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Legal Insider: Supreme Court to Decide Whether Sex Discrimination Laws Cover LGBT Employees

By John V. Berry, Esq.

On October 8, 2019, the United States Supreme Court heard oral arguments as to whether or not Title VII of the Civil Rights Act of 1964 involving sex discrimination applies to LGBT employees.

The U.S. Circuit Courts of Appeal are currently split on the issue. Hopefully, the Supreme Court will focus on the text of the law, not politics, and do the right thing here. In my opinion, the Civil Rights Act clearly protects LGBT employees from employment discrimination based on sexual orientation and transgender status. The civil rights law was written broadly and anticipates other forms of sex discrimination.

The Three Cases

The Supreme Court heard three combined cases on the issue during oral argument. They involve 3 employees, two gay males and one transgender female. The two men were fired due to their sexual orientation and the transgender woman was



fired from her employment because of her gender identity. A link to the synopsis on Scotusblog can be found [here](#).

Common Sense Should Prevail

As with so many other issues in the law, common sense has been distorted through the various legal arguments. Most individuals know that "sex" discrimination is discrimination based on some aspect of sex. Those opposing the inclusion of LGBT employees from sexual discrimination protections

have tried to twist the plain meaning of the statute's wording by claiming it to be different than it reads.

To some, it could reasonably appear that LGBT employees are attempting to enlarge the definition of a law which was meant to protect women from sex discrimination back in 1964. However, the law was also meant to broadly define sex discrimination, which can happen to anyone, regardless of whether they are straight, LGBTQ or otherwise. Opponents have argued that gender identity, sexual orientation and sex discrimination have multiple different meanings in an effort to confuse the issue.

History of Sex Discrimination Law is Non-Existent

Furthermore, Title VII's ban on sex discrimination was a last-minute inclusion in the Civil Rights Act that was intended to scuttle the bill by former Congressman Howard Smith from Virginia. Apparently, Congressman Smith [elicited laughter](#) from his colleagues when he proposed this addition at the last minute. He must have been shocked when the sex discrimination law passed Congress.

As a result, the definition was left broad, without any hearings and debate to define it. Many courts and the EEOC have concluded that the law was intended to protect LGBT employees. Hopefully, the Supreme Court will do the right thing here. Nobody should be subject to sex discrimination.

A ruling, either way, is probably likely to be 5-4, either way. The swing justice is likely Justice Neil Gorsuch, who has taken the view that the text was clear in that sex discrimination could include these forms of discrimination. If the 3 employees prevail it will likely be because Justice Gorsuch and/or Kavanaugh rule with them. However, if the Court rules against LGBT employees, it will only be a matter of time before a future Supreme Court overrules them and the justices that supported this type of discrimination will be remembered poorly.

Conclusion

If you are in need of employment law representation or advice, please contact our office at [703-668-0070](tel:703-668-0070) or through our [contact page](#) to schedule a consultation.

ALEC to Host "Free Speech Dinner" With Anti-LGBT Group in Arizona

The American Legislative Exchange Council (ALEC) is holding an "Inaugural Free Speech Dinner" with Alliance Defending Freedom (ADF), a Christian Right litigation outfit, on December 4, the first day of its annual States and Nation Policy Summit in Scottsdale, Arizona.

The [invitation](#), acquired through a public records request by the Center for Media and Democracy (CMD), states that ADF's President, CEO, and General Counsel Michael P. Farris will deliver a "special message" to ALEC legislators at the event.

ADF has been [designated as an anti-LGBT hate group](#) by the Southern Poverty Law Center (SPLC) and has been an "ALEC Private Sector Member" since at least 2018.

"Founded by some 30 leaders of the Christian Right, the Alliance Defending Freedom is a legal advocacy and training group that has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a 'homosexual agenda' will destroy Christianity and society," SPLC [writes](#).

