

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Equal Employment
Opportunity Commission,

Plaintiff,

v.

R.G. & G.R. Harris Funeral
Homes, Inc.,

Defendant.

Civil Action No.

2:14-cv-13710

Hon. Sean F. Cox

**DEFENDANT R.G. & G.R. HARRIS FUNERAL HOMES, INC.'S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF EQUAL
OPPORTUNITY EMPLOYMENT COMMISSION'S MOTION FOR
SUMMARY JUDGMENT**

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Statement of the Issues Presented

1. Whether testimony indicating that Defendant R.G. & G.R. Funeral Homes, Inc. (“R.G.”) discharged Charging Party Stephens because Stephens intended to violate R.G.’s sex-specific dress code constitutes direct evidence of discrimination based on sex in violation of Title VII, when the undisputed evidence establishes that R.G.’s dress code imposes equal burdens on the sexes.

2. Whether the Religious Freedom Restoration Act (“RFRA”) prohibits the Court from applying Title VII to Plaintiff Equal Opportunity Employment Commission’s (“EEOC”) claims on behalf of Stephens, when the undisputed evidence shows that this application of Title VII would compel R.G. (a closely held corporation) to violate its owner’s sincerely held religious beliefs, and when the EEOC cannot demonstrate that applying Title VII under these circumstances is the least restrictive means of furthering a compelling government interest.

3. Whether the EEOC is entitled to summary judgment on its Title VII claim challenging R.G.’s manner of providing work clothes and clothing allowances to its employees, when the EEOC lacks authority to bring that claim, and when the undisputed evidence demonstrates that R.G. provides equivalent clothing benefits to comparable male and female employees.

Authority for the Relief Sought

Issue No. 1

Barker v. Taft Broadcasting Co., 549 F.2d 400 (6th Cir. 1977)

Jespersen v. Harrah's Operating Co., 444 F.3d 1104 (9th Cir. 2006) (en banc)

Issue No. 2

Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1, *et seq.*

Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)

Issue No. 3

EEOC v. Bailey Co., 563 F.2d 439 (6th Cir. 1977)

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Introduction

Plaintiff Equal Opportunity Employment Commission (“EEOC”) argues that Defendant R.G. & G.R. Harris Funeral Homes, Inc. (“R.G.”) violated Title VII’s ban on sex discrimination when it discharged Charging Party Stephens for refusing to comply with its sex-specific dress code. In essence, the EEOC asks this Court to hold that R.G.’s sex-specific dress code constitutes unlawful sex stereotyping for the sole reason that it is sex-specific—a holding that would expand Title VII to invalidate all such dress codes. No court has ever gone so far. On the contrary, giving due consideration to an employer’s right to manage the public face of its business, courts have long held that sex-specific dress codes are permissible under Title VII when they do not unequally burden one sex. Because there is no dispute that R.G.’s dress code does not unequally burden one sex, it is R.G. (not the EEOC) that is entitled to summary judgment on the EEOC’s unlawful discharge claim.

The EEOC also contends that the Religious Freedom Restoration Act (“RFRA”) does not protect R.G.’s and its owner Tom Rost’s exercise of religion. But the undisputed facts show that R.G.’s exercise of religion is substantially burdened by forcing it to purchase female work attire for a male employee and by requiring it to permit its male funeral directors to wear the female uniform. Because the EEOC cannot show that imposing these burdens is the least restrictive means of furthering a compelling interest, RFRA bars the application of Title VII in this case.

Finally, the EEOC claims that R.G.'s clothing allowance treats men more favorably than women. But the EEOC lacks standing to bring that claim, and the undisputed facts show that male and female employees receive equivalent benefits. As a result, it is R.G. (not the EEOC) that is entitled to summary judgment on the clothing allowance claim.

Argument

I. RG's Enforcement of Its Sex-Specific Dress Code Does Not Constitute Impermissible Sex Stereotyping under Title VII.

The EEOC's argument in this case is deceptively simple: it contends that R.G.'s "admission" that it discharged Stephens because Stephens stated an intent to wear female attire at work constitutes direct evidence of sexual stereotyping. *See* EEOC Mem. at 26-29. The EEOC, however, is categorically wrong. Its argument skims across a critical, decisive, and undisputed fact: that when Stephens, a biological man, stated an intent to wear the female uniform at work, *Stephens announced an intent to violate R.G.'s sex-specific dress code.* T. Rost 30(b)(6) Dep. 136:22-137:15 (Def. SJ Ex. 4).¹ This sex-specific dress code makes all the difference in the world. To the best of R.G.'s knowledge, no state or federal court has *ever* held that an employer whose dress code is sex-specific violates Title VII simply because men are expected to wear different clothing than women. By shrouding its argument in concepts like gender identity and

¹ Defendant's Summary Judgment Exhibits 1 through 34 are attached to Defendant's Memorandum of Law in Support of R.G.'s Motion for Summary Judgment. Defendant's Summary Judgment Exhibits 35 through 40 are attached to Defendant's Memorandum of Law in Opposition to the EEOC's Motion for Summary Judgment.

transgender status, the EEOC attempts to mask the enormity of what it wants this Court to do—to hold that sex-specific dress codes constitute illegal sex stereotyping in all cases, even when the burdens they impose on the sexes are entirely equal. That would depart from the longstanding precedent of the Sixth Circuit and every other circuit in the country.

A. The EEOC’s Argument Is Fatally Flawed Because It Fails to Account for R.G.’s Sex-Specific Dress Code.

As explained in R.G.’s memorandum in support of its motion for summary judgment, *see* Memorandum of Law in Support of R.G. & G.R. Harris Funeral Homes, Inc.’s Motion for Summary Judgment (“Def. SJ Mem.”) at 5-7, it has long been held that sex-specific dress codes and grooming policies that impose equal burdens on men and women do not violate Title VII. *See, e.g., Barker v. Taft Broad. Co.*, 549 F.2d 400, 401 (6th Cir. 1977) (holding that a sex-specific employee-appearance standard that did not impose an unequal burden on one sex did not violate Title VII); *Fagan v. Nat’l Cash Register Co.*, 481 F.2d 1115, 1117 n.3 (D.C. Cir. 1973) (explaining that when employers adopt policies that take account of “common differences in customary dress of male and female employees, it is not usually thought that there is unlawful discrimination ‘because of sex’”). The undisputed facts in this case demonstrate that R.G.’s dress code does not impose an unequal burden on one sex. *See* Def. SJ Mem. at 7-9. Accordingly, R.G.—not the EEOC—is entitled to summary judgment on the EEOC’s unlawful discharge claim.

At first glance, the arguments of the EEOC and R.G. appear to be like ships passing in the night heading for opposite shores. To understand why the EEOC's argument must be rejected in favor of R.G.'s, it is important to understand the point at which the two arguments necessarily come to grips—namely, R.G.'s sex-specific dress code.

The EEOC attempts to avoid the central importance of R.G.'s dress code by stating that the EEOC “is not asserting that R.G.[]’s dress code violates Title VII—rather the violation is R.G.[]’s insistence that Stephens dress in accord with . . . gender stereotypes.” Memorandum in Support of Plaintiff EEOC’s Motion for Summary Judgment (“Pl. Mem.”) at 30. That argument is nothing more than an attempt to avoid addressing the real issue in this case. Two considerations show that to be true.

First, while the EEOC avoids a direct challenge to R.G.'s sex-specific dress code, there is no dispute that R.G. discharged Stephens because of Stephens's stated intention to violate the dress code at work. This fact is established by Rost's uncontested testimony on behalf of R.G.:

- Q. Is . . . the reason you fired him . . . because he claimed that he was really a woman; or was it because . . . he would no longer dress as a man?
- A. That he would no longer dress as a man.
- Q. And why was that a problem?
- A. Well, because we -- we have a dress code that is very specific that men will dress as men; in appropriate manner, in a suit and tie that we provide and that women will conform to their dress code that we specify.

T. Rost 30(b)(6) Dep. 136:22-137:10 (Def. SJ Ex. 4); *see also id.* at 137:11-15 (Def. SJ Ex. 4) (testifying that R.G. would not have terminated Stephens if Stephens had stated an intention to present as a woman only outside of work); T. Rost Aff. ¶ 50 (Def. SJ Ex. 1) (“It was Stephens’s refusal to wear the prescribed uniform and intent to violate the dress code while at work that was the decisive consideration in my employment decision”). Accordingly, if the enforcement of R.G.’s dress code is permissible under Title VII, then R.G. is entitled to summary judgment on the EEOC’s unlawful discharge claim.

Second, by claiming that R.G.’s sex-specific dress code “insist[s]” that employees “dress in accord with . . . gender stereotypes,” the EEOC merely states a truism. Pl. Mem. at 30. *Of course* R.G.’s sex-specific dress code insists that employees dress sex specifically. That is the entire point. The EEOC’s own policies recognize that it does not consider unlawful the sort of benign sex stereotyping inherent whenever an employer adopts a sex-specific dress code that requires men to wear clothing customary for men and women to wear clothing customary for women. For example, in its Compliance Manual, the EEOC acknowledges:

[A] dress code may require male employees to wear neckties at all times and female employees to wear skirts or dresses at all times. So long as these requirements are suitable and are equally enforced and so long as the requirements are equivalent for men and women with respect to the standard or burden that they impose, there is no violation of Title VII.

EEOC Compliance Manual § 619.4(d) (June 2006).

In this case too, the EEOC tacitly admits that not all sex stereotyping with respect to employee dress violates Title VII. Indeed, the EEOC's claims are unintelligible unless one *relies upon* sex stereotypes. The EEOC contends that R.G. violated Title VII because R.G. refused to permit Stephens to dress consistently with Stephens's claimed gender identity while at work. *See* Pl. Mem. at 31. In other words, the EEOC claims that R.G. should have permitted Stephens to *dress as a woman*. But the only way to discern what it means to dress as a woman is by relying on preconceived notions about how women typically dress. The EEOC's argument thus boils down to this: R.G. engaged in impermissible sex stereotyping with respect to employee dress because R.G. refused to permit Stephens to insist upon sex stereotypes concerning women's dress. The EEOC's own argument thus posits that in some situations, sex stereotypes are acceptable.

