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Supreme Court Rules 1964 Civil Rights Act Applies to LGBT Employees

Supreme Court Associate Justice Neil M. Gorsuch, President Donald Trump's first appointment to the U.S. Supreme Court, wrote the majority opinion in a case announced on Monday that the 1964 Civil Rights Act protected homosexual and transgender workers from discrimination in the workplace. Gorsuch was joined by Chief Justice John Roberts, and associate justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan in the 6-3 decision.

While many of the previous decisions of the Supreme Court in this area concerned an interpretation of the 14th Amendment (such as the decision that states and their political subdivisions could not prohibit same-sex marriage), these two cases, *Bostock v. Clayton County, Georgia*, and *Altitude Express Inc. v. Zarda*, were argued over an interpretation of the law passed in 1964 heralded as necessary to protect black Americans from discrimination in public accommodations and employment. Title VII of the 1964 Civil Rights Act also prohibited discrimination on the basis of religion, national origin, and sex.

The question before the Supreme Court, then, was the meaning of the words "because of sex" found in that famous law.

The lawyers for the employers in the case, supported by the Trump administration, argued that in 1964, the intent was to prevent irrational discrimination against a woman or a man because of a person's biological sex. In other words, no one at the time indicated that it had anything to do with questions about sexual orientation or "gender identity." In fact, this is the understanding of the law that has prevailed since that time, and the employers in the two cases, along with the attorneys for the Trump administration, argued that if Congress wanted to protect those two groups, they could pass another law to do just that.

However, the lawyers for the workers who claimed they were discriminated against said that logic would include homosexuals and transgenders — saying they were discriminated against "because of sex."

In one case, skydiving instructor Donald Zarda, complained that he was fired from job simply for being "gay." A female customer was concerned that she would be strapped to Zarda during a skydive, but Zarda attempted to reassure her by telling her that he was "100 percent gay." Although Zarda died in a 2014 skydiving accident, his estate continued the case.

Another case involves Gerald Bostock, a homosexual Georgia man who was fired from a government program dealing with neglected and abused children after he joined a gay softball league.

Finally, a man who now identifies as a woman, Aimee Stephens, said he was fired when he announced that he would be open about his self-identified female status at the Harris Funeral Home in Michigan.

Stephens died in May, but wrote in 2013, "I have felt imprisoned in a body that does not match my mind, and this has caused me great despair and loneliness."

The funeral home owner, Thomas Rost, who fired Stephens, later explained the reason for the termination: "Well, because he was no longer going to represent himself as a man. He wanted to dress as a woman."

In 2018, the 13-judge panel of the U.S. Court of Appeals for the Second Circuit in New York State allowed the suit by Zarda to proceed. Chief Judge Robert Katzmann argued, "Sexual orientation discrimination is motivated, at least in part, by sex and is thus a subset of sex discrimination."

But Judge Gerard Lynch disagreed: "Speaking solely as a citizen, I would be delighted to awake one morning and learn that Congress had just passed legislation adding sexual orientation to the list of grounds of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964. I am confident that one day — and I hope that day comes soon — I will have that pleasure."

However, Judge Lynch argued that Congress had not done so in 1964: "I would be equally pleased to awake to learn that Congress had secretly passed such legislation more than a half-century ago — until I actually woke up and realized that I must have been still asleep and dreaming."

Lynch bluntly added, "Because we all know that Congress did no such thing."

Lynch's last statement sums up the problem with the decision. It is not the province of the Supreme Court, or any other court, to decide what the law ought to be. That is the job of the legislative branch. The Constitution gives *all* legislative power granted to the federal government to Congress. If a judge wants to *make law*, then that judge can run for Congress.

In many cases in which the courts have twisted statutes to promote their own views as to what the law should be — in their minds anyway — we all know that many court rulings have little to nothing to do with either the Constitution or statutes.

What is additionally disappointing about this case to those who hold not only to traditional values, but also to the proper understanding of the role of the courts in our constitutional republic, was that Justice Gorsuch was on the side of the case that ignores the role of a judge. While Gorsuch has been a welcome addition to the Court on most cases, in this instance, he is clearly wrong.

One of the justices who dissented was Clarence Thomas. In a speech in Oklahoma City several years ago to the Oklahoma Council of Public Affairs, Thomas said that a judge who substitutes his own opinion for what the law ought to be, rather than upholding what it actually is, is a "lawless" judge. Sadly, six members of the Supreme Court opted to be lawless judges in this case.

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