THE IMPACT OF THE SEVERE OR PERVASIVE STANDARD ON BLACK EMPLOYEES IN THE WORKPLACE

Introduction

Title VII of the Civil Rights Act of 1964 was established to prohibit discriminatory practices in the workplace. Title VII was originally enacted without explicitly referencing workplace harassment, as its primary text focused on prohibiting discrimination regarding an individual's compensation, terms, conditions, or privileges of employment.[1] The early legal landscape was defined by an expansive vision of civil rights, most notably in *Rogers v. EEOC*, where the Fifth Circuit recognized that an employee's psychological stability is protected from a work environment heavily charged with ethnic or racial discrimination.[2] This unconstrictive interpretation viewed the statute as a charter of principles meant to eradicate discriminatory atmospheres that polluted the workplace, even before such conduct resulted in a tangible economic loss.[3] By prioritizing the consequences or effects of workplace bias rather than narrow employer motivations, early jurisprudence established a broad protective net intended to prevent the inconvenience, unfairness, and humiliation of ethnic discrimination.[4]

The formalization of these protections occurred decades later when the Supreme Court officially recognized hostile work environment claims as actionable under Title VII in *Meritor Savings Bank, FSB v. Vinson*.[5] *Meritor* solidified the requirement that for such conduct to be unlawful, it must be sufficiently severe or pervasive to alter the conditions of the victim's

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[1] *See* 42 U.S.C. § 2000e-2(a)(1); *Rogers v. Equal Emp. Opportunity Comm'n*, 454 F.2d 234, 238 (5th Cir. 1971).
[2] *See Rogers*, 454 F.2d at 238.
[3] *See Id*; Frances Baillon & Michelle Gibbons, *Race-Based Hostile Work Environment Claims in Federal and Minnesota Courts*, 48 Mitchell Hamline L. Rev. 863, 867 (2022).
[4] *See Rogers*, 454 F.2d at 238–39; Baillon & Gibbons, *supra*, at 868.
[5] *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986).

employment.[6] This standard was further refined in *Harris v. Forklift Systems, Inc*., which established the middle path designed to navigate between making all offensive conduct actionable and requiring a tangible psychological injury.[7] However, while these landmark cases sought to balance workplace equality with practical litigation filters, this historical formalization inadvertently set the stage for the modern restrictive application that increasingly filters out legitimate racial harassment claims.[8] Transitioning from the original unconstrictive vision of stability to this modern demanding inquiry reveals why the current legal bar has become an impossible and unattainable hurdle for many Black workplace survivors.[9]

However, the judicial application of the severe or pervasive standard in hostile work environment claims creates harmful barriers for Black employees seeking redress by establishing a legal bar that often feels impossible and unattainable. This paper argues that the current middle path interpretation, as clarified by the Supreme Court in *Harris v. Forklift Sys., Inc*., inadvertently hinders the reporting and successful litigation of racial hostile work environment claims. I suggest that the standard should be replaced with a less stringent and more current framework to ensure that the civil rights of Black workplace harassment survivors are effectively protected.

This thesis addresses the core elements of the severe or persuasive standard by identifying how the marginalized subgroup of Black Americans and the legal statutes and case law at the center of the conflict, are the systemic problem of unreported complaints. It sets the stage for my research paper to analyze how current legal interpretations fail to address the realities of racial

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[6] *See Meritor*, 477 U.S. at 67; Heather L. Kleinschmidt, *Reconsidering Severe or Pervasive: Aligning the Standard in Sexual Harassment and Racial Harassment Causes of Action*, 80 Ind. L.J. 1119, 1123 (2005).
[7] *See Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21–22 (1993).
[8] *Id*. at 21.
[9] *See* Baillon & Gibbons, *supra*, at 864; Kristy D'Angelo-Corker, *Severe or Pervasive Should Not Mean Impossible and Unattainable*, 50 Hofstra L. Rev. 1, 18 (2021).

harassment and why a policy shift is necessary to align the legal standard with the lived experiences of survivors. Ultimately, this paper aims to clarify how these high standards for severity adversely affect the terms, conditions, or privileges of employment for Black workers, highlighting a critical gap in the practical application of foundational civil rights protections.

Accordingly, this paper is organized into three distinct parts to provide a comprehensive analysis of the legal barriers facing Black employees and the necessary reforms to ensure workplace justice. Part I establishes the framework for understanding the systemic hurdles faced by Black employees, highlighting their high representation in essential service sectors alongside persistent economic disparities and the subjective experience of workplace bias. This section also traces the legal evolution of the severe or pervasive standard, identifying its origins in the early vision of psychological stability and its eventual refinement into a middle path for legal claims. Part II examines the standard's modern application and its departure from the expansive protective intent of early civil rights jurisprudence. This analysis details the judicial drift toward summary judgment, where courts frequently deconstruct the totality of the circumstances into isolated incidents to dismiss legitimate racial harassment claims before they can reach a jury. Furthermore, Part II analyzes the emerging circuit split regarding whether the Supreme Court's "some harm" threshold in Muldrow applies to atmosphere-based claims, a conflict that highlights the current unpredictability of Title VII protections.

Part III proposes a multi-faceted approach to dismantling these barriers through structural legislative, procedural, and workplace-level reforms. This section advocates for the legislative replacement of the current standard with a harm-based model and the alignment of racial and sexual harassment standards to ensure consistent protective intent. Finally, Part III recommends restricting the use of nondisclosure agreements and mandatory arbitration while adopting a jury-

centric summary judgment process to increase transparency and restore access to public justice for workplace harassment survivors.

I. Background and Context

The background and context section of this paper establishes a robust framework for understanding the systemic hurdles faced by the more than 21 million Black Americans in the labor force. Part A highlights the high representation of Black employees in essential service sectors alongside persistent economic disparities. These empirical findings are then analyzed alongside systemic issues, including the use of repulsive racial epithets motivated by power dynamics aimed at maintaining control over subordinate groups rather than simple office friction. Part B traces the legal evolution of the severe or pervasive standard from the early expansive vision of psychological stability in *Rogers v. EEOC* to the modern middle path established in *Meritor* and *Harris*, which requires a severe or pervasive showing to create an actionable hostile work environment. To conclude, the section details the current application of the totality of the circumstances test, which requires environments to be both objectively and subjectively abusive based on factors like frequency and physical threats.

