Sweet Land of Liberty: Islamophobia and the Treatment of Muslims in the State of Connecticut

CHERYL A. SHARP [†]

I. INTRODUCTION

The United States celebrates over 220 years of religious freedom, yet after the tragic events of September 11, 2001, the battle cries against Muslims based on their religion resonate throughout the United States, and Connecticut is not insulated from the controversy. This Article will examine the treatment of Muslims in Connecticut through the lens of the Connecticut Commission on Human Rights and Opportunities ("CHRO"), the oldest governmental, civil rights agency in the nation, which was established in 1943.

Over a decade has passed since the terrorist attacks on U.S. soil, on September 11, 2001, which claimed the lives of more than 3,000 Americans.[1] However the backlash from the actions of a few extremist attackers lingers on and blankets the nation and its view of Muslims in America. Most alarming, Anti-Muslim sentiment threatens to suffocate the spirit of a nation that was founded on religious freedom. When our nation faces external threats, fear often obscures the common ground that people of diverse backgrounds share.[2] Such is the case as it relates to Muslims, or those who are perceived to be Muslim, who prior to 9/11 arguably shared the same freedoms and equal protection under the law as other Americans, but now find that their Muslim identity is viewed by some as a valid proxy for terrorist association.[3]

In Connecticut, although we have very progressive laws prohibiting

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[†] J.D., University of Connecticut School of Law , 1993, M.S. Rennsselaer Polytechnic Institute 1997, Women's Campaign School at Yale University, 1996, B.A. Wesleyan University , 1990. Adjunct Professor in the Political Science Department at Quinnipiac University. I would like to thank my colleagues in the legal department of the CHRO Attorneys Alix Simonetti, Robin Fox, Kimberly Jacobsen and David Kent for early edits to this article, CHRO fellow and legal interns Shardae Parker, Kate Cunningham and Vianca Diaz, and editors at the UCONN School of Law Public Interest Law Journal, especially Derek Ghan. Finally, I would like to thank Frances McAlpine Sharp and rest of my family and friends for their support.

[1] See, *9/11 Attacks*, NEW YORK TIMES, December 30, 2011 (The article contains highlights from the New York Times archive about the attacks on the world trade center and its collapse, the attack on the Pentagon and the crash of Flight 93).

[2] *See* Morgan Cloud, *Quakers, Slaves and the Founders: Profiling To Save the Union*, 73 MISS. L.J. 369 (2003) (describing the use of race, religion, ethnicity, and alienage to support searches and seizures during times of crisis).

[3] *See generally* Dan Eggen, *Deportee Sweep Will Start with Mideast Focus*, WASH. POST, Feb. 8, 2002, at A1, *available at* ProQuest, Doc. No. 409306553 (the report was on the Immigration and Naturalization Service "Absconder Apprehension Initiative", which first targeted six thousand immigrants from countries where Muslims were in the majority).

religious discrimination against the more than 150,000 Muslims in the state,[4] fear and ignorance sometimes overshadow the law, and creates an anti-Muslim sentiment that is difficult to combat. The CHRO merely sees a slice of the bigotry against Muslims in this state, and, although the presence of a civil rights agency acts as a deterrent to discriminatory actions being taken against Muslims in employment, housing, credit transactions, and in places of public accommodation, the treatment of Muslims in Connecticut has followed the overall national trend of Islamophobia.[5] Islamophobia is evidenced by the following few examples of complaint filings with the CHRO, alleged events wherein anti-Muslim sentiment was pronounced, reports in print media, and anecdotes that would suggest that anti-Muslim sentiment needs to be quashed in Connecticut.[6]

In the fall of 2005, in a complaint certified to public hearing before a hearing referee at the CHRO, a Muslim woman alleged that she was discriminated against based on her religion in violation of Connecticut General Statutes Section 46a-64(a). More specifically, the woman walked into an unnamed bank wearing a veil as prescribed by her religion. As she started walking towards the Customer Service desk, the woman behind the desk yelled, "Ma'am you're going to have to take that mask off before you come into this bank!" The bank denied the woman the right to transact business. The woman made attempts to resolve the issue with the bank through her brother, and with a representative from the Council on American Islamic Relations; however, the bank was non-responsive. The bank had a policy to deal with veiled customers.[7] The woman pled that the bank failed to follow its policy and subjected her to discriminatory conduct.[8]

In the summer of 2010, a group of 100 Muslims and their supporters converged on the north side of Hartford's State Capitol to discuss

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[4] *What is CAIR-Connecticut?,* CAIR-CT, http://www.cair-ct.com/about.htm (last visited Jan. 28, 2012).

[5] Islamophobia is a form of intolerance and discrimination motivated with fear, mistrust and hatred of Islam and its adherents. It is often manifested in combination with racism, xenophobia, anti-immigrant sentiments and religious intolerance. *See A Proposed Definition of Islamophobia*, EUROPEAN MUSLIM INITIATIVE FOR SOCIAL COHESION, http://www.emisco.com/warsaw.html (Oct. 8, 2010).

[6] Attorneys from the CHRO's litigation department host informational sessions across the state of Connecticut to educate the public about CHRO's complaint process and about the laws that protect individuals from illegal discrimination based on religion. During informational sessions and other such education and outreach activities, some members of the Muslim community have reported that they were subjected to illegal discrimination based on their religion.

[7] The bank had a policy of bringing veiled customers to a private room and having a female verify their identity. The bank deviated from this policy in dealing with the woman in this case.

[8] A complaint of discrimination was filed with the CHRO. The complaint was investigated and reasonable cause was found. The complaint was certified to public hearing and later mutually resolved by all parties.

Islamophobia, after Muslims at a Bridgeport mosque were confronted by protestors from Operation Rescue/Save America. One of the signs being held by a supporter of Muslims said, "Jesus Loves Muslims and So Do I," Can I get a loud amen, displaying a solidarity that extended beyond sectarian lines.[9]

Earlier that summer, there was a protest outside of a mosque in Bridgeport, Connecticut, during Ramadan which caused Muslims in the state concern. Muslim leaders in Connecticut asked police to ensure that they would be allowed to worship without being harassed. [10]

In the fall of 2010, Marisol Rodriquez-Colon and her sister-in-law were planning to attend a niece's birthday party at a skating rink in Vernon, Connecticut, but once inside, Colon said they were stopped and told they would have to remove their head scarves because of a policy prohibiting head-ware. The venue's rules, posted at the entrance, read: "No Hats. No Headwear. No Exceptions." Colon said she was "mortified" when she was barred at the door. She said her religious hijab shouldn't count under the rink's policy. Colon made it clear that "we wear this for religious reasons", but indicated that rink management "didn't want to hear that." Colon said the manager gave the women two choices: take off the headscarves, or wear a helmet over them. Taking off the hijabs was "not an option," Colon told WTIC-TV in Hartford.[11] Further, the suggestion that Ms. Colon remove her hijab illustrates the lack of understanding that the representatives from the rink had about Ms. Colon's religion. Although the rink's management issued a statement spelling out its "no headwear" policy and provided as a defense to its actions that helmets are offered for safety purposes, the justification does not remedy the harm that Colon alleges she suffered.[12]

Additionally, in the fall of 2010, a high school volunteer at the William W. Backus Hospital in Norwich, CT who was assisting a patient in a wheelchair, was targeted by a woman on the elevator, who looked at the teen, shook her head in disapproval and said, "You must be from another country because you wear that thing on your head." Despite the teen explaining to the woman that she was an American and was born in

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[9] *See* Susan Campbell, *Connecticut's Muslim Community (and Others) Respond to Recent Harassment*, STILL SMALL VOICE (Aug. 13, 2010, 4:56 PM), http://blogs.courant.com/susan_campbell/2010/08/the-ct-muslim-community-and-ot.html.

[10] *See Muslims Ask for Protection as Ramadan Approaches*, NBC CONNECTICUT (Aug. 9, 2010, 5:29 PM), http://www.nbcconnecticut.com/news/local/CT-Muslims-Concerned-by-Backlash-as-Ramadan-Approaches-100254049.html.

[11] Jeane MacIntosh, *Muslim Woman Says Roller Skating Rink Discriminated Against Her,* N,Y, POST, Nov. 25, 2010, http://www.nypost.com/p/news/local/roller_skating_bias_hit_UMJhLxuflHioaOJZLlOvSL.

[12] *See* Narmeen Choudhury, *Woman Says Vernon Skating Rink's Policy Discriminates Against Muslims*, HARTFORD COURANT, Nov. 23, 2010, http://articles.courant.com/2010-11-23/community/hc-vernon-roller-skate-discrimination20101123_1_head-scarves-muslim-women-helmet.

