

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. Pastor Council, et al.,

Plaintiffs,

v.

**Equal Employment Opportunity
Commission**, et al.,

Defendants.

Case No. 4:18-cv-00824-O

**AMENDED BRIEF IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND PERMANENT INJUNCTION**

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Plaintiffs Bear Creek Bible Church and Braidwood Management Inc. respectfully move for summary judgment and a classwide permanent injunction, as there are no genuine issues of material fact and the plaintiffs are entitled to judgment as a matter of law.¹

BACKGROUND

I. The EEOC's Interpretation Of Title VII

Title VII of the Civil Rights Act of 1964 forbids employers to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). Title VII also forbids an employer to “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(2). These anti-discrimination requirements apply to employers with 15 or more employees. *See* 42 U.S.C. § 2000e(b); *Walters v. Metropolitan Educational Enterprises, Inc.*, 519 U.S. 202, 212 (1997).

Since 2015, the Equal Employment Opportunity Commission has claimed that Title VII’s prohibition on “sex” discrimination also outlaws employment discrimination on account of sexual orientation or gender identity. *See Baldwin v. Foxx*, EEOC Doc. No. 0120133080, 2015 WL 4397641 (EEOC July 16, 2015) (sexual orientation); *Macy v. Holder*, EEOC Doc. No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012) (gender identity); *see also* Exhibits 1–2 (EEOC guidance documents).

The EEOC’s “guidance documents” demand that employers recognize same-sex marriage on the same terms as opposite-sex marriage. *See* Preventing Employment

1. Plaintiff U.S. Pastor Council has withdrawn from this litigation, and we will file an amended complaint that removes it from the caption and from any allegations in the pleadings.

Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers, available at <https://bit.ly/2MnDzG5> (last visited on June 21, 2021) (“Examples of sex discrimination involving sexual orientation include . . . denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.”) (attached as Exhibits 1 and 2). The EEOC also demands that employers allow employees into restrooms that correspond to the “gender identity” that they assert—regardless of the individual’s biological sex, regardless of whether the individual has had a sex-change operation, and regardless of any objections or privacy concerns that might be raised by other employees. *See Lusardi v. Dep’t of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (April 1, 2015); Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers, available at <https://bit.ly/2MnDzG5> (last visited on June 21, 2021) (“Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee’s gender identity”).

Neither the text of Title VII nor the EEOC’s regulatory guidance makes any exemptions or accommodations for employers that oppose homosexual or transgender behavior on religious grounds. The only religious accommodations in Title VII appear at 42 U.S.C. § 2000e-1(a) and 42 U.S.C. § 2000e-2(e)(2), which allow religious organizations and religious schools to limit employment to members of a particular religion. The Supreme Court has also recognized a “ministerial exception” in the First Amendment, which categorically exempts a religious group’s selection of its ministers from the reach of anti-discrimination law. *See, e.g., Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). This “ministerial exemption” protects the Catholic church from being forced to hire women as priests—withstanding the text of Title VII—and it protects other churches from being forced to hire

practicing homosexuals as clergy. But this “ministerial exception” is no help to Christian nonprofits or businesses that oppose homosexuality and transgender behavior on religious grounds. And the “ministerial exemption” does nothing to shield churches or religious schools that require their non-ministerial employees (such as secretaries and janitors) to refrain from homosexual or transgender behavior.

II. The Supreme Court’s Interpretation Of Title VII

On June 15, 2020, the Supreme Court announced its judgment in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). *Bostock* holds that Title VII’s prohibition on “sex” discrimination prohibits employers from firing or refusing to hire individuals “for being homosexual or transgender.” *Id.* at 1737.

Bostock explained that an employer who fires an employee for conduct or personal attributes that it would tolerate in a person of the opposite biological sex has made the employee’s sex the “but-for cause” of his discharge, and that (in the Court’s view) automatically violates the statutory command of Title VII. The Court explained:

If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

Id. at 1741–42. *Bostock* also makes clear that an employer does *not* violate Title VII if it fires an employee for conduct or personal attributes that it would not tolerate in an employee of the opposite biological sex:

Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent.

Id. at 1742. This means that an employer will violate Title VII *whenever* an employee’s biological sex is a “but-for cause” of an adverse employment action.²

These statements in *Bostock* prohibit employers from enforcing sex-specific dress or grooming codes. *See Bostock*, 140 S. Ct. at 1741 (“[I]f changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”). They also render employers incapable of preventing their employees from entering and using restrooms reserved for the opposite sex, regardless of the employee’s purpose or desire for accessing the opposite-sex restroom. *See id.*; *id.* at 1745–46 (“[N]othing in Title VII turns on the employer’s labels or any further intentions (or motivations) for its conduct beyond sex discrimination.”). At the end of its opinion, the Court says it that it “do[es] not purport to address bathrooms, locker rooms, or anything else of the kind.” *Id.* at 1753. But no court can uphold the legality of sex-specific dress codes and restrooms under Title VII without contradicting and defying numerous statements that appear in the *Bostock* majority opinion.

UNDISPUTED FACTS

Bear Creek Bible Church is a nondenominational church located in Keller, Texas. Bear Creek Bible Church employs at least 15 individuals, so it is subject to the requirements of Title VII. Declaration of John Salvesen at ¶ 4 (attached as Exhibit 4). Some of Bear Creek’s employees hold non-ministerial positions. *See id.* at ¶ 9.

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2. *See Bostock*, 140 S. Ct. at 1739 (“Title VII’s ‘because of’ test incorporates the simple and traditional standard of but-for causation. That form of causation is established *whenever* a particular outcome would not have happened ‘but for’ the purported cause. In other words, a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause. . . . So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.” (citations and some internal quotation marks omitted)).

Bear Creek Bible Church believes that the Bible is the Word of God, and it includes the following statement in its bylaws and statement of faith:

That God's plan for human sexuality is to be expressed only within the context of marriage, that God created man and woman as unique biological persons made to complete each other. God instituted monogamous marriage between male and female as the foundation of the family and the basic structure of human society. For this reason, we believe that marriage is exclusively the union of one genetic male and one genetic female (Gen 2:24; Matt 19:5–6, Mark 10:6–9; Romans 1:26–27; I Cor 6–9).

See Declaration of John Salvesen at ¶ 12. Bear Creek Bible Church requires its employees to live according to Biblical teaching on matters of sexuality and gender, and it will not consider practicing homosexuals, bisexuals, crossdressers, or transgender or gender non-conforming individuals for church employment—including employment for non-ministerial positions. *See id.* at ¶ 11. Bear Creek Bible Church does not recognize same-sex marriage and will not offer benefits to same-sex partners of its employees. Indeed, any church employee who enters into a same-sex marriage would face dismissal from employment. *See id.* at ¶ 11–12. Bear Creek Bible Church also maintains restrooms that are separated by biological sex, and church employees are not permitted to use restrooms designated for the opposite biological sex. *See id.* at ¶ 14.

