Description of webinar:

This webinar will focus on the recently decided U. S. Supreme Court case, Bostock v. Clayton County, 2020 WL 3146686, ___ S.Ct.____ (June 15, 2020)

On June 15, the United States Supreme Court handed down its opinion in Bostock, which was a consolidation of three cases. In addition to Bostock, which involved anti-gay discrimination, there was Zarda v. Altitude Express (anti-gay discrimination) and R.G. & G.R. Harris Funeral Homes v. EEOC and Aimee Stephens (transgender discrimination).

In each of these cases, an employer allegedly fired a long-time employee simply for being homosexual or transgender. Clayton County, Georgia, fired Gerald Bostock for conduct "unbecoming" a county employee shortly after he began participating in a gay recreational softball league. Altitude Express fired Donald Zarda days after he mentioned being gay to a patron. And R. G. & G. R. Harris Funeral Homes fired Aimee Stephens, who presented as a male when she was hired, after she informed her employer that she planned to "live and work full-time as a woman." Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit held that Title VII does not prohibit employers from firing employees for being gay and so Mr. Bostock’s suit could be dismissed as a matter of law. The Second and Sixth Circuits, however, allowed the claims of Mr. Zarda and Ms. Stephens, respectively, to proceed.

In Bostock, the United States Supreme Court ruled in favor of all three employees, holding that an employer who fires an individual merely for being gay or transgender violates Title VII. Title VII is part of the Civil Rights Act, enacted in 1964, which bans employment discrimination against an employee because of that employee’s sex. The Court ruled that discrimination on the basis of sexual orientation or on the basis of transgender status is discrimination because of the employee’s sex.

The vote by the Court in Bostock was 6 to 3, with Justice Gorsuch and Chief Justice Roberts joining the 4 more liberal members of the Court in the majority. The majority opinion was written by Justice Gorsuch.

In this webinar, legal academics who are familiar with the case will discuss the Court’s analysis in the case, what it means for other cases in the pipeline, and especially what it means for the possible expansion of the meaning of “sex discrimination” in other areas of law, such as:

- The equal protection clause of the 14th Amendment
- Title VIII of the Civil Rights Act (Fair Housing Act)
- Title IX of the Educational Amendments of 1972 (prohibiting sex discrimination in education)
- The Affordable Care Act (ACA)(prohibiting sex discrimination in health care)
Only about half of the states have statutes banning discrimination on the basis of sexual orientation or gender identity. For states that have not passed such statutes, but that do have statutes prohibiting sex discrimination, there is speculation as to whether or not the *Bostock* decision will help courts in those states to construe statutes that ban sex discrimination as covering discrimination on the basis of sexual orientation or gender identity. This is particularly important in the case of discrimination that occurs in public accommodations. Title II of the Civil Rights Act, which prohibits discrimination in places of public accommodation, does not include protection against sex discrimination, but state statutes do. Webinar panelists will also share their thoughts on this possibility.

Another question, not directly addressed in *Bostock*, is: What is the reach of the religious exemption provision contained in Title VII? For example, may employers whose religious beliefs are grounded in the sanctity of marriage only between a man and a woman successfully claim the right to fire any employee who engages in a same-sex marriage on the basis of this statutory exemption? And, if not, might there be other grounds for employers to claim a religious right to discriminate?