America, the woman proceeded to tell the teen "well why don't you dress like an American? Dress like everybody else? When we go over to your country you make us wear those things. You should dress like an American."[13]

In the spring of 2011, during a community outreach session on harassment and bullying at the Islamic Center of New London, Connecticut, CHRO received anecdotal complaints from school aged children who were allegedly tormented, bullied, physically assaulted, threatened, harassed and called "terrorist" based on the fact that they were Muslim. One parent at the center expressed her concern that two of her children had been the victims of anti-Muslim animus while at school. The parent lamented because her child did not tell her of the bullying at first, but once she learned about the bullying, she tried to get the school to act, but the school was non-responsive. Other children spoke of bullying incidents directly related to their religion—some of those students put their heads down during their presentations, others had looks of profound sadness, others nodded in agreement that something should be done to address the bullying and harassment, while others said they would take care of any harassment that came their way.[14]

Over the past ten years, the CHRO has received 579 complaints of discrimination based on religion.[15] Although it cannot be said with certainty that all of the complaints of discrimination filed based on religion deal with animus towards Muslims, it is unquestionable that a substantial number of those complaints deal with the issue of discrimination against Muslims. [16]

These alleged incidents of discrimination reported in print media and the anecdotal stories gathered during informational sessions held at mosques and other venues across the state of Connecticut, combined with the volume of complaints filed with the CHRO over the past decade

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[13] *See* Tasmia Khan, *Muslim Headscarf Draws Hateful Outburst*, HARTFORD COURANT, Sept. 1, 2010, http://articles.courant.com/2010-09-01/news/hc-op-kahn-fresh-talk-0901-20100901.

[14] In April of 2011, Attorneys Cheryl Sharp and Alix Simonetti joined Dr. William Howe from the State Department of Education, at the behest of the State Department of Education and CAIR and conducted a CHRO informational session regarding bullying and discriminatory conduct against Muslims. Approximately one hundred school aged children and their parents attended the session and shared their concerns about discriminatory treatment they had been subjected to. Further, the audience sought information regarding the protections available to them under the Connecticut General Statutes.

[15] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEARS 2000/2001 (2001), 2001/2002 (2002), 2002/2003 (2003), 2003/2004 (2004), 2004/2005 (2005), 2005/2006 (2006), 2006/2007 (2007), 2007/2008 (2008), 2008/2009 (2009), 2009/2010 (2010) (At the Central Office Administrative Headquarters, CHRO maintains a copy of the agency's Annual Report for each fiscal year since 1944. Copies may also be found at the Connecticut State Library, 231 Capitol Avenue, Hartford, which maintains a copy of an annual report for each state agency).

[16] The annual reports maintained by the CHRO do not specify which religion the complaining party claims to be a member of they were discriminated against based on their membership.

alleging discriminatory animus towards Muslims in employment, housing, credit transactions, and in places of public accommodation, dictate that the primary focus of this Article must be the investigation, prosecution, and adjudication of complaints concerning religious discrimination against Muslims. This Article will also examine the degree to which CHRO dissuades anti-Muslim and anti-Islamic sentiment in the state and protects the citizenry of Connecticut from illegal religious discrimination by enforcing the law.

As the Muslim community in Connecticut continues to grow[17], the role of the CHRO in eliminating religious discrimination against it becomes ever more paramount to effectuating a sustained change in the attitudes of would be discriminators. To change this trajectory, the Muslim community will need to be vigilant in reporting incidents of illegal discrimination and anti-Muslim conduct to the CHRO, and the CHRO will need to utilize its vast enforcement authority to adequately address the mistreatment of Muslims in Connecticut.

Section II of this Article focuses on the trend of hate, nationally and locally. Section II A primarily focuses on the statutory right to nondiscrimination. Section II B focuses on recoverable damages when there has been a violation of anti-discrimination laws. Section III discusses the CHRO's complaint process and the CHRO's expedited processing of complaints of illegal discrimination based on religion. Section III A focuses on the investigative process and Section III B focuses on the public hearing process. Section IV examines the theories of discrimination and Connecticut courts' application of those theories to discrimination claims filed in Connecticut or in the Second Circuit. Section V analyzes the issues that arise when a victim of illegal discrimination attempts to resolve matters outside of the confines of the judicial process. This section will also focus on the role that the CHRO plays in carving out an equitable resolution to an age old problem of discrimination, and further explains how the CHRO's role advances the cause of eliminating discrimination. The conclusion asserts that it will take a sustained effort by the CHRO to meet its mission of eliminating discrimination against Muslims in employment, housing, credit transactions, and in places of public accommodation because discriminatory beliefs are entrenched, and anti-Islamic fervor that once lifelessly clung to the fringes of society has woven itself into to the fabric of mainstream America and into the fiber of Connecticut. In Connecticut, some headway is being made as the oldest civil rights agency in the nation has not been rendered powerless. The CHRO is confronted by a fierce competitor—fear and intolerance, but it is

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[17] *See generally* Fereydoun Taslimi, *Muslim community growing in Connecticut—Newsday.com*, MUSLIMS STAND UP (Dec. 25, 2007, 8:25 AM), http://muslemnews.blogspot.com/2007/12/muslim-community-growing-in-connecticut.html.

poised to meet its mission of eliminating discrimination through enforcement, advocacy, and education. The minds of many are revolutionized when education replaces ignorance, when enforcement yields monetary compensation to vindicate the interest of those that are harmed, and when advocacy empowers those that are under-represented or have been silenced by ridicule. The CHRO has been assigned the role of "do[ing] away with discrimination . . . altogether."[18]

II. THE TREND OF HATE

The CHRO has attempted to mount an offensive against anti-Islamic sentiment through enforcement, advocacy, education, and outreach, but the national tidal wave of fear threatens the strides the agency has made to reduce the number of incidents of discrimination against the Muslim community.

As recently as 2006, many Americans viewed Islam and Muslims as a direct threat to civic culture. One in four individuals who responded to a Gallup poll supported the registration of every Muslim's home in a federal database, and two in five supported the use of Muslim identity as an automatic trigger for increased government scrutiny such as special identification cards.[19] In Connecticut, Fiscal Years 2004–2005 and 2005–2006 the CHRO received the largest volume of complaints filed based on religious discrimination than it had received during the rest of the ten year period between 2000 and 2010.[20] More specifically, the CHRO received eighty-one complaints of religious discrimination between 2004–2005 and seventy-five complaints of religious discrimination between 2005–2006.[21] By Fiscal Year 2006–2007, the number of complaints filed alleging religious discrimination began to stabilize and mirror the numbers during most of the ten year period, with forty-six complaints of religious discrimination being filed.[22]

The Equal Employment Opportunity Commission ("EEOC"), the federal agency to which the CHRO is equivalent, has a similar documented history of anti-Muslim sentiment during the ten year period of 2000-2010. In 2001, a total of 2,127 charges of religious discrimination were filed with

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[18] Evening Sentinel v. Nat'l Org. for Woman, 168 Conn. 26, 34 (Conn. 1975).

[19] Lydia Saad, *Anti-Muslim Feeling Fairly Commonplace*, GALLUP POLL (Aug. 10, 2006), http://media.gallup.com/World Poll/AntiMuslimSentiment81006.

[20] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEARS 2000/2001 (2001), 2001/2002 (2002), 2002/2003 (2003), 2003/2004 (2004), 2004/ 2005 (2005), 2005/2006 (2006), 2006/2007 (2007), 2007/2008 (2008), 2008/2009 (2009), 2009/2010 (2010).

[21] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEARS 2004/2005 (2005), 2005/2006 (2006).

[22] CONN. COMM'N ON HUMAN RIGHTS AND OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEAR 2006–2007 (2007).

the EEOC and 330 or 15.5 percent of those charges were based on religious discrimination against Muslims.[23] In 2002, 2,572 charges of religious discrimination were filed, of which 720 or 28 percent were based on religious discrimination against Muslims.[24] There was a major spike in the number of religious discrimination charges filed with the EEOC after September 11, 2001. The CHRO experienced the same spike in the number of complaints filed after the September 11 attacks. In Connecticut, in Fiscal Year 2000–2001 49 complaints of religious discrimination were filed, whereas, in Fiscal Year 2001–2002 70 complaints of religious discrimination were filed with the CHRO. [25]

The next five years at the EEOC, 2003–2007, were marked by a slight decrease in the number of religious discrimination charges filed based on Muslim religion. The slight decrease did not dilute the impact of discriminatory action on the targets of the hate. In the Washington Post, Eboo Patel, lecturer and member of Barack Obama's inaugural Advisory Council on Faith-Based Neighborhood Partnerships, wrote:

> Something profoundly un-American is happening in America: the irrational fear and hatred of a group of people because of an aspect of their identity. People are taking the criminals of this community and superimposing their image on every other member, including children. Somehow, my Muslim baby will look like Osama bin Laden to millions of Americans.[26]

Unlike the EEOC, Connecticut witnessed a slight increase in the number of complaints of discrimination filed based on religion in Fiscal

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[23] *Id.*

[24] Religion-Based Charges Filed from 10/01/2000 through 3/31/2011 Showing the Percentage Filed on the Basis of Religion-Muslim, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, http://eeoc.gov/eeoc/events/9-11-11_religion_charges.cfm.