A. Employment Discrimination of Black Employees

The current landscape for the more than 21 million Black Americans in the U.S. labor force is defined by significant representation in specific service sectors alongside persistent economic disparities.[10] Black workers make up disproportionately large shares of the workforce in fields

[10] Katherine Schaeffer, *Black workers' views and experiences in the U.S. labor force stand out in key ways*, PEW RSCH. CTR. (Aug. 31, 2023), https://pewrsr.ch/3suXlFn.

such as postal service clerks (40.4%), transit and bus drivers (36.6%), and nursing assistants (36.0%).[11] Despite this high level of participation in essential roles, systemic inequality remains evident in earnings and employment stability.[12] For instance, the median weekly earnings for Black full-time workers is $878, which is significantly lower than the 1,059 median for all U.S. workers.[13] Furthermore, the unemployment rate for Black Americans consistently remains roughly double the rate of the U.S. population overall, reflecting deep-seated structural barriers to equitable employment opportunities.[14]

The subjective experience of the workplace for many Black employees is frequently shaped by racial discrimination and perceived bias.[15] 41% of Black workers report having experienced discrimination or unfair treatment in hiring, pay, or promotions because of their race, a figure notably higher than those reported by Asian (25%), Hispanic (20%), or White (8%) workers.[16] This systemic issue is further illustrated by the fact that 51% of Black employees believe their race makes it harder to succeed in their current workplace.[17] Moreover, a majority of this group identifies bias as a major problem in fundamental employment processes, with 64% citing bias in hiring and 56% citing bias in performance evaluations as significant hurdles.[18]

There are several systemic issues and biases that continue to contribute to discrimination, particularly the use of racial stereotypes and the exercise of power.[19] In some workplaces, Black

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[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] Katherine Schaeffer, *Black workers' views and experiences in the U.S. labor force stand out in key ways*, PEW RSCH. CTR. (Aug. 31, 2023), https://pewrsr.ch/3suXlFn.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Heather L. Kleinschmidt, *Reconsidering Severe or Pervasive: Aligning the Standard in Sexual Harassment and Racial Harassment Causes of Action*, 80 Ind. L.J. 1119, 1136-37 (2005).

employees have been subjected to morally repulsive conduct, including the use of racial epithets like the "N-word" or derogatory terms such as "lawn jockey," which are often dismissed by courts as mere isolated or offhand comments.[20] Scholarly analysis suggests that this harassment is frequently motivated by power dynamics and the desire to maintain control over a subordinate group, rather than being simple office friction.[21]

Ultimately, the disconnect between the high prevalence of reported discrimination and the low rate of successful litigation is exacerbated by the severe or pervasive legal bar., which often feels impossible and unattainable for Black survivors.[22] The judicial drift toward using summary judgment to dismiss claims before they can reach a jury, often by deconstructing a totality of the circumstances into isolated incidents that do not meet a judge's threshold for severity.[23] Because the current legal framework frequently fails to account for the social context and real-world impact of racial slurs, many Black employees find themselves hindered from reporting or successfully litigating hostile work environment claims.

B. The Severe or Pervasive Standard in Hostile Work Environment Claims

The severe or pervasive standard is the legal test used to determine whether workplace harassment is actionable under Title VII of the Civil Rights Act of 1964.[24] Title VII established that it is unlawful to discriminate against an individual's compensation, terms, conditions, or

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[20] *Singletary v. Mo. Dep't of Corr*., 423 F.3d 886, 893 (8th Cir. 2005); *Canady v. Wal-Mart Stores, Inc*., 440 F.3d 1031, 1035 (8th Cir. 2006).
[21] Heather L. Kleinschmidt, *Reconsidering Severe or Pervasive: Aligning the Standard in Sexual Harassment and Racial Harassment Causes of Action*, 80 Ind. L.J. 1119, 1136-37 (2005).
[22] Kristy D'Angelo-Corker, *Severe or Pervasive Should Not Mean Impossible and Unattainable*, 50 Hofstra L. Rev. 1, 49 (2021).
[23] *Id*. at 18. (*Citing Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75, 81 (1998)).
[24] *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21 (1993).

privileges of employment based on race.[25] While the statute originally lacked the term "harassment," early judicial interpretations such as *Rogers v. EEOC* (1971) recognized that a work environment heavily charged with ethnic or racial discrimination could destroy the psychological stability of minority workers.[26] This legal evolution eventually led to landmark Supreme Court decisions in *Meritor Savings Bank, FSB v. Vinson* (1986), which officially recognized a hostile work environment as a form of actionable discrimination, and *Harris v. Forklift Systems, Inc.* (1993), which established the severe or pervasive standard as a middle path for legal claims.[27]

For harassment to be legally prohibited, the discriminatory conduct must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.[28] The Supreme Court in *Harris v. Forklift Sys., Inc*. clarified that this standard takes a middle path between making all merely offensive conduct actionable and requiring the victim to suffer a tangible psychological injury.[29]

The standard is comprised of two primary components: an objective and a subjective requirement.[30] Objectively, the work environment must be one that a reasonable person would find hostile or abusive.[31] Subjectively, the specific victim must actually perceive the environment to be abusive.[32] If the victim does not subjectively perceive the environment as hostile, the conduct has not actually altered their conditions of employment, and there is no Title VII violation.[33] To

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[25] 42 U.S.C. § 2000e-2(a)(1).
[26] *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971).
[27] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65-66 (1986); *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21 (1993).
[28] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).
[29] *Harris*, 510 U.S. at 21.
[30] *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21–22 (1993).
[31] *Id*. at 21.
[32] *Id*. at 21–22.
[33] *Id*.

determine whether an environment meets this standard, courts must examine the totality of the circumstances rather than looking at individual acts in isolation.[34] The specific factors considered in this analysis include the frequency of the discriminatory conduct.[35] A second factor is the severity of the conduct.[36] A third factor is whether the conduct is physically threatening or humiliating, as opposed to being a mere offensive utterance.[37] Finally, courts evaluate whether the conduct unreasonably interferes with an employee's work performance.[38]

