

Michigan Supreme Court Affirms State's Civil Right Law Prohibits Discrimination Based on Sexual Orientation

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On July 28, The Michigan Supreme Court in *Rouch World LLC et al v Michigan Department of Civil Rights et al*, affirmed that the Elliot Larsen Civil Rights Act (ELCRA) prohibits discrimination because of an individual's sexual orientation.

The owners of Rouch World denied a request to host the same-sex wedding of Natalie Johnson and Megan Oswalt at their facility, claiming that doing so would violate their religious beliefs. The owner of Uprooted Electrolysis had denied hair-removal services to Marissa Wolfe, a transgender woman, on the same basis.

The lower court ruled that when a person discriminates against someone who identifies with a gender different than that assigned at birth, then that is dissimilar treatment on the basis of sex and is prohibited under the ELCRA, relying in part on *Bostock v Clayton Co*, 590 US ___, ___; 140 S Ct 1731 (2020).

The Michigan Supreme Court's analysis focused on the proper interpretation of the word "sex" in ELCRA. Specifically, whether "sex" was restrictive and referred only to biological gender, or more broadly includes gender identity and sexual orientation. Using the more restrictive definition of the term "sex" and applying the but-for causation standard employed by the *Bostock* Court, the Supreme Court concluded that discrimination on the basis of sexual orientation necessarily involves discrimination because of sex in violation of the ELCRA.

The Supreme Court reasoned that a discriminator's choice to "[d]eny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations," on the basis of that individual's sexual orientation is action that is dependent upon the individual's sex. Furthermore, sexual orientation is "inextricably bound up with sex," because a person's sexual orientation is generally determined by reference to their own sex. (citing *Bostock*, 590 US at ___; 140 S Ct at 1742).

The Supreme Court found that plaintiff Rouch World denied female complainant Johnson's request for services related to her wedding with female complainant Oswalt. Had Johnson instead been a male, Rouch World would not have denied its services. In other words, but for Johnson's sex, Rouch World would have rendered its services to Johnson. In summary, where the discriminator tolerates certain

MICHIGAN SUPREME COURT AFFIRMS STATE'S CIVIL RIGHT LAW PROHIBITS DISCRIMINATION BASED ON SEXUAL ORIENTATION Cont.

characteristics in one sex but not the other, discrimination on the basis of sex has occurred.

Given the Supreme Court's opinion, it is always advisable to consult your employment attorney before acting on situations involving ELCRA in the workplace. If you have any questions regarding the impact of this opinion on existing practices, policies, or handbooks, please contact your employment attorney.

If you have any questions regarding the impact of this ruling, or you would like a review of your policies and handbooks, please contact any of the members of Plunkett Cooney's Labor & Employment Practice Group today.