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ELECTION 2008: SEXISM EDITION

THE PROBLEM OF SEX STEREOTYPING

Morvareed Z. Salehpour*

It does seem as though the press at least is not as bothered by the incredible vitriol that has been engendered by the comments by people who are nothing but misogynists.

—Hillary Clinton¹

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1. Lois Romano, *Clinton Puts Up a New Fight: The Candidate Confronts Sexism on the Trail and Vows to Battle On*, WASH. POST, May 20, 2008, at C01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/19/AR2008051902729.html>.

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I. INTRODUCTION

After years of “work[ing] long hours, [and] push[ing] vigorously to meet deadlines,” Ann Hopkins, a senior manager at the accounting firm of Price Waterhouse, was up for partner.² Out of the 88 candidates for partner, she was the only woman. Ann, being aggressive in her work, had secured more major contracts than any of the other candidates for partnership.³ She was praised for her strength, independence, forthrightness, decisiveness, and productivity.⁴ However, Ann was denied partnership.⁵ Partners at Price Waterhouse criticized her for being too masculine.⁶ She was advised to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry”⁷ in order to have a better chance at making partner. Faced with the denial of partnership, Ann brought a Title VII sex discrimination claim against Price Waterhouse.⁸ The Supreme Court ruled that Price Waterhouse’s denial of partnership was illegal because Price Waterhouse had illegally sex stereotyped Ann Hopkins by putting her in a double bind by “object[ing] to aggressiveness in women . . . whose positions require this trait.”⁹ The firm had illegally disadvantaged

2. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 231-34 (1989) (plurality opinion).

3. *Id.*

4. *Id.* at 234.

5. *Id.* at 231-32.

6. *Id.* at 235.

7. *Id.*

8. *Id.* at 231-32.

9. *Id.* at 251. For the establishment of the impermissibility of the double bind and sex-based stereotyping *see id.*

her by requiring her simultaneously to act more masculine and more feminine.

Like Ann, women running for elected office face similar pressures of sex stereotyping. However, while Ann could turn to Title VII for protection, women in politics do not have the same protection available because employment laws do not extend to elected positions, though elected positions are still jobs. Thus, there exists a gap in employment law as it currently stands. In particular, this comment argues that the presidential primaries and the general election are very much like a long interview or a review for job promotion, situations in which anti-discriminatory employment laws do apply. Given this, the media can be seen as a dominant player, like a partner in an accounting firm who influences the votes of others by framing the female candidate and making gender salient.¹⁰ The media serve to play to and perpetuate existing societal sexist views by basing and framing their treatment of female candidates on such views. This process becomes particularly important because once candidates have been framed in a particular light, it is extremely difficult for these candidates to create a new frame for themselves.¹¹ Thus, the media's heightened scrutiny of female candidates influences how voters (excluding core supporters) perceive the candidate or feel about the candidate.¹² This affects how voters choose to vote,

10. See *id.* at 236 (discussing partner at Price Waterhouse repeatedly commenting that he could not consider women seriously for partner since he believed they were incapable).

11. See *infra* note 12.

12. The media has the power to influence undecided voters through its agenda-setting power to decide which issues are important, and through its ability to characterize candidates' personalities in order to influence whether voters feel positively or negatively about a candidate. MAXWELL E. MCCOMBS ET AL., *CONTEMPORARY PUBLIC OPINION: ISSUES AND THE NEWS* 81-82 (1991). By focusing on certain attributes of the candidates rather than others, the media influence voters' images of the candidates. *Id.* This influence is important since statistical data shows that voters' views of candidates based on personal attributes play a significant role in voting. *Id.*

Since "[t]he power to influence is a power which has always been exercised by all forms of news media," politicians are aware of the importance of favorable new coverage. Project, *Media and the First Amendment in a Free Society*, 60 GEO. L.J. 867, 941 (1972); Lee E. Goodman, *The Internet: Democracy Goes Online*, in *LAW AND ELECTION POLITICS: THE RULES OF THE GAME* 97, 97 (Matthew J. Streb ed., 2005). As an aide advised President Carter,

Like it or not, there exists in fact an eastern liberal news establishment which has tremendous influence in this country all out of proportion to its actual audience. The views of this small group of opinion-makers . . . are noted and imitated by other columnists and newspapers throughout the country and the world. Their recognition and acceptance of your candidacy as a viable force with some chance of success

creating a discriminatory effect very similar to that which occurs in Title VII workplace discrimination cases.

In order to explore this discriminatory effect, this paper will focus on the field of presidential politics in the context of the 2008 presidential race because the offices of president and vice president are the highest-ranking and most important jobs in the United States and because sex stereotyping of the female candidates was rampant during the 2008 election cycle.¹³ From the outset, I acknowledge that Title VII legal remedies are unlikely to succeed in the election context. Instead, this paper argues that, if future female presidential candidates are to receive fairer treatment in the media and take part in a fair election process, it is necessary to recognize that our society does not accept similar discriminatory treatment in other job situations. Additionally, counter-speech, such as this paper, can function both to acknowledge the sexist treatment that occurred in the 2008 election cycle and to balance the discriminatory narratives that the media construct about female candidates in future elections.

As part of this argument, Part II will look at the interplay of gender performance and sex-based stereotyping, particularly the double bind, as described in Title VII workplace discrimination cases.

Part III will look at how media coverage of Hillary Clinton and Sarah Palin not only clearly demonstrated the existence of sexism in presidential politics, but also showed the complexity

could establish you as a serious contender worthy of financial support of major party contributors.

Id. at 98.

13. See, e.g., *NOW's Media Hall of Shame: 2008 Election Edition*, NAT'L ORG. FOR WOMEN, http://www.now.org/issues/media/hall_of_shame/ (last visited Oct. 19, 2008). This issue is particularly pressing given that there were two women candidates in the recent presidential election cycle. It takes on greater weight if one considers that while there have been no female presidents in the United States, other countries throughout the world have had women presidents or prime ministers. Some well-known examples include Margaret Thatcher and Golda Meir, Prime Minister of Israel. Jone Johnson Lewis, *Women Prime Ministers and Presidents: 20th Century*, ABOUT.COM: WOMEN'S HISTORY (2010), http://womenshistory.about.com/od/rulers20th/a/women_heads.htm. This is especially interesting if one considers that many of these countries that have had women presidents and prime ministers are developing countries that the general American public may consider less "advanced" than the United States. Examples include: Elisabeth Domitien, Prime Minister of the Central African Republic; Corazon Aquino, President of the Philippines; and Mireya Elisa Moscoso de Arias, President of Panama. *Id.*

and range of prevailing sex stereotyping.¹⁴ In particular, it will illustrate how the media discriminated against Clinton for not fitting the female stereotype by depicting her as too aggressive and mannish and how they discriminated against Palin for fitting the female stereotype by objectifying and sexualizing her at the same time that they questioned her intelligence. Thus, while the media's treatment of the women spanned the spectrum of sex-based stereotyping, gender discrimination substantially hampered both women in their candidacy for political office. The media forced both women to combat these stereotypes and to navigate the double bind, which requires women in Clinton's and Palin's positions to simultaneously behave more masculinely and more femininely, an extra task not required of male candidates¹⁵ In response, both women attempted to achieve a working balance between these simultaneous demands in order to avoid sexist treatment. To counter her sexist treatment, Clinton may have tried to soften her image by crying¹⁶ and Palin may have tried to display strength while maintaining femininity by calling herself "a pit bull with lipstick"¹⁷ and wearing a fashionable wardrobe.¹⁸ However, even though they used differing strategies to combat the double bind, both women ultimately failed to do so effectively.

Part IV will discuss other factors that critics may argue could have influenced the harsher media treatment of Clinton and Palin and explore allegations that gender may have helped the women. Referring to Title VII motivating factor analysis, I will show that even if other factors came into play or gender benefited the women in some ways, sex stereotyping and the double

14. A range that extends from the treatment of women as the homely and unattractive intellectual "bitch" to their treatment as the empty-headed, but sexy "ditz."

15. See Devon W. Carbardo & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262 (1999) (discussing how outsider groups feel they have to do extra work to overcome negative stereotypes).

16. Gail Sheehy, *Hillaryland at War*, VANITY FAIR, Aug. 2008, available at <http://www.vanityfair.com/politics/features/2008/08/clinton200808>.

17. E.g., Rebecca Sinderbrand et al., 'Lipsick on a Pig: Attack on Palin or Common Line?', CNN, Sept. 10, 2008, <http://www.cnn.com/2008/POLITICS/09/10/campaign.lipstick/>; Hannah Strange, *Obama Hits Back at McCain in 'Lipstick on a Pig' Row*, TIMES ONLINE, Sept. 10, 2008, http://www.timesonline.co.uk/tol/news/world/us_and_america/us_elections/article4726524.ece.

18. E.g., Jeanne Cummings, *RNC Shells Out \$150K for Palin Fashion*, POLITICO, Oct. 22, 2008, <http://www.politico.com/news/stories/1008/14805.html>; Sam Stein, *Palin Clothes Spending Has Dems Salivating, Republicans Disgusted*, HUFFINGTON POST, Oct. 22, 2008, http://www.huffingtonpost.com/2008/10/22/palin-clothes-spending-ha_n_136740.html.

bind still played a role in disadvantaging both female candidates. I end by concluding that the offices of president and vice president are an unregulated workplace in which sex stereotyping violative of the spirit of Title VII occurs. I argue that while no legal remedy may exist, societal sex discrimination in this context and its perpetuation by the media must be acknowledged through counter-speech in order to increase the number of accurately informed voters and give viable female candidates a fair chance at succeeding.

II. TITLE VII SEX STEREOTYPING

This is the longest job interview in the world. Think about the decision as a hiring decision!

—Hillary Clinton¹⁹

Sex stereotyping occurs when employers require or expect women to behave according to the female stereotype.²⁰ In the leading case, *Price Waterhouse v. Hopkins*, an accounting firm denied partnership to Ann Hopkins for being too aggressive and not feminine enough.²¹ The partners disliked her “brusqueness” and her “use of profanity.”²² Though she was the most successful candidate for partnership,²³ the firm passed her over because partners thought she was overcompensating for her gender and felt that she needed to behave and appear more femininely in order to have a better chance of making partner.²⁴ One partner even recommended that she take charm school classes.²⁵ It was apparent that Price Waterhouse only looked at female candidates for partnership “favorably if partners believed they maintained

19. Sheehy, *supra* note 16.

20. See KENJI YOSHINO, *Covering: The Hidden Assault on Our Civil Rights* 158 (2006); Kenji Yoshino, *Covering*, 111 *YALE L.J.* 769, 917 (2001) [hereinafter Yoshino, *Covering*]. According to psychologist Susan Fiske, the female stereotype “is to be socially concerned and understanding, soft and tender, and the overall stereotype for a man . . . is that [he] will be competitive, ambitious, independent, and active.” *Id.* at 916 (quoting ANN BRANIGAR HOPKINS, *SO ORDERED: MAKING PARTNER THE HARD WAY* 236 (1996)).

21. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 233-37, 250-51 (1989) (plurality opinion).

22. *Id.* at 234-35.

23. *Id.* at 234.

24. *Id.* at 235.

25. *Id.*

their femin[in]ity while becoming effective professional managers.”²⁶

Ruling that sex stereotyping of employees is illegal, the Supreme Court stated, “we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotypes associated with their group.”²⁷ Further, *Price Waterhouse* specifically establishes the principle that women cannot face simultaneous demands to emphasize and deemphasize their womanhood in order to find a right balance between masculine and feminine traits; the Court determined such demands create an impermissible double bind violative of Title VII.²⁸

However, there are several areas of law in which the disparate treatment of women arising from how they perform their gender is allowed to stand.²⁹ Even in employment law and under Title VII, the protection of women from sex-based stereotyping is not absolute.³⁰ Several precedents establish that women’s choices of dress and appearance can be legally punished in many situations.³¹ These precedents illustrate the gaps that exist in employment law in the prevention of discriminatory treatment of women based on sex stereotypes.

26. *Id.* at 236.

27. *Id.* at 251. *Price Waterhouse* was a plurality opinion in which Justices Marshall, Blackmun, and Stevens joined Justice Brennan’s delivery of the Court’s opinion while Justices White and O’Connor filed concurring opinions and Justices Scalia and Rehnquist joined Justice Kennedy’s dissenting opinion. *Id.* at 231.

28. *Id.* at 251. In the Supreme Court’s words, the tension between these competing concurrent demands creates an “intolerable and impermissible catch 22.” *Id.*; See also Yoshino, *Covering*, *supra* note 20, at 780, 910, 917 (discussing how *Price Waterhouse* can be interpreted as protecting women from both covering and reverse covering demands).

29. An example outside of the employment context is court toleration of sex-based discrimination in such contexts as street harassment. See, e.g., Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 Harv. L. Rev. 517 (1993).

30. For example, churches are able to deny women positions as ministers. See, e.g., *Combs v. Central Texas Annual Conference of United Methodist Church*, 173 F.3d 343 (5th Cir. 1999); *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985). Another example is the exception for discrimination in small businesses. 42 U.S.C. § 2000e(b) (2007). A further example of such a gap in employment law is the exception for casting discrimination. See Russell K. Robinson, *Casting and Caste-ing: Reconciling Artistic Freedom and Antidiscrimination Norms*, 95 Calif. L. Rev. 1 (2007) (discussing the use of discriminatory casting in the film industry).

31. See Devon Carbado et al., *Foreword: Making Makeup Matter*, 14 DUKE J. GENDER L. & POL’Y 1, 2-4 (2007) (discussing that identity discrimination can occur through grooming standards such as dress, make-up, hair styling, etc.).