What is more, Stephens agrees that certain instances of sex stereotyping should be permissible. When asked at deposition whether R.G. should "be required . . . to allow a male funeral director who was . . . bald and [who had] a neatly trimmed beard and mustache, to wear a professional[] female dress and high heels while meeting with a bereaved family or officiating at a funeral," Stephens responded: "If that's the way *he* was going to present *himself*, *no*." Stephens Dep. 126:7-19 (emphasis added) (Def. SJ Ex. 35). Stephens thus testified that R.G. should not be forced to allow a biological man who is clearly male to wear stereotypically female clothes. When asked why not, Stephens explained that the hypothetical funeral director's appearance would not

“typically . . . meet the expectations of a female,” thus openly acknowledging that R.G. should be allowed to insist on certain sex stereotypes related to employee dress. *Id.* at 126:21-22. Therefore, even Stephens understands that not all sex stereotyping constitutes a societal evil that should be eradicated with the heavy hand of the law.

Courts have also refused to denounce the harmless sex-based generalizations that underlie all sex-specific appearance policies. Indeed, even after *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), courts have permitted employers to distinguish between the sexes in their dress and grooming policies. *See, e.g., Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104, 1110 (9th Cir. 2006) (en banc) (holding that a sex-specific dress code that required female employees to wear makeup and nail polish did not constitute unlawful sex stereotyping); *Frank v. United Airlines, Inc.*, 216 F.3d 845, 854 (9th Cir. 2000) (“An appearance standard that imposes different but essentially equal burdens on men and women is not disparate treatment”); *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998) (holding that an employee-appearance policy prohibiting men, but not women, from wearing long hair does not violate Title VII); *Tavora v. N.Y. Mercantile Exch.*, 101 F.3d 907 (2nd Cir. 1996) (upholding a sex-specific grooming policy).

At bottom, then, the central question in this case is not whether R.G.'s dress code relies on customary distinctions between male and female dress. All sex-specific employee-appearance policies do that. Rather, the critical question is whether R.G.'s sex-specific dress code engages in sex stereotyping *of a type that is impermissible under*

Title VII. Thus to prevail on its motion for summary judgment, the EEOC must explain why R.G.’s sex-specific dress code is different from other sex-specific dress and grooming policies that have been upheld after *Price Waterhouse* and that the EEOC recognizes are appropriate in its Compliance Manual. But the EEOC does not even attempt to do this.

Nor could it, for there is no meaningful distinction between R.G.’s sex-specific dress code and those other sex-specific policies. That is because R.G.’s dress code, like those other policies, does not impose an unequal burden on one sex. *See* Def. SJ Mem. at 7-9. And that consideration—whether a dress code imposes an unequal burden on one of the sexes—is what matters when determining whether a sex-specific dress code violates Title VII. *See Jespersen*, 444 F.3d at 1110 (“The material issue under our settled law is not whether the policies [for men and women] are different, but whether the policy imposed on the plaintiff creates an ‘unequal burden’ for the plaintiff’s gender”); *Barker*, 549 F.2d at 401 (holding that a plaintiff who failed to allege that his employer’s grooming policy imposed an unequal burden on one sex did not state a claim under Title VII); EEOC Compliance Manual § 619.4(d) (“[S]o long as the [dress code] requirements are equivalent for men and women with respect to the standard or burden that they impose, there is no violation of Title VII.”).

For example, in *Carroll v. Talman Federal Savings and Loan Association of Chicago*, the Seventh Circuit considered whether Talman Federal’s dress policy, which required female employees to wear a “clearly identifiable uniform” but allowed male employees

to wear a “variety of normal business attire,” violated Title VII’s prohibition on sex discrimination. 604 F.2d 1028, 1032-33 (7th Cir. 1979). The court observed that “[s]o long as [employee appearance regulations] find some justification in commonly accepted social norms and are reasonable related to the employer’s business needs, such regulations are not necessarily violations of Title VII even though the standards prescribed differ somewhat for men and women.” *Id.* at 1032. The court, however, concluded that Talman Federal’s dress policy discriminated “based on offensive [sex] stereotypes” and was “demeaning to women” because of the “natural tendency to assume that the uniformed women have a lesser professional status than their male colleagues attired in normal business clothes.” *Id.* at 1033. In other words, Talman Federal’s dress policy discriminated based on sex in violation of Title VII because it imposed an unequal burden on female employees: the burden of wearing a professionally demeaning uniform.

Here, however, R.G.’s dress code for funeral directors like Stephens does not impose an unequal burden on the sexes because R.G. provides professional suits for all funeral directors, whether male or female. *See* Def. SJ Mem. at 7-9. Thus, discharging Stephens because of Stephens’s intent to violate the dress code does not violate Title VII.

B. Accepting the EEOC's Argument Would Invalidate All Sex-Specific Dress Codes under Title VII.

As discussed above, courts use “equal burdens” analysis to separate unlawful sex-specific dress codes from lawful ones. The EEOC, however, asks this Court to hold that R.G. engaged in impermissible sex stereotyping when it discharged Stephens simply because R.G.’s dress code—the reason for Stephens’s discharge—requires that employees “conform to [RG’s] expectations of how someone assigned the male [or female] sex at birth” should dress at work. Pl. Mem. at 28. The EEOC thus would have this Court ignore equal-burdens analysis and hold that R.G.’s sex-specific dress code violates Title VII *for the sole reason that it requires employees to dress sex specifically*. But this would amount to holding that all sex-specific dress codes are unlawful under Title VII. Nothing warrants such a significant departure from precedent, congressional intent, and common sense.

No state or federal court of which R.G. is aware has ever held that a sex-specific employee-appearance policy constitutes unlawful sex stereotyping simply because it distinguishes between the sexes. Nor has any state or federal court of which R.G. is aware ever held that an employer engages in sex stereotyping in violation of Title VII simply by requiring its male employees to comply with dress-code requirements for male employees and its female employees to comply with dress-code requirements for female employees.

The EEOC relies on *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004), a case involving a biological male firefighter who presented as a female, arguing that there the Sixth Circuit held that an employer “violates Title VII when it takes action against an employee based on ‘[s]ex stereotyping,’ that is, ‘based on a person’s gender non-conforming behavior.’” Pl. Mem. at 27 (quoting *Smith*, 378 F.3d at 575). But the EEOC ignores a critical difference between the facts in *Smith* and those in this case: *Smith* did not involve a sex-specific dress code.² The plaintiff in *Smith* alleged that his employer singled him out for adverse treatment because he “express[ed] less masculine, and more feminine mannerisms and appearance.” 378 F.3d at 572. Here, however, R.G. did not target Stephens for disparate treatment, but rather evenly applied its sex-specific dress code. *See* Def. SJ Mem. at 10-11. Consequently, *Smith* provides no guidance on the decisive dress-code question at issue in this case.

Many important considerations have led courts to uphold sex-specific dress codes against Title VII challenges, and they counsel against invalidating sex-specific dress codes in the manner urged by the EEOC in this case. First, an employer must be able to control the manner in which it presents its business to the public through its employees. When holding that a company’s sex-specific grooming policy did not constitute unlawful sex discrimination, the D.C. Circuit concisely explained the significance of a business’s right to control its public image:

² Indeed, the EEOC fails to cite a single case where an employer’s dress or grooming regulations were at issue.

Perhaps no facet of business life is more important than a company's place in public estimation. That the image created by its employees dealing with the public when on company assignment affects its relations is so well known that we may take judicial notice of an employer's proper desire to achieve favorable acceptance.

Fagan, 481 F.2d at 1124-25. Accepting the EEOC's position would severely hinder the ability of businesses to control their public image. It would, for example, force an employer to allow a biological male employee who is bearded and balding to wear high heels and a dress to work. But even Stephens testified that this would be unacceptable in the funeral industry. Stephens Dep. 126:7-19 (emphasis added) (Def. SJ Ex. 35).

Second, sex-specific dress and grooming policies not only enable businesses to control their public image, they also advance legitimate—and even vital—business purposes. *See Carroll*, 604 F.2d at 1032 (observing that employee-dress policies are often “related to the employer’s business needs”). That is certainly the case here. R.G.’s dress code advances its critical interest in creating an environment free from distractions and conducive to the healing process of grieving family members and friends. *See T. Rost Aff.* ¶ 34 (Def. SJ Ex. 1) (“Maintaining a professional dress code that is not distracting to grieving families is an essential industry requirement that furthers their healing process.”). R.G. thus does not allow funeral directors to wear the uniform for members of the opposite sex because that would attract undue attention to those funeral directors and disrupt the grieving process for clients. *Id.* at ¶

37 (Ex. 1). Title VII does not require businesses to eliminate dress codes that advance such legitimate business purposes.

Third, nothing suggests that Congress intended Title VII to override all sex-specific dress codes, as the EEOC's argument would do. When enacting Title VII's sex-discrimination prohibition, "Congress sought only to give all persons equal access to the job market, not to limit an employer's right to exercise his informed judgment as to how best to run his shop." *Willingham v. Macon Tel. Pub. Co.*, 507 F.2d 1084, 1092 (5th Cir. 1975). Thus, using Title VII to invalidate a sex-specific dress code that imposes equal burdens on the sexes would stretch the statute far beyond "the intent of Congress to . . . guarantee . . . equal job opportunity for males and females." *Id.* at 1091; *see also Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978) ("In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment *of men and women* resulting from sex stereotypes.") (citation and quotation marks omitted) (emphasis added).

C. Stephens's Purported Intent to Abide by R.G.'s Dress Code for Female Employees Is Not Relevant.

The EEOC argues that compelling R.G. to allow male employees to wear the uniform for female employees would not invalidate all sex-specific dress codes because "Stephens fully intended to abide by the female dress code—and to continue to dress in a professional manner at work." Pl. Mem. at 31; *see also* Pl. Mem. at 29

(arguing that Stephens “intended to dress professionally, in a manner consistent with [RG’s] dress requirements for women”) (citing Stephens Dep. 133:6-9 (Pl. Ex. Q)). This is another sleight-of-hand meant to distract from the central issue in this case.

In order to utilize a sex-specific dress code to control the public face of its business, an employer must be able to do two things. First, the employer must be able to dictate sex-differentiated appearance regulations. Second, the employer must be able to set an objective standard for determining the sex of an employee. This means that the employer must be allowed to apply its sex-specific dress code based on the employee’s biological sex rather than his or her gender identity. Otherwise, the sex-specific nature of the dress code is not useful for controlling the image of the employer’s business.

