

Nos. 17-1618, 17-1623, 18-107

In the **Supreme Court of the United States**

GERALD LYNN BOSTOCK, *Petitioner*,

v.

CLAYTON COUNTY, GEORGIA, *Respondent*.

ALTITUDE EXPRESS, INC., *et al.*, *Petitioners*,

v.

MELISSA ZARDA, *et al.*, *Respondents*.

R.G. & G.R. HARRIS FUNERAL HOMES, INC., *Petitioners*,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent, and AIMEE STEPHENS, *Respondent-
Intervenor*.

**On Writs of Certiorari to the
United States Courts of Appeals for
the Eleventh, Second, and Sixth Circuits**

**BRIEF OF LOCAL GOVERNMENTS AND MAYORS AS
AMICI CURIAE IN SUPPORT OF THE EMPLOYEES**

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**INTEREST OF AMICI CURIAE
AND SUMMARY OF ARGUMENT¹**

Amici curiae are 66 cities, towns, and counties, as well as 28 mayors, representing more than 25 million Americans across the country. Amici run the gamut, from metropolises with anti-discrimination laws explicitly addressing sexual-orientation and gender identity (or “transgender status”) discrimination—like Los Angeles, California—to smaller cities without such express protections—like Belfast, Maine.² Despite the variety of amici, they have this in common: as the level of government closest to the American people, amici both observe and absorb the impacts of discrimination against lesbian, gay, bisexual, and transgender (LGBT) workers.

Amici have seen firsthand the benefits to the entire community when the full scope of sex-based discrimination is prohibited. Many amici have local laws and policies expressly prohibiting discrimination on the basis of actual or perceived sexual orientation or gender identity, or are located in states with such protections. Their experiences have shown that implementing such measures presents no serious

¹ Pursuant to Supreme Court Rule 37, the parties to this matter have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than the amici or their counsel made a monetary contribution to the preparation or submission of this brief.

² A complete list of amici is set forth in the appendix.

difficulties. To the contrary, in amici's experience, such laws and policies strengthen the entire community.

Amici have also seen that Title VII's longstanding promise that no one suffer discrimination in the workplace "because of ... sex," 42 U.S.C. § 2000e-2(a)(1), is critical to the health and prosperity of amici's communities. While victims of sex-based discrimination bear the primary psychological and economic costs of such discrimination, their local governments and communities also sustain harms. As providers of the primary safety net services in our nation, amici know from their own experience how workplace discrimination, in any form, strains taxpayer resources and threatens the vitality of local communities and economies.

ARGUMENT

I. Local Experience Shows That Prohibiting All Forms of Sex-Based Discrimination Benefits the Entire Community.

This Court has long recognized that governments have an interest "of the highest order" in eliminating discrimination. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). While all amici agree that Title VII's prohibition on sex discrimination includes discrimination because someone is lesbian, gay, bisexual, or transgender, in the absence of binding precedent from this Court, many amici have made that prohibition explicit in their local laws or policies. *See, e.g.*, City of Atlanta, Ga. Ord. Code §§ 94-112 *et seq.*; City of Chicago, Ill. Muni. Code § 2-160-030; City of Columbus, Ohio Ord. Code § 2331.03; City of Driggs,

Ind. City Code §§ 5-5-1 *et seq.*; Iowa City, Iowa Muni. Code §§ 2-3-1 *et seq.*; Kansas City, Mo. Ord. Code §§ 38-101 *et seq.*; City of Los Angeles, Cal. Muni. Code §§ 49.72, 51.00 *et seq.*; New York City, N.Y.C. Admin. Code §§ 8-102(23), 8-107(1)(a). In amici's experience, barring the full range of practices that discriminate on the basis of sex has presented no serious or special difficulties in their own operations or the community.

A. Non-discrimination laws and policies enhance amici's operations.

Local governments' operations form the backbone of American life, from fire protection to sanitation. But amici have not experienced difficulties in these operations as a result of policies prohibiting sexual orientation or gender identity discrimination. Instead, amici have found that enforcing non-discrimination policies improves their effectiveness and enhances their relationship with the community.

For example, the Los Angeles Police Department (LAPD), composed of nearly ten thousand sworn officers with a critical public-safety mission, has made clear the LGBT officers within its ranks "strengthen[the] organization and help[it] maintain safe, cohesive, and vibrant communities." LAPD, *The Los Angeles Police Department Affirms Support for Transgender Community*, July 27, 2017, *archived at* <https://perma.cc/TH29-U5JX>. In particular, the LAPD has expressed its "steadfast" support for transgender officers and employees. *Id.* It has issued a handbook setting out its non-discriminatory practices on issues central to its operations, including dress code, gender-

specific job assignments, and locker and bathroom use. Under these policies, transgender officers and employees take the gender-specific assignments, wear the uniforms, and use the facilities consistent with their gender identities, just as would any other officer. In shared spaces like locker rooms and bathrooms, any individuals who desire increased privacy are reasonably accommodated. Far from interfering with operations, the LAPD regards the recruitment of LGBT officers as sufficiently important to its mission that it has partnered with a community organization to plan a job fair for prospective transgender employees.

