

Supreme Court Decisions Clarify Gender Discrimination Question for LGBTQ Community

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On Monday, June 15, 2020, the United States Supreme Court issued a landmark ruling in three companion cases that provides much-needed clarity as to the issue of whether Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination against LGBTQ individuals. In a 6-3 decision, the Supreme Court ruled that by its plain language, Title VII prohibits discrimination against individuals who are gay, lesbian or transgender. Justice Neil Gorsuch delivered the opinion of the Court, joined by Chief Justice John Roberts and Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan. Justices Samuel Alito, Clarence Thomas and Brett Kavanaugh dissented.

The Court's ruling should put to rest any question as to the scope of Title VII's protection for members of the LGBTQ community.

Background

On Oct. 8, 2019, the Supreme Court heard three separate cases related to Title VII claims of gay and transgender plaintiffs. Each case started similarly, as the Court explained: long-time employees were fired shortly after revealing to their employer, or the employer learning, that the employee was gay or transgender, and for no other reason. In *Zarda v. Altitude Express Inc.*, Donald Zarda worked as a sky diving instructor for Altitude Express for several seasons. He was fired shortly after disclosing he is gay. The Second Circuit Court of Appeals concluded that discrimination on the basis of sexual orientation violates Title VII.

The second case, *Bostock v. Clayton County* involved Gerald Bostock, who worked as a child welfare services coordinator for Clayton County Georgia's Juvenile Court System for a decade. Not long after Bostock began participating in a gay recreational softball league, influential members of the community allegedly began making comments about his sexual orientation and participation in the softball league. He was fired for conduct "unbecoming" a county employee.

The third case in the trilogy, *Stephens v. R.G. & G.R. Harris Funeral Homes, Inc.*, involved a transgender and transitioning employee, Aimee Stephens, who presented as a male when she began working at a funeral home. After six years in employment, she was diagnosed with gender dysphoria and her physicians recommended that she begin living as a woman. When she explained her diagnosis to the funeral home owner, she was fired. The funeral home's defenses included an argument that Title VII did not protect transgender, and that Stephens' claims were barred by the Religious

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Freedom Restoration Act (RFRA) due to the religious beliefs of the funeral home's owner. The Sixth Circuit Court of Appeals ruled against the funeral home on both issues. Only the Title VII issue before the Supreme Court.

With the split in outcomes of the three federal appeals court, the Supreme Court granted certiorari.

Interestingly, Plaintiffs Zarda and Stephens passed away during the pendency of their appeals, and their estates pursued the cases on appeal their behalf.

Key Takeaway

“When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex. And that is all Title VII has ever demanded to establish liability.” Justice Gorsuch, *Bostock v. Clayton County*.

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