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Analysis Shows Most States Lack Legal Protections for LGBTQ Workers

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I report on the fight for transgender equality and other LGBTQ issues.



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[The Associated Press](#) did an analysis of laws protecting lesbian, gay, bisexual and transgender workers from harassment and firing, and found something many straight Americans don't realize: About half of the country's estimated 8.1 million LGBTQ employees live in states where they are not protected by local job discrimination laws. That's according to the UCLA School of Law's Williams Institute.

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The A.P. found only 21 states have their own laws prohibiting job discrimination based on sexual orientation or gender identity, and fewer than 300 cities and counties protect LGBTQ workers with local ordinances. The news agency found large gaps where LGBTQ workers have no job protection at all, beyond what is listed in Title VII of the federal Civil Rights Act of 1964.

That's the question [now being considered by the U.S. Supreme Court](#): does federal law prohibiting discrimination "on the basis of sex" include people who claim discrimination based on their gender identity or sexual orientation?

"If the Supreme Court sides against LGBT employees, it means they have to be really cautious and careful about living their lives openly and proudly," attorney Jillian Weiss told the A.P. "They may encounter a lot of discrimination, and there may not be anything they can do about it." Weiss herself is transgender, and she specializes in LGBTQ discrimination cases.

Where is it worse? According to the news agency, about 35% of LGBTQ adult Americans work in the South, and they are particularly endangered. Out of 16 states defined by the U.S. Census Bureau as "The South," Maryland and Delaware are the only states that prohibit discrimination against gay and transgender workers.

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In fact, most Southern states have five or fewer cities or counties that offer legal protections for private-sector LGBTQ workers. There is none in South Carolina, at either the state or local level. North Carolina, Arkansas and Tennessee have actually passed laws that bar local governments from enacting their own anti-discrimination ordinances to cover LGBTQ workers.

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Because of those kinds of homophobic maneuvers, the A.P. reports only about 18% of adults in the South are protected against LGBTQ-based job discrimination.

Compare that with about 89% in Northeastern states, according to the Movement Advancement Project, an LGBTQ-rights think tank that tracks anti-discrimination laws.

Critics argue the federal Equal Employment Opportunity Commission overreached by extending Title VII protections to LGBTQ workers. The federal law doesn't mention sexual orientation or gender identity. While it prohibits job discrimination based on sex, Congress didn't consider that to include LGBTQ discrimination when the law was passed in 1964, said attorney John Bursch of the Alliance Defending Freedom.

Bursch represents a [Michigan funeral home that fired transgender woman Aimee Stephens](#) in 2013 in one of the cases before the Supreme Court. A decision is expected next year. Bursch argues

Congress would need to change the law for it to cover LGBTQ discrimination.

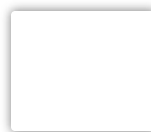
"No matter what you feel about the substantive issue of LGBT employment protections, everyone should be upset that a government agency... could punish someone based on a change in law they could not have anticipated based on its plain text and its interpretation for 50 years," Bursch said.

Journalist Katelyn Burns sat in the press gallery for the hearing on Tuesday, October 8, 2019. She wrote a first person account for [Vox](#), and noted that the justices appeared obsessed over questions about transgender people using bathrooms, even when they were hearing cases that had nothing to do with the trans community. Full disclosure: Burns (and this author) are trans.

“The first hour of arguments were over two cases in which gay men had allegedly been fired for being gay, and though neither case had anything to do with gender identity, that didn’t stop even liberal justices Sonia Sotomayor and Ruth Bader Ginsburg from bringing up the most obsessed-over of all trans issues — bathrooms and who gets to use the ones labeled ‘women’ and who gets to use the ones labeled ‘men,’ an argument often led by conservatives.”

Chief Justice John Roberts and Justice Samuel Alito raised the same concern about bathrooms. But the lawyer for the other side in the transgender case stuck to the law, Burns observed:

“ACLU attorney David Cole, attorney for Stephens, made one of the most compelling



arguments. He said that if you took the **Price Waterhouse case**, which deemed **sex stereotyping illegal** under Title VII, and the only fact you changed was making the plaintiff Ann Hopkins a transgender man, instead of cisgender woman, who refused to fit feminine stereotypes, you couldn't possibly reach a different decision than the one the previous court reached in her case. It's such a simple argument: You cannot discriminate against transgender people without imposing sex-based stereotypes based on how you expect people born male and female to present themselves and behave.”

In the end, the hearing ended, Burns said she and the other reporters filed out, and she made a beeline for the ladies room... where, of course, there was a line. Despite concerns by the newest associate justice, Neil Gorsuch, that a ruling that favored transgender workers might create “massive social upheaval,” Burns did what she went there to do, and observed: “As far as I know, civil society is still standing. No social upheaval was to be found.”

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