[*Gender Reveal* theme music starts]

**Molly:** Welcome to Gender Reveal, a podcast where we hopefully get a little bit closer to understanding what the hell straight cis people’s problem is. I'm your host and resident Gender Detective, Molly Woodstock.

[*Gender Reveal* theme song ends]

Hey everyone. I hope that now, as always, you are still hanging in there! This was a big day for queer and trans people in the United States. You may have heard something about a Supreme Court case that was argued earlier today, and I wanted to talk a little bit about what’s going on, because it is really hard to understand the Supreme Court. It’s really intentionally shrouded in mystery and, like, legal jargon. And I am not an expert on this, but I do know how to do *some* research, so hopefully this helps!

[slow background music starts]

The background of this situation is that currently, the majority of US states don’t have any laws protecting employees from being *fired* basedon their real or perceived gender identity or sexual orientation. There are only twenty-one or twenty-two states that prevent either queer or trans people from being fired from their job purely for being queer or trans. What’s more, you don’t even actually have to be queer or trans, they just have to assume that you are. So, that’s where we are right now. Today, the Supreme Court heard three cases about whether it’s legal to fire someone for being gay or trans or queer, etc. The first, Altitude Express Inc. v. Zarda, is a lawsuit on behalf of Donald Zarda, a man who was fired from a skydiving job in 2010 after disclosing to a female client that he was gay. That case was consolidated with another one, Bostock v. Clayton County, which alleges that Clayton County, Georgia employee Gerald Bostock was fired from his job after joining a gay softball league. Then, there’s R.G. & G.R. Harris Funeral Homes v. the Equal Employment Opportunity Commission, which you may have actually heard us talk about before on this show. This is the case in which funeral home employee Aimee Stephens informed her boss that she was publicly transitioning and would begin wearing attire that was appropriate for female employees as outlined in the employee handbook, but the conservative religious boss didn’t like that and she was fired two weeks later.

All three of these cases hinge entirely on the court’s interpretation of Title VII of the 1964 Civil Rights Act, which bans employment discrimination based on race, color, religion, sex, or national origin. In 1989, the Supreme Court held that gender stereotyping is in itself a form of sex discrimination. So, for example, women can’t get fired simply for being *too* masculine for someone’s taste. So, as lawyers argued today, what is homophobia and transphobia if not sex discrimination, right? If you say that a man can’t date a man, but a woman can date a man, that’s literally gender stereotyping and sex discrimination. If you say that Aimee Stephens can’t wear the same uniform that other women are allowed to wear, that’s one, transphobia, and two, sex discrimination, right? So it seems pretty clear that sex discrimination would protect queer and trans people from being fired simply for being queer or trans. And, in fact, the Obama administration did agree that Title VII protected queer and trans people from employment discrimination. However, the Trump administration disagrees, of course, because they are evil incarnate, and so they’re arguing that sex discrimination simply means sex discrimination, and does not protect LGBTQ+ individuals.

[long pause as music plays, then music fades out]

These three cases today are significant for many reasons. Aimee Stephens’case is the first trans civil rights case in Supreme Court history in the United States. It’s likely the first time the words ‘transgender’ and ‘cisgender’ were spoken aloud in the US Supreme Court. And, just as a very important aside, the ACLU’s Chase Strangio is one of the lawyers involved in Aimee’s case, and Chase is also trans, and every time I think about how fucking brave and amazing Chase and Aimee are for fighting this fight for all of us, I get super emotional and so grateful and so in awe of our community and the strength that we show. And so, anyway, shout-out to Chase and Aimee. Truly, truly heroes.

Anyway. Together, these cases require the Court to decide, perhaps once and for all, whether it’s legal to fire someone simply for being queer or trans. In fact, that attorney Chase Strangiocalled it “the most important case directly affecting LGBTQ people to ever reach the US Supreme Court.” Obviously, Title VII does not explicitly mention LGBTQ+ folx as being protected classes, but it’s a very broadly written law. It seems obvious that, were it written today, the Civil Rights Act *would* include LGBTQ+ folx as protected classes. But this goes even beyond just queer and trans people, because A) conservative majority on this case could overturn the 1989 decision that banned gender stereotyping, which leaves vulnerable not just queer and trans folks, but everyone who doesn’t perfectly conform to someone else’s idea of gender roles all the time. This is *huge*. In fact, it’s wild because people we call TERFs – you might just call them transphobic women – were outside the Supreme Court *protesting* against the idea that trans people are a protected class, which is wild, because if trans people are hurt by this, then presumably, queer women and any gender non-conforming women will also be hurt by this. And TERFs are so often gender non-conforming women, and you’re just screwing yourself over just to hurt trans people and I don’t understand it.

