.cc/3XE3-CCMH>] [hereinafter Equality Labs Report] (noting that Adivasi immigrants in the United States “endure multiplied systems of bias including casteism, racism, and religious

Adivasis exist outside of the four varnas, and they are known as “Scheduled Tribes” in India’s affirmative action system.<sup>38</sup> Caste discrimination also has intersectional effects, placing, for example, lower-caste women and dark-skinned individuals farthest from the reach of legal protections.<sup>39</sup>

While the caste system most significantly affects—and is most associated with—Hinduism and South Asia, caste systems are also present in other religions and communities.<sup>40</sup> For example, the Buraku people, a historically marginalized low-caste community in Japan, continue to remain segregated and face verbal abuse and violence.<sup>41</sup> Caste systems and discrimination are similarly seen in the Osu system of Nigeria’s Igbo people, North Korea’s Songbun caste, as well as groups in Senegal and Mauritania.<sup>42</sup> Additionally, around

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fundamentalism” and “fight against the stripping of their ancestral land and its natural resources”).

38. Vina M. Gohari & Mavis Kusi, *An Introduction to the Basic Elements of the Caste System of India*, 14 FRONTIERS 1, 2 (2023).

39. See HUM. RTS. WATCH, *supra* note 33, at 2 (“The triple burden of caste, class, and gender effectively ensures that lower-caste women are the farthest removed from legal protections.”). Equality Labs Report, *supra* note 37, at 12 (“This racialized perception of Caste maps anti-blackness in South Asian American communities to its origins in anti-Dalitness and anti-Adivasiness. In addition to racist perceptions of people of African origin, black people are often seen as impure[,] similar to Dalits and Adivasis and unlike white folks who[] are[,] in many ways, seen inherently as ‘high’ Caste and therefore ‘casteless.’” (citation omitted)).

40. See *infra* Part III.A.2 (providing examples of caste systems outside of South Asia).

41. “The Buraku system was officially abolished by the Emancipation Edict of 1871, though discrimination against Buraku persists to this day. Following the edict, peasants rioted in protest at being ranked as equals to Buraku, setting fire to Buraku villages in western Japan and demanding that the edict be revoked. In modern day Japan, many Buraku still live in segregated communities in cities around the country, including major cities such as Kyoto, Osaka, and Kobe. Burakumin continue to be characterized as ‘dirty’ and ‘inappropriate’ to associate with. They are even said to be of a different descent than the majority of Japanese people even though they are racially indistinguishable from the rest of the population.” HUM. RTS. WATCH, *supra* note 33, at 10 (citations omitted).

42. *Id.* at 2; see also Mike Sunda, *Japan’s hidden caste of untouchables*, BBC NEWS (Oct. 23, 2015), <https://www.bbc.com/news/world-asia-34615972> [<https://perma.cc/JP6V-APW9>] (detailing the history of and stories from Japan’s “untouchable” caste); O.T. Abia et al., *Osu Caste System and Human Rights in Igboland*, 20 GLOB. J. SOC. SCI. 69, 70 (2021) (discussing the discriminatory practices of the Osu caste system through a human rights framework); Paul Eckert, *North Korea Political Caste System Behind Abuses: Study*, REUTERS (June 5, 2012), <https://www.reuters.com/article/us-korea-north-caste/north-korea-political-caste-system-behind-abuses-study-idUSBRE85505T20120606>

ninety million Dalits face caste discrimination in non-South Asian countries, including other Asian countries and Europe.<sup>43</sup>

South Asian immigration to the United States became more popular after the enactment of the Immigration and Nationality Act of 1965.<sup>44</sup> In the last two decades, South Asian immigration to the United States has seen a significant uptick.<sup>45</sup> Between 2001 and 2015, over half of the H-1B visas granted were for Indian citizens.<sup>46</sup> Between 2010 and 2017, the South Asian population in the United States increased by 40%.<sup>47</sup> The U.S. Census Bureau reports that in 2018, 5.4 million people of South Asian descent resided in America.<sup>48</sup> Due to socioeconomic factors in their home country, including caste inequality, 90% of Indian immigrants in the United States are from upper castes, while Dalits and Shudras only make up 2%.<sup>49</sup>

Given the caste system's disproportionate impact on South Asia, the system's injustices followed the South Asian diaspora to America. Due to the large number of South Asian migrants in the United States on an H-1B visa, caste discrimination has a profound impact in the workplace.<sup>50</sup> Equality Labs' 2018 report on caste in the United States, one of the only reports documenting American caste discrimination, found that one in every two Dalit respondents held a fear of their caste being "outed."<sup>51</sup> Twenty-five percent of Dalit respondents had faced verbal or physical assaults based on their

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[<https://perma.cc/W8AY-DJ5C>] (describing the Songbun caste system in North Korea); Tal Tamari, *The Development of Caste Systems in West Africa*, 32 J. AFR. HIST. 221 (1991) (explaining various localized caste systems in West Africa).

43. Brett Whitley, *Importing Indian Tolerance: How Title VII Can Prevent Caste Discrimination in the American Workplace*, 75 ARK. L. REV. 163, 172–73 (2022).

44. Elzweig & Rich, *supra* note 15, at 34.

45. *Id.*

46. *Id.*

47. *Id.*

48. Brown et al., *supra* note 16, at 121 (citing U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: ASIAN ALONE OR IN ANY COMBINATION BY SELECTED GROUPS (2018), <https://data.census.gov/table/ACSST1Y2019.B02018?q=B02018&hidePreview=true> [<https://perma.cc/6JSR-5D3V>]).

49. Elzweig & Rich, *supra* note 15, at 34.

50. In 2023, Indian nationals accounted for 72% of approved H-1B visas. Madeleine Greene & Jeanne Batalova, *Indian Immigrants in the United States*, MIGRATION POL'Y INST. (Nov. 8, 2024), <https://www.migrationpolicy.org/article/indian-immigrants-united-states> (on file with the *Columbia Human Rights Law Review*).

51. Equality Labs Report, *supra* note 37, at 17–18.

caste.<sup>52</sup> With respect to employment specifically, two out of three Dalits surveyed reported being treated unfairly at their workplace.<sup>53</sup> In some instances, “lower caste individuals do not even make it past the interview process when searching for jobs in America when another Indian is the interviewer.”<sup>54</sup>

The California Civil Rights Department’s (CRD) lawsuit against Cisco Systems is the “first instance of caste discrimination being tried in the U.S.,” and the litigation is still ongoing.<sup>55</sup> In *California Department of Fair Employment and Housing v. Cisco Systems*, plaintiff John Doe, a Dalit Indian, alleged that he was “paid less, cut out of opportunities, and marginalized by coworkers” based on his caste.<sup>56</sup> The complaint alleges violations of the California Government Code, not federal antidiscrimination law.<sup>57</sup> Two-hundred-and-sixty IT workers also reported complaints of caste discrimination to Equality Labs after *Cisco* was filed.<sup>58</sup>

Measures to remedy caste discrimination, like *Cisco*, are not without opposition. The Hindu American Foundation (HAF), one of the leading organizations among the far-right Hindu groups in the United States, filed a lawsuit against CRD in response to *Cisco*.<sup>59</sup> In this suit, HAF argues that CRD violated the Free Exercise, Due Process, and Equal Protection Clauses of the U.S. Constitution by

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52. *Id.* at 26–27.

53. *Id.* at 20.

54. Whitley, *supra* note 43, at 176.

55. Elzweig & Rich, *supra* note 15, at 38 (“Although the *Cisco* case is the first instance of caste discrimination being tried in the U.S. . . . the allegations made in the case are not unique to *Cisco* or new for American companies.” (citation omitted)); *see also* Krishnamurthi & Krishnaswami, *supra* note 17, at 458 (“DFEH’s case based on Doe’s allegations is still at the complaint stage, with a long road of discovery surely ahead.”).

56. Krishnamurthi & Krishnaswami, *supra* note 17, at 456; *see also* Complaint, Cal. Dep’t of Fair Emp. & Hous. v. Cisco Sys., Inc., No. 20CV372366 (Super. Ct. Santa Clara Cnty. filed Oct. 16, 2020) [hereinafter *Cisco Complaint*] (detailing the allegations).

57. *Cisco Complaint*, *supra* note 56, at 7 (“Beginning [on] November 1, 2016, Defendants Cisco, Iyer, and Kompella engaged in unlawful employment practices, in violation of California Government Code, section § 12940 subdivisions (a), (j), (h), and (k).”); *see also* Plaintiff’s Notice of Voluntary Dismissal Without Prejudice at 2, Cal. Dep. of Fair Emp. & Hous. v. Cisco Sys., Inc., No. 5:20-cv-04374-EJD (N.D. Cal. filed Oct. 16, 2020), Dkt. No. 19 (where CRD voluntarily dismissed its initial federal claims from federal court, leaving only the California state law claims).

58. Elzweig, *supra* note 18, at 67.

59. Kish Complaint, *supra* note 8, at 1, 3.

defining Hinduism as including a discriminatory caste system.<sup>60</sup> This lawsuit is one of a host of strategies used by the network of conservative Hindu groups in America, also known as the American Sangh, including opposition to “the inclusion of educational material on caste in California public school textbooks.”<sup>61</sup>

The *Cisco* suit is a step in the right direction for increasing caste awareness. However, caste-based discrimination is far from addressed in American workplaces. Dalits are often hesitant to report caste discrimination due to the lack of explicit protection under federal employment and labor laws, and the “stakes are significantly higher for H-1B visa holders.”<sup>62</sup> H-1B visas are temporary and “require employer sponsorships . . . which means H-1B visa holders can lose their status to live and work in the U.S. if terminated.”<sup>63</sup> The functional lack of protection offered by America’s top H-1B employers contributes further to the systemic underreporting of caste discrimination in U.S. workplaces.<sup>64</sup>

Given “how programmed and hereditary discriminatory attitudes can be, it is easy to imagine how a subtler, more insidious form of caste discrimination has replicated [in the United States].”<sup>65</sup> Even if a relatively small number of Dalits reside in the United States, opportunities for lower caste individuals to become skilled employees and immigrate to the United States have increased, indicating the U.S. market’s growing dependency on workers from different caste backgrounds.<sup>66</sup> As the Equality Labs report states, “[t]he rapid growth of the South Asian American population, and communities of color as a whole, is expanding perceptions about who and what is American, while also challenging the institutions that decide who is afforded the rights and protections of the nation’s

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60. *Id.*

61. HAF WAY TO SUPREMACY, *supra* note 9, at 12.

62. Elzweig & Rich, *supra* note 15, at 38.

63. *Id.* (citation omitted).

