Baldwin v. Department of Transportation: Is Sexual Orientation Already Protected by Title VII?

I. OVERVIEW

David Baldwin ("the Complainant") worked for the Federal Aviation Administration ("the Agency") as an air traffic controller at the Miami International Airport.[1] In October 2010, he was selected for a temporary Front Line Manager (FLM) position at the Agency's Miami facility.[2] The Complainant alleged that, during the course of his employment in Miami, his supervisor made various negative comments about his homosexuality, including stating on several occasions that the Complainant "was a distraction in the radar room" upon hearing mention of the Complainant's male partner.[3] Despite these working conditions, the Complainant desired a promotion to a permanent FLM position, a fact he claimed was known to management.[4] In June 2012, the Agency issued a vacancy announcement for a permanent FLM position; however, the Complainant did not apply as he understood that he would be automatically considered for the position.[5] The Agency offered the permanent FLM position to another candidate, but ultimately did not fill

1. Baldwin v. Dep't of Transp., EEOC Doc. No. 0120133080, at 1 (EEOC July 16, 2015).
2. *Id.* at 2.
3. *Id.*
4. *Id.*
5. *Id.*

the vacancy.[6] The Complainant alleged that he was not selected because he is gay.[7] The Agency asserted that no discrimination occurred as the position was never filled.[8]

After learning in July 2012 that he was not selected for a permanent FLM position, the Complainant contacted an Equal Employment Opportunity (EEO) counselor in August, and then in December 2012 filed a formal complaint on the bases of sex and reprisal.[9] The Agency conducted an investigation and gave notice to the Complainant of his right to request a hearing before an EEOC Administrative Judge or to receive an immediate Final Agency Decision (FAD) based on the findings of the investigation.[10] The Complainant requested a FAD, which the Agency issued, dismissing his complaint on the grounds that it had not been raised in a timely fashion pursuant to an Equal Employment Opportunity Commission (EEOC) requirement that complainants contact an EEO counselor within forty-five days of the date of the action alleged to be discriminatory.[11] The Agency reasoned that the forty-five-day limitation period started to run in October 2010, the date when the Complainant was first hired for a temporary FLM position.[12] Furthermore, the FAD indicated that the Agency would process the Complainant's sex discrimination claim according to its internal procedures regarding sexual orientation discrimination and not through the EEO complaint process.[13] The Complainant appealed to the EEOC on both the timeliness of his contact with the EEO counselor and the EEOC's jurisdiction over his sex discrimination claim.[14] The United States EEOC *held* that the Complainant's initial contact with an EEO counselor was timely, and that a complaint alleging discrimination based on sexual orientation in violation of Title VII of the Civil Rights Act of 1964 lies within the Commission's jurisdiction. *Baldwin v. Dep't of Transp.*, EEOC Doc. No. 0120133080, at 5-6 (EEOC July 16, 2015).[15]

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6. *Id.* at 3.
7. *Id.* at 2.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* at 5.
14. *Id.* at 3.
15. The Commission did not reach the merits of the original complaint in its decision. Rather, it addressed only the issues of timeliness and jurisdiction as raised by the Complainant in his appeal.

II. BACKGROUND

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin.[16] Specifically, the act provides that it is unlawful to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex."[17] Title VII further requires that "[a]ll personnel actions affecting [federal] employees or applicants for employment shall be made free from any discrimination based on . . . sex."[18] While the statute does not explicitly include sexual orientation,[19] the Supreme Court of the United States has held that employers may not "rel[y] upon sex based considerations" or take gender into account when making employment decisions.[20] Thus, a sexual orientation claim made under Title VII may be analyzed the same as any other sex discrimination claim, by evaluating whether an employer relied on sex-based considerations or took gender into account in their hiring process.

