

Supreme Court to Decide Whether Bias Law Covers Gay and Transgender Workers

By Adam Liptak

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WASHINGTON — The Supreme Court announced on Monday that it would decide whether a federal law prohibits employers from discriminating against gay and transgender workers.

The law, Title VII of the Civil Rights Act of 1964, forbids employment discrimination based on sex. The question for the justices is whether that language bars discrimination based on sexual orientation or transgender status.

Most federal appeals courts have interpreted the law to exclude sexual orientation discrimination. But two of them, in New York and Chicago, recently issued decisions ruling that discrimination against gay men and lesbians is a form of sex discrimination.

The Supreme Court agreed to hear the case from New York, [Altitude Express Inc. v. Zarda](#), No. 17-1623, along with one from Georgia that came to the opposite conclusion, [Bostock v. Clayton County, Georgia](#), No. 17-1618.

The New York case was brought by a sky-diving instructor who said he was fired because he was gay. The United States Court of Appeals for the Second Circuit [concluded that](#) “sexual orientation discrimination is motivated, at least in part, by sex and is thus a subset of sex discrimination.”

The Georgia case was brought by a child welfare services coordinator who said he was fired for being gay. The 11th Circuit, in Atlanta, ruled against him in [a short, unsigned opinion](#) that cited [a 1979 decision](#) that had ruled that “discharge for homosexuality is not prohibited by Title VII.”

The justices also agreed to decide the separate question of whether Title VII bars discrimination against transgender people. The case, [R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission](#), No. 18-107, concerns Aimee Stephens, who was fired from a Michigan funeral home after she announced that she was a transgender woman and would start working in women’s clothing.

She sued and won in the United States Court of Appeals for the Sixth Circuit, in Cincinnati. Discrimination against transgender people, [the court ruled](#), was barred by Title VII.

“It is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex,” the court said, adding, “Discrimination ‘because of sex’ inherently includes discrimination against employees because of a change in their sex.”

There is a second issue in Ms. Stephens’s case, one that could allow her to win however the Supreme Court might rule on whether Title VII applies to discrimination against transgender people. In 1989, [the court said](#) discrimination against workers because they did not conform to gender stereotypes was a form of sex discrimination.

The Sixth Circuit ruled for Ms. Stephens on that ground, too, saying she had been fired “for wishing to appear or behave in a manner that contradicts the funeral home’s perception of how she should behave

or appear based on her sex.”

The Equal Employment Opportunity Commission has said that Title VII bars discrimination against gay and transgender people. In recent briefs, the Trump administration has taken the opposite position.