64. “A 2019 study found that most of America’s top ten H-1B employers were major technology firms[,] including Amazon, Google, Tata Consultancy Services, Microsoft, Facebook, IBM, Apple, and Intel.” *Id.* at 35 (citation omitted). “Despite growing pressure from employees and activists, Apple is the only tech company that has updated its internal discrimination policies to include caste as a protected class.” *Id.* at 38 (citation omitted).

65. Krishnamurthi & Krishnaswami, *supra* note 17, at 469.

66. This growing dependency is especially evident in the tech industry. Whitley, *supra* note 43, at 166.

laws.”<sup>67</sup> It is therefore in the United States’ best interest to enshrine a prohibition against caste discrimination in federal law.

## II. THE INADEQUACY OF TITLE VII IN ADDRESSING CASTE DISCRIMINATION AND THE NEED FOR A NOVEL FEDERAL SOLUTION

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin.<sup>68</sup> This statute applies to employers with fifteen or more employees and covers hiring, termination, promotion, compensation, job training, and any other term, condition, or privilege of employment.<sup>69</sup> In addition to covering underlying employment discrimination claims, Title VII also protects employees from employer retaliation in response to the employee engaging in protected activities.<sup>70</sup> Current scholarship shows that Title VII fails to adequately cover caste discrimination.<sup>71</sup> The existing protected classes do not cover caste, and to the extent they could, such interpretations rely on unpredictable judicial discretion that cannot deliver a uniform prohibition on caste discrimination.

Title VII’s protected classes are race, color, religion, sex, and national origin; currently, caste is not explicitly included as a protected class.<sup>72</sup> Thus, caste would have to be included within one of the identified protected classes to claim that caste discrimination is federally protected. Intuitively, caste would not meet definitions of sex. While arguments can be made that caste falls within race, color, religion, or national origin, there are no specific statutes or case law substantiating these arguments, making it unclear whether legal claims brought under federal caste discrimination theories are sound.<sup>73</sup> Most scholars who have discussed the possibility of incorporating caste within one of these protected classes have come to differing conclusions on the chance of success in court.<sup>74</sup> These

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67. Equality Labs Report, *supra* note 37, at 8.

68. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2–2000e-3.

69. *Id.* at §§ 2000e-2(a)(1), 2000e(b).

70. Brown et al., *supra* note 16, at 152.

71. *See infra* notes 73–88 and accompanying text.

72. 42 U.S.C. §§ 2000e-2–2000e-3.

73. Elzweig & Rich, *supra* note 15, at 35–37 (citing various scholarly opinions on how caste may be incorporated within one of Title VII’s protected classes).

74. *See, e.g., id.* (reviewing academic views on how caste may be incorporated into civil rights claims); Brown, et al., *supra* note 16, at 152–72 (reviewing U.S. Supreme Court Title VII opinions); Krishnamurthi &

differences highlight the variability in interpretation of presently protected classes and the weakness of relying on Title VII's current language to protect against caste discrimination. Although some claims may succeed, leaving employees to the mere possibility that an individual judge reads a federal protected class expansively is not a solution that matches the scale of the caste discrimination problem.

Because Title VII does not explicitly define race, Professors Kevin Brown et al. look to the definitions used by the federal government at the time of writing (which are incorporated in regulations passed by the Equal Employment Opportunity Commission, or EEOC), the 19<sup>th</sup> century definition used in the context of Title VII and Section 1981, definitions from congressional debates during the passage of the Civil Rights Act, and definitions from contemporary sources, like Black's Law and Oxford dictionaries.<sup>75</sup> The authors conclude that whether caste discrimination constitutes race discrimination depends on the definition used.<sup>76</sup> On the other hand, Professors Guha Krishnamurthi and Charanya Krishnaswami reject the viability of using standard definitions of race to incorporate caste, arguing that such an approach only works if race is defined broadly to include ancestry, which the EEOC suggests is possible.<sup>77</sup> These scholars and others generally agree that caste discrimination is not a form of color discrimination, as color does not necessarily relate to caste, even if color discrimination is used as a proxy for the broader concept of race discrimination.<sup>78</sup> Professor Laura Dudley Jenkins emphasizes that successfully incorporating caste into Title VII is highly dependent on definitions of race. More specifically, Professor

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Krishnaswami, *supra* note 17, at 470–82 (concluding that executive agencies and Congress should take action to enshrine caste into Title VII because judicial interpretation of caste is in flux); Elzweig, *supra* note 18, at 70–91 (analyzing under which protected class caste could be incorporated); Laura Dudley Jenkins, *Race, Caste, and Justice: Social Science Categories and Antidiscrimination Policies in India and the United States*, 37 CONN. L. REV. 747, 759–69 (2004) (comparing the practice of creating a classificatory scheme in the United States and India); Whitley, *supra* note 43, at 178–96 (proposing intersectionality theory as a judicial framework to understand and prohibit caste discrimination).

75. Brown et al., *supra* note 16, at 157–61.

76. *Id.* at 162.

77. Krishnamurthi & Krishnaswami, *supra* note 17, at 473.

78. *See, e.g., id.* at 476–77 (concluding that for the purposes of interpreting Title VII, caste discrimination is not understood as discrimination on the basis of color); Brown et al., *supra* note 16, at 153; Elzweig, *supra* note 18, at 78–82.

Jenkins advocates for a dynamic definition of race that moves beyond color to reflect emerging social sciences on caste.<sup>79</sup>

Similarly, scholars approach the question of whether caste discrimination is a form of national origin discrimination under Title VII differently. Professor Brian Elzweig finds it unlikely that caste discrimination would be actionable under national origin discrimination because castes would likely be considered different parts of the *same* ethnic group.<sup>80</sup> Professors Brown et al. challenge Professor Elzweig's position by positing four different theories under which Dalits could constitute a national origin group: stigmatization by caste members, ancestry, Aryan Origin Theory, or as race discrimination under Section 1981's broad, national-origin inclusive definition.<sup>81</sup> This analysis, however, is specific to Dalits and the caste system prevalent in South Asia, with no discussion of how the theories would apply to non-South Asian lower castes.<sup>82</sup> Professors Krishnamurthi and Krishnaswami note that since caste identity cannot be reduced to being South Asian, a national origin discrimination claim would require the application of the but-for causation test in *Bostock v. Clayton County*: "but for the employee having an ancestor who had a particular caste identity defined and dictated by South Asian culture and practice, the employee would not have been discriminated against."<sup>83</sup>

Finally, scholars writing on this topic also hold different opinions on the viability of a Title VII religious discrimination claim. Professors Brown et al. argue that, because Dalit identity is not a religion and religious Dalits often practice non-Hindu religions, a Title VII claim would have to focus on religious non-adherence, whereby an employer discriminated against an employee because the employee did not share the employer's religious beliefs.<sup>84</sup> By contrast, Professors Krishnamurthi and Krishnaswami argue that a religious discrimination claim could succeed without turning to non-adherence because "caste identity is inextricably linked to religious practice."<sup>85</sup>

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79. Jenkins, *supra* note 74, at 748.

80. Elzweig, *supra* note 18, at 86.

81. Brown et al., *supra* note 16, at 163–67.

82. *Id.*

83. Krishnamurthi & Krishnaswami, *supra* note 17, at 472–73; *see also* *Bostock v. Clayton County*, 509 U.S. 644 (2020) (applying the but-for causation test to a sex discrimination claim).

84. *See* Brown et al., *supra* note 16, at 154–56 (highlighting Ninth and Seventh Circuit decisions upholding religious non-adherence claims).

85. Krishnamurthi & Krishnaswami, *supra* note 17, at 477.

However, their argument only considers the Hindu caste system.<sup>86</sup> Professor Elzweig notes that such arguments in the Hindu context are controversial due to differing views on whether the caste system originated due to religious or secular motives.<sup>87</sup> To the extent that the caste system is now more representative of a social construct than a reflection of religious practices, incorporating caste within a religious-discrimination claim may prove unsuccessful.<sup>88</sup>

The arguments above provide an overview of the prevailing scholarship on how caste could be protected under Title VII, but the divergence in views also underscores the weakness in relying on Title VII's current language to protect against caste-based discrimination. These scholars have provided the groundwork for potential judicial decisions in favor of finding caste to be protected, but no such case law or statute exists in the status quo. This means that victims of caste discrimination would have to "convince the judges that caste can be interpreted as a protected ground," meaning that "[i]t will completely depend on judicial interpretation and judicial understanding of caste to read it as part of existing grounds."<sup>89</sup> Furthermore, nearly all the current scholarship focuses on the caste system as associated with Hinduism. First, this ignores the fact that the caste system affects non-Hindu communities in South Asia as well.<sup>90</sup> Second, while the system associated with South Asia is by far the most prevalent form of caste, there are caste systems in other parts of the world which may cause an individual to face employment discrimination.<sup>91</sup> Thus, an amendment to Title VII that explicitly includes caste as a protected class is necessary.

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86. See *id.* at 459 ("There are various social systems around the world that have been described as 'caste' systems. Here, we will use 'caste' to refer to the South Asian system that operates both in South Asia and in the diaspora.").

87. Elzweig, *supra* note 18, at 87.

88. *Id.*

89. Sangh Rakshita & Sofia Ranchordas, *California's Attempt to Outlaw Caste-Based Discrimination*, REGUL. REV. (Nov. 20, 2023), <https://www.theregreview.org/2023/11/20/rakshita-ranchordas-californias-attempt-to-outlaw-caste-based-discrimination> [<https://perma.cc/9TW9-S3GZ>].

90. See T.G. Percival Spear & Romila Thapar, *Caste of India*, BRITANNICA, <https://www.britannica.com/place/India/Caste> [<https://perma.cc/6AX8-AFUD>] ("Although it is not as visible as it is among Hindus, caste is found among Muslims, Christians, Sikhs, Jains, and Jews.") (last visited Nov. 5, 2025).