In *Jespersen v. Harrah's Operating Co., Inc.*, the Ninth Circuit allowed Harrah's Casino to fire a successful female bartender for failing to wear make-up.³² Looking at Harrah's grooming list, it becomes apparent that women had more requirements than men.³³ While men were faced only with generalized requirements to keep hair above their shirt collars, have clean and trimmed nails, and wear no nail polish or make-up, women had requirements with much more specificity.³⁴ Women were required to wear their hair down and teased, curled, or styled, to only wear white, pink, red, or clear nail polish, to wear nude colored stockings, and to wear powder, blush, mascara, and lipstick "applied neatly in complimentary colors."³⁵ Though their grooming standards would have consumed more time and expense,³⁶ the court determined that women faced no unequal burden and were not subject to discriminatory sex stereotyping because both men and women were subject to a "Personal Best" policy.³⁷ As a result, the court required that women like Jespersen, who found wearing make-up in "conflict with [their] self-image," to do so or face losing their jobs.³⁸ Thus, these women were required to perform against their own understanding of their gender identity if they wished to keep their jobs.

Similarly in *Craft v. Metromedia, Inc.*, the Eighth Circuit upheld a TV station's decision to reassign a woman anchor to reporter for not adhering to make-up and dress guidelines.³⁹ Despite the station's assurances to Craft that she would not be given a "make-over," criticisms regarding her appearance were made soon after she was hired.⁴⁰ As time passed, the station gave her more and more guidelines and recommendations to follow in her appearance.⁴¹ Unlike the male journalists, she not only faced greater, but also "daily scrutiny of her appearance."⁴² Among the measures it took, the station provided her with a

32. *Jespersen v. Harrah's Operating Co., Inc.*, 444 F.3d 1104, 1105, 1113 (9th Cir. 2006).

33. *Id.* at 1107.

34. *Id.*

35. *Id.*

36. Carbado et al., *supra* note 31, at 6-7. See *Jespersen*, 444 F.3d at 1107 for a list of the specific requirements for males and females.

37. *Id.* at 1111-13.

38. *Id.* at 1108.

39. *Craft v. Metromedia, Inc.*, 766 F.2d 1205, 1207-08 (8th Cir. 1985).

40. *Id.* at 1208.

41. *Id.* at 1208-09.

42. *Id.* at 1213.

clothing calendar that detailed what she had to wear every day and a book of clothing and makeup recommendations called *Women's Dress for Success*.⁴³ Eventually, after several surveys, the station determined that Craft was not adequately meeting the appearance standards required for the position; they chose to demote her to reporter because viewers saw her "as too old, too unattractive, and not deferential enough to men."⁴⁴ The station determined that she was not effectively softening the station's image, a requirement imposed only on female anchors.⁴⁵ Thus, Craft was forced to lose her job because she did not perform her identity to the expected female stereotype.⁴⁶ However, the court ruled that Craft was not subject to discriminatory sex stereotyping when the station subjected her to appearance requirements and demoted her to reporter.⁴⁷ It chose to ignore the evidence of sex stereotyping by the station in the course of its actions. The court refused to acknowledge the inequality of the measures, but rather considered the unequal measures simply part of "management's efforts to pursue with personnel their individual weaknesses."⁴⁸ It seemingly legitimized the station's sex stereotyped requirement that women maintain an image of "professional elegance" while men only maintain a "professional image."⁴⁹

Such promulgation of sex stereotyping is generally negative and subjects women to lower "workplace standing and advancement opportunities."⁵⁰ So, in situations such as *Jespersen* and *Craft*, where women are not protected from these negative stereotypes, a woman may find herself having to take part in "identity-negating conduct"⁵¹ in order to fit the stereotype. She may also find herself being forced to do 'extra work' in an attempt to deflect or conform to these stereotypes or to find the correct balance in the double bind.⁵² This 'extra work' forces women to

43. *Id.* at 1208-09.

44. *Id.* at 1209. Thus, here the TV station was playing to and perpetuating societal sex stereotyping of women just as the media played to and perpetuated social sex stereotyping of women in their treatment of Clinton and Palin.

45. *Id.* at 1208.

46. *Id.* at 1209.

47. *Id.* at 1217.

48. *Id.* at 1214.

49. *Id.*

50. Carbarido & Gulati, *supra* note 15, at 1269-70.

51. *Id.* at 1266, 1277. Carbarido and Gulati also refer to this as a "denial of self." *Id.* at 1288. For a general discussion of this *see id.* at 1288-90.

52. *Id.* at 1262, 1277. This 'extra work' consists of extra time and effort. *Id.* at 1279.

“perform comforting acts to make insiders comfortable with the [woman’s] outsider status.”⁵³ This push will be stronger for unprotected women in male-dominated arenas.⁵⁴ Further, because women are subject to multiple female stereotypes, an attempt to overcome one stereotype poses a chance that another stereotype will come into play, such as assertiveness being taken as “bitchiness.”⁵⁵

Additionally, many women also have to navigate other identities, such as race, when performing their gender.⁵⁶ As a result, these women have a more difficult time trying to find the correct gender performance because the interplay between these other identities and gender creates particularized gender stereotypes that they have to overcome.⁵⁷ Thus, female minorities have additional ‘extra work’ because, unlike a white woman or a man of color who only has to overcome one “*but for . . .* characteristic[]” to be considered part of the privileged group,⁵⁸ a woman of color will have to overcome a specialized intersection of both.⁵⁹ For example, an Asian American woman who chooses to perform her gender more femininely, will likely also have to deal with the racialized gender stereotype that Asian American women are quiet and passive.⁶⁰ Similarly, an African American woman must

53. *Id.* at 1301.

54. *See id.* at 1269 (stating that the more the stereotype conflicts with the qualities the employer is looking for, the more work the employee will have to do to counter it).

55. *Id.* at 1292.

56. For example, a minority female candidate, similarly situated to Clinton or Palin, would also face additional pressures to overcome her race in addition to demands to behave more masculinely and more femininely at the same time. *See* JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 4 (1990). For a more detailed discussion of the intersectionality of race and gender *see* Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 708, 713-715 (2000).

57. *See* Carbado & Gulati, *supra* note 56; Gowri Ramachandran, *Intersectionality as “Catch-22”: Why Identity Performance Demands Are Neither Harmless nor Reasonable*, 69 Alb. L. Rev. 299 (2005).

58. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139, 151 (1989).

59. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241, 1244 (1990) (stating that one cannot look at the gender and the race of women of color separately).

60. Carbado & Gulati, *supra* note 56, at 703; Ramachandran, *supra* note 57, at 328.

consider racialized gender stereotypes,⁶¹ such as the “Mammy” and the “Jezebel,” when shaping her gender performance.⁶²

Sadly, the lack of protection from these negative stereotypes and the extra performance demands they create for women of all colors is not limited to situations like *Jespersen* and *Craft*. In reality, there are many such gaps in employment law and the political arena is one of these areas where women remain unprotected from discriminatory sex stereotyping and face increased performance demands.

In particular, female candidates running for president or vice president fall within this gap in employment law because they are, in effect, applying for a job: in this case, the most prominent positions in the United States government with a long interview season consisting of the primary and general elections. Further, in this lengthy interview, in which candidates have to partake in hundreds of media interviews,⁶³ the media play a prominent role in influencing the votes of undecided voters upon whom the elections turn.⁶⁴ Thus, the vulnerability of these women to sex stereotype discrimination can be considered an unregulated area in employment law. These women, like the women harmed by the rulings in *Jespersen* and *Craft*, have no legal remedies under Title VII although they are subject to the discriminatory sex stereotyping which Title VII means to prevent. Further, like Hopkins, they are subject to a double bind that causes them to do ‘extra work’ in order to perform comforting strategies to balance the conflicting demands placed on them.

Therefore, it must be recognized that although many may claim that gender equality has been achieved or almost achieved, the treatment of the female candidates in the 2008 presidential race is critical evidence that females are still subject to discriminatory norms. At the very least, it must be recognized that the stereotyping that women in these positions face leads to extra

61. White women do not face this additional danger when performing their gender.

62. See Ramachandran, *supra* note 57, at 311.

63. The fact that candidates have to partake in such interviews with the press is apparent from the controversy that arose when Palin refused to partake in interviews. See Michael Calderone, *Sarah Palin Has Yet to Meet the Press*, POLITICO, Sept. 6, 2008, <http://www.politico.com/news/stories/0908/13208.html>; *No Questions: Palin Won't Talk to Press*, HUFFINGTON POST, Sept. 5, 2008, http://www.huffingtonpost.com/2008/09/05/no-questions-palin-wontt_n_124256.html.

64. See GEO. L.J., *supra* note 12, at 124.

performance demands that are only permitted due to a gap in employment discrimination law.

III. SEX STEREOTYPING OF CLINTON AND PALIN

Both Hillary Clinton and Sarah Palin were subject to sex stereotyping and the double bind by the public and the media. This section explores the sex stereotypes perpetuated by the media and applied to the candidates. It demonstrates how the candidates' differential treatment manifests the complex and broad range of female stereotypes (from the "too aggressive bitch" to the "sexy simpleton"). Finally, it explores how the candidates tried to combat this sex stereotyping. However, as a caveat to the analysis in this section, I acknowledge that I cannot be certain of the candidates' actual motivations, but must base my analysis on speculation about their motivations in shaping their responses to the double bind.

A. *Clinton's Attempt to Combat the Stereotypes and Balance the Double Bind*

This section explores the societal sex stereotypes the media perpetuated in respect to Clinton, and her attempt to combat these stereotypes and to navigate the double bind.

1. Media Stereotypes

Like Ann Hopkins in *Price Waterhouse*, Clinton had an image of being too aggressive and assertive. The media criticized her for it, depicting her as the stereotypical cold "bitch."⁶⁵ Similar to Hopkins, she was regularly criticized for being too masculine and "overcompensating for being a woman."⁶⁶ Tucker Carlson of MSNBC, when talking about Clinton after being presented with a Hillary nutcracker,⁶⁷ stated: "That is so perfect. I have often said, when she comes on television, I involuntarily cross my legs."⁶⁸ In the same vein, on another occasion, he criti-

65. See Amanda Fortini, *The "Bitch" and the "Ditz": How the Year of the Woman Reinforced the Two Most Pernicious Sexist Stereotypes and Actually Set Women Back*, N.Y. MAG., Nov. 24, 2008, available at <http://nymag.com/news/politics/nationalinterest/52184/>.

66. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989) (plurality opinion).

67. The Official Site of Hillary Nutcracker and Corkscrew Bill: America's Fun Couple, <http://www.hillarynutcracker.com/> (last visited Feb. 22, 2008).

68. Tucker Carlson on Clinton: "[W]hen she comes on television, I involuntarily cross my legs," MEDIA MATTERS FOR AMERICA (July 18, 2007, 5:06 PM ET), <http://>

cized her for overcompensating for her gender when he said, "There's just something about her that feels castrating, overbearing, and scary."⁶⁹ Clinton was being criticized for the same aggressiveness and assertiveness that would have been valued in a man as a sign of a strong leader.

Some equated this aggressiveness and assertiveness as evilness and lunacy when seen in Clinton. Along these lines, Chris Matthews called her a "she-devil" and pictured her with horns.⁷⁰ Don Imus of MSNBC called her "Satan" 11 times and labeled her a "buck-tooth[ed] witch."⁷¹ Political cartoons conveyed the same message by regularly portraying her as a wicked witch out to get Obama.⁷² Her aggressiveness and ambition were used to portray her as dishonest, manipulative, and untrustworthy. Ken Rudin of NPR, while a guest on CNN's *Sunday Morning*, criticized her ambition and aggressiveness by saying, "Hillary Clinton is Glenn Close in *Fatal Attraction*. She's going to keep coming back, and they're not going to stop her."⁷³ Bill Mitchell, a CNN political cartoonist, portrayed her as an Obama stalker⁷⁴ and a masked, psychotic, chain-saw wielding killer.⁷⁵ The *New Republic* headlined their May 7, 2008 issue with an article on Clinton titled "The Voices in Her Head: Hillaryland's Fatal Psycho-drama."⁷⁶ They combined it with a cover picture of her looking crazed and added talk bubbles making nonsense claims like "I

mediamatters.org/items/200707180009. A comment that he repeated on three separate occasions. *Id.*

69. Tucker on Sen. Clinton: "There's just something about her that feels castrating, overbearing, and scary" MEDIA MATTERS FOR AMERICA (Mar. 20, 2007, 7:32 pm ET) <http://mediamatters.org/mmtv/200703200013>.

70. *Chris Matthews Teased Segment by Asking Whether Clinton is a "She Devil,"* MEDIA MATTERS FOR AMERICA (Nov. 19, 2007, 4:07 PM ET), <http://mediamatters.org/items/200711190004>.

71. *Imus Smeared Hillary Clinton, "that buck-toothed witch, Satan," and Gore, "the phoniest bastard on the planet,"* MEDIA MATTERS FOR AMERICA (May 24, 2006, 8:06 PM ET), <http://mediamatters.org/items/200605250001>.

72. *See, e.g., Daniel Kurtzman, Political Cartoon, ABOUT.COM: POLITICAL HUMOR,* <http://politicalhumor.about.com/od/hillaryclinton/ig/Hillary-Clinton-Cartoons/Hillary-Melting.-1tN.htm>.

73. *NPR's Rudin: "Hillary Clinton is Glenn Close in Fatal Attraction. She's going to keep coming back and they're not going to stop her,"* Media Matters For America (April 28, 2008), <http://mediamatters.org/items/200804280002>.

74. Bill Mitchell, *What Does She Want?*, CNN (May 22, 2008), <http://www.cnn.com/POLITICS/analysis/toons/2008/05/22/mitchell/index.html>.

75. Bill Mitchell, *McCain Wins In PA*, CNN (Apr. 23, 2008), <http://www.cnn.com/POLITICS/analysis/toons/2008/04/23/mitchell/index.html>.

76. Posting of Jeffe Fecke to Shakesville, <http://shakespearessister.blogspot.com/2008/04/bitchez-is-cra-zee.html> (Apr. 22, 2008).

bowl with Jesus!” and crazed claims like “You’ll take away this nomination from my cold, dead hands!”⁷⁷ The dedication and steadfastness admired in male candidates was, in Clinton, a sign of the crazed women who would not move on from trying to get the nomination.