Braidwood Management Inc. employs approximately 70 individuals, and it is owned by a trust controlled by Dr. Steven F. Hotze. *See* Declaration of Steven F. Hotze at ¶ 4–6 (attached as Exhibit 5). Dr. Hotze is also the President, Secretary, Treasurer, and sole member of the Board of Braidwood Management Inc. *See id.* at ¶ 4. Dr. Hotze is a Christian, and he operates his businesses according to his Christian beliefs found in the Bible. *See id.* at ¶ 8. Because Dr. Hotze operates his corporations as Christian businesses, he does not allow Braidwood to hire or employ individuals who are known to engage in sexually immoral behavior or gender non-conforming

conduct of any sort, including homosexuality, cross-dressing, and transgenderism. *See id.* at ¶ 15. He also will not permit employees of Braidwood to use a restroom designated for members of the opposite biological sex—regardless of the gender identity that the employee asserts. *See id.* at ¶ 14.

Braidwood also enforces a sex-specific dress-and-grooming code that requires men and women to wear professional attire according to their biological sex. *See* Declaration of Steven F. Hotze at ¶ 13 & Ex. C. Men are forbidden to wear earrings, but women may. *See id.* at Ex. C, page 3. Men who have customer contact must wear a tie (or bow tie); women are not required or even permitted to wear ties. *See id.* Women are allowed to wear skirts, blouses, shoes with heels, and fingernail polish, while men are forbidden to wear any of these accoutrements. *See id.* at Ex. C, pages 1–4. Cross-dressing of any sort is strictly prohibited. *See id.* Dr. Hotze enforces this sex-specific dress-and-grooming code not only to maintain the professionalism of his businesses, but also because of his belief in the Bible, which requires men to dress as men and requires women to dress as women. *See* Declaration of Steven F. Hotze at ¶ 12–13; *see also* Deuteronomy 22:5 (KJV) (“A woman shall not wear anything that pertains to a man, nor shall a man put on a woman’s garment, for all who do so are an abomination to the LORD your God.”).

ARGUMENT

The plaintiffs are entitled to judgment as a matter of law on the undisputed facts of this case. They have asserted five distinct claims for relief—and they are entitled to judgment on all of them.

I. The Religious Freedom Restoration Act Compels Exemptions To *Bostock’s* Interpretation Of Title VII

The Religious Freedom Restoration Act “was designed to provide very broad protection for religious liberty.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706

(2014). The Religious Freedom Restoration Act (RFRA) prohibits the federal government from substantially burdening the exercise of religion. 42 U.S.C. § 2000bb-1. The only exception is when the federal government demonstrates that the application of the burden to the affected individual represents the “least restrictive means” of advancing “a compelling governmental interest.” 42 U.S.C. § 2000bb-1(b); *DeOtte v. Azar*, 332 F.R.D. 173, 188 (N.D. Tex. 2019). The interpretations of Title VII adopted by the EEOC and by the Supreme Court in *Bostock* substantially burden the plaintiffs’ religious freedom—as well as the freedom of all employers who oppose homosexual or transgender behavior for sincere religious reasons, and there is no compelling governmental interest in refusing to exempt religious employers from these novel anti-discrimination edicts.

A. Title VII, As Interpreted in *Bostock*, Substantially Burdens Employers Who Oppose Homosexual Or Transgender Behavior For Sincere Religious Reasons

The Supreme Court has explained that requiring individuals to “engage in conduct that seriously violates their religious beliefs” imposes a substantial burden on their exercise of religion. *Hobby Lobby*, 573 U.S. at 720. If an employer sincerely believes that the conduct demanded by the state would violate its religious convictions, then the courts are forbidden to question the reasonableness of that belief. *See Hobby Lobby*, 134 S. Ct. at 2778 (“[C]ourts have no business addressing whether the religious belief asserted in a RFRA case is reasonable.” (parentheses omitted)). The *only* question to resolve is whether the regulation substantially burdens the objecting employer’s ability to conduct his business in accordance with those beliefs. *See id.* at 2779 (when plaintiffs “sincerely believe” that compliance with the regulation “lies on the forbidden side of the line, . . . it is not for us to say that their religious beliefs are mistaken or insubstantial.”); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (“[U]nder RFRA, the Departments

must accept the sincerely held complicity-based objections of religious entities. That is, they could not ‘tell the plaintiffs that their beliefs are flawed’ because, in the Departments’ view, ‘the connection between what the objecting parties must do . . . and the end that they find to be morally wrong . . . is simply too attenuated.’” (quoting *Hobby Lobby*, 573 U.S. at 723–24)).

Title VII, as interpreted in *Bostock* and the EEOC’s guidance documents, substantially burdens the plaintiffs’ religious freedom by preventing them from operating their places of employment in accordance with Christian teaching. The plaintiffs have sincere and deeply held religious beliefs that marriage is limited to a man and a woman, that sex is to be reserved for marriage, and that men and women are to dress and behave in accordance with distinct and God-ordained, biological sexual identity. Title VII, as interpreted in *Bostock*, requires that the plaintiffs operate their businesses in a manner contrary to their religious beliefs by denying them the ability to prescribe standards of conduct and deportment for their employees. At the same time, the plaintiffs believe that they are called by God to obey the civil authorities. So they are caught in a bind, and until this Court grants the declaratory relief that the plaintiffs seek, the plaintiffs have no way to avoid violating their religious beliefs. The EEOC is also substantially burdening the plaintiffs’ right to conduct their businesses in accordance with their beliefs about the divinely ordained nature of sex and sexuality by threatening lawsuits against any religious employer who refuses to kowtow to its guidance documents. See *Hobby Lobby*, 573 U.S. at 710; *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018).

B. The Government Cannot Show a Compelling Governmental Interest to Justify the Burden on Plaintiffs’ Religious Exercise

Having shown a “substantial burden” on the plaintiffs’ religious liberty, the burden now shifts to the government to demonstrate that the *Bostock* interpretation of Title VII advances a “compelling governmental interest” and is “the least restrictive

means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b). This is “the most demanding test known to constitutional law,” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), and the EEOC comes nowhere close to satisfying this standard.

The relevant “governmental interest” cannot be described with vague abstractions, such as “promoting equality” or “preventing injustice.” See *Hobby Lobby*, 573 U.S. at 726 (rejecting the government’s attempt to frame the “governmental interests” in generalized terms). Instead, a court must “‘look beyond broadly formulated interests’ and . . . ‘scrutinize the asserted harm of granting specific exemptions to particular religious claimants’—in other words, to look to the marginal interest in enforcing the contraceptive mandate in these cases.” *Id.* (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)). The relevant question is not whether Title VII’s prohibition on “sex” discrimination, taken by itself, advances a compelling governmental interest. It is instead whether the EEOC’s *refusal to exempt religious objectors* advances such an interest. See *Fulton v. Philadelphia*, No. 19-123 (U.S. June 17, 2021), slip op. at 14 (“The question, then, is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS.”). And the EEOC cannot possibly show that the enforcement of Title VII is a policy of such overriding importance that no exceptions can be made.

