

DIANE SYKES AND LGBTQ RIGHTS

Highlights:

- Diane Sykes sided against LGBTQ rights repeatedly.
 - Sykes ruled that a religious student group could ban gay members.
 - Sykes wrote a dissenting opinion arguing that the Civil Rights Act did not protect an employee based on sexual orientation.
 - Sykes argued against a policy that would have made it easier for the children of same-sex couples to enroll in school and access insurance.
 - Sykes ruled that a strip search by a transgender guard of a Muslim inmate violated the prisoner's free exercise rights.

Sykes Ruled Against LGBTQ Rights

SYKES RULED THAT A RELIGIOUS STUDENT GROUP COULD BAN GAY MEMBERS

2006: Sykes Ruled That A Religious Student Group That Barred Gay Membership Had A Constitutional Right To Receive Government Subsidies. According to Newsweek, "In 2006, the *Christian Legal Society v. Walker* case involved a religious student group and Southern Illinois University's School of Law. The dean said the group's membership policies, which bar those who engage in or affirm gay conduct, violate the university's nondiscrimination policies. The group sued the university for violating its First Amendment and 14th Amendment rights. In court, Sykes said the group didn't violate the university's affirmative action policy and has a constitutional right to continue receiving government subsidies. 'Subsidized student organizations at public universities are engaged in private speech, not spreading state-endorsed messages,' she wrote." [Newsweek, [12/13/16](#)]

The Supreme Court Ruled In A Separate Case That Colleges Could Require Student Groups To Accept All Persons Wishing To Be Members

2010: The Supreme Court Ruled In *Christian Legal Society Chapter v. Martinez* That Requiring An All-Comers Policy For Student Organizations Did Not Violate The First Amendment. According to Oyez, "Did the Ninth Circuit err when its holding runs directly contrary to the Seventh Circuit's 2006 decision in *Christian Legal Society v. Walker*? No. The Supreme Court affirmed the Ninth Circuit, holding that the college's all-comers policy is a reasonable, viewpoint-neutral condition on access to the student organization forum; and, therefore, did not transgress First Amendment limitations. With Justice Ruth Bader Ginsburg writing for the majority, the Court reasoned that the same considerations that have led the Court to apply a less restrictive level of scrutiny to speech in limited public forums, counseled the same result in this case. The Court further reasoned that, considering this constitutional inquiry occurs in the education context, Hasting's all-comers policy is reasonable and viewpoint neutral." [Oyez, viewed [6/24/24](#)]

SYKES WROTE A DISSENTING OPINION ARGUING THAT THE CIVIL RIGHTS ACT DID NOT PROTECT AN EMPLOYEE BASED ON SEXUAL ORIENTATION

Sykes Wrote A Dissenting Opinion For A Case That Ruled Title VII Of The Civil Rights Act Protected Employees Based On Their Sexual Orientation. According to the American Bar Association, "In an opinion praised by gay-rights advocates, an en banc federal appeals court has ruled that Title VII of the Civil Rights Act protects employees from discrimination on the basis of sexual orientation. The 8-3 decision on Tuesday by the 7th U.S. Circuit Court of Appeals at Chicago highlights differences in statutory interpretation. [...] Judge Diane Sykes, who was on President Donald Trump's list of potential Supreme Court nominees, wrote the dissent. She said Hively was treated unjustly if she was denied a job because of her sexual orientation, but Title VII doesn't provide a remedy. Sykes said the statute should be interpreted, as a reasonable person would have understood it when adopted. The majority, however, 'deploys a judge-empowering, common-law decision

method that leaves a great deal of room for judicial discretion,' she wrote. 'The result is a statutory amendment courtesy of unelected judges,' Sykes wrote. 'Judge Posner admits this; he embraces and argues for this conception of judicial power. The majority does not, preferring instead to smuggle in the statutory amendment under cover of an aggressive reading of loosely related Supreme Court precedents. Either way, the result is the same: the circumvention of the legislative process by which the people govern themselves.'" [American Bar Association, [4/5/17](#)]

