A LEAP IN THE DARK: MARGINALIZED WORKERS, TITLE VII, AND THE LONG WAIT FOR FEDERAL PROTECTIONS

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“What’s bizarre about this is that in the state of Georgia, I can legally get married to my partner on Saturday or Sunday and get fired for it on Monday because I don’t have those federal protections. We as an LGBTQ community don’t have those federal protections.”
- Gerald Bostock, plaintiff in Bostock v. Clayton County, 2019

On a brisk Friday morning in Switzerland, Donald Zarda jumped from a cliff and died on impact. By all indications, Zarda had no intention of taking his own life on October 3rd, 2014. He had worn a wingsuit for the jump which had simply failed to open in time to correct his trajectory. Zarda, a 44-year-old who lived primarily in Dallas, TX, was an experienced skydiver, but his Switzerland excursion was far from standard practice. According to his longtime partner, Bill Moore, Zarda had recently gravitated away from typical skydiving and towards BASE jumping, an extremely dangerous recreational activity whose fatality rate has been reported to be as potentially high as one death per sixty excursions. Leading up to his


2 A. Westman et al., “Parachuting from Fixed Objects: Descriptive Study of 106 Fatal Events in BASE Jumping 1981–2006,” (British Journal of Sports Medicine, 2008). BASE jumping is an extreme recreational sport wherein participants parachute from four types of fixed structures - “building, antenna, span, or Earth.” While similar in some respects to standard skydiving, BASE jumping carries a
last jump, Zarda had been opting for increasingly dangerous activities. Four years prior, he had lost his job as a skydiving instructor for Altitude Express in Calverton, New York—a loss which Moore believes sent him into a depression, pushing him into a feedback loop of palliative thrill-seeking. “I don’t think that he would have been in Europe doing what he was doing,” Moore stated in 2019. “I don’t know that it would have ever gotten to that point.” As to the reason for Zarda’s termination, it was simple: he was fired for being gay.

This is what Melissa Zarda, Donald’s sister and executor of his estate, alleges. The discrimination lawsuit—originally filed by Donald himself against Altitude Express, and posthumously taken up by Melissa—has been active for the past nine years, and has seen its ups and downs. Moore believes that Donald had relatively modest ambitions for the case; his major hope was to clear his name in response to articles such as a 2010 New York Magazine piece which alleged that he had been fired for “spooning” a female client mid-air. In reality, he had been terminated after telling a client that he had a husband in Texas. Just over five years after his death, Zarda’s case traveled all the way to the Supreme Court of the United States, where a hearing was held on October 8th, 2019, in conjunction with a discrimination case brought by Gerald Bostock. The hearing has become a national sensation, drawing the attention of news organizations and activists across the U.S.

Why has the conversation around LGBT workers’ rights converged so readily on Zarda and Bostock? The obvious answer, of course, is that any Supreme Court case carries the power to set important precedents for federal law. But is federal law truly the last frontier of the LGBT rights movement? Or can we, perhaps, look to the history of workplace activism and its intersections with gender and

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5 Lang, “Donald Zarda.”

6 Lang.
sexuality in the United States to find a more powerful tool for progress within the union? Indeed, the historical record for union activism reveals workers’ solidarity, pre-emptive or independent of federal action, as a longstanding and effective front for LGBT protections. Moreover, collective action has stood and continues to stand as an effective way to address the immediate conditions of vulnerable workers—and cases like Bostock’s are nothing if not immediate. During the hearing, Bostock emphasized that he had lost more than just a fulfilling job. “I lost everything,” he stated. “I lost my livelihood. I lost my source of income. I lost my medical insurance.”

Even for white, middle-class workers like Bostock and Zarda, stability is never a guarantee. Employment discrimination can take away an individual’s insurance, income, dignity, and, in the extreme case of Zarda, their life. The focus on federal action to address this problem inadvertently privileges an avenue of change which, at its best, may take years to help a fraction of affected workers—and which, at its worst, may empower the state to act oppressively against workers across the board. Ultimately, while federal protections may help LGBT workers, policy cannot supersede organizing and collective bargaining as the focus of the LGBT workers’ movement.

