



June 16, 2020

## Supreme Court Says LGBTQ Civil Rights Are Protected

In a 6-3 ruling issued Monday, June 15, 2020, the United States Supreme Court found that Title VII, which precludes employers from discriminating against applicants and employees on the basis of sex, race, color, national origin and religion, also protects individuals from discrimination based on their sexual orientation or gender identity. Specifically, the majority opinion, authored by President Donald Trump's first Supreme Court appointee, Neil Gorsuch, determined that "an employer who fires an individual merely for being gay or transgender violates" the law. The Supreme Court's ruling resolved a split of authority amongst the federal circuit and district courts that recently had examined whether sexual orientation and/or gender identity was protected as a subset of "sex" as that word is used in Title VII. Squarely before the Court was a case on appeal from the Second Circuit, which had held that Title VII prohibits discrimination based on sexual orientation, and a case from the Eleventh Court, which found that it does not. Also before the Court was a case on appeal from the Sixth Circuit, which held that Title VII also prohibits discrimination on the basis of gender identity.

In reaching its decision, the majority examined the language of Title VII, concluding that "Congress [had] adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee." Thus, the majority did "not hesitate to recognize . . . a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law." The majority further reasoned that "[a]n employer who fire[s] an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex," such that "[s]ex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." Although the opinion recognized that "[t]hose who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result," the majority acknowledged that "the limits of the drafters' imagination supply no reason to ignore the law's demands[.]" as "[o]nly the written word is the law, and all persons are entitled to its benefit."

In a dissenting opinion, Justice Samuel Alito and Justice Clarence Thomas argued that the majority had improperly legislated from the bench when reaching its conclusion. In a separate dissent, Justice Brett Kavanaugh stated: "When this Court usurps the role of Congress, as it d[id] today, the public understandably becomes confused about who the policymakers really are in our system of separated powers, and inevitably becomes cynical about the oft-repeated aspiration that judges base their decisions on law rather than on personal preference."

The Court's opinion can be accessed at [Bostock v. Clayton County, Georgia, No. 17-1618](#).

### Additional Information

If you have questions related to how the Court's opinion may impact your organization, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at [www.KutakRock.com](http://www.KutakRock.com).

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