*R.G. & G.R. Harris Funeral Homes, Inc. v.
Equal Employment Opportunity Commission
and Aimee Stephens*

**To be Argued**: October 8, 2019

Background

The 14th Amendment guarantees that “No State shall…deny to any person within its jurisdiction the equal protection of the laws.” To help secure this constitutional protection, Congress passed the Civil Rights Act of 1964. This landmark piece of legislation prohibits discrimination based on race, color, religion, sex, or national origin in places of public accommodation, schools, and employment. One key provision of the Civil Rights Act is Title VII, which makes it unlawful for employers to make employment decisions based on a person’s race, color, religion, sex, or national origin. Since 1964, Congress has amended Title VII and passed additional laws making it unlawful for employers to discriminate based on other factors, such as pregnancy, age, and disability. While a bill called the Equality Act passed in the U.S. House of Representatives on May 17, 2019, it has not been taken up by the Senate yet, so there is no federal law that explicitly provides protections for LGBTQ workers against discrimination. Some federal courts have concluded that the protections against “sex” discrimination already contained in Title VII also restricts employers from discriminating based on sexual orientation or gender identity. Other federal courts have reached the opposite conclusion.

One way that an employer can unlawfully discriminate against an employee is if there is evidence of disparate treatment. Disparate treatment occurs when a member of a group that is protected under Title VII, called a protected class, is treated differently (“less well”) than similarly situated peers. Two individuals are similarly situated if they share the same relevant characteristics—such as education, job performance, and other qualifications—except for one individual’s membership in a protected class. For example, if two employees with the same qualifications—one man and one woman—were being considered for a promotion and the man was chosen over the woman because the company did not want to promote a woman, that would be evidence of disparate treatment. To prove a claim of sex discrimination, an employee can point to sex stereotyping, which occurs when an employee is punished for acting in a way that differs from how their employer expects them to behave based on their sex, such as firing a woman for not wearing makeup.

This case involves workplace discrimination against a transgender woman. Someone who is transgender has a gender identity that is different from their assigned sex at birth. The term sex refers to the biological and genetic differences between males and females, while gender encompasses the social roles of males and females. Similarly, gender identity is an individual’s own understanding of their gender regardless of their biological sex.

Facts

Aimee Stephens (formerly Anthony Stephens) worked as an embalmer and funeral director at R.G. & G.R. Harris Funeral Homes, Inc. in Michigan for almost six years. Stephens is a transgender woman, meaning that although she was assigned male at birth, she identifies as a woman. R.G. & G.R. Harris Funeral Homes has a gender specific dress code that requires men to wear a suit and women to wear skirts or dresses at all times. The Supreme Court has ruled that it is not unconstitutional for employers to have gender specific dress codes. For most of her time working for the funeral home, Stephens presented herself as a man and wore a suit. On July 31, 2013, she informed her employer that she was going to begin living openly as a woman and stated her intention to dress in “appropriate business attire” for women to meet the requirements of the funeral home’s female dress code. The owner of the funeral home expressed concern that Stephens dressing as a female would make clients uncomfortable and instructed Stephens to comply with the male dress code and wear a suit during working hours. Two weeks later, the owner of the funeral home fired Stephens despite her satisfactory job performance. When asked why she was being fired, Stephens’ boss stated that it was because “he…was no longer going to represent himself as a man.”

After she was fired, Stephens filed a charge of discrimination with the **Equal Employment Opportunity Commission (EEOC)**, which is a federal agency that addresses complaints of employment discrimination.The EEOC investigated and filed a complaint against the funeral home, alleging that they violated Title VII by firing Stephens because she is transgender and because of her “transition from male to female, and/or because [she] did not conform to [her employer’s] sex- or gender-based preferences, expectations, or preferences.”

The funeral home asked the District Court to dismiss this complaint. The District Court found in favor of the funeral home, saying that transgender individuals are not currently considered a protected class under Title VII of the Civil Rights Act.

The EEOC appealed this decision, and the Court of Appeals reversed the District Court’s ruling. First, the Court of Appeals agreed that the owner of the funeral home discriminated against Stephens because she refused to dress and act consistently with the employer’s sex stereotypes. In addition, the Court found that firing Stephens because she is transgender “is inherently a form of sex discrimination that violates Title VII.”

In October 2017, after the EEOC filed the complaint against R.G. & G.R. Harris Funeral Homes, former U.S. Attorney General Jeff Sessions ordered all departments within the Department of Justice, including the EEOC, to interpret Title VII to mean that it doesnot protect against gender identity discrimination. The EEOC reversed their position and modified their arguments to support the funeral home owner. However, Aimee Stephens aided by the American Civil Liberties Union (ACLU) continued to argue that Title VII protects transgender employees like herself.

Following the Court of Appeals decision, R.G. & G.R. Harris Funeral Homes, Inc. asked the Supreme Court of the United States to review that decision, and the Court agreed to hear the case.

Issue

Does Title VII of the Civil Rights Act of 1964 prohibit discrimination against transgender employees based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*?

