

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

GERALD LYNN BOSTOCK, Petitioners,

–v–

CLAYTON COUNTY, GEORGIA, Respondents.

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, ET AL., Respondents.

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

**BRIEF OF AMICI CURIAE
THE MUSLIM AMERICAN LEADERS
IN SUPPORT OF EMPLOYERS**

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INTEREST OF AMICI CURIAE¹

Amici curiae are Muslim religious and business leaders (“Muslim American Leaders”). The members of the group are the Memphis Dawah Association, Dr. Talib Karim Muhammad Center, Avondale Islamic Center, Academy of Muslim Achievement, Attorney Damani Ingram and Imam Yahya Hunt.

The sole purpose of this group is to correct the record currently before the Supreme Court concerning the issue of whether or not the “moral values” of Muslim Americans and the best interests of the public at large are best served by allowing the current definition of sexual discrimination under Title VII of the Civil Rights Act of 1968 to stand.

SUMMARY OF THE ARGUMENT

Plaintiffs, “Employees,”² urge this Court to stretch and expand the interpretation of Title VII’s protected classes to include “sexual preferences.”³ Amici contend

¹ All parties have filed blanket consents as to amicus briefs, except for ACLU employees. By separate correspondence dated August 21, 2019, Mr. John Knight, counsel designated by petitioner in No. 17-1618, respondents in No. 17- 1623, and respondent Aimee Stephens in No. 18-107, consented to the filing of this brief. *See* Sup. Ct. R. 37.6.

² In the present combined cases before the Court, its noted that one employee is the Petitioner Gerald Lynn Bostock and the other employee, Donald Zarda, now deceased, is the Respondent.

³ Respondent, employee in *R.G. & G.R Harris Funeral Homes, Inc., v. Equal Employment Opportunity Commission, et. al.*, not only argues that Title VII should cover sexual preferences but also people who change their appearance, medically or otherwise,

that redefining Title VII in the manner sought by Plaintiffs would offend their values as Americans. Such an amendment by this Court would create a moral conflict upon amici's constitutionally protected Free Exercise. This reinterpretation would thus both violate the rights of those the statute currently protects and undue the balance of justice that was created when the 1968 Civil Rights Act was signed into law.

ARGUMENT

I. THE VALUES OF MUSLIM AMERICANS COMPEL THEM TO OPPOSE THE PRACTICE OF ENGAGING IN SEXUAL ACTIVITY WITH PEOPLE OF THE SAME SEX

On July 3, 2019, an Amici Brief was filed with the Court in the above caption cases by Muslim Bar Association of New York, et. al ("MuBANY"). This brief was prepared and/or supported by a coalition of organizations claiming to represent the interest of Muslim Americans.⁴

In their brief, MuBANY urges the Court to stretch and redefine the meaning of Title VII of the Civil Rights Act of 1968 to include people with a certain

temporarily or permanently, to present themselves as having a different biological sex.

⁴ A number of the organizations who signed on to this brief, such as the Oklahoma Chapter of the Council on American Islamic Relations, appear to have done so without the express or implied permission of their memberships or national governing bodies. *See* Muslim Matters, <https://muslimmatters.org/2019/07/31/were-muslim-groups-duped-into-supporting-an-lgbtq-rights-petition-at-the-us-supreme-court/>

“sexual preference.”⁵ Specifically, they assert that those who prefer to engage in sexual intercourse with people of the same sex should enjoy the same protections as those who face discrimination and other harms as a result of their race, color, biological sex, ethnicity, and religion.⁶ Further, MuBANY argues that a construction of Title VII that protects employees based upon their particular sexual preference or desire is consistent with their values. Moreover, MuBANY asserts that unless Title VII is in essence amended by this Court, Muslim Americans suddenly stand to face an increase in workplace discrimination. As further discussed below, Amici assert that this Court should reject these arguments as simply . . . false.

A. Muslim Americans Are Compelled by their Beliefs to Oppose the Practice of Intercourse with People of the Same Sex as an Evil

Americans who consider themselves Muslims have adopted a code of conduct that is based upon a deep faith and spiritual conviction in an ancient set of norms. While their faith is aspirational, Muslim Americans are at least committed to abiding by moral norms that have been codified for all time in two authorities, the Quran, a divine revelation from the Almighty himself, and the Hadith, quotes and observed conduct of the Prophet Muhammad (may the

⁵ Amici Brief of MuBANY.

