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Columbia Law School Think Tank Submits Amicus Brief in Transgender Rights Case

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Press Release:

April 25, 2017

From:

Columbia Law School, [The Public Rights/Private Conscience Project \(PRPCP\)](#)

Subject:

Columbia Law School Think Tank submits amicus brief in Transgender Rights Case

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April 25, 2017 Columbia Law School's [Public Rights/Private Conscience Project \(PRPCP\)](#) and Willkie Farr & Gallagher LLP filed an amicus brief yesterday with the Sixth Circuit Court of Appeals in a case that raises the important question of whether employers can use religious liberty arguments to avoid compliance with federal non-discrimination laws. Specifically, it considers whether employers have the right to engage in sex discrimination if motivated by religious principles. The case, [Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes Inc.](#), was brought on behalf of Aimee Stephens, a funeral home director who was fired after she came out to her employer as a transgender woman. In an unprecedented decision, the trial court held that the funeral home owner's religious opposition to Stephens' gender transition and identity entitled the employer to an exemption from Title VII of the Civil Rights Act, which prohibits sex discrimination in the workplace.

The District Court's [opinion](#) rested on an interpretation of the Religious Freedom Restoration Act (RFRA), which prohibits the federal government—in this case, the Equal Employment Opportunity Commission (EEOC)—from substantially burdening religious practice unless doing so is the least restrictive means of furthering a compelling government interest. According to the court, the EEOC should have advanced its interest in nondiscrimination in a way that was less burdensome to the employer's belief that he "would be violating God's commands if [he] were to permit one of the [Funeral Home's] funeral directors to deny their sex while acting as a representative of [the Funeral Home]."

PRPCP's amicus brief explains that the trial court's interpretation of RFRA is unconstitutional. By requiring Stephens to adhere to her employer's religious beliefs about gender, the accommodation would violate the Establishment Clause of the First Amendment, which protects individuals from having to bear the significant costs of a religious belief they do not share. In addition, the accommodation would force the EEOC to participate in—rather than fight against—sex discrimination.

"While federal law provides robust protections to religious liberty, those rights are not absolute," said [Katherine Franke](#), Sulzbacher Professor of Law and Faculty Director of PRPCP. "The right to religious liberty reaches its limit when the accommodation of religious liberty results in the imposition of a material burden on third parties, as is the case here."

“The District Court opinion transforms the EEOC from an agency that prohibits discrimination to one that enables and enforces it,” said [Elizabeth Reiner Platt](#), Director of PRPCP. “If upheld, this decision will devastate one of the country’s most important civil rights protections.”

The PRPCP’s mission is to address contexts in which religious liberty rights conflict with or undermine fundamental rights to equality and liberty through academic legal analysis. PRPCP approaches the developing law of religion in a manner that respects the importance of religious liberty while recognizing the ways in which broad religious accommodations may violate the First Amendment’s Establishment Clause.

Read a copy of the full amicus brief here:

<http://tinyurl.com/PRPCP-4-24>

Read the district court opinion here: <http://www.mied.uscourts.gov/pdffiles/14-13710opn.pdf>

For more information on the PRPCP, visit the PRPCP’s webpage, here: <http://tinyurl.com/PRPCP-Columbia>