

Society and the Law: Moving and changing or motionless and stale?

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Op-Ed



Figure 1 - U.S. Supreme Court

The law moves and changes.

We learn more details, we understand the wording better, or even go through changes in our society where we learn that some laws aren't just or fair. But, maybe something goes wrong, or someone or something denies someone their rights. That is when an institution like the Supreme Court steps in. But, what if they have to step in again and again, what happens then?

The [Supreme Court first assembled in 1790](#), just fourteen years after the establishment of the United States. They hear and decide on [hundreds of cases each year](#), a small portion of the cases that are submitted. These cases range in subject, and they have changed since our society and culture has advanced, right? Well, that's a little more complicated.

Sexuality is personal, but that hasn't stopped it from becoming a political and legal issue, and some of the cases that appear before the supreme court show that. There have been many cases revolving around [sexuality](#), [sex-based discrimination](#), and [issues based on sex](#), and many of these cases were supposed to have shaped laws and attitudes in the United States. Many of the cases that are argued even have to do with the same laws, amendments, and rights.

But, if these laws are supposed to protect the rights of American citizens, why have so many cases, spanning decades, been argued based on the same laws and rights, over and over again?

[Joseph Oncale](#) experienced same-sex sexual harassment in the workplace and the lower courts deemed that same-sex sexual harassment just does not exist. In order to show that Oncale did indeed experience sexual harassment, Oncale's lawyer would have to show that the harassment experienced by Mr. Oncale was *because* of his sex. His lawyers sought out to show that [Title VII](#), which protects citizens from discrimination based on race, national origin, sex, and religion, does indeed protect citizens from same-sex discrimination as well.

The Supreme Court decided that the harassment Joseph Oncale experienced was harassment even though his abuser was a man.

That case was decided in 1998.

In 1998 the Supreme Court found that sexual harassment could happen based on sex, because of the protections of Title VII.

And then, just a few short months ago, they heard [yet another case](#) but this time revolving around the experiences of the late Don Zarda and discrimination based on sex, more specifically sexual orientation. Mr. Zarda was a tandem skydiving instructor. In this particular instance, when preparing to tandem skydive with a female client, he disclosed that he was gay in an attempt to make his client feel more comfortable about being strapped to him.

Then, he got fired. [For coming out](#).

The lower courts sided with his employer, Altitude Express. They argued that Title VII does not protect against discrimination based on sexual orientation. Mr. Zarda's team argued that the language of Title VII, "because of sex", also includes sexual orientation.

This case was argued in tandem with another case. [Gerald Bostock](#) had almost the exact same experience in Georgia. So, not only is the language of some of the most important legislation in the United States, The Civil Right Act, still being disputed today, these circumstances happened enough for two cases to be argued *at the same time*. There are no decision for these cases yet.

There has always, and hopefully will always, be a reason for an institution like the Supreme Court to listen, serve, and act. Yet twenty years later these laws are still having to be argued. They are still people, companies, and employers who are not following them.

I was taught in school of the superiority of our system, of a system that is built to serve its people. And maybe, for a moment in 1998, we believe that there is justice, and that the law does make sense. Then, nearly twenty years later another case, albeit different circumstances, has to dissect the law yet again to figure out who it protects.

Maybe this is naïve, but is it too much to ask that we, as American citizens, are protected under these laws. Is it too much to ask that these laws are upheld and respected so that two decades later those laws are still treated that way?