

Civil Rights Statutes and the 2020 U.S. Supreme Court Decisions

A review of *Bostock v Clayton County Georgia*, No. 17-1618, 590 U.S. ___, 2020, and *Sisters of Guadalupe v Morrissey Berru*, No. 19-267

Prior Cases

Price Waterhouse Cooper v Hopkins, 490 U.S. 228 (1989), gender stereotyping
Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)
Harassment against same sex

EEOC Cases
Mary v Holder-gender identity
Baldwin v Foxx-gender orientation

Combination of Other Cases

Altitude Express Inc. v Zarda, 590 U.S. ___ (2020) and *R.G. & G.R. Harris Funeral Homes Inc. v Equal Employment Opportunity*, 590 U.S. ___ (2020).

Previously:

Although 22 states,
the District of Columbia
city and county governments
Legislative patchwork

36 briefs filed in Bostock and Zarda

As many as 200 corporation on one
Religious amicus against

Bostock Facts

In 2013, Bostock was released from his
duties as a social worker when it became
known that he was a member of a gay
softball team. He worked at organization
since 2003 with only positive reviews

Bostock Opinion

The Supreme Court in *Bostock* held that under Title VII of the 1964 Civil Rights Act, employment “discrimination based on homosexuality or transgender status necessarily entails [unlawful] discrimination based on sex.” The Court did not look at legislative history or statutory intent because the text was clear to interpret and they looked at its plain meaning.

Decided June 15, 2020 (6-3 decision)

Dissent

Thomas
Alito-not known at time of act
Kavanaugh-separation of powers

Cases Not Decided Yet

Bathrooms
Locker rooms
Dress (Alito) Will have to go back to lower courts

Going Forward:

Uniformity of Laws, less of a state patchwork
7 million members of the LGBTQ community working in U.S.
Sexual orientation and gender identity

Religion

Americans with Disabilities Act
Age Discrimination and Employment Act
(implications for Title VII)

Our Lady of Guadalupe School v. Morrissey-Berru,

combination of two cases that also included St. James School v. Biel.

Both in So. Cal
On Appeal from 9th Circuit

Decisions handed down July 8
7-2 Vote (Dissent Ginsberg, Sotomayor-too simplistic-what a church says an employee does)

**Prior Ministerial Decision
Hosanna-Tabor Evangelical
Lutheran Church & School v. EEOC
565 U.S. 171, 188 (2012)**

(1) whether the employer held the employee out as a minister by bestowing a formal religious title; (2) whether the employee's title reflected ministerial substance and training; (3) whether the employee held herself out as a minister; and (4) whether the employee's job duties included "important religious functions"

**Prior-Petruska v. Gannon
Univ., 462 F.3d 294, 299 (3d
Cir. 2006)**

Title VII Sex discrimination
1st Amendment

**Corporation of the Presiding Bishop
of the Church of Jesus Christ of
Latter-Day Saints v. Amos, 483 U.S.
327 (1987)**

Preference for employees of the same religion does not violate Title VII as religious discrimination-LDS janitor late on dues

Statutory

According to 42 U.S.C. SEC. 2000e-1 (Section 702)
 (a) Inapplicability of subchapter to certain aliens and employees of religious entities.
 This subchapter shall not apply to... a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

Co Parishioner Title VII Guidance

EEOC Guidance

The exception applies only to employees who perform essentially religious functions, namely those whose primary duties consist of engaging in church governance, supervising a religious order, or conducting religious ritual, worship, or instruction.

Ministerial Function Guidance

Sisters Opinion

Minister Exception Applies
 Court said they did not need to adopt a rigid formula for who was a minister
 Hosanna-Tabor Lutheran Church and School v. EEOC (do not need four factors)
 Thomas- not place for court to get involved
 Sotomayor- Vague definition of minister.
 They were in secular subjects but lead in prayer
 Alito- worried about independence of court

Implications

Nurses in churches and counselors in summer camp?
Federal government submitted an amicus brief on behalf of the schools
Other Amicus briefs on behalf of employees

How Prior Minister Factors Related to Teachers

They did not have any religious training before beginning their jobs at the schools; indeed, they didn't even have to be Catholic. They spent "the overwhelming majority of their time" teaching subjects that had nothing to do with the Catholic faith; when they did teach religion, it was from a workbook. (Sisters Dissent)

Limiting principles--sweep in everyone
Janitor no?
Coaches maybe
Needs to be true for non mainstream--no one factor necessary