Crucially, the standard is disjunctive, meaning the conduct must be either severe or pervasive to be unlawful.[39] Because of this "either/or" nature, a single, extremely serious isolated incident can be enough to state a claim if it is sufficiently severe.[40] Conversely, conduct that is not extreme on its own may still be actionable if it occurs frequently enough to be considered pervasive.[41] In all instances, the severity must be judged from the perspective of a reasonable person in the plaintiff's position, which requires careful consideration of the social context in which the behavior occurs.[42] Ultimately, hostile work environment claims are based on the cumulative effect of individual acts that collectively constitute one unlawful employment practice.[43] Most importantly, recent cases show that courts still apply this interpretation of the standard to the current judicial interpretation of the severe or pervasive standard.[44]

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[34] *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] *Castleberry v. STI Grp*., 863 F.3d 259, 264 (3d Cir. 2017).
[40] *Id*.
[41] *Id*.
[42] *Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 81 (1998).
[43] *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002).
[44] *See, e.g., United States v. Tate*, 82 M.J. 291 (C.A.A.F. 2022) (Affirming that Muldrow did not eliminate the severe or pervasive requirement for hostile work environment claims, maintaining the standard that the workplace must be objectively abusive); *Nyamu v. Merck & Co*., No. 22-

II. The Legal Barriers of the Severe or Pervasive Standard and It's Modern Application

The legal history of the severe or pervasive standard reveals a gradual shift from an expansive, protective intent toward a restrictive judicial filter that often excludes actionable racial harassment. This analysis first traces the standard's evolution, beginning with the unconstrictive vision of psychological stability established in *Rogers v. EEOC* and the formal recognition of hostile environment claims in *Meritor Savings Bank, FSB v. Vinson*. The section then examines how *Harris v. Forklift Systems, Inc*. refined the framework into a middle path for legal claims, followed by *National Railroad Passenger Corp. v. Morgan*, which institutionalized the requirement for a cumulative effect of individual acts. Lastly, this section addresses the standard's modern application, specifically analyzing the emerging circuit split over whether the Supreme Court's ruling in *Muldrow v. City of St. Louis* creates a lower, more accessible harm threshold for atmosphere-based claims. The Severe and Pervasive Standard Deviates from the Expansive Protective Intent of Early Civil Rights Jurisprudence.

A. The Severe and Pervasive Standard Deviates from the Expansive Protective Intent of Early Civil Rights Jurisprudence

4788, 2025 U.S. Dist. LEXIS 174794 (E.D. Pa. Sep. 8, 2025) (Dismissing a hostile work environment claim, finding that a supervisor's alleged bullying did not rise to the level of severe or pervasive conduct).

The current severe or pervasive standard deviates from the originally expansive protective intent of Title VII by replacing a broad inquiry into the workplace atmosphere with a restrictive legal threshold that often filters out actionable racial harassment. Title VII's protection of the terms, conditions, or privileges of employment was originally interpreted as an expansive concept designed to define discrimination in the broadest possible terms.[45] Under this unconstrictive view, the statute was intended to eradicate working environments heavily polluted with discrimination that destroy the emotional and psychological stability of minority workers.[46] However, modern jurisprudence mandates that a hostile work environment is only actionable when discriminatory conduct is sufficiently severe or pervasive to alter the conditions of employment and create an abusive environment.[47] For race-based claims, this standard requires that workplace conduct not be measured in isolation but rather through a cumulative threshold that excludes offhand comments and sporadic incidents.[48]

In *Rogers v. EEOC*, a Spanish-surnamed employee alleged her employer created a discriminatory atmosphere by segregating patients according to their national origin.[49] The Fifth Circuit did not reach a determination as to whether the conduct met the severe or pervasive standard because the standard had not yet been established by the Supreme Court.[50] Rather, the court held that Title VII's protection of terms, conditions, or privileges of employment is an expansive concept that includes an employee's psychological stability.[51] While the court recognized that a workplace heavily polluted with discrimination could be unlawful, it specifically

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[45] *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971).
[46] *Id*.
[47] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).
[48] *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115-16 (2002).
[49] *Rogers v. EEOC*, 454 F.2d 234, 236 (5th Cir. 1971).
[50] *Id.* at 238, 240.
[51] *Id.* at 238.

left the judicial evaluation of the patient segregation's impact on employment conditions for another day.[52]

In *Meritor Savings Bank, FSB v. Vinson*, a bank employee alleged that her supervisor subjected her to constant sexual harassment over a four-year period, including approximately forty to fifty instances of intercourse, fondling in front of coworkers, following her into the restroom, and multiple forcible rapes.[53] The Supreme Court reached a determination that these allegations, which involved both pervasive harassment and criminal conduct of the most serious nature, were plainly sufficient to state an actionable claim for hostile environment sexual harassment.[54] This landmark ruling established that Title VII's protections extend beyond the tangible loss of an economic character to include the psychological aspects of the workplace environment.[55]

In the early days of civil rights, courts treated Title VII as a wide-reaching net meant to clean up any workplace polluted with discrimination that harmed a worker's mental stability. Under the original approach in *Rogers v. EEOC*, the law was a flexible charter of principles designed to stop the humiliation of racial bias from infecting the entire work atmosphere. However, modern courts have since built a high wall using the severe or pervasive standard, which often blocks employees from getting their claims heard. While the Supreme Court in *Meritor Savings Bank, FSB v. Vinson* claimed to still care about the entire spectrum of treatment, they actually narrowed the law by ruling that a boss's mere utterance of an epithet is usually not enough to violate the statute. This shift creates a dangerous gap because it tells workers they must wait until harassment

[52] *Id.* at 238, 241.
[53] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 60–61 (1986).
[54] *Meritor*, 477 U.S. at 67.
[55] *Meritor*, 477 U.S. at 64.

becomes extreme before the law will step in, rather than protecting them from a toxic environment early on.