Start with the fact that Title VII itself limits its coverage to businesses with 15 or more employees. 42 U. S. C. §2000e(b) (“‘employer’ means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year”). Congress was satisfied to use a rough-and-ready cutoff to regulate larger businesses without even attempting to impose this anti-discrimination rule on everyone. If Con-

gress didn't think the interests advanced by Title VII were important enough to extend to small employers, then the EEOC cannot possibly establish that the supposed "interests" behind its policy are of such "compelling" importance that no exemptions can be made for religious believers. *See Fulton v. Philadelphia*, No. 19-123 (U.S. June 17, 2021), slip op. at 14–15 (holding that the existence of exceptions "undermines the City's contention that its non-discrimination policies can brook no departures" and faulting the city for "offer[ing] no compelling reason why it has a particular interest in denying an exception to CSS while making them available to others."). Title VII also exempts Indian tribes from its coverage. 42 U.S.C. §2000e(b) (excluding Indian tribes from the definition of employer); *see also Wardle v. Ute Indian Tribe*, 623 F.2d 670, 672 (10th Cir. 1980) ("Thus, Indian tribes and businesses operating on or near Indian reservations are excluded from the employment discrimination prohibitions of Title VII."). So the EEOC must find some way to explain how the government's "interest" in enforcing Title VII was not quite "compelling" enough to persuade Congress to extend the statute to small employers or Indian tribes, yet *is* compelling enough to prevail over another person's religious freedom.

The EEOC must also explain how its refusal to exempt religious employers advances a "compelling" government interest when Congress has repeatedly failed to enact explicit statutory anti-discrimination protections for homosexual and transgender employees—and when Congress has (at least as of this date of this brief) refused to enact legislation that would exempt Title VII from the requirements of RFRA. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1742 (2020) (Alito, J., dissenting) ("For several decades, Congress has considered numerous bills to prohibit employment discrimination based on sexual orientation. But as noted above, although Congress has come close, it has not yet shouldered a bill over the legislative finish line."). The House of Representatives did pass the "Equality Act" last March, which would strip religious employers of RFRA protections in lawsuits brought to enforce *Bostock*. But this bill

has not passed the Senate—and it has no prospect of passage unless the Senate eliminates the filibuster or the bill is amended to strengthen protections for religious objectors. *See* John McCormack, *Susan Collins Won't Cosponsor Equality Act Again*, National Review (February 25, 2021), available at <https://bit.ly/3yzAQxN> (last visited June 21, 2021). It's hard to understand how a supposed governmental “interest” in forcing religious employers to hire homosexual and transgender employees can be deemed “compelling” when Congress repeatedly considers and fails to enact legislation that would accomplish this result. *See Little Sisters of the Poor*, 140 S. Ct. at 2392 (Alito, J., concurring) (“We can answer the compelling interest question simply by asking whether *Congress* has treated the provision of free contraceptives to all women as a compelling interest.”).

II. The Free Exercise Clause Compels Exemptions To *Bostock's* Interpretation Of Title VII

Although it is not necessary for this Court to rule on the free-exercise claims if it concludes that RFRA protects religious employers from the commands of *Bostock*, we respectfully ask the Court to resolve the free-exercise claims because Congress might someday enact the Equality Act or amend RFRA in a manner that strips religious employers of these statutory protections. It is therefore imperative that the Court rule on whether the plaintiffs' current employment practices are constitutionally protected, even if it concludes that RFRA suffices to provide the requested relief.

The First Amendment's Free Exercise Clause prohibits the government from “prohibiting the free exercise” of religion. Laws that are not neutral toward religion, and laws that are not “generally applicable,” are subject to strict scrutiny whenever they burden the exercise of a religious belief. The Supreme Court has recently clarified the analysis for Free Exercise. “[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause,

whenever they treat any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); *see also* *Fulton v. Philadelphia*, No. 19-123 (U.S. June 17, 2021), slip op. at 7–10 (laws are not “generally applicable” if they merely allow for the possibility of exemptions, even if those exemptions are never granted).

As already noted, Title VII contains two key exceptions. First, businesses with fewer than fifteen employees are not required to comply with Title VII. *See* 42 U.S.C. §2000e(b). Second, Indian tribes are not subject to Title VII. *Id.* But there is no exemption for religious believers whose religious exercise is burdened by Title VII. Yet the risks in all of these cases are the same—that an employer will discriminate against an employee (or prospective employee) on the basis of a protected characteristic or trait. When the risks are the same, the activities are appropriately comparable. *Tandon*, 141 S. Ct. at 1296 (“[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue.”).

In short, Title VII treats religion worse than it does small businesses and Indian tribes. Thus, “comparable secular activit[ies]” are treated “more favorably than religious exercise.” *Id.* This “trigger[s] strict scrutiny.” *Id.*; *see also* *Fulton v. Philadelphia*, No. 19-123 (U.S. June 17, 2021), slip op. at 6 (“A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.”).

The government bears the burden of proving that “the challenged law satisfies strict scrutiny.” *Id.* As already noted, any claim that the law satisfies strict scrutiny runs headlong into the fact that Congress saw fit to carve out exceptions for non-religious employees. One of those exceptions—the number of employees—was purely a matter of administrative convenience. The other was a matter of policy, which sought to preserve the self-governance of Indian tribes. *See, e.g.*, 110 Cong. Rec. 13702 (1964)

(suggesting that the Indian tribe exception was to enable tribes to “conduct their own affairs”). As with RFRA, so with the Free Exercise Clause: it is hard to credit the governmental interest as “compelling” when Congress couldn’t be bothered to regulate small businesses and thought that tribal self-governance trumped anti-discrimination policies.

III. The First Amendment Right Of Expressive Association Compels Exemptions To *Bostock’s* Interpretation Of Title VII

The First Amendment protects the “right to associate for the purpose of engaging in . . . activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). “[I]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Id.* at 622. And there is a corresponding right to exclude from a group those whose presence would compromise the expressive commitments of the group. *See Boy Scouts v. Dale*, 530 U.S. 640, 648 (2000).

Title VII operates to require employers to associate with employees. But many places of employment operate under the rubric of expressive association. That is especially true for churches and overtly Christian nonprofits or businesses. But it is equally true of a secular employer or business that operates according to a publicly stated set of values. And in these situations, requiring an organization to hire and employ individuals whose lifestyles and behaviors are contrary to the values of the organization violates the freedom of association. “The First Amendment’s protection of expressive association is not reserved for advocacy groups. But to come within its ambit, a group must engage in some form of expression, whether it be public or private.” *Boy Scouts*, 530 U.S. at 648. The government can no more force an association that opposes homosexuality or transgender behavior to hire individuals engaged in

that conduct than it can force a gay-rights organization to hire an avowed opponent of homosexuality.

In this case, the plaintiffs run their places of employment as a way of expressing deep and sincere religious commitments, including a commitment to their understanding of Christian values and ethics in the operation of the business. Title VII (as interpreted in *Bostock*) requires the plaintiffs to employ individuals whose behavior compromises the expression of those values, and it prevents the plaintiffs from excluding employees who will subvert the religious mission of their organization. This again triggers strict scrutiny, which the government cannot meet for the reasons provided in Sections I and II, *supra*.

IV. Title VII, As Interpreted In *Bostock*, Does Not Prohibit Employers From Discriminating Against Bisexual Employees

The EEOC continues to insist that Title VII prohibits discrimination on the basis of any and all “sexual orientations”³—even though that is decidedly not what *Bostock* held. *Bostock* held that employers violate Title VII’s prohibition on “sex” discrimination if they fire (or refuse to hire) individuals for being “homosexual or transgender.” *Bostock*, 140 S. Ct. at 1737; *see also id.* (“An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”). *Bostock* did not hold that an employer violates Title VII whenever it discriminates on account of “sexual orientation,” and it did not hold that an employer engages in “sex” discrimination when it fires (or refuses to hire) bisexual employees.