A. The EEOC Generally: Jurisdiction, Procedure, and Deference

Title VII created the Equal Employment Opportunity Commission.[21] The EEOC consists of five members appointed by the President and confirmed by the Senate, for five-year terms.[22] No more than three members may belong to the same political party.[23] The EEOC is tasked with enforcing federal employment discrimination laws by insuring that federal agencies and departments comply with EEOC regulations.[24] To further this objective, the EEOC provides technical assistance in adjudicating EEO complaints, monitors federal affirmative action programs, develops and distributes training materials, provides guidance to Administrative Judges presiding over EEO complaint hearings, and adjudicates appeals from administrative decisions.[25]

Additionally, the EEOC has the authority to investigate complaints of discrimination against private employers who are covered by the

16. 42 U.S.C.A. § 2000e-2(a)(1) (2000).
17. *Id.*
18. 42 U.S.C.A. § 2000e-16(a) (2000).
19. 42 U.S.C.A. § 2000e-(2)(a) (2000).
20. *See* Price Waterhouse v. Hopkins, 490 U.S. 228, 239, 241-42 (1989).
21. 42 U.S.C.A. § 2000e-4(a) (2000).
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*

provisions of Title VII.[26] Most businesses with at least fifteen employees are subject to the law.[27] Where an EEOC investigation reveals discrimination, the EEOC may attempt to settle the claim or to file a lawsuit on behalf of the complainant.[28] However, the EEOC does not file lawsuits in all cases where it finds discrimination.[29]

The EEOC's regulations provide that complainants bringing discrimination claims must do so "within 45 days of the date of the matter alleged to be discriminatory."[30] The forty-five-day limitation period begins at the time the complainant should reasonably suspect discrimination.[31] Moreover, where timeliness is an issue, the burden of obtaining sufficient information to support a reasoned determination of timeliness always falls on the agency making the determination.[32]

While actions by some administrative agencies have the force of law, decisions by the EEOC are not binding on any courts.[33] Rather, deference to the EEOC must be analyzed under the Supreme Court's ruling in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*. *Chevron* set forth a two-step analysis that courts must use to determine whether to defer to agency interpretations of the law.[34] First, a court must determine "whether Congress has directly spoken to the precise question at issue."[35] Thus, if a statute unambiguously answers a particular question, the court must give force to Congress' legislative command, and the analysis ends there.[36] However, if the intent of Congress is unclear, the court must determine "whether the agency's answer is based on a permissible construction of the statute."[37]

In *United States v. Mead Corporation*, the Supreme Court clarified that *Chevron* deference may be applied only "when it appears that

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26. *About the EEOC: Overview*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, www.eeoc.gov/eeoc/ (last visited Nov. 1, 2015).

27. *Id.*

28. *Id.*

29. *Id.*

30. 29 C.F.R. § 1614.105(a)(1) (2010).

31. *See, e.g.*, Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120093169, 2014 WL 2999934, at *7 (EEOC June 27, 2014); Howard v. Dep't of the Navy, EEOC Request No. 05970852, 1999 WL 91430 (EEOC Feb. 11, 1999); Ball v. U.S. Postal Serv., EEOC Appeal No. 01871261, 1988 WL 921053 (EEOC July 6, 1988), *req. for recon. den.*, EEOC Request No. 05980247 (July 15, 1988).

32. Williams v. Dep't of Def., EEOC Request No. 05920506, 1992 WL 1374923, at *3 (EEOC Aug. 25, 1992).

33. *E.g.*, E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244 (1991).

34. Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842 (1984).

35. *Id.*

36. *Id.*

37. *Id.* at 843.

Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority."[38] The Court noted that delegation may be demonstrated in a variety of ways but specifically cited an "agency's power to engage in adjudication or notice-and-comment rulemaking" as two clear ways to show that Congress explicitly delegated authority to an agency.[39]

However, even where an agency's interpretive choice is not accorded *Chevron* deference, courts may still be persuaded under the older standard of *Skidmore v. Swift & Co.* In *Skidmore*, the Court stated that "[t]he weight of such a judgment . . . will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, all those factors which give it the power to persuade, if lacking power to control."[40]