For example, in *National Railroad Passenger Corp. v. Morgan*, a Black employee alleged he was consistently harassed and disciplined more harshly than his white counterparts over several years, citing racial jokes and the use of racial epithets by managers.[56] The Supreme Court held that because a hostile work environment is composed of a series of separate acts that collectively constitute one unlawful employment practice, a court may consider the entire scope of the claim for purposes of assessing liability as long as at least one contributing act occurs within the statutory filing period.[57] This ruling stands for the principle that atmosphere-based claims are unique because their very nature involves repeated conduct rather than discrete, independent events.[58]

While Morgan provided a procedural mechanism to capture long-term abuse, it simultaneously facilitated a shift in how courts apply the severe or pervasive standard by emphasizing that these claims depend on a cumulative effect.[59] This shift moved judicial focus away from the individual impact of specific racial slurs and toward a demanding, multi-factor inquiry that examines the frequency and totality of the conduct.[60] By framing the legal injury as a product of repeated conduct, the Court established a framework where single acts of harassment are often deemed non-actionable on their own.[61]

The primary takeaway from this shift is that modern courts have adopted a restrictive application of the Morgan framework to filter out race-based claims before they can reach a jury.

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[56] *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 104–05, 120 (2002).
[57] *Id*. at 117, 120–21.
[58] *Id*. at 115.
[59] *See Morgan*, 536 U.S. at 115, 117.
[60] *See Morgan*, 536 U.S. at 115–16; *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 23 (1993).
[61] See *Morgan*, 536 U.S. at 115.

Judges frequently use the cumulative nature of the test to deconstruct a series of events into isolated incidents, dismissing vitriolic conduct, such as the use of racial epithets, as mere offhand comments or sporadic behavior that does not meet a high bar for severity.[62] Ultimately, this restrictive interpretation creates a dangerous gap in protection by failing to account for the social context and deep pain caused by racial symbols, rendering basic civil rights protections feel unfair and unattainable for many workplace survivors who just want an equal chance to succeed.

B. The Middle Path Established in Harris Inadvertently Filters Out Actionable Racial harassment

In the landmark case of *Harris v. Forklift Sys., Inc.*, the Supreme Court reaffirmed the severe or pervasive standard and positioned it as a middle path in Title VII jurisprudence.[63] This standard was specifically designed to navigate between two extremes.[64] On one hand, it ensures that Title VII makes more than merely offensive conduct actionable, yet on the other hand it does not require a plaintiff to prove they suffered a tangible psychological injury.[65] The Court reasoned that the law's protection of workplace equality comes into play before the harassment leads to a nervous breakdown.[66]

In *Harris v. Forklift Systems, Inc*., a female manager alleged her supervisor created an abusive environment by directing gender-based insults at her, such as calling her a dumb ass woman and making sexual innuendos in front of other employees.[67] The Supreme Court held that

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[62] *See Id*. at 15–16, 21.
[63] *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21 (1993).
[64] *Id*. at 21.
[65] *Id*.
[66] *Id.* at 22.
[67] *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 19 (1993).

a hostile work environment is actionable under Title VII if the conduct is sufficiently severe or pervasive to create an environment that a reasonable person would find abusive and which the victim subjectively perceives as such.[68] The Court reasoned that Title VII strikes a middle path between conduct that is merely offensive and that which causes a tangible psychological injury, as the statute's protection of workplace equality begins before harassment leads to a nervous breakdown.[69] To determine liability, courts must examine the totality of the circumstances.[70]

To determine whether a work environment is hostile or abusive under this middle path, Harris established a non-exhaustive totality of the circumstances test.[71] These factors include the frequency of the discriminatory conduct, its severity, whether the conduct is physically threatening or humiliating as opposed to a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance.[72] While the Court noted that an employee's psychological well-being is relevant to whether they subjectively perceived the environment as abusive, it is not a required element of the claim.[73]

Within the broader context of Landmark Supreme Court Cases, Harris serves as the critical bridge between *Meritor Savings Bank, FSB v. Vinson* (1986) and National Railroad Passenger Corp. v. Morgan (2002). While *Meritor* first established that a hostile work environment is an actionable form of discrimination under Title VII, Harris refined the standard by explicitly rejecting the psychological harm requirement that some lower courts had imposed. Later, in

[68] *Id*. at 21–22.
[69] *Id*.
[70] *Id*. at 23.
[71] *Id*. at 20.
[72] *Id*. at. 23.
[73] *Id*.

Morgan, the Court adopted this Harris framework specifically for racial hostile work environment claims, viewing the cumulative effect of individual acts as a single unlawful employment practice.

Despite the Court's intent to maintain a balanced standard, the middle path has evolved into a restrictive hurdle for Black employees. Scholars argue that the Harris test has facilitated a judicial drift toward using summary judgment to dismiss claims involving vitriolic racial conduct by labeling them as isolated or offhand incidents. Consequently, while Harris quoted the expansive and unconstrictive language of early cases like *Rogers v. EEOC* (1971), its practical application has often filtered out actionable racial harassment, rendering actionable racial harassment filtered out.

C. The Circuit Split on Whether to Apply a Lower Threshold to the Severe or Pervasive Standard in Hostile Work Environment Claims

The circuit split regarding the accessibility of the severe or pervasive standard is a longstanding conflict that predates the Supreme Court's 2024 ruling in *Muldrow v. City of St. Louis*. While some appellate courts have historically maintained a high wall that filters out all but the most frequent or extreme conduct, others have moved toward a more attainable standard by emphasizing the disjunctive nature of the legal test. This divide reflects a fundamental disagreement over whether the law should primarily target the cumulative frequency of harassment or the psychological impact of individual, vitriolic acts.