3. The EEOC’s website, for example, states that *Bostock* prohibits “firing individuals because of their sexual orientation.” *See* <https://bit.ly/2ZnB0bI> (last visited on June 21, 2021) (attached as Exhibit 3). And just last week, the EEOC issued a new guidance document that states (incorrectly) that *Bostock* interpreted Title VII to prohibit employment discrimination against an individual “on the basis of sexual orientation.” *See* <https://bit.ly/3zIR9J7> (last visited on June 21, 2021).

Indeed, the *Bostock* opinion is incompatible with the view that discrimination against bisexual employees violates Title VII. Consider the following passage from *Bostock*:

Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent.

Bostock, 140 S. Ct. at 1742. An employer who discriminates against *all* bisexual employees—regardless of whether they are male or female—cannot possibly be engaged in “sex” discrimination under *Bostock*. That is because the “same trait” (sexual attraction toward members of both sexes) is treated exactly the same regardless of whether that “trait” appears in a woman or a man.

The EEOC ignores this feature of *Bostock* and pretends as though the Supreme Court interpreted Title VII as outlawing *all* discrimination on account of sexual orientation. The Biden Administration is taking the same approach in its efforts to extend *Bostock* to every federal statute that prohibits discrimination on account of “sex.” *See, e.g.*, Department of Health and Human Services, Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972 (May 10, 2021), available at <https://bit.ly/3yBxeeF> (last visited June 21, 2021) (announcing that HHS will interpret section 1557 of the Affordable Care Act, which prohibits health-care entities from discriminating on account of “sex” to prohibit *all* forms of discrimination on account of sexual orientation and gender identity, and claiming that *Bostock* compels this interpretation). But the fact remains that discrimination against bisexuals is not “sex” discrimination—so long as the employer deems bisexuality equally intolerable in men and women.

V. Title VII, As Interpreted In *Bostock*, Does Not Prohibit Employers From Establishing Sex-Neutral Rules Of Conduct That Exclude Practicing Homosexuals And Transgender Individuals From Employment

Finally, Title VII's prohibition on "sex" discrimination does not prevent employers from firing or refusing to hire individuals who engage in homosexual or transgender conduct, so long as the employer does so by establishing rules of conduct that apply equally to both sexes and would lead to the same result if the employee's biological sex were different. It is easy to imagine rules that comply with *Bostock* by applying equally to men and women, yet operate to exclude homosexual or transgender individuals from employment. Here are just a few of the many examples:

No employee, male or female, may enter a gay bar or gay bathhouse.

No employee, male or female, may engage in the sexual practices associated with homosexuality.

No employee, male or female, may engage in "deviate sexual intercourse," as that term is defined in section 25.02 of the Texas Penal Code.⁴

No employee, male or female, may use Grindr (or other dating apps used primarily by homosexuals).

No employee, male or female, may seek or obtain hormone therapy unless it is prescribed for a medical condition other than gender dysphoria.

No employee, male or female, may undergo surgery to modify their genitals, unless that surgery is needed for a medical condition other than gender dysphoria.

4. Section 25.02 defines "deviate sexual intercourse" as "any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person." Tex. Penal Code § 25.02.

Rules of this sort obviously have a disparate impact on homosexual and transgender employees, but that is not a problem under Title VII, which prohibits only discrimination on account of “sex.” See *Bostock v. Clayton County*, 140 S. Ct. 1731, 1746–47 (2020) (“We agree that homosexuality and transgender status are distinct concepts from sex.”). Sex-neutral rules of conduct therefore remain permissible under *Bostock*, so long as the employer can truthfully assert that he would fire an employee of the opposite sex for the identical conduct. See *Bostock v. Clayton County*, 140 S. Ct. 1731, 1742 (2020) (“Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent.”). And any employer—whether secular or religious—can use these sex-neutral rules of conduct to exclude homosexual or transgender individuals from employment.

CONCLUSION

The motion for summary judgment and permanent injunction should be granted.

Respectfully submitted.

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Dated: June 21, 2021

CERTIFICATE OF SERVICE

I certify that on June 21, 2021, I served this document through CM/ECF upon:

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U.S. Equal Employment Opportunity Commission

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Overview



The Commission & the General Counsel

Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers

Meetings of the Commission

Open Government

Employment discrimination is illegal. Discrimination occurs when you are being treated differently than others (or are harassed) **because of** your race, color, national origin, sex, pregnancy, religion, age, disability, or genetic information. It is also against the law for an employer to retaliate against you because you report discrimination against you or on behalf of others.

Newsroom

Laws, Regulations, Guidance & MOUs

Budget & Performance

Although Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity, the EEOC and courts have said that **sex discrimination** includes discrimination based on an applicant or employee's gender identity or sexual orientation. For example, it is illegal for an employer to deny employment opportunities or permit harassment because:

Enforcement & Litigation

- A woman does not dress or talk in a feminine manner.
- A man dresses in an effeminate manner or enjoys a pastime (like crocheting) that is associated with women.
- A female employee dates women instead of men.
- A male employee plans to marry a man.
- An employee is planning or has made a gender transition from female to male or male to female.

Initiatives

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FOIA

Privacy

Who is protected?

Doing Business with EEOC

Title VII applies to all private sector and state/local government employers with at least 15 employees. Note: State or local laws in your jurisdiction also may explicitly prohibit employment discrimination based on sexual orientation or gender identity.

Jobs & Internships

EEOC History

Applicants and civilian employees of federal government agencies also have rights against LGBT discrimination under Title VII, and also Executive Order 11478, as amended.

Office of Inspector General

Discrimination against an individual because that person is **transgender**, is by definition discrimination based on sex, and violates Title VII. *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (transgender discrimination is sex discrimination in

violation of Title VII because it involves non-conformance with gender norms and stereotypes, or based on a plain interpretation of the statutory language prohibiting discrimination because of sex); *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395 (March 27, 2015) (Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee's gender identity, or harasses an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun corresponding to the employee's gender identity as communicated to management and employees).

Discrimination based on **sexual orientation** also necessarily states a claim of sex discrimination under Title VII because (1) it literally involves treating an applicant or employee differently based on his or her sex, (2) it takes sex into account by treating him or her differently for associating with a person of the same sex, and, (3) it involves discrimination based on gender stereotypes -- employer beliefs about the person to whom the employee should be attracted because of the employee's sex. *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015). Examples of sex discrimination involving sexual orientation include:

- Denying an employee a promotion because he is gay or straight.
- Discriminating in terms, conditions, or privileges of employment, such as by providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.

It also violates Title VII to discriminate against or harass an employee because of his or her sexual orientation or gender identity in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

How Do I Report Workplace Discrimination?

Employees or applicants of a private company, state government, or local

municipality: EEOC will investigate complaints of employment discrimination, harassment and retaliation and may act to stop it and seek remedies on your behalf for free. We accept complaints from job applicants, employees (full-time, part-time, seasonal and temporary), and former employees. Regardless of your citizenship and work authorization status, the law still protects you. Complaints may be filed by mail or in person at the nearest EEOC office. Visit www.eeoc.gov to find out more about laws against employment discrimination. In some cases, you have 180 days to file a complaint. In others, you have 300 days. Call us immediately if you believe you experienced discrimination.

