
***Bostock v. Clayton County, Georgia* (No. 17-1618); *Altitude Express Inc. v. Zarda* (No. 17-1623); *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission* (No. 18-107)**

Title VII of the Civil Rights Act of 1964 makes it “unlawful . . . for an employer . . . to discriminate against any individual . . . because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). Today, the Supreme Court held in a 6-3 decision that Title VII prohibits employers from discriminating against employees for being gay or transgender.

Background:

Today’s decision resolves three separate cases that were argued in October 2019. The plaintiff in *Bostock* was an employee of Clayton County, Georgia, who was fired from his government position after joining a gay recreational softball league. The plaintiff in *Zarda* was a New York skydiving instructor who was fired after revealing to a customer that he was gay. The plaintiff in *Harris* was a Michigan funeral director who presented as male when she was hired, and later was fired after informing her employer that she intended to “live and work full-time as a woman.” All three plaintiffs brought suit under Title VII, alleging unlawful discrimination on the basis of sex. Although the plaintiffs in *Zarda* and *Harris* prevailed in the Second and Sixth Circuits respectively, the Eleventh Circuit held against the plaintiff in *Bostock*. The Supreme Court granted certiorari in all three cases.

Issues: Whether Title VII prohibits discrimination based on an individual’s sexual orientation or transgender status.

Court’s Holding: In an opinion written by Justice Gorsuch and joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan, the Supreme Court held that the “express terms” of Title VII “clearly” prohibit employers from “fir[ing] someone simply for being homosexual or transgender.” This is because the statute prohibits employment discrimination “because of . . . sex,” and “[a]n 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 undisguisable role in the decision, exactly what Title VII forbids.”

Justice Alito authored a dissent on behalf of himself and Justice Thomas; Justice Kavanaugh authored a separate dissent.

Today’s decision will have a profound impact on workplaces across the United States. Only 21 states have antidiscrimination statutes that cover sexual orientation and gender identity. Title VII, by contrast, applies nationwide. Hundreds of major employers filed amicus briefs on behalf of the employees in these cases. Mayer Brown submitted one of those briefs on behalf of Altria Group, Inc.