B. Links Between Sex Discrimination and Sexual Orientation Discrimination

In *Los Angeles Department of Water & Power v. Manhart*, the Court held that employment practices that treat an employee "in a manner which but for that person's sex would be different" violate Title VII.[41] In *Manhart*, female employees of a municipal department were required to make greater contributions to its pension fund than male employees on account of females having a greater average longevity.[42] The Court reasoned that while women as a class do in-fact live longer than men, the statutory text makes discrimination against *individuals* unlawful based, *inter alia*, on the *individual's* sex.[43] Courts have adopted this analysis of Title VII in the sexual orientation context.[44]

Lesbian, gay, bisexual, and transgender (LGBT) employees may also bring claims based on associational discrimination. To date, courts have also held that Title VII's prohibition of race discrimination includes discrimination based on association with persons of different race.[45] However, the theory of associational discrimination is not limited to race

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38. 533 U.S. 218, 226-27 (2001).
39. *Id.*
40. 323 U.S. 134, 140 (1944).
41. 435 U.S. 702, 711 (1978).
42. *Id.* at 702.
43. *Id.* at 708.
44. *See, e.g.*, Hall v. BNSF Ry. Co., No. 13-2160, 2014 WL 4719007 (W.D. Wash. Sept. 22, 2014) (holding that a male employee denied spousal benefits for his husband alleged Title VII discrimination, where female employees married to males were treated more favorably).
45. *See, e.g.*, Holcomb v. Iona Coll., 521 F.3d 130, 138 (2d Cir. 2008).

as the Supreme Court stated in *Price Waterhouse v. Hopkins* that Title VII "on its face treats each of the enumerated categories exactly the same."[46] Thus, an employee discriminated against for their sexual orientation may allege sex discrimination based on their associations with others of the same sex.

Title VII also proscribes discrimination based on gender stereotypes.[47] In *Price Waterhouse*, a female employee of an accounting firm successfully alleged sex discrimination where she was passed over for a promotion and later told she would have a better chance of making partner if she acted more femininely.[48] The Court underscored that in Title VII, Congress intended to eliminate unequal treatment of men and women based on gender stereotypes.[49] Following *Price Waterhouse*, courts have held that lesbian, gay, and bisexual employees may bring Title VII claims if they can demonstrate that they were treated unfairly because their appearance, behavior, or mannerisms were inconsistent with their employer's standards of masculinity or femininity.[50]

C. Reconciling Past Decisions with Present Legal Evolutions

Because Title VII does not explicitly prohibit sexual orientation discrimination, courts have gone so far as to suggest that sexual orientation discrimination is permissible under current law,[51] reasoning that Congress had a "traditional notion of sex in mind" when it passed Title VII.[52] However, the Court has sometimes taken a broader reading of Title VII, holding that conduct not explicitly addressed by the statute is still actionable.[53]

Similarly, some courts have taken Congress's failure to pass subsequent legislation protecting sexual orientation as a sign that Title

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46. 490 U.S. at 243 n.9; *see also* Whidbee v. Garzarelli Food Specialties, Inc., 223 F.3d 62, 69 n.6 (2d Cir. 2000) ("[T]he same standards apply to both race-based and sex-based hostile environment claims."); Williams v. Owens-Illinois, Inc., 665 F.2d 918, 929 (9th Cir. 1982) ("[T]he standard for proving sex discrimination and race discrimination is the same."); Horace v. City of Pontiac, 624 F.2d 765, 768 (6th Cir. 1980) ("Both cases concern Title VII cases of race discrimination, but the same standards and order of proof are generally applicable to cases of sex discrimination.").

47. Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989).

48. *Id.* at 263.

49. *Id.* at 251.

50. *See* Smith v. City of Salem, 378 F.3d 566, 574 (6th Cir. 2004) (holding that an employer engaged in sex discrimination where he discriminated against a male employee because he acted effeminately, because the discrimination would not have occurred but for the employee's sex).

51. *See, e.g.*, Dawson v. Bumble & Bumble, 398 F.3d 211, 217 (2d Cir. 2005).

