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⁴⁹ *Id.* at 8.

⁵⁰ *Id.*

⁵¹ *Id.* at 19.

⁵² *Id.*

⁵³ *Id.*

AN UNSETTLED QUESTION: THE EMERGENCE OF
SEXUAL ORIENTATION DISCRIMINATION UNDER
TITLE VII

by
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I. INTRODUCTION

Within the last few years, harassment based on gender identity (sometimes referred to as sexual orientation or sexual preference) has been accepted by some courts as a form of sexual discrimination. This is a new development in the law and clearly favors those in the transgender community who wish to describe themselves as members of the opposite sex. The basic issue presented in this paper is whether sexual orientation discrimination is included within the boundaries of sexual discrimination under Title VII. Title VII of the 1964 Civil Rights Act states that it is illegal for any employer “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of . . . sex.”¹

Serious problems exist since discrimination against transgendered individuals appears to be widespread. Mara Keisling, the executive director for the National Center for Transgender Equality in Washington, D.C. stated, “ ‘We get calls virtually every day from somebody who has been fired from his or her job’ “² for having a different sexual orientation

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than their natural anatomical body. "Each month a transgendered person is murdered simply for being themselves,"³ and most "will be the target of a hate crime."⁴ Another problem is that "birth-assigned sex requires a host of medical experts to list all of the ways in which the transgender person is gender conforming."⁵ Emotional difficulties abound when a transgendered individual discloses his or her status.

This paper describes the terms used in sexual orientation discrimination claims (Gender Identity Disorder, gender, sex, and transgender), the case law prior to the acceptance of gender identity discrimination, and the more recent case law which allows for a claim of sexual discrimination as well as upholds the traditional view.

II. TERMOLOGY

Those who have been discriminated against based on sexual orientation are sometimes classified as having a mental condition defined by psychologists as Gender Identity Disorder (GID). This is best described as "persistent feelings of gender discomfort and inappropriateness of anatomic sex."⁶ The American Psychiatric Association's handbook, *The Diagnostic and Statistical Manual of Mental Disorders* (DSM), states that "there are two components of Gender Identity Disorder."⁷ The first component is that the person must show "strong and persistent cross-gender identification."⁸ This usually means that the person desires to live and dress as a person of the opposite sex. The second component is that "there must also be evidence of persistent discomfort about one's assigned sex or a sense of inappropriateness in the gender role of that sex."⁹ This has been defined as having a "preoccupation with getting rid of primary and secondary sex characteristics."¹⁰ In other words, there is a strong desire to seek sexual reassignment

surgery in order to become the other sex. "The exact cause of this disorder is unknown."¹¹

"The term *transgender* generally refers to a person whose 'gender identity or gender presentation falls outside of stereotypical gender norms.'¹² It should be noted that this is a very general definition. Opinion exists that there are "many different ways in which one can be transgender."¹³

Even "gender" and "sex" are terms in dispute. Gender has been described as "social behavior or norm"¹⁴ and thought of as a cultural dimension. Sex is generally thought of as a person's physical trait. This is an anatomic versus psychological bifurcation. The courts, however, have not been coherent in applying these terms, and exact definitions have been elusive. Even the question of distinguishing between gender and sex is open to debate.

III. SETTING THE STAGE

Prior to 2001, gender identity sexual harassment claims based on Title VII were clearly not accepted by the courts. Examples are *Ulane v. Eastern Airlines, Inc.*¹⁵ and *Hamner v. St. Vincent Hospital and Health Care Center, Inc.*¹⁶ The traditional view of sexual discrimination dominated jurisprudence thinking. Title VII was read from a narrow viewpoint and conformed to the traditional male-female division of sex. Discrimination on any other basis, such as gender identity, was allowed.