Laws and Supreme Court Precedents

* **14th Amendment to the U.S. Constitution**

“No State shall…deny to any person within its jurisdiction the equal protection of the laws.”

* **Title VII of the Civil Rights Act of 1964**

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to fire or refuse to hire an individual or to base their wages or benefits on the basis of their “race, color, religion, sex, or national origin.”

* ***Price Waterhouse v. Hopkins* (1989)**

Ann Hopkins was a successful manager at Price Waterhouse, a major business management and accounting firm. Although she was nominated for partnership, she was eventually denied the position. Hopkins sued Price Waterhouse for gender-based discrimination under Title VII of the Civil Rights Act of 1964. Hopkins argued that she was a successful senior manager, and yet she was denied a partnership because her demeanor, appearance, and personality was not deemed “feminine” enough. She said colleagues described her as “macho” and told her she should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” and take “a course at charm school” if she wanted to become a partner. Price Waterhouse argued that they did not offer her a partner position because of her poor relationships with others in the office, not because she was a woman, and that Title VII did not apply in this case. The Supreme Court considered and rejected the argument that the term “sex” in Title VII refers only to differences between men and women and ruled that when an employer relies on sex stereotypes to deny employment opportunities, it is at a minimum evidence that the employer is acting “because of sex.”

The Court also decided that an employer is not liable (legally responsible) for gender discrimination under the Civil Rights Act if they can prove that, by a **preponderance of the evidence**, they would have made the same decision without a discriminatory motive. Here, preponderance of the evidence means that Price Waterhouse would not be liable if they could prove that there was a greater than 50% chance that Hopkins was not promoted because of her behavior, and not because of her gender.

Arguments for R.G. & G.R. Harris Funeral Homes, Inc. (petitioner)

* **Sex discrimination:** When interpreting laws, courts typically understand words to carry their plain, everyday meaning. The word “sex” was understood by the legislators who passed the law to mean biological sex and did not include gender identity or transgender status. Therefore, Title VII of the Civil Rights Act does not prohibit discrimination on the basis of gender identity.
* The owner of R.G. & G.R. Harris Funeral Homes fired Stephens not because she is a transgender woman, but because she refused to follow the funeral home’s sex-specific dress code at work. R.G. & G.R. Harris Funeral Homes would have responded to a female employee who wanted to follow the male dress code while working with clients the same way it responded to Stephens. Because it does not disfavor one sex compared to the other, the funeral home does not discriminate based on sex.
* Stephens dressing as a woman would affect her job performance because it might make clients uncomfortable, as well as co-workers who would share a single-sex restroom with her.
* The funeral home imposes a dress code on both female and male employees, burdening each sex equally. The Supreme Court has ruled in the past that sex-specific dress codes like this one are lawful and are not considered discriminatory or stereotyping.
* In several laws passed after Title VII, Congress discussed discrimination based on gender identity but did not amend Title VII to include transgender individuals as a protected class.
* **Sex stereotyping:** Sex stereotyping can only be used as evidence that sex played a significant part in the employer’s decision-making. If the employer would have made the same decision if they had not considered the employee’s sex, then the action is not sex-based discrimination.
* If the Court rules that the word “sex” in Title VII protects employees from discrimination based on gender identity and sexual orientation, there will be legal implications for employment law, lower privacy protections (in restrooms, shelters, etc.), and reduced equal opportunities for women in areas such as sports.

Arguments for Aimee Stephens (respondent)

* **Sex discrimination:** The owner of the funeral home admitted that he fired Stephens because she “was no longer going to represent himself as a man” in her behavior and clothing choices.
* Stephens’s firing violated Title VII because she was not judged as an employee based on her individual merit and ability to do the job, but rather on her sex.
* Stephens agreed to follow the dress code for a female funeral director and wear “appropriate business attire” so she would not be violating the dress code.
* Stephens was fired because she is transgender for two reasons: (1) she was assigned a male sex at birth and (2) she intended to live openly as a female. Therefore, sex was the reason for her firing. If she was assigned a female sex at birth and was living openly as a woman, the petitioner would not have fired her.
* Even if Stephens’s sex was not the only reason she was fired, it was still a motivating factor. As long as Stephens shows that she would have been treated differently if her sex was different, she has shown that sex caused her firing under Title VII.
* Even if the lawmakers who originally passed Title VII did not state that it included protections based on gender identity, the scope of sex discrimination as determined by years of precedents (earlier rulings) like *Price Waterhouse v. Hopkins* (1989)requires that gender identify be protected.
* **Sex Stereotyping:** Discrimination against someone for being transgender is discrimination based on the fact that they have departed from sex-based stereotypes. The petitioner unlawfully fired Stephens because she chose to dress and act in a way that contradicts her boss’s stereotypes of how men and women should identify, appear, and behave. Here, the petitioner’s stereotype is that someone who was born a male should dress and act in a traditionally masculine way. Stephens defied that stereotype by using a traditionally feminine name, wearing makeup, styling her hair in a traditionally feminine way, and displaying traditionally feminine stereotypes.