[25] *See* CONN. COMM'N ON HUMAN RIGHTS AND OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEAR 2000–2001 and 2001–2002 (2001 and 2002). In 2003, at the EEOC 2,532 religion charges were filed, 598 or 23.6 percent were based on Muslim religion. In 2004, 2,466 religion charges were filed, of which 504 or 20.4 percent were based on Muslim religion. In 2005, 2,340 religion charges were filed, of which 507 or 21.7 percent were based on Muslim religion. In 2006, 2,541 religion charges were filed, of which 593 or 23.3 percent were based on Muslim religion. In 2007, 2,880 religion charges were filed, of which 606 or 21 percent were based on Muslim religion.[25] In 2008, there was a steady increase in the number of charges of religious discrimination filed with the EEOC- 3,273 charges of religious discrimination were filed, of which 668 or 20.4 percent were based on Muslim religion. In 2009, there was a spike in the number of religious discrimination charges filed—3,386 charges of which 804 or 23.7 percent were filed based on Muslim religion. In 2010, the largest number of religious discrimination charges were filed with the EEOC in a ten year period, however, the number of charges based on Muslim religion was slightly lower than the previous year. In 2010, 3,790 charges of religious discrimination were filed, 796 or 21 percent were filed based on Muslim religion. *Supra* note 14.

[26] *See* Eboo Patel, *Discrimination Against Muslims*, THE FAITH DIVIDE, THE WASH. POST, (Mar. 20, 2007, 9:41 AM), http://newsweek.washingtonpost.com/onfaith/eboo_patel/2007/03/discrimination_against_muslims.html#more.

Years 2009 and 2010. More specifically, in Fiscal Year 2009 forty-eight complaints of discrimination were filed based on religion, whereas in 2010 fifty-four complaints of religious discrimination were filed.[27] In Fiscal Year 2009, there were no complaints of religious discrimination filed based on a denial of housing,[28] but in Fiscal Year 2010 there were four complaints of religious discrimination based on denial of housing.[29]

In Connecticut, over the past decade, there has been a rise and fall and rise again of reported claims of unfair and discriminatory treatment against Muslims in the context of employment, housing, credit transactions, and in places of public accommodation. Nationally, it appears that the number of complaints of religious discrimination has for the most part steadily increased:

> Hate in America continued in 2011 to be aimed at Islam and Muslims. From congressional hearings on the "radicalization" of Islam by Rep. Peter King (R-N.Y.) to a report that revealed an anti-Islam network impacting views on Muslims to the release of 2010 FBI Hate Crime Statistics, which found an increase in anti-Muslim hate crimes, to Lowes home improvement stores yanking ads from TLC's "All American Muslim Reality Show," Muslims felt the sting of Islamophobia.[30]

In 2010, there was a slight increase in the number of incidents of animus towards Muslims that may be exhibited by the number of complaints of discrimination filed with the CHRO.[31] Further, through anecdotal and print media, the CHRO was made aware of more incidents of alleged discrimination against the Muslim community than in years prior.[32] However, in 2011, there appears to be some stabilization of the number of complaints of discrimination being filed based on religion.[33]

A. Statutory Right to Non-Discrimination

The mission of the CHRO is to eliminate discrimination through civil and human rights law enforcement and to establish equal opportunity and

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[27] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEAR 2009–2010 (2010).

[28] The denial of housing based on religion may show a more ingrained religion biased.

[29] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEAR 2008–2009 (2009), 2009–2010 (2010).

[30] *See* Nisa Islam Muhammad, *Islamaphobia in the United States Still Rising*, THE FINAL CALL, Dec. 28, 2011, http://www.finalcall.com/artman/publish/National_News_2/article-8447.shtml.

[31] CONN. COMM'N ON HUMAN RIGHTS & OPPORTUNITIES, CASE PROCESSING REPORT, CUMULATIVE AND RECENT DATA FISCAL YEAR 2008–2009 (2009), 2009–2010 (2010).

[32] NBC, *Supra* note 10.

[33] http://ct.gov/chro/default.asp

justice for all persons within the state through advocacy and education.

The issue of whether Muslims are discriminated against in employment, housing, credit transactions, and in places of public accommodation based on their religion is within the purview of the CHRO's authority. Over the past decade, the CHRO has addressed the treatment of Muslims in Connecticut through complaint processing, litigation, and adjudication.

As Connecticut Courts have duly noted, the CHRO is our country's first civil rights watchdog agency and is "charged by [law] with initial responsibility for the investigation and adjudication of claims of …discrimination."[34] The CHRO has been assigned the duty, "to do away with. . . discrimination . . . ." [35] Further, the Commission reserves to itself an independent role as a guardian of the public as well as the complainant's interests. [36]

State and federal laws protect individuals against discriminatory conduct in employment[37], in places of public accommodation[38], in housing[39], and in credit transactions[40]. Thus, there is protection for

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[34] Sullivan v. Bd. of Police Comm'n, 196 Conn. 208, 216 (1985).

[35] Evening Sentinel v. NOW, 168 Conn. 26, 34 (1975).

[36] Miko v. Comm'n on Human Rights & Opportunities, 220 Conn. 192, 208 (1991).

[37] The statute states:

> It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, *religious creed*, age, sex, marital status, *national origin*, *ancestry*. . . .

CONN. GEN. STAT. § 46a-60 (2011) (Emphasis added).

[38] The statute provides in pertinent part:

> (a) It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of race, creed, color, national origin, ancestry…(2) to discriminate, segregate or separate on account of race, *creed*, color, national origin, ancestry. . . .

CONN. GEN. STAT. § 46a-64 (2011) (Emphasis added).

[39] CONN. GEN. STAT. § 46a-64c prohibits discriminatory housing practices:

> (a) It shall be a discriminatory practice in violation of this section: (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, *creed*, color, national origin, ancestry. . .(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, creed, color, national origin, ancestry. . .(3)To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, creed, color, national origin, ancestry. . . .

[40] Connecticut law prohibits discrimination in credit practices. Pursuant to Connecticut General

Muslims who are discriminated against based on their religion, national origin or ancestry.

Connecticut General Statute section 46a-58 (a) provides:

> It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of *religion*, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability.[41]

Connecticut "General Statutes § 46a-58(a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws."[42]

Connecticut laws prohibiting discrimination are very progressive. There is even individual liability if an individual aids or abets in discrimination. Specifically, it is a discriminatory practice "for *any person*, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so…"[43] Federal law also protects citizens against religious discrimination. [44] Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act, prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, *religion*, sex or national origin. Title VIII was amended in 1988 by the Fair Housing Amendments. [45]

Statutes §46a-66 "(a)It shall be a discriminatory practice in violation of this section for any creditor to discriminate on the basis of sex, age, race, color, religious creed, national origin, ancestry. . .in any credit transaction." CONN. GEN. STAT. §46a-66 (2011).

[41] CONN. GEN. STAT. §46a-58(a) (2011) (Emphasis added).

[42] Trimachi v. Conn.Workers Comp. Comm., No. CV 970403037S, 2000 WL 872451, at *7 (Conn. Super. Ct. June 14, 2000).

[43] CONN. GEN STAT. § 46a-60(a)(5) (2011).

[44] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2006). The statute provides in pertinent part:

> It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, *religion*, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, *religion*, sex, or national origin.

Id. (emphasis added).

[45] Civil Rights Act of 1968, *amended by* Title VIII 42 U.S.C. § 3604 (2006). Section 804. provides in pertinent part that discrimination in the sale or rental of housing is a prohibited practice:

The Civil Rights Act of 1991[46] provides additional protection for victims of illegal discrimination. It provides in relevant part: "an unlawful employment practice is established when the complaining party demonstrates that . . . religion . . . was a motivating factor for any employment practice, even though other factors also motivated the practice."[47] The state and federal protections are vast and should have the effect of curbing discriminatory actions towards Muslims based on their religion. However, as Mongi Dhaouadi, Executive Director of the Council on American-Islamic Relations in Connecticut, said in September of 2010, the harassment of Muslims has "'metastasized', taking the form of bigoted comments by politicians, hate crimes against Muslims and mosques, a call to burn Qurans by an extremist pastor in Florida and opposition to a Muslim community center near Ground Zero."[48] Thus, the CHRO and its federal counterparts have a difficult task ahead, in addressing discrimination against the Muslim community.