91. See, e.g., Sunda, *supra* note 42 (detailing the history of and stories from Japan's "untouchable" caste); Abia, *supra* note 42 (discussing the discriminatory practices of the Osu caste system through a human rights framework); Eckert, *supra* note 42 (describing the Songbun caste system in North Korea); Tamari,

### III. METHODOLOGY: DESCRIPTION OF CASE STUDY APPROACH

This Note seeks to find the optimal statutory language for an amendment to Title VII that adds caste as a protected class through a case study of approaches to prohibiting caste discrimination at the city, state, and university levels. Analyzing the benefits and drawbacks of city, state, and university regulatory approaches provides a useful frame of reference in drafting language for a Title VII amendment. These institutions do, however, face different circumstances and barriers than the federal government. Thus, federal legislators implementing and modifying the suggestions offered by this Note's Title VII amendment should also integrate unique considerations beyond those in the case study.

In determining what language is "optimal," this Note uses two measures: 1) historical and factual accuracy and 2) protection from First Amendment challenges.

#### A. Historical and Factual Accuracy

Caste is a broad and complex term, with many points about its history in contention among various communities. Nevertheless, there are specific points about caste that have been studied and found to be true: its historic connection to Hinduism, South Asia, and the South Asian diaspora and its impact on non-South Asian and non-Hindu communities. At a general level, ensuring that terms describing a protected class are accurately defined is important for ensuring the precision of a statute. But these particular considerations inform the approach of this Note because they capture the communities which are disproportionately affected by caste while maintaining the complexity of "caste" as a term. Highlighting caste's historic connections to Hinduism accomplishes more than simply identifying caste's origins. Rather, analyzing these connections underscores why caste is so central to South Asian society, to the extent that it then follows the diaspora. Simultaneously, emphasizing non-Hindu, non-South Asian communities impacted by caste broadens the protected class in a manner that reflects less-known systems and caste's modern contours.

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*supra* note 42, at 221 (explaining various localized caste systems in West Africa). See *infra* Part III.A.2. (providing further detail on these systems).

### 1. Connection to Hinduism, South Asia, and the South Asian Diaspora

While the extent to which caste is a tenet of Hinduism is contested, the Indian caste system, with influences in South Asia broadly, is historically *connected* to Hinduism.<sup>92</sup> The four varnas, Brahmin, Kshatriya, Vaishya, and Shudra, are mentioned in Hindu sacred texts.<sup>93</sup> While not descriptive of all traditions, many Hindu practices, such as endogamy and temple purification, continue to reinforce the caste system.<sup>94</sup> Lower caste communities also continue to suffer overt discrimination in access to Hindu priest positions, which are often granted exclusively to Brahmins and other high-caste individuals.<sup>95</sup>

Those attempting to undermine caste's connection to Hinduism may point to the fact that the word "caste" derives from the

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92. See J.E. Llewellyn, *The Modern Bhagavad Gita: Caste in Twentieth-Century Commentaries*, 23 INT'L J. HINDU STUD. 309, 309–23 (2019) (analyzing conflicting interpretations of caste by Hindu thinkers).

93. See THE HYMNS OF THE RIGVEDA para. 10.90.12 (Ralph T. H. Griffith trans., 1973) (describing a four-part social hierarchy of the Brahmana, Rajanya (Kshatriya), Vaishya, and Shudra castes); see also THE BHAGAVAD GITA para. 4.13, at 110 (A. Mahadeva Sastri trans., 2d ed. 1901) (describing the four-fold division of mankind); Brown et al., *supra* note 16, at 130 (discussing how both the Bhagavad Gita and Rigveda mention the caste system, while the Purusha Sukta verse within the Rigveda, which describes the creation of the universe, specifically outlines how the four varnas were created to form various castes); Elzweig & Rich, *supra* note 15, at 33 (explaining that the caste system goes back to at least the Rig Veda, which created hierarchical relationships within Indian society).

94. See Rukmini S., *What the data tells us about love and marriage in India*, BBC (Dec. 7, 2021), <https://www.bbc.com/news/world-asia-india-59530706> [<https://perma.cc/NR3R-ASQK>] (citing a 2014 survey to show that "caste remains an essential feature of marriage in India"); see also Nagarjun Dwarakanath, *2-year-old Dalit child runs into temple in Karnataka, family fined Rs 25,000 for 'purification ritual'*, INDIA TODAY (Sep. 22, 2021), <https://www.indiatoday.in/india/story/2-year-old-dalit-child-runs-into-temple-in-karnataka-family-fined-rs-25-000-for-purification-ritual-1855817-2021-09-22> [<https://perma.cc/T3D6-B2M9>]. But see *Hinduism & the Caste System*, HINDUS FOR HUM. RTS., <https://www.hindusforhumanrights.org/hinduism-and-caste> [<https://perma.cc/B7R8-4K45>] (last visited Dec. 31, 2024) (outlining Hindus for Human Rights' goal of practicing Hinduism while working to dismantle the caste system).

95. See, e.g., Lalitha Ranjani, *Priesthood for Non-Brahmins Continues to Be a Mirage*, NEW INDIAN EXPRESS (July 16, 2020), <https://www.newindianexpress.com/states/tamil-nadu/2020/jul/16/priesthood-for-non-brahmins-continues-to-be-a-mirage-2170383.html> [<https://perma.cc/Y6WV-K7PL>] (outlining the continuing difficulties for non-Brahmins seeking priesthood).

Spanish and Portuguese word “casta,” which the Portuguese used for the first time in India upon arriving there to trade in the 15<sup>th</sup> century.<sup>96</sup> Others may also point out that British colonialism cemented the caste system, using it to systematize India’s diverse population.<sup>97</sup> Simultaneously, the British condemned the caste system as a problematic institution revealing the “moral inferiority of the Indian character.”<sup>98</sup> These arguments, however, do not negate caste’s historical connection to Hinduism and the reality that the paradigmatic ethnographic example of caste is in India’s Hindu society. While the status quo caste system reflects countless historical influences, “what is known is that the caste system was perpetuated *through* Hinduism.”<sup>99</sup>

The Indian caste system is one of the oldest institutionalized forms of oppression,<sup>100</sup> but the system exists in South Asian countries broadly.<sup>101</sup> Given its role in South Asia, South Asian diasporas are among the groups most impacted by the caste system. The 2018 Equality Labs survey found that caste inequality has become “embedded within all of the major South Asian American institutions.”<sup>102</sup> The survey finds, for example, that lower caste folk have a fear of being outed, 40% of Dalit students reported facing discrimination in educational institutions (compared to only 3% of upper caste respondents), and 67% of Dalits surveyed reported facing employment discrimination.<sup>103</sup>

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96. Goghari & Kusi, *supra* note 38, at 2.

97. *Id.* at 3.

98. *Id.*

99. Elzweig & Rich, *supra* note 15, at 33 (emphasis added); *see also* Krishnamurthi & Krishnaswami, *supra* note 17, at 460 n.19 (providing additional examples of caste’s connection to Hinduism).

100. *See* Goghari & Kusi, *supra* note 38, at 2 (noting that the caste system has been in existence for over 3000 years); *see also* G. DUNCAN MITCHELL, A NEW DICTIONARY OF THE SOCIAL SCIENCES 194 (2d ed. 1979) (“[The] classical Hindu system of India approximated most closely to pure caste.”).

101. *See* Goghari & Kusi, *supra* note 38, at 6 (Nepal has a National Dalit Commission to ameliorate caste-based discrimination. Sri Lanka has a less rigid caste system, with variations among the Tamil and Sinhalese ethnic groups. Bangladesh and Pakistan have castes across all religions in their population, including Hinduism, Christianity, and Islam.).

102. Equality Labs Report, *supra* note 37, at 16.

103. *Id.* at 17–20.

## 2. Impact on non-Hindu South Asians and non-South Asian Communities

The caste system is prevalent among many non-Hindu South Asians, including Christian, Muslim, Sikh, and Jain communities.<sup>104</sup> In India, Buddhists almost universally identify themselves in caste categories, and 76% of Jains and 46% of Muslims and Sikhs identify with “General Category” castes (castes that do not belong to protected groups).<sup>105</sup> Although many Dalits practice non-Hindu religions, caste identity also transcends religion altogether. Dalit identity is linked with social, political, and economic issues, making it important that caste is not defined strictly based on Hindu scriptures or academic work.<sup>106</sup> The “insidiousness of caste discrimination is such that it sprouts and thrives even when divorced from its doctrinal home of Hinduism, and even when there is claimed caste eradication.”<sup>107</sup> The language and scope of legislation which seeks to prohibit caste discrimination must avoid limiting caste to its potential religious dimensions.

Finally, caste systems exist outside of South Asia as well. Some of the most prominent examples include Japan’s Burakumin people, Nigeria’s Osu caste system, and North Korea’s Songbun caste.<sup>108</sup> The exclusion of Japan’s Burakumin people, the country’s “untouchable class,” dates back to the feudal era, during which the Burakumin represented a segregated group of laborers.<sup>109</sup> The Burakumin typically worked in occupations considered “impure,” including executioners and butchers.<sup>110</sup> Despite Japan’s official abolition of the caste and feudal systems in 1871, the Burakumin people continue to live in isolated areas and face barriers to integration.<sup>111</sup> Similarly, the Osu people of the southeast region of

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104. See Krishnamurthi & Krishnaswami, *supra* note 17, at 463 n.39 (citing scholarship on casteism in each of these religious traditions).

105. Neha Sahgal et al., *Religion in India: Tolerance and Segregation* (June 29, 2021), <https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation> [<https://perma.cc/Q5ER-HA5X>].

106. Goghari & Kusi, *supra* note 38, at 3 (“Overarching statements about the caste system typically fail to capture the complexities of caste-related local practices, the views of Dalits, customs and necessities, or their evolution over time.”).