But anyway, to be clear. In the states that currently protect queer and trans employees against discrimination, LGBTQ+ employees should still be protected, because state rights trump federal, uh, lack of rights. But this federal ruling would make it harder for folx in states *without* queer or trans anti-discrimination laws, and would potentially make it harder or impossible for individual cities to pass anti-discrimination laws in the future, or even to uphold the ones they already have. So, for example, if Chicago considers gay or trans people to be a protected class but Illinois doesn’t, Illinois would be able to overrule Chicago. Basically, we’re screwed now, in much of America. And we’ll still be screwed if we lose. So as always, one of the best things we can do is work on changing things on the state level and local level when we can. On the other hand, if we win somehow, trans people and gay people, bisexual people, queer people, gender non-conforming people, all across the country, would be protected by Title VII. I think? But that seems too positive to be true.

So anyway. What happens now? Well, now we wait for nine presumably heterosexual – although who knows? – fifty-two to eighty-six year-old cisgender judges to tell us whether we’re people or not. As Stevie of the very good band Adult Mom tweeted, “It’s fun to have my rights be put in the hands of these very capable withered and potentially haunted people.” The Supreme Court will discuss this internally and vote on this issue most likely tomorrow. But even though they’re voting maybe right now as you’re listening, we won’t learn the results of this vote until the decisions are written and released and that will happen on some mystery day in probably spring or summer of 2020. So in the meantime, we just get to speculate about what might happen.

[jazzy music starts]

And what might happen? Well, as you may know, we have nine Supreme Court Justices, four “liberal” Justices – that’s RBG, Stephen Breyer, Sonia Sotomayor, and Elena Kagan – and five conservative judges – that’s John Roberts, Clarence Thomas, Samuel Alito,Neil Gorsuch,and Brett Kavanaugh. During the arguments today, all four of the liberal Justices seemed pretty firmly on the side of queer and trans folks, although there were a few questionably worded comments, because it’s essentially impossible for a room full of fifty to ninety year-old cisgender people to get queer and trans issues right, I guess! Uh, for example, Justices on both sides seemed fixated on bathroom questions, even though the lawyers arguing the case reminded them that that’s not at all what these cases are even about. [sigh]

In order for anything remotely good to happen, we need at least one of the conservative Justices to side with the so-called liberals. Thomas and Alito seem very firmly anti-queer on this one, so they’re out. Clarence Thomas famously doesn’t ever speak, but we can assume he’s also anti-queer. And that leaves us with nightmare Trump appointees Kavanaugh and Gorsuch. Kavanaugh didn’t really speak during the trial either, he just asked one sort of innocuous question, but everyone’s assuming he’ll side against queers because he’s an absolute hell nightmare who has never done anything good in his life. But who knows, I guess. Gorsuch, meanwhile, identifies as a ‘textualist,’ which is not a sexuality, it just means that he takes documents very literally and doesn’t leave space for people to reinterpret them using, like, modern-day common sense. Which is really frustrating when you’re trying to make an argument like, the Civil Rights Act would obviously have covered queer and trans people if it were written today. But there’s maybe space for him to *maybe* side with the liberal justices. Maybe.

I want to read you a section of the court transcript from today. You may know there is no recording allowed in the Supreme Court, but we get to read this tiny transcript. So, this is speaking to one of the attorneys that is representing Aimee Stephens, as far as I can tell. Gorsuch: “I’m with you on the textual evidence. It’s close, okay? We’re not talking about extra-textual stuff. We’re talking about the text. It’s close. The judge finds it very close. At the end of the day, should he or she” – goddamn it – “should he or she take into consideration the massive social upheaval that would be entailed in such a decision,and the possibility that Congress didn’t think about it,and that it’s more effective, more appropriate a legislative rather than a judicial function? That’s it. It’s a question of judicial modesty.” [pause] We’re going to break that down, but I actually want to read you the lawyer’s response, because it’s great. “So, first of all, federal courts of appeals have been recognizing that discrimination against transgender people is sex discrimination for twenty years. There’s been no upheaval. As I was saying, there are transgender male lawyers in this courtroom following the male dress code and going to the men’s room and the Court’s dress code and sex-segregated restrooms have not fallen. So the notion that somehow this is going to be a huge upheaval**,** we haven’t seen that upheaval for twenty years, there’s no reason that you would see that upheaval. Transgender people follow the rule that’s associated with their gender identity. That’s not disruptive. And as to whether this is a question of interpretation, it’s absolutely a question of interpretation. How in the world can the Court interpret Title VII to say that Ann Hopkins can’t be fired for being insufficiently feminine” – that was the 1989 case – “but my client can be fired for being insufficiently masculine? There’s no textual basis for drawing that distinction whatsoever.” I don’t know, it’s compelling! *I* agree! [laughs] Um, so really what Gorsuch is saying is like, “The text actually agrees with you, but is it maybe too big of a social deal for us to all rule that trans people have human rights, and should we instead leave it to Congress to decide that trans people have human rights?” And the lawyer is like, “No. Absolutely not, you moron.”