Further, Clinton, like Hopkins, was also criticized for not being feminine enough. She was openly criticized for stepping so far out of the female stereotype and the expectation of the domestic sphere tied to it. Pundits regularly portrayed her as the shrill overbearing wife that was getting too uppity and needed to return to her household duties. Glenn Beck called her a “stereotypical bitch” who would drive all men crazy after four years of listening to her “nagging.”⁷⁸ Marc Rudov of FOX News agreed, stating that when she spoke with her “nagging voice,” “men hear[d], ‘take out the garbage.’”⁷⁹ Thus, Rudov and Glen relegated Clinton to the role of a housewife who had nothing better to say than “take out the garbage.” Such comments denied her the right to be in the public/political sphere and portrayed her as outside her rightful place — the home. Mike Barnicle of the *Boston Herald* further promulgated this view on MSNBC by stating that Clinton looked “like everyone’s first wife standing outside a probate court” in reference to how she looked in her reactions to Obama during a debate.⁸⁰ In this statement, he was telling Clinton, and voters, that she was performing her given role as a woman too aggressively and was now the hated, grasping “ex-wife.” One of the worst criticisms was made by Charlotte Allen of the *Washington Post*, who said,

By all measures, [Hillary Clinton] has run one of the worst — and, yes, stupidest — presidential races in recent history, marred by every stereotypical flaw of the female sex. . . . What is it about us women? Why do we always fall for the hysterical, the superficial and the goily sentimental? . . . *I don’t understand why more women don’t relax, enjoy the innate abilities most of us possess (as well as the ones fewer of us possess) and revel in the things most important to life at which nearly all of*

77. *Id.*

78. CNN’s, *ABC’s Beck on Clinton: “[S]he’s the stereotypical bitch”*, Media Matters For America (Mar. 15, 2007), <http://mediamatters.org/items/20070315001>.

79. *Fox News graphic: “Rudov: Clinton’s ‘nagging voice’ is reason she lost male vote”*, Media Matters For America (JAN.4,2008), <http://mediamatters.org/items/200801050004>.

80. All-male Morning Joe panel laughed as Barnicle compared Clinton to “everyone’s first wife standing outside a probate court”, Media Matters For America (Jan 23, 2008), <http://mediamatters.org/items/200801230004>.

*us excel: tenderness toward children and men and the weak and the ability to make a house a home. . . . Then we could shriek and swoon and gossip and read chick lit to our hearts' content and not mind the fact that way down deep, we are . . . kind of dim.*⁸¹

Clinton was being criticized for daring to leave the home and challenging the female stereotype of the good mother and housewife.

In addition, Clinton's appearance was criticized for not being feminine enough. She was ridiculed for her pantsuits and average looks. For example, Cameron Cardow, in his cartoons in the *Ottawa Citizen*, repeatedly took jabs at Clinton's pantsuits.⁸² Similarly, Ron Fournier of the *Associated Press* accused Clinton of hiding behind her pantsuit on one occasion.⁸³ The media regularly used the most unflattering pictures of her in the most awkward positions to portray her as ugly and hysterical.⁸⁴ They criticized her for being a crazy old hag, rather than a good-looking, feminine woman, as apparent from the constant portrayals of her as a witch.⁸⁵ Rush Limbaugh went further to question if Americans would "want to watch a woman get older before their eyes on a daily basis."⁸⁶ No one voiced similar concerns about seeing one of the male candidates age before their eyes as president.⁸⁷

Finally, just as Hopkins' success in bringing in the most business was ignored, Clinton's experience and competence were

81. Charlotte Allen, *We Scream, We Swoon. How Dumb Can We Get?*, WASH. POST, Mar. 2, 2008, at B01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/29/AR2008022902992.html>.

82. Cameron Cardow, *Pantsuit*, OTTAWA CITIZEN, June 2, 2008, available at <http://www.caglecartoons.com/viewimage.asp?ID={9A3AA335-5393-4B74-B034-C2A5DA47C569}>; Cameron Cardow, *Still Moving*, OTTAWA CITIZEN, June 4, 2008, available at <http://www.caglecartoons.com/viewimage.asp?ID={56D47D7F-E743-4E2C-979D-184B7BF92EC9}>.

83. Rick Klein & Mike Chesney, *Clinton Plays Gender Card*, ABC News, Nov. 2, 2007, <http://abcnews.go.com/Politics/TheNote/story?id=3811025&page=1>.

84. Rebecca Traister, *The Witch Ain't Dead, and Chris Matthews is a Ding-Dong*, SALON.COM, Jan. 9, 2008, http://www.salon.com/mwt/feature/2008/01/09/hillary_nh/.

85. See sources cited *supra* notes 70-71.

86. *Taking lead from Drudge, conservative echo chamber hypes Clinton photo*, Media Matters For America (Dec. 18, 2007), <http://mediamatters.org/items/200712190002>.

87. In fact as males age, society views them as becoming "distinguished" looking while women are seen as aging and losing their looks. Jan Wilson, *Men Look Distinguished and Women Have Had a Procedure*, ARTICLE ALLEY (Dec. 14, 2008), http://www.articlealley.com/article_719271_28.html.

sometimes downplayed; because she was a woman, everything she had accomplished so far was attributed to her husband. She was denied her qualifications and accomplishments.⁸⁸ Chris Matthews treated her dismissively and refused to admit that she had any merits of her own. On one occasion, he stated, "Let's not forget, and I'll be brutal, the reason she's a U.S. Senator, the reason she's a candidate for president, the reason she may be a front-runner is . . . her husband messed around."⁸⁹ In fact, Chris Matthews was so dismissive of her that on one occasion he pinched her cheek.⁹⁰ It was as if he was telling her, "You're so cute, thinking you can become president." One cannot imagine him doing the same thing to McCain or Obama or any other male presidential candidate. If he had done so, it would surely have been openly criticized by the rest of the media, unlike this treatment of Hillary Clinton that was virtually ignored.

Moreover, Clinton's stereotype as the bitch did not save her from some in the media who sexualized her in order to dismiss her ability and qualifications.⁹¹ For example, a *Mad TV* spoof

88. The qualifications she touted were mostly from her time as Senator of New York and First Lady. Thus, she not only spoke of the experience she had gained in Congress, but also actively talked about the experience she had gained as First Lady including her trips abroad and her active involvement in Bill Clinton's administration. See Anne E. Kornblut & Alec MacGillis, *Hillary Clinton Embraces Her Husband's Legacy*, WASH. POST (Dec. 22, 2007), at A01, available at <http://www.washingtonpost.com/wpdyn/content/article/2007/12/21/AR2007122102588.html> and Sheey, *supra* note 16. Examples of major qualifications she claimed from her time as First Lady included creation of the Children's Health Insurance Program, helping bring peace to Northern Ireland in the 1990s, and negotiating open Macedonian borders to refugees of Kosovo. Karen Tumulty et al., *Assessing Clinton's "Experience"*, TIME (Mar. 13, 2008), available at <http://www.time.com/time/politics/article/0,8599,1721966-1,00.html>. However, her decision to greatly rely on the experience she gained during her time as First Lady may have led her to face criticisms that her run was a co-presidency, or that her experience only derived from her husband. See, e.g., Kornblut & MacGillis, *supra* and Terrence Smith, *The Clinton Co-Presidency*, HUFFINGTON POST (Dec. 18, 2007), http://www.huffingtonpost.com/terrence-smith/the-clinton-copresidency_b_77338.html. This can be seen from Maureen Dowd of the *New York Times* stating, as if discounting Hillary Clinton's abilities and competence, "It's odd that the first woman with a shot at becoming president is so openly dependent on her husband to drag her over the finish line." Maureen Dowd, Op-Ed., *Two Against One*, N.Y. TIMES (Jan. 23, 2008), available at <http://www.nytimes.com/2008/01/23/opinion/23dowd.html>.

89. After vowing not to underestimate Clinton, Matthews asserted, "[T]he reason she may be a front-runner is her husband messed around", Media Matters For America (Jan. 9, 2008), <http://mediamatters.org/items/200801090008>.

90. Posting of Jessica Valenti to Feministing, <http://www.feministing.com/archives/008372.html> (Jan. 9, 2008, 03:46 PM).

91. This sexualization was different than the sexualization of Palin discussed later. While Palin was sexually objectified, Clinton was rather sexualized in an "un-

music video of the Democratic primaries, set to the tune of *Umbrella* by Rihanna, showed Clinton as only being in the race in order to sleep with Obama.⁹² In the spoof, the Obama impersonator claimed, that “[Hillary’s] got her eyes on the prize and I’m talking about my junk.”⁹³ They portrayed her as an unserious contender for the position of president and applied to her the stereotype that, deep down, all women were inherently only motivated by their desire for “the prize.”

2. Clinton’s Response

Clinton had to maintain an image of aggressiveness and assertiveness in order to show voters that she had the strength required to be president. She had to show voters that she was qualified and prepared for the position and had the stereotypically masculine qualities associated with the position of president. Especially in light of dismissive comments like Matthews’s, which denied her any accomplishment of her own and implied that she could not stand on her own qualifications, Clinton likely understood the need to combat the traditional female stereotype of the soft-spoken, gentle, and sensitive listener, viewed as incompatible with being a strong leader.⁹⁴ Clinton may have known that she would have to continue to promote her masculine qualities and tout her experience in order to be considered

sexy” way consistent with Part III.A.2’s forthcoming discussion of the portrayal of Clinton’s cleavage by the media as unwanted because of her age. For example, the *Mad TV* spoof not only referenced the fact that her husband cheated on her, but also portrayed her in “granny” bras and panties. *Mad TV* (FOX television broadcast Nov. 24, 2007).

92. *Id.* This “music video” was not only sexist, but also racist. It subjected Obama to several racial stereotypes as well, such as black men have large genitalia and white women want to sleep with the dangerous, but sexy black man. *See id.*

93. *Id.*

94. Men on the other hand may have more leeway in their performance of the leader role since they are assumed to more easily fit into the role of the strong leader and are not subject to the stereotype that their default role is that of a soft-spoken, gentle, and sensitive listener. Thus, while a woman who is soft-spoken will be automatically assumed to be solely a listener and thus, an ineffective leader, a soft-spoken man is not subject to such an inference. Rather a soft-spoken man may even be admired for the fact that he is soft-spoken while a woman with the same quality is seen as incompetent. For example, during the 2008 election, the fact that Obama was soft-spoken appealed to many voters and many in the media. *See* Nedra Pickler, *Remember Lincoln, Obama Allies Say*, WASH. POST (Jan. 16, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/16/AR2007011601168.html> and Todd Purdum, *Raising Obama*, VANITY FAIR, (Mar. 2008), available at <http://www.vanityfair.com/politics/features/2008/03/obama200803>. Thus, often men are allowed to openly exhibit qualities that women are forced into hiding.

viable. Thus, in the face of such dismissiveness towards her abilities, Clinton may have decided to continue to be aggressive and begin to actively stress her 35 years of experience and achievements, particularly those from her time as First Lady.⁹⁵ To maintain her aggressive image, she made statements such as, "I'm a fighter and I will get up every day in the White House, and I will fight for you."⁹⁶ Similarly, her heightened emphasis on her experience was apparent in her release of an advertisement asking whom voters wanted answering that 3 a.m. phone call.⁹⁷

However, Clinton may have come to realize that she may have gone too far with her attempts to combat the stereotype of the vulnerable and weak female. Her proactive performance of comforting strategies to better fit herself into the male-dominated field, may have led her to face another female stereotype. She had become confined to the category of "bitch" and likely felt she had to feminize herself while maintaining her image as aggressive and assertive.

As a result, Clinton may have tried to demonstrate her "warmer, kinder, compassionate side."⁹⁸ For example, she made changes in her dress and her behavior. She tried to dress more femininely, particularly by wearing more colors and make-up that matched her clothes.⁹⁹ However, her actions were not enough and the media attacked her for these attempts. For instance, the *Washington Post* criticized her attempts to dress more femininely, accusing her of showing cleavage when she wore a more feminine shirt with a lower cut.¹⁰⁰ The article claimed, "[i]t was startling to see that small acknowledgment of sexuality and femininity."¹⁰¹ Clinton was blamed for straying from her "desexualized uniform."¹⁰² "[T]he cleavage stir[red] . . . discomfort No one want[ed] to see that."¹⁰³ "Just look away," they en-

95. See Tumulty et al., *supra* note 87.

96. Sheey, *supra* note 16.

97. Julie Bosman, *Clinton on Experience*, N.Y. TIMES (Mar. 1, 2008), available at <http://www.nytimes.com/2008/03/01/us/01adbox.html?scp=9&sq=clinton+3+a.m.+ad&st=nyt>.

98. Sheey, *supra* note 16.

99. See Robin Givhan, *Hillary Clinton's Tentative Dip into New Neckline Territory*, WASH. POST (July 20, 2007), at C01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/19/AR2007071902668.html>; Sheey, *supra* note 16.

100. Givhan, *supra* note 98.

101. *Id.*

102. *Id.*

103. *Id.*

couraged readers.¹⁰⁴ Thus, not only was she criticized for her attempt to feminize herself, but she was also denied the ability to dress femininely because she was too old to be “sexy.”¹⁰⁵

In another attempt to make her image more feminine, Clinton may have even allowed herself to show some emotion by getting misty-eyed the day before the New Hampshire primary.¹⁰⁶ However, the media criticized her for being too emotional with headlines reading: “Clinton Fights Back Tears,” “Clinton Gets Emotional,” and “Hillary Gets Leaky.”¹⁰⁷ Maureen Dowd asked, “Can Hillary Cry Her Way Back to the White House?”¹⁰⁸ One of Clinton’s male competitors, John Edwards, attacked her, saying that a president needed “strength and resolve.”¹⁰⁹ Thus, at the same time that the media criticized her for being too manly and too cold, the media (and even her opponents) criticized her for being emotional. Clinton was being criticized for being too feminine now. Her tears, which would have been admired in a man as a show of emotion, were criticized as a sign of weakness.¹¹⁰ She was portrayed as the weak female who was out of

104. *Id.*

105. See Robinson, *supra* note 30, at 28 for a discussion of how females actors in the film industry are subject to age-based role trapping that pressures them into maintaining the “young sexy appearance” as long as possible since as they age, they are regarded as losing sex appeal and thus, lose roles. The same perception of women is true in society at large. As women age, they are considered “unsexy” and expected to hide away their sexuality. Essentially, they are required to present themselves as asexual as apparent from the *Washington Post’s* allegation that Clinton had a “desexualized uniform.” Givhan, *supra* note 98.