For nearly a decade, the Third and the Fourth Circuits have pioneered a more accessible standard for hostile work environment claims by holding that a single, extremely serious isolated

incident can independently satisfy the severity prong.[74] For example, in the Fourth Circuit in *Boyer-Liberto v. Fontainebleau Corp*. (2015), an African-American waitress alleged that a manager called her a "porch monkey" on two consecutive days while shouting at her and threatening her with the loss of her job.[75] The Fourth Circuit held that a hostile work environment can be established by a single extremely serious isolated incident of harassment, provided the conduct is sufficiently severe to alter the conditions of employment.[76] Reasoning that racial epithets like "porch monkey" are degrading and humiliating in the extreme, the court moved toward a more accessible standard by overruling restrictive precedent that had previously required employees to wait for a plan of repeated harassment to unfold before seeking protection.[77] By emphasizing the disjunctive nature of the severe or pervasive test, the court ensured that survivors of vitriolic, one-time incidents can reach a jury without proving a regular pattern of abuse.[78]

Similarly, two years later in the Third Circuit in *Castleberry v. STI Group* (2017), two African-American laborers alleged their supervisor used a vitriolic racial slur while threatening them with termination, an incident accompanied by anonymous discriminatory notes on sign-in sheets and disparate task assignments.[79] The Third Circuit held that the lower court applied an incorrect legal threshold by requiring harassment to be pervasive and regular, clarifying instead that the correct standard is the disjunctive severe or pervasive.[80] The court reasoned that severity and pervasiveness are alternative possibilities, meaning that a single extremely serious isolated incident, such as a supervisor's use of a racial epithet, is sufficient to contaminate a workplace

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[74] *Boyer-Liberto v. Fontainebleau Corp*., 786 F.3d 264, 268, 208-281 (4th Cir. 2015).
[75] *Boyer-Liberto v. Fontainebleau Corp*., 786 F.3d 264, 268–70 (4th Cir. 2015) (en banc).
[76] *Id*. at 268, 280–81.
[77] *Id*. at 268, 280, 284.
[78] *Id*. at 284; *Castleberry v. STI Grp*., 863 F.3d 259, 264 (3d Cir. 2017).
[79] *Castleberry v. STI Grp*., 863 F.3d 259, 264–65 (3d Cir. 2017).
[80] *Id*. at 263–64.

environment even if it is not frequent.[81] By abandoning the restrictive regularity requirement and acknowledging that a lone, egregious act can be actionable, the court moved the circuit toward a more accessible standard that removes the harmful barrier of proving a pattern of abuse for survivors of vitriolic harassment.[82] These decisions effectively opened a judicial door for survivors of concentrated racial vitriol who were previously blocked by a requirement for constant repetition.

Conversely, other jurisdictions like the Fifth Circuit have historically maintained a much more demanding inquiry that often requires evidence of a sustained and uninterrupted pattern of abuse to satisfy the pervasiveness threshold.[83] For example, in *Wantou v. Wal-Mart Stores Texas, L.L.C.* (2022), a Black pharmacist from Cameroon alleged that several coworkers repeatedly harassed him by calling him the names of various animals and making derogatory comments about his accent and home country.[84] The Fifth Circuit held that the district court properly dismissed the hostile work environment claim, reasoning that physical threats are not necessary to state a claim and animal comparisons are uniquely harmful.[85] The plaintiff failed to show a triable issue regarding whether the harassment continued after management issued an initial warning.[86]

This outcome illustrates the significant difficulty of establishing a pervasive environment when judges focus heavily on the documented frequency of specific incidents rather than the deep social impact of vitriolic racial insults. Ultimately, by requiring evidence of a sustained and uninterrupted pattern of abuse to satisfy the pervasiveness prong, the court effectively filtered out

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[81] *Id*. at 264–66.
[82] *Id*. at 264–65.
[83] *Wantou v. Wal-Mart Stores Tex., L.L.C.*, 23 F.4th 422, 433–35 (5th Cir. 2022).
[84] *Id.* at 433, 437 (5th Cir. 2022).
[85] *Id*. at 433–35.
[86] *Id*.

conduct that was otherwise recognized as reprehensible, demonstrating how this legal requirement often functions as an unattainable hurdle for survivors of concentrated racial vitriol.

The complexity of this existing split was recently heightened by the Supreme Court's 2024 ruling in *Muldrow v. City of St. Louis*, which redefined the harm threshold for discrete discriminatory acts. The Court in *Muldrow* established the principle that a Title VII plaintiff challenging a discrete discriminatory act, such as an involuntary job transfer, must show only some harm regarding their employment conditions rather than a significant or material disadvantage.[87] The case involved a female police sergeant who was moved from a prestigious specialized intelligence division to a uniformed patrol role, resulting in a less regular schedule and the loss of a take-home vehicle.[88] While the Supreme Court held that these changes were sufficient to satisfy the injury requirement for a disparate treatment claim, this lower threshold for specific decisions actually reinforces the necessity of the heightened standard for hostile work environment claims.[89]

While this decision definitely lowered the bar for specific employment decisions, it sparked a new legal debate over whether this more lenient some harm threshold should also abrogate the traditional sever or pervasive requirement for atmosphere-based claims. Unlike discrete acts which are independent and immediately actionable, hostile environment claims rely on a cumulative effect of smaller occurrences that may not be unlawful on their own.[90] Therefore, the traditional severe or pervasive requirement remains a crucial filter to ensure that environment-based claims

[87] *Muldrow v. City of St. Louis*, 601 U.S. 346, 350, 354–55 (2024).
[88] *Id*. at 350–51.
[89] *Id*. at 359; *Russell v. United States Army*, No. 23-3162, 2025 WL 631023, at 4 (10th Cir. Feb. 24, 2025).
[90] *See Russell*, 2025 WL 631023, at 4; *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002).

represent a true alteration of employment terms rather than minor workplace antagonisms.[91] Ultimately, by maintaining this distinction, the law ensures that the lower harm bar for specific employment acts does not inadvertently eliminate the severity requirement that identifies a legally toxic atmosphere.

