

Bishops say order on LGBTQ equality has implications for religious liberty

WASHINGTON (CNS) – President Joe Biden’s wide-ranging executive order to extend existing federal nondiscrimination protections to LGBTQ people exceeds the U.S. Supreme Court’s June 2020 ruling on the issue in *Bostock v. Clayton County, Georgia*, said the chairmen of five U.S. bishops’ committees.

In so doing, they said, the Jan. 20 order has implications for religious freedom.

“Every person has a right to gainful employment, education and basic human services free of unjust discrimination. That right should be protected,” the committee heads said in a joint statement released late Jan. 22 by the U.S. Conference of Catholic Bishops.

However, Biden’s order on “‘sex’ discrimination exceeds the court’s decision,” they said. “It threatens to infringe the rights of people who recognize the truth of sexual difference or who uphold the institution of lifelong marriage between one man and one woman.”

The statement was issued by: Cardinal Timothy M. Dolan of New York, Committee for Religious Liberty; Archbishop Paul S. Coakley of Oklahoma City, Committee on Domestic Justice and Human Development; Bishop Michael C. Barber of Oakland, California, Committee on Catholic Education; Bishop Shelton J. Fabre of Houma-Thibodaux, Louisiana, Ad Hoc Committee Against Racism; and Bishop David A. Konderla of Tulsa, Oklahoma, Subcommittee for the Promotion and Defense of Marriage.

Biden’s order “may manifest in mandates that, for example, erode health care conscience rights or needed and time-honored

sex-specific spaces and activities,” the prelates said, pointing out the high court took care “to note that *Bostock* did not address its clear implications for religious freedom. (Biden’s) executive order exercises no such caution.”

The *Bostock v. Clayton County* decision, handed down June 15, 2020, addressed two consolidated cases about fired gay employees and a separate case concerning a transgender worker who sued for employment discrimination after being fired.

At issue was the wording in Title VII of the Civil Rights Act of 1964 that prevents employment discrimination based on race, religion, national origin and sex. The court had to determine if this applied to sexual orientation as well as gender identity, and in its 6-3 ruling the court said LGBTQ people are indeed protected from job discrimination by Title VII.

“An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex,” said Justice Neil Gorsuch, who wrote the majority opinion.

When Congress enacted Title VII, he said, it might not have expected “this particular result.” But he also said Congress likely didn’t see many interpretations of the federal law coming, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees.

But the *Bostock* ruling had a narrow application. “We do not purport to address bathrooms, locker rooms or anything else of the kind,” Gorsuch wrote.

In a statement after the ruling was issued, Los Angeles Archbishop José H. Gomez, USCCB president, said the court “effectively redefined the legal meaning of ‘sex’ in our nation’s civil rights law.”

“This is an injustice that will have implications in many

areas of life," he said.

In friend-of-the-court briefs filed Aug. 23, 2019, in the cases before the court, the USCCB said that "by forbidding workplace discrimination based on sex, Congress intended to level the playing field between men and women. Differential treatment based on 'sexual orientation,' however, does not expose women to disadvantageous terms or conditions to which men are not exposed (or vice versa). Therefore, it is not sex discrimination."

They added: "Construing the term 'sex' to include 'sexual orientation' will create conflicts with many religious believers and with their institutions. Such an interpretation will affect the ability of churches and faith-based schools and charities to hire and retain employees who, by word and conduct, accept or at least do not contradict the organization's religious message."

In their Jan. 22 statement, the five USCCB committee chairmen criticized the court's *Bostock* decision for "needlessly" ignoring "the integrity of God's creation of the two complementary sexes, male and female, with reasoning that treated them as devoid of meaning.

In his executive order, Biden said *Bostock* held "that Title VII's prohibition on discrimination 'because of ... sex' covers discrimination on the basis of gender identity and sexual orientation."

He said U.S. laws that currently prohibit sex discrimination, such as Title IX of the Education Amendments of 1972, the Fair Housing Act, the Immigration and Nationality Act – and their respective amendments over the years and the regulations implementing these laws – will now "prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary."

“Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love,” stated Biden, whose order included protection for equal access not just to employment and health care but to restrooms, locker rooms and school sports.

In their statement, the USCCB committee chairmen said they were “very grateful for new administration’s actions on immigration and the climate,” referring to immigration-related executive orders Biden issued hours after his inauguration.

These orders included bolstering the Deferred Action for Childhood Arrivals program, instituting a 100-day pause in deportations and rescinding a policy that required those seeking asylum in the United States to stay in Mexico until their case came up for review.

They also said Biden’s executive order titled “On Advancing Racial Equity” is “nobly aimed at identifying and remedying racism and its impact on society and in government.” But they raised concerns about it as well.

The order defines equity as:

“The consistent and systematic fair, just and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”

The bishops said: “It is unfortunate that the goal of racial equality is partially conflated with the imposition of new attitudes and false theories on human sexuality which can produce social harms.”