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Why Gay Rights Is a Republican Value

Conservatives support freedom, which is why they should oppose job discrimination against L.G.B.T.Q. Americans.

By Kenneth B. Mehlman
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This week, more than 2,000 signatories — members of Congress, women's rights groups, businesses — submitted nearly 50 friend-of-the-court briefs to the Supreme Court in three pending cases involving L.G.B.T.Q. rights.

The cases, which the court is likely to take up next session, consider whether Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, prohibits discrimination against L.G.B.T.Q. people. The signers reflect what a broad cross section of Americans overwhelmingly believe: Such discrimination is wrong.

Polls consistently show a high percentage of Americans think that firing people or denying them jobs or promotions because they are L.G.B.T.Q. is wrong and that it should be prohibited under our nation's civil rights laws. A full 92 percent said so in an April poll by Quinnipiac University. That's in part because basic protections against job discrimination are fundamental to core American values of fairness.

This isn't a new idea, or a partisan one. Abraham Lincoln wished for all workers to have an equal chance to acquire property and to gain wealth. "When one starts poor, as most do in the race of life," he said, "free society is such that he knows he can better his condition."

Ronald Reagan had a similar vision, dedicating himself to reducing government spending, lowering taxes and improving opportunities for individuals to build successful lives for themselves. "One of the greatest contributions the United States can make to the world is to promote freedom as the key to economic growth," he said.

Members of the Republican Party are heirs to the legacies of Lincoln and Reagan. Our party should support people's ability to reap the rewards of their labor — to earn a fair and honest living, and to work where they want to work. We are the party of economic freedom, personal liberty and limited governmental interference.

This year, more than two dozen Republican lawmakers in over a dozen states sponsored L.G.B.T.Q. nondiscrimination legislation; and many Republicans refused to pass discriminatory, anti-L.G.B.T.Q. legislation in places like Texas, Georgia and South Dakota.

That's why I'm proud to file a friend-of-the-court brief that makes the conservative argument for these protections. I'm in good company, alongside 34 other high-ranking Republicans, including former members of Congress, political advisers and former longstanding members of Republican administrations. Our brief argues that interpreting Title VII's plain text in accordance with conservative textualist principles makes it clear that the law bans discrimination against L.G.B.T.Q. workers.

Title VII prohibits discrimination based on an individual's most basic characteristics, including race, "sex" and other factors. Lower courts and agencies have often ruled that discrimination based on who someone loves means discrimination based on sex. If a man is fired for having a picture of his husband at his desk, but the woman beside him with a picture of her husband is not, that's discrimination based on sex.

Courts have come to the same conclusion regarding transgender status. If an employer hires someone it initially perceives to be a woman, but then dismisses that employee for being a transgender woman, that's also discrimination based on sex. Neither sexual orientation nor transgender identity can be accounted for without considering one's sex.

In the cases pending before the Supreme Court, Don Zarda was a skydiving instructor in New York with a deep love for his sport who was fired after disclosing his sexual orientation to a female customer in an effort to make her more comfortable with the intimacy of a tandem sky-dive. Aimee Stephens was fired from her job as a funeral director in Michigan after opening up to her employer about being a transgender woman. And Gerald Bostock was dismissed from his job as a child welfare services coordinator in Georgia after his employers learned he is gay.

Such treatment is unethical and un-American, and the Supreme Court has the opportunity to read the clear language of Title VII and affirm that it is illegal. No matter whether the justices take a textualist or practical interpretation, the answer is the same.

Businesses are ahead of the government in this — almost 90 percent of Fortune 500 companies prohibit discrimination against L.G.B.T.Q. workers. They know that to live up to our American ideals and to remain competitive, we must attract and retain the strongest work force possible and hire people who are the most qualified, hardworking and talented.

No matter political party or personal beliefs, treating everyone fairly is something we can all get behind.

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