Consider, for example, a company that requires its male employees to wear men’s suits and its female employees to wear skirts or dresses. By the EEOC’s logic, a male employee could wear a men’s suit to work one day, declare his gender identity to be female and wear a skirt the next day, and then declare himself male and switch back to a men’s suit at some point in the future, all without violating the company’s “sex-specific” dress code. Thus, if the EEOC is right that an employer may establish sex-differentiated appearance standards but may not apply those standards based on its employees’ biological sex, it is meaningless to say that the employer’s appearance standards are sex-differentiated in the first instance.

Here, the undisputed record evidence establishes that, from the time of hiring through the time of termination, Stephens was a biological male. Indeed, this fact is conclusively established for purposes of this proceeding. *See* Pl.’s Resp. to Def.’s First Set of Discovery at Request for Admission No. 6 (Def. SJ. Ex. 25) (denying that Stephens is “female *and not a male* for purposes of determining whether discrimination on the basis of ‘sex’ has occurred under Title VII”) (emphasis added); Stephens Dep. at 49:5-13 (Def. SJ Ex. 14) (testifying that Stephens “was assigned male at birth”). But if this Court does not allow R.G. to apply its dress code to Stephens based on Stephens’s undisputed status as a biological man, it will transform the sex-specificity of R.G.’s dress code into a dead letter that serves no purpose, and in that way, it will undermine R.G.’s ability to control its public face and create distraction-free environments for grieving families.

Underlying the EEOC’s arguments is an unstated claim that Stephens is a transgender woman and that, because of that alone, Stephens should have been allowed to comply with R.G.’s dress code for female funeral directors. But arguing that transgendered employees may comply with their employers’ sex-specific dress codes in accordance with their gender identity, while non-transgendered employees must comply with those dress codes in accordance with their biological sex, essentially asserts that transgender status is a protected classification entitled to special treatment under Title VII. This Court, however, has already rejected that position in this very case. *See EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 100 F. Supp. 3d 594, 595

(E.D. Mich. 2015) (holding that “transgender status is not a protected class under Title VII”). The EEOC should not be able to avoid the clear import of that holding by subtly repackaging its arguments.

* * *

The foregoing discussion demonstrates that, as a matter of law, Rost’s statement that R.G. discharged Stephens as a result of Stephens’s intent to wear the female uniform in violation of R.G.’s sex-specific dress code does not constitute direct evidence of unlawful sex stereotyping under Title VII. This Court should thus refuse to hold that R.G.’s enforcement of its dress code constitutes unlawful sex stereotyping simply because it is sex-specific. Rather, the Court should follow the lead of other courts (like the Ninth Circuit in *Jespersen*), apply equal-burdens analysis to R.G.’s dress code, and determine that R.G.—not the EEOC—is entitled to summary judgment on the unlawful discharge claim.

II. RFRA Prohibits the EEOC from Applying Title VII to Force R.G. to Violate its Sincerely Held Religious Beliefs.

A. Contrary to the EEOC’s Contentions, Applying Title VII in this Case Would Substantially Burden R.G.’s Religious Exercise.

The EEOC contends that its attempt to apply Title VII in this case does not substantially burden or even affect R.G.’s religious exercise. *See* Pl. Mem. at 18-24. Yet the EEOC’s arguments rely upon mischaracterizations of R.G.’s RFRA defense. This Court should thus reject the EEOC’s position and conclude that R.G. has established the prerequisites of its RFRA defense: (1) religious exercise; and (2) substantial burden.

Religious Exercise. As R.G. explained in its memorandum in support of its motion for summary judgment, Rost and R.G. engage in religious exercise that RFRA protects. *See* Def. SJ Mem. at 15-18. The EEOC tries to reduce R.G.’s religious exercise to its “placement of devotionals and cards for the public.” Pl. Mem. at 20. But the undisputed facts establish that Rost’s life work of serving those who mourn the loss of their loved ones—that is, his very operation of R.G.—constitutes protected religious exercise. The Supreme Court has recognized that “the exercise of religion involves . . . acts that are engaged in for religious reasons,” which include “[b]usiness practices that are compelled . . . by the tenets of a religious doctrine.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770 (2014) (quotation marks and citation omitted). Here, the record shows that Mr. Rost’s “faith compels [him]” to “serve grieving people” as he does through R.G., *see* T. Rost Aff. ¶ 10 (Def. SJ Ex. 1) (“I believe God has called me to serve grieving people . . . , and my faith compels me to do this important work.”). Accordingly, R.G. is not just a business; it is the embodiment of Rost’s religious exercise.

Furthermore, another more specific aspect of R.G.’s and Rost’s religious exercise is at issue in this case. R.G. operates consistently with Rost’s sincerely held religious beliefs that a person’s sex (whether male or female) is an immutable God-given gift and that people should not deny or attempt to change their sex. *Id.* at ¶ 42. Because of these convictions, R.G. will not purchase female attire for a male funeral director (or male attire for a female funeral director), or otherwise permit a funeral

director to wear the uniform for members of the opposite sex. *See id.* at ¶¶ 43-46. Supreme Court precedent confirms that this qualifies as religious exercise protected under RFRA. For just as Hobby Lobby’s religiously motivated business practice of declining to pay for its employees’ abortion-inducing drugs is protected religious exercise under RFRA, *see Hobby Lobby*, 134 S. Ct. at 2766, 2775, so is R.G.’s religiously motivated decision not to purchase female attire for a male funeral director.³

These facts about R.G.’s religious exercise show that the EEOC is incorrect when it claims that R.G. discharged Stephens simply because Stephens “does not act as Rost’s beliefs dictate [Stephens] should.” Pl. Mem. at 20. On the contrary, the uncontested evidence establishes that Rost would not have discharged Stephens if Stephens had stated an intent to present as a woman on Stephens’s own time while complying with R.G.’s dress code at work. Rost 30(b)(6) Dep. 137:11-15 (Def. SJ Ex. 4); T. Rost Aff. ¶¶ 50-51 (Def. SJ Ex. 1). Thus, the decisive factor in R.G.’s employment decision was Stephens’s intent to dress in female attire *while representing* R.G. because what Stephens wears at work implicates Rost’s religious convictions and R.G.’s dress code. T. Rost Aff. ¶ 50 (Def. SJ Ex. 1).

Substantial Burden. As R.G. demonstrated in its memorandum in support of its motion for summary judgment, applying Title VII in this case would substantially

³ The EEOC curiously argues that RFRA protects only “religious exercise, not simply beliefs.” Pl. Mem. at 18. This argument is irrelevant because, as explained above, R.G. engages in protected religious exercise. But to the extent that it is relevant, it is flatly wrong because “the exercise of religion” protected by RFRA *includes* “belief and profession” as well as “the performance of (or abstention from) physical acts that are engaged in for religious reasons.” *Hobby Lobby*, 134 S. Ct. at 2770.

burden R.G.'s and Rost's religious exercise. *See* Def. SJ Mem. at 18-19. The EEOC disagrees, claiming that "Rost's religious exercises are not affected" by Stephens's wearing the uniform for female funeral directors, Pl. Mem. at 20, and that "RG[] cannot establish a substantial burden" on its exercise of religion, *id.* at 21.

But the undisputed facts demonstrate that forcing R.G. to allow Stephens to wear the uniform for female funeral directors would require Rost "to engage in conduct that seriously violates [his] religious beliefs," *Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015), thus imposing a substantial burden on R.G.'s exercise of religion. *See* Def. SJ Mem. at 18. Moreover, as R.G. has already shown, requiring it to permit a male funeral director to wear the uniform for female funeral directors would directly interfere with—and thus impose a substantial burden on—R.G.'s ability to carry out Rost's religious exercise of caring for the grieving. *Id.* at 18-19. It would do this in at least two ways. First, allowing a funeral director to wear the uniform for members of the opposite sex would often create distractions for the deceased's loved ones and thereby hinder their healing process. T. Rost 30(b)(6) Dep. 54:8-17, 59:13-60:9 (Def. SJ Ex. 4); T. Rost Aff. ¶¶ 36-38 (Def. SJ Ex. 1). Second, by forcing R.G. to violate Rost's faith, this application of Title VII would significantly pressure Rost to leave the funeral industry and end his ministry to grieving people. T. Rost Aff. ¶ 48 (Def. SJ Ex. 1). Thus, applying Title VII here would substantially burden R.G.'s and Rost's religious exercise of caring for the grieving.

B. The EEOC Has Not Shown that Applying Title VII in this Case Satisfies Strict Scrutiny.

The EEOC argues that even if this application of Title VII substantially burdens Rost's religious exercise, that burden is nonetheless justified because it purportedly serves a compelling government interest in the "eradication of employment discrimination based on the criteria identified in Title VII." Pl. Mem. at 25-26 (quoting *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763, 810 (S.D. Ind. 2002)). This argument is flawed because RFRA's strict-scrutiny test focuses not on generalized state interests like the eradication of discrimination in employment, but rather on the state's specific interest in applying the law at issue to the party before the court and "the asserted harm of granting specific exemptions to [that party]." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006); see also *Hobby Lobby*, 134 S. Ct. at 2779 (similar); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 578 (1995) (analyzing a nondiscrimination law's "apparent object" when "applied . . . in the way it was done [t]here" rather than its general purpose of prohibiting discrimination on all the statutorily "proscribed grounds"). Thus, the relevant question is whether the state has a specific compelling interest in forcing R.G. to allow its male funeral directors to wear the uniform for female funeral directors while on the job. But as R.G. has shown in its memorandum in support of its motion for summary judgment, the EEOC has no interest in requiring that. See Def. SJ Mem. at 19-20.

This need for a particularized analysis of the asserted governmental interest explains why the EEOC's reliance on dicta in *Hobby Lobby* is unavailing. *See* Pl. Mem. at 24-25. The majority in *Hobby Lobby* addressed the principal dissent's contention that "discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction." 134 S. Ct. at 2783 (citing *id.* at 2804-05 (Ginsberg, J., dissenting)). The EEOC argues that the *Hobby Lobby* majority's rejection of the dissent's contention somehow means that "Title VII serves a compelling governmental interest which cannot be overridden by RFRA" in any case. Pl. Mem. at 24. The EEOC is incorrect.

