

## New Federal Lawsuit Pits Religion Against Gay Rights in Employment Context

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On Oct. 6, the U.S. Pastor Council and Hotze Health & Wellness Center filed a federal class action lawsuit against the Equal Employment Opportunity Commission (EEOC) and Attorney General Jeff Sessions in Texas. Plaintiffs seek a declaratory judgment that Title VII violates the Religious Freedom Restoration Act (“RFRA”) and the First Amendment because it does not provide a religious exemption. The U.S. Pastor Council is a non-profit council of approximately 1,000 churches and Hotze Health & Wellness Center is a private Christian-owned business whose owner believes the Bible condemns homosexuality.

The EEOC has repeatedly interpreted sexual orientation and gender identity discrimination to fall under the umbrella of prohibited sex discrimination. EEOC guidance requires employers to recognize same-sex marriage and to allow employees to use restrooms that correspond to their gender identities.

EEOC guidance does not contain a religious exemption, and such an exemption would be counter to EEOC’s consistent guidance and to a trend in federal courts to grant expanded protections for sexual orientation and gender identities.

The First Amendment provides for a ministerial exception to the First Amendment that exempts a religious group’s selection of its ministers from antidiscrimination laws. However, plaintiffs state that this ministerial exception does not protect churches from refusing to hire non-ministerial employees based on their sexual orientations or gender identities. Moreover, they state that the ministerial exception does not apply to private Christian-owned businesses that oppose homosexuality and transgender status on religious grounds.

Plaintiffs also claim the RFRA forbids the EEOC to interpret or enforce Title VII in a way that requires churches or Christian-owned businesses to recognize same-sex marriage, hire homosexual individuals for ministerial or non-ministerial positions, provide spousal benefits to same-sex partners, or allow employees to use restrooms reserved for the opposite biological sex.

The RFRA prohibits the government from substantially burdening one’s exercise of religion unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.

Previous cases have addressed the conflict between religious beliefs and the rights of homosexual and/or transgender individuals, most notably the Supreme Court’s ruling in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, which involved a baker’s refusal to bake a wedding cake for a same-sex couple based on a religious objection.

However, there is little high-profile case law on the conflict between religion and sexual orientation and gender identity in the employment context.

The case could prove important to religious organizations and businesses either affiliated with religious organizations or privately owned by those with strong religious beliefs, as it may test the limits of those organizations’ legal ability to make employment decisions consistent with their religious beliefs.



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As the complaint was only recently filed, there have not yet been any rulings or opinions. We will continue to monitor this case and bring you updates. The case is *U.S. Pastor Council v. Equal Employment Opportunity Commission*, No. 4:18-cv-824, which is pending in the United States District Court for the Northern District of Texas.

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