**Judge finds new legal protection for transgender people**

For the first time, a federal disability rights law has been interpreted to give legal protection to transgender people against discrimination. A Pennsylvania judge did so by giving a narrow reading to a phrase in that law that says it does not apply to individuals with “gender identity disorders.”

U.S. District Judge Joseph F. Leeson, Jr., of Allentown rejected a retail store chain’s argument that the phrase in the American with Disabilities Act flatly bars claims of workplace bias by transgender individuals.

The judge decided that, in order to avoid having to decide whether to strike down that part of the law as an unconstitutional form of discrimination, he opted for the view that it does not apply to employees who have been diagnosed as having a medical condition that limits their ability to live normal lives.

Gay rights advocates have praised the decision as a “breakthrough” for transgender rights. According to GLBTQ Legal Advocates and Defenders, a legal advocacy group that had filed a brief in the case, “While not all transgender people experience clinically significant disorders, the fact that many do should not be ignored.”

The new ruling came on Thursday in the case of Kate Lynn Blatt of Pottsville, PA, who was identified as a boy at birth but as an adult has been diagnosed with “gender dysphoria,” often referred to as gender disorder identity. She has had hormone therapy to change her appearance, and her name has been legally changed from her birth name, James Benjamin Blatt.

She began work in 2006 as a stocking clerk in an outdoor sports equipment store, Cebala’s Retail, Inc., just outside of the small town of Hamburg in eastern Pennsylvania. She has dressed in female clothing, and initially used the female restroom in the store. Later, however, she claimed that store managers would not allow her to use that bathroom, and refused, for a time, to provide her with a name tag as “Kate Lynn.”.

Her lawsuit claimed that she was humiliated and ostracized at the store, with one department manager referring to her as a “confused sicko” and co-workers using degrading names. She ultimately was fired in 2007, and she sued, claiming that her treatment was discriminatory and her firing was in retaliation for seeking an accommodation of her disability.

Her lawsuit argued that her medical condition was covered by the ADA, because that impaired her ability to engage in some normal living pursuits – the law’s definition of a protected disability.

The retail store company sought to have her lawsuit dismissed, relying on amendments that were added to the ADA in the Senate when the law was first enacted in 1990. That lists homosexuality as a condition not covered by the law, and also lists a number of sexual disorders or conditions – including “gender identity disorders” – as outside the law’s protection. (Those provisions were left in the law when it was expanded in scope by Congress in 2008.)

The lawsuit has had slow progress through the federal court in Allentown, with several apparently unsuccessful efforts to settle it. (Blatt also has made a claim of sex discrimination under federal civil rights law’s Title VII, but that was not at issue in the judge’s decision last week.)

Along the way, her lawyers responded to the company’s effort to have the case dismissed by urging the judge to strike down the disputed phrase in the ADA, if that phrase were read to exclude her claim of disability discrimination.

When Judge Leeson reached his decision on Thursday, he noted that the ADA’s protection was designed to be interpreted broadly. He did not rule on the constitutionality of the phrasing at issue, but rather relied upon the general rule that a judge is to avoid striking down a law if it can be read to salvage it.

He said that most of the words used by Congress in the exclusions were “associated with harmful or illegal conduct,” but that the reference to “gender identity disorders” was not like that, but rather alluded only to an individual’s self-identification as being of a different gender, without any actual disability.

Blatt’s diagnosis with “gender dysphoria,” the judge wrote, “substantially limits her major life activities of interacting with others, reproducing, and occupational functioning. Because this interpretation allows the court to avoid the constitutional questions raised in this case, it is the court’s duty to adopt it.”

Besides refusing to dismiss the claim of discrimination based on disability, Judge Leeson also refused the retailer’s argument that her retaliation claim should also be dismissed.

Neither ruling is a final decision that Blatt will ultimately win on those claims, when the case develops further. The ruling did clear the way for the two sides’ lawyers to start exchanging facts prior to a trial – the so-called “discovery process.”