52. DeSantis v. Pac. Tel. & Tel. Co., 608 F.2d 327, 329 (9th Cir. 1979).

53. *See* Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 79, 78-80 (1998).

VII should be read to exclude claims based on sexual orientation discrimination.[54] However, this contention is erroneous in light of the Supreme Court's holding in *Pension Benefit Guar. Corp. v. LTV Corp.* that "[c]ongressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change."[55]

III. COURT'S DECISION

A. Timeliness of EEO Counselor Contact

In the noted case, the EEOC examined federal statutes and prior Commission decisions to evaluate whether the Complainant made timely contact with an EEO counselor, finding that he did.[56] The EEOC held that the Agency did not meet its burden of proving that the Complainant was untimely in making contact with an EEO counselor.[57] It reasoned that the date of the incident giving rise to the complaint was in dispute, despite the FAD's determination that the date of the alleged discrimination was the Complainant's staffing to a temporary position in October 2010.[58] The EEOC further held that it was not reasonable for the Agency to argue that the Complainant knew or should have known at the time of his temporary appointment that he would not ultimately be selected for a permanent FLM position, especially not as a result of discrimination.[59] Thus, the EEOC found that the Complainant could only have reasonably suspected he was discriminated against in July 2012, after he learned that he was not hired permanently, making his August contact with an EEO counselor within the required forty-five-day limitation period.[60]

B. EEOC Jurisdiction over Complainant's Sex Discrimination Claim

In the noted case, the EEOC examined federal jurisprudence, including numerous Supreme Court decisions, and discussed legislative intent to explain how existing law prohibiting sex discrimination in

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54. *See* Bibby v. Phila. Coca Cola Bottling Co., 260 F.3d 257, 261 (3d Cir. 2001).
55. Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990).
56. Baldwin v. Dep't of Transp., EEOC Doc. No. 0120133080, at 3-5 (EEOC July 16, 2015).
57. *Id.* at 3.
58. *Id.*
59. *Id.* at 4.
60. *Id.* at 4-5.

employment necessarily applies to sexual orientation discrimination.[61] The EEOC concludes its analysis by reconciling past interpretations of the law, with its present decision.[62]

First, the EEOC held that "sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex."[63] The EEOC further explained this basic premise with an analogy to an employee's display of a spouse's photo on their desk.[64] If a lesbian employee is suspended for displaying a photo of her female spouse when a heterosexual male employee is not suspended for the same action, the lesbian employee is penalized because she is a woman, and therefore has been discriminated against on the basis of sex.[65] The EEOC found support for this holding in several district court opinions.[66]

Second, the EEOC held that "sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex."[67] In other words, the EEOC found that when an employer discriminates against an employee on the basis of their sexuality, the employer treats the employee differently because they *associate* with members of the same sex.[68] Interestingly, here the EEOC looked to precedent concerning discrimination against race-based associations such as interracial marriages [69] noting, however, that an analysis of associational discrimination should not be confined to race.[70] Thus, Title VII "prohibits employers from treating an employee or applicant differently than other employees or applicants based on the fact that such individuals are in a same-sex marriage or because the employee has a personal association with someone of a particular sex."[71] Such actions necessarily discriminate against employees on the basis of sex.[72]

Finally, the EEOC held that "sexual orientation discrimination also is sex discrimination because it necessarily involves discrimination based

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61. *Id.* at 6-11.
62. *Id.* at 12-14.
63. *Id.* at 7.
64. *Id.*
65. *Id.*
66. *E.g.*, Heller v. Columbia Edgewater Country Club, 195 F. Supp. 2d 1212, 1223 (D. Or. 2002).
67. *Baldwin*, EEOC Doc. No. 0120133080, at 8.
68. *Id.*
69. *Id.*
70. *See* Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989).
71. *Baldwin*, EEOC Doc. No. 0120133080, at 9.
72. *Id.*

on gender stereotypes."[73] Since the Court's decision in *Price Waterhouse*, several federal circuits have held that employees may bring Title VII sex discrimination claims based on gender stereotyping,[74] and the EEOC has specifically held that allegations of sexual orientation discrimination are claims of sex discrimination because such discrimination is based on stereotypes of gender appropriate partners.[75] The EEOC carefully noted that such discrimination can take many forms.[76]

