

The Meaning of Sex Under the 1964 Act

In 1964, Congress passed the Civil Rights Act, which prevents employers from discriminating against employees for their sex, ethnicity, race, religion, national origin, etc. Today, the topic of sexual discrimination is in question in terms of what the meaning of sex is. In 1964, sex was known as whether you are biologically male or biologically female. Society has gone through drastic change in the past decades, where acceptance of being gay or transgender has progressed. This has posed the question of if the meaning of the word sex has changed or expanded, and more specifically, if employers should be free to fire employees for being gay or transgender under Title VII of the 1964 Civil Rights Act.

In the NPR newscast titled, “Showdown Over LGBTQ Employment Rights Hits Supreme Court,” that question is discussed and real-life examples are provided. A man named Gerald Bostock worked in social services, primarily foster children who were abused or neglected. He did great work for a great cause, but all of a sudden, the word was out that he was a gay man. He was then fired, regardless of how good he was at his job. Being gay may have nothing to do with biological sex, however, an interesting point was later brought up. “If you wouldn’t fire a man for having a wife at home and would fire a woman for having a wife at home, then how is that not sexual discrimination?”(NPR.org). This is an equivocation upon the term sexual discrimination. “Bostock’s counsel argues, have clearly determined that the prohibition on discrimination “because of sex” in Title VII must be interpreted broadly, and “discrimination against an employee on the basis of sexual orientation – whether gay or straight – is fundamentally a form of discrimination based on sex” (PBS.org). Times have changed over the past decades, and gender identity and sexual orientation have become extensions of the meaning of sex.

Another example was provided by Aimee Stephens, who worked for a funeral home. She seriously contemplated suicide, but grew up the courage to tell her boss and coworkers that she was a transgender woman. Once she did, she was fired shortly after. This brought up the question of how is this

not sexual discrimination if Stephen is saying she is a woman and is fired for saying so? Similar to the earlier point, this applies to the idea of “If a man shows up to work as a man but later shows up to work as a woman, how is that not sexual discrimination?”(NPR.org). Being a biological woman versus being a transgender woman has a different connotation than the meaning of what being a woman is, so therefore results in a different view of the meaning of sex. “Because Harris Homes would have treated Stephens differently had her assigned sex at birth been different, adds Stephens, its decision to fire her violated Title VII” (PBS.org).

The counterarguments that came up regarding these cases were vague and not very convincing. Courts on the opposing side claimed “Sex is not the same as sexual orientation and is not the same as gender identity” (NPR.org) and “sexual orientation and gender status dont fit under the law” but did not provide any evidence or reason for why these claims are true. Bursch, a lawyer on the defense for Harris Homes, states, “If we redefine the meaning of sex in federal law... it would allow "biological men to identify as women and take women's places on sports teams” (NPR.org). While this may be true, this reasons does not extend off of the issue, and that is discrimination against gay and transgender people.

In the past 55 years, a lot of societal changes have progressed. Acceptance of the LGBTQ community has moved many milestones, but there is still a lot of work to be done. The 1964 Civil Rights Act has paved the way for equal opportunity for all, but “these questions weren’t anticipated back in 1964”(NPR.org). As society accommodates to minorities, the laws should follow as well.

Totenberg, Nina. “Showdown Over LGBTQ Employment Rights Hits Supreme Court.” NPR, 8 Oct. 2019, www.npr.org/2019/10/08/766386729/showdown-over-lgbtq-employment-rights-hits-supreme-court.

Coyle, Marcia. “Does This Anti-Discrimination Law Protect LGBTQ Workers? 3 Cases Ask Supreme Court to Decide.” *PBS*, Public Broadcasting Service, 12 Sept. 2019, www.pbs.org/newshour/politics/does-this-anti-discrimination-law-protect-lgbtq-workers-3-cases-ask-supreme-court-to-decide.