106. See Sheey, *supra* note 16.

107. Traister, *supra* note 83.

108. Maureen Dowd, Op-Ed., *Can Hillary Cry Her Way Back to the White House?*, N.Y. TIMES (Jan. 9, 2008), available at <http://www.nytimes.com/2008/01/09/opinion/08dowd.html>.

109. Traister, *supra* note 83.

110. For example, while Hillary Clinton was criticized for getting choked up, Former President George H. Bush was admired for his fatherly pride when he sobbed in describing his son, Jeb Bush’s, gubernatorial loss in Florida in 1994. Today (NBC television broadcast Dec. 5, 2006). Similarly, George W. Bush became emotional and teared up several times during his presidency, but was overwhelming not criticized for it. Martha Brant, *West Wing Story: Bush’s Tears*, NEWSWEEK (Apr. 3, 2002), available at <http://www.newsweek.com/id/63537>. One example of such tears was while paying tribute to his father during a recent commencement speech. *CBS Evening News* (CBS television broadcast Dec. 12, 2008). Rather than being seen as weak or “breaking under pressure” as a women would, his tears were seen by many as a sign of his emotional connection to the nation. Brant *supra*; Evan Thomas, *The Politics of Tears: Clinton is Just the Latest Pol to Use Emotion to Effect*, NEWSWEEK (Jan. 9, 2008), available at <http://www.newsweek.com/id/88458>. Likewise, Ronald Reagan’s tearing up was also considered such a show of “warm-hearted sentiment.” Thomas, *supra*. Further, male presidential candidates who have teared up have also

her league and had been brought to tears by it.¹¹¹ However, this reactionary media criticism may also have arisen due to a potential belief in the media that Clinton was performing, so they treated her worse for it. As Carbado and Gulati state, "to the extent that the outsider is perceived as acting strategically, her actions will be discounted and probably resented. Therefore, the outsider not only has to perform, but she has to perform well."¹¹² Such a theory can be supported by media accusations that Clinton faked the tears to get the support of women.¹¹³ For example, in response to her tears, one reporter said, "I'll bet she spent hours thinking about it beforehand. Crying doesn't work in campaigns. Only in relationships."¹¹⁴

If Clinton was not performing well, so that the media were able to pick up on the fact that she may have been performing, it was likely due to several factors limiting candidates' abilities to act more femininely or more masculinely. For Clinton, these limiting factors included her age, physical appearance, and core supporters. Clinton's age and looks posed a challenge in her attempts to present a more feminine persona. Her age and figure may have made her unable to attractively wear the more feminine skirt suit and confined her to the pantsuit, thus limiting her ability to feminize her appearance. Her age and looks may also have prevented her from wearing the more form fitting clothes of Sarah Palin or growing her hair longer to appear more feminine.

Additionally, Clinton had to consider her core supporters. To prevent the loss of core supporters, candidates have to be sure that they do not move too radically toward feminization or masculinization. Clinton, however, appears to have been limited not only by her feminist support, but also by her own feminist ideals.

faced no criticism. For example, the emotional moments of Republican candidate Mitt Romney, who teared up several times, received much less coverage than Clinton's emotional moment. *Id.* This differing treatment suggests that men may have a greater ability than women to get emotional without fear of political repercussions.

111. However, though the media criticized her for her tears, the emotion she allowed herself to show may have actually helped her in gaining the support of women voters who felt a closer tie to her as a result of the emotion she had shown. Karen Breslau, *Hillary Tears Up: A Muskie Moment, or a Helpful Glimpse of 'the Real Hillary'?*, NEWSWEEK (Jan. 7, 2008), available at <http://www.newsweek.com/id/85609>. Such voters related to her emotional statement that the election is "about our country. It's about our kids' future. It's about all of us together. Some of us put ourselves out there and do this against some difficult odds." *Id.* These voters also felt that they were finally seeing the "real Hillary." *Id.*

112. Carbado & Gulati, *supra* note 15, at 1291.

113. See Traister, *supra* note 83.

114. Dowd, *supra* note 107.

It seems likely that because of her own feminist leanings and the fact that many feminists supported her, she had less room to cater to the female stereotype by acting more femininely as she faced losing that core support base. It may also be that Clinton, in order to maintain her feminist base, took part in some acts that contradicted the comforting strategy she had undertaken.¹¹⁵ For instance, while she attempted to feminize herself, she continued to support women's issues and remained aggressive in order to preserve her position with her core feminist base.

B. *Palin's Attempt to Combat the Stereotypes and Balance the Double Bind*

As a newcomer to the national political field, Sarah Palin had no existing national media image like Hillary Clinton, but, like Ann Hopkins and Hillary Clinton, she was still subject to the double bind. The role of vice president is seen as requiring masculine qualities, especially because the vice president is understood to be a "heartbeat away" from the presidency. Female candidates, however, also face pressures to exhibit femininity while displaying the required masculine qualities. Palin's decision on how to deal with this double bind differed from Clinton's in that Palin seemed to embrace her femininity and play it up, trying to use it to her advantage. However, Palin was still unsuccessful in her efforts of balancing the double bind. In fact, she was often subject to treatment that derived from female stereotypes, such as objectification and perceptions that she lacked intelligence. Her label of the "Hot VP," which emerged from her own party, exemplified this.¹¹⁶

As soon as she came to the national spotlight, Palin was criticized for being a bad mother and neglecting her children (who would take care of her baby with Down syndrome!¹¹⁷) to run for

115. See Carbardo & Gulati, *supra* note 15, at 1306-07 (discussing how outsiders "who engage in comfort strategies may engage in some visible discomfort strategies to retain status in the outsider community").

116. See Mark Leibovich, *Among Rock-Ribbed Fans of Palin, Dudes Rule*, N.Y. TIMES (Oct. 18, 2008), available at <http://www.nytimes.com/2008/10/19/us/politics/19palin.html?ref=politics> (discussing button stating "Proud to be voting for a hot chick."); Average Joe American, <http://averagejoeblogs.blogspot.com/2008/09/hot-button.html> (Sept. 3 2008, 11:14:00 PM) (providing examples of political buttons including one saying, "From the coldest state comes the Hottest VP.").

117. See John F. Harris & Beth Frerking, *Clinton Aides: Palin Treatment Sexist*, POLITICO, Sept. 11, 2008, available at <http://www.politico.com/news/stories/0908/13129.html>. For example John Roberts of CNN said, "Children with Down's syndrome require an awful lot of attention. The role of vice president, it seems to me, would

vice president.¹¹⁸ But Palin also likely knew that many found her attractive. From the beginning, the media focused on her looks. David Weiner of the *Huffington Post* talked about her being a “VPILF.”¹¹⁹ A whole website was dedicated to this idea.¹²⁰ In what was likely an effort to balance this feminine framing and present herself as an aggressive, but feminine leader, Palin defined herself as a “hockey mom,”¹²¹ a “pit bull with lipstick,”¹²² someone who had been nicknamed “Sarah Barracuda” for her aggressiveness¹²³ and was an “avid hunter” in her free time.¹²⁴ While she presented herself as the experienced maverick governor from Alaska,¹²⁵ she likely made sure to maintain a feminine image. At the same time she “[t]out[ed] her ‘executive experience,’”¹²⁶ she may have taken steps to dress and appear femininely and retain her image as a mother by bringing her family on stage and, on one occasion, having her youngest daughter recorded saying, “Vote for my mommy and John McCain.”¹²⁷ She

take up an awful lot of her time, and it raises the issue of how much time will she have to dedicate to her newborn child?” *Id.* Similarly, Sally Quinn of the *Washington Post* said, “Her first priority has to be her children. When the phone rings at 3 in the morning and one of her children is really sick what choice will she make?” *Id.*

118. See Bob Cusack, *Pro-Hillary Clinton Group Decries ‘Sexism’ at Palin*, THE HILL (Sept. 2, 2008), available at <http://thehill.com/leading-the-news/pro-hillary-clinton-group-decries-sexism-at-palin-2008-09-02.html>; Fortini, *supra* note 64; Posting of Francesca Donner to Front Lines, <http://blogs.wsj.com/frontlines/2008/09/01/sarah-palin-mother-of-five-soon-to-be-grandmother-of-one/> (Sept. 1, 2008, 5:46 PM); Sarah Palin, Now starring In “What Kind of a Mother. . .”, http://open.salon.com/blog/heather_michon/2008/08/29/sarah_palin_now_starring_in_what_kind_of_a_mother (Aug. 29, 2008, 4:54 PM).

119. David Weiner, *VPILF*, HUFFINGTON POST (Aug. 29, 2008), http://www.huffingtonpost.com/david-weiner/vpif_b_122404.html. For those who may not be aware VPILF (VP I’d like to fuck) is an offshoot of MILF (Mother I’d like to fuck).

120. VPilf.com, <http://www.vpif.com/> (last visited Feb. 22, 2008).

121. Michael Cooper and Elisabeth Bumiller, *Alaskan is McCain’s Choice; First Woman on G.O.P. Ticket*, N.Y. TIMES (Aug. 29, 2008), available at <http://www.nytimes.com/2008/08/30/us/politics/29palin.html>; Sinderbrand et al., *supra* note 17.

122. Sinderbrand et al., *supra* note 17; Strange, *supra* note 17.

123. Posting of Dan Beucke to Election 2008, http://www.businessweek.com/election/2008/blog/archives/2008/08/mccains_vp_choi.html (Aug. 28, 2008).

124. Steve Gorman, *Moose Hunter Palin Draws Comedians’ Fire*, REUTERS (Sept. 4, 2008), <http://www.reuters.com/article/vcCandidateFeed2/idUSN0333449720080904>.

125. Beucke, *supra* note 122.

126. Robin Abcarian, *Sarah Palin Touts Her Executive Experience*, LA TIMES (Sept. 5, 2008), available at http://www.latimes.com/news/politics/la-na-trailpalin5-2008sep05_0,5129232.story.

127. Ted Anthony, *Analysis: GOP Contradicts Self on Palin Family*, USA TODAY (Sept. 3, 2008), available at http://www.usatoday.com/news/politics/2008-09-03-3753354928_x.htm.

spoke of being a “tough executive” who stopped the “Bridge to Nowhere” and challenged corruption in Alaska,¹²⁸ but she simultaneously spent \$150,000 on wardrobe and make-up to present the image of a stylish, attractive woman.¹²⁹

Further, Palin, probably realizing that many found her attractive, may have regularly winked, waved, and smiled at the cameras and the public in a likely attempt to use her attractiveness to her advantage.¹³⁰ She may have tried to gain supporters through her looks by using the stereotype of a good-looking woman to her advantage. Thus, unlike Clinton, Palin’s strategy to combat the stereotypes and double bind she faced may have included pandering to the stereotype¹³¹ at the same time that she tried to present herself as a strong leader. Palin seems to have tried to play into the female stereotype so that she, seeming unthreatening to the current system, would attract voters.

The media and voters did not appreciate her efforts. They became more obsessed with her appearance. There was regular

128. Beucke, *supra* note 122.

129. See Cummings, *supra* note 18 and Stein, *supra* note 18.

130. See Fortini, *supra* note 64. A female minority candidate would likely not have the same ability to attempt to use her attractiveness to her advantage because she would not easily fall into the “white” image of attractiveness that is promulgated by the media and into which Sarah Palin easily falls. Thus, in this instance, Palin was benefited by her race because she had the choice to use her good looks to her advantage, an opportunity a female minority candidate may not have. Further, women of different racial backgrounds likely have differing degrees of difficulty in trying to take advantage of their good looks. For example, women of certain minorities are generally viewed as more attractive than women of other minorities because they are perceived as closer to the “white” standard. Thus, Asian American, bi-racial, and Latina women may be considered sexier than black women. An example of this can be seen in a recent photo-shopped L’Oreal advertisement that featured attractive, African American singer Beyoncé Knowles, but that had made her look white by lightening both her skin color and her hair color. Posting of Caroline to She Knows the Buzz, <http://thebuzz.sheknows.com/girls/beyonce-girls/since-when-is-beyonce-white> (Aug. 6, 2008).

131. Some may have viewed Clinton’s emotional tears as pandering to the female stereotype as well. However, it seems more likely that Clinton may have allowed herself to get emotional in an attempt to frame herself in a more feminine way in order to contradict allegations of being too masculine rather than as a strategy of gaining votes by fitting herself in a certain female stereotype, as Palin may have done. Further, it is more likely that Clinton was not trying to pander to stereotypes with her show of emotions because, as a feminist, she is opposed to the promulgation of stereotypes. See Dorothee Benz, *The Media Factor Behind the ‘Hillary Factor,’* EXTRA!, Oct. 1992, available at <http://www.fair.org/index.php?page=1206> (discussing the Tammy Wynette and tea and cookies statements which are explored more in Part IV.A.1.b dealing with Clinton Hate).

coverage of her wardrobe and make-up,¹³² especially her hair.¹³³ Such concerns were not raised for any of the male candidates in the elections with the same prevalence or popularity. The *Boston Herald* worried for her “long locks” suffering in her updos.¹³⁴ She was criticized for spending such an extravagant amount on wardrobe,¹³⁵ but it served to demonstrate how deeply obsessed the media were with what she wore, especially when shows like *Access Hollywood* were covering her \$150,000 wardrobe in detail.¹³⁶ Further, both the excessive amount spent and the extensive coverage demonstrated that, because she was a woman, Palin had less leeway with her wardrobe. While the male candidates could easily wear the same suit on multiple occasions with no one batting an eyelash, Palin did not have the same freedom. As a female, she would be judged on every wardrobe choice she made.¹³⁷ If the media had not criticized her extravagant war-

132. The *Huffington Post* was even concerned over whether her lipliner was a tattoo or not and the speculation was of course accompanied with a picture slideshow. Anya Strzemien, *Is Sarah Palin's Lipliner a Tattoo?*, HUFFINGTON POST (Sept. 30, 2008), available at http://www.huffingtonpost.com/2008/09/30/is-sarah-palins-lipliner_n_130352.html.