Price Waterhouse,¹⁷ however has been a cause of action for sexual orientation discrimination. Although this case has nothing to do with gender or sexual orientation discrimination, it does concentrate on sexual discrimination in the traditional

sense. The court set the stage for an expansion of the view of sexual discrimination when it stated that

“We are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.”¹⁸

After this statement, all federal courts have held that sexual stereotyping falls under the umbrella of Title VII. In this case the plaintiff, Ann Hopkins, was denied promotion to partner due to her non-feminine appearance, behavior, and mannerisms. She had performed very well for the employer but was considered “ ‘overly aggressive, unduly harsh, difficult to work with and impatient with staff’ ”¹⁹ by the district court judge. She filed a Title VII claim against her employer. The court stated that “the central point is [that] . . . an employer may not take gender into account in making an employment decision.”²⁰ An exception to this general rule occurs when gender is a bona fide occupational qualification (BFOQ). The court also stated that sexual stereotyping in and of itself is not gender discrimination. “The plaintiff must prove that the employer actually relied on her gender in making its decision.”²¹ For a cause of action to be upheld, it appears that some sort of harm must happen to the plaintiff based on sexual stereotyping. Sexual stereotyping could be defined as fitting one into a preconceived category. An example is “requiring that a woman wear heels and make-up.”²² The *Price Waterhouse* decision appears to open the door to the idea that there are a large number of mannerisms that are acceptable.

IV. THE EMERGENCE

Transgender rights under Title VII emerged as an evolutionary process starting with reliance on the *Price Waterhouse* decision. The following cases all base their opinions favoring transgender rights on this case.

Nichols v. Azteca Restaurant Enterprises Inc. (256 F.3d 1131, 10th Cir. 2001) was a case that extended sexual harassment to males. In this case Antonio Sanchez acted in an effeminate manner and received ongoing abuse from co-workers and a supervisor. The harassment was persistent. After an argument with a manager, the plaintiff walked off the job and was fired. A Title VII claim was filed by the plaintiff against the employer, and the court stated that “sexual harassment is actionable under Title VII to the extent it occurs ‘because of’ the plaintiff’s sex.”²³ The court considered this action a form of discrimination based on stereotyping an individual and, relying on *Price Waterhouse*, found that stereotyping is illegal sexual discrimination. In *Price Waterhouse* the woman was thought to be too masculine, here a male was thought to be too feminine. Both cases are based upon the stereotypical image of an individual founded on their anatomical sex at birth. A restriction was put in place since not “all gender-based distinctions are actionable under Title VII.”²⁴ An exception was carved out, and the court went on to identify dress and grooming codes, which are different for males and females, as being acceptable. Although the court declared harassment for acting differently came under Title VII, it did not state that sexual orientation was within Title VII.

In *Smith v. City of Salem*²⁵ the court stated that sexual orientation was discrimination based on sex, similar to sexual stereotyping. Smith, a firefighter, worked for the city of Salem, Ohio and was diagnosed with Gender Identity Disorder.

He was employed as a lieutenant and had 7 years of prior service without an incident before adopting a more feminine appearance and conduct. After an executive meeting, the city requested that Smith submit to three psychological evaluations from different physicians of the city's choosing. The city hoped that he would either resign or not comply, thus terminating his employment. The firefighter's attorney contacted the city regarding this matter. Smith then filed a complaint with the Equal Employment Opportunity Commission (EEOC) and received a "right to sue" letter in return. The city suspended Smith for breach of a City/Fire Department policy which was not in effect at the time. At a City Civil Service Commission hearing, the chairman refused to allow testimony from Smith and upheld the suspension. The Columbiana County Court of Common Pleas in Ohio reversed the suspension since the regulation was not in effect at the time of suspension. Smith then filed suit in federal district court on the grounds of sex discrimination and retaliation under Title VII and other state claims. District court found for the city saying that sexual orientation was not a basis for filing a sexual discrimination suit. Smith appealed.

When Smith appealed court applied the McDonnell-Douglas rule. This required that "(1) he is a member of a protected group, (2) he suffered an adverse employment action, (3) he was qualified for the position in question, and (4) he was treated differently from similarly situated individuals outside of his protected class."²⁶ The appeals court also stated that four elements were required to establish a prima facie case for retaliation under Title VII. These were as follows: "(1) he [plaintiff] engaged in an activity protected by Title VII; (2) the defendant knew he engaged in this protected activity; (3) thereafter, the defendant took an employment action adverse to him; and (4) there was a causal connection between the protected activity and the adverse employment action."²⁷ Only

the questions of whether Smith suffered an adverse employment action and whether sexual stereotyping includes sexual orientation were examined by the appeals court. All other elements for a prima facie case were found to be established.