Likewise, the New York City Police Department (NYPD) has supported transgender officers, including facilitating transgender officers' transitions by providing uniforms and bulletproof vests that correspond to their gender identity. D. Artavia, *An LGBT Group Is Changing the NYPD From Within*, *The Advocate* (July 18, 2018), *archived at* <https://perma.cc/9HYR-3M75>. As early as 1993, the NYPD began "successfully integrating gay and lesbian officers into virtually every policing function." R. Blumenthal, *Gay Officers Find Acceptance On New York's Police Force*, *N.Y. Times* (Feb. 21, 1993), *archived at* <https://perma.cc/GVQ6-LFQ2>. Today, like the LAPD and police departments across the country, the NYPD recruits directly from the LGBT community. NYPD, *NYPD Pride* (June 15, 2016), <https://youtu.be/HYQWmRpbqkw>; *see also* A. Zimmerman, *Pittsburgh Police Looking to Expand LGBT Recruitment, Training*, *Pittsburgh City Paper* (Mar. 10, 2015), *archived at* <https://perma.cc/R5NJ-8NGF>; Fort Worth Police Dep't, *LGBT Recruiting - Fort*

Worth Police Department (July 15, 2014), <https://youtu.be/YTtrpqhhFvQ>; Baltimore Police Dep't, *GLBT Recruitment* (Sept. 16, 2013), <https://youtu.be/tOvfJAY4MbQ>.

Prohibitions against employment discrimination based on sexual orientation or gender identity have not, in amici's experience, caused particular negative impacts in these or other contexts. Established laws provide extensive and well-understood mechanisms for addressing genuine job qualifications and workplace requirements, as well as concerns about appropriate behavior in shared spaces. And reasonable employment policies that do not discriminate against LGBT individuals have been developed and are similarly well-understood. *See, e.g.*, Transgender Law Center, *Model Transgender Employment Policy*, archived at <https://perma.cc/SP7P-R37J>; The Williams Inst., *Model Employment Policies for Federal Contractors Related to Sexual Orientation and Gender Identity* (Oct. 2015), archived at <https://perma.cc/K6DV-PCZD>.

B. Communities nationwide have benefitted from such anti-discrimination protections.

More broadly, amici's experience is consistent with that of communities across the nation. There is little reason to believe that communities are disrupted when anti-discrimination laws are applied to LGBT people. *See, e.g.*, *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 528-29 (3d Cir. 2018) (highlighting lack of evidence of problems in accommodating transgender individual in school context); *Adams v. Sch. Bd. of St. John's Cty.*, 318 F. Supp. 3d 1293, 1314-15 (M.D. Fla. 2018) (same); *Carcaño v. McCrory*, 203 F. Supp. 3d 615,

624 -25 (M.D.N.C. 2016) (transgender students used restrooms and lockers based on gender identity without incident for years before state passed ban); *see also* A. Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 Sex Res. Soc. Policy 70 (2019) (noting empirical data confirm no increase in adverse incidents after allowing restroom and locker access based on gender identity).

Further, laws that explicitly prohibit sexual orientation or gender identity discrimination provide important benefits to the entire population. When LGBT people are able to support themselves financially on the same terms as any other Americans, free from discrimination based on who they are or whom they love, they are able to contribute to their communities at a higher level. And laws barring the full scope of sex- and gender-stereotyping discrimination benefit everyone in the community, not just its LGBT members.

Social science data confirm amici's experience that local anti-discrimination laws promote the prosperity and vitality of American communities. Among other things, these laws enhance innovation and economic opportunities. For example, researchers have found that state-level non-discrimination acts barring sexual orientation and gender identity discrimination result in higher rates of innovation, as measured by patents and patent citations. H. Gao & W. Zhang, *Employment Nondiscrimination Acts and Corporate Innovation*, 63 Management Science 2773 (Jun. 2016), *archived at*

<https://perma.cc/EY3F-83L8>. Researchers have also found a positive link between anti-discrimination laws protecting LGBT individuals and per capita gross domestic product. M.V. Badgett et al., Williams Inst., *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Nov. 2014), *archived at* <https://perma.cc/SCL7-Q9LP>. And the data consistently demonstrate “a positive relationship between LGBT-supportive policies or workplace climates and business-related outcomes.” M.V. Badgett, Williams Inst., *The Business Impact of LGBT-Supportive Workplace Policies* (May 2013), *archived at* <https://perma.cc/EL62-DFYA>.