133. See, e.g., Willow Lindley & Anya Strzemien, *Sarah Palin: A Brief History of Hair*, HUFFINGTON POST (Oct. 31, 2008), available at http://www.huffingtonpost.com/2008/10/31/sarah-palin-a-briefhisto_n_139573.html (including slideshow photo analysis); Willow Lindley & Anya Strzemien, *Sarah's Sexy Hair: A Desperate Bid for Votes?*, HUFFINGTON POST, Oct. 8, 2008, available at http://www.huffingtonpost.com/2008/10/13/is-sarahs-new-hairstyle-p_n_133048.html (including slideshow photo analysis).

134. Lauren Beckham Falcone, *Stylists to Passe Sarah Palin: Let Your Hair Down*, BOSTON HERALD (Sept. 4, 2008), available at http://www.bostonherald.com/news/us_politics/view.bg?articleid=1116858.

135. See, e.g., Patrick Healy & Michael Luo, *\$150,000 Wardrobe for Palin May Alter Tailor-Made Image*, N.Y. TIMES (Oct. 22, 2008), available at <http://www.nytimes.com/2008/10/23/us/politics/23palin.html?fta=y>; Stein, *supra* note 18.

136. Healy & Michael Luo, *supra* 135. However, it is also likely that Palin and the Republican Party may have contributed to such criticisms by portraying Palin as the normal, blue-collar, all-American woman, an image contradicted by the \$150,000 wardrobe. See *Palin, Motherhood and Apple Pie*, Media Matters for America (Sept. 11, 2008, 3:17 PM ET), <http://mediamatters.org/mmtv/200809110013> (discussing Republican strategist, John Feehery's, statement that Palin represented “motherhood and apple pie and everything good about America.”).

137. There appears to be a social norm that female candidates are expected to not only present themselves in a professional manner as required of male candidates, but also present themselves in a fashionable way (reminiscent of the “professional elegance” standard of the TV station in *Craft*) or face criticism. See Booth Moore, *Sarah Palin's \$150,000 Wardrobe Malfunction?*, LA TIMES (Oct. 22, 2008, 9:16 AM PT), available at <http://latimesblogs.latimes.com/alltherage/2008/10/palins-economic.html>. This social expectation for women in the public eye to be fashionable is also apparent in the media obsession over Michelle Obama's wardrobe. See, e.g., *Michelle Obama: A First Lady Fashionista*, CBS NEWS (Nov. 7, 2008), available

drobe, they would likely have criticized her poor wardrobe *à la* Hillary Clinton and her pantsuits. As a result, Palin, because she could not politically afford to wear the same suit on multiple occasions, was likely compelled to spend more on her wardrobe than her male counterparts.

Additionally, such efforts to play into the female stereotype may have backfired for Palin in that they appear to have increased her objectification by the media, the public, and *her supporters*. For example, George Gurley of the *New York Observer*, a Republican and John McCain supporter, wrote that his first thought about Palin was, "I want to have sex with her," before he continued to make even more explicit comments about her.¹³⁸ He bemoaned her lack of cleavage during her convention speech,¹³⁹ treating her as a sexual object.¹⁴⁰ Further, this sexual objectification led to dismissive treatment. Gurley said he wanted Palin to take care of him, to bake pancakes for him.¹⁴¹ He was essentially telling her she was out of place in the political sphere and relegating her back to her "true" role in the domestic sphere. If this was not enough, in reaction to watching one of her old interviews, he dismissively said, "What a delightful nose!"¹⁴² very reminiscent of Matthews pinching Clinton's cheek and, sadly, having the same effect as well. With this statement, Gurley dismissed Palin. It was as if he were saying, "You are too cute to belong here in the man's world."

Also prevalent was evidence of Sarah Palin's sexual objectification by the public. Such objectification included T-shirts twisting the Republican chant of "Drill, Baby, Drill" into a cari-

at http://www.cbsnews.com/stories/2008/11/07/earlyshow/main4583142.shtml?source=RSS&attr=_4583142; Booth Moore, *Michelle Obama's Inauguration Wardrobe Reviewed*, LA TIMES: All the Rage (Jan. 20, 2009, 12:23 PM PT), available at <http://latimesblogs.latimes.com/alltherage/2009/01/michelle-obamas.html>; *Stalking Michelle Obama's Style*, SF CHRON: SF UNZIPPED (Oct. 15, 2008, 10:15 AM), available at <http://blog.sfgate.com/chronstyle/2008/10/15/stalking-michelle-obamas-style>.

138. George Gurley, *My Vice President*, N.Y. OBSERVER (Sept. 16, 2008), available at <http://www.observer.com/2008/style/my-vice-president>.

139. *Id.*

140. The fact that the media and the public wanted to see the "Hot VP's" cleavage while wanting the cleavage of the "old and ugly bitch" Hillary Clinton hidden away demonstrates the differing female stereotypes the two women candidates were subjected to. It also demonstrates the differing treatment of the two women based on age. While Clinton was too old for the public and the media to see as sexy, Palin seems to have just made it into the category of the "young, sexy female" who is the perfect sex object. See Givan, *supra* note 99.

141. Gurley, *supra* note 138.

142. *Id.*

capture of her having sex with McCain and another picturing a woman's silhouette next to an oil drill and saying, "I'd drill that."¹⁴³ A pornographic film called *Nailin' Paylin*¹⁴⁴ and a Palin blow-up doll¹⁴⁵ were also made. These characterizations not only sexually objectified Palin, but also played on her position as vice presidential nominee by portraying her as subordinate to the male figure. Thus, her attempt at providing a gender comfort strategy and using it to her advantage failed. As a result, the media, and much of the public, dismissed her as a sex object and did not see her as a viable political candidate.

At the same time, like Clinton, Palin had several factors limiting her performance, specifically her inability to act more masculinely. For Palin this limitation arose from her family circumstances and her support base. As a mother of five, including a newborn, she was limited in her ability to downplay her motherhood. Having younger children and a baby with Down syndrome ensured that one of the first identifications she would receive would be that of a mother, even if she did not desire motherhood to be one of her prominent identifications. Further, her conservative base also limited her in her ability to act more masculinely. If she behaved more masculinely, not only did she risk losing the support of the conservative women who related to her as a mother and who saw her as one of themselves,¹⁴⁶ but she also risked losing her conservative (and largely sexist) male base. This conservative male base consisted of many men who found her good-looking and objectified her based on her looks.¹⁴⁷ Their objectification limited Palin in how strong and less femi-

143. Ann Friedman, *Palin Sexism Watch: Sexist Stereotypes Edition*, FEMINISTING (Sept. 16, 2008, 3:47 PM), available at http://feministing.com/2008/09/16/palin_sexism_watch_sexist_ster.

144. *Nailin' Paylin*, HUFFINGTON POST (Oct. 24, 2008 2:00 PM), available at http://www.huffingtonpost.com/2008/10/24/nailin-paylin-another-min_n_137592.html (updated Nov. 24, 2008, 5:12 AM).

145. Jessica Valenti, *Palin Sexism Watch: Sex Doll Edition*, FEMINISTING (Oct. 13, 2008, 5:11 PM), available at http://feministing.com/2008/10/13/palin_sexism_watch_sex_doll_ed/.

146. See, e.g., David Jackson, *Conservative Women 'So Excited' over Palin*, USA TODAY, Sept. 10, 2008, available at http://www.usatoday.com/news/politics/election/2008/2008-09-09-women_N.htm?loc=interstitialskip; Emily Ramshaw, *Conservative Women Applaud Choice of Palin*, DALLAS MORNING NEWS, Aug. 29, 2008, available at DENTON RECORD-CHRONICLE, <http://www.dentonrc.com/sharedcontent/dws/news/politics/national/stories/082908dnpoleagle.249380f3.html>; Kim Severson, *They Raise Children, Pray and Support Palin*, N.Y. TIMES, Sept. 4, 2008, available at <http://www.nytimes.com/2008/09/05/us/politics/05women.html>.

147. See Leibovich, *supra* note 116.

nine she could portray herself.¹⁴⁸ Further, they too expected her to be the good mother, the good child-rearer.¹⁴⁹ Therefore, they also limited her masculinization in that respect. Consequently, if she stopped being the “Hot VP” and good mother, she would likely have lost the support of not only these conservative male supporters, but also the conservative female supporters who believed in the female stereotype.

Thus, just as Clinton’s masculinization of herself seemed to have gone too far, Palin’s feminization of herself seemed to have gone too far, especially in light of her limited ability to masculinize herself. She continued to receive dismissive treatment. Matthews, before a debate, asked if Biden would help Palin with her chair;¹⁵⁰ something that would not be asked if she had been a man and, more importantly, had never been asked about Clinton prior to a debate. Her sexual objectification combined with her often uninformed answers in interviews (such as her failure to know what the Bush Doctrine was¹⁵¹ and not being able name a single magazine or newspaper she read¹⁵² or another Supreme Court case that she disagreed with other than *Roe v. Wade*¹⁵³), brought into play the stereotype of the attractive but dumb woman. The media began to call Palin a “bimbo”¹⁵⁴ and a “ditz.”¹⁵⁵ Stephanie Miller, host of a nationally syndicated progressive talk radio show, called her an “idiot,” a “sack of stupid,” and a stupid “Barbie.”¹⁵⁶

Thus, while the stereotype of the good-looking woman and mother may have helped Palin in gaining some votes from conservative women and men who were attracted to her, it hurt wo-

148. *See id.*

149. *See id.*

150. A.J.W., Whether Biden Will Help Palin With Her Chair at Debate, MEDIA MATTERS FOR AMERICA (Oct. 2, 2008, 4:58 PM ET), available at <http://mediamatters.org/items/200810020015>.

151. Seth Colter Walls & Sam Stein, Palin’s ABC Interview: Stumped on Bush Doctrine, Seems to Contradict McCain on Pakistan, HUFFINGTON POST (Sept. 11, 2008 7:13 PM), available at http://www.huffingtonpost.com/2008/09/11/palins-abc-interviewstum_n_125818.html (updated Oct. 12, 2008, 5:12 AM).

152. CBS Evening News (CBS television broadcast Sept. 30, 2008).

153. CBS Evening News (CBS television broadcast Oct. 1, 2008).

154. *E.g.*, Ed Schultz, a radio host, used “bimbo alert” in reference to her. Harris & Frerking, *supra* note 117.

155. *See* Fortini, *supra* note 65; Friedman, *supra* note 143.

156. The Stephanie Miller Show (KTLK radio broadcast Nov. 3, 2008). In fact Palin was commonly referred to as “Caribou Barbie.” *E.g.* David Freddoso, *Following ‘Caribou Barbie,’* NAT’L REV., (Sept. 5, 2008 10:00 AM), available at <http://www.nationalreview.com/articles/225546/following-caribou-barbie/david-freddoso>.

men as a whole since her performance of the stereotype served to confirm it. As a result, the negative inferences that arise from the stereotype will continue to harm future female candidates.¹⁵⁷ Donny Deutsch of CNBC called Palin the “new feminist ideal.”¹⁵⁸ He claimed that Palin had figured out what she needed to be a “woman in power:” a “supermom,” “sexy,” “at the perfect age” (44, an age at which she had experience, but still “physical appeal”), “a lioness,” “funny,” “real,” “rock solid,” “feisty,” and “smart.”¹⁵⁹ He said that 40 years of feminists had not figured out this ideal, but Palin had.¹⁶⁰ He stated Clinton had not figured it out either.¹⁶¹ She did not wear a skirt, he said.¹⁶² Most damning of all for women in general, Deutsch essentially told women if they wanted to be successful as powerful women in business, they had to adopt the ideal Palin had created.¹⁶³ The stereotypes Palin promulgated were taking women a step backwards. Women were being told that in order to be successful, it was necessary that they be good mothers, be attractive, and, most importantly, wear skirts to ensure everyone knew they were “powerful women.”¹⁶⁴ Hence, Palin had “reinforced some of the most damaging and sexist ideas of all: that women are undisciplined in their thinking; that w[omen] are distracted by domestic concerns or frivolous pursuits like shopping; and that w[omen] are not smart enough, or not serious enough, for the important jobs.”¹⁶⁵

Therefore, in the face of the failure of Palin and Clinton to combat sex stereotyping and navigate the double bind effectively, it is evident that presidential politics is an unregulated workplace in which future women candidates will be similarly disadvantaged by facing the double bind and by being expected to play into the female stereotype. Potentially most striking is that, as it currently stands, women in Clinton's and Palin's positions will be required to undertake the extra and difficult task of finding a working balance between the competing pressures of

157. See Carbarido & Gulati, *supra* note 15, at 1304-05 (discussing how performance that confirms stereotypes, although it may be to an individual's advantage, will only burden others in the group).

158. *Squawk on the Street* (CNBC television broadcast Sept. 5, 2008).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* (emphasis added).

165. Fortini, *supra* note 65.

the double bind in the context of presidential politics in order to remain viable candidates.

IV. CRITICISM: OTHER POTENTIAL FACTORS AFFECTING TREATMENT AND POTENTIAL BENEFITS OF SEX

Critics of the views promulgated in this paper may argue that factors other than sex were involved in Hillary Clinton and Sarah Palin receiving negative treatment in the media's coverage of their campaigns. For Clinton, they may argue that these factors include Clinton's feminist background, media dislike of her, and her husband's behavior. For Palin, they may argue that these factors include her alleged lack of experience and the poor interviews she gave. These critics will argue that in the absence of sex-based discrimination, Clinton and Palin would still have lost their respective races because of these other legitimate factors. They will argue that, as a result, there is less of a necessity to acknowledge the sex discrimination the candidates received. Additionally, critics may also argue that, if anything, gender helped rather than hurt these women.