The court stated that "sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination."²⁸ It was also stated that the cause of the behavior is immaterial and that labels of an individual are "not fatal to a sex discrimination claim."²⁹ Here the term "non-conforming behavior" is utilized to make any form of discrimination illegal as applied to sexual behavior. It was the opinion of the court that labeling someone as "transsexual" does not "legitimize discrimination based on plaintiff's gender."³⁰ The court stated that Title VII was never meant to apply only to the traditional notions of sexual behavior. Traditionally, the courts had separated claims under sex or biological features from claims under gender or social norm behavior. The former were granted protection under Title VII and later were not. The appeals court stated that *Price Waterhouse* never intended this type of separation, but that the intent of the U.S. Supreme Court in that case was to bar discrimination based on sex. The court stated that "employers who discriminate against men because they do wear dresses and makeup, or otherwise act femininely, are also engaging in sex discrimination, because the discrimination would not occur but for the victim's sex."³¹

This case has opened the door for discrimination claims on any potential sexual behavior which the employer criticizes as not proper for a male or female. The court did not restrict sexual stereotyping to females who act as males but extended the concept to all people acting in other than traditionally acceptable sexual behavior.

Another case from the same circuit that supported transsexual rights and followed the *Smith* decision is *Barnes v. City of Cincinnati*.³² In this case a police officer was denied promotion to sergeant based on the fact that the officer was a pre-operative male-to-female transsexual. The officer was scrutinized more severely than other officers regarding the promotion and was the only person denied promotion during the probation period between 1993 and 2000. At one point, the officer was told "to stop wearing makeup and act more masculine."³³ The officer filed suit for sex discrimination, and the city of Cincinnati objected on the grounds that the officer was not a member of any protected class and that a similarly situated employee was not identified. Using the *quid pro quo* test for sexual discrimination, the court found that the officer was "a member of a protected class by alleging discrimination against the city for his failure to conform to sex stereotypes."³⁴ The court also found that the officer did not have to "demonstrate an exact correlation with the employee receiving more favorable treatment in order for the two to be considered 'similarly situated.'³⁵

The officer was never identified as having gender identity disorder. Thus, it appears that a transgender person is protected without the need for a psychiatric examination, which may be an expansion of *Smith*.

Other courts disagree with the traditional view. In *Schroer v. Billington*,³⁶ the plaintiff applied for a position with the Congressional Research Service (part of the Library of Congress). After an interview, the plaintiff was offered the job and accepted the position. The plaintiff decided to explain . . . that she was under a doctor's care for gender dysphoria [gender identity disorder] and would be presenting herself as a woman when she started work. The position offer was rescinded, and the plaintiff filed a sex discrimination claim under Title VII.

The court stated that "neither the logic nor the language of *Price Waterhouse* establishes a cause of action for sex discrimination in every case of sex stereotyping."³⁷ A Title VII cause of action is created under sexual stereotyping only when disparate treatment occurs. The primary concern by the court was the motivation of the defendant. If the plaintiff was chastised for not conforming to a male role when perceived to be a male or chastised for not conforming to a female role when perceived to be a female, then discrimination has occurred.

Traditional courts have held that a distinction exists between sexual stereotyping and sexual orientation. The later has been considered "a form of discrimination that remains outside the settled scope of federal sex discrimination laws."³⁸ In *Schroer*, the court felt that it was the time to revisit the decision in *Ulane*.

In the case of *Mitchell v. Axcan Scandipharm, Inc.*³⁹ the court relied upon *Smith*, *Barnes* and *Price Waterhouse* to conclude that a Title VII claim does arise where the plaintiff has suffered discrimination due to "plaintiff's appearance and gender-related behavior."⁴⁰ The court equated this to sexual stereotyping.

V. CONFUSION AT THE DISTRICT AND APPEALS COURT LEVELS

The traditional view of sexual discrimination is still being applied in both the federal district and appeals courts. Examples include *Kastl v. Maricopa County Community College District*,⁴¹ *Etsitty v. Utah Transit Auth.*,⁴² *Dawson v. Bumble and Bumble*⁴³ and *Vickers v. Fairfield Medical Center*.⁴⁴

In *Kastl* the plaintiff was diagnosed with Gender Identity Disorder and at the time was a pre-operative transsexual but “‘functionally living as a female.’”⁴⁵ The court held that the “plaintiff has failed to meet her burden of establishing a prima facie case of discrimination because she has provided no evidence that she was a biological female and member of a protected class while she was employed.”⁴⁶ The equation made by the court is that for sexual discrimination to be determined for a female there must be the finding of a biological female.