The Tenth Circuit has since explicitly rejected the. Application for Muldrow's lower threshold to hostile work environment claims, thereby doubling down on existing heightened standard in restrictive jurisdictions. In *Russell v. United States Army* (2025), a male civilian employee alleged his female supervisor created a hostile work environment through gender-segregated meetings, discriminatory appointment requirements, and removing him from leadership communications.[92] The Tenth Circuit held that the some harm threshold established for discrete acts in *Muldrow v. City of St. Louis* does not apply to hostile work environment claims, which still must meet the traditional severe or pervasive standard.[93] The court reasoned that while discrete acts are independent events, environment-based claims involve a cumulative effect of actions that are not actionable on their own, meaning the severity filter remains integral to identifying a legal injury.[94] Ultimately, the court concluded that this high bar is crucial to prevent Title VII from expanding into a general civility code that would improperly police all minor workplace antagonisms.[95]

These recent appellate decisions demonstrate a shift toward making the legal threshold more attainable by clarifying that the traditional test is alternative rather than additive. In

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[91] *See Russell*, 2025 WL 631023, at 4, 6; *Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 81 (1998).
[92] *Russell v. Driscoll*, 157 F.4th 1348, 1349-50 (10th Cir. 2025).
[93] *Id*. at 1351–52.
[94] *Id*. at 1352; *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002).
[95] *Russell*, 157 F.4th at 1352 (10th Cir. 2025); *Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 81 (1998).

jurisdictions like the Third Circuit, a worker no longer needs to prove a long-standing pattern of abuse if they can show that one specific moment of harassment was sufficiently extreme. Similarly, the Fourth Circuit has determined that a solitary but deeply offensive racial insult from a supervisor can immediately transform a workplace into an illegal environment. This interpretation prevents the law from forcing employees to endure a growing plan of harassment before they are allowed to seek legal help. By focusing on the high impact of single, vitriolic acts, these courts have effectively opened a door for survivors that was previously blocked by a requirement for constant repetition.[96]

Despite this movement toward a more accessible standard, other courts like *Russell* have firmly rejected the idea that recent Supreme Court rulings regarding job transfers should lower the bar for atmosphere-based claims. The Tenth Circuit maintains that because hostile environment cases involve many small acts that build up over time, the traditional requirement for serious or widespread conduct remains a necessary filter. This view argues that environment claims are different in nature from independent employment decisions like transfers, which only require a showing of some disadvantage. Consequently, in these jurisdictions, the traditional high wall remains in place to stop the law from policing every minor workplace conflict that does not reach a major level of abuse. This creates a significant legal gap where the same offensive conduct might reach a jury in one part of the country while being dismissed as a minor annoyance in another.

D. The Impact of Summary Judgment within the Severe or Pervasive Standard

[96] *Castleberry*, 863 F.3d at 264; *Boyer-Liberto*, 786 F.3d at 281.

The judicial practice toward substituting summary judgment for trial has fundamentally corrupted the severe or pervasive standard by allowing judges to pre-screen claims through their own subjective lenses. By transforming summary judgment from a tool to identify genuine disputes into a full dress-rehearsal for trial, courts now impose evidentiary burdens that mimic a full trial, effectively filtering out legitimate racial harassment claims before they can ever reach a jury of peers. This process frequently involves judges deconstructing a totality of the circumstances into a series of isolated incidents or offhand comments, thereby ignoring the cumulative, toxic effect of repeated racial vitriol. As a result, courts have parsed out dozens of racially charged actions, labeling them as "ill-chosen" but non-actionable as a matter of law. This practice creates a legal bar that is impossible and unattainable for Black employees, as it requires them to endure an extreme level of abuse before the law recognizes a change in their employment conditions.

For example, in *Nichols v. Michigan City Area Schools*, an African American temporary janitor alleged a series of incidents that occurred during a two-and-a-half-week assignment.[97] He was called a "Black n----r" by a food service manager, heard that same coworker ask "Where that boy at?" in his presence, had a food tray slammed into his chest, and was subjected to a suspected entrapment ruse involving an unattended purse.[98] This case stands for the proposition that a single, unambiguous racial epithet is generally insufficient to establish an actionable hostile work environment claim, even when coupled with other workplace antagonisms.[99] The Seventh Circuit reached a legal determination affirming summary judgment for the employer, reasoning that while the slur was deplorable, it was not severe enough to rise to

[97] *Nichols v. Michigan City Area Schs*., 755 F.3d 594, 598, 601 (7th Cir. 2014).
[98] *Id*.
[99] *Id*. at 601.

the level of liability and that the other incidents lacked sufficient context to prove they were directed at the employee because of his race.[100]

Similarly, in *Allen v. Ambu-Stat, LLC*, a female emergency medical technician alleged that her supervisor, the company's co-owner, subjected her to a series of sexually graphic comments.[101] The incidents included the employer telling her she was "fine as hell," comparing her "big old butt" to that of his ex-girlfriend, making crude references to oral sex, sending "tongue" emojis, and two instances where the supervisor's four-year-old son slapped her buttocks while the supervisor laughed.[102] This case stands for the principle that even explicit sexual references and physical contact can be dismissed as sporadic or joking if the court perceives the overarching relationship as friendly.[103] The Eleventh Circuit affirmed the summary judgment for the employer, reasoning that these one-off comments failed to meet the pervasiveness threshold required to alter the conditions of employment.[104]

These summary judgment decisions illustrate the judicial drift where judges replace the jury's role by deconstructing a series of events into isolated, non-actionable incidents. The takeaway from this shift is the adoption of a restrictive application that filters out legitimate racial harassment claims by declaring a plaintiff's theory insufficient as a matter of law before it can reach a jury of peers.[105] Ultimately, this judicial practice transforms the severe or pervasive

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[100] *Id*. at 597, 601–02.
[101] *Allen v. Ambu-Stat, LLC*, 799 F. App'x 704, 705–06 (11th Cir. 2020).
[102] *Id*.
[103] *Id*. at 708–09.
[104] *Id*. at 708, 710.
[105] *See* Frances Baillon & Michelle Gibbons, *Race-Based Hostile Work Environment Claims*, 48 Mitchell Hamline L. Rev. 863, 874 (2022).

standard into an unattainable bar that fails to account for the deep social impact and pain caused by vitriolic racial conduct in the modern workplace.[106]

III. A New Standard with the Precision Necessary to Account for Racial Social Context

As dissected above, Black employees face a number of legal barriers when trying to sufficiently meet the severe or pervasive standard for hostile work environment claims: (1) the restrictive judicial application of the severe or pervasive standard, (2) the institutionalized requirement for a cumulative effect in hostile environment claims, (3) the systemic under-reporting of racial harassment complaints, (4) the judicial drift toward summary judgment that deconstructs vitriolic conduct into isolated incidents, (5) the failure of courts to recognize the social context and impact of racial symbols, and (6) the emerging circuit split regarding whether the *Muldrow* some-harm threshold should lower the bar for atmosphere-based claims. Accordingly, in order to dismantle the barrier created by the current judicial application of the severe or pervasive standard, a multi-faceted approach involving legislative, procedural, and workplace-level reforms is required.