The majority in *Hobby Lobby* stated that its decision "provides no . . . shield" against cloaked racial discrimination because the government "has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal." 134 S. Ct. at 2783. The majority spoke only of racial discrimination, not discrimination based on sex, sex stereotyping, or transgender status. And it certainly did not discuss the government's interest in applying Title VII to force a funeral home to allow its funeral directors to dress in the uniform for members of the opposite sex. *Hobby Lobby* thus did not address what is at issue here.

Notably, the Court in *Hobby Lobby* confirmed that RFRA's strict-scrutiny analysis demands a "focused inquiry" that "look[s] beyond broadly formulated interests" and scrutinizes the government's particularized interest in applying its law

under the specific circumstances. *Id.* at 2779 (quotation marks and alterations omitted). *Hobby Lobby* thus leaves no doubt that each court must scrutinize the facts before it to determine whether that particular application of a government mandate satisfies strict scrutiny. Therefore, the EEOC's attempt to invoke *Hobby Lobby* in its effort to bypass the particularized analysis that *Hobby Lobby* mandates is unpersuasive.

Finally, it is telling that the EEOC does not even attempt to explain why forcing R.G. to allow its funeral directors to wear uniforms for members of the opposite sex satisfies RFRA's least-restrictive-means requirement. The EEOC's silence on this point is not at all surprising because "[t]he least-restrictive-means standard is exceptionally demanding." *Id.* at 2780. Thus, for the reasons explained in R.G.'s memorandum in support of its motion for summary judgment, this Court should find that the EEOC has not satisfied the least-restrictive-means requirement, *see* Def. SJ Mem. at 20-21, conclude that R.G. must prevail on its RFRA defense, and declare that R.G. (not the EEOC) is entitled to summary judgment on the EEOC's unlawful discharge claim.⁴

III. The EEOC Is Not Entitled to Summary Judgment on Its Clothing-Allowance Claim.

The EEOC also contends that R.G. violates Title VII through a purported

⁴The EEOC also argues that the application of Title VII in this case does not violate R.G.'s free-exercise rights under the First Amendment. *See* Pl. Mem. at 15-17. Because RFRA provides more expansive protection for R.G.'s free-exercise rights than the First Amendment does, and because R.G. is entitled to summary judgment on its RFRA defense, the Court need not reach R.G.'s First Amendment free-exercise defense. *See Hobby Lobby*, 134 S. Ct. at 2785 (concluding, after finding a RFRA violation, that it was "unnecessary to reach the First Amendment claim").

“policy of paying for the work clothing of male employees” but not “provid[ing] a comparable benefit to female employees.” Pl. Mem. at 32. This argument also fails.

First, the EEOC does not have standing to maintain a claim with respect to R.G.’s clothing allowance on behalf of a class of female employees. As explained in R.G.’s memorandum in support of its motion for summary judgment, *see* Def. SJ Mem. at 21-24, because the clothing-allowance claim is “unrelated to [the charging] party” and involves discrimination “of a kind other than that raised by [the charging party],” it is not the result of an “investigation reasonably expected to grow out of [Stephens’s] charge of discrimination.” *EEOC v. Bailey Co.*, 563 F.2d 439, 446-448 (6th Cir. 1977), *disapproved of on other grounds by Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978). Consequently, the EEOC lacks authority to raise the claim in this lawsuit.

Second, contrary to the EEOC’s assertions, the undisputed facts demonstrate that R.G. provides equivalent clothing benefits to male employees and female employees. For funeral directors, it is R.G.’s policy to provide all of them (whether male or female) with company-issued suits. *See* Def. SJ Mem. at 24. For employees who interact with the public in positions other than funeral director, even though the male employees receive company-issued suits and the female employees receive a clothing allowance, both sexes receive clothing benefits that enable them to conform to the dress code and replace worn clothing as necessary. *See id.* at 24-25. And for employees in positions that do not interact with the public, no one (regardless of their sex) receives clothes or a clothing allowance. *See id.* at 25.

The EEOC claims that the benefits are not comparable because the clothing allowance for female employees who interact with the public in positions other than funeral director is only \$150 for full-time employees and \$75 for part-time employees, while the suit purchased for comparable male employees is worth “in excess of \$200.” Pl. Mem. at 33. This argument ignores that these female employees are given the allowance every year, while the men’s suits are used until they wear out. Thus, if a part-time male employee has his suit for three years, the value of what he receives during that time is approximately \$225, and a part-time female employee who works during those same three years has equally received clothing allowance checks in the amount of \$225. Or if that male employee’s suit lasts for five years, which is common for part-time male employees, *see* T. Rost Dep. 18:10-24 (Def. SJ Ex. 3), the value of what he receives (\$225) is far less than what a comparable female employee obtains over that time (\$375). So the EEOC’s suggestion that R.G.’s clothing benefits discriminate against female employees is simply mistaken.

For these reasons, R.G.—not the EEOC—is entitled to summary judgment on the EEOC’s clothing-allowance claim.

Conclusion

For the foregoing reasons, R.G. respectfully requests that the Court deny the EEOC’s motion for summary judgment.

Dated: May 2, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2016, I electronically filed the foregoing Opposition to EEOC's Motion for Summary Judgment and all accompanying papers (which include the Exhibits in Support of this Opposition) with the Clerk of the Court using the ECF system, which will send notification of this filing to all parties in the case.

/s/ Douglas G. Wardlow
Douglas G. Wardlow

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**R.G. & G.R. HARRIS FUNERAL
HOMES, INC.,**

Defendant.

Case No.
2:14-cv-13710

Hon. Sean F. Cox

INDEX OF SUPPLEMENTAL EXHIBITS

Defendant, R.G. & G.R. Harris Funeral Homes, Inc., submits the following supplemental exhibits in support of its Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment:

<u>Exhibit No.</u>	<u>Exhibit Title</u>
35	Excerpts from Deposition of Aimee Stephens
36	Excerpts from Deposition of Thomas Rost
37	Excerpts from Deposition of Delores Nemeth
38	Excerpts from Deposition of George Crawford
39	Excerpts from Deposition of Wendy McKie
40	Excerpts from Deposition of Shannon Kish

EXHIBIT 35

Aimee Stephens
December 16, 2015

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<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. Case No. 2:14-cv-14-13710 Hon. Sean F. Cox R.G. & G.R. HARRIS FUNERAL HOMES, INC., Defendant.</p> <hr/> <p>The Deposition of AIMEE A. STEPHENS, Taken at 39111 Six Mile Road, Livonia, Michigan, Commencing at 9:28 a.m., Wednesday, December 16, 2015, Before Deborah A. Culver, #3001.</p>	<p>1 BRADLEY ABRAMSON 2 Alliance Defending Freedom 3 15100 N. 90th Street 4 Scottsdale, Arizona 85260 5 (480) 444-0020 6 Appearing on behalf of the Defendant. 7 8 JEFF T. SCHRAMECK 9 Schrameck Law, P.L.L.C. 10 843 Penniman Avenue 11 Plymouth, Michigan 48170 12 (734) 454-5400 13 Appearing on behalf of the Defendant. 14 15 Also Present: 16 Thomas F. Rost 17 18 19 20 21 22 23 24 25</p>
Page 2	Page 4
<p>1 APPEARANCES: 2 3 DALE R. PRICE, JR. 4 MILES E. SHULTZ 5 KATIE N. LINEHAN 6 Equal Employment Opportunity Commission 7 477 Michigan Avenue, Room 865 8 Detroit, Michigan 48226 9 (313) 226-7808 10 Dale.price@eeoc.gov 11 Appearing on behalf of the Plaintiff. 12 13 JOEL J. KIRKPATRICK 14 Kirkpatrick Law Offices, P.C. 15 843 Penniman Avenue 16 Suite 201 17 Plymouth, Michigan 48170 18 (734) 404-5710 19 Joel@joelkirkpatrick.com 20 Appearing on behalf of the Defendant. 21 22 23 24 25</p>	<p>1 TABLE OF CONTENTS 2 3 WITNESS PAGE 4 AIMEE A. STEPHENS 5 6 EXAMINATION 7 BY MR. KIRKPATRICK: 5 8 EXAMINATION 9 BY MR. PRICE: 131 10 RE-EXAMINATION 11 BY MR. KIRKPATRICK: 135 12 13 EXHIBITS 14 15 EXHIBIT PAGE 16 (Exhibits attached to transcript.) 17 18 DEPOSITION EXHIBIT 1 51 19 (Resumé) 20 DEPOSITION EXHIBIT 2 55 21 (Employee Manual) 22 DEPOSITION EXHIBIT 3 67 23 (Letter) 24 DEPOSITION EXHIBIT 4 119 25 (Plaintiff's Witness List)</p>

Aimee Stephens
December 16, 2015

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1 A. No.
 2 Q. Have you had any conversations, other than -- we've
 3 already kind of talked about this at the dinner you
 4 had --
 5 Have you had any conversations with any
 6 other people that are somehow connected to the funeral
 7 home since your removal?
 8 A. No.
 9 Q. Hypothetically speaking, you presented to this letter
 10 to Tom Rost and if he would have allowed you, for lack
 11 of a better term, to present as a woman, would that
 12 preclude you from going back to present as a man later
 13 on?
 14 MR. PRICE: Objection, calls for
 15 speculation.
 16 To the extent that it's relevant, go ahead
 17 and answer.
 18 A. To go back as a male?
 19 BY MR. KIRKPATRICK:
 20 Q. Yes.
 21 A. No.
 22 Q. If a male funeral director, hypothetically speaking,
 23 wanted to present as woman at work, is it your
 24 position the funeral home must allow him to do so?
 25 MR. PRICE: Objection. Again, same