In *Etsitty* (2005) a pre-operative transsexual individual, who had been diagnosed having Gender Identity Disorder, filed suit due to termination based on possible liability by the employer as to what restroom the employee would use. The district court recognized that the 6th Circuit court decisions of *Smith* and *Barnes* existed but disagreed with them stating that Gender Identity Disorder is a “drastic action”⁴⁷ and not sexual stereotyping. The court relied on *Ulane*. It maintained that the *Ulane* decision meant that sexual discrimination should be given an “ordinary common meaning”⁴⁸ in “that it is unlawful to discriminate against women because they are women and against men because they are men.”⁴⁹ The district court also cited the Congressional intent when it stated:

From 1981 through 2001, thirty-one proposed bills were introduced in the United States Senate and the House of Representatives which attempted to amend Title VII to prohibit employment discrimination on the basis of affectional or sexual orientation. None of them passed. The rejection of these proposed amendments indicates that Congress intended the phrase in Title VII prohibiting

discrimination on the basis of sex to be narrowly interpreted.

It is interesting to note that the district court went on to state that Title VII “should be liberally construed,”⁵⁰ that the issue of Title VII and transgender identity “is a complex one,”⁵¹ and that “a great deal of tension [exists] . . . on the issue of whether Title VII applies to transsexuals.”⁵² These statements appear to be in conflict with the traditional view.

In *Dawson v. Bumble and Bumble*,⁵³ the appeals court stated that discrimination or harassment is not prohibited due to sexual orientation and that Title VII “does not recognize homosexuals as a protected class.”⁵⁴ The court acknowledged the prior *Smith* decision but gave no analysis of that decision except to say that sexual orientation discrimination is clearly permissible behavior on the part of an employer because such an employee is not part of a protected class (the first requirement to show a prima facie case of sex discrimination). Both the district court and the appeals courts admitted that the distinction between being a woman or man, nonconformance to gender norms, and the status of being gay or lesbian are “somewhat interrelated protected classes”⁵⁵ and that “the borders [between these classes] are so imprecise.”⁵⁶ Even though the appeals court stated that these behaviors would blur together, it still held to a clear distinction that sexual stereotyping was protected under Title VII and sexual orientation was not.

The *Vickers* case presents the most confusing opinion against sexual orientation discrimination. *Vickers* was a private police officer who filed suit against Fairfield Medical Center and others for a variety of claims including sexual orientation discrimination under Title VII. First, the district court held “that Title VII did not protect individuals from

discrimination based on sexual orientation.”⁵⁷ Second, the court stated that the behavior upon which harassment was based was “the employee’s perceived homosexuality, rather than based on gender non-conformity.”⁵⁸ Vickers supplied the court with a complaint that had extensive details showing that he was harassed at work. The district court held that the “behavior which the employee claimed . . . was not behavior observed at work or affecting his job performance.”⁵⁹ Vickers appealed and the 8th Circuit Court of Appeals affirmed in a terse opinion. The *Smith* decision was made after the district court made its opinion but before the appeals court affirmed the decision. The majority opinion in *Vickers* did not mention the *Smith* case. Only the dissent cited *Smith* claiming that sexual orientation was not covered under Title VII.

VI. ANALYSIS

The idea that discrimination is illegal due to sex has been long established by case law and by statutes. This has now been applied to sexual orientation and individuals with gender identity disorder. Perhaps an explanation for the traditional view is that the idea of adopting a different sex from one’s anatomical birth sex is the belief that it is morally wrong. Even the American Psychiatric Association recognizes gender identity disorder in the DSM as a mental disorder or illness.⁶⁰ These attitudes have been criticized as regressive jurisprudence where the court holds a rigid vision of what sex and sexuality are. Until 2000, the courts used the doctrine of protected classes to “affirm and strengthen traditional sex and gender roles that fail to account for the wide spectrum of sexual difference[s].”⁶¹ With *Smith*, *Barnes*, and *Schroer* the door has been opened to punish those who discriminate based on any form of sex.

