

Court: Workers can't be fired over gender identity, sexual orientation

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What's the news: In a decision combining three separate cases, the U.S. Supreme Court ruled 6-3 that the protections against sex discrimination in the workplace contained in Title VII of the 1964 Civil Rights Act apply to employees in the LGBTQ+ community.

"Held: An employer who fires an individual merely for being gay or transgender violates Title VII," the ruling states, noting that the Civil Right Act made it "unlawful ... for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual ... because of such individual's race, color, religion, sex, or national origin."

This was the result sought by the AMA Litigation Center, American College of Physicians, Medical Association of Georgia, Michigan State Medical Society and other medical, mental health and health care organizations in a joint amicus brief in the Supreme Court filed last July.

"The AMA joined 15 other leading health organizations in an amicus brief to the Supreme Court, urging it to confirm that discrimination protections under Title VII of the Civil Rights Act of 1964 cover sexual orientation and gender identity," said AMA President Susan R. Bailey, MD. "We know that discrimination reinforces stigma and can have significant adverse mental and physical health outcomes. We are pleased the Supreme Court also recognized this fact."

The court ruled that Title VII is violated when an employer fires an employee because of their sexual orientation or gender identity because this type of discrimination "requires an employer to intentionally treat individual employees differently because of their sex."

The ruling comes on the heels of a final federal rule released last week by the U.S. Department of Health and Human Services that reversed a policy that had banned health care providers from discriminating against LGBTQ patients, women and others.

Read the AMA statement opposing efforts to allow discrimination against patients.

The amicus brief was filed in the cases *Bostock v. Clayton County, Georgia*; *Altitude Express Inc. v. Zarda*; and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Opportunity Commissions*, and it urged the court to rule in favor of protecting transgender individuals from employment discrimination to ensure their physical and mental health.

“The AMA opposes any discrimination based on sex, sexual orientation or gender identity, and supports public and private health insurance coverage for treating the gender dysphoria these individuals may experience,” AMA Immediate Past President Patrice A. Harris, MD, MA, wrote last year in an op-ed published in *The Advocate* urging Supreme Court justices to “do the right thing” in the case.

Discussion in the case also spilled into other concerns such as to whether it would still be legal to maintain same-sex bathrooms and locker rooms. The Supreme Court said the ruling did not involve such matters.

“The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination,” states the ruling, written by Justice Neil Gorsuch. “And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; ... The only question before us is whether an employer who fires an employee simply for being homosexual or transgender has discharged or otherwise discriminated against that individual ‘because of the individual’s sex.’”

In *Bostock v. Clayton County, Georgia* the 11th U.S. Circuit Court of Appeals in Atlanta upheld a lower court decision that Title VII does not protect employees from discrimination based on sexual orientation when it refused to hear the appeal of a case in which a man says the reason he was fired from his job was his sexual orientation, not for improperly handling funds. The Supreme Court decision reversed this ruling.

In *Altitude Express, Inc., et al v. Zarda, et al*, an En Banc panel of the 2nd U.S. Circuit Court of Appeals in New York overruled a previous decision by a three-judge panel and said Title VII prohibits discrimination after a skydiving instructor claimed he was fired based on his sexual orientation. The Supreme Court upheld this ruling.

And in *R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission, et al.*, the 6th U.S. Circuit Court of Appeals in Cincinnati ruled that Title VII protections did apply in a case where a funeral home director, who had worked at the business for six years, was fired after writing a letter to the owner stating that she planned to transition from male to female. The Supreme Court upheld this ruling.

Why it's important: About 1.4 million adults and 150,000 teenagers identify as transgender, and frequently face discrimination and bias in everyday life, from employment and social services to health care

The amicus brief also notes that between 67% and 78% of transgender individuals experience workplace harassment or mistreatment, and that more than one out of four individuals have been fired, denied a promotion or not hired because of their gender identity or expression.

“As physicians, and as leaders in medicine, we believe that LGBTQ+ individuals must be protected from workplace discrimination in order to prevent negative health outcomes,” Dr. Bailey said. “The AMA supports everyone’s access to quality, evidence-based health care regardless of gender or sexual orientation, and will continue to work diligently at the state and federal levels to expand access to medical services, reduce stigma in treating patients with unique needs and break down discriminatory barriers to care.”

To learn more: Learn more from the AMA about advocating for the LGBTQ community and consider getting involved in the AMA Advisory Committee on LGBTQ Issues.