A. *Applicability of Title VII Motivating Factor Analysis*

Under Title VII motivating factor analysis, the employer is allowed a limited affirmative defense under 42 U.S.C. § 2000(e)-5(g)(2)(B), which allows the remedy available to the employee to be decreased when "the same action [would have been taken] in the absence of the impermissible motivating factor."¹⁶⁶ While awards to victims of illegal discrimination typically include damages, in the face of the employer's limited affirmative defense under 42 U.S.C. § 2000(e)-5(g)(2)(B), victims' remedies are limited to "declaratory relief, certain types of injunctive relief, and attorney's fees and costs."¹⁶⁷ Critics could use the existence of this limited affirmative defense to argue that there need not be acknowledgment of the media's negative treatment of Clinton

166. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 95 (2003).

167. *Id.* at 94. For a direct statement of the law, see 42 U.S.C. § 2000(e)-5(g)(2)(B) (2007) (providing that: (B) 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, described in subparagraph (A).).

and Palin: although sexist motivations may have come into play, other legitimate factors would still have led Clinton and Palin to lose their respective races in the absence of sexist treatment. They may argue that the legitimate factors that contributed to Clinton's negative treatment by the media included her feminism and feminist support, the prior media dislike of her, and her husband. For Palin, critics may argue that the legitimate factors were her lack of experience and her poor interviews. Therefore, critics may claim that there is less of a need to acknowledge the sexist treatment of either candidate because the harm of the sexist treatment is not as great as it would have been if sex had been the sole motivating factor for their negative treatment and the respective loss of the presidency or the vice presidency.

However, even if the critics are correct that other legitimate factors existed, the existence of the other legitimate factors does not mean that the sex stereotyping that occurred did not matter or did not play a role. Under 42 U.S.C. § 2000(e)-2(m), mixed-motive Title VII cases are allowed to stand.¹⁶⁸ Thus, although the remedy is different if an employer would have made the same adverse decision in the absence of considering sex, the employer is still liable for illegal discrimination if such an illegitimate consideration came into play.¹⁶⁹ Legitimate reasons for negative treatment of the employee do not protect employers from a finding of illegal discrimination. The Supreme Court affirmed this in *Desert Palace, Inc. v. Costa*.¹⁷⁰

In *Desert Palace*, Catharina Costa, a warehouse worker and heavy equipment operator, had many problems with co-workers and management.¹⁷¹ She was finally fired after she got into a physical fight with a co-worker.¹⁷² However, while working she had been stalked by a supervisor, more harshly punished than male workers for similar conduct, offered less overtime than male workers, and endured sex-based slurs.¹⁷³ The Supreme Court affirmed that this was a mixed motive case and, thus, af-

168. 42 U.S.C. § 2000(e)-2(m) 2007 (“[e]xcept as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, *even though other factors also motivated the practice.*”) (emphasis added); *Desert Palace*, 539 U.S. at 94.

169. *Desert Palace*, 539 U.S. at 97.

170. *Id.* at 90.

171. *Id.* at 95.

172. *Id.*

173. *Id.* at 96.

firmed the district court's jury ruling that the employer was liable for gender discrimination.¹⁷⁴ As a result, under *Desert Palace*, an employer will be liable as long as the employer "used a forbidden consideration with respect to 'any employment practice.'"¹⁷⁵ Therefore, under Title VII motivating factor analysis, even if sex stereotyping was not the motivating factor for the negative treatment, as long as it was a factor, it constitutes discrimination. Hence, even if the candidates still would have lost in the absence of the discriminatory treatment, gender, at the very least, still played a role in their increased negative treatment. Thus, it is appropriate to consider the treatment of the candidates as discriminatory and to acknowledge that discrimination through counter-speech.¹⁷⁶ Further, it is appropriate to use counter-speech to acknowledge and discuss this discriminatory negative treatment because these "legitimate" factors were interwoven with gender and arose from sex-based discrimination as discussed below in the following subsections. Therefore, the legitimate factors, in reality, also work to demonstrate that sex was an influential factor in the media treatment of these candidates.

1. Clinton:

Critics may consider Clinton's feminism and feminist support, the prior media dislike of her, and her husband, as legitimate factors that contributed to her negative treatment by the media.

a. Feminist Background and Leanings

Clinton was often criticized for her feminist background and her support for women's issues. Thus, according to some, these feminist ideals and goals may have played a role in the negative treatment she received. For example, Marc Rudov on *The O'Reilly Factor* stated that:

"Of course, the main problem I have is if a woman has a female agenda. If she doesn't have a female agenda, if she just wants to be an executive for all the people, then all I care about is if she's qualified. And I have no qualms about having

174. *Id.* at 101-02.

175. *Id.* at 98.

176. See discussion *infra* Conclusion.

a female president. But if we take Hillary Clinton, she specifically does have a female agenda."¹⁷⁷

Thus, some people appeared to have a problem with the fact that Clinton promoted women's issues and rights. This view was sexist in itself because it required a female candidate to abandon women's rights in order to be seen as a viable candidate. In fact, it seems as if a male candidate may have an easier time raising women's issues than a female candidate. His efforts are more likely to be seen as those of an "executive for all the people" rather than a "female agenda," solely because he is a man. Thus, it cannot as easily be said that he is violating his gender stereotype and he cannot be accused of trying to advance himself, or others like him, by attempting "to level the playing field."¹⁷⁸

b. Clinton Hate

Others may argue that the negative media treatment of Clinton developed from the media's dislike of her from her husband's time in office and from the fact that, during that time, she became "one of the most demonized politicians in America."¹⁷⁹ However, this media dislike arose due to her failure to follow the traditional female stereotype during her husband's run for office and his terms in office.¹⁸⁰ For example, she was criticized for

177. Ann Friedman, *Hillary Sexism Watch: 'Female Agenda' Edition*, FEMINIST-ING (Mar. 19, 2008), available at http://feministing.com/2008/03/19/hillar_sexism_watch_female_age/.

178. In a similar vein, candidates who are racial minorities will be criticized if they are seen as supporting minority issues and having, for example, an "African-American agenda" rather than being an "executive for all the people." Thus, like women who face pressures not to focus on women's issues, minorities face pressures not to focus on minority issues. Like Obama, they are required to appear "post-racial," supporting "American issues" rather than "African-American issues." Andrea Billups & David R. Sands, *Obama Term Expected to Be Post-racial*, WASH. TIMES, Nov. 9, 2008, available at <http://www.washingtontimes.com/news/2008/nov/09/obama-presidency-expected-to-be-post-racial/>. To be successful they must avoid the "race-conscious campaign" and tout the election as a "color-blind election." *Id.* Thus, like the female and male candidates above, a white candidate will have greater ability to raise racial issues than a minority candidate, as can be seen from the failure of Jesse Jackson and Al Sharpton. *Id.* This outcome is racist in itself because minority candidates must downplay racial issues in favor of viability. Further, this result suggests that female minority candidates will have the additional pressure and 'extra work' of not only appearing "post-feminist," but also "post-racial" in order to be successful.

179. Janet Hook & Mark Z. Barabak, *Clinton Winning over the Skeptics: The Demonized Image Fades When Voters Are Reintroduced to Her*, LA TIMES, Oct. 8, 2007, at A-1, available at <http://articles.latimes.com/2007/oct/08/nation/na-dems8>.

180. See Benz, *supra* note 131.

openly speaking out against the female stereotype.¹⁸¹ Criticism of Clinton began from the moment she stated, in January of 1992 during an interview with *60 Minutes*, that she was “not some little woman standing by my man like Tammy Wynette,” the country music singer-songwriter responsible for the song “Stand by Your Man.”¹⁸² Wynette herself responded by calling Clinton a bitch.¹⁸³

This dislike and criticism only grew after subsequent statements and actions, like her statement that instead of focusing on her career, she “could have stayed home and baked cookies and had teas.”¹⁸⁴ Further, Clinton garnered criticism for performing against the female stereotype by taking an active role in her husband’s administration. From the beginning of Bill Clinton’s administration, Hillary was involved both openly and behind the scenes in major matters.¹⁸⁵ For instance, she played a central role in developing a health care reform plan and was blamed when it failed.¹⁸⁶ She was also known for making trips abroad in order to make ties with other countries and to speak out against social justice issues, particularly women’s issues.¹⁸⁷ This only increased criticism that she was a “radical feminist.”¹⁸⁸ Thus, even if the negative media treatment of Clinton during the 2008 election had not been specifically gender based, it would still have originated in sexism if it resulted from the generalized dislike for her that derives from Hillary’s past performance against the female stereotype.

c. *Bill as Liability*

Additionally, critics may argue that another factor that led to Hillary Clinton’s increased negative treatment was the prominent role in her campaign played by her husband, Bill Clinton, who was also a very divisive figure and who made various controversial statements during the campaign.¹⁸⁹ He was accused of be-

181. *Id.*

182. *Id.*

183. *Tammy Wynette & the KLF, An American In Mumu Land*, ENTERTAINMENT WEEKLY, Feb. 7, 1992, available at <http://www.ew.com/ew/article/0,,309431,00.html>.

184. Benz, *supra* note 131.

185. See Smith, *supra* note 88.

186. See Kornblut & MacGillis, *supra* note 88 and Smith, *supra* note 88.

187. See Kornblut & MacGillis, *supra* note 88.

188. Benz, *supra* note 131.

189. Don Frederick, *Bill Clinton in the Wilderness*, LA TIMES, Feb. 15, 2008, at A-18, available at <http://articles.latimes.com/2008/feb/15/nation/na-trailvanish15>. See Peter Nicholas, *Some Fear the Other Clinton’s Behavior May Hurt the Party*, LA TIMES, Jan. 25, 2008, at A-25, available at <http://articles.latimes.com/2008/jan/25/na->

ing out of control (such as arguing with reporters and lashing out at Obama) and dragging her campaign down.¹⁹⁰ However, this heightened coverage of Bill Clinton and the media obsession with his statements was sexist in and of itself as it arose from the husband-wife relationship.¹⁹¹ There was not similar heightened coverage of the other candidates' spouses. Rather, Cindy McCain and Michelle Obama, were portrayed as playing supportive roles for their husbands instead of playing major roles in defining their husbands.¹⁹² But by labeling Bill as a "liability"¹⁹³ for her, the media were saying that Hillary could only be defined through her husband.

In fact, some members of the media alleged that Clinton's run was a co-presidency or just another (Bill) Clinton presidency.¹⁹⁴ Thus, they were also denying her qualifications and claiming that, in actuality, Bill Clinton was running for a third term; but, facing term limits, was campaigning under Hillary's name.¹⁹⁵ No such allegations of co-presidencies were made about any of the male presidential candidates. Rather, while Clinton's husband had been portrayed as the force behind her,

tion/na-clinton25; Sheey, *supra* note 16; *The Bill Clinton Factor: Boon or Liability*, ABC NEWS, Jan. 21, 2008, <http://abcnews.go.com/WN/Story?id=4167485&page=1> [hereinafter *Bill Clinton Factor*].

190. See Peter Nicholas, *Some Fear the Other Clinton's Behavior May Hurt the Party*, LA TIMES, Jan. 25, 2008, at A-25, available at <http://articles.latimes.com/2008/jan/25/nation/na-clinton25>; Sheey, *supra* note 16; *The Bill Clinton Factor: Boon or Liability*, ABC NEWS, Jan. 21, 2008, <http://abcnews.go.com/WN/Story?id=4167485&page=1> [hereinafter *Bill Clinton Factor*].

191. Note, it does not matter that Bill Clinton is a former president because the media focus was on him as Hillary's husband. They claimed he was a liability as her spouse, not as a former president; the media was directly tying him into her qualifications while the female spouses were only portrayed as a benefit to the candidates.

192. See Jill Lawrence, *Michelle Obama: 'I Don't Want to Be a Distraction,'* USA TODAY, July 14, 2008, available at http://www.usatoday.com/news/politics/election/2008/2008-06-29-MichelleObama_N.htm; Jill Lawrence, *The Quiet Force in McCain's Campaign*, USA TODAY, July 14, 2008, available at http://www.usatoday.com/news/politics/election/2008/2008-04-14-cindy-mccain_N.htm [hereinafter *Lawrence, Quiet Force*].

193. See, e.g., Frederick, *supra* note 189; *Bill Clinton Factor*, *supra* note 190.

194. See, e.g., Patrick Healy, *For Clintons, Delicate Dance of Married and Public Lives*, N.Y. TIMES, May 23, 2006, available at <http://www.nytimes.com/2006/05/23/nyregion/23clintons.html>; Kornblut & MacGillis, *supra* note 88; Smith, *supra* note 88; Karen Tumulty, *Hillary: Love Her, Hate Her*, TIME, Aug. 20, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1229103-1,00.html>; Bill Mitchell, *Two for One*, CNN, May 9, 2008, available at <http://www.cnn.com/POLITICS/analysis/toons/2008/05/09/mitchell/index.html>.

195. See Cam Cardow, *Hillary*, OTTAWA CITIZEN, May 22, 2007, available at <http://www.caglecartoons.com/viewimage.asp?ID={95450750-AF29-40C3-ABAA-6DAD1AE6D8FA}>.

the media relegated Michelle Obama and Cindy McCain to secondary roles to their husbands and flippantly subjected them to female stereotypes.¹⁹⁶

2. Palin:

Critics may consider Palin's lack of experience and her poor interviews as legitimate factors that contributed to her negative treatment by the media.

a. No Experience

Some critics may argue that a factor that led to increased negative treatment of Palin is the fact that many considered her to have little or no experience necessary for the position of vice president. She was particularly criticized for having little foreign policy experience.¹⁹⁷ Palin was ridiculed for claiming foreign policy qualification because of Alaska's proximity to Russia — because Russian land could be seen from an island in Alaska.¹⁹⁸ Some even disparaged her for only getting her passport during the past year.¹⁹⁹ Further, many feared that if McCain died, she would not be qualified to be president.²⁰⁰ Critics may argue that

196. For example, the media and the public were obsessed with Michelle Obama's wardrobe and fashion sense rather than her accomplishments. *See, e.g.*, Guy Trebay, *She Dresses to Win*, N.Y. TIMES, June 8, 2008, http://www.nytimes.com/2008/06/08/fashion/08michelle.html?_r=1; *Michelle Obama: First Lady of Fashion*, ABC NEWS, <http://abcnews.go.com/GMA/popup?id=5322917> (last visited Oct. 10, 2011); MRS. O, <http://www.mrs-o.com> (last visited Oct. 10, 2011). Further, Cindy McCain was often derogatively portrayed as a "Stepford wife." *See, e.g.*, Matthew Balan, *CNN's Carol Costello: Cindy McCain 'Stepford Wife'*, NEWSBUSTERS (May 22, 2008, 3:45 PM), <http://newsbusters.org/blogs/matthew-balan/2008/05/22/cnn-s-carol-costello-cindy-mccain-stepford-wife>; Lawrence, *Quiet Force*, *supra* note 192. Additionally, the coverage they received was more gendered than that which Bill Clinton received. For example they received *Vogue* covers while Bill Clinton received heightened coverage of his campaigning. *See* Balan, *supra*.