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1 objection. But go ahead and answer.
 2 A. Yes.
 3 BY MR. KIRKPATRICK:
 4 Q. Why?
 5 A. If that individual is willing to adhere to the female
 6 dress code, then I see no problem in it.
 7 Q. Okay. So following that up, what you just told me,
 8 would the funeral home be required -- again,
 9 hypothetically speaking -- to allow a male funeral
 10 director who was, say, bald and neatly trimmed beard
 11 and mustache, to wear a professionally female dress
 12 and high heels while meeting with a bereaved family or
 13 officiating at a funeral?
 14 MR. PRICE: Objection; calls for
 15 speculation. No such facts in evidence.
 16 BY MR. KIRKPATRICK:
 17 Q. Hypothetically speaking.
 18 MR. PRICE: Go ahead and answer.
 19 A. If that's the way he was going to present himself, no.
 20 BY MR. KIRKPATRICK:
 21 Q. Why not?
 22 A. Typically doesn't meet the expectations of a female.
 23 Q. What meets the expectations of a female?
 24 A. Your guess is as good as mine. I mean you assume if
 25 she has hair, long hair, as long as it's groomed

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1 nicely, what difference does it make what she wears as
 2 long as it's within that dress code.
 3 Q. Even though that male believed -- wanted to be
 4 perceived as a female?
 5 MR. PRICE: Same objection.
 6 A. I think I've already answered your question.
 7 BY MR. KIRKPATRICK:
 8 Q. Well, actually, that was a new question.
 9 A. The same one you asked before.
 10 Q. Can you answer the question, please?
 11 MR. PRICE: Objection; asked and answered.
 12 But you can answer.
 13 MR. KIRKPATRICK: Actually, it has not been
 14 asked and answered. But go ahead.
 15 A. Repeat the question.
 16 MR. KIRKPATRICK: Can you repeat the
 17 question, please?
 18 (Record read back by reporter as follows:
 19 Q. Even though that male believed --
 20 wanted to be perceived as a female?)
 21 A. I think if you're going to present in that fashion,
 22 you have to basically adhere to the part you're
 23 professing to play.
 24 BY MR. KIRKPATRICK:
 25 Q. So playing a part, if that person perceived that they

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1 were a female and wanted to do that and they were
 2 playing a part, they should be able to do that or not?
 3 A. Well, yes, as long as they're willing to adhere to the
 4 female dress code.
 5 Q. I know I asked you previously about the letter you
 6 wrote and presented that we discussed, that you
 7 presented to Tom Rost, that you had drafts beforehand,
 8 and you showed some of the employees maybe up to two
 9 months before.
 10 Is there something you're looking at in the
 11 Exhibit that we presented you?
 12 A. There's something that caught my thought.
 13 Q. Well, I'll tell you what. Why don't put that down for
 14 a minute. Your Counsel, or Counsel can ask you
 15 questions if you want.
 16 MR. PRICE: We can follow up.
 17 BY MR. KIRKPATRICK:
 18 Q. But to follow up what I just said, I want to make sure
 19 I had your attention, so I'm going to repeat my
 20 question.
 21 We already discussed the letter you
 22 prepared, I think you had some drafts, maybe up to two
 23 months before July 31st and showed some employees at
 24 some point some of those drafts. Do you recall that
 25 testimony?

Aimee Stephens
December 16, 2015

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1 before. What's your understanding of what a
2 sex-specific dress code is?
3 A. That you dressed as however you presented.
4 Q. Was it your understanding that -- let me put it this
5 way.
6 Were you intending on adhering to the
7 female dress code expectations at R.G. & G.R. when you
8 presented your letter?
9 A. Yes.
10 Q. And you had no intention of changing that?
11 A. No.
12 Q. You were asked earlier about a resumé that you sent
13 out before -- or after you were terminated at
14 R.G. & G.R., and you were asked if there were any
15 changes from the resumé you were shown earlier,
16 Exhibit 1 with the cover letter.
17 Were there changes to that resumé
18 substantively?
19 A. Well, basically R.G. & G.R. Harris was added as a
20 place of employment.
21 Q. So you added R.G. & G.R. to your workplace experience
22 list?
23 A. Correct.
24 Q. But was there any other changes that you can recall?
25 A. The cover letter changed some in respect that, of

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1 course, name changed, and I mentioned in the cover
2 letter that I had a name change done and that all my
3 experience is under my old name.
4 Q. You were also asked earlier about a dialysis schedule
5 that you're on, and it's currently Tuesday, Thursday
6 and Saturday.
7 Is there any way currently that that can be
8 altered?
9 A. It can be altered in the respect that I could do
10 nocturnal dialysis.
11 Q. What's nocturnal dialysis?
12 A. You go get put on at night after 6:00 p.m., and your
13 dialysis session is done at night rather than during
14 the day.
15 Q. Have you ever done this?
16 A. No.
17 Q. Okay. You were also asked about if there was any way
18 that people, your coworkers or managers or supervisors
19 at R.G. & G.R., could have understood that you were
20 going to be presenting as female.
21 When you gave the -- when you showed the
22 letter to people or gave it to them in the case of Mr.
23 Rost, were you intending to notify people that you
24 were going to be presenting as female?
25 A. Yes.

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1 MR. PRICE: Okay. That's all I have.
2 MR. KIRKPATRICK: Just a few follow-up
3 questions.
4 RE-EXAMINATION
5 BY MR. KIRKPATRICK:
6 Q. When you interviewed with these other funeral homes
7 and presented the resumé that you changed, and this
8 was after your removal, you put on there your work
9 experience with R.G. & G.R. Funeral Home?
10 A. Yes.
11 Q. Did you tell them why you left?
12 A. The subject was never brought up.
13 Q. Did you put on there that you were fired or
14 terminated?
15 A. No, I did not.
16 Q. They never asked?
17 A. Never asked.
18 Q. You didn't offer that information?
19 A. No.
20 Q. Counsel just asked you about your time with the
21 Carolina Mortuary Services and the female dress code.
22 A. Yes.
23 Q. I don't know if you testified to this previously, but
24 just to be clarified on his remarks, did you yourself
25 dress with the male dress code?

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1 A. Yes.
2 Q. Now, you have an option to do nocturnal dialysis?
3 A. I do now.
4 Q. When did that option become available?
5 A. Just recently.
6 Q. Like in the last --
7 A. Within the last month.
8 Q. So that would enable you to go out and work right now
9 if you wanted to --
10 A. Yes.
11 Q. -- at a funeral home?
12 Did you ask or why did you all of a sudden
13 get the opportunity to do that?
14 A. When you get to a certain point, they give you options
15 as to what you could do if you chose to.
16 Q. I don't know much about dialysis, and I'm sorry for my
17 ignorance, but is your current schedule of three times
18 a week, is that considered a lot of dialysis?
19 A. No, that's considered normal.
20 Q. Okay. Are there some that some get dialysis daily or
21 anything like that?
22 A. There are some that do home hemodialysis.
23 Q. Okay.
24 A. That do it on a daily basis for less amount of time.
25 Q. All right. This nocturnal schedule is 6:00 p.m. to

EXHIBIT 36

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)

7 Plaintiff,)

8 vs.) Case No. 14-13710

9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox

10 HOMES, INC.,) United States

11 Defendants.) District Court Judge

12 _____)
13

14 DEPOSITION OF THOMAS ROST

15 PLYMOUTH, MICHIGAN

16 THURSDAY, NOVEMBER 12, 2015
17
18
19
20
21
22
23

24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519

25 JOB NO.: 276003-B

THOMAS ROST - 11/12/2015

Page 22	Page 24
<p>1 Q Let's double check.</p> <p>2 MR. KIRKPATRICK: Here it is.</p> <p>3 THE WITNESS: Okay. So he signs</p> <p>4 both names. Okay.</p> <p>5 BY MR. PRICE:</p> <p>6 Q Okay. So, was there any confusion on your end</p> <p>7 as to who was bringing this charge?</p> <p>8 A Either Anthony or Aimee Stephens.</p> <p>9 Q It would have been the same person, though --</p> <p>10 A Would be the same person.</p> <p>11 Q -- the person you knew as Anthony Stephens was</p> <p>12 filing it, right?</p> <p>13 A Yes.</p> <p>14 Q There's no question as to that?</p> <p>15 A That's true.</p> <p>16 Q Now, did you -- okay, I apologize. Did you see</p> <p>17 it before it went out or not?</p> <p>18 A Did I see?</p> <p>19 Q The position statement?</p> <p>20 A Yes.</p> <p>21 Q Okay.</p> <p>22 A Correct.</p> <p>23 Q Did you recommend any changes to it, that you</p> <p>24 can remember?</p> <p>25 A I don't believe so.</p>	<p>1 A We have done that.</p> <p>2 Q Okay. How recently?</p> <p>3 A It hasn't been very recent.</p> <p>4 Q Okay. What was the issue?</p> <p>5 A Hard to say. It might be a woman, possibly, on</p> <p>6 her dress, or -- pretty hard for a man since we</p> <p>7 dress them.</p> <p>8 Q Okay. What is the woman's dress code, what do</p> <p>9 they have to wear?</p> <p>10 A Well, they wear a skirt and usually a jacket.</p> <p>11 Q Okay.</p> <p>12 A A professional-looking suit.</p> <p>13 Q Okay. What about pants, no pants?</p> <p>14 A No pants.</p> <p>15 Q Why is that?</p> <p>16 A I guess I'm just old-fashioned and I believe</p> <p>17 this is a funeral home and there's a certain</p> <p>18 tradition that we want to keep there. We</p> <p>19 want -- and I think the consumer out there,</p> <p>20 families believe that they -- a male should</p> <p>21 look like a particular individual, like a man,</p> <p>22 and a woman should look like a woman. And</p> <p>23 dress accordingly.</p> <p>24 Q And you think so as well?</p> <p>25 A And I think so as well.</p>
<p>Page 23</p> <p>1 Q Okay. Does it fairly reflect your views as to</p> <p>2 the case and the position of the company?</p> <p>3 A Yes. Yes. Uh-huh.</p> <p>4 Q Were you uncomfortable with the fact that the</p> <p>5 name Aimee Stephens was being used in the</p> <p>6 charge?</p> <p>7 A I'm uncomfortable with the name because he's a</p> <p>8 man.</p> <p>9 Q Okay. And you wanted to keep referring to</p> <p>10 Stephens as Anthony Stephens, correct?</p> <p>11 A That's who the employee was.</p> <p>12 Q I'm sorry, the employee?</p> <p>13 A Yeah. He was the employee.</p> <p>14 Q Okay. And we have already talked a little bit</p> <p>15 about the fact it doesn't talk about religious</p> <p>16 freedom or free exercises and it was that -- it</p> <p>17 was your belief that you didn't have to raise</p> <p>18 this at this point?</p> <p>19 A Yes.</p> <p>20 Q Okay. Have you ever disciplined anyone for a</p> <p>21 violation of the dress code?</p> <p>22 A No. I wouldn't say discipline, no.</p> <p>23 Q Okay. Have you ever counseled somebody that</p> <p>24 they're -- they weren't adhering to the dress</p> <p>25 code?</p>	<p>Page 25</p> <p>1 Q With respect to the stipend, or what's paid,</p> <p>2 the dress allowance and the suit acquisition</p> <p>3 and -- where would the records be for those?</p> <p>4 You know, that showed the payouts, the buying</p> <p>5 of the suits, that sort of thing?</p> <p>6 A Yeah, at our east side location.</p> <p>7 Q Okay. Would that be in the care or control of</p> <p>8 Ms. Kish?</p> <p>9 A It would be.</p> <p>10 Q You mentioned earlier that you were concerned</p> <p>11 about, and again correct me if I'm wrong, but</p> <p>12 you were concerned about disrupting the</p> <p>13 grieving process and you believe that Stephens</p> <p>14 presenting as female would be a disruption of</p> <p>15 that, it would be -- you talked to people who</p> <p>16 said, you know, if someone was dressed -- a man</p> <p>17 was dressed as a woman they wouldn't go there.</p> <p>18 Would it -- could it also -- if I am not</p> <p>19 mistaken, isn't the Livonia kind of downriver</p> <p>20 area known for having a lot of people from the</p> <p>21 south, correct?</p> <p>22 A You mean --</p> <p>23 MR. KIRKPATRICK: Well, I want to</p> <p>24 place an objection, it's kind of a speculation</p> <p>25 if he knows the makeup of the geographical</p>