With a budget of more than \$50 million, ADF is the largest legal advocacy group in the U.S. fighting to protect the right to discriminate against LGBT people, and argued the notorious *Masterpiece Cakeshop* case before the Supreme Court.

ALEC, a pay-to-play operation where legislators and corporate lobbyists meet behind closed doors to adopt model legislation on a broad range of public policy issues, has recently worked with ADF to push a bill in at least five states that would impose steep penalties on campus protesters who disrupt controversial speakers and weaken campus harassment rules, CMD previously [reported](#).

ALEC Embraces Christian Right

ALEC has increasingly embraced the Christian Right in recent years as brand-sensitive corporations, [at least 115 by CMD's count](#), flee the controversial bill mill.

At its annual meeting in August, ALEC provided a forum for the [National Association of Christian](#)

Lawmakers (NACL) to **solicit new members and state chairs**. According to its leader, State Sen. Jason Rapert (R-AR), NACL secured **nine state chairs** and many members at that meeting in Austin, Texas.

NACL seeks to convene legislators like ALEC does, but "to address major policy concerns from a Biblical worldview," and to "train and elect Christians to serve in public office so that our nation honors God once again."

According to an **invitation** to join composed by Rapert, NACL will,

be a functioning legislative organization that has a leadership structure populated by Christian lawmakers on committees from the local, state, and federal level. The concept is that we would debate and discuss issues and formulate model statutes, ordinances and resolutions based upon a Biblical worldview for introduction in cities, counties, states and nationally at the federal level.

Former Arkansas Gov. Mike Huckabee (R-AR), President of the **Family Research Council** Tony Perkins, former Congressman Bob McEwen (R-OH), and President of the Justice Foundation Allan Parker have all agreed to serve on NACL's national board of advisors, CMD has learned.

Rapert recently **railed** against Chick-Fil-A, based on an **erroneous story** that the company was cutting off donations to anti-LGBT groups, for abandoning "their Christian values by deciding to bow down to the LGBTQ movement," saying, "a false god to homosexuality has been erected in our nation and we are being forced down or pay a price."

Chick-fil-A **has faced protests** in the US and abroad for its support of anti-LGBT organizations, and its change in charitable giving practices was viewed on both sides as a major corporate policy shift, despite company denials.

In addition to hosting NACL at its Annual Meeting this year, ALEC provided a venue for the National Pro-Life Women's Caucus, a project of Susan B. Anthony List, to hold a "**Network for Life**" event just steps from the ALEC meeting rooms.

Susan B. Anthony List claims to be a nationwide network of 700,000 members whose mission is "to end abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders."

ADF **writes** that SBA List has "helped elect more than 100 pro-life candidates to the U.S. House of Representatives, 20 to the U.S. Senate, and 16 to other statewide offices across the country."

Latin America Human Rights Lawyers Join Forces

In a gathering in Bogota, Colombia on Nov. 19, 40 human rights lawyers from across Latin America launched an innovative "Red Litigio LGBT" - an LGBT Litigation Network - in order to guarantee the rights of LGBT persons in 13 Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Panama, Paraguay, Peru and Venezuela.

Despite many legal victories, especially in terms of recognition of same-sex couples rights such as in Argentina and in Colombia, much work is needed throughout the Latin American world.

In Bolivia, Paraguay and Venezuela there is little to no recognition of LGBT rights with governments advocating to restrict rights, while activists in countries such as Brazil with LGBT rights on the books fear a chipping away of rights and an increase on anti-LGBT violence under the presidency anti-gay president Jair Bolsonaro.

Organizers say that over the past five years, there have been at least 1,300 murders of LGBT persons in Latin America. That translates to four each day.

This group of legal experts has an ambitious agenda. They have identified the following goals for the member countries: ensuring that LGBT relationships are decriminalized, allowing for public displays of affection among same-sex couples, full marriage and adoption rights, gender identity protection laws and combatting impunity in homicide cases.



There are plans to expand the scope to a further eight Latin American countries in the near future.

