

# Supreme Court rules for LGBT worker protections

## Bars workplace discrimination

By MARK SHERMAN  
Associated Press

WASHINGTON — The Supreme Court ruled Monday that a landmark civil rights law protects gay, lesbian and transgender people from discrimination in employment, a resounding victory for LGBT rights from a conservative court.

The court decided by a 6-3 vote that a key provision of the Civil Rights Act of 1964 known as Title VII that bars job discrimination because of sex, among other reasons, encompasses bias against LGBT workers.

“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,” Justice Neil Gorsuch wrote for the court. “Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”

The decision was a defeat not just for the employers, but also the Trump administration, which argued that the law’s plain wording compelled a ruling for the employers. Gorsuch, a conservative appointee of President Donald Trump, concluded the opposite.

He was joined in the majority by Chief Justice John Roberts and the court’s four liberal members. Justice Brett Kavanaugh, Trump’s other Supreme Court pick, dissented, along with Justices Samuel Alito and Clarence Thomas.

“The Court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous,” Alito wrote in the dissent. “Even as understood today, the concept of discrimination because of ‘sex’ is different from discrimination because of ‘sexual orientation’ or ‘gender identity.’”

Kavanaugh wrote in a separate dissent that the court was rewriting the law to include gender identity and sexual orientation, a job that belongs to Congress. Still, Kavanaugh said the decision represents an “important victory achieved today by gay and lesbian Americans.”

The outcome is expected to have a big impact for the estimated 8.1 million LGBT workers across the country because most states don’t protect them from workplace discrimination. An estimated 11.3 million LGBT people live in the U.S., according to the Williams Institute at the UCLA law school.

Gerald Bostock, a gay county government worker from Georgia whose lawsuit was one of three the Supreme Court decided Monday, said no one should have to be “fearful of losing their job because of who they are, who they love or how they identify. And the justices have now made sure



The Supreme Court in Washington, D.C., on Monday.

J. Scott Applewhite/AP Photo

*‘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 UNDISGUIASABLE ROLE IN THE DECISION, EXACTLY WHAT TITLE VII FORBIDS.’*

Justice Neil Gorsuch

that we won’t have to worry about that.”

John Bursch, who argued the appeal from a Michigan funeral home owner against a fired transgender employee, said, “Americans must be able to rely on what the law says, and it is disappointing that a majority of the justices were unwilling to affirm that commonsense principle. Redefining ‘sex’ to mean ‘gender identity’ will create chaos and enormous unfairness for women and girls in athletics, women’s shelters, and many other contexts.”

But Monday’s decision is not likely to be the court’s last word on a host of issues revolving around LGBT rights, Gorsuch noted.

Lawsuits are pending over transgender athletes’ participation in school sporting events, and courts also are dealing with cases about sex-segregated bathrooms and locker rooms, a subject that the justices seemed concerned about during arguments in October. Employers who have religious objections to employing LGBT people also might be able to raise those claims in a different case, Gorsuch said.

“But none of these other laws are before us; we have not had the benefit of adversarial testing about the

meaning of their terms, and we do not prejudge any such question today,” he wrote.

The cases were the court’s first on LGBT rights since Justice Anthony Kennedy’s retirement and replacement by Kavanaugh. Kennedy was a voice for gay rights and the author of the landmark ruling in 2015 that made same-sex marriage legal throughout the United States. Kavanaugh generally is regarded as more conservative.

The Trump administration had changed course from the Obama administration, which supported LGBT workers in their discrimination claims under Title VII.

During the Obama years, the federal Equal Employment Opportunity Commission had changed its longstanding interpretation of civil rights law to include discrimination against LGBT people. The law prohibits discrimination because of sex, but has no specific protection for sexual orientation or gender identity.

Democratic presidential contender Joe Biden, Obama’s vice president, praised the decision on Twitter as “another step in our march toward equality for all. The Supreme Court has confirmed the simple but profoundly American idea that every human

being should be treated with respect.”

In recent years, some lower courts have held that discrimination against LGBT people is a subset of sex discrimination, and thus prohibited by the federal law.

Efforts by Congress to change the law to explicitly bar job discrimination on the basis of sexual orientation and gender identity have so far failed.

The Supreme Court cases involved two gay men and a transgender woman who sued for employment discrimination after they lost their jobs.

Aimee Stephens lost her job as a funeral director in the Detroit area after she revealed to her boss that she had struggled with gender most of her life and had, at long last, “decided to become the person that my mind already is.” Stephens told funeral home owner Thomas Rost that following a vacation, she would report to work wearing a conservative skirt suit or dress that Rost required for women who worked at his three funeral homes. Rost fired Stephens.

The 6th U.S. Circuit Court of Appeals in Cincinnati, Ohio, ruled that the firing constituted sex discrimination under federal law.

Stephens died last month. Donna Stephens, her wife of 20 years, said in a statement that she is “grateful for this victory to honor the legacy of Aimee, and to ensure people are treated fairly regardless of their sexual orientation or gender identity.”

The federal appeals court in New York ruled in favor of a gay skydiving instructor who claimed he was fired because of his sexual orientation. The full 2nd U.S. Circuit Court of Appeals ruled 10-3 that it was abandoning its earlier holding that Title VII didn’t cover sexual orientation because “legal doc-

trine evolves.” The court held that “sexual orientation discrimination is motivated, at least in part, by sex and is thus a subset of sex discrimination.”

That ruling was a victory for the relatives of Donald Zarda, who was fired in 2010 from a skydiving job in Central Islip, New York, that required him to strap himself tightly to clients so they could jump in tandem from an airplane. He tried to put a woman with whom he was jumping at ease by explaining that he was gay. The school fired Zarda after the woman’s boyfriend called to complain.

Zarda died in a wingsuit accident in Switzerland in 2014.

In a case from Georgia, the federal appeals court in Atlanta ruled against Bostock, a gay employee of Clayton County, in the Atlanta suburbs. Bostock claimed he was fired in 2013 because he is gay. The county argues that Bostock was let go because of the results of an audit of funds he managed.

The 11th U.S. Circuit Court of Appeals dismissed Bostock’s claim in a three-page opinion that noted the court was bound by a 1979 decision that held “discharge for homosexuality is not prohibited by Title VII.”

Associated Press writers Alex Sanz in Atlanta and Ed White in Detroit contributed to this report.

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