

Fox Pridecast

McGinnis: Hi, I'm [Brian McGinnis](#).

McGarry: and I'm [Colleen McGarry](#).

McGinnis: To celebrate LGBTQ plus Pride month, this year, we're doing something a bit new and different. We're doing a quick podcast in which two of our out lawyers interview each other. And take turns, asking questions.

McGarry: I love this idea. No one has to be in the hot seat for too long. I think we should start by introducing each other. How about if I go first?

McGinnis: Yeah, sure.

McGarry: My co-host today is Brian McGinnis. Brian is a labor and employment lawyer who joined Fox Rothschild in the Philadelphia office in 2015. What's unique about Brian is the work he did in politics and activism prior to the launch of his legal career. For nearly seven years, Brian worked as the communications director for two members of the New Jersey legislature.

And before that Brian was the South Jersey Director of [Garden State Equality](#), where he worked on political and grassroots outreach and activism on behalf of South Jersey's LGBTQ community and straight allies. Since July 2021, Brian has served as president of the board of directors of the [Independence Business Alliance](#), the Greater Philadelphia region's LGBTQ plus Chamber of Commerce.

Brian has served on the IBA's board since 2017 and is now leading the board's diversity, equity and inclusion initiative and its long-term strategic planning. Of course, there's plenty more I could talk about on Brian's resume, but let's leave it there.

McGinnis: Thanks Colleen. Colleen McGarry is a litigation partner in Fox Rothschild's Minneapolis office.

Her practice spans a lot of different areas, but probably best summarized as complex business and commercial disputes that emphasize real estate transactions. Like so many skilled litigators, Colleen started her career with a clerkship and was a clerk for a judge on the Minnesota Court of Appeals for nearly two years.

She also just finished a 10-year stint on the board of directors for the [American Civil Liberties Union of Minnesota](#). She's a former chair of the [Minnesota Defense Lawyers Association Diversity Committee](#) and the [Minnesota Lavender Bar Association](#). And one of the reasons I know Colleen so well is that here at Fox Rothschild, she's one of the co-chairs of our firm's LGBTQ and Allies Initiative.

In fact, just today, Colleen and I attended the Initiative's latest monthly meeting. So Colleen, why don't we just dive right into the Q and A part of the podcast? And I'll start by asking you a question. You and I joined Fox Rothschild at around the same time. And since then the firm has grown quite a bit.

We now have nearly a thousand lawyers in 29 different offices nationwide. What is your sense of how the firm's diversity efforts have evolved during that time and in particular with respect to the LGBTQ plus Initiative?

McGarry: That's a great question. To put things into context, when I first joined Fox, I was coming from a firm where I was the founder and sole member of the diversity committee and the only out attorney in the whole firm.

So it was refreshing to join an office. This Minneapolis office has roughly the same number of attorneys as where I came from and find that there was not only a [Diversity Committee](#), but that there were actually four or five other out attorneys just in Minneapolis. So at that time, [the LGBTQ plus Initiative](#) was an offshoot still of the larger Diversity Committee.

And we were just figuring out what our role was, you know. We were sponsoring CLEs and local Lavender Bar events, as well as the national Lavender Law conference. And I'd say in the last six plus years and 400 plus attorneys, we've evolved significantly. We're our own stand-alone Initiative now.

And we still sponsor those local and national events, but we've also collaborated within the firm to make Fox a more welcoming workplace for all. We worked with our [Women's Initiative](#) to develop a new parental leave policy. And as Brian being one of the primary drafters, we established a workplace gender transition policy.

We've expanded our CLE programming and we now offer a program every June on current LGBTQ issues. And we've participated in HRC's Corporate Equality Index, [receiving a hundred percent](#) for the last four years. You know, all of this has been within the framework of the firm's increased commitment to diversity, equity and inclusion.

We have received wholehearted support from the firm, you know. We'll continue to evolve as long as we continue to have attorneys and staff energetic about making the firm an inclusive and accepting community. I'd say we've got a bright future ahead of us.

McGinnis: Awesome.

McGarry: Yeah, my turn to ask a question. Brian, what do you think about celebrating Pride? I'm sure you have thoughts about this. You know, we hear from critics and detractors who say that, you know, can't wait to see all the corporate logos turn to rainbow colors in June, but what about the rest of the year? Others are more positive and find value in celebrating Pride and Black History Month and Women's History Month, et cetera.

Where do you come out on that? No pun intended.

McGinnis: Yeah. My view generally is that if an organization, whether it's business or otherwise, or a law firm or otherwise, if an organization sole participation is just to hang a rainbow flag and to send out some rainbow apparel and then forget about it the rest of the year, then I don't see much value in. And that's why I appreciate, what's going on here at our firm. In that it's a longer-term commitment and one

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that involves like real meaningful substance, right? So not just rainbow-ifying everything, for lack of a better term, which is important, but also making real meaningful substantive strides.

So things like you talked about, making a parental leave policy more equitable, making health benefits equitable and accessible to trans and gender nonconforming employees, things like that. I think that celebrating Pride appropriately requires an acknowledgement that the reason for Pride in the first place is due to the systemic and historic discrimination and lack of access to affirming culture, to affirming benefits, to affirming and celebrating ourselves.

And part of celebrating that means making real substantive contributions. So I'm glad to be at a place where that's inherently recognized and we'll keep pushing towards it. So I have a question for you, Colleen. We I'm sure you have witnessed as well, but we've witnessed a lot of landmark advances for the LGBTQ plus community in the last few years, but it also seems like we're in a little bit of a backlash moment.

Things like the, "Don't Say Gay" law in Florida: From the perspective of someone who spent so much time as an ACLU board member and also an attorney, what are your thoughts on the trend here?