B. Damages

The relief available to a victim of illegal discrimination is governed by the broad-sweeping provisions of Connecticut General Statute section 46a-86.[49] In applying the provisions of section 46a-86, the two purposes

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> [I]t shall be unlawful— (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, *religion*, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, *religion*, sex, handicap, familial status, or national origin.

Id. (emphasis added).

[46] 42 U.S.C. § 2000e-2 (m) (2006).

[47] *Id.*

[48] *See* Mary E. O'Leary, *Conn. interfaith leaders address 'anti-Muslim hysteria'*, THE NEW HAVEN REGISTER, Sept. 3, 2010, http://www.nhregister.com/articles/2010/09/03/news/new_haven/aa1_new_haven_muslims090310.txt.

[49] CONN. GEN. STAT. §46a-86 (2011). In pertinent part, the following is statutorily provided:

> (a) If, upon all the evidence presented at the hearing conducted pursuant to Section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall state [his] findings of fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to

underlying the fair employment practice legislation must be kept in mind. The first goal is the elimination of the discriminatory practice. The Connecticut Supreme Court noted "[w]here prohibited discrimination is found, the hearing officer has not merely the power but also the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future."[50] Once a court finds that an employer has engaged in an unlawful employment practice, the law requires that the employee be made whole.[51] As such, the victim of discrimination should be placed in the position he would have been in but for the prohibited act of discrimination.[52]

Hearing Officers have broad authority to "restore those wronged to their rightful economic status absent the effects of the unlawful discrimination."[53] The remedial purpose of section 46a-86(b) "requires that consideration be given to placing the employee in a position which is 'the functional equivalent of the position' he or she would have occupied had there been no unlawful discrimination and that he or she be 'accorded all the rights and privileges appertaining thereof.'"[54]

In *Bridgeport Hospital v. Commission on Human Rights*, the Connecticut Supreme Court also indicated that monetary relief was appropriate where an employee could not "be otherwise restored to the economic status he or she would have had if not for the discriminatory conduct in question."[55]

A hearing referee is legally required to make a victim whole for injuries he suffered as a direct result of a respondent's invidious discrimination.[56] Victims of discrimination are entitled to a presumption in favor of relief with all doubts to be resolved against the proven discriminator rather than the innocent employee.[57] "The most elementary conceptions of justice and public policy require that the wrongdoer shall

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take such action as in the judgment of the presiding officer will effectuate the purpose of this chapter;

(b) In addition to any action taken hereunder, upon a finding of a discriminatory employment practice, the hearing referee may order the hiring [of] or reinstatement of employees[,] with or without back pay.

[50] Wroblewski v. Lexington Gardens, Inc., 188 Conn. 44, 66(1982) (Parskey, J., concurring) (citing Albermarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975)).

[51] Civil Serv. Comm'n of City of Waterbury v. Comm'n on Human Rrights & Opportunities, 195 Conn. 226, 230 (1985).

[52] *See generally* Ford Motor Co. v. Equal Employment Opportunity Comm'n., 458 U.S. 219, 230 (1982); Franks v. Bowman Transp. Co., 424 U.S. 747, 774 (1976); *Albermarle*, 422 U.S. at 418–19.

[53] State v. Comm'n on Human Rights & Opportunities, 211 Conn. 464, 484 (1989).

[54] Bridgeport Hospital v. Comm'n on Human Rights, 232 Conn. 91, 111 (1995) (citing Thames Talent, Ltd., v. Comm'n on Human Rights and Opportunities, 827 A.2d 659, 666 (2002)).

[55] *Id.* at 112.

[56] *Civil Serv. Comm'n of Waterbury*, 487 A.2d at 203.

[57] *See* Teamsters v. United States, 431 U.S. 324, 359 (1977).

bear the risk of the uncertainty which his own wrong has created."[58]

Certain elements of back pay are presumed to be necessary to make the employee whole including lost wages and prejudgment interest.[59] Back pay relief is specifically authorized by section 46a-86(b) and is a mandatory element of damages if losses were suffered.[60] Moreover, front pay when reinstatement is not feasible is appropriate to make an employee whole for the continuing future effects of the discrimination.[61]

Emotional distress damages may also be available to individuals who have been the victims of illegal discrimination based on religion. In *CHRO ex rel. John Crebase v. Proctor and Gamble Pharmaceuticals, Inc.*, a presiding hearing referee found:

> For several reasons, it is apparent that emotional distress damages are available for a violation of section 46a-58 (a) arising from an unlawful employment practice under Title VII. First, General Statutes section 1-2z provides that: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or workable results, extratextual evidence of the meaning of the statute shall not be considered." Section 46a-58 (a) plainly and unambiguously. . . [makes a] deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States a discriminatory practice. . . [in] violation of this section . . . [62]

Further, the Court, in *Trimachi v Connecticut Workers Compensation Committee*, provided further support for the position that a victim of illegal discrimination is entitled to emotional distress damages as a result of the invidious discrimination. The *Trimachi* Court determined that General Statute 46a-58(a) had "expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination

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[58] Equal Employment Opportunitie Comm'n v. Prudential Fed. Sav. & Loan Ass'n., 763 F.2d 1166, 1173 (10th Cir. 1985) (quoting Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 265 (1946)).

[59] Loeffler v. Frank, 486 U.S. 549, 557–58 (1988); Clarke v. Frank, 960 F.2d 1146, 1153–54 (2d Cir. 1992).

[60] Equal Employment Opportunitie Comm'n v. Hacienda Hotel, 881 F.2d 1504, 1518 (9th Cir 1989); Maxfield v. Sinclair Int'l Corp., 766 F.2d 788, 794 (3d Cir. 1985), *cert denied*, 474 U.S. 1057 (1985).

[61] Blum v. Witco Chem. Corp., 829 F.2d 367, 373–74 (3d Cir. 1987); Xieng v. People's Nat'l Bank, 821 P.2d 520, 526 (Wash. Ct. App. 1991).

[62] Conn. Comm'n on Human Rights and Opportunities No.0330171, July 12, 2006 (Referee, Jon P. Fitzgerald).

laws."[63] Cases under employment discrimination law have uniformly awarded victims of discrimination pre-judgment interest on any awards they receive.[64]

Additionally, pursuant to Connecticut General Statutes section 46(a)-89, punitive damages and civil penalties may be awarded.[65] A civil penalty may be imposed against the defendant, and paid to the State of Connecticut to vindicate the public interest.[66] "[Civil] [p]enalties are imposed for the purpose of punishment and deterrence."[67] Under the federal law, there is also a substantial opportunity for victims of illegal religious discrimination to be awarded damages. [68]

III. CHRO'S COMPLAINT PROCESS

A. Investigation

Through the enforcement of Connecticut's anti-discrimination laws, the CHRO protects the Muslim community from discrimination. The process of enforcing the law begins with the filing and processing of a complaint of discrimination.[69] During the last legislative session, the

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[63] Trimachi v. Conn. Workers Comp. Comm., CV 9704030375, 2000 Conn. Super. LEXIS 1548, at *21 (Conn. Super. Ct. June 14, 2000).

[64] Maturo v. Nat'l Graphics, Inc., 722 F.Supp. 916, 930 (D.Conn. 1989); Lodges 743 & 1746, Int'l Ass'n of Machinsts & Aerospace Workers v. United Aircraft, 534 F.2d 422, 445–46 (D.Conn. 1975). These cases include several hearing officer decisions interpreting the Connecticut Fair Employment Practice Act. CHRO *ex rel*. Deleon v. Barlow, Inc., Case No. 8338845 (6/28/91) at 17–18; CHRO *ex rel*. Banos v. Carpenter Tech. Corp., Case No. 8420378 (6/29/90) at 11–13; Silhouette Optical Ltd. v. CHRO, 10 Conn. L.RPTR No. 19, 599, CV92-520590 (Conn. Super. Ct.1994). Prejudgment interest is an element of complete compensation. *Loeffer*, 486 U.S. at 558. In *Clarke v. Frank*, 960 F.2d 1146, 1154 (2d Cir. 1992), the Second Circuit held in an employment discrimination case that "it is ordinarily an abuse of discretion not to include pre-judgment interest in a back pay award." CONN. GEN. STAT. § 37-3a (2011) defines the statutory rate of pre-judgment interest available under Connecticut law at 10 percent.

[65] CONN. GEN. STAT. § 46a-89(b)(2) (2011).

[66] *Id.* at § 46a-89(b)(2)(D).

[67] Comm'r of Envtl. Prot. v. Sergy Co., LLC, No. X06CV084018262S, 2010 WL 1508465, at *5 (Conn. Super. Ct. Mar. 10, 2010).

