

THREE THINGS: SCOTUS ON LGBTQ+ DISCRIMINATION, QUALIFIED IMMUNITY, GUN RIGHTS

Very big SCOTUS day today. Huge – and that’s in spite of the court declining to hear cases on multiple issues.

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In *BOSTOCK v. CLAYTON COUNTY, GEORGIA* and two other cases, the Supreme Court ruled in 6-3 decision that firing an employee for being gay or transgender violates the Title VII of the Civil Rights Act of 1964.

Title VII (42 USC § 2000e-2 [Section 703]) reads,

It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin;

Dissenters were Justices Kavanaugh, Thomas, and Alito; Alito filed a dissenting opinion which Thomas joined. Kavanaugh also filed a dissenting opinion.

Overview of the three cases from Human Rights Watch:

In *R.G. & G.R. HARRIS FUNERAL HOMES v. EEOC and AIMEE STEPHENS*, Aimee Stephens worked as a funeral director at R.G. & G.R. Harris Funeral Homes. When she

informed the funeral home's owner that she is transgender and planned to come to work as the woman she is, the business owner fired her, saying it would be "unacceptable" for her to appear and behave as a woman. The Sixth Circuit Court of Appeals ruled in March 2018 that when the funeral home fired her for being transgender and departing from sex stereotypes, it violated Title VII, the federal law prohibiting sex discrimination in employment.

In *ALTITUDE EXPRESS INC. v. ZARDA*, Donald Zarda, a skydiving instructor, was fired from his job because of his sexual orientation. A federal trial court rejected his discrimination claim, saying that the Civil Rights Act does not protect him from losing his job because of his sexual orientation. In February 2018, the full Second Circuit Court of Appeals ruled that discrimination based on sexual orientation is a form of discrimination based on sex that is prohibited under Title VII. The court recognized that when a lesbian, gay or bisexual person is treated differently because of discomfort or disapproval that they are attracted to people of the same sex, that's discrimination based on sex.

In *BOSTOCK v. CLAYTON COUNTY*, Gerald Lynn Bostock was fired from his job as a county child welfare services coordinator when his employer learned he is gay. In May 2018, the Eleventh Circuit Court of Appeals refused to reconsider a 1979 decision wrongly excluding sexual orientation discrimination from coverage under Title VII's ban on sex discrimination and denied his appeal.

The dissent weighed in at more than 140 pages out of the entire 177 page syllabus and decision

handed down by SCOTUS today.

The first sentence of the dissent:

There is only one word for what the Court has done today: legislation. The document that the Court releases is in the form of a judicial opinion interpreting a statute, but that is deceptive.

Right-wing ideologues are in a furor over Justice Gorsuch's delivery of the opinion. They must have had absolute faith in Gorsuch to be so incredibly outraged that his interpretation didn't sustain bigotry. He wrote,

An employer who fired an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids. Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. But the limits of the drafters' imagination supply no reason to ignore the law's demands. Only the written word is the law, and all persons are entitled to its benefit.

Today's decision doesn't end all discrimination against LGBTQ+ persons, only employers defined by Title VII. There is still a need for more legislation to ensure all persons in this country may rely on the same rights in housing, credit, property ownership and more. The House passed the Equality Act in May 2019 to address these shortcomings; the bill is now languishing on Senate Majority Leader Mitch McConnell's desk in spite of support for the bill from 70 percent of Americans.

Our work is not done. We still need Congress to protect LGBTQ people from

discrimination in public accommodations,
federal programs, and more.

Congress must pass the Equality Act
NOW. <https://t.co/4npFEvKwMM>

– ACLU (@ACLU) June 15, 2020

Steve Silberman noted a trait shared by two of
the three dissenting jurists:

Let history record that two of the
SCOTUS justices who championed
discrimination against LGBTQ people this
morning are alleged sexual harrassers of
women. You'd almost think there's some
connection between oppression of women
and oppression of gays.

<https://t.co/vUxiP4T79m>

– Steve Silberman (@stevesilberman) June
15, 2020

One of the most passionately angry voices today:

Justice Scalia would be disappointed
that his successor has bungled
textualism so badly today, for the sake
of appealing to college campuses and
editorial boards.

This was not judging, this was
legislating—a brute force attack on our
constitutional system. (1/x)

– Carrie Severino (@JCNSeverino) June
15, 2020

“Bungled textualism.” ~chuckling~

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The SCOTUS declined to hear cases seeking
reexamination of the doctrine of “qualified
immunity.” Thomas was the lone jurist who wanted
to hear cases; in a six-page dissent he wrote,
“qualified immunity doctrine appears to stray

from the statutory text.”

There will be greater pressure on lawmakers to address qualified immunity in legislation.

Opinion piece about qualified immunity:

Powerful, excellent piece by 4th Circuit Court of Appeals Judge Jim Wynn on why qualified immunity must be fixed. He’s sending up a flare. SCOTUS should listen. (The #JusticeInPolicingAct also includes a provision that would change qualified immunity).

<https://t.co/1LFB9qrcqW>

– Sherrilyn Ifill (@Sifill_LDF) June 12, 2020

Rep. Ayana Pressley on qualified immunity:

Today, #SCOTUS announced that it will NOT review the unjust doctrine of qualified immunity. It’s critical that Congress pass my bill with @justinamash to #EndQualifiedImmunity.

<https://t.co/ZULUZQxBVf>

– Congresswoman Ayanna Pressley (@RepPressley) June 15, 2020

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The SCOTUS declined to hear multiple Second Amendment cases after it avoided addressing New York City’s regulation of guns back in April because the city repeal of the restriction render the case moot.

Justices Thomas and Kavanaugh dissented, wanting to hear a case related to New Jersey’s regulation of concealed carry guns.

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There’s actually four things today – SCOTUS also declined to hear the Trump administration’s petition regarding California’s SB 54 which

prevents the state's law enforcement resources from being deployed to aid federal immigration enforcement. Alito and Thomas dissented, wanting to take up the matter; surprisingly, Kavanaugh voted with Roberts and Gorsuch to decline.

We are still waiting for a decision on Deferred Action of Childhood Arrivals policy (DACA), which could cost the U.S. as many as 27,000 health care workers at the worst time possible if SCOTUS finds DACA unconstitutional.

This is an open thread.