McGarry: Well, frankly, it's terrifying. I think there's been something like over a hundred bills attacking transgender people introduced in state legislatures in the past two years.

It's overwhelming. It's on all fronts, too. It's athletic restrictions, bathroom bills, health care issues that are both denying affirming health care based on insurance, and also criminalizing affirming health care by caregivers and parents, and just restricting inclusion of LGBTQ plus topics and curriculum.

I think the hardest part is how significantly and negatively these proposed and passed bills affect kids. I can't give you the statistics off the top of my head, but we know that the incidence of suicide and depression are significantly higher in LGBTQ kids than they are in hetero kids.

And I think that's what makes organizations like the ACLU so critical. They're out there working to ensure that LGBTQ plus people can live openly and safely. Whether it's through lobbying or litigation or public education, et cetera. And I think we have seen significant progress in LGBTQ rights, but we certainly can't let up now. I think we've reached the shameless plug portion of the interview, where I get to ask you about a cool project that you completed earlier this year. In January you published an [LGBTQIA plus inclusive glossary](#). It's an ebook. And I'm gonna quote from your press release.

It was designed as "a resource to help companies and individuals gain fluency and the ever-evolving language relevant to the LGBTQIA plus community." So tell me what was the impetus for the project and how did it evolve from where it started to where it ended?

McGinnis: That's a great question. Thanks, Colleen.

So this actually started off our Initiative's regular habit, or whatever you want to call it, of presenting a CLE for the firm and the firm's lawyers and staff on an annual basis during Pride month. And what we

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realized pretty early on is that a lot of people didn't have familiarity with some of the terms and concepts we were gonna be discussing.

And so what we started to do in those presentations is right at the start, create a common vocabulary, so we were all on the same page; try and introduce concepts to folks in a way that didn't necessarily delve into the third tier nuances of things, but really gave people, at least an upfront summary of what we'd be talking about, you know. Over time, that expanded and evolved as understandings of language expanded and evolved. And we ultimately looked to create a resource that we could provide, not only to our firm's lawyers and staff members, but also as a resource that our clients could use, when navigating some of these issues. In producing it, finalizing it and publishing it, there was a great team of attorneys, of firm leaders, who thought it was a great idea, reviewed, signed off, had helpful feedback. And now we've published our initial guide. The great thing about a project like this is that we get great feedback and we get people who write to us and acknowledge that language is evolving and understanding is evolving.

And sometimes people have given great suggestions for future editions of a document like this. So I think we're just getting started here and we'll be looking to update it and hopefully continue to provide a resource to some folks to increase understanding.

McGarry: Great.

McGinnis: Next up, at the risk of making us both feel a little bit older than we want to, I want to talk about the kids these days. How different do you think it is today for a queer or LGBTQ law student who is just entering the profession, you know, as compared to when you started out yourself?

Well, I like that you didn't put any years or dates on that. So I'll speak in generalities.

We wanna protect the witness as much as we can.

McGarry: Gosh, I think there's a world of difference. When I started out, I didn't have really any role models or mentors who looked like me, who I could go to and say, "Hey, how did you navigate this?" Or, "How did you talk to this person about that kind of thing." You know, I remember when I was researching firms as a student still, it was a huge deal if a firm provided insurance for a domestic partner, cause you couldn't be married. How shocking is that to remember that was a thing? I think I mentioned earlier, I was the only out attorney at my previous firm so I'd more often than not just go solo to firm events or functions just because it was easier.

And as compared to now, I don't even think it's a blip on the radar for most young associates, which is fantastic and how it should be. I don't know. It just, it's a world of difference to me. Obviously there's still issues out there and there's still some firms that aren't as inclusive and accepting as Fox, but I'm pretty grateful that we are here. So here's my final question for you. Many Americans were surprised by the June 2020 decision in *Bostock v. Clayton County, Georgia*, where the Supreme Court held in the six-three decision that federal law prohibits discrimination against employees on the basis of sexual orientation or gender identity. You've written about this case and talked about it and thought about it a lot. Looking at this case through both your litigation and politics lenses, I'm curious to know whether you

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think this is an instance of the Court leading the way for change, or simply following what Congress already said in the plain text of title.

McGinnis: That's a great question. I think this is an instance of the Supreme Court as a lagging indicator in some ways, right? So the kind of textualist theory underpinning that decision had been advanced in any number of district and circuit court opinions previous to that. Certainly in the ways a number of states analyzed and applied their own sex discrimination prohibitions, and also administrative agency guidance, such as the EEOC and things like that.

I was talking with someone who does statutory analysis as kind of their specialty, but also has a particular interest in LGBTQ plus policy issues about this decision. What we discussed was if the textual consideration, the actual text of Title Seven was the only consideration, right?

If we were only looking at pure law, then this probably should have been a nine to zero decision, because the interesting part is the three dissenting justices all had arguments and all made points, but none of those points actually refuted the central textualist holding, which is that if you prohibit sex discrimination, you are prohibiting discrimination based on characteristics that depend on sex.

And that necessarily includes sexual orientation and gender identity. So, you know, in some ways this was a landmark decision and I don't wanna subtract from that. In other ways, I do think it's an example of the Court following a path that had been laid out for it. And certainly one that had been set forth in public opinion prior to it.

McGarry: Well, thanks for your insights on that.

McGinnis: Yeah, happy to help. And thank you so much for joining me for this conversation and thank you to all of our listeners for joining us today. We're looking forward to continuing this conversation and we hope you'll do the same in your own communities with your own networks about how you can bring more LGBTQ plus inclusivity into your area.

So thanks again. Have a great day and happy Pride.

McGarry: happy Pride.