

IN LANDMARK DECISION, SUPREME COURT RULES LGBTQ EMPLOYEES ARE PROTECTED FROM JOB DISCRIMINATION

The United States Supreme Court recently expanded the definition of “sex” under Title VII of the Civil Rights Act of 1964, to include sexual orientation and gender identity. The decision was 6-3, with Justice Gorsuch writing the opinion for the majority. Chief Justice John Roberts joined Justice Gorsuch along with the four traditionally more liberal justices. Justice Samuel Alito wrote a dissent and was joined by Justice Clarence Thomas. Justice Brett Kavanaugh wrote a separate dissent.

The majority’s reasoning to expand Title VII to include sexual orientation and gender identity was a pragmatic one – the prohibition against sex discrimination in Title VII necessarily involves different treatment based on an individual employee’s sex, and there is no reason to consider sexual orientation and gender identity any differently. The dissenting justices argued that the majority’s opinion amounted to judicial legislation because the majority added concepts to Title VII. According to the dissenting justices, adding new concepts to Title VII should be left to the legislature.

The main takeaway is that the majority implicitly recognized that society has evolved away from the notion that sex is binary to the more modern understanding that sex and gender are fluid concepts. The Supreme Court’s opinion last week put the focus on the employer’s treatment of a specific employee and whether the employer treats the specific employee differently because of the specific employee’s sex instead of focusing on whether the employer treats the broader class of male and female employees equally.

The Supreme Court’s opinions bring federal anti-discrimination law in line with state anti-discrimination laws in half of the states, and numerous local ordinances that prohibit discrimination on the basis of sexual orientation or gender identity.