[68] Civil Rights Act of 1991, 42 U.S.C. § 2000e-5(g)(2)(B) (2006):

> On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court (i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and (ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment . . . ." 42 U.S.C. § 2000e-2 (m) pertains to cases analyzed under the mixed motive method for disparate treatment.

[69] CONN. GEN. STAT. § 46a-82(a) – (b) (2011). The actual process is laid out in §§46a-83(a)-(b), which states:

legislature enacted Public Act 11-237 which should act to expedite the process for resolving complaints of illegal discrimination.

> If a complaint is not dismissed after the merit assessment review. . . . or. . . is reinstated after legal review. . . an investigator or commission legal counsel [shall] hold a mandatory mediation conference within sixty days. . . . If the complaint is not resolved after the mandatory mediation conference, the complainant, the respondent or the commission may request early legal intervention. . . ."[70]

If early legal intervention is utilized a complaint may proceed directly to public hearing, a release of jurisdiction may be issued, or a limited investigation may be conducted.[71] A considerable number of complaints will not be resolved through the early legal intervention program, but, rather will be resolved using traditional investigative techniques.

> [I]f the commissioner or investigator determines after the investigation that there is reasonable cause for believing that a discriminatory practice has been or is being committed as alleged in the complaint, he shall endeavor to eliminate the practice complained of by conference, conciliation and persuasion. If the commissioner or investigator finds that there is "reasonable cause" to believe that a discriminatory act has been committed and the complaint is not settled through the procedures outlined in section 46a-83, the complainant is entitled to a hearing on the matter."[72]

> Within twenty days after the filing of any discriminatory practice complaint, or an amendment adding an additional respondent, the commission shall cause the complaint to be served upon the respondent together with a notice (1) identifying the alleged discriminatory practice, and (2) advising of the procedural rights and obligations of a respondent under this chapter. The respondent shall file a written answer to the complaint under oath with the commission within thirty days of receipt of the complaint. . . . Within ninety days of the filing of the respondent's answer to the complaint the executive director or the executive director's designee shall review the file. The review shall include the complaint, the respondent's answer and responses to the commission's requests for information, if any, and the complainant's comments, if any, to the respondent's answer and information responses. If the executive director . . . determines that the complaint fails to state a claim for relief or is frivolous on its face, that the respondent is exempt from the provisions of this chapter or that there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause, the complaint shall be dismissed.

[70] *See* Public Act 11-237 §§ 6(c)(1)-(2) (Oct. 1, 2011).

[71] *Id.* at § 6(c)(2).

[72] *See generally* Adriani v. Comm'n on Human Rights & Opportunities, 596 A.2d 426 (Conn. 1991).

A hearing may be held before the administrative tribunal, the Office of Public Hearings.

B. Public Hearing

At the CHRO, the Office of Public Hearings ("OPH") is an administrative tribunal responsible for scheduling and conducting all phases of the public hearing process in contested discrimination cases under the Commission's jurisdiction. Within the OPH, the Chief Human Rights Referee administers the operations of the unit. All of the referees are gubernatorial appointees, subject to legislative approval, who function independently from the rest of the Commission.[73] "Upon certification of a complaint. . . the Chief Human Rights Referee shall appoint . . . a hearing officer . . .to hear the complaint or to conduct settlement negotiations . . . Such hearing shall be a de novo hearing on the merits . . . Hearings shall proceed with reasonable dispatch and be concluded in accordance with the provisions of section 4-180."[74]

IV. THEORIES OF DISCRIMINATION

There are several theories of discrimination under which a claim of discriminatory conduct may be analyzed but this Article will focus on the disparate treatment theory. Disparate treatment occurs where an individual is treated differently or less favorably than similarly situated individuals, based on their membership in a protected class.[75] Here an evaluation of some of the incidents of alleged discrimination against the Muslim community enumerated in the introduction will be analyzed under the disparate treatment theory of discrimination.

The state of Connecticut has comprehensive anti-discrimination laws, but state courts look to federal fair employment and fair housing case law when interpreting Connecticut's anti-discrimination statutes. Federal law, however, should be used as a guide and not the sole resource in interpreting state statutes.[76]

"The principal inquiry of a disparate treatment case is whether the [complainant] was subjected to different treatment because of his or her protected status." [77] "Under the analysis of disparate treatment theory of liability, there are two general methods to allocate the burdens of proof: (1)

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[73] CONN. GEN. STAT. § 46a-57 (2011).

[74] CONN. GEN. STAT. § 46a-84(b) (2011).

[75] McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800–01 (1993).

[76] *See* State v. Comm'n on Human Rights & Opportunities, 211 Conn. 464, 470 (Conn. 1989); *see also* Wroblewski v. Lexington Gardens, Inc., 188 Conn. 44, 53 (1982).

[77] Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96, 104 (Conn. 1996).

the mixed-motive/Price Waterhouse model[78] and (2) the pretext/McDonnell Douglas-Burdine model." [79]

A. Price Waterhouse Mixed Motives Allocation of Proof

> A mixed-motive case exists when an employment decision is motivated by both legitimate and illegitimate reasons. In such instances, a plaintiff must demonstrate that the employer's decision was motivated by one or more prohibited statutory factors. Whether through direct evidence or circumstantial evidence, a plaintiff must submit enough evidence that if believed, could reasonably allow a fact finder to conclude the adverse employment consequences resulted because of an impermissible factor. . . . Under this model, the plaintiff's prima facie case requires that the plaintiff prove by a preponderance of the evidence that he or she is within a protected class and that an impermissible factor played a 'motivating' or 'substantial' role in the employment decision. . . . [80]

"The critical inquiry is whether the discriminatory motive was a factor in the decision 'at the moment it was made.'"[81] The complainant

> has the burden of persuading the fact finder that the defendant's employment decision was motivated at least in part by an impermissible factor, while the defendant bears the burden of persuading the fact finder that the same decision would have been reached absent the impermissible factor. He must focus his proof directly at the question of discrimination and prove that an illegitimate factor had a "motivating" or "substantial" role in the employment decision.[82]

The complainant retains "the burden of persuasion on the issue of whether a discriminatory motive played a part in the decision."[83] For example, as explained earlier a Muslim woman who was attempting to utilize the services of a bank, but was told, "Ma'am you're going to have to take that

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[78] Price Waterhouse v. Hopkins, 490 U.S. 228, 246 (1989).

[79] *Levy*, 236 Conn. at 104.

[80] Taylor v. Dept. of Transp., No. CV980578141S, 2001 WL 104350, at *7 (Conn. Super. Jan. 10, 2001); *see also Levy*, 236 Conn. at 105–07; *Price Waterhouse*, 490 U.S. at 246 (citations omitted; internal quotation marks omitted).

[81] Miko v. Comm'n on Human Rights & Opportunities, 220 Conn. 192, 205 (Conn. 1991) (citing Price Waterhouse, 490 U.S. at 241).

[82] *Id.* at 106. (internal citations omitted; quotation marks omitted.).

[83] *Miko*, 220 Conn. at 205 (citing *Price Waterhouse*, 490 U.S. at 246).

mask off before you come into this bank!" If this 2005 case was analyzed under the disparate treatment theory, the inquiry would first be whether she belonged to a protected class, and second whether an impermissible factor played a role in the decision to deny the complainant the use of the bank facility. In the instant case, the answer would arguably be yes to both. The complainant was not allowed to utilize the bank's services because of her religion and the fact that she wore a hijab.

"Once the plaintiff has established [a] prima facie case, the burden of production and persuasion shifts to the defendant. The defendant may avoid a finding of liability [under state law] only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the [impermissible factor] into account."[84] "An alleged discriminator 'may not prevail in a mixed motives case by offering a legitimate and sufficient reason for its decision *if that reason did not motivate it at the time of the decision*.'"[85] "The employer instead must show that its legitimate reason, standing alone, would have induced it to make the same decision."[86] In the case involving the bank discussed above, part of the bank's defense was that the wearing of the hijab caused safety concerns, particularly since it was Halloween day.

Direct evidence of discrimination "may include evidence of actions or remarks of the employer that reflect a discriminatory attitude . . . or comments [which] demonstrate a discriminatory animus in the decisional process."[87] Statements or comments that are undisputed constitute direct evidence.[88]

Circumstantial evidence requires the "fact finder to take certain inferential steps before the fact in question is proved."[89] For example, "evidence consist[ing] of a statement by a decisionmaker 'to the effect that older employees have problems adapting to new employment policies. . .'constitutes circumstantial evidence that a discriminatory motive played a

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[84] *Taylor*, 2001 WL 104350 at *7; *see also Levy*, 236 Conn. at 106–07; *Price Waterhouse*, 490 U.S. at 258 (citations omitted; internal quotation marks omitted).

[85] *Miko*, 220 Conn. at 205 (citing *Price Waterhouse*, 490 U.S. at 252).