Federal government applicants and employees should contact their agency EEO office within 45 days of experiencing discrimination to pursue a Title VII claim. Federal employees also may have rights to pursue claims in internal processes governed by E.O. 11478.

The Equal Employment Opportunity Commission is the federal agency that enforces laws against employment discrimination, harassment and retaliation. We have offices around the country that can help you. We can explain whether the situation you face

is lawful or unlawful

Contact Us!

Call 1-800-
669-4000

You can ask for translation
assistance.

Our mission is to stop and remedy unlawful employment discrimination.

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Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers (brochure)



As a result of the Supreme Court's decision in *Bostock v. Clayton County*, we are currently working on updating this webpage.

Employment discrimination is illegal. Discrimination occurs when you are being treated differently than others (or are harassed) **because of** your race, color, national origin, sex, pregnancy, religion, age, disability, or genetic information. It is also against the law for an employer to retaliate against you because you report discrimination against you or on behalf of others.

Although Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity, the EEOC and courts have said that **sex discrimination** includes discrimination based on an applicant or employee's gender identity or sexual orientation. For example, it is illegal for an employer to deny employment opportunities or permit harassment because:

- A woman does not dress or talk in a feminine manner.
- A man dresses in an effeminate manner or enjoys a pastime (like crocheting) that is associated with women.
- A female employee dates women instead of men.
- A male employee plans to marry a man.
- An employee is planning or has made a gender transition from female to male or male to female.

Who is protected?

Title VII applies to all private sector and state/local government employers with at least 15 employees. Note: State or local laws in your jurisdiction also may explicitly prohibit employment discrimination based on sexual orientation or gender identity.

Applicants and civilian employees of federal government agencies also have rights against LGBT discrimination under Title VII, and also Executive Order 11478, as amended.

Discrimination against an individual because that person is **transgender**, is by definition discrimination based on sex, and violates Title VII. *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (transgender discrimination is sex discrimination in violation of Title VII because it involves non-conformance with gender norms and stereotypes, or based on a plain interpretation of the statutory language prohibiting discrimination because of sex); *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395 (March 27, 2015) (Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee's gender identity, or harasses an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun corresponding to the employee's gender identity as communicated to management and employees).

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- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.

It also violates Title VII to discriminate against or harass an employee because of his or her sexual orientation or gender identity in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

How Do I Report Workplace Discrimination?

Employees or applicants of a private company, state government, or local municipality: EEOC will investigate complaints of employment discrimination, harassment and retaliation and may act to stop it and seek remedies on your behalf for free. We accept complaints from job applicants, employees (full-time, part-time, seasonal and temporary), and former employees. Regardless of your citizenship and work authorization status, the law still protects you. Complaints may be filed by mail or in person at the nearest EEOC office. Visit www.eeoc.gov to find out more about laws against employment discrimination. In some cases, you have 180 days to file a complaint. In others, you have 300 days. Call us immediately if you believe you experienced discrimination.

Federal government applicants and employees should contact their agency EEO office within 45 days of experiencing discrimination to pursue a Title VII claim. Federal employees also may have rights to pursue claims in internal processes governed by E.O. 11478.

The Equal Employment Opportunity Commission is the federal agency that enforces laws against employment discrimination, harassment and retaliation. We have offices around the country that can help you. We can explain whether the situation you face is lawful or unlawful.

Contact Us!

Call 1-800-669-4000

You can ask for translation assistance.

Our mission is to stop and remedy unlawful employment discrimination.

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1-800-669-6820 (TTY)
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What You Should Know: The EEOC and Protections for LGBT Workers

Overview

Title VII prohibits discrimination because of an “individual’s ... sex.” 42 U.S.C. § 2000e-2(a)(1).

In *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020)[1], the Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII’s prohibition on discrimination because of sex. The Court reached its holding by focusing on the plain text of Title VII, and did not adopt other theories – such as sex stereotyping and associational discrimination – to reach its conclusion. As the Court explained, “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.” For example, if an employer fires an employee because she is a woman who is married to a woman, but would not do the same to a man married to a woman, the employer is taking an action because of the employee’s sex because the action would not have taken place but for the employee being a woman. Similarly, if an employer fires an employee because that person was identified as male at birth, but uses feminine pronouns and identifies as a female, the employer is taking action against the individual because of sex since the action would not have been taken but for the fact the employee was originally identified as male.

The *Bostock* decision does not address related issues under Title VII such as dress codes, bathroom access, or locker room access, which were raised by Justice Alito’s dissent. The Court also noted that its decision did not address various religious liberty issues, such as the First Amendment, Religious Freedom Restoration Act, and exemptions Title VII provides for religious employers.

Laws the Commission Enforces

- 42 U.S.C. § 2000e-2 (Section 703)

This is the section of the law that was at issue in *Bostock* and applies to the private sector, state and local governments, employment agencies, and labor organizations. *Bostock* made clear that section 703’s prohibition of discrimination based on sex includes sexual orientation and transgender status.

- 42 U.S.C. § 2000e-16 (Section 717)

Section 717 covers employees of the federal government. The Commission has issued several federal sector decisions under section 717 finding discrimination based on the sexual orientation and transgender status of federal employees. <https://www.eeoc.gov/federal-sector/reports/federal-sector-cases-involving-transgender-individuals>.

What to Do if You Think You Have Been Discriminated Against

If you believe you have been discriminated against, you may take action to protect your rights under Title VII by filing a complaint:

- **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or go to <https://www.eeoc.gov/how-file-charge-employment-discrimination>.
- **Federal government employees** may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at <https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>.

Other Laws

Other laws that also may apply:

- Federal contractors and sub-contractors are covered by a separate, explicit prohibition on transgender or sexual orientation discrimination in employment pursuant to Executive Order (E.O.) 13672 enforced by the U.S. Department of Labor’s Office of Federal Contract Compliance.
- State or local fair employment laws also may prohibit discrimination based on sexual orientation or transgender status. Contact information for state and local fair employment agencies can be found on the page for EEOC’s [field office](#) covering that state or locality.

[1] This also served as the decision for *Altitude Express, Inc., et al. v. Zarda et al.* (No. 17–1623) and *R. G. & G. R. Harris Funeral Homes, Inc. v. EEOC et al.* (No. 18–107).

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This guidance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

OLC Control Number: EEOC-NVTA-0000-29

Concise Display Name: What You Should Know: The EEOC and Protections for LGBT Workers

Issue Date: 06-30-2020

General Topics: Sex

Summary: This document provides information about enforcement of Title VII sex discrimination prohibitions for LGBTQ people.

Citation: Title VII, 29 CFR Part 1604

Document Applicant: Employees, Employers, Applicants, HR Practitioners

Previous Revision: Yes. The current version updates a document originally published on 05-04-2015.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.



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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. Pastor Council, et al.

Plaintiffs,

v.

**Equal Employment Opportunity
Commission**, et al.,

Defendants.

Case No. 4:18-cv-00824-O

DECLARATION OF JOHN SALVESEN

1. My name is John Salvesen. I am over 18 years old and fully competent to make this declaration.
2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.
3. I am senior pastor at Bear Creek Bible Church. Bear Creek Bible Church is the DBA name (doing business name) of The Bible Church.
4. Bear Creek Bible Church employs at least 15 individuals, and it is therefore subject to Title VII of the Civil Rights Act of 1964.
5. There have been at least three episodes in which an employee of Bear Creek Bible Church was engaged in “sexually immoral behavior, including homosexuality” or “gender non-conforming behavior including cross-dressing, transvestism, efforts to change or transition one’s gender, or asserting a gender identity that departs from one’s biological sex.”
6. Bear Creek Bible Church has employed two pastors who were homosexuals, but the church was not aware of this until after they left employment. One of these

pastors had been employed with Bear Creek Bible Church for three years, the other for six years.