107. Krishnamurthi & Krishnaswami, *supra* note 17, at 464.

108. See *supra* notes 41–42 and accompanying text (sources detailing caste systems outside of South Asia).

109. Sunda, *supra* note 42.

110. *Id.*

111. *Id.*

Nigeria have been subject to one of the world's longest surviving caste systems.<sup>112</sup> While the origins of the Osu caste system are debated, it is embedded in many local traditions and "has been handed over from one generation to the other."<sup>113</sup> The Osu people continue to face numerous restrictions of their fundamental rights, including restrictions of their right to inter-caste marriage.<sup>114</sup>

In comparison, North Korea's Songbun class is more directly state-sanctioned, as castes are determined based on a family's political background and their loyalty to the country's leadership.<sup>115</sup> To this day, U.N. agencies and rights groups document the abuses of the Songbun caste system, equating its injustice to South African apartheid.<sup>116</sup> While the direct role of politics in the Songbun caste system distinguishes it from the Hindu caste system and others, caste status is still intrinsically tied to employment. Lower caste North Koreans are assigned to the most dangerous and difficult labor in remote regions, where they are placed under constant surveillance.<sup>117</sup> Lower caste North Koreans also face discrimination in educational admissions and marriage opportunities.<sup>118</sup>

While non-South Asian caste systems are different from South Asian systems due to their unique cultural and political circumstances, they share many commonalities. These caste systems are tied to national traditions, creating a system of division distinct from categories like race or gender that are more well-known and analyzed in the United States. To ensure that federal antidiscrimination measures cover instances of caste inequality outside of South Asia, definitions of caste should acknowledge such non-South Asian systems.

## B. Protection from First Amendment Challenges

Among the most vocal opponents to measures prohibiting caste discrimination is the American Sangh: a network of U.S.-based organizations aligned with Hindutva, a political ideology of Hindu

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112. Abia et al., *supra* note 42, at 69.

113. *Id.* at 70.

114. *Id.* at 71–75. West Africa is also home to a number of localized caste systems. See Tamari, *supra* note 42, at 221 (identifying castes as "characteristic of over fifteen West African peoples, inhabiting at least fourteen states").

115. Eckert, *supra* note 42.

116. *Id.*

117. *Id.*

118. *Id.*

nationalism and supremacy.<sup>119</sup> Well-known groups in the American Sangh include the Hindu American Foundation (HAF)—the organization this Note primarily focuses on—the Vishwa Hindu Parishad of America, and the Hindu Swayamsevak Sangh.<sup>120</sup> HAF often attempts to turn its opposition to measures prohibiting caste discrimination into legal claims, arguing that such measures are a violation of the First Amendment’s Free Exercise and Establishment Clauses.<sup>121</sup> The Free Exercise Clause forbids Congress from passing laws that prohibit the free exercise of religion, and the Establishment Clause forbids Congress from passing laws which respect the establishment of religion.<sup>122</sup> As examples detailed below demonstrate, HAF frequently criticizes measures prohibiting caste discrimination as unjustly targeting Hindus.<sup>123</sup>

HAF’s ongoing lawsuit against the California Civil Rights Division (CRD) is a prime example of this legal argument.<sup>124</sup> In its pleading, HAF argues that the CRD violated the Free Exercise, Due Process, and Equal Protection Clauses by asserting that Hindu beliefs and practices include a discriminatory caste system.<sup>125</sup> HAF’s First and Second Amended Complaints also include an Establishment Clause claim.<sup>126</sup> The Free Exercise claim asserts that by “acting under

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119. HAF WAY TO SUPREMACY, *supra* note 9, at 6.

120. *Id.*

121. *See, e.g.*, Kish Complaint, *supra* note 8, at 1, 3 (arguing that the California Civil Rights Department violated the Free Exercise, Due Process, and Equal Protection Clauses by outlawing caste discrimination); *California State University Professors File Appeal in Caste Policy Case* (Mar. 19, 2024), HINDU AM. FOUND., <https://www.hinduamerican.org/csu-professors-file-appeal-caste-policy-case> [<https://perma.cc/3GPS-KNUH>] (demonstrating that HAF provided support to California State University professors who appealed their case claiming that CSU’s non-discrimination policy with respect to caste violated the Establishment Clause).

122. U.S. CONST. amend. I.

123. *See infra* notes 124–32, 155–56, 162, and accompanying text.

124. Kish Complaint, *supra* note 8, at 1, 3.

125. *Id.*

126. *See* First Amended Complaint at 25, Hindu Am. Found., Inc. v. Kish, No. 2-22-cv-01656-DAD-JDP (E.D. Cal. filed Sep. 21, 2023), Dkt. No. 21 [hereinafter Kish First Amended Complaint] (arguing that “by falsely declaring that caste-discrimination is a fundamental practice of Hinduism, the CRD is declaring Hindus as inherently discriminatory, and subject to state censure, including personal civil actions against them simply because of their status as practicing Hindus,” thus violating the Establishment Clause of the First Amendment); Second Amended Complaint at 25–26, Hindu Am. Found., Inc. v. Kish, No. 2-22-cv-01656-DAD-JDP (E.D. Cal. filed Aug. 27, 2024), Dkt. No. 50

color of state law to wrongly define Hindu beliefs” and declaring “that caste-discrimination is a fundamental practice of Hinduism,” “CRD has imposed special disabilities on Hindu Americans” which violate their free exercise rights.<sup>127</sup> In support, HAF cites *Gillette v. United States*, which barred government regulation of religious beliefs.<sup>128</sup> They also cite *Espinoza v. Montana Department of Revenue*, which held that laws imposing “special disabilities on the basis of religious status” violate the Free Exercise Clause.<sup>129</sup>

Regarding the Establishment Clause, HAF points to case law indicating that state actions violate the Establishment Clause when they dictate or influence matters of faith. HAF argues that by defining Hinduism as inherently discriminatory, CRD illegally defines Hindus’ religious beliefs.<sup>130</sup> The only case cited by HAF on this claim is *Our Lady of Guadalupe School v. Morrissey-Berru*, which held that state actions that dictate or influence matters of faith or doctrine violate the Establishment Clause.<sup>131</sup> Both the Free Exercise and Establishment Clause claims rest heavily on a critique of CRD’s description of the caste system as a “strict Hindu social and religious hierarchy.”<sup>132</sup>

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[hereinafter Kish Second Amended Complaint] (making an equivalent Establishment Clause claim against CRD).

127. Kish First Amended Complaint, *supra* note 126, at 25, 27–28.

128. *Id.* (citing *Gillette v. United States*, 401 U.S. 437, 461 (1971)).

129. *See* Kish Second Amended Complaint, *supra* note 126, at 27 (“Laws violate the Free-Exercise Clause when they ‘impose special disabilities on the basis of religious status.’” (quoting *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 475 (2020))).

130. *Id.* at 27 (“By acting under color of state law to wrongly define Hindu beliefs, teachings and practices to include an abhorrent practice of discrimination, the California Civil Rights Department has violated the religious freedom rights of Hindu Americans by seeking to legally define their religious beliefs and declaring those inaccurate beliefs and practices as illegal conduct under state law.”).

131. *Id.* (quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020)).

132. “The California Civil Rights Department (CRD) is pursuing enforcement actions under the California Fair Employment and Housing Act (FEHA) that wrongly asserts that a caste system and caste-based discrimination are integral parts of Hindu teachings and practices by declaring the caste system to be ‘a strict Hindu social and religious hierarchy,’ having a ‘centuries-old hierarchy,’ the doctrine for which mandates ‘untouchability,’ by ‘social custom and legal mandate.’” *Id.* at 2; *see also* Cisco Complaint, *supra* note 56, at 2 (“As a strict Hindu social and religious hierarchy, India’s caste system defines a person’s status based on their religion, ancestry, national origin/ethnicity, and race/color—or into which they are born—and will remain until death.”).

To limit a Title VII amendment's susceptibility to legal weakness or other barriers to passing the proposed legislation, this Note will analyze the statutory language used in various case study examples to determine the extent to which the language is vulnerable to First Amendment challenges similar to those articulated in the lawsuit against CRD. There are two primary reasons for this mode of analysis: minimizing susceptibility to legal challenges and accounting for the viewpoints of the current U.S. Supreme Court.

First, the language of potential federal legislation should be crafted to minimize the possibility of legal challenges, while still fulfilling the goals of the legislation and accurately reflecting the realities of caste. Thus, this case study aims to find statutory language that provides historical and factual accuracy while curtailing the use of unnecessarily controversial or legally suspect language, such as CRD's sole focus on Hinduism in its description of the caste system. This Note does not argue that making caste a protected class offends the Establishment or Free Exercise Clauses; in fact, judicial responses to HAF's legal briefs and the work of scholars writing on this subject show that such First Amendment claims are likely weak.<sup>133</sup>

Focusing on First Amendment challenges despite their weakness further supports this mode of analysis: the challenges may become stronger in the face of a U.S. Supreme Court that is increasingly willing to give weight to religious exercise claims.<sup>134</sup>

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133. See, e.g., Edvard Pettersson, *Judge Tosses Hindu American Group Civil Rights Case Against California*, COURTHOUSE NEWS SERV. (Aug. 31, 2023), <https://www.courthousenews.com/judge-tosses-hindu-american-group-civil-rights-case-against-california/?emci=d5b7a261-f65e-ef11-991a-6045bddbfc4b&emdi=ea000000-0000-0000-0000-000000000001&ceid=%7B%7BContactsEmailID> [https://perma.cc/T8DU-3D65] (dismissing HAF's initial complaint for a lack of standing but also noting that HAF failed to make "any factual allegations of actual or imminent harm as a result of the Civil Rights Department's state court lawsuit, let alone actual harm to any individuals that the foundation seeks to represent"); see generally Guha Krishnamurthi, *The Constitutionality of Prohibiting Caste Discrimination*, U. CHI. L. REV. ONLINE (June 13, 2023), <https://lawreview.uchicago.edu/constitutionality-prohibiting-caste-discrimination> [https://perma.cc/9AAJ-XLMN] (arguing that prohibiting caste discrimination does not violate the Establishment or Free Exercise Clauses).