Zarda and Bostock’s cases have received massive media attention for good reason. The peculiarity of these cases rests upon the fact that there exists no definite federal protection against workplace discrimination targeting LGBT people—hence the decision on the part of the 11th circuit of the U.S. court of appeals to block Bostock’s case from going forward. While there exists no exact protection, though, there is tenuous legal shelter for workers within the confines of Title VII of the Civil Rights Act; this is the point around which Zarda and Bostock’s cases pivot. The argument, though somewhat roundabout, is easy enough to understand. If Title VII prohibits an employer from taking disciplinary actions against an employee “on the basis of sex,” and if a male employee is fired from his job or faces other retribution from his employer for being gay, then that firing constitutes a decision on the basis of sex—assuming that a woman in the same position would not receive discipline as a result of her

attraction to men— and thus can be classified as a violation of Title VII. This was the conclusion reached by the Second Circuit Court which reviewed Zarda’s case and defined the employer’s actions as constituting a “subset of sex discrimination” — prompting the employer, Altitude Express, to file for an appeal of the decision. The Eleventh Circuit Court which reviewed Bostock’s case, on the other hand, concluded the opposite, dismissing an interpretation of Title VII which would include homophobia as constituting sex discrimination. Both appeals were consolidated before the Supreme Court in 2019. When a ruling comes, it will either explicitly include or permanently exclude LGBT identities from using Title VII protections.

The push for a federal confirmation of protection for LGBT workers is hardly a new phenomenon. While Bostock’s case has been active since his firing 2013, there have been significant pushes for protective legislation over the last 45 years. A response to the limitations of Title VII, and its potential as a basis for LGBT workers’ protections, came in 1974 with the introduction of the Equality Act to the 93rd Congress of the United States. Sponsored by congresswoman Bella Abzug of New York’s 20th Congressional District and drafted in collaboration with the National Gay Task Force, the bill proposed an amendment of the Civil Rights Act which would further define the limitations of “sex discrimination.” The bill specifically prohibited “discrimination on account of sex, marital status or sexual orientation” by those same institutions included under Title VII, including employers. Interestingly, the bill did not imagine these violations as being purely the jurisdiction of the EEOC; indeed, the Equality Act provided for civil actions by the attorney general against parties found to be in violation. Yet while the act addressed employment, its primary focus lay with public accommodations. It sought to prohibit discrimination in housing and federal assistance programs, as well as public facilities and education programs. Indeed, although its status as an amendment to Title VII would theoretically allow its application to matters of employment, the bill’s summary

neglected to mention employment in any regard. ¹⁰ Placing employment in the background of this kind of legislation is, of course, understandable. The Equality Act aimed not only to address massive sections of infrastructure through its legislation, but also to authorize and even mandate federal intervention on behalf of those discriminated against via its use of civil actions. Yet this also represents a key issue with federal policy as the primary vehicle for addressing discrimination. Employment discrimination—a matter of dire importance, and of quite literal life and death for the most economically marginalized LGBT workers—can risk becoming an afterthought, lost in the vagueness of all-inclusive legislation or roped in only via technicality through attachment to previously existing legislation.

Worse, though, is the ultimate fact of the Equality Act: it didn’t work. In May of 1974, the bill was referred to the House Committee on Judiciary, where it failed to move forward. Similar pieces of legislation have been repeatedly pushed forward by legislators in collaboration with the National Gay Task Force (now known as the National LGBT Task Force) since 1974. Most of these efforts died before making it to a vote.¹¹ Federal policy takes time to change. On the longer end of the scale, legislation like the Equality Act can take decades to pass, if it passes at all. On the shorter end, Gerald Bostock’s case has taken six years to reach the highest court in the U.S., and could take many more months before a verdict is delivered. Donald Zarda lived for four years after his firing; it would take another five years for his case to reach the court and be consolidated with Bostock’s. Financially speaking, Zarda was in a better place than a large proportion of LGBT workers in the U.S., yet the mental toll of his job loss was ultimately a major factor in his abrupt death. As wage decreases, this kind of pressure can only compound, levying the existential crisis of lost work along with even more pressing issues of food, shelter, and health. Time is a necessity for legal change, but it is also a resource which many workers quite simply do not have.