Adopting specific protections against discrimination based on sexual orientation or gender identity has facilitated LGBT individuals’ participation in, and contribution to, their communities, enriching both the individual and the whole. And it has achieved that end with no real difficulties of implementation or administration, all while avoiding burdening taxpayer resources to remediate the harms of workplace discrimination against LGBT residents.

II. Workplace Discrimination—Including Sex Discrimination Against Lesbian, Gay, Bisexual, and Transgender People—Harms Local Governments.

Conversely, the absence of non-discrimination laws harms local governments. Local communities function best when their members can support themselves through employment, free from discrimination based on sex stereotyping or notions about how a person of particular sex should live, behave, or dress. This is the

fundamental commitment of Title VII. When that promise is denied through unlawful discrimination, the impact is far-reaching, borne foremost by the victims who experience that discrimination, but also by their communities and the local governments that serve them.

Workplace discrimination causes “terrible humiliation, pain and suffering, psychological harm and related medical problems,” H.R. Rep. No. 102-40(I) (1991), *reprinted in* 1991 U.S.C.C.A.N. 549, 604, and has a profound impact on its direct victims. After all, if a person “can earn enough money to pay for food and a place to live, all other obstacles and problems can be handled in time.” P. R. Frye, *The International Bill of Gender Rights vs. the Cider House Rules*, 7 Wm. & Mary J. Women & L. 133, 175 (2000), *archived at* <https://perma.cc/M7BF-DD9L>. It is thus not surprising that workplace discrimination inflicts deep economic wounds on its victims, imperiling access to housing, healthcare, and other basic needs. And local governments fill the gap when community members cannot provide for themselves, contributing to, providing, and administering a panoply of fundamental services for vulnerable populations, including medical services, mental health services, substance use services, income assistance, nutrition assistance, housing subsidies, services for foster children and youth, job training, and much more.

Although amici’s LGBT community members are no less qualified for employment than other Americans,³

³ In Santa Clara County, for example, lesbian and gay residents were more likely than other County residents to have a college

they and their families are already disadvantaged in securing basic needs due to various systemic barriers. So, for example, LGBT people see their limited access to medical care further diminished when, unemployed or underemployed, they lose their health insurance or become unable to afford out-of-pocket costs.⁴ And when many LGBT people—especially youth—already face

degree—but also more likely to live below 200 percent of the federal poverty level. Cty. of Santa Clara, Office of Public Health, *Status of LGBTQ Health*, 17-18 (2013), *archived at* <https://perma.cc/K9WE-5PEH>. Nationwide, transgender individuals have higher levels of educational attainment than other Americans, but are four times as likely to live below 200 percent of the federal poverty level. Center for American Progress and Movement Advancement Project, *Paying an Unfair Price, The Financial Penalty for Being Transgender in America*, 3 (Feb. 2015), *archived at* <https://perma.cc/5LJ5-VG8Q>.

⁴ LGBT individuals generally suffer from precarious access to health care. See Lambda Legal, *When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV*, 5 (2010), *archived at* <https://perma.cc/3U3Y-6GPX> (70% of transgender respondents and more than half of lesbian, gay, or bisexual respondents experienced discrimination in health services); G. J. Gates, Gallup, *In U.S., LGBT More Likely Than Non-LGBT to Be Uninsured* (2014), *archived at* <https://perma.cc/D3W7-J6M3> (LGBT people far more likely to be unable to afford medical care); S. Frazer & E.E. Howe, The Lesbian, Gay, Bisexual & Transgender Community Center, *LGBT Health and Human Services Needs in New York State: A Report from the 2015 LGBT Health and Human Services Needs Assessment*, 14 & 16 (2016), *archived at* <https://perma.cc/M6TW-PAMB> (one-third of LGBT respondents in New York reported having no or insufficient insurance coverage, and one-fifth reported being unable to cover healthcare costs).

housing instability, the denial of gainful employment only compounds the problem.⁵

Workplace discrimination causes an increased need among LGBT people for on-the-ground services that are typically the responsibility of local governments like amici. Like all Americans, when the bottom drops out, LGBT people turn to the safety net offered by government benefits and services. *See, e.g.,* C. Mallory et al., Williams Inst., *The Impact of Stigma and Discrimination Against LGBT People in Texas* 57 (2017), *archived at* <https://perma.cc/LCP2-5RR4>. Cities, towns, and counties are often the ones to step in, providing services like temporary and transitional housing or shelter, emergency hospital care for the uninsured, free and reduced-cost clinical health services, job training, and other social services. *See, e.g.,* New York City, *One New York: Health Care for Our Neighborhoods: Transforming Health + Hospitals* 6, 15, 23 -25 (2016), *archived at* <https://perma.cc/CN84-PU2D>; New York City, *Turning the Tide on Homelessness in New York City* 11 (2017), *archived at* <https://perma.cc/5QVC-MPMT>. The upshot is that local governments, and thus taxpayers, absorb substantial

