

2.6: Interpreting the Law

Learning Objectives

1. 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 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.” 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.” 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.”

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 reimaged if it is to survive.”

PRACTICE QUESTION

One of your organization’s core values is equal opportunity. At an HR Meet & Greet an employee asks you what impact a Supreme Court decision would have on organizational policy. Which of the following is the best response?

- We will change our policy and practices to reflect the Supreme Court’s interpretation of discrimination protections.
- As a law-abiding company, we support the Department of Justice’s position on this matter.
- Our position is not to comment on pending litigation.
- We have signed the brief in support of retaining discrimination protections for sexual orientation and gender identity and our policy and practices will continue to reflect that interpretation regardless of the Supreme Court’s decision.

Answer

We have signed the brief in support of retaining discrimination protections for sexual orientation and gender identity and our policy and practices will continue to reflect that interpretation regardless of the Supreme Court’s decision.

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