Legal Update Article

Moving Forward: District Court Denies Religious University's Motion to Dismiss Transgender Ex-Employee's Title VII Suit

By Michelle E. Phillips, Timothy Gorde & Jennifer E. Burgess

February 27, 2025

Meet the Authors

Michelle E. Phillips

(She/Her)
Principal
914-872-6899
Michelle.Phillips@jacksonlewis.com

Timothy Gorde

Associate
804-212-2850
Timothy.Gorde@jacksonlewis.com

Takeaways

- A former employee sued Liberty University alleging it violated Title VII when it fired her because of her transgender status.
- The case raises issues of first impression in the Fourth Circuit, and the district court rejected Liberty's arguments against the suit proceeding.
- Employers should anticipate more cases implicating the tension between accommodating individuals with religious objections to the LGBTQ+ community and protecting the rights of LGBTQ+ employees.

Related links

- Supreme Court: Title VII Protects LGTBQ+ Employees
- Groff Takes DeJoy: U.S. Supreme Court Changes Standard in Religious Accommodation Case
- EEOC Revises Guidance on Religious Discrimination in the Workplace

Article

The U.S. District Court for the Western District of Virginia denied Liberty University's motion to dismiss a federal lawsuit brought by a former employee who alleges that Liberty violated Title VII of the Civil Rights Act when it terminated her employment because she is transgender. *Zinski v. Liberty University, Inc.,* No. 6:24-cv-00041 (Feb. 21, 2025).

Liberty sought to dismiss the plaintiff's suit, relying on Sections 702 and 703 of Title VII; the Religious Freedom Restoration Act (RFRA); the ministerial exception; the freedom of expressive association protected by the First Amendment; and the ecclesiastical abstention doctrine. Addressing an issue of first impression within the U.S. Court of Appeals for the Fourth Circuit, the district court rejected all of Liberty's arguments and denied the motion. (The Fourth Circuit covers Maryland, North Carolina, South Carolina, Virginia, and West Virginia.)

Plaintiff's Allegations

Ellenor Zinski began working in Liberty's information technology department in February 2023. Her primary job duty was to assist students and staff with computer issues, for which she received positive performance reviews.

In July 2023, Zinski emailed Liberty's human resources department and informed it that she identified as a trans woman, was undergoing hormone replacement therapy, and

Jennifer E. Burgess
(BER-jis • She/Her • Jen)
KM Attorney
312-442-6104
Jennifer.Burgess@jacksonlewis.com

Related Services

Corporate Diversity Counseling
Employment Litigation

intended to change her name. One month later, Liberty terminated Zinski's employment, stating that Liberty "does not and will not permit employees … to transition away from one's birth gender," because doing so violated Liberty's religious beliefs. Zinski filed suit, raising a sex discrimination claim under Title VII.

District Court's Decision

Recognizing that this case presented issues of first impression within the Fourth Circuit, the district court thoroughly analyzed Liberty's arguments. It concluded that none of the arguments warranted dismissing Zinski's complaint.

Title VII

Relying on Sections 702 and 703 of Title VII, Liberty argued that the court could not hold it liable under Title VII. Section 702 provides exceptions to the anti-discrimination provisions of Title VII, stating those provisions do not apply "to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities." Liberty further argued that the holding in *Bostock v. Clayton County,* 140 S. Ct. 1731 (2020), which extended Title VII's protections to prohibit discrimination on the basis of sexual orientation and gender identity, was inapplicable here because its decision to terminate Zinksi's employment was rooted in Liberty's religious beliefs and not Zinski's gender identity.

The district court rejected this argument. After analyzing the text of Title VII and the legislative history, the court looked to *Bostock,* which announced a "but-for causation" standard for sex discrimination claims. Under this framework, a court asks if "but for the employee's sexual orientation or gender identity, would the employer have made the same decision?" The court concluded that an employer could not convert a sex discrimination claim into a religious discrimination claim solely because the employer's decision was religiously motivated in part.

Addressing the apparent tension between Liberty's religious beliefs and Zinski's existence as a transgender person, the court held:

> Sections 702 and 703 must be narrowly construed so as to permit discrimination only on the basis of an employee's espoused religious belief or practice, such that religious employers have no license to discriminate on the basis of any other protected class. Where a religious employer discriminates on the basis of any other protected class in a but-for fashion, a statutory violation occurs, even if the decision was religiously motivated.

Religious Freedom Restoration Act

The court made short shrift of Liberty's argument that the RFRA foreclosed Zinski's claim. The RFRA states, "Government shall not substantially burden a person's exercise of religion." Because the statutory text only allows suit against a governmental entity, the court followed the vast majority of courts to hold that RFRA does not apply to suits between private parties.

Ministerial Exception

Liberty next argued that it should avoid liability under the "ministerial exception," a First

Amendment-based doctrine that prevents courts from interfering with the employment relationship between a religious institution and its ministers. *See Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,* 565 U.S. 171 (2012). The court noted that Zinski did not engage in any teaching, had limited contact with students, and had no religious duties. In contrast, most cases implicating the ministerial exception involved teachers who provide religious values and instruction to students, even if they teach secular subjects. The court held that because Zinski did not meet the definition of "minister" set forth by the U.S. Supreme Court, the ministerial exception did not apply here.

Freedom of Association

Liberty then argued that the First Amendment's protection of freedom of expressive association should shield it from Title VII liability for refusing Zinski's continued employment.

As this presented an issue of first impression for Fourth Circuit courts, the court looked to cases from the Second and Third Circuits to synthesize a three-part test. First, the court considered whether Liberty engaged in expressive association. Second, it analyzed "whether the state action at issue significantly affected [Liberty's] ability to advocate its viewpoints." Third, the court weighed the state's interest against the burden imposed on the expressive association.

After concluding that Liberty did engage in expressive association, it concluded that Zinski's continued employment "would not significantly burden Liberty's ability to maintain its views and associate for its expressed purposes." This minor burden, the court held, did not supersede the government's legitimate interest in eliminating employment discrimination.

Ecclesiastical Abstention

Finally, the court rejected Liberty's reliance on the ecclesiastical abstention doctrine, which prohibits civil courts from engaging in extensive inquiry into religious law and polity. Here, the court was able to conduct its analysis without analyzing scripture or religious doctrine and made no conclusions with respect to Liberty's interpretation of the same. Further, Zinski held no spiritual functions as part of her employment. Therefore, the court found the doctrine inapplicable.

What Employers Can Expect

Liberty is likely to appeal the case as the plaintiff's claim raises several questions of first impression in the Fourth Circuit.

This case highlights the tension between the rights of religious individuals to practice their faith and the right of LGBTQ+ persons to not be subject to discrimination based on their gender identity, sexual orientation, or any other protected characteristic.

Companies can expect an increase in religious objections to such company policies as mandatory training that covers gender identity and sexual orientation, pronoun policies, and restroom and locker room usage. Religious accommodation claims have increased and, at the urging of the Trump Administration, the Equal Employment Opportunity Commission will pursue more of these claims. Employers must engage in an interactive dialogue with employees who request religious accommodations and balance these

needs with the business imperative of treating LGBTQ+ employees with respect and dignity.

If you have any questions or need assistance to ensure compliance with your obligations under Title VII or state discrimination laws, please contact one of our attorneys.