To understand the failure of federal protections for LGBT workers, it may prove useful to return for a moment to Title VII, the piece of legislation on which Bostock and Zarda’s cases, as well as the Equality Act, have attempted to build. Title VII operates as part of the Civil Rights Act signed into law in 1964. It is the precise wording of Title VII—its prohibition of sex discrimination, a situationally nebulous category—which has allowed it to function in any sort of protective capacity for LGBT workers. As Katherine Turk argues in *Equality on Trial: Gender and Rights in the Modern American Workplace*, Title VII was a marked departure from previous attempts to regulate gender in the workplace. Before this legislation, “protective” laws actually helped to support gendered hierarchies within the American workplace, enforcing regulations which “framed breadwinning as a masculine enterprise and construed women’s wage labor as inherently less valuable than men’s.”\(^{12}\)

Title VII, on the other hand, would flatly ban discrimination on several bases of identity, theoretically placing sex in the same social category as race. To do so, of course, presented significant issues for a working world in which women’s roles were seen as definitively different. While the ideal implementation of the ban on racial discrimination would prohibit any differential treatment in favor of fostering a color-blind model of employment,\(^{13}\) decades of previous regulation had done just the opposite for women, establishing them as the demure and vulnerable counterparts of their breadwinning husbands. As Turk writes, the sex discrimination ban represented nothing short of a logistical nightmare for legislators. The Equal Employment


\(^{13}\) It’s important to note here that such a concept was just so - conceptual, and bearing little fruit in the reality of things. That Title VII failed to produce an idyllic colorblind workplace is perhaps not a failure of the specific legislation so much as an impossibility for any regulatory means to deconstruct a capitalistically-incentivized system of racial discrimination as deeply rooted as that of American racism. The important distinction here is not what did happen, but instead what *should* happen as according to the liberal imaginary of the time. This distinction would see the conflict between gender discrimination prohibitions and racial discrimination prohibitions on the grounds that racial differences in division of labor were not as explicitly necessary in the liberal mind of the 1960s as were gendered divisions of labor. The sexual dimorphism of the workplace was a deep concern not only for policymakers, but also for women who advocated for federal workplace protections. For more on this, see Chapter 1 of Katherine Turk’s *Equality on Trial*. 87
Opportunity Commission (EEOC), the federal agency established by Title VII to investigate and assist with discrimination claims, would find itself inundated with four thousand sexual discrimination in its first two years alone.\textsuperscript{14} The EEOC’s initial response was sluggish at best; not until several years into its existence would the commission make an earnest move towards implementing and pursuing a corrective course for sex discrimination in U.S. employment.

This move came partially in the form of changing tactics. As Turk writes, the EEOC shifted its primary focus during the late 1960s away from investigations into individual claimants’ situations and towards research.\textsuperscript{15} Through identifying discrimination as a quantifiable thing—rather than a collection of instances with vastly different contexts and involving vastly different participants—the process of addressing sexism in employment was streamlined. This transformation in the EEOC’s primary mode of operation is indicative of another major issue with the overreliance on federal protections for marginalized workers: standardization. Though unilateralization allows agencies such as the EEOC to address a wider span of cases, it fails in addressing the individual complainants and their own urgent matters in the workplace. Standardized efforts to research and reform sex discrimination via affirmative action may produce a statistical improvement—but for those discriminated against or fired by their employers, it does little to improve their immediate lot. Further, Turk argues that the unified model adopted by the EEOC essentially railroads an individual worker’s agency or personal interpretation of the situation. “Within a decade of Title VII's passage,” Turk writes, “it became possible for a worker to be a victim of sex discrimination without assenting to that classification and for violations of her self-identified rights to be denied legal legitimacy.”\textsuperscript{16} Such a process poses inherent limitations for complainants, particularly for those that seek remediation for alleged discrimination on the basis of their LGBT identities. If the EEOC defines discrimination across the board, as opposed to within individual cases and circumstances, then identities which fall outside the legible scope of the commission’s definition—as LGBT identities very well may, depending on a handful of justices’

\textsuperscript{14} Turk, Equality on Trial, 14.
\textsuperscript{15} Turk, 15.
\textsuperscript{16} Turk, 16-17
political whims—thus become impossible to address without the passage of additional legislation.

