

DESPITE LANDMARK SUPREME COURT RULING IN *BOSTOCK*, STATES MUST CONTINUE TO ADVANCE **EXPLICITLY LGBTQ-INCLUSIVE** NON-DISCRIMINATION LAWS AND POLICIES

In June of this year, the Supreme Court of the United States issued a landmark ruling in *Bostock v. Clayton County, Georgia* confirming that sexual orientation and gender identity discrimination are prohibited under the sex-based employment protections of Title VII of the Civil Rights Act of 1964.

This represents a major step forward for LGBTQ equality and has implications that ought to reach federal civil rights laws forbidding discrimination in all federal laws prohibiting sex discrimination, including education, health care, and housing.

Despite this significant progress on the federal level, it is important that state governments continue enacting comprehensive non-discrimination protections that are expressly inclusive of both sexual orientation and gender identity.

IMPLEMENTATION OF *BOSTOCK* BEYOND EMPLOYMENT

Opponents of LGBTQ equality have already begun executing legal strategies to attempt to stymie the full and proper implementation of *Bostock* beyond the federal employment context. Current federal civil rights laws contain sex-based protections in numerous areas, including education, housing, health care, credit, and jury service. Pursuant to the reasoning of *Bostock*, LGBTQ people ought to be protected under these federal laws as well. However, due to the resistance of anti-equality

officials and organizations, the full implementation of *Bostock* will likely require protracted litigation that could take years. While advocates continue the fight for *Bostock* to be correctly applied throughout all relevant federal civil rights law, state governments have the ability to immediately protect residents from discrimination in many areas beyond employment. States should exercise the fullest extent of their legal authority to clearly and holistically protect the LGBTQ community.

LIMITATIONS OF EXISTING FEDERAL NON-DISCRIMINATION LAW

Importantly, *Bostock* only impacts areas of federal law where sex discrimination is already explicitly prohibited. Existing federal statutes do not outlaw discrimination on the basis of sex in public spaces and services as well as all federally-funded programs. While advocates across the

country continue to push for the passage of the federal Equality Act, which would remedy these deficiencies and fully codify *Bostock*, states can, and should, extend vital protections to LGBTQ people including in public accommodations and taxpayer-funded programs.

STATE NON-DISCRIMINATION LAWS ARE ALWAYS BENEFICIAL

Even when LGBTQ-inclusive protections exist at higher levels of government, state legislation can provide many additional, invaluable benefits. This is why states and localities across the nation have enacted laws codifying and expanding protections that exist on the federal and state levels, respectively, for decades.

▪ SCOPE

Even if federal protections already exist, state non-discrimination laws and policies can provide more expansive protections for workers, visitors, and residents. For example, federal employment non-discrimination law only covers employers that employ fifteen or more people. This excludes many workers of smaller employers all across the country.

▪ ENFORCEMENT

States can and should create better, more accessible enforcement options for those who have been discriminated against.

▪ EDUCATION AND AWARENESS

The legislative process and implementation of state non-discrimination laws create significant opportunities for preventive anti-discrimination education and awareness. Additionally, state human rights commissions created by non-discrimination laws play an important role in regularly educating communities on the harms of prejudice and discrimination and the importance of diversity, equity, and inclusion.

▪ ECONOMIC STRENGTH

The enactment of strong, comprehensive, and fully-inclusive state non-discrimination laws is one of the strongest statements of a community's values. People in search of new places to live, visitors in search of leisure getaways, and businesses looking to begin or expand operations take heed. States that care enough to adopt inclusive protections position themselves to attract new residents, visitors, and businesses who value diversity, equity, and inclusion.

CONCLUSION

Although *Bostock* represents a watershed victory in the fight for LGBTQ-inclusive non-discrimination protections, it does not signal the end of the struggle for full, comprehensive legal equality. The decision itself directly applies to federal sex non-discrimination protections in employment and does not automatically apply to sex non-discrimination protections under state and local law. While the only correct implementation of *Bostock* requires immediate application to all other federal sex non-discrimination protections and ought to apply to state level sex non-discrimination laws, anti-equality opponents are doing everything they can to prevent this from happening. Even when

fully implemented, *Bostock* only applies to areas of existing law that expressly cover sex non-discrimination, which excludes important areas of life like access to public accommodations. State officials are uniquely positioned to engage the relatively quick-moving gears of state government to fill many of these gaps and offer LGBTQ people immediate comprehensive protections. Moreover, adopting protections that exist on higher levels of government provide opportunities for broader protections, more efficient and accessible enforcement mechanisms, preventative community education, and continued economic growth.