

# Bostock v Clayton County's Affect on LGBTQ Rights

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## History of LGBTQ Law

In my module for Fair Employment Practices HRM458, I discuss Title VII of the 1964 Civil Rights Act, which includes protected classes "race, color, national origin, sex and religion." The law has recently changed as a result of U.S Supreme Court Decision Bostock v Clayton County effective July 2020.

Prior to many challenges through Title VII employment law, it is important to provide a history of LGBTQ advocacy and the law generally, including the 14th Amendment to the US Constitution and US historical social political context. The most major noteworthy event occurred during the Stonewall riots in 1969 where the police were raiding a gay bar run by the Mafia on liquor license charges in the Greenwich Village area of New York City.<sup>1</sup>

Patrons were being rough handled and a riot ensued which was unusual given that many people were afraid of repercussions from being recognized. Although the incident was reported in New York no new laws immediately resulted.

In the 1980s various LGBTQ right groups such as Act Up drew media attention to the HIV Virus and AIDS crisis, which focused on public health measures and education. Eventually new treatments were developed..

Next challenges to state Criminal Law through the 14th Amendment to the U.S. Constitution Bowers v Hardwick upheld criminalization of homosexuality in 1986 finding that the Georgia statute did not violate a fundamental right. This holding was overturned in Lawrence v Texas in 2003 as violating the liberty and privacy section of the Due Process Clause of the 14th Amendment.

Constitution ultimately Marriage Equality was decided under the 14th Amendment to the US Constitution.

In 2015 Obergefell v. Hodges legalized marriage in every state and required jurisdictions to accept marriage licenses from other states under the 14th Amendment Equal Protection and Due Process Clause.

### Title VII of 1964 Civil Rights Act

Title VII cases involving "sex" and orientation and identity have been relatively recent.

In PriceWater House Cooper v Hopkins the U.S. Supreme Court decided that discrimination based on gender stereotypes was prohibited under Title VII. This opened up precedent for cases that although not direct could be asserted by the LGBTQ community. Onacle v Sundowner Offshore Services held that sexual harassment may occur between members of the same sex based on gender, but not on the basis of sexual orientation.

## Bostock and Beyond

In June 2020 the court issued the determination in Bostock vs. Clayton County, Georgia under Title VII. Now, as with other protected classes, Title VII shields LGBTQ employees from discrimination in recruiting, applying, hiring, firing and promoting employees.

Justice Gorsuch, opined, "It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

In 2021 the Biden administration passed the "Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" applying Bostock to Housing and Education.

## References

<sup>1</sup>Walsh, Colleen Stonewall Then and Now (June 27, 2019) The Harvard Gazette URL <https://news.harvard.edu/gazette/story/2019/06/harvard-scholars-reflect-on-the-history-and-legacy-of-the-stonewall-riots/>