While Turk is far from wholly uncritical of the state and its remedial efforts, the above argument, salient though it is, relies almost on a presumption of innocence or well-meaning. That Turk’s state failed to follow through on EEOC complaints for a full two years is plainly a function of capacity; the commission was understaffed and underprepared for the workload it received in its initial years. The federal government wanted to help—it just couldn’t. But, is this too benign an image? Turk’s interpretation of the state rests largely on a presumption of earnestness, one which places the federal government as having genuinely accepted the necessity for protections against discrimination for the women of the nation. Yet a cursory review of the history of Title VII and the sex discrimination clause reveal that this was hardly the case. Indeed, the introduction of women as a protected group under the Civil Rights Act came from an unlikely source: Virginia congressman Howard Smith, a notorious racist and the leader of an anti-civil rights coalition in the House of Representatives. Smith’s amendment was introduced absent any prior hearings or testimony on sex discrimination, a matter which had previously been totally excluded from the contents of the Civil Rights Act. While some debate exists as to Smith’s precise intentions, popular historical opinion falls with the explanation that, given his record of staunch opposition to civil rights expansions, the amendment was little more than a political attack on the bill, intended to derail it while still in the House. This is the argument made by John J. Donahue III in “Prohibiting Sex Discrimination in the Workplace: An Economic Perspective,” a 1989 article published in the University of Chicago Law Review. Donahue makes reference to the mocking tone with which Smith delivered this amendment, noting the apparently audible laughter that addition was met with. If Smith’s play was a political sabotage, then it was not a successful one. The Civil Rights Act passed in both the House and the Senate, retaining the sex clause in Title VII. It is this history which led many to refer to the ban on gender

discrimination as a wholesale accident of the legislative process. In The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution, author and law professor Barry Friedman argues exactly this point. Friedman references the positions of lawmakers and politicians at the time of the Civil Rights Act’s passage and shortly thereafter, quoting one director of the EEOC itself who actually referred to the sex discrimination clause as a “fluke” which had been “conceived out of wedlock.”¹⁹ In Friedman’s telling, the EEOC’s initial inaction was not an inability to address women’s complaints so much as it was a refusal. Whether we place more stock in Turk’s version of events or in Friedman’s, however, the reality remains the same. Federal action is a slow-going process which often fails to address individuals’ desperate situations. It is a process largely dependent on the human beings behind it—human beings who at their worst may neglect or sabotage remedial action, and at the best may fail to pursue it, despite the best intentions, simply out of inability.

That state which impedes, through negligence or malice, workers’ protections is certainly a threat to the improvement of marginalized workers’ situations. But what about the logical extreme of this avenue? Indeed, the U.S. government has not only failed at times to assist workers, but has often been actively complicit in their oppression. Governmental violence directed as intervention on behalf of employers is no new concept in the field of labor history. From police murders of individuals, as exemplified by the death of two migrant workers preceding the Oxnard strike,²⁰ to the infamous massacre at Blair Mountain in 1921, the pre-Rooseveltian state showed little hesitation in asserting its physical dominance over workers in the bloodiest ways possible. If the modern state fails to reproduce such visible violence, though, it has succeeded in continuing to undermine the marginalized and their positions in the working world. Take, for instance, Wal-Mart Stores, Inc. v. Dukes, a Supreme Court case argued in 2011. Named for Betty Dukes, a greeter

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²⁰ Frank Barajas, Curious Unions: Mexican American Workers and Resistance in Oxnard, California, 1898-1961 (Lincoln, NE: University of Nebraska Press, 2012), 133.
at a Wal-Mart location in Pittsburg, CA, the case was a class-action lawsuit which alleged that the Wal-Mart corporation’s nationwide policies had resulted in lower pay and lessened upward mobility for women working at Wal-Mart stores. Filed in 2001, it took ten long years for Dukes to reach the Supreme Court— and less than three months between argument and adjudication for the court to side in Wal-Mart’s favor. In delivering the opinion of the court, Justice Antonin Scalia addressed the case immediately as “one of the most expansive class actions ever,” making reference to the approximately 1.5 million plaintiffs involved via the charge of unilateral, nationwide discrimination. It was this very expansive nature which delegitimized the case in the eyes of the five deciding justices.

Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury. This does not mean merely that they have all suffered a violation of the same provision of law. Title VII, for example, can be violated in many ways—by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company. Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate-impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once.

That the plaintiffs of the case had all allegedly suffered under Title VII meant nothing to a court majority which demanded commonality in the specificities of their suffering. Six years after her claim was denied, Betty Dukes passed away.