The Supreme Court Disagreed With Sykes And Upheld Title VII Protections Based On Sexual Orientation

June 2020: The Supreme Court Upheld The Decision By The Seventh Circuit In Bostock v. Clayton County And Validated Title VII Protections Based On Sexual Orientation. According to NBC News, "The Supreme Court's landmark ruling in Bostock v. Clayton County, Georgia — which was widely praised by LGBTQ advocates but condemned by social conservatives — will likely have broad ramifications that go far beyond employment protections, according to several legal experts. In the 6-3 decision last Monday regarding the scope of 'employment discrimination based on ... sex,' which is banned under Title VII of the Civil Rights Act of 1964, the high court stated that 'it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.'" [NBC News, [6/23/20](#)]

SYKES ARGUED AGAINST A POLICY THAT WOULD HAVE MADE IT EASIER FOR THE CHILDREN OF SAME-SEX COUPLES TO ENROLL IN SCHOOL AND ACCESS INSURANCE

2017: Sykes Argued From The Bench That A Same-Sex Couple Should Not Be Listed On A Child's Birth Certificate Without Adoption, Saying, "You Can't Overcome Biology." According to the Indianapolis Star, "In oral arguments Monday, a panel of three judges for the Seventh Circuit Court of Appeals examined whether Indiana discriminates by not recognizing two married women both as parents on their children's birth certificates without having to adopt. Judge Diane S. Sykes drew distinctions between biological parentage and parental rights, and which of the two should be represented on birth certificates. 'You can't overcome biology,' Sykes said. 'If the state defines parenthood by virtue of biology, no argument under the Equal Protection Clause or the substantive due process clause can overcome that.' [...] The state of Indiana is appealing a ruling by a district judge who sided with the same-sex couples and ordered the state to recognize both women as parents on birth certificates of children who are conceived through a sperm donor." [Indianapolis Star, [3/23/17](#)]

- **The Process Of Adoption Can Be Cost Prohibitive.** According to the Indianapolis Star, "The adoption process, which can be costly, amends the birth certificate to recognize adoptive parents. The original record, Fisher said, is still retained." [Indianapolis Star, [3/23/17](#)]

The Defense Argued Preventing Same-Sex Couples To Be Listed On The Birth Certificate Without Adoption Could Make It More Difficult To Access Insurance Coverage And Education. According to the Indianapolis Star, "Not recognizing the non-birth mother, the lawsuit said, could make it more difficult for families to be covered by insurance policies, or for the parent to enroll her child in school." [Indianapolis Star, [3/23/17](#)]

SYKES RULED THAT A STRIP SEARCH BY A TRANSGENDER GUARD OF A MUSLIM INMATE VIOLATED THE PRISONER'S FREE EXERCISE RIGHTS

September 2022: Sykes Ruled That A Strip Search By A Transgender Guard Of A Muslim Inmate Violated The Prisoner's Right To Free Exercise Of Religion. According to the Milwaukee Journal Sentinel, "A Wisconsin prisoner who was strip searched by a transgender male guard says the search unlawfully violated his Muslim faith, and a federal court has ruled it shouldn't happen again. The search of Rufus West took place in 2016 at Green Bay Correctional Institution. West sued after he was denied exemptions from such future searches, and was threatened with discipline if he continued to complain. A federal district judge dismissed the lawsuit, finding West hadn't shown a substantial burden to his free exercise of religion. Even if he had, the search was legal as the least restrictive way to further a compelling governmental interest, the judge found. The 7th U.S. Circuit Court of Appeals recently reversed, and granted relief to West. Writing for a three-judge panel, Chief Judge Diane Sykes found West is entitled to judgment under the Religious Land Use and Institutionalized Persons Act of 2000, and can pursue his second claim under the Fourth Amendment. 'There's no dispute (Rufus's) objection to cross-sex

strip searches is both religious in nature and sincere,' Sykes wrote. 'The prison has substantially burdened his religious exercise by requiring him to either submit to cross-sex strip searches in violation of his faith or face discipline.'" [Milwaukee Journal Sentinel, [9/20/22](#)]