EXHIBIT 37

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4
5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)

7 Plaintiff,)

8 vs.) Case No. 14-13710

9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox

10 HOMES, INC.,) United States

11 Defendants.) District Court Judge

12 _____)

13
14 DEPOSITION OF DELORES NEMETH
15 PLYMOUTH, MICHIGAN
16 FRIDAY, NOVEMBER 13, 2015

17
18
19
20
21
22
23
24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519

25 JOB NO.: 276004-A

<p style="text-align: right;">Page 22</p> <p>1 I'm there. I work. I do my job. I don't --</p> <p>2 Q So Mr. Rost has never discussed his religious</p> <p>3 beliefs with you?</p> <p>4 A As far as I know.</p> <p>5 MR. SHULTZ: Okay. I don't think</p> <p>6 we have anything further, Joel.</p> <p>7 MR. KIRKPATRICK: Just a few</p> <p>8 questions.</p> <p>9 EXAMINATION</p> <p>10 BY MR. KIRKPATRICK:</p> <p>11 Q Mr. Nemeth, Mr. Shultz was asking you questions</p> <p>12 about why Stephens was fired. Do you remember</p> <p>13 that just a few minutes ago?</p> <p>14 A Yeah.</p> <p>15 Q And he essentially asked you do you know why</p> <p>16 Stephens was fired; and you said, "I don't</p> <p>17 know, but because of the situation"; do you</p> <p>18 remember that?</p> <p>19 A Uh-huh.</p> <p>20 Q Were you present when Mr. Rost fired Stephens?</p> <p>21 A I was not present at --</p> <p>22 Q So you had no conversations with either Mr.</p> <p>23 Rost -- or Mr. Rost regarding why --</p> <p>24 A Right.</p> <p>25 Q -- Stephens was terminated, right?</p>	<p style="text-align: right;">Page 24</p> <p>1 for work; or do you also use that as part of</p> <p>2 your wardrobe in general?</p> <p>3 A For my --</p> <p>4 Q Right.</p> <p>5 A -- general.</p> <p>6 Q Okay. Did you ever know if there was a</p> <p>7 discussion about having an actual uniform for</p> <p>8 female employees?</p> <p>9 A Yes, there was at one time.</p> <p>10 Q And was there a presentation or a proposal, I</p> <p>11 should say --</p> <p>12 A Yes.</p> <p>13 Q -- to have women wear the exact same outfits?</p> <p>14 A Yes.</p> <p>15 Q And what happened with that proposal?</p> <p>16 A Well, I can remember what happened is there was</p> <p>17 a very nice looking suit and a skirt, and a lot</p> <p>18 of the people there were different sizes; some</p> <p>19 were short, they could never wear that kind of</p> <p>20 an outfit. Some people were on the heavy side.</p> <p>21 Some were thin, slim and tall. And I guess</p> <p>22 everybody kind of said "I don't think I can</p> <p>23 wear that."</p> <p>24 Q So when you say "everybody" and "people",</p> <p>25 you're referring to women?</p>
<p style="text-align: right;">Page 23</p> <p>1 A Right.</p> <p>2 Q So you have no reason -- you have no knowledge</p> <p>3 of the specific reason --</p> <p>4 A No.</p> <p>5 Q -- that he was fired?</p> <p>6 A No.</p> <p>7 Q Okay. Thank you.</p> <p>8 Now, does the funeral home have</p> <p>9 scripture references laying around like Daily</p> <p>10 Breads, that kind of thing?</p> <p>11 A Oh, yeah, things like that, yes.</p> <p>12 Q So there are scriptural and religious --</p> <p>13 A See, I didn't understand. Yes.</p> <p>14 Q Okay.</p> <p>15 A In fact, I read that occasionally. It's some</p> <p>16 people --</p> <p>17 Q Okay. So the funeral home presents a --</p> <p>18 A Yes.</p> <p>19 Q -- kind of Christian, would you say,</p> <p>20 presentation?</p> <p>21 A Oh, yes. I'm sorry, I didn't understand --</p> <p>22 Q Also, he asked you about your \$75 clothing</p> <p>23 allowance.</p> <p>24 A Uh-huh. Yes.</p> <p>25 Q Do you use that money to purchase clothes only</p>	<p style="text-align: right;">Page 25</p> <p>1 A Women, yes.</p> <p>2 Q So there was no consensus among the female</p> <p>3 employees as to what would be an appropriate</p> <p>4 uniform?</p> <p>5 A Right.</p> <p>6 Q Was there a decision made to just wear</p> <p>7 professional business attire?</p> <p>8 A Right.</p> <p>9 MR. KIRKPATRICK: I have no further</p> <p>10 questions.</p> <p>11 MR. SHULTZ: I just have a few</p> <p>12 followup questions, then we'll be done.</p> <p>13 THE WITNESS: Okay.</p> <p>14 RE-EXAMINATION</p> <p>15 BY MR. SHULTZ:</p> <p>16 Q R.G. G.R. has funerals for non-Christians,</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q So people of other faiths have services at R.G.</p> <p>20 G.R.?</p> <p>21 A Yes.</p> <p>22 Q And the chapel, what we've been calling the</p> <p>23 chapel, is decorated like a living room,</p> <p>24 correct?</p> <p>25 A (Shook head in an affirmative manner.)</p>

EXHIBIT 38

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4
5 EQUAL EMPLOYMENT OPPORTUNITY
6 COMMISSION,

7 Plaintiff,

Case No. 2:14-cv-13710

8 vs.

Hon. Sean F. Cox

9 R.G. & G.R. HARRIS FUNERAL

Mag. David Grand

10 HOMES, INC.,

11 Defendant.

12 -----
13 VIDEOTAPED DEPOSITION

14
15 DEPONENT: GEORGE J. CRAWFORD

16 DATE: Thursday, December 17, 2015

17 TIME: 10:25 A.M.

18 LOCATION: Regus - Grand Rapids

19 250 Monroe Avenue, N.W.

20 Suite 400

21 Grand Rapids, Michigan

22 REPORTER: Dawn M. Spaeth, CSR-1458

23 VIDEOGRAPHER: Todd Young

24 Job no. 280991

25

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1 Q. Do you recall a decedent being brought into R.G. & G.R.
 2 who was either a transgender or transsexual?
 3 A. I do not recall that.
 4 Q. You don't recall anything like that at all?
 5 A. Nothing.
 6 Q. Okay. You think you would recall something like that?
 7 A. Possibly.
 8 Q. Okay.
 9 A. I can't answer that question.
 10 MR. PRICE: All right. Can we go off the
 11 record?
 12 VIDEOGRAPHER: We are going off the record at
 13 the time of 11:13.
 14 (Break taken.)
 15 VIDEOGRAPHER: We are back on the record at
 16 the time of 11:17.
 17 Q. (By Mr. Price) Just a couple more questions. You
 18 didn't have any role in firing Stevens; is that
 19 correct?
 20 A. I did not.
 21 Q. All right. Did you prepare any of the responses to the
 22 Commission during the investigation?
 23 A. Did I -- I'm sorry, I don't understand the question.
 24 Q. Were you asked to submit any documents as part of the
 25 investigation or anything like that?

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1 A. No.
 2 Q. Okay. Other than your interview, did you participate
 3 in the investigation in any way?
 4 A. No, that's the only contact I've had.
 5 Q. Okay. And other than what you've already described
 6 before, did you have any other discussions with
 7 Mr. Rost about either Stevens's intent to present as
 8 female or the firing decision?
 9 A. I did not.
 10 Q. There was -- one last thing, there's like an annual
 11 Christmas or annual service to memorialize the people
 12 who have passed away?
 13 A. Yes.
 14 Q. What does that involve?
 15 A. We would send out invitations to all of the family
 16 members that we had served over the past year and we
 17 would have a tree and each family was given an angel
 18 that their loved one's name was written on that they
 19 could hang on the tree and then we would have a guest
 20 speaker and then we'd serve refreshments afterwards.
 21 Q. Okay. And this was sent out to every family regardless
 22 of religious affiliation?
 23 A. It was.
 24 Q. Correct?
 25 A. Correct.