This initiative is the work of four organizations in the region: Colombia Diversa, Promsex, Cattrachas and Dejusticia and the initial meeting was supported by ARCUS, the Ford Foundation and the Open Society Foundations.

LGBT Activists in China Seek to Change Marriage Civil Code

BEIJING - It was only after her partner's death that He Meili realized the full meaning of marriage.

As a lesbian couple in China, He and Li Qin kept their ties largely unspoken, sometimes introducing themselves as cousins. This rarely bothered He until Li succumbed to complications from lupus in 2016, and Li's parents demanded that He hand over the deed for their apartment and other property documents under Li's name.

He, a 51-year-old nonprofit worker in southern China's Guangzhou city, has joined LGBT activists and supporters in an appeal to lawmakers to allow same-sex marriage, using a state-sanctioned channel to skirt recent government moves to suppress collective action.

"I realized if LGBT people don't have the right to marry, we have no legal protections," she said. "Others will also experience what I did – and be left with nothing."

Under Chinese President Xi Jinping, space for civil society and advocacy has shrunk. Human rights activists and their lawyers have been detained, while internet censorship has increased.

LGBT activists have turned to a novel tactic: submitting statements to the National People's Congress, China's legislature, which is soliciting opinions from the public on a draft of the "Marriage and Family" portion of the Civil Code through Friday.

"A lot of people told me that this is the first time they've participated in the legal process," said Peng Yanzi, director of LGBT Rights Advocacy China, one of several groups running the campaign.

The Marriage and Family section is among six draft regulations for which the legislature began seeking comments at the end of October. As of Thursday afternoon, the website showed that more than 200,000 suggestions had been submitted either

online or by mail, the greatest number of any of the outstanding drafts. It was not clear what proportion of the suggestions pertained to same-sex marriage.

In social media posts, campaign participants held up their Express Mail Service envelopes along with rainbow Pride flags. In their suggestions, they shared stories of coming out, the challenge of gaining family members' acceptance and running into legal roadblocks when trying to share their lives with someone of the same sex.

A teacher wrote about experiencing discrimination at his workplace; others wrote about not being allowed to make medical decisions for their ailing partners.



FILE - Teresa Xu, left, and Li Tingting, right, share a kiss as clerks take photographs in a beauty salon where the two were preparing for their wedding in Beijing, July 2, 2015.

"This is not just a symbolic gesture," Peng said. "It really has an impact on our everyday lives."

Peng's organization has outlined a desired revision to the language in the Civil Code, changing the terms throughout from "husband and wife" to "spouses" and from "men and women" to "the two parties." Rather than adding specific language about same-sex marriage, the revisions seek to eliminate gendered terms from the legislation.

While activists and experts acknowledge that legalizing same-sex marriage is still a far-off reality in China, they said appeals through the official channel will push the government to take the demand more seriously.

"There's a near-zero chance the suggested changes will be accepted and implemented, but this campaign makes China's LGBT community's demands for equality harder to ignore," said Darius

Longarino, a senior fellow at Yale Law School's Paul Tsai China Center who has worked on legal reform programs promoting LGBT rights in China.

"Calls for gay marriage often get dismissed as being too marginal and unimportant to get onto the political agenda, or as being inconsistent with Chinese traditional culture," Longarino said.

Few legal protections are available for same-sex couples in China. One party can apply to be the other's legal guardian, but those accompanying rights are just a fraction of those enjoyed by married couples, Longarino said. He gave the example of a lesbian woman who bears a child in China, with no way for her partner to become a second legally recognized parent of that baby.

At a briefing in August, a spokesman for the National People's Congress Standing Committee's Legislative Affairs Commission suggested that same-sex marriage does not suit Chinese society.

"China's current marriage system is built on the basis of a man and a woman becoming husband and wife," said Zang Tiwei, director of the commission's research department, when asked whether same-sex marriage will be legalized.