7. The first of these individuals was a homosexual pedophile who left church employment in 1996. He was caught molesting children at the church that he worked at after leaving Bear Creek, and is now serving time in state prison.

8. The second of these individuals left church employment in 2007, after he had been discharged for poor performance. We learned that this individual was a homosexual because he married another man after leaving church employment.

9. Bear Creek Bible Church has also had an employee on administrative staff who was engaged in cross-dressing behavior, but he voluntarily left employment. He worked for us for one year as an office employee, and left because he didn't want to do his job anymore and returned to his previous employment.

10. I found out at the time that he left church employment that he was struggling with wanting to become a woman, and I'm still talking with him on a regular basis.

11. I continue to love and pray for each of these individuals, who are former colleagues of mine. But I do not believe it is appropriate for them, or others who are struggling with homosexual conduct or gender non-conforming behavior, to be working as employees of our church.

12. Bear Creek Bible Church's statement of faith says:

That God's plan for human sexuality is to be expressed only within the context of marriage, that God created man and woman as unique biological persons made to complete each other. God instituted monogamous marriage between male and female as the foundation of the family and the basic structure of human society. For this reason, we believe that marriage is exclusively the union of one genetic male and one genetic female (Gen 2:24; Matt 19:5-6, Mark 10:6-9; Romans 1:26-27; I Cor 6-9).

<https://bcbc.org/about-us/beliefs> (last visited on May 24, 2021). Bear Creek Bible Church added this provision to its statement of faith in 2015. This statement also appears in Bear Creek Bible Church's bylaws. *See* <https://bcbc.org/wp-content/uploads/2015/09/bcbcby-laws092715.pdf> (last visited on May 24, 2021).

13. We added this statement because several organizations, including the Family Research Council, the Alliance Defending Freedom, and First Liberty Institute, advised churches who adhere to those beliefs to make them explicit in their doctrinal statements, in order to strengthen their legal position in any lawsuits that might arise over their exercise of religious freedom. The church's teachings on the topics of homosexuality and transgenderism before we added this statement are exactly the same as they are today.

14. Bear Creek Bible Church has restrooms that are separated by sex.

15. I am aware that the EEOC has issued a "guidance document" that demands that employers refrain from discriminating against homosexual or transgender employees, recognize the same-sex marriages of their employees, and allow their employees into restrooms that correspond to the "gender identity" that they assert—regardless of the individual's biological sex, regardless of whether the individual has had a sex-change operation, and regardless of any objections or privacy concerns that might be raised by other employees. *See* Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers, available at <https://bit.ly/2MnDzG5> (last visited on May 24, 2021). The EEOC guidance document refuses to recognize any religious exemptions for any employer, not even churches.

16. I am also aware that the EEOC has been suing Christian businesses that refuse to conform to the edicts in its guidance documents. *See, e.g., EEOC v. R.G. & G.R. Harris Funeral Homes Inc.*, 884 F.3d 560 (6th Cir. 2018) (EEOC lawsuit against a Christian funeral home for refusing to allow a biologically female employee to dress like a man).

17. I regard the EEOC's guidance document, and its lawsuit against Harris Funeral Homes, as threatening Bear Creek Bible Church and every Christian employer in the United States with penalties and lawsuits unless it accedes to the EEOC's interpretation of Title VII.

This concludes my sworn statement. I swear under penalty of perjury that, to the best of my knowledge, the facts stated in this declaration are true and complete.



John Salvesen (May 24, 2021 20:56 CDT)

JOHN SALVESEN

May 24, 2021

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. Pastor Council, et al.,

Plaintiffs,

v.

**Equal Employment Opportunity
Commission**, et al.,

Defendants.

Case No. 4:18-cv-00824-O

DECLARATION OF STEVEN F. HOTZE

I, Steven F. Hotze, being duly sworn, state as follows:

1. I am over 18 years old and fully competent to make this declaration.
2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.
3. I am the founder and CEO of the Hotze Health & Wellness Center. The Hotze Health & Wellness Center is the DBA (“doing business as”) name of Hotze Medical Association, P.A., a Texas professional association, which is taxed as an S Corporation. I am the sole owner of Hotze Medical Association, P.A.
4. The Hotze Health & Wellness Center is not an employer. Instead, the people who work at the Hotze Health & Wellness Center are employed by a company called Braidwood Management, Inc. Braidwood Management, Inc. is owned by a trust called the “David Bradley SFH 2005 Family Trust.” I am the sole trustee and beneficiary of that trust. I am also the President, Secretary, Treasurer, and sole member of the Board of Braidwood Management, Inc.
5. Braidwood Management, Inc. employs approximately 70 individuals, and each of those Braidwood employees works at one of the following entities: The Hotze

Health & Wellness Center, Hotze Vitamins, or Physicians Preference Pharmacy International, LLC.

6. The upshot is that I own or control each of these four business entities, and that Braidwood Management, Inc. employs each of the 68 individuals who work at my companies.

7. I am familiar with Braidwood's mission, religious beliefs, and health-insurance policy. The facts set forth are based on my personal knowledge and information available to me, and if I were called upon to testify to them, I would competently do so.

8. I am a Christian and I operate each of my businesses according to my Christian beliefs found in the Bible. Indeed, I believe that as a Christian I am required to run my businesses in accordance with Christian Biblical principles. My faith in Christ directs both my personal and business life.

9. The core values of each of my four businesses—the Hotze Health & Wealth Center; Hotze Vitamins; Physicians Preference Pharmacy, International, LLC; and Braidwood Management, Inc.—are described in the document attached as Exhibit A to this declaration. Our first core value is “To worship God in our work.” Our second core value is “To recognize the intrinsic worth of each individual.”

10. We start every weekly staff meeting with a prayer in Christ's name, thanking God for his blessings and praying for those who have entrusted their care to us.

11. I have produced a video entitled “What I Believe,” which explains the beliefs and values of my businesses. This video is available at <https://www.youtube.com/watch?v=3QfLjCpfRQA>. Each employee of Braidwood is required to have watched this video. One of our beliefs—which is described in the video—is that the Bible is the inerrant Word of God and that it lays down the principles that regulate all human activity. A transcript of this video is attached as Exhibit B to this declaration.

12. One of my most important Christian beliefs, and one of the fundamental principles upon which I operate my business, is that God created the human race male

and female, and that the institution of marriage was created by God and can exist only between one man and one woman. The Bible clearly and repeatedly teaches that homosexual conduct is a sin. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13; Genesis 19:1–29. The Bible also condemns cross-dressing and gender non-conforming behavior. *See* Deuteronomy 22:5 (KJV) (“A woman shall not wear anything that pertains to a man, nor shall a man put on a woman’s garment, for all who do so are an abomination to the LORD your God.”). The Bible teaches that sex and gender are categories created by God, rather than a social or cultural construct or an individual choice. *See* Genesis 1:27 (KJV) (“So God created man in his own image, in the image of God created he him; male and female created he them.”).