The differentiation between sexual stereotyping and sexual orientation remains blurred. Some courts state that “gender identity and/or expression are distinct from sexual orientation.”⁶² The court in *Smith* found that using labels, such as transgender, to describe a person did not prohibit a claim of sex discrimination. The limits of the decision from *Smith* are in limbo as many questions remain unanswered. Will this decision allow a male to female (or female to male) preoperative transgender person from dressing and acting as a female (or male), going to work on a regular basis dressed as such, or using the women’s (or men’s) restrooms?

The basic question that must be answered is whether sexual orientation discrimination is truly discrimination? Title VII was created to eradicate sexual discrimination. Why is sexual orientation discrimination allowed at all? Why are transgender individuals punished for not conforming to traditional societal viewpoints regarding sex? Courts on both sides of the issue cite the intent of Congress. The traditional view points out that sexual orientation has never been accepted or enacted into law as a protected class. The modern view cites the opinion of *Price Waterhouse* since “Congress intended to strike at the entire spectrum of disparate treatment.”⁶³ Courts with a traditional viewpoint, as in the *Etsitty* decision, acknowledged a legal problem concerning the usage of the narrow definition of sex discrimination.

Even with the concept that sexual orientation falls under Title VII, numerous questions still exist: What is the difference between physical sex and sexual orientation? Should there be a difference between the two? Should the transgendered individual be allowed insurance and medical coverage? What role, if any, does a psychological examination and determination of Gender Identity Disorder have to do with Title VII sexual orientation claims? Should GID be a standard

before sexual orientation discrimination is allowed? Although some courts have mentioned that the plaintiff has been diagnosed with GID, no court has held it to be a prerequisite for discrimination. How is record keeping handled concerning name, sexual classification, and social security? Should transgendered individuals be allowed to use the restroom, locker room, or the residence hall of their choice? What happens to the dress codes that require men to wear only suits and women to wear either skirts or dresses? Is this not sexual stereotyping? A standard of professional attire would appear more appropriate and be gender neutral.

VII. CONCLUSION

The federal courts are starting to recognize the fact that discrimination based on sex is illegal in all its forms. Also, "a growing number of states and localities have enacted laws prohibiting discrimination based on sexual orientation."⁶⁴ To simply state that discrimination is allowed because of a label (such as transsexual) placed on a person defies logic and the true intent of Title VII prohibition against sexual discrimination. The courts must interpret the law to prohibit discrimination no matter what its form or classification. "Many employers have also begun to address discrimination against transgender workers."⁶⁵ Perhaps the entire concept of sexual orientation discrimination is best stated as a warning: "No one will have their gender rights secure until the entire gender galaxy . . . have rights and protections."⁶⁶

ENDNOTES

¹ 42 U.S.C. §2000e-2(a)(1)

² Jost, Kenneth. *Transgender Issues: Should Gender-Identity Discrimination be Illegal?* 16 CQ Researcher, 391, n. 17 (May 5, 2006).

³ Wade, Dylan. *Expanding Gender and Expanding the law: Toward a Social and Legal Conceptualization of Gender That is More Inclusive of Transgender People.* 11 Michigan Journal of Gender & Law 256, 2005, at 2.

⁴ *Id.* at 257.

⁵ *Id.* at 297.

⁶ *Gender Identity Disorder*, Psychology Today, October 10, 2002, at <http://www.keepmedia.com/Register.do?oliID=225>.

⁷ American Psychiatric Association, *The Diagnostic and Statistical Manual of Mental Disorders*, at 532.

⁸ *Id.*

⁹ *Id.* at 533.

¹⁰ *Id.* at 538

¹¹ Zieman, Gayl. *Gender Identity Disorder*. Behavioral Health Advisor, August 15, 2005, at http://www.fairview.org/healthlibrary/content/bha_genderid_bha.htm.

¹² Bazluke, F T. & Nolan J. J. *Topic: Gender Identity and Expression Issues at College and Universities Quoting Human Rights Campaign Foundation, Transgender Issues in the Workplace* 3 NACUANOTES June 2, 2005 n.3, 1, at <http://www.nacuaorg/nacualert/memberversion/Gender.asp>.

