

3.4.18: Interpreting the Law

Learning Objectives

- Discuss changing interpretations of legal protections of diversity

As illustrated above, laws are subject to interpretation—both expansion and contraction. For example, an EEOC notice^[1] emphasizes that their interpretation of the Title VII reference to “sex” is broadly applicable to gender, gender identity and sexual orientation. And further, that “these protections apply regardless of any contrary state or local laws.” This interpretation is consistent with Executive Orders issued by the Obama administration that extended discrimination protection based on sexual orientation or gender identity to federal workers and federal contractor employees. However, the Trump administration is seeking to reverse that interpretation and the associated protections.

The Supreme Court has agreed to hear a series of cases on the interpretation of “sex” in the Civil Rights Act of 1964; specifically, to decide whether the Act’s prohibition of employment discrimination based on sex applies to sexual orientation or transgender status.

In a brief submitted to the court on August 23, 2019, the Department of Justice argues that federal employment law doesn’t protect workers from discrimination based on sexual orientation. A SHRM article notes that “the department’s lawyers said that the ordinary meaning of “sex” is biologically male or female and doesn’t include sexual orientation.”^[2] Major companies, like the EEOC, are fighting to retain protections. In a SHRM article, attorney Allen Smith states that “more than 200 businesses signed a brief on July 2 calling on the Supreme Court to rule that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation and gender identity.”^[3] The Supreme Court has agreed to hear two cases, one from a federal appeals court in New York that found that discrimination against gay men and lesbians is a form of sex discrimination and one from a court in Georgia that came to the opposite conclusion. The justices also agreed to decide the separate question of whether Title VII bars discrimination against transgender people.

The New York Times reports that in a minor case, “Justice Neil M. Gorsuch wrote that courts should ordinarily interpret statutes as they were understood at the time of their enactment.” Justice Ruth Bader Ginsburg held that “Congress may design legislation to govern changing times and circumstances.” Adding, from a previous opinion, “Words in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic.”^[4]

Key Takeaway

Law is interpreted (and, by extension, enforced) differently by different Administrations and courts. As Zadie Smith observed: “Progress is never permanent, will always be threatened, must be redoubled, restated and reimagined if it is to survive.”

Practice QQuestion

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1. "What Your Should Know About EEOC and the Enforcement Protections of LGBT Workers." U.S. Equal Employment Opportunity Commission. Accessed September 14, 2019. ↵
2. Nagele-Piazza, Lisa. "DOJ Asks Supreme Court to Find Workplace Bias Law Doesn't Cover Sexual Orientation." Society for Human Resource Management. August 26, 2019. Accessed September 14, 2019. ↵
3. Smith, Allen. "Companies Urge High Court to Ban LGBTQ Discrimination." Society for Human Resources Management. July 2, 2019. Accessed September 14, 2019. ↵
4. Liptak, Adam. "Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers." The New York Times. April 22, 2019. Accessed September 14, 2019. ↵

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