⁶ Muslim Leaders note that all of these characteristics are biological with the exception of religion, which is also a preference, but one so important that the Founders enshrined the protection of this preference in the U.S. Constitution.

peace and blessings of Allah, the Almighty, be upon him).

The Quran clearly describes the practice of engaging in sexual relations with people of the same sex as an abomination. The commandment in the Quran against this practice is expressed in the verses about the ancient city Sodom and the prophet sent to them, Lut. Specifically, it says

And [Lut's] people came rushing towards him, and they had been long in the habit of practicing abominations. He said: "O my people! Here are my daughters: they are purer for you (if ye marry)! Now fear Allah, and cover me not with shame about my guests! Is there not among you a single right-minded man?" They said: "Well dost thou know we have no need of thy daughters: indeed thou knowest quite well what we want!" He said: "Would that I had power to suppress you or that I could betake myself to some powerful support." (The Angels) said: "O Lut! We are Messengers from thy Lord! By no means shall they reach thee! Now travel with thy family while yet a part of the night remains, and let not any of you look back: but thy wife (will remain behind): To her will happen what happens to the people. Morning is their time appointed: Is not the morning nigh?" [God said] "When Our Decree issued, We turned (the cities) upside down, and rained down on them brimstones hard as baked clay, spread, layer on layer, marked as being from thy Lord. And (such

punishment) is never far from those who do wrong!⁷

It should be noted that these verses mirror the language in all of the known ancient texts of the Almighty (in the monotheistic tradition).⁸

In fact, the Quran expressly spells out that sexual relations are only permitted within marriage and save another manner that is no longer generally practiced.⁹ Islamic legal tradition further prescribes that the validity of a marriage rests upon the groom being male and the bride being female.¹⁰

The act of engaging in sinful sexual relations is called *Zina*. According to Muhammad ar-Ramliyy, a well-known authority of Islamic jurisprudence from the 16th century, penetration of the anus is also a form of *zina*.¹¹

Moreover, ar-Ramliyy mentions that *zina* belongs to the category of sins called *kabaa'ir* (enormous sins) and that the adherents of every iteration of Islam (*i.e.*, including the original forms of Judaism, Christianity, and others) have agreed unanimously that it is a sin.¹²

⁷ Quran Chapter 11, verse 78-83

⁸ The Bible. Genesis 19:1-29, Leviticus 18:22, Leviticus 20:13, Romans 1:26-27.

⁹ Quran, Chapter 23, verses 5-6.

¹⁰ *al-Yaqut an-Nafees fi Madhhab ibn Idrees*, by Ahmad ash-Shatery.

¹¹ *Nihaayat al-Muhtaaj ilaa Sharh al-Minhaaj* by Muhammad ar-Ramli.

¹² *Nihaayat al-Muhtaaj ilaa Sharh al-Minhaaj* by Muhammad ar-Ramli.

In addition to unanimous condemnation from all past and present iterations of Islam, the act of *zina* also carries a stiff statutory punishment, to be administered by the state.¹³ While the root of the prohibition against same sexual relations is ancient, the punishment for actions are very much contemporary and found in modern penal systems across the world, in both Muslim and non-Muslim countries.¹⁴

Please note that individual Muslims are not empowered by the religion to carry out such punishments unless directed to do so by the state, and since the state, here in the U.S., follows its own penal codes, such a punishment will not occur on these shores. Nonetheless, the prescription of such a severe punishment is a clear sign of how vehemently Islam condemns this practice.

Muslim Americans have a responsibility to forbid people from committing sin and to refuse to cooperate in support of it. A construction of Title VII that protects employees on the basis of sexual preference is a means of supporting such lifestyles and therefore is not consistent with values of Muslim Americans.

¹³ For free persons, that punishment is either one hundred lashes and one lunar year of exile (if single) or stoning to death (if any other marriage status). *See Minhaaj al-Taalibeen* by Yahya an-Nawawi.

