

July 16, 2020

The Honorable William Barr
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Supreme Court Ruling Concerning the Scope of Sex Discrimination in Federal Civil Rights Statutes

Attorney General Barr:

On behalf of the undersigned organizations, we write in regards to the Supreme Court's recent ruling in the consolidated cases *Bostock v. Clayton County*, *Altitude Express v. Zarda* and *R.G. & G.R. Harris Funeral Homes v. EEOC*.¹ As you are aware, on June 15, 2020 the Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation, gender identity, and transgender status as unlawful sex discrimination. As this letter details, we urge you to begin coordinating full implementation of this decision, including by instructing your department and other federal agencies to withdraw any guidance or instruction that is inconsistent with the Court's holding that discrimination on the basis of sexual orientation, gender identity, and transgender status is unlawful sex discrimination. The Supreme Court's holding in *Bostock*, as to the textual meaning of sex discrimination within our laws, applies to protections against sex discrimination contained within all federal civil rights statutory and regulatory provisions. This direction will be faithful to decades of legal precedent and is mandated by the Supreme Court ruling in *Bostock*.

The Supreme Court's analysis of what constitutes discrimination on the basis of sex relied on a textual reading that applies with equal force to other statutory prohibitions of sex discrimination. Indeed, federal courts have routinely relied on the scope of sex discrimination protection provided by the Civil Rights Act to inform decisions regarding sex discrimination coverage under the Equal Credit Opportunity Act,² the Fair Labor Standards Act,³ the Fair Housing Act,⁴ Title IX of the Education Amendments of 1972,⁵ and many other statutes.

¹ *Bostock v. Clayton Cty., Georgia*, No. 17-1618, 2020 WL 3146686 (U.S. June 15, 2020).

² *Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000).

³ *Hall v. BNSF Railway Co.*, Case No. C13-2160 RSM, 2014 U.S. Dist. LEXIS 132878 (W.D. Wash. Sept. 22, 2014).

⁴ *Wetzel v. Glen St. Andrew Living Community*, 901 F.3d 856 (7th Cir. 2018); *Smith v. Avanti*, 249 F. Supp. 3d 1194 (D. Colo. 2017).

⁵ *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015); *Miles v. New York University*, 979 F. Supp. 248, 250 n.4 (S.D.N.Y. 1997).

The Department of Justice is not only appropriately positioned to coordinate implementation of the *Bostock* decision across the federal government, but has historically undertaken this role. It is imperative that the Department accept this responsibility and ensure that enforcement of this decision, as to the definition of sex discrimination through federal civil rights laws and regulations, is uniform across the federal government. Departmental inaction or the issuance of contradictory guidance regarding the Supreme Court’s interpretation of the scope of federal protections against sex discrimination, would undoubtedly result in needless confusion, and both public and private liability.

Thank you for the opportunity to provide this information. Should you have any questions, please contact Rose Saxe (rsaxe@aclu.org), Sarah Warbelow (swarbelow@hrc.org), Jennifer Pizer (jpizer@lambdalegal.org), and Sunu Chandy (schandy@nwlc.org). As we have concluded June, a month when so many organizations, including within the federal government, have traditionally commemorated LGBTQ history and struggles for equal rights, and as individuals and organizations across our nation recommit to working together for racial justice including for Black LGBTQ individuals, we now look forward to confirming the ways that the Supreme Court’s recent ruling will lead to greater equality across so many critical areas.

Sincerely,

American Civil Liberties Union
Human Rights Campaign
Lambda Legal
National Women’s Law Center
Center for American Progress
Family Equality
Freedom for All Americans
GLBTQ Legal Advocates and Defenders (GLAD)
National Center for Lesbian Rights
National Center for Transgender Equality
National LGBTQ Task Force
PFLAG National
SAGE: Advocacy and Services for LGBT Elders
Transgender Law Center