I will first discuss the advantages and disadvantages of a legislative replacement of the current standard with a framework similar to the New York, which recognizes harassment whenever an individual is subjected to inferior terms, conditions or privileges of employment regardless of whether the conduct is severe or pervasive. I will also discuss the importance of how

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[106] *See* Kristy D'Angelo-Corker, *Severe or Pervasive Should Not Mean Impossible and Unattainable*, 50 Hofstra L. Rev. 1, 18 (2021).

moving toward a jury-centric summary judgment standard is essential to prevent judges from deconstructing cumulative racial friction into isolated, non-actionable incidents. Lastly, implementing proactive initiatives like aligning racial and sexual harassment standards will ensure a consistent, protective application of Title VII that acknowledges the deep social context and impact of racial symbols.

A. *Redefining the Legal Threshold through Legislative Reform*

To address the restrictive nature of current hostile work environment jurisprudence, this proposal advocates for a legislative replacement of the severe or pervasive standard with a harm-based model and the alignment of racial and sexual harassment standards. This model, drawing from the New York State Human Rights Law[107], defines harassment as an unlawful discriminatory practice whenever an individual is subjected to inferior terms, conditions or privileges of employment.[108] This is because of their membership in a protected class, regardless of whether the conduct meets the traditional threshold.[109] By explicitly aligning race and sex standards, the law ensures that the totality of the circumstances is evaluated with consistent protective intent across all Title VII protected classes.[110] This dual-pronged reform aims to bridge the critical gap between documented workplace bias and the current legal framework that frequently filters out actionable

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[107] The New York model aligns racial and sexual harassment standards by replacing the restrictive severe or pervasive requirement with a unified statutory framework that applies equally to all protected categories under N.Y. Exec. Law § 296(1)(h). This alignment is achieved through Section 1(h), which explicitly prohibits harassment based on race, color, and sex, among others, regardless of whether such harassment would be considered severe or pervasive under prior judicial precedent.

[108] N.Y. Exec. Law § 296(1)(h).

[109] *Id*.

[110] Heather L. Kleinschmidt, *Reconsidering Severe or Pervasive: Aligning the Standard in Sexual Harassment and Racial Harassment Causes of Action*, 80 Ind. L.J. 1119, 1119 (2005).

racial harassment. Ultimately, redefinition ensures that the civil rights of workplace survivors are effectively protected through a standard that reflects modern understandings of workplace power dynamics.[111]

The primary advantage of this legislative reform is that it dismantles a legal bar that is currently viewed as impossible and unattainable for Black employees.[112] By lowering the burdensome threshold, the law can effectively reach vitriolic racial conduct, such as the use of offensive epithets, that judges often dismiss at the summary judgment stage as mere isolated comments. Furthermore, aligning racial and sexual harassment standards prevents courts from importing more stringent severe and pervasive requirements that have historically plagued sex-based claims into race-based litigation.[113] This alignment also benefits minority group women, whose experiences of harassment often sit at the intersection of race and sex, by ensuring their claims are not fragmented under different legal tests.[114] Finally, the move to a harm-based model serves as a powerful deterrent, putting employers on notice that discriminatory behavior will be addressed before it escalates to a nervous breakdown.[115]

The primary disadvantages of such a legislative shift include persistent judicial and policy concerns that a lower harm threshold might transform civil rights law into a general civility code for the American workplace.[116] Opponents argue that redefining harassment in less stringent terms could lead to an increased volume of litigation, potentially swamping the court system with

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[111] Kristy D'Angelo-Corker, *Severe or Pervasive Should Not Mean Impossible and Unattainable*, 50 Hofstra L. Rev. 1, 18 (2021).
[112] D'Angelo-Corker, *supra*, at 18.
[113] Kleinschmidt, *supra*, at 1120, 1131.
[114] Kleinschmidt, *supra*, at 1138.
[115] *See Harris v. Forklift Sys., Inc*., 510 U.S. 17, 22 (1993).
[116] *See Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 81 (1998).

insubstantial lawsuits regarding minor workplace frictions.[117] Critics also suggest that standards such as “inferiority” or “offensive" are inherently vague, which may lead to unpredictable and inconsistent results from juries.[118] Some practitioners further contend that weakening the substantive standard in state courts is unnecessary because lawyers can already bypass federal hurdles by pleading state-law tort claims like assault or battery.[119] Finally, there is a fear that shifting away from the severe or pervasive standard may encourage a culture of lateral surveillance and over-reporting that estranges employees from one another.[120]

Despite these administrative concerns, the advantages of expanding access to justice significantly outweigh the potential for a higher caseload or increased litigation. While courts fear swamping the system, the primary objective of Title VII is to avoid harm and ensure workplace equality, a goal that is fundamentally undermined when employees are forced to endure prolonged toxicity before the law intervenes.[121] Moreover, legislative models like New York’s include necessary safeguards, such as an affirmative defense allowing employers to show that the conduct amounted to no more than petty slights or trivial inconveniences.[122] This balance allows the system to filter truly frivolous claims while ensuring that victims of genuine racial harassment are no longer silenced by an unattainable legal standard.[123] Ultimately, the societal and democratic cost of maintaining an impossible standard is far more detrimental than the administrative cost of a higher judicial workload.

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[117] D’Angelo-Corker, *supra*, at 6-7.
[118] D’Angelo-Corker, *supra*, at 48-49.
[119] *Id*.
[120] *Boyer-Liberto v. Fontainebleau Corp*., 786 F.3d 264, 290 (4th Cir. 2015) (Wilkinson, J., dissenting).
[121] *Harris*, 510 U.S. at 22.
[122] N.Y. Exec. Law § 296(1)(h).
[123] D’Angelo-Corker, *supra*, at 18.

