



Written by [R. Cort Kirkwood](#) on May 17, 2024

18 States Sue EEOC Over Rule That Bans “Misgendering”

Eighteen states have sued the federal Equal Employment Opportunity Commission for new guidelines that claim, among other absurdities, that “misgendering” an employee constitutes sexual harassment.

Led by Tennessee, the 18 states (Alabama, Alaska, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Ohio, South Carolina, South Dakota, Tennessee, Utah, Virginia, and West Virginia) seek to enjoin EEOC from enforcing its mandate on the grounds that it is unconstitutional, exceeds the agency’s authority, and violates the separation of powers.



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Yet the lawsuit itself doesn’t address the real import of what EEOC has done. A federal agency has enshrined science denial in federal law by falsely claiming that “gender identity” can change.

!!ICYMI

The EEOC has tried to rewrite Title VII once before. We sued them and won.

Yesterday, 17 states joined Tennessee in suing the EEOC to stop this abuse of federal power.

We will continue to defend TN businesses and institutions from illegal federal overreach.□

pic.twitter.com/xL0pZuvITx

— TN Attorney General (@AGTennessee) [May 14, 2024](#)

The Guidelines

The new guidelines that cover “gender identity” are, in a word, ridiculous. Crafted pursuant to an executive order from President Joe Biden, who in turn followed up on the U.S. Supreme Court’s equally ridiculous [Bostock v. Clayton](#) decision, which banned “discrimination” against the mentally ill who wrongly believe they are the opposite sex, or no sex at all, the [guidelines claim](#) the following:

Sex-based harassment includes harassment based on sexual orientation or gender identity, including how that identity is expressed. Harassing conduct based on sexual orientation or gender identity includes epithets regarding sexual orientation or gender identity; physical assault due to sexual orientation or gender identity; outing (disclosure of an individual’s sexual orientation or gender identity without permission); harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person’s sex; repeated and intentional use of a name or pronoun inconsistent with the



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individual's known gender identity (misgendering); or the denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity.

After that dollop of bureaucratic gobbledygook, the guidelines provide preposterous examples of what might happen in real life.

In one case, "Heidi, a staff journalist at a media conglomerate, recently attended a company award ceremony with her wife, Naomi. After the ceremony, one of Heidi's coworkers, Trevor, approaches Heidi and says, 'I did not know you were a d*ke, that's so hot.'"

But Trevor isn't finished. He then asks who the man in the marriage is and who wears the pants.

Of course, the chances of anyone in a "media conglomerate" doing such a thing is impossible, given that about 99.99 percent of "media conglomerate" employees are hard-bitten, pro-homosexual leftists.

Another example features Chloe, a retail employee who "is approached by her supervisor, Alton, who asks whether she was 'born a man' because he had heard a rumor that 'there was a transvestite in the department.'"

Well, a transvestite *is* in the department, but anyway, Alton tells Chloe that he must wear pants to work. Even worse, he also "asks inappropriate questions about Chloe's anatomy and sexual relationships," and when "frustrated with Chloe, he misgenders her by using, with emphasis, 'he/him' pronouns, sometimes in front of Chloe's coworkers."

Another example involves "Jennifer," a "trans woman" cashier. His supervisor, Allison, uses Jennifer's real name and masculine pronouns, and calls Jennifer "dude." Equally bad are coworkers.

All those things violate Title VII of the U.S. Civil Rights Act, EEOC claims.

Tennessee led a coalition of states to seek and [get an injunction](#) against EEOC in 2022 to stop the enforcement of similar guidelines issued in 2021.

Now, Tennessee leads the 18 states in challenging updated rules.

The States' Claim

In a five-claim, [46-page lawsuit](#), the states argue that the court must stop EEOC from enforcing the rules because it has exceeded its authority in promulgating them, and in any event has interpreted the *Bostock* decision too broadly.

"The EEOC's [guidelines are] an exemplar of recent federal agency efforts to enshrine sweeping gender-identity mandates without congressional consent," the lawsuit's introduction argues:

Among other things, the Enforcement Document declares that Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2, requires all covered employers and employees to use others' preferred pronouns; allow transgender individuals to use the shower, locker room, or restroom that corresponds to their gender identity; and refrain from requiring employees to adhere to the dress code that corresponds to their biological sex.

As for the rule relying on *Bostock*, "the Court explicitly disclaimed any intent "to address bathrooms, locker rooms, or anything else of the kind."

The rule trespasses the Administrative Procedures Act, [Claim I says](#), "because it expands the scope of



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Title VII liability beyond what was authorized by Congress.”

Claim II argues that the rule violates the federalism established in the Constitution by “strongarming States into promoting and implementing the agency’s preference for gender-identity accommodations that conflict with state law. And it does so without any indication that Congress intended that result.”

As well, [it trespasses](#) Section 5 of the 14th Amendment by unconstitutionally redefining a state’s obligations to enforce federal mandates.

Perhaps most importantly, it also violates the First Amendment’s free speech protection:

By purporting to require employers and their employees to convey the Administration’s preferred message on controversial gender-identity preferences — for example, requiring the use of pronouns that align with an employee’s self-professed gender identity and prohibiting the use of pronouns consistent with that employee’s biological sex — the Enforcement Document unconstitutionally compels and restrains speech, even if contrary to the regulated parties’ viewpoints.

Claim III argues similarly, while Claim IV says the rule violates the separation of powers because EEOC itself is unconstitutional.

But all the legalese boils down to one thing. From Day 1, the Biden administration has been obsessed with forcing Americans to accept “transgender” ideology. Thus, it repeatedly set out to offend as many Americans as possible with such policies as “transgenders” [openly serving](#) in the military, a “transgender” No. 2 health official [who wants to](#) mutilate children, and even a bald, “non-binary” sadist — [an apologist for underage homosexual prostitution](#) — as [a top nuclear waste official](#).

Now, it wants to punish Americans for “misgendering” someone; i.e., for refusing to join the war on decency and normalcy, and for refusing to endorse its science-denying embrace of “gender” ideology.

H/T: [Legal Insurrection](#)



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