134. See, e.g., 303 Creative LLC v. Elenis, 600 U.S. 570 (2023) (holding that the plaintiff, a website and graphic designer, could not be compelled to create wedding websites that violated her religious belief that marriage should be limited to one man and one woman); *Fulton v. Philadelphia*, 593 U.S. 522 (2021) (holding that a Catholic foster care agency was permitted to decline screening to

Many of the current Supreme Court justices have explicitly stated their desire to expand freedom of speech and religion and expressed fears of attacks on religious liberty.<sup>135</sup> With such a forthright push from the majority of justices to expand religious liberties, often at the expense of civil rights, the Court could very well be sympathetic to HAF's view that making caste a protected class violates the First Amendment by allowing the government to dictate the nature of Hinduism. While most of the recent decisions deal with Christianity and had facts different from HAF's lawsuit against CRD,<sup>136</sup> HAF's conservative advocacy nevertheless mirrors the language of the Christian groups who have prevailed before the current Court. In demonizing caste education in U.S. classrooms as "Critical Caste Theory," HAF borrowed from the "Christian Far Right's appropriation of the language of religious freedom to argue that their particular beliefs entitle them to discrimination, such as against Queer people."<sup>137</sup> By adopting this language, HAF manufactured a claim to victimhood, stating that banning caste discrimination is

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same-sex parents based on religious beliefs); *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617 (2018) (holding that requiring a cake shop owner to sell a wedding cake to a same-sex couple did not comply with the Free Exercise Clause's requirement of religious neutrality); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (holding that a high school football coach's private religious exercise after games was not an impermissible government coercion of students to pray).

135. See, e.g., Kimberly Strawbridge Robinson, *Alito Condemns Fundamental Threats While Toning Down Rhetoric*, BLOOMBERG L. (May 11, 2024, 09:41 ET), <https://news.bloomberglaw.com/us-law-week/alito-condemns-fundamental-threats-while-toning-down-rhetoric> [<https://perma.cc/H2HW-AJK9>] ("US Supreme Court Justice Samuel Alito once again warned that Americans' freedom of speech and religion are imperiled during what he called 'troubled times.'"); Carrie Campbell Severino, *Justice Kavanaugh on the Court's Religious Liberty Jurisprudence*, NAT'L REV. (Oct. 2, 2024, 14:18 ET), <https://www.nationalreview.com/bench-memos/justice-kavanaugh-on-the-courts-religious-liberty-jurisprudence> [<https://perma.cc/PSW3-BSAY>] (quoting U.S. Supreme Court Justice Brett Kavanaugh stating his belief that the Court has made "correct and important strides" on religion during the six years he has been on the bench, and "reinforced a critical principle of religious equality and religious liberty"); John Fritze, *Supreme Court flooded with prayers for relief from groups eager to promote religion*, CNN (Sep. 30, 2024, at 06:00 ET), <https://www.cnn.com/2024/09/30/politics/supreme-court-religious-freedom-church-state/index.html> [<https://perma.cc/5F35-V2R4>] (quoting statements made and books written by U.S. Supreme Court Justices Samuel Alito, Brett Kavanaugh and Neil Gorsuch expressing their desire to expand protections for religion).

136. See *supra* note 134 (discussing decisions related to Christian individuals or organizations).

137. HAF WAY TO SUPREMACY, *supra* note 9, at 15.

itself discriminatory against Hindu Americans.<sup>138</sup> HAF has also shown willingness to collaborate with Trump Republicans and issued explicit statements criticizing liberal and progressive initiatives.<sup>139</sup> Thus, HAF's alignment with the rhetoric of the Christian Far Right may give its claims more weight and increase its political clout before a conservative Court, president, and legislature.

#### IV. CASE STUDY: AN ANALYSIS OF SEVEN LOCAL APPROACHES TO ADDRESSING CASTE DISCRIMINATION

To date, a number of ordinances and other forms of legislation have been passed to prohibit caste discrimination at city and university levels. Seattle and Fresno are the two cities that have enacted bills against caste discrimination.<sup>140</sup> The universities and university organizations that have passed similar measures are Brandeis University, the California State University System, Brown University, Colby College, University of California, Davis, and Harvard University's Graduate Student Union.<sup>141</sup> The bill to include

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138. *Id.*

139. *See id.* at 24–25 (citing an October 2023 op-ed written by HAF's Senior Director of Communications which states that advocacy groups for minority religious communities in India and the U.S. Progressive movement are the two biggest challenges that Hindu American advocacy groups face). Similar statements have been made by HAF's Managing Director and CFO. *Id.* HAF's former Government Relations Director, Jay Kansara, was also involved in the 2020 Trump campaign. *Id.*

140. Seattle, Wash., Ordinance 126767 (Feb. 24, 2023) [hereinafter Seattle Caste Ordinance]; Fresno, Cal., Ordinance 2023-031 (Feb. 28, 2023) [hereinafter Fresno Caste Bill].

141. *See* Letter from Jacob Tabor, Dir., Off. of Equal Opportunity & Lee Bitsó, Vice President, Diversity, Equity, and Inclusion, to the Brandeis Univ. Cmty. regarding the Anti-Discrimination Policy (Mar. 4, 2025) (on file with the *Columbia Human Rights Law Review*) (letter notifying community of the inclusion of caste in the Brandeis anti-discrimination policy); Memorandum from Alex Pursley, Senior Dir. For C.R., Cal. State Univ., on the Interim CSU Nondiscrimination Policy (Aug. 1, 2024) (on file with the *Columbia Human Rights Law Review*) (California State University antidiscrimination policy, which includes caste as a protected category); Memorandum from Brown Univ. on Corporation Policy Statement on Equal Opportunity, Nondiscrimination and Affirmative Action (last reviewed Oct. 15, 2022) [hereinafter Brown University Statement] (on file with the *Columbia Human Rights Law Review*) (Brown University antidiscrimination policy, which includes caste as a protected category); Memorandum from Colby College Admissions on Nondiscrimination Policy and Compliance Information (last visited Jan. 5, 2025) [hereinafter Colby College Caste Policy] (on file with the *Columbia Human Rights Law Review*) (Colby College antidiscrimination policy, which includes caste as a protected

caste in California’s antidiscrimination statute passed the legislature but was vetoed by Governor Newsom.<sup>142</sup> This case study analyzes all of the above examples except for Harvard and Brandeis. Brandeis is excluded as it does not contain novel language which cannot be analyzed through the other examples; Harvard is excluded for the same reason, and also because its resolution was limited to the Graduate Student Union. Rather than analyzing each of these examples individually, the case study categorizes them for the purpose of addressing three specific considerations: statutory language defining caste, history and data useful for defining caste, and the cause of the California veto. Through each consideration, the two metrics for “optimal” statutory language mentioned in the description section above—historical and factual accuracy and protection from First Amendment challenges—are analyzed.

#### A. Seattle vs. Fresno: Statutory Language for Defining Caste

The Seattle ordinance adopts the U.N. Special Rapporteur’s definition of caste as “a strict hierarchical social system that is often based on the notions of purity and pollution, in which individuals placed at the bottom of the system may face exclusion and discrimination in a wide range of areas.”<sup>143</sup> The definitions section separately defines caste as “a system of rigid social stratification characterized by hereditary status, endogamy, and social barriers sanctioned by custom, law, or religion.”<sup>144</sup> Several parts of the ordinance explicitly connect the caste system to Hinduism and South Asia. The ordinance states that the caste system is “primarily associated with the South Asian region” and that “its existence is linked to the religiously sanctioned social structure of Hinduism.”<sup>145</sup>

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category); Memorandum from U.C. Davis Harassment & Discrimination Assistance & Prevention Program on Discrimination & Harassment (last visited Jan. 5, 2025) (on file with the *Columbia Human Rights Law Review*) (University of California Davis antidiscrimination policy, which includes caste as a protected category); Memorandum from Harv. Kenneth C. Griffin Graduate Sch. Arts Sci. on Discrimination and Harassment (last updated Sep. 11, 2024) (on file with the *Columbia Human Rights Law Review*) (Harvard University Graduate student discrimination and harassment policy, which includes caste as a protected category).

142. See S.B. 403, 2023–2024 Reg. Sess. (Cal. 2023) (vetoed) (vetoed proposed amendment to California civil rights laws to address discrimination based on ancestry, including caste).

143. Seattle Caste Ordinance, *supra* note 140.

144. *Id.*

145. *Id.*

In addition to *associational* language, the ordinance notes that “the majority of the *affected* communities live in or originate from South Asia.”<sup>146</sup> Despite this focus, the ordinance does make note that caste discrimination is “an international problem” that “transcends religious and geographic boundaries . . . showing up in Christian, Muslim, Sikh, and other religious communities all over South Asia, and in Southeast Asian and African communities, including Japan, the Middle East, Nigeria, Somalia, and Senegal.”<sup>147</sup>

In comparison, Fresno’s bill does not mention Hinduism at all.<sup>148</sup> The bill defines caste as “a system of rigid social stratification characterized by hereditary status, endogamy, and social barriers sanctioned by custom, law, or religion.”<sup>149</sup> Unlike the Seattle ordinance, the Fresno legislation has no *associational* language. Rather, the ordinance only focuses on *affected* communities, stating that “the majority of the caste-affected communities live in or originate from South Asia, including India, Nepal, Sri Lanka, Bangladesh, and Pakistan, where many are known by the self-chosen identity of ‘Dalits,’ which means ‘those who have been broken but are resilient’ and others are indigenous or indentured community members.”<sup>150</sup> This shifts the focus from the caste system’s origin to the predominantly affected population in the status quo.

With regards to historical and factual accuracy, neither bill includes language that overtly distorts the realities of caste. The Seattle legislation mentions important facets of caste, including its connection to Hinduism, South Asia, the South Asian diaspora, non-Hindu religions, and non-South Asian communities.<sup>151</sup> The Fresno bill is comparatively brief, primarily focusing on the affected South Asian communities.<sup>152</sup> However, Seattle’s description of a “religiously sanctioned social structure of Hinduism” suggests that the caste system is formally sanctioned by Hinduism, despite inclusion of the word “linked” in the earlier part of the sentence.<sup>153</sup> Although caste certainly originates from and is linked to Hinduism, it is not formally sanctioned by all Hindu practices.<sup>154</sup> Given Fresno’s more brief and

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146. *Id.* (emphasis added).

147. *Id.*

148. Fresno Caste Bill, *supra* note 140.

149. *Id.*

150. *Id.*

151. Seattle Caste Ordinance, *supra* note 140.

152. Fresno Caste Bill, *supra* note 140.

153. Seattle Caste Ordinance, *supra* note 140.

154. *See supra* notes 86–87 and accompanying text.

general language, the bill does not run into this issue. However, the Fresno bill may have benefited from added specificity about non-Hindu, non-South Asian communities that are affected.

