

# *Dormant Transgender Rights Cases See New Life in Supreme Court Ruling*

Transgender Americans such as Rachel Tudor have been fighting for their rights at work, school and housing for years. On Monday, the Supreme Court gave them hope.



By Erica L. Green

Published June 17, 2020 Updated July 24, 2020

**Sign Up for the Education Briefing** From preschool to grad school, get the latest U.S. education news. [Get it sent to your inbox.](#)

WASHINGTON — The only thing Rachel Tudor wants more than to be herself is to teach.

After transitioning from male to female in 2007, Ms. Tudor, a professor at Southeastern Oklahoma State University, applied for tenure to ensure she could do both. But her path was blocked by members of the university's administration, including one who wondered if she could be fired for her new gender identity. In 2011, she was out of a job.

Nine years later, the Supreme Court seemed to confirm on Monday that the university's actions violated Ms. Tudor's civil rights, when six justices ruled that Title VII of the Civil Rights Act extended to gender identity. Ms. Tudor's long-stalled federal employment suit was granted new life.

"When I read what they decided, I felt a page had turned not only in my life, but in the nation's, and in the history of civil rights," Ms. Tudor said in an interview on Tuesday. "I hope that as a result of the Supreme Court decision, no one else will have to live with the dilemma of having to choose between doing what they love and being who they are."

Dozens of cases, if not hundreds, like Ms. Tudor's are likely to be bolstered by the court's landmark ruling that employers cannot fire people based on their gender identity or sexual orientation. L.G.B.T.Q. rights lawyers are preparing to argue that the highest jurists in the land have erased all doubt that transgender people are protected from discrimination on the basis of sex.

"We've always known that our legal arguments are strong and should be accepted, but the reason it took decades for the courts to accept these arguments was because transgender people were so foreign to the courts," said Shannon Minter, the legal director of the National Center for Lesbian Rights, who is representing transgender military members suing the Trump administration over its transgender ban on service.

That ban is just one of many policies that the administration has pursued against transgender people, including a regulation completed on Friday that lifted civil rights protections for transgender patients seeking health care, the revocation of Education Department guidance that had told schools to respect students' gender identity in the use of bathrooms and a proposed rule forcing transgender homeless people into shelters according to their biology, not their identity.

"What the court did was send a strong rebuke to this administration's attempt to scapegoat trans people and treat them with less than basic dignity," Mr. Minter said.

Kristen Waggoner, the general counsel at the Alliance Defending Freedom, the Christian conservative organization that lost the Supreme Court case, said advocacy groups risked "weaponizing" the court's decision by applying it too broadly.

“The majority of the court made very clear that its opinion was limited to the employment context, and it would be wrong to read anything more into it,” Ms. Waggoner said. “And we will continue to insist, and I believe ultimately the court will find, that biology is not bigotry.”

Transgender legal advocacy groups have already begun to mobilize. Transgender Legal Defense & Education Fund, which has lawsuits pending in North Carolina and Georgia, said the ruling would “immediately benefit” its challenges to state government decisions to withhold insurance coverage of transition-related health care. The organization said that it would immediately file briefs explaining how the decision affected the outcomes of those cases and “expects to bring new suits around the country.”

Greg Nevins, the senior counsel and the director of Lambda Legal’s Employment Fairness Project, is representing a health care sales specialist who said his job offer from a St. Louis-based geriatric management company was withdrawn after the employer found out he is gay. The case is currently before the U.S. Court of Appeals for the Eighth Circuit in St. Louis, which, Mr. Nevins said, was likely to quickly send it back to the district court that initially dismissed it.

“We have to prove it up, but it’s going to be a lot easier,” he said.

Mr. Minter, who argued the landmark California same-sex marriage case before the state’s Supreme Court, is also more hopeful about the outcome of a fair housing case in Missouri.

He is representing a married lesbian couple who filed a lawsuit in 2018 claiming that they were rejected by a senior living community in St. Louis County because they are gay, in violation of the Fair Housing Act. A district court judge dismissed the case, ruling that her court “squarely held that ‘Title VII does not prohibit discrimination against homosexuals.’” The couple has an appeal before the Eighth Circuit Court of Appeals, which stayed the case pending the outcome of the Supreme Court ruling. Mr. Minter said he would soon ask that it be reactivated.

“If we win this case, it would be a huge weight lifted off people in our community who worry how they’re going to fare as they age,” he said. “This is a generation that’s already survived hostile climates, and it’s heartbreaking to think about them facing something similar at the end of their lives.”

Within hours of the Supreme Court decision, Ms. Tudor’s lawyer filed a brief to resume her case, which was put on hold more than a year ago pending the Supreme Court’s decision.

Ms. Tudor won her initial employment discrimination case — which had garnered support from the Obama administration’s Justice Department — against Southeastern Oklahoma in a 2017 jury trial.

Ms. Tudor’s application for tenure during the 2009-10 school year was approved by the department’s tenure committee and by the department chair. In more than a century, a tenure committee vote had never been vetoed by the administration — until hers. The lawsuit said that a human resources staff member had warned Ms. Tudor that the school’s vice president for academic affairs had asked whether she could be fired because the “transgender lifestyle” offended his religious beliefs. He was on the panel that initially denied her application and prevented her from applying again. She was terminated in May 2011 for failing to obtain tenure.

An Oklahoma jury not only determined that Ms. Tudor was a victim of sex discrimination, it awarded her \$1.165 million in damages to compensate for lost wages and emotional distress. But a judge decided not to reinstate her to her position, citing a hostile work environment, and reduced the damages to \$360,040.77.

“It went from being one of the highest moments of my life to one of the lowest,” she recalled.

The university is fighting Ms. Tudor’s appeal to get her job back on several grounds, including that she is not subject to protection under Title VII “because her status as a transgender person is not a protected class.”

“Twelve people in Oklahoma understood that this trans woman was discriminated against, and they should have their verdict back, and she should have her life back,” said Jillian Weiss, an employment discrimination lawyer who is representing Ms. Tudor.

Since she was denied her job, Ms. Tudor has applied for hundreds of tenure-track positions in English and the humanities, but she has not gotten a call back. She has taught at a community college, where she said she was not putting her doctorate in English, her master's in humanities and her bachelor's in multicultural studies to use. She said she wanted to go back to teaching courses like Native American literature and philosophy.

Ms. Tudor, 56, who is Native American, said she wanted to see her students and her friends on faculty. She spoke of her deep connection to the campus, which sits on land her ancestors in the Chickasaw Nation took refuge on after the Trail of Tears. She gets through the hardest times by reading positive course evaluations from her students and notes of encouragement that they and her colleagues had sent her over the years.

The administrators who denied her tenure have left the school, and it has reformed its nondiscrimination policy to include transgender faculty members and students. But Ms. Tudor said she did not want special treatment; she wanted normalcy.

"I miss doing a job that I was trained to do, that I want to do, and that by all measures that I'm very good at," she said.

***A correction was made on June 17, 2020: An earlier version of this article misstated the name of a Christian conservative group. It is Alliance Defending Freedom, not Alliance for Defending Freedom.***

---

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at [nytnews@nytimes.com](mailto:nytnews@nytimes.com). [Learn more](#)

**Erica L. Green** is a correspondent in Washington covering education and education policy. [More about Erica L. Green](#)

A version of this article appears in print on , Section A, Page 15 of the New York edition with the headline: New Life for Transgender Rights Cases in Wake of Supreme Court Ruling