On June 15, 2020, the Supreme Court of the United States ruled, in a 6-to-3 decision, that Title VII of the Civil Rights Act of 1964 prohibits employers from firing workers for being homosexual or transgender. Justice Neil Gorsuch, in his majority opinion, stated: “In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee’s sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.” Bostock v. Clayton County, Georgia (No. 17-1618).

**Background**

The Supreme Court’s opinion resolved three cases:
1. *Bostock v. Clayton County, Georgia* in which the U.S. Court of Appeals for the Eleventh Circuit held that the law does not prohibit employers from firing employees for being gay.

2. *Altitude Express, Inc. v. Zarda*, No. 17-1623, in which the U.S. Court of Appeals for the Second Circuit held that sex discrimination under Title VII encompasses discrimination based on sexual orientation.

3. *R.G. & G.R. Harris Funeral Homes v. EEOC*, No. 18-107, in which the U.S. Court of Appeals for the Sixth Circuit ruled that “[d]iscrimination on the basis of transgender and transitioning status is necessarily discrimination on the basis of sex” and “discrimination on the basis of transgender and transitioning status violates Title VII.”

Justice Gorsuch noted that “Each of the three cases before us started the same way: An employer fired a longtime employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee’s homosexuality or transgender status.” In this case, the Supreme Court affirmed the Second Circuit and Sixth Circuit opinions in *Zarda* and *Harris Funeral Homes* and reversed the Eleventh Circuit’s ruling in *Bostock*.

**The Supreme Court’s Analysis**

In his opinion, Justice Gorsuch relied on Title VII’s prohibition of discrimination on the basis of sex. Justice Gorsuch reasoned that “the ordinary public meaning” of Title VII’s language “at the time of the law’s adoption” gives us a “straightforward rule”: “An employer violates Title VII when it intentionally fires an individual employee based in part on sex.” According to Justice Gorsuch,

> the statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.

Thus, the Court concluded that discriminating against employees for being homosexual or transgender is prohibited by “Title VII’s plain terms” as discrimination because of sex. Both Justice Samuel Alito and Justice Brett Kavanaugh wrote lengthy dissenting opinions, which Justice Gorsuch opposed in the majority opinion. Notably, with regard to the argument that sexual orientation and transgender status are not expressly listed as protected characteristics in Title VII, Justice Gorsuch noted:

> discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second. Nor is there any such thing as a “canon of donut holes,” in which Congress’s failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception.


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