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### District Court Rejects Religious University's Defenses Against Transgender Ex-Employee's Title VII Suit

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A former employee who sued Liberty University for terminating her because she is transgender survived Liberty's challenge - for now - after the U.S. District Court for the Western District of Virginia denied Liberty's motion to dismiss. Liberty argued the employee's case must be dismissed because, as a religious institution, it was entitled to terminate the employee because it objects to transgender identification on religious grounds. The court disagreed, finding that Title VII does not summarily shield religious organizations from civil liability in employment decisions.

#### The District Court's Decision

Liberty terminated Zinski, an IT helpdesk employee, after she informed HR that she identified as a trans woman. In her termination letter, Liberty explained its decision was "because of her transition from her sex/gender assigned at birth to the sex/gender for which she identifies," which violated its religious beliefs and doctrinal policy. Zinski then sued for sex discrimination in violation of Title VII.

Liberty moved to dismiss Zinski's claims on the grounds that, as a religious institution, it could not be held liable under the religious exemption in Title VII, the Religious Freedom Restoration Act (RFRA), the ministerial exception, the First Amendment freedom of association, and the ecclesiastical abstention doctrine. In sum, Liberty argued that its termination of Zinski was religiously motivated and thus permissible religious discrimination, rather than impermissible sex discrimination.

The court quickly rejected Liberty's defenses under the ministerial exception and RFRA, as Zinski's role as an IT assistant could not be characterized as "ministerial," and RFRA only allows suit against a governmental entity. The court also found the ecclesiastical abstention doctrine, which prohibits courts from inquiring into religious law, inapplicable, as its decision was entirely grounded in secular reasoning without regard to underlying religious doctrine.

Liberty's arguments under Title VII and the First Amendment, however, required further scrutiny. While the court agreed that Liberty engaged in expressive association by seeking to require employees to comply with its religious values, the court was not persuaded that compliance with Title VII burdened Liberty's ability to associate for purposes of its religion. The court concluded that Zinski's mere presence at Liberty would not force the organization to "send a message" that it accepts being transgender, as she had limited interactions with students and no influence on its programming. Acceptance of a member alone, the court held, cannot shield a religious organization against anti-discrimination laws on First Amendment grounds.

The more difficult question was the extent to which Title VII exempts religious organizations from scrutiny in employment decisions. Title VII exempts religious institutions from the prohibition against discrimination on the basis of religion. In practice, courts interpret these statutory exemptions to allow religious organizations to terminate or refuse to hire an individual whose conduct or beliefs they find to be inconsistent with the organization's beliefs. The district court recognized these exemptions show a conflict between eradicating employment discrimination and allowing religious organizations the freedom to employ a workforce that conforms to their beliefs.

In reconciling Title VII's competing purposes, the court concluded that the exemption for religious organizations must be construed narrowly. While Title VII protects religious organizations who base relevant hiring decisions on religious preference, "Title VII does not confer upon religious organizations a license to make those same decisions on the basis of race, sex, or national origin." Because Liberty admitted that Zinski's gender identity was the "but-for" cause of her termination, it could not evade liability under a narrow reading of Title VII's religious exemptions. To conclude otherwise, "would allow employers to achieve all manner of discrimination under the banner of religion." Liberty has appealed this decision to the Fourth Circuit Court of Appeals.

## Takeaways

The case comes as courts—and employers—are increasingly forced to balance simultaneously protecting LGBTQ+ employees under federal, state, and local laws and accommodating religious objections related to the LGBTQ+ community. The rising number of religious discrimination and accommodation cases, particularly those related to vaccination requirements and mandatory employment training, have also required courts to grapple with how to reconcile neutral employment decisions and policies with seemingly capacious protections for religious employees.

It is unclear whether the Fourth Circuit will accept Liberty's appeal and use the opportunity to clarify the outer bounds of Title VII. What is clear is that employers will continue to face competing interests in ensuring compliance with anti-discrimination laws. If you have any questions or need assistance in navigating this complex and changing area of the law, please contact your Vorys attorney.