

[A More Just Rhode Island: Transgender identity vs. the Supreme Court](#)

The policing of identity continues as the Supreme Court waits to hear three separate cases that will determine workplace protections for members of the LGBTQ+ community. At the heart of the matter is a Michigan funeral home that fired an employee who no longer identified as a cis male and intended to reflect this in the workplace. Following her dismissal, Aimee Stephens took her former employer to court, and in March 2018, the Sixth Circuit Court of Appeals ruled that she had been unlawfully terminated, citing that transgender people are protected under federal sex discrimination laws. The battle did not end there, and on October 8 R.G. and G.R. Harris Funeral Homes will challenge the ruling in the Supreme Court in what is set to be a monumental moment for civil liberties, one way or the other. As with similar individual cases carrying larger significance, R.G. and G.R. Harris Funeral Homes vs. Stephens and the others are set to lay the foundation that decides whether LGBTQ+ individuals are covered under the anti-discrimination laws of the 1964 Civil Rights Act.

But what does the reality look like behind the formality of legal proceedings? In Rhode Island, despite a vibrant and active LGBTQ+ community pushing to normalize the societal perception of gender and sexuality, the Transgender Survey of 2015 found that 23% of transgender individuals in the state reported “being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.” In addition, 15% reported “being verbally harassed at work because of their gender identity or expression,” while a similar number reported mistreatment based on gender identity, including “being forced to use a restroom that did not match their gender identity, being told to present in the wrong gender in order to keep their job, or having a boss or coworker share private information about their transgender status with others without their permission.”

Such extreme harassment has critical repercussions that linger long after the hatred or ignorance of the perpetrator has settled, not least on the psychological wellbeing of the abused. Joseph Wendelken is the public information officer at the Rhode Island Department of Health (RIDOH), and while Wendelken and RIDOH do not work in the field of workplace discrimination laws, the organization recognizes – and tries to mitigate – the effects of gender bias within professional settings.

“The principal focus on the RIDOH is health equity,” explains Wendelken. “We have a very active Sexual Orientation and Gender Identity workgroup at RIDOH that looks precisely at how discrimination in these areas affects health.

“Discrimination and access to employment opportunities,” he continues, “are two of the many

community level factors that we are working to address to build healthier communities and a healthier, more just Rhode Island.”

However, there can be only one winner when it comes to state vs. federal law, and that dichotomy is acutely felt by those on the receiving end. Jess Motyl-Szary of the Rhode Island LGBT Center is a vocal member of the community, as well as the reigning Ms. Bisexual Rhode Island. I asked Motyl-Szary how the Supreme Court hearings made her feel, and what the greater implications mean for the LGBTQ+ community within the United States as a whole.

“My feelings come from believing this is a country that values respect and freedom. If a person can be fired from their job for their gender, then we are not truly able to live in the country our founding fathers imagined when Thomas Jefferson wrote that we all are entitled to ‘life, liberty, and the pursuit of happiness.’

“That anyone believes discrimination is an acceptable reason for firing is what drives me anger,” she continues. “This is firing someone for their gender, which is not considered to be legal, plain and simple. To try to justify otherwise is to ignore the progress this country has made in truly treating all humans as equal.”

But Motyl-Szary’s fears don’t end there. With the possibility of a decision in favor of the employers, “it also will mean that there is a legal precedent in place that does not acknowledge a person’s transgender identity as valid. This has very serious implications and can easily lead to further legal discrimination.”

Further legal discrimination can mean many things, and with the policing of gender identity comes the real possibility of regulating other means of identification. “Charlotte” is a trans-woman who wishes for her identity to remain anonymous (“outside the family and a handful of close friends, basically nobody knows I’m trans anymore. Life’s too short to make this sort of thing your personality”), but was willing to speak to *Motif* on the pending Supreme Court decisions. Her tone is one of exhaustion.

“Honestly, I just keep this stuff at arm’s length these days; I don’t follow it anywhere near like what I used to. I just wanna get on with life, you know?” she explains. “I mean it’s pretty easy to be cynical about this anyway, ‘cuz of how shit the US is to the normal working population as a general rule, and ‘cuz of how Trump got to put absolute scum on the bench, too.”

Because for “Charlotte,” sexual expression and gender identity are common human traits, regardless of how they are presented, with physical forms and sexual behavior slotting-in alongside identity as a whole. “I’d always see [identity] in the wider context rather than just [sexual and gender] cases,” she explains. “Overall, the picture is not good for society as a whole.”

And what does society as a whole say? While there are strong pockets of support both within and outside the LGBTQ+ community, not everyone is convinced. In August, *The Federalist* ran a column arguing that, “gender identity [should] not be a protected class, but that it’s an imaginary construct of traumatized minds,” going on to contend that “becoming transgender hurts more than it helps” and “there is no such thing as gender fluidity.” These words were met with great applause in certain communities across the country, so I asked Jess Motyl-Szary whether the convictions voiced by *The Federalist* held any water.

“There is no reality to this,” she stated. “There is ample anecdotal and historical evidence of the transgender experience. The notion that this is not real is extremely dangerous. The suicide statistics from HRC [Human Rights Campaign; America’s largest civil rights organization working toward LGBTQ+ equality] show how harmful this way of thinking is to our youth.”

In the study cited by Motyl-Szary, the HRC reported that, “[m]ore than half of transgender male teens who participated in the survey reported attempting suicide in their lifetime, while 29.9% of transgender female teens said they attempted suicide. Among non-binary youth, 41.8% of respondents stated that they had attempted suicide at some point in their lives.”

Critical, divisive and, at times, violent and lonely, the landscape in which LGBTQ+ individuals find themselves is often far from rosy. While the courts hold the key to legal status, how do we, as a society, advance, normalize and accept fluid/non-cis gender identities regardless of the October 8 outcome? Almost everyone I spoke to said the same thing: The most important change is how the world thinks about gender. Instead of binary terms (such as “opposite sex”, as cited by Motyl-Szary) we should consider gender on a spectrum, using terms like “other sex” or “other gender.” This is a first step among many that need to be taken, but it will bring society a long way to loving and accepting everyone in our community.

As Motyl-Szary observes: “The United States Declaration of Independence states, ‘We hold these truths to be self-evident, that all men are created equal’ in reference to these rights, and to deny them in the form of discrimination is to deny the very foundation of our nation.”