All in all, redefining the legal threshold through legislative reform and aligning harassment standards is the only viable method to restore the unconstrictive protective intent of early civil rights jurisprudence.[124] Replacing an archaic and insensitive standard with a manageable, harm-based model ensures that the terms, conditions, or privileges of employment are protected as originally intended.[125] This structural change moves the legal focus from a clinical assessment of psychological injury to a pragmatic policing of discriminatory atmospheres.[126] By enacting these reforms, legislatures can bridge the critical gap between documented workplace bias and the current legal framework. Making racial equity a practicable reality rather than an elusive legal standard is a necessary step for the future of workplace justice.

B. *Enhancing Access to Justice through Procedural and Workplace Safeguards*

To enhance access to justice for victims of workplace discrimination, this proposal advocates for procedural and workplace-level safeguards, specifically the adoption of a jury-centric summary judgment process and mandatory arbitration.[127] The current judicial drift toward substituting summary judgment for trial allows judges to filter out legitimate racial harassment claims by deconstructing the totality of the circumstances into isolated, non-actionable incidents.[128] By shifting the evaluative power to a representative body of peers and increasing transparency in dispute resolution, these reforms seek to dismantle the practical barriers that render civil rights redress unattainable for Black employees. Ultimately, these procedural shifts ensure

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[124] *See Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971).
[125] 42 U.S.C. § 2000e–2(a)(1).
[126] *Harris*, 510 U.S. at 22.
[127] Frances Baillon & Michelle Gibbons, *Race-Based Hostile Work Environment Claims in Federal and Minnesota Courts*, 48 Mitchell Hamline L. Rev. 863, 874–75 (2022).
[128] *Smith v. Fairview Ridges Hosp*., 625 F.3d 1076, 1089 (8th Cir. 2010) (Bye, J., dissenting).

that the terms, conditions, or privileges of employment are protected through a process that values the community's perspective over judicial efficiency.[129]

The primary advantage of a jury-centric approach is that it ensures the social context and real-world impact of racial symbols are evaluated by a diverse body rather than a single judge. Juries are uniquely positioned to determine what a reasonable person would find abusive, reflecting evolving community standards rather than rigid or outdated judicial perceptions.[130] Increased reporting resulting from these safeguards would provide a more accurate picture of workplace equity, incentivizing employers to foster a harassment-free environment.[131]

The primary disadvantages associated with these reforms include concerns regarding unpredictable results and the potential for a dramatic increase in litigation costs. Opponents of a jury-centric model argue that juries may be influenced by shifting societal whims or media coverage, leading to inconsistent legal applications across different jurisdictions. Additionally, there is a persistent judicial fear that lowering procedural bars will transform civil rights law into a general civility code that overwhelms the court system with insubstantial claims.[132]

Despite these administrative and economic concerns, the advantages of expanding transparency and access to a jury trial significantly outweigh the potential downsides. While the fear of swamping courts with litigation is persistent, the fundamental objective of Title VII, which is to avoid harm and ensure workplace equality, cannot be secondary to judicial efficiency.[133] Jury justice, while potentially less uniform than judicial rulings, is more reflective of the diverse society

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[129] *D'Angelo-Corker, supra, at 49.*
[130] *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21–23 (1993).
[131] D'Angelo-Corker, *supra*, at 49-50.
[132] *Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75, 80–81 (1998).
[133] *See* 42 U.S.C. § 2000e-2(a)(1).

the Civil Rights Act was designed to protect.[134] By removing these barriers, the law provides a manageable path for victims to have their claims properly acknowledged rather than dismissed based on an insensitive judicial rationale.

Consequently, adopting jury-centric procedures are essential steps to restoring the protective integrity of workplace discrimination law. These safeguards ensure that a plaintiff's case is not prematurely discarded by a judge who may lack the social context to appreciate the cumulative weight of racial friction. By prioritizing transparency over organizational reputation, the law can effectively expose and eradicate systemic bias that is currently hidden behind closed doors. Ultimately, these procedural shifts move the system toward a model of justice where the terms, conditions, or privileges of employment are guarded by the community. Enhancing access through these safeguards is a necessary prerequisite to ensuring that the promise of a harassment-free workplace becomes a practicable reality for all.

IV. Conclusion

In conclusion, this paper has shown that the severe or pervasive standard under Title VII has evolved from an expansive protective intent into a restrictive judicial barrier that feels unattainable for Black employees. While foundational cases like *Rogers v. EEOC* initially viewed Title VII as a charter of principles meant to protect an employee's psychological stability from environments polluted with discrimination, modern jurisprudence has instead built a high wall that frequently filters out legitimate racial harassment claims.[135] This transformation is most damaging

[134] D'Angelo-Corker, *supra*, at 20.
[135] *See Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971).

in the judicial drift toward summary judgment, where courts deconstruct a totality of the circumstances into isolated incidents to dismiss vitriolic conduct as mere offhand comments or sporadic behavior.

The findings matter because these legal hurdles have profound real-world consequences for the more than 21 million Black Americans in the labor force, who already face persistent earnings disparities and an unemployment rate that is double the national average.[136] By maintaining an unattainable bar for severity, the current framework inadvertently silences survivors and discourages the reporting of toxic environments until the abuse reaches a level of extreme psychological injury. Furthermore, the emerging circuit split regarding the Supreme Court's ruling in *Muldrow* reveals a dangerous lack of predictability, as the same offensive conduct may be actionable in one jurisdiction while being dismissed as a minor annoyance in another.[137]

Ultimately, this analysis has demonstrated that a multi-faceted reform involving legislative and procedural safeguards is required to restore the unconstrictive protective intent of civil rights law. This includes replacing the current standard with a harm-based model, modeled after the New York State Human Rights Law, which focuses on whether an employee was subjected to inferior terms, conditions or privileges of employment.[138] Additionally, adopting a jury-centric summary judgment process and mandatory arbitration are essential to ensuring that the community's perspective, rather than a single judge's perception, guards the workplace. Only by aligning the legal standard with the lived experiences of survivors can the promise of racial equity move from an elusive legal standard to a practicable reality for all.

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[136] Katherine Schaeffer, *Black workers' views and experiences in the U.S. labor force stand out in key ways,* PEW RSCH. CTR. (Aug. 31, 2023), https://pewrsr.ch/3suXlFn.
[137] *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024).
[138] N.Y. Exec. Law § 296(1)(h).