For similar reasons, the language used by Seattle is more likely to fall within HAF's First Amendment critiques than that used by Fresno. In fact, HAF reached out to the Seattle City Council expressing serious concern about the bill prior to its passage.<sup>155</sup> In its letter, HAF pointed out the parts of the bill that associated caste with Hinduism, India, and South Asia, as well as the notion of intrinsic connection to certain diasporic communities.<sup>156</sup> No such media comment from HAF was published regarding the Fresno bill. While the media comments alone cannot show susceptibility to First Amendment challenges, the "targeted" language used in the Seattle ordinance is vulnerable to arguments of the kind HAF raised in the CRD lawsuit—that the government cannot define what Hinduism is and is not.<sup>157</sup>

B. California State University, University of California, Davis,  
Colby College, and Brown University: History and Data for  
Defining Caste

A question that remains after comparing the Seattle and Fresno ordinances is the amount of history and data necessary for understanding caste, particularly when outlining caste's origins and the communities it currently affects.

The California State University (CSU) resolution to add caste to its antidiscrimination policy focused heavily on the "Caste in the United States" report by Equality Labs.<sup>158</sup> For instance, the resolution cites that "[o]ne in three Dalit[] [students] report being discriminated against during their education in the United States," and that "students from India represent the second-largest group of

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155. HAF has 'serious concerns' about addition of caste to Seattle non-discrimination policy, *City Council told*, HINDU AM. FOUND. (Feb. 15, 2023), <https://www.hinduamerican.org/press/serious-concerns-caste-seattle-city-council-told> [<https://perma.cc/G93V-L4RL>].

156. *Id.*

157. See Kish Second Amended Complaint, *supra* note 126, at 25 (outlining HAF's First Amendment claims against CRD).

158. Memorandum from the Cal. State Univ. Acad. Senate on Endorsement of the Cal. State Student Ass'n Resol. Calling for the CSU to Include Caste in Anti-Discrimination Pol'y (Mar. 17–18, 2022) (on file with the *Columbia Human Rights Law Review*).

international students in the US.”<sup>159</sup> The resolution also outlines the four main caste groups as Brahmins, Kshatriyas, Vaishyas, and Shudras.<sup>160</sup> From a historical and factual accuracy standpoint, the resolution’s language properly articulates the connection of caste to Hinduism and its disproportionate impact on South Asia, South Asian Americans, and Dalits. However, it does not mention caste in non-Hindu religions or caste outside of South Asia.

The sole focus on Dalit oppression and South Asia also fuels the HAF First Amendment critique, and the pages of statistics provided from the Equality Labs study likely bolsters the critique further.<sup>161</sup> In fact, HAF published an article condemning CSU’s decision, arguing that it would discriminate against Hindu faculty and students.<sup>162</sup> HAF also criticized the resolution’s reliance on the Equality Labs report, dismissing Equality Labs as an “anti-Hindu activist group.”<sup>163</sup> In its article, HAF cites to a letter written by over eighty members of the CSU faculty to the CSU Board of Trustees opposing the change to the antidiscrimination policy.<sup>164</sup> This faculty letter similarly argued that the addition of caste to the policy placed a unique risk on faculty of Indian and South Asian origin since the category “is only associated with people of Indian descent.”<sup>165</sup> Two CSU professors even filed a lawsuit in federal court challenging the school’s inclusion of caste in its non-discrimination policy and recently appealed the dismissal of their complaint with support from HAF.<sup>166</sup> The scale of this opposition is likely driven by many factors, including the fact that the resolution applied to the entire CSU system as opposed to an individual university. However, the resolution’s data-driven focus on South Asia and Hinduism is a focal point of the groups’ critiques.

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159. *Id.*

160. *Id.*

161. *Id.* at 3–4.

162. *Inclusion of caste in Cal State non-discrimination policy will illegally single-out Indian and South Asians: Concerned faculty tell Board of Trustees*, HINDU AM. FOUND. (Jan. 21, 2022), <https://www.hinduamerican.org/press/cal-state-caste-policy-faculty-petition#:~:text=Just%20days%20after%20California%20State,be%20passed%20as%20currently%20written> [https://perma.cc/FZV5-Y3HY].

163. *Id.*

164. *Id.*

165. *Id.*

166. Michelle De Pachina, *Indian professors file appeal to remove caste from Cal State non-discrimination policy*, NEXTSHARK (Mar. 26, 2024), <https://nextshark.com/indian-professors-file-appeal-csu-caste> [https://perma.cc/JYS7-V435].

The University of California, Davis (UCD) took a similar approach. A UCD Senate resolution that proposed changes to the school's antidiscrimination policy also relied heavily on the Equality Labs report.<sup>167</sup> In addition to this data, however, the resolution cites extensively to history about caste. The resolution discusses the use of caste by the Spanish and Portuguese in the 17<sup>th</sup> century C.E., mentions of caste in Hindu scriptures, the stripping of Dalit and Adivasi ancestral lands, and the history of caste awareness in America, including the work of Dr. Bhimrao Ramji Ambedkar in India and New York.<sup>168</sup> While this history provides incredibly important and useful context to the current role of caste in America, the history selections face the same issue as the data used by CSU—complete focus on Hinduism and South Asia.

Thus, a federal approach to making caste a protected class should select a few of the most important statistics and points of history in supporting the claim that caste is connected to Hinduism and significantly affects South Asian populations. Rather than focus all such information on South Asia, the legislation should also discuss non-Hindu, non-South Asian populations, both to maintain accuracy and diminish the critique of “Hindu targeting.”

Colby College's approach is drastically different from CSU and UCD's. Colby merely added the word “caste” to its nondiscrimination policy.<sup>169</sup> The updated policy does not define caste, and there is no public resolution outlining the change.<sup>170</sup> However, a *Colby News* article featuring comments from Colby professor Sonja Thomas, who spearheaded efforts to revise the College's policy, sheds light on the motivations behind the change.<sup>171</sup> The article defines casteism as “a form of descent-based discrimination, where one's family background determines to which caste they belong at birth.”<sup>172</sup> While the article begins by focusing on Adivasis and Dalits, it

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167. Memorandum from the Associated Students U.C. Davis, Ethnic and Cultural Affs. Comm'n, on Senate Resolution #8 (Feb. 4, 2021) [hereinafter ASUCD Senate Resolution #8] (on file with the *Columbia Human Rights Law Review*).

168. *Id.*

169. Colby College Caste Policy, *supra* note 141.

170. *Id.*

171. Kardelen Koldas, *Caste Added to Colby's Nondiscrimination Policy*, COLBY NEWS (Oct. 12, 2021), <https://news.colby.edu/story/caste-added-to-colbys-nondiscrimination-policy/#:~:text=The%20College%20has%20recently%20added,recognize%20caste%20in%20its%20policies> [https://perma.cc/53YK-CEAH].

172. *Id.*

includes a quote from Professor Thomas, who specializes in caste and Christianity, noting that “[o]ne of the major misconceptions is that caste is this weird ancient thing tied to Hinduism that happens elsewhere.”<sup>173</sup> She goes on to explain that “although Hindu texts refer to caste, it ‘happens across religions,’ including Christianity, Islam, Sikhism, and across South Asian countries and diasporas, also in other countries and here in the U.S., especially in the tech industry and academia.”<sup>174</sup> Such information provides a necessary gloss on CSU and UCD’s approaches to explaining the caste system.

Colby College’s approach and the *Colby News* article can also be contrasted with Brown University’s policy. There, too, the University simply added “caste” to its nondiscrimination policy.<sup>175</sup> However, a subsequent *Brown News* article discussed caste only as it relates to South Asia and people of South Asian descent.<sup>176</sup> While the information provided was accurate, the approach invited commentary from HAF.<sup>177</sup> Suhag Shukla, the Executive Director of HAF, argued that through *Brown News*’s focus on South Asia, the University itself admitted that “the policy change is based on and applies only to one particular national or ethnic origin.”<sup>178</sup> Accordingly, Shukla argued that the policy change is “by definition discriminatory and shirks Brown’s obligations to not discriminate under both Title VI and Title VII.”<sup>179</sup> Colby and Brown had equivalent approaches in terms of policy modification, yet their media presence describing the change differed in what it chose to emphasize. While it is likely that HAF would have criticized Colby’s policy change if given the opportunity, they would not have had the same language from the *Brown News* article that

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173. *Id.*

174. *Id.*

175. Brown University Statement, *supra* note 141. The word “caste” has since been removed from the policy. *Corporation Policy Statement on Equal Opportunity and Nondiscrimination*, BROWN (last reviewed Apr. 18, 2025), <https://policy.brown.edu/policy/nondiscrimination> [<https://perma.cc/KN6Q-NRPC>].

176. *Brown University adds caste to nondiscrimination policy*, BROWN NEWS (Dec. 1, 2022), <https://www.brown.edu/news/2022-12-01/caste#:~:text=PROVIDENCE%2C%20R.I.%20%5BBrown%20University%5D,misunderstood%20form%20of%20structural%20inequality> [<https://perma.cc/72MT-XKNW>].

177. See Suhag Shukla, *Opinion/Shukla: Brown policy on caste bias gives in to false stereotyping*, PROVIDENCE J. (Dec. 23, 2022), <https://www.providencejournal.com/story/opinion/columns/2022/12/23/opinionshukla-brown-policy-on-caste-bias-gives-in-to-false-stereotyping/69725629007> [<https://perma.cc/D2U5-JACA>].

178. *Id.*

179. *Id.*

Shukla pulled for her opinion piece. Highlighting non-Hindu communities that employ a caste system not only makes the definition of caste more accurate but also helps address the First Amendment claims by showing how caste has transcended particular religions, even if the system's origins are linked to Hinduism.

### C. A Final Consideration: the California Veto

The cases above help determine what information federal legislation should include when making caste a protected class in Title VII, particularly when considering historical accuracy and First Amendment challenges. The ultimate veto of the California bill slated to add caste to the state's antidiscrimination laws provides an interesting final example. Governor Newsom ultimately vetoed the bill because of his view that discrimination based on caste was already prohibited under California's existing antidiscrimination laws, making the new bill unnecessary.<sup>180</sup> The proposed bill itself stipulates that the move to include "caste" within the definition of "ancestry" should not be "construed to mean that discrimination on the basis of ancestry does not already include discrimination on the basis of lineal descent, heritage, parentage, caste, or any other inherited social status."<sup>181</sup> S.B. 403's choice to explicitly state that ancestry should already be construed to include caste was pointed out by HAF and the Coalition of Hindus of North America; both groups argued that S.B. 403 was unnecessary because existing law already included caste protections.<sup>182</sup>

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180. See Letter from Gavin Newsom, *supra* note 11.