Wal-Mart’s victory through the state meant more than just the denial of remedial efforts for those 1.5 million women believed to be affected by discriminatory corporate practices. The precedent set by the Supreme Court’s decision also ensured that a case such as Dukes’
could never stand on the same legal footing. The court directly impeded the ability for workers to seek relief or justice against discrimination on a massive scale by disallowing the Title VII class action lawsuit, defining the plaintiff class as one which necessarily shares more than the simple violation of their rights on the basis of identity. Wal-Mart v. Dukes is not only an example of state action against marginalized workers, but also an instance in which a belief in the state’s remedial power backfired. In the denial of the right to collectively file class action lawsuits, marginalized workers in the U.S. are more worse off from a legal standpoint than they were in the years leading up to adjudication. The trusted hand of the state not only failed to guide its vulnerable workers towards safety— it throttled them and their collective ability to seek justice.

If the state, then, is not to be trusted, what is left to a worker who faces discrimination? In the patriarchal liberal mindset of the post-Roosevelt school, the denial of the state as a kind shepherd of the meek may read as a doomsday prophecy. It is crucial to remember, though, that federal action was not, and never has been, the sole site for the development of LGBT workers’ protections. Historically, women and LGBT workers have collectively organized with allies to achieve better working conditions, higher pay, and protections from harassment and discrimination in the workplace. In 1978, just four years after the Equality Act first died on the floor of the house, labor activists in California rallied in defense of gay teachers against Proposition 6. Known as the Briggs amendment, Prop 6 was a bill written by conservative California State Senator John Briggs. The proposition, if passed, would amend California’s constitution, changing the state’s education regulations to deny gay teachers the right to work in public schools. The bill read that “as a result of continued close and prolonged contact with schoolchildren, a teacher ... becomes a role model whose words, behavior and actions are likely to be emulated by students coming under his or her care.” Under the Briggs amendment’s proposed framework, the state government of California would be compelled to conduct investigations and hearings into teachers’ personal lives. If found to be practicing or even simply endorsing homosexuality, whether in public or in the privacy of their own home, a teacher could then be fired without recourse.24 The

response to the amendment was explosive. Enraged not only by the attack on gay workers’ legitimacy but also by the explicit violation of privacy which the bill entailed, opponents of the Briggs amendment rallied to create the “Vote No” campaign, hoping to sway the electorate against the damaging legislation. Backing LGBT activists in the Vote No campaign were California’s labor leaders. Walter Johnson, the president of Local 1100—an IBT chapter representing retail workers—vocally supported the bill, stating during an organized labor event, “It’s a matter of equal rights. They’re all people; they were all babies once.”

With the support of California unionists, the Vote No campaign was a success; against considerable odds, the Briggs amendment failed to pass on November 7th, 1978. Organized labor’s support for LGBT educators is important to note for multiple reasons. Union leaders did not simply support Vote No out of political sympathy—the bill was a flat-out matter of workers’ rights. The amendment was a direct violation of the right to collective bargaining, and leaders such as Johnson saw the destructive potential of a discriminatory policy that would apply not only to homosexuals, but to those that supported them as well.

The response to the Briggs amendment proves that labor organization as a response to LGBT employment discrimination is built on, and contributes to, worker solidarity. Further, it shows that organized labor can win significant victories for these workers using collective action.

Action in conjunction with organized labor has proven not only to be an effective way of seeking remediation for discrimination, it also often serves as a sight of cultural production for LGBT communities. Note, for instance, the Marine Cooks and Stewards Union (MCSU), an organization representing service workers on passenger liners which rose to prominence in the early decades of the 20th century. Emphasizing the importance in extending dignity and respect to all its constituent members, the MCSU stood out for its embrace of a diverse membership, accepting African American members as well as openly gay workers. It was this very union which would win the first official protections for LGBT workers, ensuring that its members could not have their employment terminated for anything other than violation of the employment contract. Gay workers were foundational to the MCSU; one member of the union

25 Frank, Out in the Union, 91.
26 Frank, 90.
stated that the majority of stewards within the union were themselves gay. In a piece for *New Socialist Magazine*, Scarlett C. Davis has noted the way in which LGBT culture was fostered and embraced through the union, describing the prevalence of drag culture within the MCSU. 27 Within spaces like the MCSU, new gay cultures were allowed to emerge in conjunction with the worker identity.