[86] *Price Waterhouse*, 490 U.S. at 252; *Miko*, 220 Conn. at 207. (internal citations and question marks); *Id.* at 106.

[87] *Levy*, 236 Conn. at 108 (quoting Beshears v. Asbill, 930 F.2d 1348, 1354 (8th Cir, 1991).

[88] *See Price Waterhouse*, 490 U.S. at 256 (where the statement was admitted); *Miko*, 220 Conn. at 206 (where the statement was uncontroverted); Tyler v. Bethlehem Steel Corp., 958 F.2d 1176, 1185 (2d Cir. 1992) (there was an unequivocal statement of intent constituting direct evidence of discriminatory motive ("I fired him because he was too old").) In *Levy v. Comm'n on Human Rights & Opportunities*, the employer's statement that the complainant was transferred "because of his hearing disability" was considered to be direct evidence, 236 Conn. at 110. Other examples of direct evidence include a company president's planning documents stating that the company's strengths included "young managers"; and a decision maker's comment that he would not hire blacks if it were his company. *See* Reiff v. Interim Personnel, Inc., 906 F.Supp. 1280, 1287–88 (D. Minn. 1995).

[89] *Bethlehem Steel,* 958 F.2d at 1183.

motivating factor in the challenged employment decision."[90] In the case involving the bank, a hearing referee would analyze the direct statement made by an employee of the bank to the victim.

B. McDonnell Douglas-Burdine Allocation of Proof

The second method of allocating the burden of proof is the *McDonnell Douglas-Burdine* model. The pretext *McDonnell Douglas-Burdine* model is used "when a [victim] cannot prove directly the reasons that motivated an employment decision but nevertheless may establish a prima facie case of discrimination through inference by presenting facts sufficient to remove the most likely bona fide reasons for an employment action."[91] The burden shifting scheme of *McDonnell Douglas-Burdine* applies to the Connecticut Fair Employment Practices Act ("CFEPA").[92] Under this model, the complainant "must first establish, by a preponderance of the evidence, a 'prima facie case' of . . . discrimination."[93] At the prima facie stage, the burden of proof for a complainant in an employment discrimination case is minimal.[94]

To establish a prima facie case of employment discrimination under the *McDonnell Douglas-Burdine* model, the complainant must show (1) membership in a protected class, (2) qualification for the position, (3) termination from employment or other adverse employment action, and (4) circumstances giving rise to an inference of discrimination.[95] "To satisfy the second element of the test, [the victim] need not demonstrate that his performance was flawless or superior. Rather, he need only demonstrate that he possesses the basic skills necessary for performance of [the] job."[96] Again, using the case involving the bank, in order to establish a prima facie case the victim would need to show that she is Muslim, that she had

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[90] Stacks v. Sw. Bell Yellow Pages, 996 F.2d 200, 202 n.1 (8th Cir.1993) (citations omitted). Regardless of whether the evidence is direct or circumstantial, "the plaintiff must present evidence showing a specific link between discriminatory animus and the challenged decision." *Id.* Therefore, a complainant may establish a prima facie case under the mixed-motive analysis by presenting evidence that is either "direct" or "circumstantial." "If the [complainant] is unable to produce evidence that directly reflects the use of an illegitimate criterion in the challenged decision, the employee may proceed under the now-familiar three-step analytical framework described in *McDonnell Douglas*." *Id.* at 202 (Referncing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1972)).

[91] Taylor v. Dep't of Transp., CV900578141S, 2001 WL 104350 at *8 (Conn. Super. Jan. 10, 2001); *see also McDonnell Douglas*, 411 U.S. at 802–04; Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 252–56 (1981).

[92] Ann Howard's Apricots Rest., Inc. v. Comm'n on Human Rights & Opportunities, 237 Conn. 209, 225 (1996).

[93] St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506 (1993); *Burdine*, 450 U.S. at 252–53 (1981).

[94] *Levy*, 236 Conn. at 107 (citing *Burdine*, 450 U.S. at 253).

[95] Cruz v. Coach Stores, 202 F.3d 560, 565 (2d Cir. 2000); *See* Bd. of Educ. v. Comm'n on Human Rights & Opportunities, 266 Conn. 492, 505 (2003).

[96] De La Cruz v. New York City Human Res. Admin. DSS (citations and internal quotation marks omitted.), 82 F.3d 16, 20 (2d Cir. 1996).

business to transact at the bank, that she was not allowed to transact her business at the bank, and that she was denied the use of banking services based on her protected class status as a Muslim, while persons who were not wearing a hijab were granted full access to the bank and its services.

Once a prima facie case has been made, the employer must articulate some legitimate, non-discriminatory reason for its decision.[97] Once the complainant has established a prima facie case, the burden shifts to the defendant to rebut the presumption of discrimination by producing evidence of a legitimate, nondiscriminatory reason for why the plaintiff was rejected. The defendant need not persuade the court that it was actually motivated by the proffered reasons. It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff."[98] The proffered explanation "must be clear and reasonably specific."[99] In the banking case, the defense was one of public safety.

Once the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted. The plaintiff retains the burden of persuasion, and must have the opportunity to prove by a preponderance of the evidence that the proffered reason was not the true reason for the employment decision, but a pretext for intentional discrimination. [100] Despite the shifting burdens, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff."[101] The victim must show that he "has been the victim of intentional discrimination."[102] The woman in the banking case referred to earlier would need to establish that the bank intentionally denied her services based on her religious creed, whereas, other patrons who were similarly situated were not denied use of the bank's services.

Some of the darkest episodes in American history are characterized by religious, ethnic, and racial minorities being discriminated against and persecuted based on their membership in a protected class.[103] "From Catholics, Mormons, Japanese Americans, European immigrants, Jews, and African Americans, the story of America is one of struggle to achieve in practice our founding ideals. Unfortunately, American Muslims and Islam are the latest chapter in a long American struggle against

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[97] *McDonnell Douglas*, 411 U.S. at 802.

[98] *Burdine*, 450 U.S. at 248, 259 (Internal citations omitted); *Levy*, 236 Conn. at 108.

[99] *Burdine*, 450 U.S. at 258.

[100] *Id.* at 253; *St. Mary's Honor Ctr.*, 509 U.S. at 507–08; *Levy*, 236 Conn. at 108.

[101] *Burdine*, 450 U.S. at 253.

[102] *Id.* at 256; *St. Mary's Honor Ctr.*, 509 U.S. at 508.

[103] *See* Wajahat Ali, *et al.*, *Fear, Inc. The Roots of Islamophobia Network in America*, CENTER FOR AMERICAN PROGRESS (August 26, 2011), http://www.americanprogress.org/issues/2011/08/islamophobia.html

scapegoating based on religion, race, or creed."[104] There are recent court cases which reflect the types of conflicts that observant Muslims experience in their lives, and some of these cases illustrate how the courts have applied the disparate treatment theory of discrimination to cases involving Muslims.[105] While the discriminatory treatment against Muslims is well defined, discriminatory practices complaints against Muslims are difficult to prove.

The EEOC was investigating two charges of religious discrimination against UPS for not accommodating employees who had beards for religious reasons, despite UPS's Appearance Guidelines.[106] UPS's Appearance Guidelines prohibited all employees in public-contact positions from wearing facial hair below the lower lip.[107] In 1999, UPS circulated a memo describing how employees could request an exemption from the prohibition because of religious purposes.[108] Bilal Abdullah, a practicing Muslim who wore a beard, interviewed with UPS's Rochester, New York facility, for the position of seasonal driver's helper and sorter. The interviewer told him that he would have to shave his beard; when he told her that he could not for religious reasons, she told him that there were other seasonal positions available where he would not have to shave his beard. However, when he attended orientation, he was asked to complete a form that stated he would be clean shaven; when he explained his religion, he was logged out of UPS's computer system and was not hired.[109]

Muhammed Farhan, also a Muslim, was working at UPS in Dallas, Texas, as a package handler where he had no contact with the public. In 2007, UPS accepted his bid for a driver position, which would have put him in contact with the public.[110] Around that time, Farhan also began to grow a beard in observance of his religion. When he reported for work as a driver, he was told that UPS does not allow anyone with a beard to be a driver. Farhan asked his manager and union representative for a religious accommodation; the manager told him that he could not wear a beard as a driver and would have to return to his position as a package handler. Farhan asked the human resources office at two locations for a form to request a religious accommodation, but both offices said there were no such forms.[111]

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[104] *Id.*

[105] *See* Ishra Solieman, *Born Osama: Muslim-American Employment Discrimination,* 51 ARIZ. L. REV. 1069 (2009).

[106] Equal Emp't Opportunity Comm'n v. United Parcel Serv., Inc., 587 F.3d 136, 137–38 (2d Cir. 2009).