Notwithstanding these holdings, the EEOC acknowledged prior decisions by various courts holding either that Congress did not intend Title VII to cover sexual orientation discrimination, or that further congressional action is required to affect such protection.[77] The EEOC then discounted these decisions, explaining that those holdings incorrectly reasoned that application of Title VII to sexual orientation discrimination cases creates a new protected class.[78] The EEOC cited analogous caselaw to further explain that the supposed creation of sexual orientation as a protected class is no truer than it was that *Price Waterhouse* created a protected class of "masculine women," for example.[79] Thus, the EEOC found its decision in the noted case to be in accordance with the principles of Title VII.[80]

IV. ANALYSIS

Many commentators have heralded this decision as yet another groundbreaking advance in equal rights for the gay, lesbian, and bisexual communities.[81] However, this decision might best be described as *potentially* groundbreaking. On one hand, some federal circuits already take one or more approaches outlined by the EEOC in its holding, as described above. On the other hand, federal courts that have yet to consider this question might be persuaded by the EEOC's view that

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73. *Id.*

74. *See* Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004); EEOC v. Boh Brothers, 731 F.3d 444, 459-60 (5th Cir. 2013).

75. *See* Veretto v. U.S. Postal Service, EEOC Appeal No. 0120110873, 2011 WL 2663401 (EEOC July 1, 2011); Castello v. U.S. Postal Service, EEOC Request No. 0520110649 (EEOC Dec. 20, 2011).

76. *Id.* at *10.

77. *Baldwin*, EEOC Doc. No. 0120133080, at 12-13.

78. *Id.* at 14.

79. *Id.* Likewise, the Commission noted that associational discrimination cases do not create a protected class of "people in interracial relationships," nor do cases protecting atheists from religious discrimination create a class of "non-believers."

80. *Id.*

81. The Commission had already addressed the availability of Title VII claims to transgendered persons in Macy v. Dep't of Justice, EEOC Doc. No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012).

sexual orientation is already covered by Title VII, sidestepping some thirty years of congressional inability to pass legislation protecting the LGBT community from employment discrimination. But any excitement should be tempered by the fact that this decision constitute only persuasive authority and does not bind any courts, a fact already highlighted by at least one federal judge.[82] Furthermore, future changes in political composition of the EEOC might result in a reversal of the stance taken in this case.

The surest inroad to widespread acceptance of this decision would be the application by courts of *Chevron* deference to the ruling. Unfortunately, this is unlikely.[83] While Congress has granted some explicit rulemaking authority to the EEOC under Title VII,[84] the statute only provides authority to issue "suitable procedural regulations."[85] Thus, the Court has only applied *Chevron* deference in two antidiscrimination cases, under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) respectively, and only deferred to the EEOC in one of those.[86] Nevertheless, Title VII plaintiffs may still argue that a court should apply *Chevron* deference to the noted case on the theory that, while Congress may not have delegated explicit Title VII rulemaking authority to the EEOC, the statute still grants the Commission an adjudicatory function as contemplated by *Chevron*.

While a successful argument for *Chevron* deference may be out of reach, courts are still bound to weigh the persuasiveness of EEOC decisions under *Skidmore*.[87] While the noted case is not binding, it should still be highly persuasive under the standard set forth by Justice Jackson: the noted decision exhibits "thoroughness in its consideration" and "validity in its reasoning."[88] The EEOC explored thirty-plus years of federal precedent and argued from three independent bases of reasoning, all supporting the conclusion that Title VII should cover discrimination

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82. *See* Burrows v. Coll. of Cent. Florida, No. 5:14-CV-197-OC-30PRL, 2015 WL 5257135, at *2 (M.D. Fla. Sept. 9, 2015).