13. Because I accept the Bible as the inerrant and authoritative Word of God, and because I run my businesses in accordance with Christian principles, I require my male employees to dress as men and my female employees to dress as women. Cross-dressing of any sort is strictly prohibited. An authentic copy of Braidwood’s dress code is attached as Exhibit C to this declaration.

14. Because I accept the Bible as the inerrant and authoritative Word of God, and because I run my businesses in accordance with Christian principles, I also have Braidwood operate sex-segregated restrooms, and I require each of my employees to use the restroom that comports with their biological sex—regardless of any gender identity that the employee might choose to assert.

15. Because I accept the Bible as the inerrant and authoritative Word of God, and because I run my businesses in accordance with Christian principles, I am unwilling to employ individuals whose lifestyles flout Christian Biblical teachings, and Braidwood accordingly has a policy against hiring individuals who are known to engage in homosexual conduct or gender non-conforming behavior.

16. I am aware that the EEOC has issued a “guidance document” that demands that employers refrain from discriminating against homosexual or transgender employees or job applicants, recognize the same-sex marriages of their employees, and allow their employees into restrooms that correspond to the “gender identity” that they assert—regardless of the individual’s biological sex, regardless of whether the individual has had a sex-change operation, and regardless of any objections or privacy concerns that might be raised by other employees. *See* Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers, available at <https://bit.ly/2MnDzG5> (last visited on May 24, 2021). The EEOC guidance document refuses to recognize any religious exemptions for any employer, not even churches.

17. I am also aware that the EEOC has been suing Christian businesses that refuse to conform to the edicts in its guidance document. *See, e.g., EEOC v. R.G. & G.R. Harris Funeral Homes Inc.*, 884 F.3d 560 (6th Cir. 2018) (EEOC lawsuit against a Christian funeral home for refusing to allow a biologically female employee to dress like a man).

18. I regard the EEOC’s guidance document, and its lawsuit against Harris Funeral Homes, as threatening every Christian employer in the United States with penalties and lawsuits unless it accedes to the EEOC’s interpretation of Title VII.

This concludes my sworn statement. I swear under penalty of perjury that, to the best of my knowledge, the facts stated in this declaration are true and complete.


STEVEN F. HOTZE

Exhibit A

H O T Z E

HEALTH & WELLNESS CENTER • PHARMACY • VITAMINS

CORE VALUES

1. To worship God in our work
2. To recognize the intrinsic worth of each individual
3. To provide extraordinary hospitality and guest experiences
4. To operate profitably
5. To continually increase our knowledge and skills

Exhibit B

What I Believe
Steven F. Hotze, M.D.

As a man thinks within himself, so he is. What you think about, what I think about, what we believe determines how we conduct our lives. I believe that God made the Heavens and the earth and everything in them, including you and me. And because of this, I believe in the intrinsic worth of each individual.

I was raised in a Christian home, and during medical school, I placed my confidence in Jesus Christ as my savior and Lord as the one who died on the cross for my sins and rose victoriously from the grave. I believe that the Bible is the inherent word of God and that it lays down the principles that regulate all human activity. My faith in Christ directs my personal and business life.

We start every weekly staff meeting with a prayer in Christ's name. Thanking God for his blessings and praying for the people who've decided to entrust their care to us. I believe what my mother taught me when she said, "Don't follow the herd. If you follow the herd, you'll get run over. You'll get stampeded."

I believe that you always have to ask why, and question conventional thinking. I believe in taking the road less traveled, or never traveled is necessary to bring about change. I passionately believe in natural approaches to health. This began in 1988 when my dad underwent emergency heart surgery after a failed angioplasty had torn his main artery in his heart. Two weeks after his surgery, dad called me to his house and he gave me a newsletter from Dr. Julian Whitaker, who's an advocate for natural approaches to health.

That newsletter, which was about heart disease, Dr. Whitaker wrote that 15% of angioplasty patients died within the first year of the procedure. 5% of heart bypass patients died within the first year. The patients who simply made dietary changes, lost weight, exercised, and took vitamins and minerals had a mortality rate of only 1%. My dad asked me what I thought, and I told him that I didn't know anything about this but wished we had known about it beforehand. Dad then said, "This doctor says I need to take vitamins. What type of vitamins do I need to take, son?" I looked at dad like a deer in the headlights and then I said, "Dad, I'm a doctor. What do I know about vitamins?" He looked at me straight in the eyes and asked me, "Will you please find out?" I was the oldest of eight children, seven sons. I loved my dad and would have done anything for him. I told him, "Yes sir. I will find out."

My dad's tragic experience with conventional medicine completely redirected my entire medical career. I believe no one is sick and tired because they have low levels of drugs in their bodies. This point was driven home to me when a patient of mine, Mrs. Jones, who lived in a retirement center by my office, came in for a follow-up visit. When I asked her how she was doing, she said "Ever since I've gotten rid of all those drugs you were giving me, doctor, I feel like a million dollars."

Well, this drove home the point my dad had told me. "Son, don't poison your patients like all the other doctors do." I believe that drugs are poisons. Drugs are toxins that must be detoxified by the body. Drugs only mask symptoms. I believe the reason people are sick is because of an

overload of environmental toxins in their cells. We're living in a sea of chemical pollutants which are found in foods that we eat, the beverages we drink, and in the air that we breathe. This toxic overload leads to a host of diseases, heart disease, cancer, diabetes, high blood pressure, degenerative arthritis, Alzheimer's disease, Parkinson's disease, Multiple Sclerosis, just to name a few.

Pharmaceutical drugs for these conditions, only add to the toxic load in your cells and make you sicker quicker. Let me tell you about drugs. Our nation which has 5% of the population of the world, consumes 42% of all the drugs that are made and produced by pharmaceutical companies. We spend more per capita than any other nation in the world. That means we spend more health dollars per person than any other nation in the world, and we're the sickest nation in the world. We lead in the number of heart disease cases and the number of percentage of people with cancers, and the host of diseases that I've just mentioned to you.

I believe that your health problems aren't all in your head. You're not a hypochondriac, you aren't sick and tired of being sick and tired because you're simply getting older. There is a real cause for your symptoms, and for the way you feel. I believe it's the responsibility of physicians to take time with their patients, asking them questions, listening attentively to their concerns. I believe that if you will eliminate junk food, replace it with natural whole foods, and take vitamins and minerals and nutrients, then you can remove the toxins from your cells and regain your health. I also believe in replenishing the body's natural occurring hormones, so that the cells and the organs in your body can be rejuvenated. I believe it's possible to restore your health and transform yourself from being a sick and tired person, into being a healthy and well one. I believe in offering a first-class experience for my patients who we call guests, and I know that my guests appreciate this. I believe that the way a guest is treated is as important as the treatment that is prescribed.

I believe that we can help people who are willing to invest in their health and who will make a commitment to take charge of their lives and follow the recommendations of the lifestyle changes we make. I believe in the free market economy, and I do believe this applies to medicine and specifically, to preventive medicine. I believe that insurance was meant for emergencies, not for preventive healthcare. I believe that you can achieve your goals and live a healthy, happy, and purpose driven life.