¹³ Wade at 260.

¹⁴ Ben-Asher, Noa. *The Necessity of Change: A struggle for Intersex and transex liberties.* 29 Harvard Journal of Law & Gender, 2006, at 52.

¹⁵ *Ulane v. Eastern Airlines, Inc.*, 581 F.Sup. 821, 7th Cir. 1984.

¹⁶ *Hamner v. St. Vincent Hospital and Health Care Center, Inc.*, 224 F.3d 701, 7th Cir. 2006.

¹⁷ *Price Waterhouse v. Ann B. Hopkins*, 490 U.S. 228 (1989).

¹⁸ *Id.* at 251.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Nichols v. Azteca Restaurant Enterprises Inc.*, 256 F.3d 1131, 9065 (10th Cir. 2001).

²⁴ *Nichols*, 9066 note 7.

²⁵ *Smith v. City of Salem*, 378 F.3d 566, 569 (6th Cir. 2005).

²⁶ *Id.*

²⁷ *Id.* at 570.

²⁸ *Id.* at 573.

²⁹ *Id.*

³⁰ *Id.* at 574.

³¹ *Price Waterhouse* at 234.

³² 401 F.3d 729, 731 (6th Cir., 2005).

³³ *Id.*

³⁴ *Id.* at 733.

³⁵ *Id.*

³⁶ 424 F.Supp. 2d 203, 213 (D.C. Cir. 2006).

³⁷ *Id.*

³⁸ *Bazluka* at 2.

³⁹ 2006 U.S. Dist. LEXIS 6521 at 3.

⁴⁰ *Id.*

⁴¹ 2006 U.S. Dist. LEXIS 60267 at 3, citing Defendant's Separate Statement of Undisputed Facts p 11-12, Ex. 6.

⁴² 2005 U.S. Dist. LEXIS 12634 at 12.

⁴³ 398 F.3d 211, 2nd Cir. 2005.

⁴⁴ 453 F.3d 757 (8th Cir. 2006).

⁴⁵ *Kastl* at 3, citing Defendant's Separate Statement of Undisputed Facts p 11-12, Ex. 6.

⁴⁶ *Id.* at 20.

⁴⁷ *Estitty* at 12.

⁴⁸ *Id.* at 5.

⁴⁹ *Ulane* at 1085.

⁵⁰ *Etsitty* at 8.

⁵¹ *Id.* at 7.

⁵² *Id.* at 8.

⁵³ 398 F.3d 211, 218 (2nd Cir. 2005).

⁵⁴ *Id.*

⁵⁵ *Id.* at 217.

⁵⁶ *Id.*

⁵⁷ *Vickers*, p. 1

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Jost at 390.

⁶¹ Ling, Thomas. *Smith v. City of Salem: Title VII Protects Contra-Gender Behavior*, 40 Harvard Civil Rights-Civil Liberties Law Review, October 2, 2006 at 1, at http://www.law.harvard.edu/students/orgs/crcl/vol40_1/ling.php.

⁶² Bazluke at.2.

⁶³ *Price Waterhouse* at 251.

⁶⁴ Sheehy, Catherine. *Transgender Issues in the Workplace 2004*, Human Rights Campaign Foundation at 4.

⁶⁵ *Id.*

⁶⁶ Vade at 315.

POST-SARBANES-OXLEY: INTERNATIONAL RESPONSES

by
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INTRODUCTION

The Enron, WorldCom, Adelphia, and other corporate scandals gave rise to the passage of the Sarbanes-Oxley Act (SOX) in 2002.¹ This legislation seeks to change corporate culture and significantly improve the reliability of financial reporting by corporate CEOs and CFOs. The Act, however, created a number of problems including the enormous costs of compliance with the Act, particularly with companies whose incomes were borderline or below profitability. Significant conflicts with the laws and regulations of other advanced countries also exist. Section 404 of the Act, for example, requires that the company document every internal and external process that affects corporate earnings.² Estimated costs for compliance exceed \$4.6 million for companies with over \$5 billion in revenues and medium-size companies are expected to incur approximately \$2 million for compliance.³ The EU adamantly stated that its regulations and the actions of member states protect shareholders and, therefore, SOX's extension of the Act to foreign companies is unwarranted.

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