181. S.B. 403, 2023–2024 Reg. Sess. (Cal. 2023) (vetoed).

182. See Letter from Suhag A. Shukla, Exec. Dir., Hindu Am. Found., Samir Kalra, Managing Dir., Hindu Am. Found., & Nikhil Joshi, Cofounder, Hindu Am. Found., opposing S.B. 403 to Aisha Wahab, Cal. Senator (last visited Jan. 8, 2025) (on file with the *Columbia Human Rights Law Review*) ("Especially where existing, facially neutral categories such as national origin, ethnicity and ancestry already bar discrimination on the basis of characteristics such as birthplace, culture, descent or linguistic characteristics, the addition of 'caste' is not only redundant, but appears intentionally punitive and discriminatory towards only people of primarily South Asian descent, but also those of South American, Japanese and African descent."); see also *Oppose California SENATE BILL SB-403, COAL. HINDUS N. AM.*, <https://cohna.org/sb-403> [<https://perma.cc/N34P-GMN3>] (last visited Jan. 12, 2025) ("While admitting that existing California laws CAN provide protection against any such discrimination, the bill still pushes to include 'caste' as a special category by falsely arguing that California has 'grave caste discrimination.'").

S.B. 403's approach had the benefit of creating a backstop if the bill failed to pass: By explicitly stating that the bill should not be construed to mean that caste is excluded from ancestry, litigators would have a more difficult time arguing that caste is not protected. However, the veto of S.B. 403, after lobbying from HAF and other conservative Hindu groups, was based on the very argument that protections already existed.<sup>183</sup> Thus, a federal amendment to make caste a protected class should explain why an *explicit* recognition of caste within Title VII is still necessary, even if some interpretations of Title VII may already include caste.<sup>184</sup> Furthermore, Title VII does not include "ancestry" as a protected class. To the extent the use of "ancestry" in S.B. 403 more obviously encompasses caste-based discrimination than the classes identified in Title VII, explicit recognition of caste would remain necessary in Title VII even if the language in California's law sufficed.

#### V. STATUTORY RECOMMENDATIONS

To maximize the benefits and minimize the drawbacks identified in the case study, the following language can serve as components for a federal amendment to Title VII. This does not represent the entirety of what the statutory scheme should contain. Rather, the suggestions draw specifically on the findings of the case study to provide a useful starting point. For example, some bills from the case study have additional helpful language that could be substituted for one of the data points or facts presented in the suggestion below. The following set of suggestions is simply one model of achieving the goals outlined in this Note's method section. Omitted language is reflected via a strikethrough, and added language is italicized.

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183. See HAF WAY TO SUPREMACY, *supra* note 9, at 14 (highlighting that the American Sangh spent \$300,000 lobbying against S.B. 403); Letter from Gavin Newsom, *supra* note 11 (explaining S.B. 403 was vetoed because Newsom viewed it to be unnecessary in light of existing protections).

184. See *supra* Part II (arguing that Title VII is currently inadequate to address caste discrimination).

	Language	Author Analysis
Introductory Information	<p>This act shall not be construed to mean that discrimination on the basis of <i>one of Title VII's presently protected classes</i> does not already include discrimination on the basis of <del>lineal descent, heritage, parentage</del>, caste, or any other inherited social status.<sup>185</sup></p> <p><i>Even so, this amendment to Title VII is necessary to make caste discrimination protections explicit; absent such clear language, redress for caste discrimination will remain subject to individual judicial interpretations of Title VII.</i></p>	<p>This language is drawn from the vetoed California bill. The first italicized text alters the language to reflect a federal amendment to Title VII. The omitted text is unnecessary for legislation that specifically focuses on adding caste as a protected class. The final italicized text addresses Governor Newsom's reason for vetoing the California bill by making clear why an amendment is necessary despite the chance that caste is already covered by one of the current protected classes.</p>
Definitions/Background	<p>"Caste is a system of rigid social stratification characterized by hereditary status, endogamy, and social barriers sanctioned by</p>	<p>The first two sentences, copied from the language used in the Seattle and Fresno bills, define caste in a manner that is applicable to any</p>

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185. S.B. 403, 2023–2024 Reg. Sess. (Cal. 2023) (vetoed).

	<p>custom, law, or religion.”<sup>186</sup> “Caste discrimination is based on birth and descent, and occurs in the form of social segregation, physical and psychological abuse, and violence.”<sup>187</sup> Caste is “found in many <i>American</i> industries and is a grave contributor to workplace discrimination and bias; individuals in industries like technology, construction, restaurant, domestic work and other employment sectors have faced caste discrimination, harassment, bias, wage theft, and even trafficking.”<sup>188</sup></p>	<p>ethnic, racial, or religious group with a caste system without narrowing the focus on Hindu and South Asian communities. “American” is added to the third sentence to make clear that caste discrimination’s impacts on employment occur in the United States as well, not just the countries typically associated with caste.</p>
Caste Origins/Associated Communities	<p>“The concept of a ‘caste system’ is primarily associated with the South Asian region, where its existence is linked to the religiously</p>	<p>The language on the origins of caste and associated communities is borrowed largely from the Seattle bill. However, the language indicating</p>

186. Seattle Caste Ordinance, *supra* note 140; *see also*, Fresno Caste Bill, *supra* note 140 (using same language to define caste).

187. Fresno Caste Bill, *supra* note 140.

188. *Id.*

	<p>sanctioned social structure of Hinduism, which identified four original and endogamous groups, or castes, called varnas.”<sup>189</sup> “At present, the term ‘caste’ has broadened in meaning, transcending religious affiliation. Caste and caste-like systems may be based on either a religious or a secular background and can be found within diverse religious and/or ethnic groups in all geographical regions, including within diaspora communities.”<sup>190</sup></p>	<p>that the caste system is formally sanctioned by Hinduism is removed to minimize susceptibility to First Amendment claims. The second sentence provides a gloss on the first sentence’s claim that caste is linked to Hinduism. This avoids the drawbacks seen in the Fresno and CSU approaches, where it was never mentioned that caste has evolved beyond any particular religion.</p>
Affected Communities	<p>“The majority of the affected communities live in or originate from South Asia, including India, Nepal, Sri Lanka, Bangladesh, and Pakistan, where many are known by the self-chosen identity of ‘Dalits,’</p>	<p>The first sentence ensures that the caste system’s disproportionate impact on South Asia is recognized, as it rightfully was in the Seattle, Fresno, CSU, and UCD approaches. The language about Adivasis is added</p>

189. S.B. 403, 2023–2024 Reg. Sess. (Cal. 2023) (vetoed).

190. *Id.*

	<p>which means ‘those who have been broken but are resilient’ and others are indigenous or indentured community members,” <i>such as Adivasis</i>.<sup>191</sup> “Similarly affected groups are also found in or originate from elsewhere in Asia, Africa, the Middle East, the Pacific region, and various diaspora communities, and caste is found in communities of religious practice among South Asians in America.”<sup>192</sup> <i>Although Hindu texts refer to caste, caste is seen across religions, including Christianity, Islam, and Sikhism</i>.<sup>193</sup></p>	<p>given their unique marginalization in South Asia.<sup>194</sup> The inspiration for this addition is in the UCD Senate Resolution, which made sure to mention Adivasis in addition to Dalits.<sup>195</sup> The second sentence highlights the presence of caste systems outside of South Asia, avoiding the omission of this information as seen in the Fresno, CSU, and UCD approaches. The added last sentence re-emphasizes the point made in the caste origins section—caste is practiced in many religions. Re-emphasis helps avoid the skewing of statutory language as applying only to Hindus and South Asians, as occurred in the <i>Brown News</i></p>
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191. *Id.*

192. Seattle Caste Ordinance, *supra* note 140.

193. Koldas, *supra* note 171.

194. See THE ADIVASIS OF INDIA, *supra* note 37 (“The caste system is one of an ‘ascending superiority and descending inferiority,’ and although various peoples have been assimilated into this system, the Adivasis are increasingly identifying themselves as being opposed to this system, to its principles, and to the unequal positions it relegates to them in this hierarchy.”).

195. ASUCD Senate Resolution #8, *supra* note 167.

		<p>article and Suhag Shukla’s op-ed about Brown’s policy change. The language in the final sentence is borrowed from Professor Thomas of Colby College’s comment about Colby’s addition of caste to its antidiscrimination policy.</p>
Data	<p>“In 2016, the United Nations Special Rapporteur on minority issues stated that at least 250 million people worldwide still face ‘appalling and dehumanizing discrimination based on caste and similar systems of inherited status,’ and during a presentation of the first comprehensive report on caste-based discrimination in 2016 to the United Nations Human Rights Council, the Rapporteur described caste-based discrimination as ‘a global problem,’ adding that ‘caste-</p>	<p>This data section avoids the approach taken by CSU and UCD in two ways. First, the data and history touch on the disproportionate impact on South Asians and South Asian Americans while simultaneously including information that is generalizable to caste in any community. The first sentence discusses caste generally, and the focus on caste as a “global problem” not only accentuates the sheer number of people impacted by caste injustice but also underscores its role outside of</p>

	<p>based discrimination and violence goes against the basic principles of universal human dignity and equality, as it differentiates between ‘inferior’ and ‘superior’ categories of individuals, which is unacceptable.”<sup>196</sup> <i>While caste discrimination touches diasporic communities globally, the particular impact on South Asia confers a similar impact on South Asian Americans. A 2018 survey of caste among South Asian Americans conducted by Equality Labs found that caste has become “embedded within all of the major South Asian American institutions.”<sup>197</sup> With regards to the workplace, 67% of Dalits surveyed</i></p>	<p>Hinduism and South Asia. The second sentence adds a caveat to this generality, noting the disproportionate impact on South Asian Americans. The final sentence both adds support to the claim about impact on South Asian Americans while also re-emphasizing caste as a more general structure (as the quote does not mention Hinduism or South Asia). The quote’s connection to making caste a protected class in federal law as a remedy to discrimination makes it a powerful addition for statutory language. The second way in which this data section avoids the problems in the CSU and UCD approaches is by using a diversity of statistics from four different sources.</p>
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196. S.B. 403, 2023–2024 Reg. Sess. (Cal. 2023) (vetoed); *see also* Fresno Caste Bill, *supra* note 140 (using same language to refer the UN Special Rapporteur findings).

