

THE SUPREME COURT'S
DECISION OVER LGBT
WORKPLACE PROTECTIONS
COULD BE MOMENTOUS.
IN THE MEANTIME,
LAMBDA LEGAL CLIENT
MARK HORTON IS
TRYING TO HOLD ONTO
THE FARM.

FREEDOM AT WORK

Mark Horton has been looking forward to **October 8**—the date on which the Supreme Court heard arguments over whether a key provision of the Civil Rights Act of 1964, as written, protects LGBT people from discrimination in the workplace. He'd posted and commented about it passionately on social media.

For Horton, 62, the question before the court is personal. Three years ago, the sales executive, recruited through a head hunter, received a written job offer from a new employer, Midwest Geriatric Management (MGM). Horton accepted the offer and resigned from the job he held at the time. In a subsequent email

to one of MGM's owners, Horton mentioned his partner had been encouraging him to finish his MBA. Five days later, MGM cancelled its job offer.

It was a gut punch. The year before, Horton's husband, Al, 62, an air force veteran, had a horseback riding accident which required nine surgeries. With Al unable to work, Horton's new job would have been their sole source of income. And then it was gone.

"There are people who are much worse off, with their health or other situations, than what we have gone through," says Horton, who has the upbeat demeanor of an eternal optimist. Still, the effects of MGM's actions have

been devastating. With Horton on a steady but difficult track to find new work, the couple, who recently became great-grandfathers, have had to liquidate assets, sell belongings and even give beloved pets away.

According to a 2019 poll conducted by Quinnipiac University, 92 percent of Americans think it's wrong for an employer to fire someone based on sexual orientation or gender identity. Over 200 major companies signed a brief urging the Supreme Court to confirm that discrimination on the basis of sex—which Title VII of the Civil Rights Act prohibits—includes discrimination on the basis of sexual orientation and gender identity.



Where the Heart Is: Mark Horton and husband Dr. Alton Greenough on the 11-acre Illinois farm they've called home for the past 20 years. They've had to liquidate assets and give away pets, though horse Sparky and llamas Bandita and Tinkerbell remain.

And yet, the Trump Administration, through the Department of Justice, filed two briefs in the three Title VII cases, urging the Supreme Court to find that the federal prohibition on sex discrimination does not protect LGBT workers—in direct opposition to the EEOC, which has taken the position that it does.

“It is profoundly disturbing to have the U.S. Department of Justice urging the Supreme Court to read LGBT people out of laws that would otherwise protect us,” says Lambda Legal Chief Strategy Officer Sharon McGowan. “The Trump Justice Department is now deploying the kinds of anti-LGBT, and specifically transphobic, arguments that we have become accustomed to hearing from anti-LGBT extremist groups. These arguments take a scorched earth approach, and seek not only to wipe out protections for LGBT people but undermine the ability

of these laws to root out other forms of gender discrimination as well. The stakes here could not be higher.”

Lambda Legal has played an important role in advancing the argument that sex discrimination includes sexual orientation and gender identity discrimination. It was the basis for our landmark 2017 victory in U.S. Court of Appeals for the Seventh Circuit on behalf of an Indiana teacher terminated for being a lesbian (*Hively v. Ivy Tech Community College*). The argument also prevailed in the Second Circuit in



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Zarda v. Altitude Express in February 2018, a case that Lambda helped to argue. In *Zarda*, one of the three cases that will be heard by the Supreme Court, Lambda filed an amicus (“friend of the court”) brief explaining why sexual orientation discrimination is simply a form of sex discrimination already prohibited by federal law.

The question of whether sex discrimination laws protect transgender workers is under consideration by the Supreme Court as well. Here too, Lambda Legal laid crucial groundwork, securing a groundbreaking 2011 ruling on behalf of court employee Vandy Beth Glenn from the federal court of appeals, which held that firing an employee for being transgender was a form of sex discrimination. In one of the cases before the Supreme Court, in which a funeral home fired a funeral director for being transgender, Lambda Legal filed a separate amicus brief explaining why transgender discrimination claims should

be treated as sex discrimination claims as well.

Regardless of how the Court rules, expected sometime in 2020,

**FACT:
IN 2019,
ADULTS OVER
65 ARE TWO
TIMES MORE
LIKELY TO BE
WORKING OR
LOOKING FOR
WORK THAN
IN 1985.**

21 states and the District of Columbia have laws prohibiting discrimination on the basis of sexual orientation and gender identity. Since the Title VII deliberation is over the interpretation of legislation rather than constitutional law, the Equality Act, passed by the House in May—a landmark in its 25-year history—still remains an

important tool for either solidifying comprehensive federal protections, not just in employment but in housing, education and beyond, or correcting the Supreme Court should it reach the wrong answer in these cases. “Regardless of how the court rules, we need the Equality Act for full protection,” says Greg Nevins, who spearheads Lambda’s employment fairness project and who made successful arguments in *Hively* and *Zarda*. “We hope that the cases provide momentum for Congress to finally make it a reality.”

Horton, who continues to renew credentials and look for work, credits the challenges faced by LGBT people in the 60s, 70s and 80s for giving him the strength to endure. “I went through all of the stages,” he says. “I’ve been sad, angry, in shock. People ask me why I’m so active on Facebook, why am I always posting about this court date? Why is it so important? It’s my life.” ■ **—Angelo Ragaza-Webster**

ROUND-UP

Lambda Legal fights every day to advance and protect the rights of all LGBTQ people and everyone living with HIV. Here’s a snapshot of recent work your support made possible...

CITIZENSHIP AND FAMILY RECOGNITION

Lambda Legal and Immigration Equality are suing the U.S. State Department on behalf of two married gay couples, Derek Mize and Jonathan Gregg from Georgia, and Roe and Adiel Kiviti from Maryland, and their children for refusing to recognize the U.S. citizenship at birth of these children born abroad via surrogacy.

FOSTER CARE

Lambda filed a lawsuit against Health and Human Services and the state of South Carolina for a married lesbian couple, Eden Rogers and Brandy Welch, who were rejected by a government-funded foster care agency that refuses to license all same-sex couples as well as anybody who is not an evangelical Protestant Christian.

EQUAL SERVICE

Lambda Legal is representing Rachel and Laurel Bowman-Cryer, a lesbian couple denied service by an Oregon bakery. The Oregon courts rejected the bakery owners’ religion and speech defenses and awarded damages to our clients. The case is now back before the state appeals court after the U.S. Supreme Court ordered additional briefing.

ANTI-LGBT DA

Lambda filed an ethics complaint and is calling for the disbarment of District Attorney Craig Northcott, of Coffee County, Tenn. He publicly declared that he doesn’t file domestic assault charges if the violence occurred between same-sex spouses, but rather charges a lesser offense, because

he does not recognize “homosexual marriage” as legitimate. He has also said that he would not prosecute Tennessee county clerks who deny marriage licenses to same-sex couples.

FLIGHT DREAMS

“I wasn’t about to let them take away my dreams without a fight,” wrote our client, an airman who goes by Richard Roe for anonymity, in a September 18 op-ed in *The Advocate*. The Trump administration is trying to discharge him and other servicemembers from the Air Force because they have HIV. Lambda is fighting for Roe in the Fourth Circuit Court of Appeals: and expects to bring his case to a full trial on the merits next year.

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