

FIRM NEWS

U.S. SUPREME COURT EXTENDS TITLE VII PROTECTION TO LGBTQ EMPLOYEES

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In a much-anticipated landmark decision, the U. S. Supreme Court announced today that, "An employer who fires an individual merely for being gay or transgender defies the law." Interpreting the federal Civil Rights Act of 1964's ban against discrimination "because of sex," the Court today held, 6-3, that this language does indeed protect the LGBTQ community.

The Court considered three cases: *Bostock v. Clayton County, Georgia* and *Altitude Express Inc. v. Zarda*, in which employees were fired because of their sexual orientation, and *R. G. & G. R. Harris Funeral Homes, Inc. v. EEOC*, a case from Michigan in which Aimee Stephens, a funeral director, was fired after telling the company owner that, going forward, she would be living and working as a woman, although she had previously presented as male. The U.S. Sixth Circuit Court of Appeals decided that her termination violated Title VII, but the funeral home appealed to the Supreme Court. Ms. Stephens died in May 2020 without knowing the result of her case.

That Sixth Circuit decision was affirmed today by the Supreme Court. Justice Neil Gorsuch, for the majority, wrote that Congress' use of the phrase "because of sex" is expansive, and while its application might lead to results not expected in 1964, the Supreme Court was bound by that language. Justice Gorsuch posited a simple test: change the gender of the employee and ask yourself if the employee would still have been fired. Thus, if the fired employee - a male attracted to other males, for example - was a woman attracted to males, would the woman have been fired? If the answer is no, then the termination decision was made "because of sex" and in violation of Title VII. As the Justice wrote: "An employer who fires 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. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

It will be interesting to see how this decision impacts the current petition drive to amend Michigan's Elliott-Larsen Civil Rights Act to add LGBTQ persons to its current list of protected categories. Many employers already include LGBTQ protections in their handbook, benefits plans and other policies. Employers who have not previously done so may want to review their policies with counsel, and revise their handbooks and harassment and retaliation training to ensure compliance with all applicable laws. Employers may also see an uptick in EEOC or internal complaints alleging LGBTQ discrimination. To the extent you need guidance in ensuring compliance with this evolving area of the law and human rights, Nemeth Law is available to assist.