[pause as calm acoustic music starts]

So, if someone can convince Gorsuch that he should stick to his job as a textualist and just side with the text, which means that we would have the right to not be fired for being gay and trans, um, that could be a really good thing. But if he decides to just go with his conservative tendency to fuck over trans people, uh, that could be obviously a bad thing. People are speculating maybe Gorsuch will side with the liberals, but probably not because he’s a swamp monster from the hell lagoon. But it’s technically possible and we can’t possibly know and we have to wait, like, six or eight months for a decision to come out. I don’t know! Like, I sort of feel like personally, for me, it’s better to live with, like, one molecule of hope in order to survive. But maybe it’s better to not get your hopes up and just assume that we’re just as fucked as ever were, I don’t know. Do whatever works for you.

If you want to follow along for future updates on this story, I would highly suggest following Katelyn Burns. She’s @transscribe on Twitter. And Chase Strangio, who is @chasestrangio on Twitter. A couple more things to note here: one is that the decisions could technically split. Like, they could say that you are allowed to fire people for being trans but not for being gay – that would be wild, but they could do it. Just so you know. Also, I just want to acknowledge that nine cisgender Ivy-Leaguers in robes are never going to get to decide our personhood! They can’t! We’re people and we deserve basic rights, so if anything, they’re deciding their *own* personhood, their *own* right to be treated with decency. It’s going to be several months, again, until we know how the Supreme Court voted, and meanwhile it will still be legal to fire someone for being gay or trans in the majority of the United States, which is a nightmare that we’ve lived with for a long, long time. We know how to survive, and we know how to fight, and we know how to show up for each other, and we know how to be proud as *fuck* about who we are. Being gay is the best part of my life. Being trans is the best part of my life. And Neil fucking Gorsuch doesn’t get a say in that.

[calm acoustic music slowly ends]

[outro music begins]

Thank you so much for listening to this bonus episode. I hope it was helpful to you. Feel free to follow up with us with any questions you may have. We’re on Twitter and Instagram @genderreveal.

If you are looking for ways to support trans people in this time, there’s so many things you can do, including donating to Trans Lifeline, but one thing you can do is donate to our grant program. We are currently giving away $1500 in grants, and I just realized I haven’t mentioned that yet on the podcast. Hey, what’s up? We’re giving away *$1500* in grants? Which is like a pretty fucking huge deal! And the only reason we’re able to do that is because of the people who donate to us on Patreon and Paypal. And so if you want to support trans art, trans activism, trans education, again, there are a bunch of ways to do that, but one of them is to donate at patreon.com/gender. And also, if you are a person who is not cisgender and you would like to apply for one of these grants, please do so by October 31 and *please* spread the word in your community, that would be so helpful. You can apply at genderpodcast.com/grant. You can donate at patreon.com/gender or paypal.me/MollyWoodstock. All links are in the show notes.

Also in the show notes, link to our merch store! Did you know that 100% of merch profits go to trans artists and trans organizations? I don’t take any of it! So take look at our merch store, we have *incredible* new designs by Cassandra Fountaine. They say ‘What the hell is gender?’ in the colors of the trans flag. That’s on t-shirts, that’s on tanks, that’s on stickers. We also have our Support Trans Media shirt back for a *very* limited time, because some people missed it the first time around. So grab your Support Trans Media shirt, grab your ‘What the hell is gender?” shirt, grab anything else you want. All of the profits benefit trans people 100%. Uh, one quick note about the Slack, the link to the Slack broke? I don’t know how. I’m very mad. But the new link to the Slack is bit.ly/genderslack2, genderslack and the number 2.

This episode was produced and edited by me, Molly Woodstock. Our logo is by the talented Michelle Leigh. Our theme song is by Breakmaster Cylinder. Additional music this week by Blue Dot Sessions.I am still working on the last episode of Season 4. I don’t know why I’m struggling with it *so* much, but I am! I’m trying! It will be here soon. In the meantime, stay safe, show up for each other. I love you *so* much, and I’m so proud to be in community with you. We’ll be back *so* soon with more feelings about gender.

[music ends]