[107] *Id.* at 137.

[108] *Id.*

[109] *Id.* at 137–38.

[110] *Id.* at 138.

[111] *Id.*

In another case, Elmenayer was a truck driver who engaged in weekly congregational prayers held in a mosque on Friday afternoons from twelve to two.[112] Up until March 1996, he was able to attend the prayers during his lunch break. However, on March 29, 1996, he was assigned to work in the Brooklyn terminal, which required work at one location instead of driving a route.[113] During his lunch break, Elmenayer attended prayers and was gone for more than two hours (a lunch break is one hour long).[114] When he returned, Elmenayer was questioned by the station manager, Murphy. Elmenayer explained that he was a Muslim and was attending prayers.[115] Murphy told him that he could be fired for job abandonment and suspended Elmenayer without pay for two weeks.[116] On April 10, 1996, while on suspension, Elmenayer made a written request for accommodation, proposing that he be allowed to combine his fifteen-minute coffee break with his lunch hour. On June 13, 1996, Murphy verbally denied the accommodation and suggested that Elmenayer bid for the night shift so that he could observe his Friday prayers.[117]

Additionally, on October 8, 1997, Elmenayer was pulling a trailer out of the bay and went to close the truck's back doors when he noticed that one was missing.[118] He took the trailer to the mechanical shop for repairs and told Murphy of the incident the following day.[119] Murphy determined that Elmenayer violated the rule to report all accidents immediately and suspended him for two days without pay.[120] Elmenayer contends that he was treated disparately.[121] On October 16, 1997, Elmenayer filed an administrative charge of discrimination with the EEOC.[122] The Court of Appeals held that the claim of religious accommodation was time-barred. Elmenayer argued that the rejection of accommodation was a continuing violation.[123] The court held that the rejection was a discrete act, stating that "rejection of a proposed accommodation is a single completed action when taken, quite unlike the 'series of separate acts' that constitute a hostile work environment and 'collectively constitute' an unlawful employment practice." [124] As for the claim of disparate treatment, the court held that

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[112] Elmenayer v. ABF Freight Sys., Inc., 318 F.3d 130, 132 (2d Cir. 2003).
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Elmenayer*, 318 F.3d at 133.
[119] *Id.*.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.* at 134.
[124] *Elmenayer*, 318 F.3d at 135 (citing Nat'l R.R Passenger Corp. v. Morgan, 536 U.S. 101, 114 (2002)).

Elmenayer did not submit sufficient evidence of pretext.[125]

In another case, El Badrawi was working at the University of Connecticut ("UConn") on an H1-B visa when the Department of State decided to revoke his visa without notifying him or his employer.[126] UConn applied for an extension of his visa but while the application was pending Immigration and Customs Enforcement ("ICE") arrested El Badrawi for being unlawfully present in the U.S. While El Badrawi was incarcerated, he was denied access to his medication for Crohn's disease for a few days and was not allowed to observe the fasting schedule for Ramadan. In immigration court, El Badrawi agreed to a deal where he would voluntarily leave the U.S.[127]

The District Court dismissed the State's Motion to Dismiss in part, holding that El Badrawi stated a claim that his right to free exercise of religion was deprived. The Court also held that El Badrawi stated a claim that the defendant failed to accommodate his observance of Ramadan in violation of Religious Land Use and Institutionalized Persons Act ("RLUIPA").[128]

In another instance, an employee was terminated after he complained that a co-worker called him a "Terrorist Muslim Taliban."[129] The employer's alleged reason for termination was that the employee had omitted certain prior employment history. The Second Circuit ruled that the temporal proximity of events was sufficient to establish a prima facie case of discrimination even though the employer provided a legitimate non-discriminatory reason for the termination.[130]

Omid Nodoushani, a Muslim of Iranian descent, was the Director of the MBA program at Southern Connecticut State University ("SCSU"). In 2007, Nodoushani filed an internal discrimination complaint because of an email sent to Hein, the interim Dean of the School of Business, comparing Nodoushani to Saddam Hussein.[131] In 2008, the University implemented a new process for appointing faculty to directorships. Nodoushani did not reapply for his directorship in the MBA program, but did apply for directorship in the Department of Management. Nodoushani received eight of the thirteen faculty votes and was recommended to Hein. In addition, one of Nodoushani's former students, who was elected First Selectman of North Haven, wrote a letter of praise to Nodoushani. Hein wrote to the personnel committee, rejecting the recommendation and asking that

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[125] *Id.*

[126] El Badrawi v. Dep't of Homeland Sec., 579 F. Supp. 2d 249, 254 (D. Conn. 2008).

[127] *Id.* at 254.

[128] *Id.* at 258.

[129] El Sayed v. Hilton Hotels Corp., 627 F.3d 931 (2d Cir. 2010).

[130] *Id.* at 933.

[131] Nodoushani v. S. Conn. State Univ., No. 3:08CV00561(AWT), 2011 WL 4537978 (D. Conn. Sept. 29, 2011).

another candidate, a white male, be elected. The committee held a second vote and recommended a third candidate. Hein also rejected that recommendation and instead appointed his choice.

The District court granted summary judgment for the University on a number of claims. Nodoushani's state law claims were dismissed based on the theory of sovereign immunity while his claims arising from the discriminatory email were determined to be time-barred.[132] Nodoushani's claim that he was discriminated against when he was not appointed director of the MBA program was rejected because Nodoushani failed to present evidence that would have given rise to an inference of discrimination. The Court noted that Hein had rejected another white male in exercising his discretion and that Nodoushani failed to present evidence of pretext.[133]

A claim that the University did not publicize the North Haven event was rejected because it did not constitute an adverse employment action. The court granted summary judgment for the University on Nodoushani's relation claims because the failure to publicize the North Haven event was not an adverse employment action and Nodoushani failed to establish a causal connection between the protected action and the alleged discriminatory acts of not appointing him to the directorships. [134]

Despite the fact that these cases of religious discrimination are difficult to prove, there has been an evolution of thought regarding the religious accommodation needs of some of the most vulnerable Muslims in our state—those that are incarcerated. The outcry is from behind prison bars and far from the public's ear. Nevertheless, Connecticut courts have shown some willingness to sanction conduct that violates the religious freedoms of Muslims. The CHRO investigates, litigates, and adjudicates claims of religious discrimination in prisons.[135]

In one case, an inmate was assigned to a work detail in the commissary where he would be required to handle pork products.[136] He told the supervising staff that he was Muslim, that he was prohibited from handling pork, and that he was required to pray five times a day. He was accommodated on the first day of work, but not the second. Instead, he was reported to the captain. The captain confirmed the religious claim and transferred the inmate to a different work detail as a janitor.[137] The court was impressed by how the accommodation was granted and how it did not single out the inmate in a discriminatory way. The court dismissed the

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[132] Nodoushani v. S. Conn. State Univ., No. 3:08CV00561(AWT), 2011 WL 4537978 at *5–6 (D. Conn. Sept. 29, 2011).

[133] *Id.* at *7–11.

[134] *Id.*

[135] *See* CONN. GEN. STAT. § 46a-64 (2011).

[136] Moore v. Dimars, No. CV 980578839, 1999 WL 235783 (Conn. Super. Ct. April 9, 1999).

[137] *Id.* at *1–2.

inmate's petition for writ of habeas corpus.[138]

In another Connecticut case, an inmate requested Halal meat for two Islamic feast days; the request was denied and he was served fish instead.[139] The defendants presented a declaration from an Islamic expert consultant stating that the feasts do not require eating meat, only that if meat is eaten, then it must be Halal.[140] The District Court denied the inmate's summary judgment motion, taking a different line of reasoning from other courts on the "sincere belief" test.[141] The Court relied on cases where inmates' religious rights were not violated when they were provided an alternative that met the requirements of a Halal diet.[142]

However, a female inmate believed that an important requirement of Islam was the prohibition of physical contact between a woman and a man outside her *mahram*.[143] She was pat searched by a male correctional officer in the presence of female correctional officers on many non-emergency occasions. The inmate requested an exemption from cross-gender pat searches but was denied based on policy grounds.[144] The District Court held that there was a substantial burden on the prisoner's practice of religion and the prison's argument that her belief may not be held by all Muslims was insignificant.[145] The prison did not have a compelling interest justifying the burden because it did not prove that safety and security were promoted by cross-gender searches as opposed to same-gender searches, or that granting same-gender searches to the prisoner would force the prison to violate Title VII in its staffing of correctional

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[138] *Id.* at *2.

[139] Collins v. Bruno, No. 3:08-CV-1943 (AVC), 2010 WL 3955810 (D. Conn. Sept. 16, 2010).

[140] *Id.* at *3.