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1 MR. PRICE: Okay. I don't have any further
 2 questions.
 3 EXAMINATION
 4 BY MR. KIRKPATRICK:
 5 Q. I just have a few. Mr. Crawford, I just want to follow
 6 up what Counsel just asked you about whether you
 7 participated in the removal of Anthony Stevens as you
 8 knew him, and you didn't, you weren't present for any
 9 meetings between Tom Rost and Anthony Stevens regarding
 10 his removal?
 11 A. No, I was not.
 12 Q. So do you actually know the specific reasons why Mr.
 13 Rost removed Anthony?
 14 A. I don't know specifically.
 15 Q. Okay. There was some discussion about the dress code
 16 and male dress code I think about dark blue suits that
 17 were purchased?
 18 A. Yes.
 19 Q. I think there was the female employees wear something
 20 conservative, there was no specific uniform I think you
 21 testified to?
 22 A. That is correct.
 23 Q. Do you know why the female employees never had a
 24 specific dress code themselves, the uniform?
 25 A. It was my understanding that they could not agree on

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1 the specific uniforms as such.
 2 Q. The women themselves couldn't agree what colors looked
 3 good?
 4 A. Exactly. That was my understanding.
 5 Q. They expressed concerns about different sizes and shape
 6 and what was flattering?
 7 A. Yes, that's correct.
 8 Q. So the plan to have a specific uniform for women was
 9 abandoned and just to wear something that a woman would
 10 consider conservative?
 11 A. That is my understanding.
 12 Q. Okay. All right. You were shown this employee
 13 manual. Do you recall that?
 14 A. Yes.
 15 Q. Do you know if all employees are given that in
 16 practice?
 17 A. To my knowledge all employees are given that at the
 18 time of hire.
 19 Q. And did Anthony Stevens ever question anything about
 20 either the employee manual or the dress code in
 21 general?
 22 A. I never had him question it once in my presence.
 23 Q. Did he ever approach you and say I don't want to wear
 24 men's clothing?
 25 A. Never.

EXHIBIT 39

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 -----
5 EQUAL EMPLOYMENT OPPORTUNITY
6 COMMISSION,

7 Plaintiff,

8 -vs-

9 No. 2:14-cv-13740

10 R.G. & G.R. HARRIS FUNERAL
11 HOMES INC.,

12 Defendants.
13 -----

14 D E P O S I T I O N O F

15 WITNESS: WENDY McKIE

16 LOCATION: Joel Kirkpatrick, PC
17 843 Penniman Avenue, Suite 201
18 Plymouth, Michigan 48170

19 DATE: Friday, January 22, 2016
20 10:56 a.m.

21 APPEARANCES:
22 FOR PLAINTIFF: EQUAL EMPLOYMENT OPPORTUNITY
23 COMMISSION
24 477 Michigan Avenue, Room 865
25 Detroit, Michigan 48226
313.226.7808
dale.price@eeoc.gov
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BY: DALE R. PRICE, JR. (P55578)
MILES E. SHULTZ (P73555)
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BY: JOEL J. KIRKPATRICK (P62851)

REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
Job no. 285887-B

WENDY MCKIE - 01/22/2016

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<p>1 could be up to a hundred.</p> <p>2 Q. That's the typical range for a blazer is a</p> <p>3 hundred dollars?</p> <p>4 A. Or less. Sales. Just all depends --</p> <p>5 Q. Okay.</p> <p>6 A. -- if you're hunting or not.</p> <p>7 Q. And I just want, you know, just general. I</p> <p>8 understand I'm asking pretty abstract questions</p> <p>9 so I just want to get an idea of how much it cost</p> <p>10 for you to present at work in accordance with</p> <p>11 R.G. & G.R.'s dress code for you.</p> <p>12 How about your blouse? Like your</p> <p>13 undershirt is called a blouse, right?</p> <p>14 A. Yeah, a blouse.</p> <p>15 Q. I'm getting into unknown territory on my side.</p> <p>16 MR. KIRKPATRICK: Oh, I think we know</p> <p>17 the territory you're getting into, but go ahead.</p> <p>18 BY MR. SHULTZ:</p> <p>19 Q. How much do you typically spend on a blouse?</p> <p>20 A. About ten.</p> <p>21 Q. Ten to 20?</p> <p>22 A. Correct.</p> <p>23 Q. Always looking for a sale?</p> <p>24 A. Yeah, definitely.</p> <p>25 Q. How often do you have to replace a blouse?</p>	<p>1 stated it was going -- you know, he was working</p> <p>2 on to tell his father what he was doing.</p> <p>3 Q. And by what he was doing you mean the --</p> <p>4 A. The transition.</p> <p>5 Q. The transition. Okay.</p> <p>6 And then do you remember any of the</p> <p>7 other specifics of that other than just giving</p> <p>8 him a hug?</p> <p>9 A. I just remember us being in the garage. Probably</p> <p>10 close to one of the last times I seen him. I</p> <p>11 remember being in the garage. He was leaving.</p> <p>12 It was brief.</p> <p>13 MR. SHULTZ: I think I'm done for the</p> <p>14 moment. I might have some followup after Joel,</p> <p>15 but I'm done.</p> <p>16 EXAMINATION</p> <p>17 BY MR. KIRKPATRICK:</p> <p>18 Q. Thanks. Just a few questions.</p> <p>19 Mr. Shultz was asking questions about</p> <p>20 the dress code. Do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. Obviously, you just kind of discussed it now.</p> <p>23 And about the men -- the male employees. They</p> <p>24 get suits. Do you recall that?</p> <p>25 A. Yes.</p>
<p>1 A. I can wear the same skirt for ten years so I</p> <p>2 don't know. As needed. I'm not much of a</p> <p>3 shopper. Probably every so many months.</p> <p>4 Q. Okay. So with the same frequency that you</p> <p>5 replace the skirt and blazer?</p> <p>6 A. Yes. Yeah.</p> <p>7 Q. How many different work outfits do you have?</p> <p>8 A. Work outfits. Lots. Quite a few.</p> <p>9 Q. So you can go an entire week without repeating an</p> <p>10 outfit?</p> <p>11 A. Correct.</p> <p>12 Q. Could you go two weeks without repeating an</p> <p>13 outfit?</p> <p>14 A. That's pushing it, but yes.</p> <p>15 Q. Okay. And I was being very confusing earlier</p> <p>16 when we were talking about the distinction</p> <p>17 between the paragraph that Amy had showed you and</p> <p>18 the letter.</p> <p>19 A. Correct.</p> <p>20 Q. So I would just like to go back and kind of clear</p> <p>21 that up.</p> <p>22 A. Okay.</p> <p>23 Q. So you testified that the paragraph had to deal</p> <p>24 with Amy's father and Amy's feelings?</p> <p>25 A. He -- she had me asked me to read -- he verbally</p>	<p>1 Q. And it's kind of a uniform. Would you describe</p> <p>2 what that male uniform looks like?</p> <p>3 A. It's a pants suit.</p> <p>4 Q. It's a suit like I have on right now?</p> <p>5 A. A suit, yes. Suit coat.</p> <p>6 Q. Is it, like, navy?</p> <p>7 A. It's dark, yes. They just got new ties.</p> <p>8 Q. Okay. And they're supposed to wear it daily --</p> <p>9 A. Every day.</p> <p>10 Q. -- or at work.</p> <p>11 Was there ever any discussions at work</p> <p>12 about implementing or finding a female dress code</p> <p>13 or female uniform?</p> <p>14 A. Yes.</p> <p>15 Q. And was that a while back? How long ago was</p> <p>16 that?</p> <p>17 A. It's been a while.</p> <p>18 Q. Several years.</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. Been brought up a few times.</p> <p>22 Q. Okay. And could you tell me a little bit about</p> <p>23 the discussion surrounding the female dress code</p> <p>24 or the female uniform, so to speak? Was there a</p> <p>25 move to find a specific female uniform that all</p>

WENDY MCKIE - 01/22/2016

Page 38	Page 40
<p>1 the women would wear?</p> <p>2 A. Correct.</p> <p>3 Q. And why was that never implemented?</p> <p>4 A. Until Daytona came aboard, I was the youngest in</p> <p>5 the funeral home female. There's a large age</p> <p>6 group or -- yeah, and we couldn't get along or</p> <p>7 agree with the same suit.</p> <p>8 Q. So if you're testifying that there was</p> <p>9 discussions and there was no consensus reached by</p> <p>10 all the female employees about what color suit to</p> <p>11 wear, that kind of thing?</p> <p>12 A. That and the style of the suit. I think skirt</p> <p>13 length was a big issue.</p> <p>14 Q. So at some point was it determined that since</p> <p>15 there could be no consensus among the female</p> <p>16 employees that there would be no specific uniform</p> <p>17 that all the females had to wear?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Was it your understanding that if and when</p> <p>20 there was a decision made that was agreed upon</p> <p>21 for a female uniform that the funeral home would</p> <p>22 purchase that for the females?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Now, Mr. Shultz asked you questions about</p> <p>25 how much shoes cost and shirts, blazers,</p>	<p>1 A. I have no idea.</p> <p>2 Q. Are we talking once a year? Once every six</p> <p>3 months?</p> <p>4 A. Maybe once every six months.</p> <p>5 Q. So the more formal events in your life, a wedding</p> <p>6 or a funeral you might wear your work clothes to</p> <p>7 that event?</p> <p>8 A. A funeral, yes.</p> <p>9 Q. Not a wedding, though?</p> <p>10 A. No.</p> <p>11 Q. But fairly rarely?</p> <p>12 A. Correct.</p> <p>13 Q. Twice a year?</p> <p>14 A. Correct.</p> <p>15 Q. And Mr. Kirkpatrick just asked you about the</p> <p>16 discussions R.G. & G.R. had with the female</p> <p>17 employees regarding providing a suit similar to</p> <p>18 what the men received to the women; is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. You said that was a long time ago; is that</p> <p>22 correct?</p> <p>23 A. Yes. It was brought up a few times.</p> <p>24 Q. And do you remember when it was brought up?</p> <p>25 A. Not exactly. It was before.</p>
<p>1 etcetera. Do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. Now, are these clothes that you only wear for</p> <p>4 work or are you free to wear them any time?</p> <p>5 A. Free to wear any time.</p> <p>6 Q. Okay.</p> <p>7 A. Wouldn't.</p> <p>8 Q. Okay. Right. But you could and you have. Have</p> <p>9 you worn these things, like, to an event or</p> <p>10 something like that, to a wedding or funeral or</p> <p>11 something else?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 MR. KIRKPATRICK: I don't have any other</p> <p>15 questions.</p> <p>16 RE-EXAMINATION</p> <p>17 BY MR. SHULTZ:</p> <p>18 Q. Just a limited followup. I promise.</p> <p>19 You primarily wear the clothes that we</p> <p>20 were discussing for work, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So on an odd occasion you may wear them to a</p> <p>23 nonwork event?</p> <p>24 A. Correct.</p> <p>25 Q. Could you estimate how often that happens?</p>	<p>1 Q. You started, like, in the late nineties, right?</p> <p>2 A. Correct.</p> <p>3 Q. Was it within the first few years of you starting</p> <p>4 R.G. & G.R.?</p> <p>5 A. I would say about -- probably about five.</p> <p>6 Q. Okay.</p> <p>7 A. And then brought up again. More than once.</p> <p>8 Q. So somewhere in 2003-ish?</p> <p>9 A. I guess. Yes.</p> <p>10 Q. So the period of time between 2003 when R.G. &</p> <p>11 G.R. decided it couldn't provide suits to the</p> <p>12 women and the -- between that period of time of</p> <p>13 R.G. & G.R.'s decision not to provide suits to</p> <p>14 women and providing the clothing allowance, there</p> <p>15 was neither a clothing allowance or suits</p> <p>16 provided to women for that decade?</p> <p>17 A. I would say the discussion of it back then wasn't</p> <p>18 as -- we did look at some things, but it wasn't</p> <p>19 as detrimental, like, or, you know, it wasn't --</p> <p>20 we did discuss it again after that. I think some</p> <p>21 of us weren't interested at all in it.</p> <p>22 Q. In having --</p> <p>23 A. Correct.</p> <p>24 Q. -- a uniform suit that is worn?</p> <p>25 A. Correct. Correct.</p>