I believe it's time for a revolution in medicine and at the Hotze Health and Wellness Center, we are leading one. I believe that you should have a choice in your healthcare. To choose natural approaches to your health. I believe that you can obtain and maintain health and wellness naturally and enjoy a better quality of life. I believe you can restore your health, that you can transform your life and renew your world naturally. This is what I want for you.

Exhibit C

Uniform and Personal Appearance Policy

As representatives of our businesses, your appearance is a direct reflection of the level of professionalism of our businesses. For this reason, all staff members shall follow these basic minimum guidelines regarding dress and personal appearance. Uniforms which conform to the standards below must be pressed (no wrinkles). In order to maintain the wear of the uniform, it is recommended that they be dry-cleaned. All staff members are expected to arrive fully dressed in the current uniform.

We are a scent free environment! Please refrain from any scents for example, perfumes, smoke, essential oils, etc.

Suits

1. Black or Navy (**solids only**)
2. Jacket, dress, pant and/or skirt must be **matching** fabric and color suit separates. All jackets must be accompanied with matching dress, skirt and/or pants.
3. No pinstripes
4. Bottoms:
 - a) Skirts (including A-line) must be professional and no shorter than 1 inch above the knee. No full length (A-line or broom) skirts allowed.
 - b) Flare, straight leg, ankle (to hit just at or below the ankle bone), or bootleg trousers
 - c) No cropped pants.
 - d) Sheath style dress
5. Jackets:
 - a) Single or double breasted
 - b) Must be buttoned or fastened in the front – no open jackets
 - c) Wrist or 3 quarter length sleeves – no short sleeves

Examples of Brands of Suits:

Dillard's/Macy's:	JC Penny's	Other Stores
Antonio Melani	Sag Harbor	Ann Taylor
Jones New York	East 5th	Ann Taylor Loft
Alex Marie		Banana Republic
Tahari		The Limited
Anne Klein		J Crew/ Talbots
Stressa		Marshalls/ TJ Max
Ellen Tracey		Beta Brand
To the Max		Nordstrom/ The Rack
Theory		
Calvin Klein/ Ralph Lauren		Neiman Marcus Last Call/ Saks Fifth Off
Kasper		
Nine West		

Shirts (Shells and jewel neckline shirts only)

1. Solid color shells or shirts with a jewel neckline.
2. Neckline of the shirt should compliment the lines of the suit jacket
3. Shells must lay flat and neat under the jacket and tucked in.
4. No V-necks, tank tops and/or button downs.
5. No t-shirt material or “matte jersey” material.
6. The top of the neckline should not be lower than 3 inches from the neck and should not reveal cleavage.

Hotze Culture Professional Shoes ARE:

1. **Black or Nude**, closed toe shoes only
2. No flats and/ or ballet slippers
3. Must have at least a kitten heel
4. No heel higher than 6 inches
5. Recommended heel of 1 inch for pumps
6. “Pump” style shoe
7. Solid black with no bows, buckles, jewels, etc
8. Suede, leather or patent leather are all acceptable
9. No boots

Jewelry

1. Jewelry can be colored or monochromatic or metals
2. Should be subtle and not distracting or overwhelming to the outfit.
3. No loud or noisy jewelry

Hotze Culture Professional Shoes DO NOT INCLUDE:

- **Open toe**
- **Platforms**
- **Backless (i.e. clogs)**
- **Stilettos**

Additional Notes

- Only jackets, dresses, skirts, slacks and shells are eligible for reimbursement by the businesses. Each staff member has a one-time uniform allowance of up to \$250 upon passing the staff exam. Receipts must be turned in within 90 days after passing the staff exam for reimbursement and will be paid at a rate of 50% of the amount paid for uniform pieces, up to the maximum \$250 allowed.
- Shoes, pantyhose and other items are not eligible for reimbursement.

- It is our policy that “No visible body piercing (i.e. nose, eyebrow and tongue rings) with the exception of a single piercing in each ear for women” is allowed.
- Take the initiative to replace parts of your uniform before they appear to be worn out. Otherwise, you may be asked to purchase new uniforms. This reflects Number 22 of our Practice Basics: “*Keep uniforms, footwear and the office immaculate... Take pride in your appearance.*”

Maternity Dress Code

- *Maternity clothing may be worn once your uniform suits do not fit.*
- Solid black or Navy skirts, dresses or dressy pants suits accompanied by a matching jacket color.
- Solid black closed toe shoes.
- Solid black flats with no accessories are appropriate.

Men who have customer contact

- Conservative Business Attire:
- Slacks
- Sports Coat or navy blue blazer
- Dress Shirt (white, starched and pressed)
- Tie or Bowtie
- Dress shoes
- Belt
- No facial hair, earrings or other visible body piercing jewelry

Men who do not have customer contact (in shipping)

- Conservative Business Attire:
- Slacks
- Dress Shirt or Golf style polo shirt (preferably white, starched and pressed)
- Belt
- No facial hair, earrings or other visible body piercing jewelry

Shippers or Compounding Technicians working in Hotze Pharmacy

- Nice khakis (like Dockers). No cargo pants, corduroys, hip huggers, cotton or jean material. Pants must not be tightly fitted.
- Clean, solid colored collared golf style polo shirt. No stripes or patterned shirts.
- Shirt must be tucked in and worn with a solid black or brown belt.
- Nice, clean tennis shoes or nice brown or black solid loafers.
- On an annual basis, the company will reimburse technicians for shoes purchased for work in the compounding lab. Maximum reimbursement per pair is \$50 (1/2 of \$100/pair of shoes).

Medical Assistant / Lab Staff Members

- Lab personnel (Medical Assistants) have been authorized to wear black lab coats on a trial basis. You may choose to wear this with black slacks and the dress code approved shoes or the staff uniform. It is your choice!
- The approved lab coat is META 835 Women's stretch fabric 30" LAB Coat, STYLE #835.
- The lab jacket MUST be pressed and clean and replaced whenever it fades or becomes stained at your own expense.
- Wear an appropriate blouse/top underneath with the lab jacket buttoned up to the middle of the chest (think xiphoid process area!)
- Name tags should be worn on the upper right - below collar bone.
- Standard shoe qualifications listed above: Solid black closed toe heels.

Best Practices for All Staff

- No visible body piercing (i.e., nose, eyebrow and tongue rings) with the exception of a single piercing in each ear for women.
- No visible tattoos.
- Gum is not allowed while around guests.
- Uniforms shall be clean and pressed.
- Footwear shall be in good condition and polished.
- Fingernails shall be clean and neatly manicured. Nail polish color shall be conservative and professional (i.e. no green, blue or loud colors).
- All staff members are required to arrive to work fully dressed, wearing their suit jacket.
- Staff members who do not comply with this uniform policy may be sent home to change into attire that meets these standards. Repeated violation of this policy may lead to disciplinary action up to and including termination.

If you have any doubts about your attire, then ask for guidance from your supervisor.

The changes in the staff uniform policy are intended to promote individuality while maintaining a conservative and professional appearance. If in doubt about the style of any uniform components that you would like to wear, then you may get them approved by Talent Recruitment & Development before purchasing or wearing them.

*** Braidwood Management reserves the right to periodically update or change any and all parts of the dress code and uniform policy. Certain positions require different dress code measures, i.e. compounding room staff members, shipping, and Leadership Team. Please check with your supervisor if you have any questions about exceptions to this dress code.*