



Melissa M. Carleton

Partner
Columbus
614.227.4846
mcarleton@bricker.com

Supreme Court's Title VII case has potential Title IX implications

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On June 15, 2020, the U.S. Supreme Court issued its long-awaited decision in [Bostock v. Clayton County, Georgia](#), Case No 17-1618. This landmark ruling interprets Title VII's prohibition against employers discriminating "because of ... sex" to also prohibit discrimination on the basis of sexual orientation and transgender status.

While recognizing that the concept of "sex" has evolved since the passage of the Civil Rights Act in 1964, the Court determined that when an employer considers an employee's sexual orientation or transgender status in making employment decisions, the employer is necessarily considering the employee's sex. The Court gave this example:

Imagine an employer who has a policy of firing any employee known to be homosexual. The employer hosts an office holiday party and invites employees to bring their spouses. A model employee arrives and introduces a manager to Susan, the employee's wife. Will that employee be fired? If the policy works as the employer intends, the answer depends entirely on whether the model employee is a man or a woman.

Decision at 11. The Court states plainly that "[a]n individual's homosexuality or transgender status is not relevant to employment decisions." Decision at 9. Note that

the Court explicitly did not consider how the religious exemption provision of the Civil Rights Act, found in [42 U.S.C. 2000e-1\(a\)](#) and limited in application to private religious institutions, might interact with this definition of sex.

As noted by the dissent, this decision is likely far-reaching in its implications, as the courts often look to the definition of “sex” as used in Title VII to inform how to interpret other statutes—including [Title IX](#) of the Education Amendments Act of 1972, which prohibits educational entities from discriminating on the basis of sex.

School districts, private schools, career-technical schools, colleges and universities should consult with legal counsel regarding potential policy implications of this decision.