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Groundbreaking Decision Expands Protections to Sexual Orientation

Since June 26, 2015, when jubilant masses swarmed First Street in front of the Supreme Court and the White House illuminated the night with rainbow lights, lawyers, scholars, and many citizens have waited with bated breath to see how the legacy of *Obergefell v. Hodges* would shape the next generation of jurisprudence.

On Tuesday, the first Court of Appeals in our nation's history ruled that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation. *Hively v. Ivy Tech Community College of Indiana*, Case No. 15-1720 (7th Cir. 2017) (en banc). The decision over-ruled over 50 years of jurisprudence. The Seventh Circuit Court of Appeals took this opportunity to revisit the Act's prohibition against "sex" discrimination "to take a fresh look at our position in light of developments at the Supreme Court extending over two decades." One of the most critical developments on which the Court based its decision was Judge Kennedy's decision in *Obergefell*, which held that the liberties granted in the Due Process Clause of the Fourteenth Amendment "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597, 192 L. Ed. 2d 609 (2015) (ruling that same-sex couples had a fundamental right to marry).

Though the pending confirmation of Supreme Court nominee Neil Gorsuch could alter this legal course, the balance of the Court still supports Kennedy's holding that same-sex couples are entitled equal dignity and equal protections under the law. This is because the conservative originalist Justice Scalia was a dissenting vote in *Obergefell* and Gorsuch (assuming he would also side with the conservative Justices) would merely replace Scalia's vote in the minority on this issue.

The civil rights and employment attorneys at Joseph Greenwald & Laake are following this case closely, ready to utilize it as persuasive authority in our Title VII cases to seek justice for victims of discrimination.

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