[141] In free exercise cases, scrutiny of the prisoner's sincerity is often essential in "differentiating between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud." *Patrick,* 745 F.2d at 157.

[142] *Id.* at *4. *See. eg.,* Williams v. Morton, 343 F.3d 212, 218 (3d Cir. 2003) (holding provision of vegetarian diets to Muslim inmates was based on legitimate penological interests and did not violate the First or Fourteenth Amendments); Kahey v. Jones, 836 F.2d 948 (5th Cir. 1988) (holding prisons are not required to respond to particularized religious dietary requests of Muslim inmate); Phipps v. Morgan, No. CV-04-5108-MWL, 2006 WL 543896, at *2 (E.D. Wash. Mar. 6, 2006) (holding nutritionally adequate alternatives to halal meat diet do not offend RLUIPA, free exercise, or equal protection); Abdul-Malik v. Goord, No. 96 CIV. 1021(DLC), 1997 WL 83402, at *6 (S.D.N.Y. Feb. 27, 1997) (noting that "[a]ll that is required for a prison diet not to burden an inmate's free exercise of religion is 'the provision of a diet sufficient to sustain the prisoner in good health without violating [his religion's] dietary laws") (quoting Kahane v. Carlson, 527 F.2d 492, 496 (2d Cir. 1975)).

[143] A *mahram* is a male, whom a women can never marry because of close relationship (e.g. a sibling or parent). The *mahram* can be thought of as a guardian she can call upon when necessary if she is not married, but if she is married, her husband is her *mahram* when he is available. A woman need not wear *hijab* in front of her *mahram* and a *mahram* is usually needed for travelling long distances in safety. *Mahram Definition*, ISLAMIC-DICTIONARY.COM, http://www.islamic-dictionary.com/index.php?word=mahram (last visited Jun. 2, 2012).

[144] Forde v. Baird, 720 F. Supp. 2d 170 (D. Conn. 2010).

[145] *Id.* at 176–77.

officers.[146] Furthermore, the prison did not prove that cross-gender searches were the least restrictive means of addressing the prison's interests.[147]

V. DISCRIMINATION: THE CHESHIRE BOARD OF EDUCATION CASE

Not only does the CHRO attempt to eradicate illegal discrimination in places of public accommodation such as prisons, but, the CHRO also has the broad remedial authority to eliminate discrimination in other public places such as schools.

Children are not insulated from Islamophobia. Muslim children are subject to the negative conduct of others in their neighborhoods, communities, and schools. Muslim children have reported physical and mental abuse from other children. In New London, CHRO was told that school administrators did not take action when they observed bullying conduct or when the victim's parents reported the conduct, seeking the school's help.[148]

The facts of the *Cheshire Board of Education* case, where an African American victim of illegal discrimination "fought it out" are eerily similar to sentiment expressed by one child during an informational session held at the Islamic Center of New London, Connecticut.[149] Problems arise when a victim of bullying has no other recourse but to take action to eliminate the bullying by himself. When a victim uses force to fight back, the victim then becomes subject to discipline, despite the fact that he or she is trying to protect his or herself.

In *Chesire Board of Education,* a student alleged that on October 9, 1997, he and a friend were called "n****r" by a white student. A fight among the three students ensued. As a result of the altercation, the juvenile and his friend were suspended from school for three days, but the white student was not.[150] This was in violation of a provision in the school handbook which required the suspension of all students involved in fights. The student alleged that when he returned to school on October 16, 1997, the racial harassment against him continued on a daily basis, with the white student calling him names and threatening him.[151] Eventually, after not receiving an adequate remedy, the student left Cheshire High School, enrolled in another high school, and filed a complaint with the CHRO.

After a process which involved the complaint being dismissed, appealed, reversed and remanded, the Connecticut Supreme Court

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[146] *Id.* at 179.

[147] Forde v. Baird, 720 F. Supp. 2d 170, 182–83 (D. Conn. 2010).

[148] Comm'n on Human Rights and Opportunities v. Bd. of Educ., 270 Conn. 665 (Conn. 2004).

[149] At the meeting, a school aged child said if he were confronted with anti-Muslim sentiment he would take the matter into his own hands.

[150] *Comm'n on Human Rights and Opportunities,* 270 Conn. at 671.

[151] *Id.*

concluded that the CHRO had the power to eliminate religious discrimination and the Muslim community should utilize the agency's resources to do so:

> [T]he commission has authority, under section 46a-86 (c), to vindicate public school students' rights in the case of the type of racial discrimination alleged in the present case, namely, a discrete course of allegedly discriminatory conduct by school personnel and the local board of education, pursuant to section 46a-58 (a), on the basis of the protection of those rights by section 10-15c.[152]

A violation of the Connecticut Constitution that causes a deprivation of rights on account of *religion*, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability, would also constitute a violation of section 46a-58(a). The *Cheshire* Court discussed the CHRO's authority in section 46a-58(a).

> [A]fter this 1975 legislation, there can be no doubt that the legislature intended the commission to have its full panoply of powers to enforce the broad civil rights protections afforded by what is now § 46a-58. Furthermore, given the breadth of the language of that statute, the fact that it was legislatively regarded as our state's civil rights statute, and the fact that the history of the development of the battle against racial discrimination in this nation was so deeply rooted in constitutional litigation over public schools, we cannot impute an intention to the legislature that the broad language and the specific enforcement power in the commission would, nonetheless, not apply to a discrete course of conduct amounting to racial discrimination by educational officials in our own public schools. Accordingly, we conclude that since 1975, the commission has had the statutory authority to investigate and adjudicate such claims of racial discrimination against students by such officials in the public schools of this state.[153]

The CHRO's statutory authority to litigate and adjudicate claims of religious discrimination is broad and should not be underutilized. There is also adequate justification for victims of illegal discrimination to rely on statutory protections for vindication. The broad sweeping authority set forth in the Connecticut General Statutes, as enforced by CHRO, provides the necessary armor and artillery to combat discrimination.

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[152] *Id.* at 706.
[153] *Id. at* 710.

VI. CONCLUSION

Anti-Muslim sentiment has engendered a provocative response in Connecticut condemning anti-Muslim bigotry and discrimination, and applauding the contributions and sacrifices that Muslims have made. The CHRO and other public service organizations have worked cooperatively and collectively with the Muslim community to denounce discrimination against Muslims, and to end the cycle of fear, intolerance, and discriminatory intent and conduct by those unwilling to embrace and accept that cultural, ancestral, or religious differences that make the state of Connecticut a richer place to live. "Let us learn the proper lesson from the past, and rise above fear-mongering to public awareness, acceptance, and respect for our fellow Americans."[154] The following resolution illustrates how diligently Connecticut is working to eradicate discrimination, and how public outcry coupled with enforcement and utilization of the statutory protections provided can work to reshape the minds of many.

On September 14, 2011, Muslim leaders met with the AFL-CIO to discuss the Muslim American experience in Connecticut. As a result of this meeting, the Connecticut AFL-CIO supported a week of Peace and Reconciliation that was sponsored by a vast coalition of Connecticut religious and community organizations.[155] "Resolution 7", approved during the AFL-CIO convention that day, condemned anti-Muslim bigotry and discrimination. Resolution 7 identified Muslims as "everyday Americans and workers and among our union brothers and sisters," who have contributed to the diverse makeup of this nation since its founding. Muslims were among the first to respond and die while trying to save others on 9/11 and they continue to defend this nation by serving in the armed forces. Muslim institutions and organizations have openly condemned terrorism. Despite these contributions, anti-Muslim sentiment has intensified since 9/11. This growing discrimination has created barriers for Muslim participation in the public life and workplace. Such discrimination and intolerance undermine the very principles upon which this nation was founded. Therefore, Resolution 7 honors those citizens who died in 9/11 by "condemning discrimination and bigotry that runs contrary to our founding principles." Resolution 7 declared the role of the Connecticut AFL-CIO as a leader in ending discrimination and intolerance towards Muslims.[156]

Perhaps a day will come where resolutions such as this will be a relic

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[154] *See* Wajahat Ali *et al*, *The Roots of Islamophobia Network in America*, CTR. FOR AMERICAN PROGRESS, (Aug. 28, 2011). http://www.americanprogress.org/issues/2011/08/islamophobia.html.

[155] CT American Fed. of Labor and Cong. of Indus. Org., *Resolution 7: Condemning Anti-Muslim Bigotry*, AFL-CIO, (Sept. 16, 2011), http://ct.aflcio.org/statefed/index.cfm?action=article&articleID=273324d9-f941-4ecb-bc40-f8c5b3600dce.

[156] *Id.*

of the past, and serve as a reminder of how much we have overcome as a nation and a state. In the meantime the CHRO will continue to focus on its mission of eliminating discrimination through advocacy, education and enforcement.