



A Perspective on LGBTQ Issues The Issues of Bostock and the Supreme Court Ruling on LGBTQ Health

by Jesse M. Ehrenfeld, MD, MPH, FAMIA, FASA

On June 15, 2020, the U.S. Supreme Court announced a historic ruling that has catapulted America and LGBTQ equality forward by guaranteeing equal opportunity for LGBTQ people in employment. The 6–3 *Bostock v. Clayton County* decision is likely to lead to more changes in courts at all levels across the nation in the coming weeks and months. I’ve been asked to give some perspective on the impact of the ruling, and what this means on the journey for complete LGBTQ freedom in America.

What We Won

The Supreme Court ruled that Title VII prohibits workplace discrimination based on sexual orientation or gender identity. This is an important change in that while Title VII has long prohibited sex discrimination, the Supreme Court has now interpreted the law more broadly to protect LGBTQ people. The ruling indicates that sex discrimination includes discrimination on the basis of sexual orientation or gender identity.

Because of this expansion of how sex discrimination is now interpreted in relation to Title VII, I expect that a number of other in-progress lawsuits around the nation will also soon provide important nondiscrimination protections in similar laws where sex discrimination is banned. Key examples include health insurance (Affordable Care Act), housing (Fair Housing Act), credit & lending (Equal Credit Opportunity Act), and higher education funding (Title IX). These are a few examples that are among dozens which are embedded in other state and federal laws which prohibit sex discrimination.

What We Didn't Win

There are a number of areas where LGBTQ people still lack any protection in federal law, because sex discrimination is still not prohibited by statute. Within the Civil Rights Act, Title II covers business services and public accommodations. Unfortunately, Title II does not provide any protection against discrimination on the basis of sex – and therefore is not likely to be interpreted as providing protections for discrimination against LGBTQ people.

There are also no protections for sex discrimination in Title VI, which is the federal law that bans discrimination across all federally funded programs and services. Again, since it has no prohibitions against sex discrimination, there are no current protections for LGBTQ people in the important areas covered by Title VI – which are effectively any program that receives federal funding (including thousands of state and local government-sponsored programs and activities).

It should be clear then why there is still an important, urgent need for federal legislation that codifies the *Bostock* decision and provides nondiscrimination protections to sex, sexual orientation, and gender identity. The Supreme Court ruling also does not provide any guarantee of equal opportunity for military service for transgender individuals – an issue near and dear to my heart ([see link](#)).

Finally, the ruling does not protect children from being subjected to conversion therapy, a practice that – while widely discredited by every major reputable medical society in the U.S. – still persists. Conversion therapy attempts to change an individual's sexual orientation, sexual behaviors, or an individual's gender. Underlying these techniques is the assumption that homosexuality and gender identity are mental disorders and that sexual orientation and gender identity can and should be changed. It is estimated that in the U.S. approximately 57,000 youths will receive these type of change efforts before they turn 18 years old.

What You Can Do

As physicians, health care professionals, educators, and trainees we must weigh in on these important issues around health equity and LGBTQ equality. Legislative action is needed to expand and codify protections against discrimination, and our voices are essential to this work.

Outside of legislative action we, as biomedical and population health researchers and health care providers, can continue to use science to push for progress. At the Advancing a Healthier Wisconsin Endowment, the statewide health philanthropy established by MCW, we invest in projects that are working to understand and address health disparities, including disparities among the LGBTQ population. We are striving to do more to build a healthier future for all marginalized populations, including LGBTQ people.

As educators, training the next generation of researchers and health care providers, we can insist on inclusive training standards. This is in fact the subject of a forthcoming perspective piece, in *Academic Medicine*, which will be published later this month.

As coworkers, supervisors, and mentors we must be visible allies and advocate for our LGBTQ colleagues. Add your [name](#) to the list of allies through the MCW Academic and Student Services webpage. Share with your entire departments the MCW employee resource groups available to support them, including the newly created MCW LGBTQ Resource Group (here are the [announcement](#) and [contact information](#)). Do everything you can to build a welcoming workplace where students, staff, and faculty can be their true selves each and every day.

We can take action today to make change. Otherwise, we may be waiting another hundred years for court cases to work their way through the judicial process.

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