



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, D.C. 20507**

Office of  
General Counsel

October 13, 2017

Deborah S. Hunt, Clerk of Court  
United States Court of Appeals for the Sixth Circuit  
Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202

Re: *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, No. 16-2424

Dear Ms. Hunt,

The EEOC responds to the Rule 28(j) letter filed on October 13, 2017, by Appellee R.G. & G.R. Harris Funeral Homes, Inc. That letter referred to, and attached, the October 6, 2017, memorandum from the Attorney General to all executive departments and agencies entitled “Federal Law Protections for Religious Liberty.” Appellee asserts, without citing any particular page, that the memorandum “supports Defendant-Appellee’s argument that RFRA bars application of Title VII under the facts of this case.” It does not. Nothing in the Attorney General’s memorandum speaks to the facts of this case. The memorandum nowhere mentions this case at all.

The memorandum states that religious observance and practice should be reasonably accommodated in all government activity. Memo. at 1. The memorandum discusses the Religious Freedom Restoration Act (RFRA) and Title VII, and reminds executive agencies that RFRA applies to agency enforcement actions. Memo. at 3-6. The memorandum also states that agencies should consider RFRA when considering whether to pursue or continue any particular enforcement action. Memo. at 8. The EEOC considered RFRA in the context of this enforcement action at the time Appellee raised the RFRA defense (after the suit was filed), and has continued to consider RFRA, as evidenced by the lengthy analysis of that statute in the EEOC’s briefs to this Court and by EEOC’s argument to this Court on October 4, 2017, that RFRA does not provide a defense in this action. The EEOC continues to believe this enforcement action is consistent with RFRA and Supreme Court precedent interpreting RFRA and the Constitution, and that this action is consistent with the legal principles discussed in the Attorney General’s memorandum.

Sincerely,

s/Anne Noel Occhialino  
Senior Appellate Attorney  
EEOC, Office of General Counsel  
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