In a highly anticipated decision, the U.S. Supreme Court held Title VII of the federal Civil Rights Act protects LGBTQ employees from being fired because of their sexual orientation or gender identity.

The opinion, released on June 15, 2020, was a consolidation of three federal appellate court decisions—*Bostock v. Clayton County; Altitude Express v. Zarda;* and *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission.* In each case, the employer terminated the plaintiff after learning that he or she was gay or transgender.

In *Bostock,* the 11th Circuit Court of Appeals held Title VII did not protect an employee against discrimination because of his or her sexual orientation, relying on circuit precedent. The 2nd Circuit came to the opposite conclusion in *Zarda,* concluding an employer discriminated on the basis of sex (including gender stereotypes) when it terminated a long-time employee. In *R.G. & G.R.* the 6th Circuit held Title VII protected against discrimination based on an employee’s transgender or transitioning status because such discrimination is grounded in an employee’s failure to conform to gender stereotypes.

Justice Neil Gorsuch, writing for the majority, analyzed whether discrimination because of sexual orientation or transgender status is fundamentally sex discrimination for failing to conform to gender stereotypes—an issue already
determined to fall within Title VII’s scope.

In its analysis, the majority used the example of an employer who has a policy of firing any employee who is known to be gay. According to the Court, if a model employee brings a female spouse to an office holiday party and the employee is then fired due to also being female rather than male, the employer discriminated on the basis of sex, even if the intent was to discriminate on the basis of sexual orientation.

Similarly, the Court reasoned that an employer cannot discriminate against one of two otherwise identical female employees because she was identified as a male at birth. In doing so “the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth.” Accordingly, such discrimination is indistinguishable from sex discrimination.

Justice Samuel Alito, joined by Justice Clarence Thomas, authored one of two dissenting opinions. Justice Alito’s primary points of disagreement with the majority were: (1) the definition of “sex,” as understood by the legislators who authored Title VII, does not include sexual orientation or transgender status; and (2) Congress has had opportunities to amend Title VII to expressly include such protections but has failed to do so.

Justice Brett Kavanaugh’s dissent relied on his interpretation of the “ordinary meaning” of Title VII, which he concluded does not include protections for sexual orientation or transgender status. As such, Justice Kavanaugh reasoned it was not the Court’s role to expand the scope of Title VII. Despite his disagreement with the majority, Justice Kavanaugh’s dissent concluded with a congratulatory note to those he would deny Title VII’s protections, “Millions of gay and lesbian Americans have worked hard for many decades to achieve equal treatment in fact and law. They have exhibited extraordinary vision, tenacity, and grit—battling often steep odds in the legislative and judicial arenas, not to mention in their daily lives. They have advanced powerful policy arguments and can take pride in today’s result.”

The upshot of the Court’s Bostock decision is effectively an expansion of Title VII’s antidiscrimination protections to LGBTQ employees. While many employers already have policies prohibiting discrimination because of sexual orientation and/or transgender status, this decision presumably authorizes EEOC charges and Title VII claims for such discrimination.

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