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Victory in Supreme Court Title VII Case

A D.C.-based C&G team helped secure a victory in the U.S. Supreme Court's landmark ruling that all workers are protected under Title VII of the 1964 Civil Rights Act regardless of gender identity or sexual orientation. In a pro bono capacity, C&G filed an amicus curiae brief on behalf of our clients, 37 women's rights organizations led by the National Women's Law Center.

The ruling stemmed from three separate cases in which workers alleged their termination was discriminatory under Title VII on the basis of sex. In all three cases, an employer fired a long-time employee shortly after the employee revealed that he or she was homosexual or transgender, for no reason other than the employee's homosexuality or transgender status. The 6th Circuit and 2nd Circuit had affirmed that the employee's termination violated Title VII, while the 11th Circuit had held that the law didn't prohibit employers from firing people who are gay.

The former employers claimed that Title VII only applied to being male or female, as assigned at birth, thus excluding discrimination tied to gender identity or sexual orientation. Amici noted that such a limitation contradicted both the text of Title VII and clear Supreme Court precedent, the latter of which made clear that Congress passed Title VII to affirm that sex is not relevant to the selection, evaluation, or compensation of employees, including sex discrimination connected to sexual orientation or an individual being transgender. Any decision to the contrary would upend decades of precedent recognizing sex stereotyping as a form of sex discrimination barred by Title VII, and would roll back well-established protections for all employees who fail to conform to sex stereotypes, not only LGBTQ+ applicants and employees. Indeed, the agency tasked with enforcing federal employment laws regarding preventing and addressing discrimination, the United States Equal Employment Opportunity Commission (EEOC), has also made clear that Title VII's protections against sex stereotyping covers discrimination due to sexual orientation or gender identity.

Further, as a practical matter, such a limitation could not be implemented in the workplace or enforced by the courts. Were the Supreme Court to limit Title VII so as to prohibit some, but not all, forms of sex stereotyping, it would make Title VII impossible to navigate for courts, employers, and employees, who would have to guess at whether a particular behavior or conduct related to a sex stereotype is not related to sexual orientation or gender identity—and thus, prohibited by federal law—or, whether it was tied to sexual orientation or gender identity and then deemed outside the scope of sex discrimination barred by Title VII. Amici thus urged the Supreme Court to affirm Title VII's "broad rule of workplace equality." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993).

In a 6-3 decision, the Supreme Court sided with the employees, holding that any definition of "sex" discrimination in Title VII must include discrimination on the basis of sexual orientation or gender identity. Justice Neil Gorsuch, who authored the Court's majority opinion, wrote "We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law." The majority opinion can be found here: https://www.scotusblog.com/wp-content/uploads/2020/06/17-1618_hfci.pdf.

The C&G team included [Melissa H Maxman](#), [Ronald F Wick](#), and [Erica Lai](#).

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