197. Equality Labs Report, *supra* note 37, at 16.

	<p><i>reported facing employment discrimination.</i><sup>198</sup></p> <p>“In an editorial published May 25, 2021, in <i>The New York Times</i>, Professors Paula Chakravartty and Ajantha Subramanian wrote that ‘oppressed castes in the United States are doubly disadvantaged by caste and race. Making caste a protected category under federal law will allow for the recognition of this double disadvantage’; further writing that to ‘protect oppressed castes in the United States, we have to be willing to insist that civil rights extend to communities whose oppression is still hidden.’”<sup>199</sup></p>	<p>While the Equality Labs report has been one of the most important sources on caste discrimination in the United States, avoiding exclusive reliance on its data would prevent the criticism CSU received, where the HAF called Equality Labs “anti-Hindu.”<sup>200</sup></p> <p>The data and related analysis selected here are a few examples of how to achieve such aims. The information could be swapped out for other similarly compelling support for a federal remedy to caste discrimination.</p>
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While these recommendations directly reflect the findings of the case study, counterarguments rooted across the political spectrum are possible. First, this Note’s choice to give disproportionate attention to the opinions of HAF could be viewed as misplaced efforts

198. *Id.* at 20.

199. Seattle Caste Ordinance, *supra* note 140.

200. *Inclusion of caste in Cal State*, *supra* note 162.

by those who embrace more progressive ideologies. Hindus for Human Rights, for example, argues that notions of systemic “Hinduphobia” and labeling criticisms of Hinduism and caste as inherently anti-Hindu sentiment should be rejected head on.<sup>201</sup> While this Note is critical towards HAF’s demonization of caste advocacy, the choice to suggest statutory language that minimizes susceptibility to HAF’s criticisms shows an *accommodation* of the HAF perspective, rather than outright dismissal. There are many benefits to dismissal over accommodation. Of note, the “Hinduphobia” narrative is being deployed in many parts of the world to justify anti-Muslim and anti-Christian violence, namely under India’s Bharatiya Janata Party rule.<sup>202</sup> This violence represents the horrific, tangible consequences of the rhetoric espoused by conservative Hindu groups. Hence, avoiding concessions in response to HAF criticisms may be more beneficial than this Note’s methodology.

While this is certainly a valid critique of Hindu nationalism, this Note’s approach is nevertheless preferable because it reflects the nature of the legislative process and the increasing political power of the conservative Hindu bloc. Much like any legislation, particularly in the age of political polarization, an amendment to Title VII would face significant barriers to passage. With conservative Hindus aligning closely with Trump and both houses of Congress controlled by Republicans, balancing minimizing conservative opposition is desirable.<sup>203</sup> That may necessitate some concession to the HAF view now, but the resulting benefits to caste-oppressed communities would make the concession worthwhile.

The low likelihood of an amendment to Title VII passing presents another counterargument to this Note’s recommendation. In response, state implementation of the proposed statutory language presents a viable alternative to the federal approach. Although relying on states feeds into the issue of disparity in judicial interpretation across the country, state-level protections are superior to no remedy at all. Furthermore, if each state amended its

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201. See *On cries of “Hinduphobia,”* HINDUS FOR HUM. RTS., <https://www.hindusforhumanrights.org/en/blog/on-cries-of-hinduphobia> [<https://perma.cc/9RKC-M2D3>] (last visited Feb. 28, 2025) (arguing that “mere criticism of caste, Hindu nationalism, or Hinduism itself” should not be construed as anti-Hindu sentiment).

202. *Id.* (arguing “Hinduphobia” is being used as a cover for anti-Muslim and anti-Christian violence in India).

203. See *supra* notes 134–39 (showing the increasing political power of conservative Hindu groups in the United States).

employment antidiscrimination laws in accordance with this Note's proposed language, the state laws would be relatively uniform. This may prevent diverging legal interpretation across states.

On the other end of the political spectrum, American Sangh organizations may find issues with this Note's statutory recommendations, despite the deliberate attempt to minimize such opposition. Essentially, these organizations have critiqued nearly every attempt at remedying caste discrimination, regardless of the process. For example, American Sangh groups voice opposition to measures that do not even mention Hindus or South Asians. The Coalition of Hindus of North America's opposition to California's S.B. 403 stated that even if the bill proposed to add a general term of "caste," the language would "lead to automatic presumption of guilt and fault when it comes to Indian Americans."<sup>204</sup>

In response to Seattle's amended version of its caste bill, which reduced language about Hinduism and South Asia and added language about non-Hindu religions and non-South Asian communities, HAF argued that this now targeted "only diasporic communities and immigrants, including those who are refugees, from South Asia, Southeast Asia, and Africa—in other words, all people of color to the exclusion of people of white, European descent."<sup>205</sup> Thus, a counterargument to this Note's approach may be that it does not surmount the inevitability of conservative Hindu opposition.

While American Sangh organizations do tend to find some criticism to issue, the argument that *any* discussion of caste would inevitably target Hindus and South Asians lacks evidentiary support, and to the extent that it is supported, the argument contradicts claims made by HAF that caste is not intrinsic to Hinduism and is merely a "colonial trope."<sup>206</sup> By stating that Hindus would be inevitably targeted by reference to caste, HAF assumes that caste is connected to Hinduism. Furthermore, the argument that broadening the list of groups affected by caste leads to the targeting of diasporic communities to the exclusion of white Europeans has no solution but to obfuscate the truth: Diasporic communities *are* among the groups most affected by caste. Thus, conservative Hindu attacks on even

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204. Letter from Suhag A. Shukla, *supra* note 182.

205. HAF has 'serious concerns' about addition of caste, *supra* note 155.

206. See Kish First Amended Complaint, *supra* note 126, at 21 ("The CRD is actively pursuing religious discrimination enforcement actions against Hindu Americans in California State Court based on the inaccurate, colonial assertion that Hindu beliefs and practices include a discriminatory caste system.").

general mentions of caste are significantly weaker than more specific claims, such as the ones in HAF's lawsuit against CRD. This makes this Note's focus on the First Amendment challenge worthwhile in the pursuit of statutory language.

#### CONCLUSION

This Note used two criteria—historical and factual accuracy and protection from First Amendment challenges—to suggest statutory language for an amendment to Title VII adding caste as a protected class. Uncertainty looms regarding how the second Trump administration will continue to affect the civil rights of minorities. The American Sangh, however, has positioned itself to maximize influence from President Trump and his allies.<sup>207</sup> As long-term advocates for Prime Minister Narendra Modi and his Bharatiya Janata Party, organizations like the HAF have defended Modi's atrocious human rights record, lobbied against a 2011 Indian law which would have strengthened protections for anti-minority violence, and helped organize several receptions for Modi in the United States.<sup>208</sup> Given Modi and Trump's close alliance, HAF's consistent support for Modi will likely keep them among Trump's respected groups.<sup>209</sup> To minimize challenges from a conservative political bloc that is only gaining more power, this Note aims to carefully construct a Title VII amendment so as to avoid language that has fallen prey to the HAF's critiques in the past.

Employment discrimination only scratches the surface of the oppression faced by lower caste communities in the United States. Much more work on documenting such discrimination is to be done, as evidenced by the fact that Equality Labs' report is the only comprehensive study of caste in the United States in recent years. This Note hopes to not only reimagine the potential of Title VII but also increase awareness of caste issues in the United States.

One author pursuing a similar aim is Isabel Wilkerson, whose book, *Caste: The Origins of Our Discontents*, links the caste systems of America, India, and Nazi Germany to explore the motivations and

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207. HAF WAY TO SUPREMACY *supra* note 9 (showing the HAF's support for the Trump administration).

208. *Id.* at 23.

209. *Id.* at 22–23; *see also* Krutika Pathi & Ashok Sharma, *India's Modi likely to find comfort in Trump's return and a shared worldview*, ASSOCIATED PRESS (Nov. 14, 2024), <https://apnews.com/article/india-us-election-2024-trump-modi-a291df0d68d76d88da353e1e12ad1934> [<https://perma.cc/LZ5L-V2XV>].

consequences of caste across civilizations.<sup>210</sup> Wilkerson shows how in the United States, race is the visible agent that reinforces a caste system relegating Black and Brown individuals to an inferior status compared to Caucasians.<sup>211</sup> In doing so, Wilkerson employs the term “caste,” which is typically used in the context described in this Note, to mean any insidious, hierarchical social system. The findings of this Note should be read in tandem with Wilkerson’s work. The caste system originating from Hinduism and South Asia cannot be separated from the other hierarchical systems of injustice that contradict basic notions of humanity. In fact, all of Title VII’s protected classes were created to address the various hierarchical systems that have subjugated people of color, women, the LGBTQ+ community, non-American citizens, and other marginalized groups for generations.

Finally, this Note would be incomplete without an acknowledgement of Dr. Bhimrao Ramji Ambedkar, a leading figure in the Dalit liberation movement and drafter of the Indian Constitution.<sup>212</sup> Ambedkar wrote that “the outcaste is a bye-product of the caste system. There will be outcastes as long as there are castes. Nothing can emancipate the outcaste except the destruction of the caste system.”<sup>213</sup> An amendment to Title VII is far from the destruction of the caste system. But as our collective awareness of caste’s ills builds, the annihilation of caste will hopefully ensue.

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210. ISABEL WILKERSON, *CASTE: THE ORIGIN OF OUR DISCONTENTS* (2020).

211. *Id.*

212. *Bhimrao Ramji Ambedkar*, COLUM. GLOB. CTRS., <https://globalcenters.columbia.edu/content/mumbai-bhimrao-ramji-ambedkar> [<https://perma.cc/79VD-7N6X>] (last visited Jan. 19, 2025).

213. Arundhati Roy, *Introduction* to B. R. AMBEDKAR, *ANNIHILATION OF CASTE: THE ANNOTATED CRITICAL EDITION 18* (S. Anand ed., Verso 2014) (1936). The introduction to this edition is an essay by Arundhati Roy titled *The Doctor and the Saint*.