

U.S. Supreme Court Refuses to Hear Employment Discrimination Appeal Case

OVERVIEW

On Monday, December 11, 2017, the Supreme Court of the United States refused to hear an appeal of *Evans v. Georgia Regional Hospital* case, that sexual orientation is not protected by Title VII of the Civil Rights Act.

TIMELINE OF EVENTS

- 2012-2013** Jameka Evans is employed as a security officer at Georgia Regional Hospital.
- October 2013** Evans is fired by Georgia Regional Hospital, claiming it was because she is a lesbian.
- March 2017** *Evans v. Georgia Regional Hospital*. The 11th Circuit Court refuses to hear the case, citing past precedent that Title VII does not cover sexual orientation in employment discrimination.
- April 2017** The 7th Circuit Court of Appeals rules in another case (*Hively v. Ivy Tech Community College of Indiana*) that Sexual Orientation is covered and protected by Title VII.
- July 2017** A three-judge panel of the 2nd Circuit Court of Appeals rules that Sexual Orientation is not protected by Title VII.

WHAT YOUR COMPANY NEEDS TO KNOW

Lambda Legal, which filed the appeal petition with the U.S. Supreme Court, suggests that by refusing to hear the case, the U.S. Supreme Court leaves disagreement among the lower Circuit Courts, as well as between federal agencies about what Title VII of the Civil Rights Act of 1964 covers; the Department of Justice also disagrees with the independent Equal Employment Opportunity Commission about whether Title VII covers employment discrimination based on sexual orientation.

WHAT YOUR COMPANY NEEDS TO KNOW CONT...

U.S. Supreme Court watchers and scholars have noted that there is precedent for the Supreme Court to refuse to take a request for appeal that is not fully resolved or concluded in the lower courts. It is still possible, if not likely, (depending on the resolution of the exhaustion of all appeals at the Circuit level) that the U.S. Supreme Court will be asked at some future date and will accept, to review the larger issue.

Lambda Legal essentially acknowledged this, saying,

"But this was not a 'no' but a 'not yet,' and rest assured that Lambda Legal will continue the fight, circuit by circuit as necessary, to establish that the Civil Rights Act prohibits sexual orientation discrimination," Greg Nevins, the group's employment fairness project director, said in a statement.

"... The public is on the right side of history; it's unfortunate that the Supreme Court has refused to join us today, but we will continue to invite them to do the right thing and end this hurtful balkanization of the right of LGBT people to be out at work."

WHAT YOUR COMPANY CAN DO

- Continue to stand with Out & Equal and the vast majority of Fortune 1000 companies that have long recognized that we are stronger—as companies and communities—when we can bring our whole selves to work. That no one should have to choose between a career they love and who they are.
- Send messages to your elected officials—particularly those of you who are corporate and resident constituents in Georgia—that this issue matters to you and that Georgia is better than discriminating against the LGBT community in the workplace.

WHO SHOULD ENGAGE AT YOUR COMPANY

- Your Employee Resource Groups (ERGs); HR/Diversity & Inclusion Department; Legal and Marketing teams to determine if there are opportunities to sign on to an Amicus Brief while this case goes through lower courts, or other ways to speak up and out against employment discrimination. Go further, and highlight your corporate culture and policies you have in place to recruit and retain the best and brightest – regardless of sexual orientation and gender identity.