

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-1618

GERALD LYNN BOSTOCK, PETITIONER,

v.

CLAYTON COUNTY, GEORGIA

No. 17-1623

ALTITUDE EXPRESS, INC., ET AL., PETITIONERS,

v.

MELISSA ZARDA, ET AL.

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURTS OF APPEALS
FOR THE ELEVENTH AND SECOND CIRCUITS

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in these consolidated cases as amicus curiae in support of the employers (respondent in No. 17-1618 and petitioners in No. 17-1623) and for divided argument, and requests that the United States be allowed ten minutes of argument time. The United States has filed a brief

as amicus curiae supporting the employers. The employers have agreed to cede ten minutes of argument time to the United States and thus consent to this motion.

These cases concern the scope of the protections in Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 253-266 (42 U.S.C. 2000e et seq.). As relevant here, Title VII makes it "an unlawful employment practice for an employer" who satisfies certain criteria "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1). The question presented is whether the prohibition against such discrimination "because of * * * sex" in that provision encompasses discrimination based on an individual's sexual orientation.

The United States has a substantial interest in the resolution of that question. The Attorney General enforces Title VII against public employers and the Equal Employment Opportunity Commission enforces Title VII against private employers. See 42 U.S.C. 2000e-5(f)(1). Conversely, Title VII applies to the federal government itself in its capacity as an employer. See 42 U.S.C.

2000e-16. Accordingly, the United States has a substantial interest in the statute's proper interpretation.

The United States has participated in oral argument as amicus curiae in prior cases involving the interpretation and application of Title VII. E.g., Fort Bend County, Texas v. Davis, 139 S. Ct. 1843 (2019); Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015); University of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338 (2013); Vance v. Ball State Univ., 570 U.S. 421 (2013); Thompson v. North Am. Stainless, LP, 562 U.S. 170 (2011); Ricci v. DeStefano, 557 U.S. 557 (2009); AT&T Corp. v. Hulteen, 556 U.S. 701 (2009); Crawford v. Metropolitan Gov't of Nashville & Davidson County, 555 U.S. 271 (2009); Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53 (2006); Arbaugh v. Y & H Corp., 546 U.S. 500 (2006). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

AUGUST 2019