

PLANNED LOCAL GOVERNMENT TITLE VII AMICUS BRIEF

A coalition of local jurisdictions, which we anticipate will include the City of Los Angeles and the County of Santa Clara, with the assistance of the Public Rights Project, are preparing an amicus brief on behalf of local governments in support of the employee-plaintiffs in a trio of cases before the United States Supreme Court concerning whether and how Title VII's ban on sex discrimination prohibits discrimination on the basis of sexual orientation or gender identity.

DEADLINE:

The deadline to sign on is **July 1** (the day before the brief is due to the printer), and the brief will be filed in the Supreme Court on July 3. We encourage you to take steps to secure approval to sign on now. An outline of the brief appears below and a draft amicus brief will be circulated on June 24. We are happy to discuss the contents of the brief in more detail with any interested jurisdictions. If your jurisdiction requires a draft brief before June 24 to obtain approval by July 1, please contact us.

ABOUT THE CASES:

The Supreme Court will consider how Title VII's ban on workplace sex discrimination protects LGBTQ people from discrimination on the basis of sexual orientation or gender identity in a trio of cases: *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC & Aimee Stephens*; *Altitude Express Inc. v. Zarda*; and *Bostock v. Clayton County* (see appendix for more details). The EEOC and many federal courts have recognized that anti-LGBTQ discrimination is a form of sex discrimination. The Court will now decide whether to revoke these non-discrimination protections.

PLANNED BRIEF:

Our amicus brief will share the unique perspective of local governments when it comes to protecting LGBTQ people in the workplace. The brief will have two components. *First*, a section will discuss discrimination against LGBTQ people, especially in the workplace, and the profound effect of discrimination on LGBTQ members' lives, and the community itself. Though LGBT people are most immediately and severely harmed by this discrimination, the damage resonates through local governments and the entire community. When LGBTQ people lose their jobs or sustain other workplace injury because of who they are – and then are unable to redress that injury in court – a local government, which provides the first safety net and essential services such as job training, social safety net, health care,

housing and the like, carries a significant burden. Our communities function best when all members can support themselves through employment, without the specter of discrimination preventing a targeted sector of the community from realizing their full potential.

Second, a section will detail the experience of local governments that have long protected LGBTQ people from discrimination in the workplace, and show that these municipalities' protection of LGBTQ people has benefitted and strengthened these communities. Certainly, protecting against these forms of discrimination has not caused any of the problems cited by the opposing side. To the contrary, we would like to illustrate for the Court that local governments that do *not* have these protections, or are housed in states that do not provide these protections, suffer; we would appreciate input from such jurisdictions.

HOW TO JOIN:

The deadline to sign on is **July 1**. Please email confirmation that your city, county, mayor, or county leader will sign on—with the signature block of the representing attorney—to:

- Jaime Huling Delaye, Deputy City Attorney in the San Francisco City Attorney's Office, at Jaime.HulingDelaye@sfcityatty.org;
- Jeremy Avila and Lorraine Van Kirk, Deputy County Counsels in the Santa Clara County Counsel's Office, at Jeremy.avila@cco.sccgov.org and lorraine.van_kirk@cco.sccgov.org; and
- LiJia Gong, Staff Attorney at the Public Rights Project, at lijia@publicrightsproject.org.

Here is a sample signature block:

JAMES R. WILLIAMS
County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San José, CA 95110
Attorney for the County of Santa Clara, California

REQUEST FOR INFORMATION:

We encourage your jurisdiction to provide any information that you think would be useful for the brief. We would particularly appreciate any anecdotes or data you might have that show that LGBTQ discrimination, especially in the workplace, harms LGBTQ people and imposes costs on our communities and our local governments. We would also appreciate specific examples that illustrate the impact of legal protections on LGBTQ people and our communities. For example, if you have anecdotes or data that show the benefits of such protections or the harms of lacking without them, please contact us.

CONTACT INFORMATION:

To ask any questions or provide the information requested above, please contact:

- Jaime Huling Delaye, Deputy City Attorney in the San Francisco City Attorney's Office, at Jaime.HulingDelaye@sfcityatty.org or (415)554-3957;
- Jeremy Avila and Lorraine Van Kirk, Deputy County Counsels in the Santa Clara County Counsel's Office, at Jeremy.avila@cco.sccgov.org and lorraine.van_kirk@cco.sccgov.org; and/or
- LiJia Gong, Staff Attorney at the Public Rights Project, at lijia@publicrightsproject.org at (301) 335-3828.

APPENDIX: CASE DESCRIPTIONS

- *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC and Aimee Stephens*, No. 18-107 (gender identity and expression)

Aimee Stephens worked as a funeral director at R.G. & G.R. Harris Funeral Homes. When she informed the funeral home's owner that she is transgender, the owner fired her. The Sixth Circuit ruled in March 2018 that when the funeral home fired her for being transgender and departing from sex stereotypes, it violated Title VII. Aimee was the same capable employee she had always been, and she was fired because her employer wanted her to look and act "like a man." That is sex discrimination.

- *Altitude Express Inc. v. Zarda*, No. 17-1623 (sexual orientation)

Donald Zarda, a skydiving instructor, was fired from his job because of his sexual orientation. The trial court rejected his discrimination claim, because then-existing Second Circuit precedent did not appreciate that sexual-orientation discrimination is necessarily a form of sex discrimination. In October 2014, Don died unexpectedly, but the case continues on behalf of his estate. In February 2018, the en banc Second Circuit ruled that discrimination based on sexual orientation is a form of discrimination based on sex that is prohibited under Title VII. The court recognized that when a lesbian, gay, or bisexual person is treated differently because of discomfort or disapproval that they are attracted to people of the same sex, that is sex discrimination.

- *Bostock v. Clayton County*, No. 17-1618 (sexual orientation)

Gerald Lynn Bostock was fired from his job as a county child-welfare-services coordinator when his employer learned he is gay. In May 2018, the Eleventh Circuit denied his appeal, refusing to reconsider a 1979 decision that excluded sexual-orientation discrimination from Title VII's ban on sex discrimination.