Supreme Court to hear case about whether sex is the same as gender identity

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In 2013, several years after he was first hired, a male employee told his employer, R.G. & G.R. Harris Funeral Homes, he wanted to dress as a woman at work.

The funeral home owner, Thomas Rost, refused to comply with this wish, insisting it was not “in the best interest of grieving families.” The Equal Employment Opportunity Commission filed a lawsuit against the funeral home owner arguing they had violated Title VII of the Civil Rights Act of 1964, and that "sex" means "gender identity." The U.S. Court of Appeals for the 6th Circuit ruled that the federal government can force R.G. & G.R. Harris Funeral Homes and its owner to allow a male employee who identifies as female to dress in women’s clothing at work. This essentially redefines “sex” as referred to in Title VII in a way that is different than when it was interpreted when enacted in 1964.

Now the Supreme Court has agreed to hear the case and see if the EEOC and federal judges have the power to bypass Congress and redefine "sex." The issue of sex and gender identity has been percolating for some time now, particularly as it relates to transgender students and the workplace.

The Civil Rights Act of 1964 is a landmark civil rights and labor law that made it illegal to discriminate based on race, color, religion, sex, or national origin. For the Equal Employment Opportunity Commission to reinterpret it, and force a company to comply, allows men and women to receive broad protections that often undermine or violate the rights of others, especially their employers.

Walter Olson, a senior fellow at the Cato Institute’s Robert A. Levy Center for Constitutional Studies, explained to me what happens next:

“The idea that the ban on discrimination on account of sex should be read to include transgender persons as a protected class would probably have dumbfounded the Congress that voted for the 1964 law. But neither legislative intent nor precedent necessarily has the last word when courts interpret statutes. More recently, some advocates, including the federal Equal Employment Opportunity Commission (EEOC) have argued that the 1964 language should be read broadly to include the additional categories. Some federal judges have agreed, while others have ruled against, creating the uncertainty that the high court is now likely to resolve.”

In the funeral home’s petition, Alliance Defending Freedom argues, “Substituting ‘gender identity’ for ‘sex’ in nondiscrimination laws also threatens freedom of conscience. Statutes interpreted that way have the effect, for instance, of forcing doctors to participate in — or

employers to pay for — surgical efforts to alter sex in violation of their deeply held beliefs. ... In sum, the Sixth Circuit ushered in a profound change in federal law accompanied by widespread legal and social ramifications."

I'm glad to see the Supreme Court hear a case like this. It seems overwhelmingly obvious to me that sex and gender identity aren't even close to the same thing and would not have been interpreted as such in 1964, nor am I sure that should change. If so, it should certainly not be up to the Equal Employment Opportunity Commission to dictate without any word from Congress.

The constitutional issues circulating, ones that identify conflicts between gender identity discrimination law and the First Amendment, are cause for just as much concern, if not more. A government entity should not be able to compel a private company to abide by a reinterpretation of a law for its own political gain.