⁵ LGBT people face systemic issues with housing. *See* Social Justice Sexuality Project, City Univ. of N.Y., *Intersecting Injustice: Addressing LGBTQ Poverty and Economic Justice for All: A National Call to Action*, 45-47 (L.A. Hunter et al., eds., 2018) (noting prevalence of discrimination against LGBTQ people by landlords, that many others find themselves without stable housing due to rejection by their families and communities, and that 40% of the nation's runaway or homeless youth identify as LGBT); Frazer, *supra*, at 3 (more than one-sixth of LGBT New Yorkers have experienced homelessness).

costs of workplace discrimination, including discrimination against the LGBT community. Given the limited resources of these governments, other local needs go unfulfilled.

Family stability is also at stake. Local governments like amici are on the front lines of foster care in this country, and demand for suitable parents regularly outpaces supply. Same-sex couples, who are six times more likely to raise foster children than different-sex couples, make an invaluable contribution to our nation's future by raising children who might otherwise have little or no family support. G.J. Gates, Williams Inst., *LGBT Parenting in the United States* (2013), *archived at* <https://perma.cc/E9HT-LSQB>. That contribution is threatened when LGBT parents are denied gainful employment and the means to support their families. And it would fall to local governments to meet many of the resulting needs of the children.

* * *

Some of amici have adopted local measures that explicitly prohibit discrimination based on sexual orientation and gender identity; others have not. But all amici agree that, with or without such measures in place, Title VII's ban on such sex-based discrimination has independent value. For example, retention of a nationwide prohibition on employment discrimination based on sexual orientation and gender identity addresses the reality that some people live in one jurisdiction but work in another while drawing on services from both. A consistent federal baseline follows them everywhere and prevents jurisdictions from shifting costs of discrimination to others. In addition,

retaining Title VII's ban on such discrimination ensures that victims of discrimination will not be left without a remedy because of local resource constraints. Finally, the EEOC applies unique expertise and plays a special role in preventing, investigating, and remedying discrimination under Title VII. In the end, there is no substitute for Title VII's longstanding promise that no one in America has to suffer discrimination in the workplace because of their sex.

CONCLUSION

The Court should affirm the orders of the Second Circuit and Sixth Circuit in *Zarda* and *Stephens* and reverse the order of the Eleventh Circuit in *Bostock*.

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July 3, 2019

APPENDIX

APPENDIX

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List of Amici

City of Alameda, California
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City of Austin, Texas
City of Baltimore, Maryland
City of Belfast, Maine
City of Boulder, Colorado
Town of Brighton, New York
Town of Carrboro, North Carolina
Mayor Pam Hemminger and the Town of Chapel Hill, North Carolina
City of Chicago, Illinois
City of College Park, Maryland
City of Columbus, Ohio
Culver City, California
City of Dallas, Texas
City and County of Denver, Colorado
City of Detroit, Michigan
City of Driggs, Idaho
City of Flint, Michigan
Township of Franklin, New Jersey
City of Gary, Indiana
City of Golden, Colorado
City of Grand Rapids, Michigan
Mayor Alex Morse and the City of Holyoke, Massachusetts
City of Iowa City, Iowa

App. 2

Kansas City, Missouri
King County, WA and Public Health – Seattle & King County
Mayor Andy Schor and the City of Lansing, Michigan
City of Las Cruces, New Mexico
City of Los Angeles, California
County of Los Angeles, California
Mayor Victor DeLuca and the Township of Maplewood, New Jersey
County of Marin, California
Mayor Dan Gelber and the City of Miami Beach, Florida
City of Minneapolis, Minnesota
City of New Rochelle, New York
City of New York, New York
City of Northampton, Massachusetts
City of Oakland, California
City of Olympia, Washington
City of Palm Springs, California
City of Philadelphia, Pennsylvania
Mayor Kate Gallego and the City of Phoenix, Arizona
City of Pittsburgh, Pennsylvania
Mayor Jorge O. Elorza and the City of Providence, Rhode Island
City of Sacramento, California
City of Saint Paul, Minnesota
City of Salem, Massachusetts
City of San Diego, California
City and County of San Francisco, California
City of San Leandro, California
County of San Mateo, California
County of Santa Clara, California
City of Santa Cruz, California
City of Santa Fe, New Mexico

App. 3

City of Santa Monica, California
City of Seattle, Washington
City of Southfield, Michigan
City of Tempe, Arizona
City of Torrance, California
Travis County, Texas
Washtenaw County, Michigan
City of West Hollywood, California
City of Wilmington, Delaware
Mayor Justin S. Flippen and the City of Wilton Manors,
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