197. *See* Kate Linthicum, *Republican Senator is No Fan of Palin*, L.A. TIMES, Sept. 19, 2008, available at <http://articles.latimes.com/2008/sep/19/nation/na-trailhagel19>.

198. *See, e.g.*, Cooper & Bumiller, *supra* note 121; Linthicum, *supra* note 197; Greg Mitchell, *Cindy McCain on ABC Today: Palin Has National Security Experience Because Alaska Is Close To Russia*, HUFFINGTON POST (Aug. 31, 2008, 10:12 AM), http://www.huffingtonpost.com/greg-mitchell/cindy-mccain-on-abctoday_b_122759.html.

199. Linthicum, *supra* note 197.

200. *See, e.g.* Thomas B. Edsall, *The Palin Plunge: Voters Sour on McCain VP Pick*, HUFFINGTON POST (Oct. 18, 2008, 4:58 PM), http://www.huffingtonpost.com/2008/10/18/the-palin-plunge-voters-s_n_135857.html; *CBS News RAW: Matt Damon Rips Sarah Palin* (CBS web broadcast Sept. 10, 2008), <http://www.cbsnews.com/video/watch/?id=4435771n>. (footage of Matt Damon calling Palin's run a "bad Dis-

this only added to the negative criticisms that arose from her qualifications.

However, such criticisms of her lack of experience also had a sexist undertone. After all, she was not the first candidate to run in a presidential race with no foreign policy experience. Bill Clinton, being governor of Arkansas before his run for president, similarly had little to no foreign policy experience.²⁰¹ George W. Bush also had little to no foreign policy experience when he ran in 2000 and, when speaking on foreign policy, he made similar types of gaffes as Palin.²⁰² For example, he said he enjoyed meeting a foreign minister from Slovakia who had come to Texas; in reality, he had met the prime minister of Slovenia.²⁰³ On other occasions, he said, he would have “a foreign-handed foreign policy”²⁰⁴ and that the “foreign policy stuff [wa]s a little frustrating.”²⁰⁵ He continued to make such gaffes before his second bid for election as well. For example, in 2003, he said: “This very week in 1989, there were protests in East Berlin and in Leipzig. By the end of that year, every communist dictatorship in *Central America* had collapsed.”²⁰⁶ Jimmy Carter and Ronald Reagan (who was even called “an amiable dunce” once²⁰⁷) were also among those who had no foreign policy experience.²⁰⁸ Therefore, if it is acceptable for a winning presidential candidate to lack foreign policy experience, Palin’s heightened negative treatment could not have been the result of this. This is especially true because she was running for the subordinate position of vice president, even if there was a chance that she might be-

ney movie” and expressing fear at the thought that if McCain died then Palin would take over).

201. See, e.g., Clay Waters, Sarah “No Foreign Policy Experience” Palin — But What About Bill?, *TIMES WATCH* (Oct. 1, 2008, 5:41 PM), <http://www.mrc.org/times-watch/articles/2008/20081001054155.aspx>; Judy Woodruff & Bruce Morton, *Bush Lacks Gore’s Foreign Policy Expertise: How Much International Experience Have Past Presidents Had?*, CNN (June 24, 1999, 1:43PM), <http://www.cnn.com/ALLPOLITICS/stories/1999/06/24/president.2000/foreign.policy/index.html>.

202. See Woodruff & Morton, *supra* note 201.

203. *Id.*

204. Jacob Weisberg, *The Complete Bushisms*, *SLATE* (Jan. 20, 2009, 3:48 PM), http://www.slate.com/articles/news_and_politics/bushisms/2000/03/the_complete_bushisms.html.

205. *Id.*

206. President George W. Bush, Address at the National Endowment for Democracy Anniversary Dinner (Nov. 6, 2003) in *LEND ME YOUR EARS: GREAT SPEECHES IN HISTORY* 578, 581 (William Safire ed., 3d ed. 2004) (emphasis added).

207. Fortini, *supra* note 65.

208. Woodruff & Morton, *supra* note 201.

come president at some later point. This disparity in treatment between Palin, the inexperienced vice presidential nominee, and inexperienced male *presidential* candidates clearly suggests that gender played a role in the heightened negative treatment she received from the media.

b. Poor Interviews

Critics may also argue that another factor that led to Palin's increased negative treatment was the public perception of her as unintelligent, due in large part to the uninformed and unresponsive answers she gave in interviews, particularly her interviews with Katie Couric of *CBS Evening News*. For instance, during an interview with Couric, Palin, when asked, could not name the title of a single magazine or newspaper she read to stay informed.²⁰⁹ In another Couric interview, Palin misunderstood the economic bailout and began talking about how it was about healthcare reform, job creation, spending reductions, reducing taxes, and trade.²¹⁰ While speaking with Couric, Palin was also unable to name any other Supreme Court cases other than *Roe v. Wade* with which she disagreed.²¹¹ In an interview with Charlie Gibson of ABC News, when asked if she supported the Bush Doctrine, her answer made it clear that she did not know what the doctrine was, forcing Gibson to define it for her.²¹² Many perceived these gaffes as a sign of her lack of intelligence. Further, in the eyes of many people, her claims to Gibson and Couric that Alaska's proximity to Russia and Canada gave her foreign policy experience²¹³ were also seen as signs of stupidity. In particular, many people interpreted those statements as stupid because she replied evasively when Gibson asked her what insight that proximity gave her into Russian actions; she said, "They're our next door neighbors. And you can actually see Russia from land here in Alaska."²¹⁴

With such faux pas, Palin may have drawn negative attention and coverage by making others think she was unintelligent. However, much of the negative media treatment that Palin re-

209. *CBS Evening News*, *supra* note 152.

210. *CBS The Early Show* (CBS television broadcast Sept. 25, 2008).

211. *CBS Evening News*, *supra* note 153.

212. Walls & Stein, *supra* note 151.

213. *Id.*; *CBS Evening News: Exclusive: Palin on Foreign Policy* (CBS television broadcast Sept. 25, 2008).

214. Walls & Stein, *supra* note 151.

ceived throughout the election criticizing her intelligence was, in fact, gendered in nature. This demonstrates that sexism was influencing criticisms of her intelligence. That is particularly apparent in the fact that rather than being treated as solely unintelligent, she was treated as the particularized female stereotype of the “ditz” as discussed in Part III.B. Not only was she considered stupid or dumb as Bush often had been, but criticisms of her stupidity were more often along the lines of gendered terms such as bimbo,²¹⁵ ditz²¹⁶ or Barbie.²¹⁷ One online article from the *National Ledger* gave Palin her own doctrine, the “Bimbo Doctrine.”²¹⁸ Thus, she was not only criticized as stupid, but was also criticized as the stereotypical good-looking, but stupid woman.

B. *Potential Benefits of Sex: Voters Voting Based on Gender*

This section will explore and respond to critics’ potential arguments that gender helped rather than hindered Clinton and Palin in the 2008 election. It will particularly look at the benefits that the candidates’ may have received because of their gender from voters of a particular gender.

1. Female Voters

A potential benefit that both Clinton and Palin were able to reap was that certain women voters supported them because of their gender.²¹⁹ For Clinton, many women who supported women’s rights and advancement flocked to support her, instead of her black male competitor, with the hope of seeing the first female president inaugurated.²²⁰ For Palin, conservative women flocked to support her because they saw her as one of their

215. See Harris & Frerking, *supra* note 117.

216. See Fortini, *supra* note 65; Friedman, *supra* note 143.

217. See *supra* note 156 and accompanying text.

218. Jackson Simpson, *The Sarah Palin Bimbo Doctrine: Hillary Clinton Won't Share Stage*, NAT'L LEDGER (Sept. 17, 2008), <http://www.nationaledger.com/news-tech/the-sarah-palin-bimbo-doctrine-425628.shtml>.

219. See Kay S. Hymowitz, *Sexism Isn't Holding Hillary Back*, CITY J. (Apr. 28, 2008), <http://www.city-journal.org/2008/eon0428kh.html>.

220. See Stephen Braun, *Clinton Is Happy to Play the Gender Card*, L.A. TIMES, Apr. 7, 2007, at A2, available at <http://articles.latimes.com/2007/apr/07/nation/na-hillary7> (stating, for example, that she had the support of NOW and Emily's List); Amanda Fortini, *The Feminist Reawakening: Hillary Clinton and the Fourth Wave*, N.Y. MAG., Apr. 21, 2008, available at <http://nymag.com/news/features/46011>.

own.²²¹ They could relate to her as a church going, middle-class mother and sympathize with her for having a child with a disability, a pregnant daughter, and a son being deployed to Iraq.²²²

However, even though Clinton and Palin may have benefited from being women, this does not justify the media disadvantaging them by subjecting them to stereotypes and pressuring them with the double bind. It is a fallacy that just because someone received a benefit, they cannot claim discrimination. For example, returning to Ann Hopkins and Price Waterhouse, if she had been hired through affirmative action, that benefit would not prevent her from being subject to discrimination once she began working at the firm. In this hypothetical, just because Ann was hired in part because she was a woman, she is not deprived of Title VII protection from discriminatory sex stereotyping or other protections such as the ban on sexual harassment once hired. Similarly, here the benefits Clinton and Palin may have received from being women does not mean they were not subject to discrimination.

Moreover, the fact that women are voting in support of a female candidate partially, primarily or wholly because of her gender demonstrates that women's views are not being heard equally in the current political environment.²²³ If women's positions in general were not disadvantaged in the political realm, women would not feel an urgency to elect the first female president/vice president or "one of their own" to office. Thus, the supposed benefit to female candidates cannot be taken in isola-

221. See Jackson, *supra* note 146; Ramshaw, *supra* note 146; Severson, *supra* note 146; Red State Feminists, <http://redstatefeminists.org> (last visited Oct. 12, 2011).

222. See Jackson, *supra* note 146; Ramshaw, *supra* note 146; Severson, *supra* note 146.

223. For example, this is apparent from the very low number of women compared to men in the national political field. In 2009, only 17 out of 100 senators were women. Ann Friedman, *Some Minor Gains for Women in Politics*, FEMINISTING (Nov. 5, 2008), <http://www.feministing.com/archives/012014.html>. Similarly, only 74 out of 432 members of the House of Representative were women and only 8 governors were female. *Id.* This representation was even lower for female minorities. For example, the House of Representatives only had 12 African American women, 7 Latina women, and 2 Asian American women. *Id.* More importantly, numbers since 2008 have not dramatically changed. Currently, there are 17 female senators, 76 female members of the House of Representatives, and 6 female governors. JENNIFER E. MANNING & COLLEEN J. SHOGAN, CONG. RESEARCH SERV., WOMEN IN THE UNITED STATES CONGRESS: 1917-2012, at 107 (2012); Karl Jurtz, *How Many Women Governors? v3 2011*, THE THICKET AT STATE LEGISLATURES (Jan. 26, 2011) http://ncsl.typepad.com/the_thicket/2011/01/how-many-women-governors-v3-2011.html.

tion, but must be considered in light of a long history of subordination and disadvantage of women.

Further, it is important to consider the racial aspects of such a potential benefit. If Clinton and Palin did receive a benefit from the support of certain women voters because of their gender, an interesting thought is whether a female minority candidate in the same position would have received a similar benefit. It seems that any benefit that a minority woman may have received would be more limited because some women voters take the candidate's race into consideration as well when making their decision. In particular, some white women may let their concerns for race outweigh their desires for gender advancement. As a result, while Clinton and Palin, as white women, may have received the support of women from all racial and ethnic groups,²²⁴ a minority female candidate seems more likely to have a base of support from racial and ethnic women minorities rather than all women.

2. Male Voters

Additionally, critics will argue that a potential benefit that Sarah Palin was able to take advantage of was that certain male voters supported her because of her gender. She received the support of some men because of her good looks and the fact that these men were attracted to her.²²⁵ However, the critics' argument is flawed because Palin did not receive any real benefit from these male supporters who only contributed to her sexist treatment by sexually objectifying Palin. These supporters came to her rallies to look at her.²²⁶ They spoke about how hot she was and how much she turned them on.²²⁷ Some went so far as to masturbate while at her rallies.²²⁸ Thus, their behavior not only subjected Palin to sexist treatment, but also aided the media in engaging in sexist treatment because Palin's supporters were

224. See Romano, *supra* note 1 (including an example of Clinton receiving support from Pakistani women). Further, looking at the Democratic primary exit polls, the numbers show that the majority of Latina women voted for Hillary Clinton, however, the majority of African American women voted for Obama. See, e.g., CBS News, *Behind the Clinton-Obama Draw*, CBS NEWS: POLITICS (June 18, 2009, 6:22 PM), http://www.cbsnews.com/2100-250_162-3795497.html.

225. See Leibovich, *supra* note 116.

226. Leibovich, *supra* note 116.

227. David Rothmiller, *Palin's Male Supporters Getting Harder*, POLICYWANKER (Oct. 22, 2008, 1:27 PM), <http://policywanker.blogspot.com/2008/10/palins-male-supporters-getting-harder.html> (post of an Associated Press article).