¹⁴ CNN reporting. April 3, 2019 <https://www.cnn.com/2019/04/03/world/same-sex-laws-map-intl/index.html>

B. Muslim American Values Do Not Support Changing Interpretation of Title VII Definition of Sexual Discrimination

It is completely contrary to Islamic values to support those who actively seek to engage in sexual relations with people of the same sex as they fortify their lifestyle. Rather, the duty of Muslim Americans as dictated by Islamic values is to counsel and assist those with same-sex inclinations to change or at least resist those desires. If those with these sexual preferences choose not to change or at least resist these desires, then the moral duty of Muslim Americans is to shun them, not offer them employment.¹⁵

These teachings are similar to those of the other monotheistic faiths. In speaking of these faiths, it is said in the Quran, “The disbelievers among the Israelites were cursed by the tongues of David and of Jesus, the son of Mary. This is because they sinned and transgressed. They **did not forbid** one another from the sins that they did. What a vile thing they used to do!” [emphasis added]¹⁶

Ultimately, this responsibility is a big part of the Muslim identity. God praised the Muslim community for holding this particular value, saying “You are the best nation that has ever been brought forth for the

¹⁵ Quran Chapter 5, verse 2: “Cooperate with one another in what is righteous or God-fearing, but do not cooperate with one another in what is sinful or hostile.”

¹⁶ Quran Chapter 5, verse 78-79.

benefit of mankind. You order good deeds, and you forbid sinful deeds, and you believe in God,”¹⁷

Prophet Muhammad (may the peace and blessings of Allah, the Almighty, be upon him) also warned Muslim communities in a Hadith, “Truly, if the people *see* sin and **do not forbid it**, then God is very close to sending a punishment that will encompass them all.”¹⁸

C. Muslim American Values Support Helping the Oppressed, But Islam Does Not Consider Those Being Punished for Sins as a Form of Oppression.

It is true that Islam advocates for protection of the weak and oppressed in general, but in light of explicit divine condemnation, unanimous scholarly agreement, severe statutory punishment, and past societal annihilation, it is clear that this protection does not extend to active homosexuals.

How should individual Muslims respond when confronted with active homosexuality? The Prophet Muhammad (may the peace and blessings of Allah, the Almighty, be upon him) said:

Whoever inclines towards doing a good deed, but doesn't do it, then Allah credits this as one complete good deed, and if he inclines towards a good deed then carries it out, Allah credits it as ten good deeds, up to seven hundred good deeds, up to many (more)

¹⁷ Quran Chapter 3, verse 110.

¹⁸ Musnad Ahmad.

multiples. And if he inclines towards doing a bad deed, but doesn't do it, then Allah credits this as one complete **good** deed, and if he inclines towards a bad deed then carries it out, Allah credits it as one bad deed.¹⁹ [emphasis added]

Thus, the responsibility of the one with homosexual inclinations is to resist this inclination. Doing so is deemed a good deed, and consequently is encouraged by the religion.

As for the responsibility of others, God's commandment is, "Cooperate with one another in what is righteous or God-fearing, but do not cooperate with one another in what is sinful or hostile. And fear Allah, truly Allah is severe in punishment."²⁰

II. CHANGING TITLE VII'S MEANING OF SEXUAL DISCRIMINATION WOULD TRANSFORM THE CIVIL RIGHTS ACT OF 1968 INTO AN UNJUST LAW FOR MUSLIMS AND OTHER PEOPLE OF FAITH

Title VII prohibits workplace discrimination on the basis of ". . . race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Amici note that of all these protected classes, all are biological with the exception of religion. A person's faith, like their sexual desires, according to Amici's religious beliefs, is rooted in their personal preferences and has no biological connection save the fact that many inherit the faith of their families.

¹⁹ Saheeh al-Bukhari 6491, Saheeh Muslim 131.

²⁰ Quran Chapter 5, verse 2.

So why did Congress single out religion for this noteworthy distinction? The answer to this question can be found deeply embedded in the founding of our nation and is enshrined in its founding documents, the U.S. Constitution.

According to Free Exercise Clause enshrouded in the Constitution's First Amendment, the government “shall make no law . . . prohibiting the free exercise of religion.” *Id.* This Free Exercise exemption from even religiously-neutral laws that nonetheless infringe on religious rights was upheld as late as 2014 by this Court in *Burwell v. Hobby Lobby*, 573 U.S. ___ (2014).

The preference of faith is also rooted in the Founders’ understanding that our nation’s laws should be an extension not a departure from “natural laws” or the law of the Creator.