"This regulation is in line with China's national conditions and historical and cultural traditions," Zang said. "As far as I know, at the moment most countries in the world don't recognize the legality of same-sex marriage."

LGBT advocates have garnered growing support from the Chinese public, using social media to raise awareness even as they face frequent censorship. They won a victory over the censors in April 2018, when one of the country's top social networking sites backtracked on a plan to restrict content related to LGBT issues. Users flooded Weibo with hashtags such as "#I'mGayNotAPervert" after the Twitter-like platform said "pornographic, violent or gay" subject matter would be reviewed.

But misconceptions and discrimination persist. A 2015 survey by the Beijing LGBT Center found that 35% of mental health professionals in a sample group of nearly 1,000 believed that being gay is a mental illness. Around the same percentage supported the use of conversion therapy. When *Bohemian Rhapsody*, the hit biopic about Queen lead singer Freddie Mercury, came to China, viewers were treated to a version without any references to Mercury's sexuality or his struggle with AIDS.

Hua Zile, the chief editor of an LGBT-focused Weibo account with 1.69 million followers, said he

hasn't publicized the same-sex marriage campaign on his microblog because he worries about the dispiriting effect it will have on the LGBT community when it inevitably fails.

"We can't reach the sky in a single leap," Hua said. "We should try to make progress step-by-step, or else we'll constantly be disappointed."

After He's partner passed away, it pained her to think about how they kept their status in the shadows.

Through their 12-year relationship, it was He who accompanied Li on doctor's visits. She stayed with her at the hospital when lupus made her nauseous and delirious with fever, and she helped her reach their fourth-floor walk-up after her legs grew weak.

In He's mind, they were married. But in reality, many people didn't even know they were dating.

Friends told He that she could file a lawsuit to recover some of her and Li's shared property. She hired a lawyer to start the process, which required painstaking documentation of their relationship and signed statements from their neighbors and friends attesting to their long-term bond.

"It was like tearing open a wound over and over again," He said. "I had to keep coming out about my sexuality. If we were married, all of this would be understood."

In the end, He gave up on the lawsuit. It was too exhausting, she said, to have to prove their love to everyone.

France, A Land of Freedom For LGBT Arabs-Focus

Since most Arab countries criminalise homosexuality, same-sex unions are only possible in some countries abroad. Here in France, an imam has been offering his blessings to same-sex marriages for four years now. Among these couples, many are of Arab origin and some have travelled or emigrated to the country to benefit from France's law legalising same-sex unions. Thameen Kheetan reports

Cyndi Lauper to Win UN Award For LGBT Advocacy

Singer Cyndi Lauper is being [honored with an award for her advocacy on LGBTQ issues](#) by the United Nations.

The “Girls Just Want to Have Fun” singer will be given the High Note Global Prize, which “celebrates artists that have leveraged their musical gifts to create a platform to promote social justice,” [according to the award’s creator](#).

Lauper, a longtime ally of the LGBTQ community, will be the first person to be honored with the award.



Grand Marshall Cyndi Lauper rides at 2012 New York City's Pride March in New York on June 24, 2012.

Photo: Shutterstock

In 2010, she co-founded True Colors United, an organization dedicated to implementing “innovative solutions to youth homelessness that focus on the unique experiences of [LGBTQ] young people.”

Kesha will present Lauper with the award at the singer’s ninth annual *Cyndi Lauper & Friends: Home for the Holidays* benefit concert on December 10. The concert raises funds for the True Colors United.

Marilyn Manson, Brandi Carlile, Billy Porter, Lily Tomlin, Belinda Carlile, Margaret Cho, Perry Farrell, Charlie Musselwhite, and Henry Rollins will also perform at the event. Lauper’s award will be displayed at the Grammy Museum.

The Trevor Project Granted 6 Million

Today’s young people seem to be more comfortable than ever expressing their diverse gender and sexual identities. In fact, [a 2016 study](#) found that 52% of teenagers do not identify as exclusively heterosexual. With all of this progress, though, it is important not to lose sight of how much work is left to do.

