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In a groundbreaking, 8-3 decision, the full Seventh Circuit Court of Appeals has ruled that workplace discrimination based on sexual orientation violates federal civil rights law.

The court found that such discrimination is a form of sex discrimination in violation of Title VII of the Civil Rights Act of 1964, the federal law prohibiting employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.

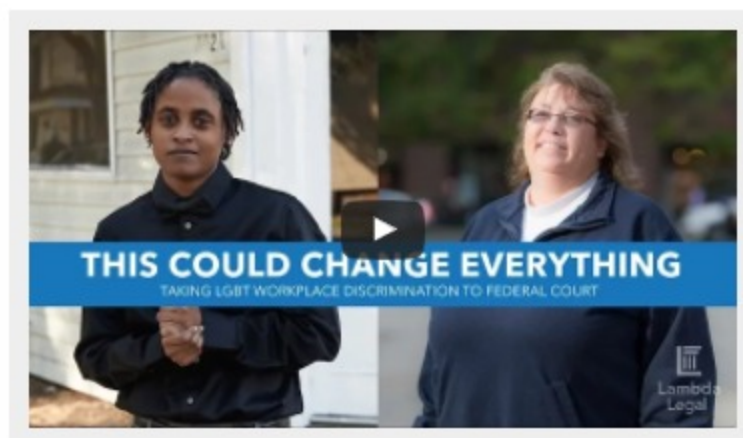
The decision — which came in Lambda Legal’s case on behalf of Kimberly Hively, an instructor at Ivy Tech Community College who was fired for being a lesbian — makes the Seventh Circuit the highest federal court to reach this conclusion and could change the national landscape of employment law for LGBT people.

In August of 2014, Kimberly Hively sued Ivy Tech Community College, arguing that the school violated Title VII of the Civil Rights Act of 1964 when it denied her full-time employment and promotions after she had been seen kissing her then-girlfriend in the parking lot of the school. The trial court dismissed Hively’s lawsuit and held that Title VII — which prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion — does not protect employees from antigay discrimination.

In April 2015, Lambda Legal appealed to the Seventh Circuit Court of Appeals, seeking reversal and reinstatement of Hively’s complaint. A three-judge panel ruled against Hively in July 2016, but Lambda Legal requested a rehearing of the case by the full panel of the Seventh Circuit — all eleven judges. On October 11, 2016 that request was granted, and in November, Greg Nevins, Employment Fairness Program Director for Lambda Legal, appeared once again, to ask that the court overturn its prior decisions limiting the reach of Title VII.



Lambda Legal client Kim Hively



“In many cities and states across the country, lesbian and gay workers are being fired because of who they love. But, with this decision, federal law is catching up to public opinion: ninety-percent of Americans already believe that LGBT employees should be valued for how well they do their jobs—not who they love or who they are. Now, through this case and others, that principle is backed up by the courts,” said Greg Nevins, Employment Fairness Program Director for Lambda Legal. “This decision is gamechanger for lesbian and gay employees facing discrimination in the workplace and sends a clear message to employers: it is against the law to discriminate on the basis of sexual orientation.”

In the opinion filed today, Chief Judge Diane Wood writes:

*“... Hively represents the ultimate case of failure to conform to the female stereotype (at least as understood in a place such as modern America, which views heterosexuality as the norm and other forms of sexuality as exceptional): she is not heterosexual. Our panel described the line between a gender nonconformity claim and one based on sexual orientation as gossamer-thin; we conclude that it does not exist at all. Hively’s claim is no different from the claims brought by women who were rejected for jobs in traditionally male workplaces, such as fire departments, construction, and policing. The employers in those cases were policing the boundaries of what jobs or behaviors they found acceptable for a woman (or in some cases, for a man).”*

“Love won again today,” said Lambda Legal CEO Rachel B. Tiven. “Kim Hively loved her job teaching math at Ivy Tech Community College, but she was fired because she is a lesbian. Today the Seventh Circuit said clearly: that’s wrong. Our movement is about love and pride. Pride in yourself and your work, and the freedom to love and to be treated equally. Even in these challenging times, Lambda Legal continues to win in court and make our country better.”

“I have been saying all this time that what happened to me wasn’t right and was illegal. Now I will have my day in court, thanks to this decision,” said Kimberly Hively. “No one should be fired for being lesbian, gay, or transgender like happened to me and it’s incredibly powerful to know that the law now protects me and other LGBT workers.”