EXHIBIT 40

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)

7 Plaintiff,)

8 vs.) Case No. 14-13710

9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox

10 HOMES, INC.,) United States

11 Defendants.) District Court Judge

12 _____)
13

14 DEPOSITION OF SHANNON KISH

15 PLYMOUTH, MICHIGAN

16 FRIDAY, NOVEMBER 13, 2015
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24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519

25 JOB NO.: 276004-B

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<p>1 A '88.</p> <p>2 Q 1988 through the present it happened several</p> <p>3 times?</p> <p>4 A That we've tried to, you know, get everybody on</p> <p>5 the same page.</p> <p>6 Q Okay.</p> <p>7 A Never works.</p> <p>8 Q But the clothing allowance didn't begin until</p> <p>9 2014?</p> <p>10 A That's correct.</p> <p>11 Q And were you involved in the decision-making to</p> <p>12 begin providing a clothing allowance?</p> <p>13 A No.</p> <p>14 Q That was --</p> <p>15 A Tom's.</p> <p>16 Q Mr. Rost's decision?</p> <p>17 A Uh-huh. Uh-huh.</p> <p>18 Q Did he consult with you at all regarding that</p> <p>19 decision?</p> <p>20 A He told me what the amounts were, because</p> <p>21 obviously I would make the payments to the</p> <p>22 girls.</p> <p>23 Q Did you help him at all in determining how</p> <p>24 much?</p> <p>25 A No.</p>	<p>1 Q Is that the total clothing allowance that Marie</p> <p>2 Jones has received?</p> <p>3 A That is correct.</p> <p>4 Q Do you know if Marie Jones is full-time or</p> <p>5 part-time employee?</p> <p>6 A Full-time.</p> <p>7 Q So that appears to be two years of the clothing</p> <p>8 allowance?</p> <p>9 A That is correct.</p> <p>10 Q Okay. So, is that chart -- does that chart</p> <p>11 just go back two years or is that the entirety</p> <p>12 of the clothing allowance provided by R.G.</p> <p>13 G.R.?</p> <p>14 A I believe there was a time frame of employees</p> <p>15 that you asked for, and that's the employees</p> <p>16 that are on the list. I don't remember what</p> <p>17 year you had me go back to.</p> <p>18 Q Well, if the clothing allowance started in</p> <p>19 2014, then that would just be two years of</p> <p>20 clothing allowance, right?</p> <p>21 A For Marie Jones?</p> <p>22 Q For everyone, if R.G. G.R. only started</p> <p>23 providing a clothing allowance to its female</p> <p>24 employees in 2014, there would only be two</p> <p>25 years of clothing allowance for anyone, right?</p>
<p>1 Q So you don't have any understanding of the</p> <p>2 process to determine how much the allowance</p> <p>3 would have been?</p> <p>4 A No.</p> <p>5 Q Okay. So you can't explain Rost's calculation</p> <p>6 for the 150 or \$75?</p> <p>7 A No.</p> <p>8 Q I'm going to hand you what's been marked as</p> <p>9 Exhibit 8. Are you familiar with that</p> <p>10 document?</p> <p>11 A I am.</p> <p>12 Q Why are you familiar with that document?</p> <p>13 A Because I believe I typed this.</p> <p>14 Q Okay. And so this is in response to an EEOC</p> <p>15 discovery request and it appears to be a list</p> <p>16 of employees by name, gender, job title, and</p> <p>17 either the clothing allowance provided or the</p> <p>18 clothing provided per employee; is that</p> <p>19 correct?</p> <p>20 A That's correct.</p> <p>21 Q Okay. And so, for instance, the first person</p> <p>22 on that list is Marla Jones; is that correct?</p> <p>23 A Marie Jones.</p> <p>24 Q Marie Jones. And there's \$300 there?</p> <p>25 A Right.</p>	<p>1 A That's fair to say.</p> <p>2 Q Okay. I just wanted to clarify the chart.</p> <p>3 And I believe you're on the chart,</p> <p>4 correct?</p> <p>5 A I do believe.</p> <p>6 Q I think you're the last on that second page.</p> <p>7 A Yeah, I think I left myself off the first time.</p> <p>8 If -- yep.</p> <p>9 Q So you've received \$300?</p> <p>10 A Yes.</p> <p>11 Q Okay. And you're responsible for cutting these</p> <p>12 checks?</p> <p>13 A I am.</p> <p>14 Q And they are cut separately from paychecks?</p> <p>15 A That is correct.</p> <p>16 Q And when do you issue these checks?</p> <p>17 A I believe it was like mid-year of 2014. And I</p> <p>18 believe I did the 2015 at the beginning of the</p> <p>19 year.</p> <p>20 Q Okay. And you would have -- maintain copy of</p> <p>21 those?</p> <p>22 A I do.</p> <p>23 Q Okay. In your office?</p> <p>24 A Yes.</p> <p>25 Q Okay. Do you -- does R.G. G.R. receive a</p>

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<p>1 A Matthew Rost, we have a maintenance person, Bob 2 LaVoie (ph), and that's pretty much it. 3 Q Okay. For these new admin hires in Livonia and 4 Garden City, Terry and Paige, I believe you 5 testified to -- 6 A No, not Paige. 7 Q Who is -- 8 A There's no Paige. 9 MR. PRICE: Denise. 10 BY MR. SHULTZ: 11 Q Denise. 12 A No, Paula Rike (ph) is her name. 13 Q Couldn't read my handwriting. 14 A That's all right. 15 Q So for the new hires at Livonia and Garden 16 City, are they issued any clothing allowance 17 upon hire or would they just wait until the 18 next? 19 A They would wait until the next. 20 Q Until the next check is cut for the clothing 21 allowance. 22 Okay. But the new like Troy 23 Shaffer who is a recent Garden City hire, I 24 believe, he was issued two suits upon hire? 25 A That's correct.</p>	<p>1 Q Okay. And R.G. G.R. itself does some 2 cremations; is that correct? 3 A We don't do the cremations, per se. 4 Q You have a -- 5 A We provide cremations. 6 Q Okay. Could you describe the distinction. 7 MR. KIRKPATRICK: I just want to 8 object to the line of questioning on relevance, 9 but go ahead. Sorry. Go ahead. 10 THE WITNESS: Okay. I'm sorry. 11 BY MR. SHULTZ: 12 Q I'm sorry. I think there's a Cremation Society 13 of Michigan. 14 A That's correct. 15 Q Are they a part of R.G. G.R.? 16 A They are owned by R.G. G.R. 17 Q Okay. And do they provide cremation services? 18 A They provide cremation services. 19 Q Are the Cremation Services of Michigan included 20 in the R.G. G.R. balance sheet here? 21 A You can see it. It says Cremation Society 22 Southeast. 23 Q So Southeast Michigan is the -- 24 As the person responsible for 25 paying R.G. G.R.'s bills, does R.G. G.R. have</p>
<p>1 Q Okay. 2 A Or shortly thereafter. 3 Q Okay. I'm going to hand you what has been 4 marked as Exhibit 9. Have you seen that 5 document before? 6 A I have. 7 Q Did you prepare that document? 8 A Our CPA prepared the document. 9 Q And who's your CPA? 10 A Bud Keller. 11 Q Did you ask him to prepare it? 12 A Yes. 13 Q The document indicates for 2012, 2013, and 14 2014, there is a net income loss varying from 15 \$6,000 to \$80,000. Then in 2014 it was 16 \$68,000. Do you see that? 17 A Yes. 18 Q Do you have any understanding why R.G. G.R. has 19 a net income loss? 20 A Yes. 21 Q Why? 22 A The cost of -- the operation cost, generally, 23 lower sales, people have gone to cremation more 24 so than, you know, a full-blown funeral. So 25 there's been a lot of factors.</p>	<p>1 any problems making prompt payments on its 2 bills? 3 A Generally, no. 4 Q Is R.G. G.R. able to meet its payroll each pay 5 period? 6 A Yes. 7 Q Why do you say generally no on the bills? 8 A If -- I don't know exactly what you mean about 9 promptly paying or -- 10 Q Do you ever miss a payment on a bill? 11 A No. 12 Q You never incur late fees or penalties for -- 13 A Rarely. 14 Q But sometimes you do? 15 A (No verbal answer.) 16 Q Do you remember an instance when R.G. G.R. 17 was -- had to pay a late fee for -- 18 A If a bill came -- didn't get to me with 19 approval or, you know, we were waiting for -- 20 or if cash flow wasn't strong enough, it was 21 paid as soon as it could be. 22 Q Okay. So in some situations it's just not 23 getting routed to you in time for you to pay 24 it; and in other situations there's not enough 25 cash in the account to actually pay it?</p>