Even for those LGBT people not directly involved in unions, solidarity with workers has historically served to create new cultural traits and identities. In 1977, the Coors brewery in Golden, Colorado, made headlines when it began to probe into the personal sexual lives of its employees. Already known for its subpar conditions of employment, Coors’ reputation of poor worker treatment reached a new low when workers publicized some of the company’s standard hiring procedures. Included were the polygraph tests which potential employees were required to take. In addition to questions intended to determine qualities such as “loyalty,” the tests reportedly included invasive personal questions about the employee’s sexuality as an attempt to eliminate gay applicants. 28 Employees wanted to end the tests; in return, Coors wanted to nullify the shop agreement that had been in place since 1935 which required brewery employees to pay dues to the union to receive benefits. 29 The responsive strike called by Brewery Workers Local 366 in April of 1977 was, by itself, unsuccessful; but the effort found new life through the involvement of the LGBT community. As part of a nationally declared boycott of Coors beer, Teamster Allan Baird reached out to Harvey Milk, an openly gay community organizer who would soon come to be known as the “Mayor of Castro Street.” Milk agreed to publicize the boycott, urging gay bars and individuals to drink alternative brands in light of Coors’ poor labor practices. With Milk’s help, the boycott quickly earned the support of the Tavern guild, an association of one hundred San Francisco gay bars. 30 The results of the boycott have been incredibly enduring. In a 2004 article for the *Journal of Consumer Research*, Stephen M. Kates identified Coors as a “brand villain” — essentially a

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29 Frank, *Out in the Union*, 79.
30 Frank, 78.
“punished brand” whose avoidance in many gay communities is a foundational aspect to identity.\textsuperscript{31} While the boycott effort ultimately met little success at the Coors plant itself, it exemplifies the ability for collective action to affect and produce LGBT culture.

Despite a significant history of effective organization and cultural production, though, it seems that collective action often fails to capture the public’s attention in the same way that pushes for federal action, such as the Zarda and Bostock case, do. Though unions such as the American Federation of State, County and Municipal Employees have worked to further LGBT causes by adding protective clauses to their constitutions and pursuing remediation in response to discrimination, all eyes remain on the state.\textsuperscript{32} The Supreme Court’s decision on Zarda and Bostock’s interpretation of Title VII could either make or break federal protection for LGBT employees. A decision in favor of the plaintiffs will establish precedent at the highest judicial level, codifying these protections into federal law; a decision in favor of the employers, on the other hand, would nullify any protections for gay workers under Title VII, preventing lower courts from ruling in favor of gay plaintiffs in states without established legal protections. There is a palpable tension surrounding the case and its implications. During the October 8th hearing, Justice Neil Gorsuch, a recent appointee to the court under the Trump administration, warned that the court should “take into consideration the massive social upheaval that would be entailed” in any decision which would categorize homophobia as sex discrimination under

\textsuperscript{31} Steven M. Kates, “The Dynamics of Brand Legitimacy: An Interpretive Study in the Gay Mens Community.” \textit{Journal of Consumer Research} 31, no. 2 (2004): 455–64. Kates has written brilliantly and with considerable nuance about the effectiveness of the “punished brand” in creating the American consumer activist. While I posit here that the Coors strike represents a positive force for LGBT culture, there is far more to be said on the subject of consumption and the consumer identity’s emergence within the LGBT community, especially in relation to the drift between labor and the gay liberation movement which took place over the many long years of the strike’s duration. As with any historical movement, the Coors strike had its own complexities and consequences for the parties involved, both good and bad. It was by no means a wholly and completely unifying event between the workers and the sexually marginalized in the U.S.

federal law. At the very same time, hundreds of demonstrators gathered outside the court to show support for the plaintiffs, many holding signs promising to “fight back” in the name of gay workers. At present, the case remains pending adjudication. To say that the state is a wholesale force against good when it comes to marginalized workers would be reductionist. Title VII, incidental as it may be, has allowed for some progress in challenging the long tradition of workplace discrimination. Yet through its encounters with LGBT identity, we begin to see its fault and the fault of any wholly legislatively-based effort to improve the situation of workers in the U.S. The process of federal change can take decades. Even at the judicial level, it may take years of waiting— a process which many do not have the time for, and which some plainly may not survive. The foundations for those scant theoretical protections which do exist are precarious at best, and a court decision this year could very well result in massive setbacks for the establishment of any LGBT worker protections at all. When we ask LGBT workers to seek remediation for discrimination through the powers of the federal government, we ask them to take a leap in the dark. Yet collective action and unionization stand as a light, forming a common, culturally productive ground through which marginalized workers may fight for dignity, for equality, and for workplace justice.

33 Williams, “Supreme Court Appears Divided.”
34 Fitzsimons, “Central Figures.”


