

# Supreme Court Holds Title VII Protects Sexual Orientation, Transgender Status

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The U.S. Supreme Court issued its decision in *Bostock v. Clayton County, Georgia*, on June 15, ruling 6-3 that Title VII protects sexual orientation and transgender status.

The Supreme Court was asked to decide whether Title VII, which prohibits discrimination in employment on the basis of sex (among other protected classes), includes protection for employees fired because of their sexual orientation or transgender status. The decision encompassed three cases from the Second, Sixth and Eleventh Circuits.

Writing for the majority, Justice Neil Gorsuch, joined by Chief Justice John Roberts and Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan, held the plain language of Title VII prohibits an employer from firing an employee for sexual orientation or for transgender status.

The Supreme Court accepted the employers' argument that "sex," as used in Title VII, refers to status as either male or female as determined by reproductive biology. In addressing the core question of whether sexual orientation and transgender were within the definition of "sex," the Supreme Court held both are encompassed by "sex." "That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The Supreme Court reasoned that "homosexuality and transgender status are inextricably bound up with sex. . . . because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex." The Supreme Court gave as an example that if a man and a woman are both attracted to men and an employer fired the man but not the female for that attraction, it has fired the man for actions it tolerated from a woman. The Supreme Court concluded: "By discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women. By discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today."

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The Supreme Court rejected the employer's argument that because sexual orientation and transgender status are distinct concepts from sex (gender), the absence of those terms in Title VII's list of protected classes should result in no protection being found under the statute. The Supreme Court reasoned the argument came down to a suggestion that sex must be the sole or primary cause of the adverse employment action. Since that argument was at odds with established Supreme Court precedent construing Title VII, it was rejected.

Finally, the Supreme Court dismissed the employer's argument that when Title VII was passed in 1964 no one contemplated it would protect sexual orientation or transgender status. "But the fact that [a statute] has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity; instead, it simply demonstrates [the] breadth of a legislative command. [Citation omitted]. And it is ultimately the provisions of those legislative commands rather than the principal concerns of our legislators by which we are governed." (Internal quotation marks omitted).

At bottom, an employer who fires an individual "merely for being gay or transgender defies the law" and violates Title VII.