LGBTQ youth across the country continue to face deep mental health struggles due shameful feelings about their gender or sexual identities. [According to The Trevor Project](#), the nation’s leading organization in suicide prevention services for LGBTQ youth, 1.8 million LGBTQ young people between the ages of 13 and 24 seriously consider suicide every year.

This horrifying number is one reason that on November 17, the PwC Charitable Foundation announced it was awarding a whopping six million dollar grant to the Trevor Project, the largest in Trevor’s history, so the organization could increase its reach and potentially save thousands more lives.

The Trevor Project’s major services involve direct support for youth considering suicide through text, phone, and online chat hotlines. With the PwC grant, the Trevor Project will be able to develop a new technology platform that will facilitate the training of hundreds of thousands of additional volunteers. The new platform will also allow volunteers to communicate with and support one another through this difficult work.

“The size of the grant says a great deal about the size of the problem they’re addressing,” said Yolanda Seals-Coffield, president of the PwC Charitable Foundation. Right now, she said, the Trevor Project reaches [about 75,000](#) kids each year. “That is important and those are important lives, but that is not making a dent in the number of young people in need. So the idea of supercharging their volunteer network and getting ten times the number of people available to pick up these phones and answer these texts 24 hours a day is huge.”

The grant will be a collaborative effort. PwC will help the Trevor Project implement the grant over the next four years.

Additionally, PwC will provide two million dollars worth of pro bono services.

“It’s a great honor for us and the foundation to be connected with this work and to do our small part to help them achieve these great outcomes,” said Seals-Coffield. “They are just an incredibly impressive group of professionals leading this work, and we’re really excited to play a small role.”

PwC consultants and developers will assist the Trevor Project’s technology team with building the new volunteer management system. “They are helping us build this technology from the ground up,” said Muneer Panjwani, the Trevor Project’s head of corporate development. “We’re not adapting it from other technology because our needs are so specific.”



BEVERLY HILLS, CALIFORNIA - NOVEMBER 17: Miss Shalae performs onstage during The Trevor Project’s TrevorLIVE LA 2019 at The Beverly Hilton Hotel on November 17, 2019 in Beverly Hills, California. (Photo by Tasia Wells/Getty Images for The Trevor Project)

The foundation will also help the Trevor Project improve its cyber security efforts, since the organization compiles a lot of data on young people.

“We take notes and record so we have access to that data for trend spotting, to learn about behaviors and what’s happening in young people’s minds,” explains Panjwani. “But security is not something a lot of people invest in. It was wonderful when we pitched this idea to PwC. They were very excited to help us support building out this project.”

Seals-Coffield said she is continually impressed with the Trevor Project team. “Not only are they committed to their cause, which all nonprofits are, but they are just insanely well-organized and well-run. They have one mission and they do it well.”

Panjwani said the team has no choice but to execute this mission well, and PwC’s grant money and resources will help them continue to do that. “When you look at the mental health ecosystem, and the charities and nonprofits working in it, there are not a lot being funded well,” he said. “They can’t use the best in class people or technology, so they have to compromise. Our mission is way too important for us to compromise.”

<https://www.lgbtqnation.com/2019/11/trevor-project-getting-6-million-historic-grant-help-lgbtq-youth/>

House Democrats Almost Overturned Trump’s Trans Military Ban But The GOP Stopped Them

A provision was inserted in a military spending bill to overturn the trans military ban. But it was dropped due to Republican pressure. Five major national LGBTQ organizations and other groups are “profoundly discouraged” by a bipartisan National Defense Authorization Act (NDAA) – a major \$738 billion 2020 military funding bill – for [its exclusion of language overturning Donald Trump’s transgender military ban](#). The NDAA is expected to pass with bipartisan support.