83. Melissa Hart, *Skepticism and Expertise: The Supreme Court and the EEOC*, 74 FORDHAM L. REV. 1937, 1945 (2006).

84. Congress has granted greater authority under the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA). *See generally* Theodore W. Wern, *Judicial Deference to EEOC Interpretations of the Civil Rights Act, the ADA, and the ADEA: Is the EEOC A Second Class Agency?*, 60 OHIO ST. L.J. 1533, 1560 (1999).

85. 42 U.S.C.A. § 2000e-12(a) (2000).

86. Hart, *supra* note 83, at 1945.

87. Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

88. *Id.*

against sexual minorities.[89] While Justice Jackson also cited consistency with prior decisions as a factor in the *Skidmore* analysis,[90] and this may seem a reason to argue against persuasiveness, the EEOC also carefully examined contradictory precedent and explained why it is either consistent or should be overruled.[91] Furthermore, Jackson did not limit the analysis to only those factors of thoroughness, validity, and consistency, but rather noted that the authority of an administrative judgment will depend on "all those factors which give it the power to persuade."[92] Congress' decades-long deliberation over the Employment Non-Discrimination Act (ENDA), the massive change in public opinion with respect to lesbian, gay, bisexual, and transgender (LGBT) issues, and recent Supreme Court decisions advancing long-pursued rights are additional factors that should weigh heavily in a *Skidmore* analysis of this decision.

It is worth noting that employees may still pursue sex-discrimination claims based on gender stereotyping alone as a backstop to their recovery efforts.[93] These employees should be aware, however, that they may need to forego all claims of sexual orientation discrimination to prevail on a gender stereotyping theory, as complaints containing any hint of sexual orientation claims are summarily dismissed in some jurisdictions.[94]

After decades[95] of litigation and congressional failures, the Supreme Court should settle the matter. One case pending before the United States Court of Appeals for the Fourth Circuit may present just such an opportunity.[96] Furthermore, the EEOC itself, acting under its authority to bring litigation on behalf of employees, may also be a source of future certiorari applications.[97] Absent such a ruling by the Court, or

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89. Baldwin v. Dep't of Transp., EEOC Doc. No. 0120133080, at 5-11 (EEOC July 16, 2015).

90. *Skidmore*, 323 U.S. at 140.

91. *Baldwin*, EEOC Doc. No. 0120133080, at 12-14.

92. *Skidmore*, 323 U.S. at 140.

93. Tanya A. De Vos, *Sexuality and Transgender Issues in Employment Law*, 10 GEO. J. GENDER & L. 599, 604 (2009).

94. *Id.*

95. The United States Court of Appeals for the Ninth Circuit considered the question of whether sexual orientation discrimination is sex discrimination for the purposes of Title VI in 1979, in DeSantis v. Pac. Tel. & Tel. Co., F.2d 327 (9th Cir. 1979).

96. Kerr v. Marshall Univ. Bd., No. 15-1437 (4th Cir. Filed May 1, 2015). This case is set for oral argument on May 22, 2016.

97. This will probably depend on continued political will among the commissioners to pursue sexual orientation complaints. While there were no dissenting opinions filed in the noted case, we may infer that the commission only narrowly supports the current reading of Title VII. The *Baldwin* decision was 3-2. As this article went to print, the EEOC had just filed two separate

congressional action, this area of law will remain unsettled. Employees in jurisdictions that do not consider sexual orientation as protected by Title VII will continue to be forced to redress their harms in the courts, alleging gender stereotyping or other alternative claims, or gambling that *Baldwin* will be sufficiently persuasive.

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lawsuits on behalf of employees who suffered harassment at work for their sexual orientations and/or their non-conformity to their employers' gender-based expectations, preferences, or stereotypes. See EEOC v. Scott Medical Health Center, P.C., No. 2:16-cv-00225-CB (W.D. Pa. Filed March 1, 2016); EEOC v. Pallet Companies d/b/a IFCO Systems NA, Inc., No. 1:16-cv-00595-RDB (D. Md. Filed March 1, 2016).

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