

CLIENT ALERT

Supreme Court Adopts Expansive Interpretation of Sex Discrimination Under Title VII

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On Monday, June 15, 2020, a 6-3 majority of the U.S. Supreme Court issued an historic decision in a trio of cases addressing the rights of gay and transgender individuals under Title VII of the Civil Rights Act of 1964. See *Bostock v. Clayton County, Georgia*, 590 U.S. __ (2020). In a decision authored by Justice Gorsuch, the Court held that: “An employer who fires an individual merely for being gay or transgender defies [Title VII].”

The decision, which consolidates three cases, *Bostock v. Clayton County, Georgia* (on appeal from the Eleventh Circuit), *Altitude Express Inc. v. Zarda* (on appeal from the Second Circuit), and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission* (on appeal from the Sixth Circuit), resolves a circuit split as to whether Title VII prohibits discrimination based on a person’s sexual orientation or gender identity, including transgender status. See 42 U. S. C. §2000e–2(a)(1). Proponents of an expansive reading of Title VII’s anti-discrimination provision have argued that discrimination based on sex includes a prohibition on sexual orientation discrimination and gender identity discrimination. Opponents have argued for a narrow reading of the statutory term “sex,” which would result in Title VII protections only applying in cases where men and women are treated differently on the basis of their biological sex.

The Court explained that the protections of Title VII apply when an employer intentionally takes an adverse employment action against an individual employee based in part on sex. The majority noted that whether “other factors besides the plaintiff’s sex contributed to the decision” and “if the employer treated women as a group the same when compared to men as a group” were irrelevant considerations. After conducting an analysis of the statutory text, Justice Gorsuch, perhaps recognizing the impact of the Court’s decision, wrote:

“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.”

Justice Alito wrote a dissent, which was joined by Justice Thomas. Justice Kavanaugh wrote a separate dissent. Both dissents argue various statutory construction principles and conclude that this is an issue that should be decided by Congress.

Bostock suggests that employers should ensure that their policies and practices prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression. Crowell and Moring’s team will continue to monitor state and federal developments responding to this important decision.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Trina Fairley Barlow

Partner – Washington, D.C.

Phone: +1 202.624.2830

Email: tbarlow@crowell.com

Thomas P. Gies

Partner – Washington, D.C.

Phone: +1 202.624.2690

Email: tgies@crowell.com