228. *Id.*

already doing it. In reality, because their support was based in sexism, these voters served to disadvantage Palin by subjecting her to more sex stereotyping.

V. CONCLUSION

This paper argues that given the similarity of presidential elections to an interview for a job and the fact that the positions of president and vice president are jobs in the federal government, Title VII workplace discrimination ideas can be applied to presidential elections. Particularly, the media's treatment of the female candidates in the 2008 election allows for exploration of sex discrimination in this context. Thus, this paper demonstrates that the media's sexist treatment of Hillary Clinton and Sarah Palin during the 2008 election coverage and commentary led to discriminatory sex stereotyping reminiscent of Title VII sex discrimination.

In spite of this, I do not argue for a legal remedy or the extension of Title VII protection to political campaigns. Instead, I acknowledge that potential legal remedies will raise First Amendment concerns as a defense to the media's conduct. Opponents of legal remedies will argue that the public interest in free press and free political speech outweighs concerns of discrimination against presidential candidates subject to sex stereotyping. Since the Supreme Court has upheld the importance of political speech and advocacy whether in the form of advocating action or just communicating facts as the media do,²²⁹ critics will argue that the media's coverage and commentary of presidential campaigns and candidates²³⁰ is subject to stringent First Amendment protections. Thus, they argue that if legal action is taken to prevent discriminatory sex stereotyping, it will have a chilling effect on free speech by suppressing political speech. Further, it will disallow the media from adequately performing its First Amendment-based purpose of being a check on the government.²³¹

229. LAURENCE H. TRIBE, *CONSTITUTIONAL CHOICES* 201 (1985) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982)).

230. Critics will argue that since advocacy is protected as well as communicating fact, political commentary by the media is protected as well and thus, no action should be taken to address sex stereotyping in either the media coverage or the commentary.

231. See Potter Stewart, *Or of the Press*, 26 *HASTINGS L.J.* 631, 634-35 (1975). Since few can participate in government, the media functions as a watchdog on the government.

However, the public interest in free speech does not mean that the discrimination should be ignored. My proposal to acknowledge the costs and burdens imposed on women by this discriminatory treatment does not threaten any of the First Amendment values served by the media. Rather, my proposal is to attempt to achieve recognition of discriminatory sex stereotyping as a function of the First Amendment. I argue that, because the media play a key role in presidential elections,²³² an attempt must be made to make the public aware of this discriminatory sex stereotyping through counter-speech.²³³

"[N]o candidate can succeed without the press."²³⁴ The media have great influential power over undecided voters who are important in determining the outcome in presidential elections.²³⁵ Thus, if the media are supposed to be the source of "truth," it is apparent that a problem exists when the media promote sexist views in their coverage of the candidates. Clearly, certain groups of people will take these "untruths" of the media as true, which influences their votes. Therefore, at the very least, the public should be aware that the media perpetuated and engaged in sex stereotyping and did not promote the "truth" in relation to the female candidates in the 2008 presidential election. Since the public cannot hold the press accountable,²³⁶ these "untruths" need to be recognized at least through counter-speech such as this paper.

Thus, people who agree that treatment of the female candidates was based upon discriminatory sex stereotyping can partake in counter-speech in order to protest and call out the media for promulgating societal sexist stereotyping and in order to pro-

232. See Thomas E. Patterson, *The Miscalculation*, in *MEDIA POWER IN POLITICS* 202, 204 (Doris A. Graber ed., 5th ed. 2007).

233. According to proponents of the First Amendment, to counteract false speech, more speech is needed rather than government regulation:

To courageous, self reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.

Whitney v. California, 274 U.S. 357, 377 (1927). This is the doctrine of counter-speech.

234. Patterson, *supra* note 232, at 204.

235. See GIBO, L.J., *supra* note 12, at 124.

236. See Patterson, *supra* note 232, at 206.

duce change. Some of the most effective forms of counter-speech may be through blogs (particularly, popular mainstream blogs such as the *Huffington Post* and through niche blogs such as *Feministing*) and other online forums, as well as vocalized protests from organized groups like *Media Matters for America* and the *National Organization of Women* (“NOW”). Supporters of effected candidates, women’s rights supporters, and media watchdogs can take part in vocal and active counter-speech in order to draw attention to the need for change in the media coverage and begin that change.

For instance, counter-speech by such groups resulted in what little mainstream recognition there has been of Clinton’s sexist treatment. Clinton supporters, women’s rights supporters²³⁷ and groups (including NOW²³⁸), and media watchdogs (including *Media Matters for America*²³⁹) actively argued, particularly online, that she was receiving sexist treatment during the campaign. Although these concerns were not acknowledged at all in the mainstream until the race was over,²⁴⁰ and even then minimally, this counter-speech did lead to official recognition of sexist treatment, though late, by the Democratic Party. Finally, on June 1, 2008, when Clinton no longer had any hope of the presidency, the Democratic Party acknowledged that she had faced sexist treatment. It was only then that Howard Dean, Chair of the Democratic National Committee, spoke out about her treatment:

This article has demonstrated that a substantive engagement with the challenges posed by transgender identities and experiences can transform feminist praxis in productive ways. Transgender identities are not, as premised by VRR, a third sex that can be neatly added alongside normative gender categories without fundamentally altering the existing formulation. Instead, they call into question the borders that differentiate male from female and make visible the demanding work of

237. See, e.g., Hillary Sexism Watch, FEMINISTING, <http://www.feministing.com/cgi-bin/movabletype/mt-search.fcgi?IncludeBlogs=2&search=%22hillary+sexism+watch%22> (last visited Oct. 12, 2011); Clinton/Palin Sexism Watch, SHAKESVILLE, <http://shakespeareassister.blogspot.com/2008/09/clinton-sexism-watch-111-palin-sexism.html> (last visited Oct. 12, 2011).

238. National Organization for Women, *supra* note 13.

239. Chris Matthews Monitor, MEDIA MATTERS FOR AMERICA, http://mediamatters.org/action_center/matthews_monitor/ (last visited Oct. 19, 2008).

240. See, e.g. Katharine Q. Seelye & Julie Bosman, *Media Charged with Sexism in Clinton Coverage*, N.Y. TIMES, June 13, 2008, available at <http://www.nytimes.com/2008/06/13/us/politics/13women.html>; Domenico Montanaro, *Clinton: Sexism, the Downfall?*, MSNBC, June 13, 2008, <http://firstread.msnbc.msn.com/archive/2008/06/13/1138240.aspx>.

policing those boundaries, th There has been an enormous amount of sexism in this campaign on the part of the media, including the mainstream media. . . . [T]here have been major networks that have featured numerous outrageous comments that if the words were reversed and they were about race, the people would have been fired.²⁴¹

Further, these groups' active criticism of Chris Matthews and Keith Olbermann led both anchors to be demoted from being hosts of MSNBC's major political coverage for the remainder of the election due to their biased coverage.²⁴²

Similar to Clinton supporters and such groups, Republicans also used counter-speech. From the beginning, Republican officials were vocal about alleged sexist treatment of Palin.²⁴³ For example, less than a month after Palin's nomination, Jane Swift, the Republican former Governor of Massachusetts, stated that Palin was subject to "an outrageous smear campaign."²⁴⁴ In fact, Republican officials were able to use counter-speech to more effectively draw some mainstream attention and press to the sexist treatment of Palin.²⁴⁵ However, their ability to use counter-speech more effectively than Clinton supporters and women's rights groups was likely the result of Republicans, because of their conservative ideology, having greater freedom to claim sexism than individuals and groups who are seen as feminists and thus, too sensitive to sexism.

While women's rights supporters are likely to be seen as radical feminists when they make claims of sexism, Republicans do not face that danger. In fact, Clinton supporters and others who pointed out her sexist treatment during the race were ignored or

241. Walter Alarcon, *Dean Derides 'Sexist' Media Coverage*, THE HILL, June 1, 2008, <http://thehill.com/homenews/campaign/1400-dean-derides-sexist-media-coverage>. Because women of color face racialized gender stereotypes, Dean's above mentioned comments take on an interesting spin since racialized gender stereotypes are even less acknowledged than solely sex or race stereotypes, which are based on the experiences of white women and men of color respectively rather than including the experiences of women of color as well.

242. Robert Dougherty, *Chris Matthews, Keith Olbermann Demoted from MSNBC Election Coverage*, ASSOC. CONTENT, Sept. 8, 2008, http://www.associated-content.com/article/1017796/chris_matthews_keith_olbermann_demoted.html?cat=2.

243. This may in part be due to the Republicans' hope that by nominating a woman, they could appeal to Democratic women voters who had been disgusted with the sexist treatment of Hillary Clinton.

244. Harris & Frerking, *supra* note 117.

245. *See id.*

pushed aside as irrational “feminists” with invalid concerns.²⁴⁶ If Clinton herself tried to raise the issue during her race, she was accused of playing the gender card and punished for it.²⁴⁷ When Clinton spoke about “the double standards a woman running for president faces,” claiming that a woman candidate could not get “too emotional,” Maureen Dowd criticized her for “playing the female victim.”²⁴⁸ Clinton was even accused of playing the gender card²⁴⁹ for simply stating that “We’re ready to shatter the highest glass ceiling” when referring to her run as the first female presidential candidate.²⁵⁰ Her accusers told her to stop “whining” and “complaining,”²⁵¹ they ironically told her to “take these attacks like a man.”²⁵²

After the primaries were over, many still criticized Clinton and others who had cried out against sexism.²⁵³ These critics still claimed that those charges were baseless and invalid.²⁵⁴ Further, women in the media who partook in this counter-speech by speaking out against the treatment of Clinton and Palin, faced similar criticisms. For example, Kate Couric received much criticism for speaking out against the sexism in the media coverage of Clinton’s campaign. In response to Couric’s statement that she felt “that Sen[ator] Clinton received some of the most unfair, hostile coverage [she had] ever seen,” Keith Olbermann labeled her as the “Worst Person in the World”²⁵⁵ and accused her of

246. See, e.g., Fortini, *supra* note 65; Elaine Hopkins, *Unmasking Sexism in Media Coverage of Hillary Clinton*, HUFFINGTON POST, Mar. 11, 2008, http://www.huffingtonpost.com/elaine-hopkins/unmasking-sexism-in-media_b_90916.html.

247. See Fortini, *supra* note 65; Klein & Chesney, *supra* note 83.

248. Dowd, *supra* note 108.

249. If a woman of color had been in the position of Hillary Clinton (or Sarah Palin), she would also have had to face racial stereotyping, particularly racialized gender stereotypes such as those Michelle Obama faced through the “Baby Mama” comment made by Fox. See National Organization for Women, *supra* note 13. Thus, a woman of color would be accused of not only playing the gender card, but also the race card if she tried to point out the stereotypes facing her.

250. Klein & Chesney, *supra* note 83.

251. Peggy Noonan, Op-Ed., *Sex and the Sissy*, WALL ST. J., May 23, 2008, at A11, available at http://online.wsj.com/article/SB121148557268715077.html?mod=todays_columnists.

252. Ruth Marcus, *Damsel in the Debate*, WASH. POST, Nov. 2, 2007, at A21, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/11/01/AR2007110102146_2.html.

253. See Bernard Chapin, *Claims of Sexism: Hillary Clinton’s Last Refuge*, PAJAMAS MEDIA (June 13, 2008, 9:24 AM), <http://pajamasmedia.com/blog/claims-of-sexism-hillary-clintons-last-refuge/>.

254. See *id.*

255. Rachel Sklar, *Katie Couric Is Rubber and Keith Olbermann Is Glue*, HUFFINGTON POST (June 12, 2008, 10:15 AM), <http://www.huffingtonpost.com/2008/06/>

speaking “nonsense” and being “a little Kool-aid ish.”²⁵⁶ Thus, even though Couric was a prominent member of the media, she was still treated as the irrational, radical feminist.

Consequently, counter-speech may initially be more or less effective (based upon the social views of the individuals or groups partaking in it) in achieving widespread recognition of the media's promulgation of societal sex stereotyping, particularly during the period of time in the race when recognition most matters. However, at the very least, even if occurring after the election, the counter-speech reaches some voters who may realize that there is bias in media coverage. This knowledge will hopefully lead the public to be more informed and more skeptical of the media. As a result, they will be able to view the media treatment of future female candidates with discernment. Thus, voters, particularly the undecided voters so important to winning presidential elections, rather than simply accepting the media's word and falling subject to perpetuation of societal sexist views, will begin to evaluate media coverage and commentary of female candidates. Further, they will question its validity before forming their opinions of the candidates and deciding how to vote. This is particularly important given the prevalence of the discriminatory media treatment of the female candidates in the 2008 election cycle and the fact that it extended through the whole range of female stereotypes from the “power-hungry bitch” to the “attractive simpleton.”

Without public knowledge of past discriminatory treatment by the media, these voters will continue to be influenced by sexist media treatment that plays into societal sexist views. Indeed, they will be influenced without realizing that the negative media treatment derives not from fact, but from discriminatory sex stereotyping of female candidates that arises from society and is being perpetuated by the media. Thus, even if public knowledge is not widespread and only some voters are informed of past discrimination, there is still a benefit. It will not only lead to some informed votes, but it will also be a step toward more widespread recognition of the discriminatory treatment that occurred during the 2008 election and that will likely face future female candi-

12/katie-couric-is-rubber-an_n_106714.html; Kelly Moeller, *Olbermann Slams Couric for Saying Clinton “Received Some of the Most Unfair, Hostile Coverage I’ve Ever Seen,”* POLITICAL PUNCH (June 12, 2008, 2:00 PM), <http://blogs.abcnews.com/politicalpunch/2008/06/olbermann-slams.html>.

256. Moeller, *supra* note 255.

dates as well. In fact, some of these newly knowledgeable voters may not only discredit the media's coverage, but may also choose to partake in counter-speech as well. This will aid in raising awareness of the discriminatory sex stereotyping. Most importantly, because no legal remedy exists for these candidates in the face of such sexist treatment, the only way for a viable female candidate to have a fair chance at success is if the public recognizes the existence of such discriminatory treatment, even if it only begins with a few.

