

MOTION BY SUPERVISOR SHEILA KUEHL

June 11, 2019

Signing onto an Amicus Brief on Behalf of Local Governments in Support of Plaintiffs Seeking Protection Under Title VII of the Civil Rights Act of 1964 Against Discrimination on the Basis of Sexual Orientation and Gender Identity

In its next term, the Supreme Court will determine whether the ban on workplace sex discrimination contained in Title VII of the Civil Rights Act of 1964 (Title VII) prevents discrimination on the basis of sexual orientation or gender identity. The County can take a proactive step to protect its residents from such discrimination by signing onto an amicus brief supporting the plaintiffs in the pending Supreme Court litigation.

Title VII prohibits employers from discriminating against any individual "because of . . . sex." In addition to being applicable to workplace discrimination based on biological sex, LGBTQ individuals and the Federal Equal Employment Opportunity Commission (EEOC) have successfully utilized Title VII to protect against workplace discrimination on the basis of sexual orientation and gender identity.

There is, however, a split of Federal authority concerning whether Title VII is appropriately applied in situations involving these types of discrimination. On April 22, 2019, the Supreme Court granted certiorari in three cases: *R.G. & G.R. Harris Funeral*

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Homes Inc. v. EEOC and Aimee Stephens, No. 18-107 (discrimination on the basis of gender identity and expression); *Altitude Express Inc. v. Zarda*, No. 17-1623 (discrimination on the basis of sexual orientation); and *Bostock v. Clayton County*, No. 17-1618 (discrimination on the basis of sexual orientation). The Supreme Court's ruling on these cases will resolve the uncertainty that exists and determine conclusively whether Title VII's ban on workplace sex discrimination protects against discrimination on the basis of sexual orientation or gender identity.

If the plaintiffs are unsuccessful in the Supreme Court, the ruling could cause substantial harm to the County and its residents. Discrimination against LGBTQ individuals has a profound effect on both the LGBTQ members' lives and the community itself. In addition to the immediate and severe harm LGBTQ individuals experience as a result of workplace discrimination, the damage also resonates through and directly affects the County, which provides a safety net and essential services for unemployed individuals. Removing the ability of LGBTQ individuals to seek redress for discrimination in court would have a profound negative impact on both the LGBTQ community and the County as a whole.

The City of San Francisco and Santa Clara County are drafting an amicus brief in support of the plaintiffs and have invited Los Angeles County to join as a party to that amicus brief. The brief will share the unique perspective of local governments when it comes to protecting LGBTQ people in the workplace. By signing onto the amicus brief, the County can take a proactive step to protect its residents from discrimination on the basis of sexual orientation and gender identity.

I, THEREFORE, MOVE that the Board of Supervisors direct County Counsel to join the amicus brief supporting the plaintiffs in the three above-cited cases seeking to confirm the applicability of Title VII of the Civil Rights Act of 1964 to sexual orientation and gender identity discrimination.

S: LM/Signing onto an Amicus Brief on Behalf of Local Governments in Support of Plaintiffs Seeking Protection Under Title VII of the Civil Rights Act of 1964 Against Discrimination on the Basis of Sexual Orientation and Gender Identity