As articulated by Foundation For Moral Law (“Moral Law”) in their Amici Brief in *R.G. & G.R. Harris Funeral Homes, Inc., v. Equal Employment Opportunity Commission, et. al*, Sup. Ct. Docket 18-107, the Framers intended for our nation of laws to be built “Upon these two foundations, the law of nature and the law of revelation . . . that is to say, no human laws should . . . contradict these.” *Id.* at 15 (quoting Sir William Blackstone). Also noted by Moral Law in the same brief was a parallel understanding of the relationship between man-made and the Creator’s laws as expressed by the leading proponent of the 1968 Civil Rights Act, Dr. Martin Luther King. *Id.* at 16. Dr. King states “An unjust law is a code that is out of harmony with the moral law.” *Id.*

Reinterpreting Title VII as plaintiffs advocate would have the effect of turning the 1968 Civil Rights

Act, a statue borne out of the great sacrifices (even deaths) of racial and religious activists, from a just to an unjust law.

III. REINTERPRETING TITLE VII TO COVER PEOPLE WITH CERTAIN SEXUAL PREFERENCES WOULD LIKELY HAVE THE EFFECT OF INFRINGING ON THE RIGHTS OF MUSLIM AMERICANS AND INCREASING WORKPLACE RELIGIOUS DISCRIMINATION FOR PEOPLE OF FAITH

As discussed above, Muslim Americans like other people of faith are compelled to enjoin what is right and oppose what is wrong. If this Court re-wrote the meaning of Title VII to include as a protected class not a person’s biological sex, but also the type of sex a person enjoys, it would create a moral crisis for Muslim American employers and other people of faith. This moral crisis could be played out in many ways, from Muslim Americans along with other people of faith being singled out and even terminated themselves from their employment due to their unwillingness to comply with the new, “unjust”, version of Title VII.

This is a crisis that this Court has sought to avoid even as recently in *Masterpiece Cakeshop, Ltd., et al. v. Colorado Civil Rights Commission et al.*, 584 U.S. ___ (2018). Specifically, this Court observed that a person’s religious objections to a person’s sexual preferences are “. . . protected views and in some instances protected forms of expression” *Id* at 13. On that instance, this Court reaffirmed its earlier ruling in *Obergefell v. Hodges*, 576 U. S. ___ (2015), that “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling

and so central to their lives and faiths.” *Id.*, at ___ (slip op., at 27).

This Court acknowledged that an unjust moral crisis would be created if it compelled a member of the clergy to perform a marriage between two people of the same sex or if compelled a baker to bake a cake celebrating and endorsing such a marriage when his faith forbids him from doing so. *Masterpiece Cakeshop* at 14. Similarly, if this Court adopts the position of Plaintiffs and their supporters such as MuBANY, it would create an unjust moral crisis for millions of employers and supervisors who deeply held religious beliefs compel them to oppose Plaintiffs’ lifestyle choices.

The year 1968, when Title VII was enacted and signed into law is considered by many historians as one of the most “politically violent”²¹ on record for our nation. It saw the deaths of Dr. Martin Luther King, Jr.; Senator Robert F. Kennedy; and countless others. The deaths of King and Kennedy resulted in rioting and unrest that ravaged the nation and led to untold economic losses. The same year, tens of thousands of young Americans engaged in a summer of protests outside the doors of this Court and throughout the nation to demonstrate against unjust laws and other government action. Title VII was intended to ease the nation’s collective pain in the days after Dr. King paid the ultimate price for his own moral convictions.

Dr. King and so many of his era, sacrificed to push the scales of man-made laws in the direction of just, divine, moral laws. As written, Title VII is one of our

²¹ See <https://www.history.com/news/1968-political-violence>.

nation's best examples of the synchronicity of man-made and moral law. Reinterpreting Title VII would be an undue transgression upon the legacy of Dr. King and all of the sacrifices that laid the foundation for the justice that was borne out of this statute, in its current form. Such a move would not only disrupt the scales of justice but lead to millions of Americans who are people of faith to experience new forms of discrimination as well as diminishment to their own dignity and worth.

Amici pray that this Court has the wisdom to keep the scales of justice in balance and stave off the efforts of those attempting to create yet another, new moral crisis for millions in our nation including Muslim Americans.

CONCLUSION

For the reasons set forth above, Amici urge the Court to affirm the judgment of the Eleventh Circuit and reverse the judgments of the Second and Sixth Circuits in favor of the Employers.

Respectfully submitted,

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