The final bill does have language encouraging the military to grant waivers allowing trans soldiers to enlist despite Trump’s ban and a provision helping LGBTQ soldiers kicked out under “Don’t Ask, Don’t Tell” (DADT) to fight for “honorable” discharges on their official records, facilitating their access to federal veteran benefits. The Democratic-led House had approved an NDAA amendment introduced by Rep. Jackie Speier (D-CA) that would’ve ended Trump’s trans ban and, for the first time ever, prohibited anti-LGBTQ and other discrimination in the military. *But in a [public statement](#), the National Center for Transgender Equality, the Human Rights Campaign, Lambda Legal, the National Center for Lesbian Rights, and GLBTQ Legal Advocates & Defenders joined the American Civil Liberties Union (ACLU) and the Modern Military Association of America to say that Republicans successfully gutted that language from the final NDAA.*

“Although House and Senate Democratic leaders fought to retain this provision to end the ban,” the statement reads, “the White House, House Armed Services Chairman Mac Thornberry (R-TX), Senate Armed Services Committee Chairman James Inhofe (R-OK), and Senate Majority Leader Mitch McConnell (R-KY) fought vigorously to remove it, and ultimately prevailed.” The groups call it

“unconscionable” that thousands of honorably serving transgender service members will continue to have their lives and families destabilized by Trump’s biased ban which is opposed by a majority of American citizens “military experts, and elected officials across the political spectrum.”

Despite this, the NDAA has a provision clarifying that LGBTQ service members who were dismissed under DADT and who were denied an “honorable” upgrade to their discharge papers can “seek an appeal under current law or defense policy.” The NDAA also encourages the military to let trans people enlist by granting them exception waivers. But so far, [no such waivers have ever yet been granted](#), raising doubts as to whether they’ll ever be issued, even with this new NDAA’s encouragement.

When Trump issued his July 2017 ban via Twitter, he said it was because of “the tremendous medical costs and disruption that transgender in the military would entail.” His announcement came a year after reports that the Pentagon had lifted the ban on transgender service members. Trans healthcare would’ve costed the military between \$2.4 million and \$8.4 million annually – the military currently [spends \\$41.6 million annually on the erectile dysfunction medication Viagra](#) and Trump’s trips to his Mar-a-Lago resort in Florida [cost taxpayers “an estimated \\$21.6 million](#) during the first 80 days of his presidency.

Finland’s New Prime Minister Was Raised by Two Moms

Her LGBTQ family “was something that couldn’t be discussed” when she was growing up, but they’re “the foundation of everything.

Sanna Marin was just picked by her party to be the Prime Minister of Finland, making her the youngest leader of a government in the world.



Sanna Marin

And, notably, she was raised by two mothers.

Marin was named Minister of Transport and Communications earlier this year. A rising star in

the Social Democratic Party, she was voted by a wide margin to the position of prime minister this month, succeeding Antti Rinne, who has faced criticism for his handling of strikes. Marin is 34-years-old, making her the youngest currently serving leader of a government in the world when she is sworn in this week.

Born in 1985, she said that the topic of homosexuality was taboo when she was growing up and not feeling free to discuss her “rainbow family” made her feel “invisible” at school.

“That was something that couldn’t be discussed,” [she told Menaiset](#), explaining openness about LGBTQ families in Finland is a very recent thing.

“The silence was the hardest. The invisibility made me feel inferior. We were not recognized as a true family or equal with others.” She said that she didn’t face bullying.

“Even when I was little, I was very candid and stubborn,” she said. “I wouldn’t have taken anything easily.”

Marin’s family was also working-class - she’s the first person in her family to attend college. She joined the Social Democratic Youth in 2006 and was elected vice president of the organization in 2010.

She held several local elected positions, but rose through the ranks in the party.

Marin said that her mother always made her feel like she could do anything.

“My mother has always been very supportive and has made me believe that I can do exactly what I want,” she said. Growing up in a working-class and LGBTQ family also made her see the importance of social justice.

“For me, people have always been equal,” she said. “It’s not a matter of opinion. That’s the foundation of everything.”