How Recent SCOTUS Rulings Will Impact the HIV Community

The Supreme Court handed down two wins and a loss.

July 2, 2020 By AIDS United

The Supreme Court of the United States recently handed down multiple decisions that will directly impact the HIV community. Below, AIDS United will try to unpack how these decisions may help or hinder those most impacted by HIV.

Fighting Back Against Anti-LGBTQ+ Discrimination in Employment (Boystock v. Clayton)

In an unexpected 6–3 decision by a conservative leaning group of justices, the Supreme Court ruled in favor of extending certain protections to LGBTQ+ individuals under the Civil Rights Act. Specifically, Justice Gorsuch wrote in the majority opinion that sex-based employment discrimination protections extended to sexual orientation and gender identity. The majority opinion also noted that Title VII can be applied in sex discrimination not only in groups but also toward specific individuals. This case involved a statutory interpretation of Title VII rather than constitutional law, meaning that the courts interpreted legislation rather than what is contained within the Constitution.

In his dissent, Justice Alito, joined by Justice Thomas, accused the court of legislating rather than interpreting the law, claiming that members of Congress would not have known about the concepts of sexual orientation or gender identity during the creation of the Civil Rights Act of 1964.

AIDS United has long engaged in advocacy around rights of LGBTQ+ individuals in employment. We look forward to seeing how this case influences protections for LGBTQ+ people, and especially for trans people, in all areas of life. We also owe a tremendous debt of gratitude to the late Aimee Stephens, one of the plaintiffs in these joint cases, whose resolve and determination to fight for her rights and the rights of anyone facing employment discrimination based on sexual orientation and gender identity led to this decision.

Sex-Work Stigma in Foreign HIV/AIDS Efforts (U.S. Agency for International Development v. Alliance for Open Society International)

The Supreme Court also ruled on June 29 on a disputed aspect of a 2013 case, determining that foreign-based HIV/AIDS organizations must still officially denounce sex work to receive U.S.

funding.

Seven years ago, the Court ruled that requiring HIV/AIDS organizations working outside of the United States (but registered and based in the U.S.) to denounce sex work as a requirement of receiving U.S. funding was a violation of the First Amendment's rights to freedom of speech. The Alliance for Open Society International won that case, which allowed them to continue their HIV/AIDS work with U.S. funding abroad without an organizational statement "explicitly opposing [sex work] and sex trafficking." However, until this week it was unclear if foreign-based grantees and other Alliance for Open Society International partners would have the same protections. In a 5–3 decision (with Justice Kagan self-excused because of her work on the issue in a previous role), the Supreme Court ruled that these foreign-based organizations were not subject to the same free speech protections and that the U.S. government could require denunciation of sex work from them as a contingent for funding intended to end HIV/AIDS abroad.

AIDS United contributed to an amicus curiae brief in support of Alliance for Open Society International and their non-U. S. partner organizations for this case, stating that enforcement of this so-called "anti-prostitution pledge" will undermine public health goals and the work needed to reach them.

Despite this week's loss, AIDS United will continue to support the decriminalization and destigmatization of sex work, particularly in service of our mission to end the HIV epidemic.

Abortion Care Rights (June Medical Services v. Russo)

The Supreme Court's decision in June Medical Services v. Russo bolsters protections for abortion care rights — for the moment. In a 5–4 decision on June 30, Supreme Court justices chose to strike down a Louisiana law requiring doctors who perform abortions have "admitting privileges" in nearby hospitals, allowing the state's three abortion clinics to remain open and providing care.

The case was almost identical to one decided by SCOTUS in 2016, Whole Woman's Health v. Hellerstedt, in which Texas legislators also sought to institute an admitting privileges law for doctors practicing abortion care in the state. Because of the precedent set in WWH v. Hellerstedt that this type of law was an "undue burden" on people seeking abortion care, reproductive justice advocates were also able to prevail in June Medical Services v. Russo.

However, while this case is a win for reproductive health, advocates must keep alert and proactively engaged as it was decided not on the merits of bodily autonomy but merely on court precedent, as Chief Justice Roberts articulated in his dissent.

Reproductive justice advocates warn that, even though it was a win, June Medical Services v. Russo should be a wake-up call for all who value medical accuracy, doctor-patient relationships, health care practices rooted in science and the ability for all — particularly people of color and especially Black people — to determine their own health care and lives.

We must recognize now that legality has never been enough to protect reproductive rights, and

such rights are meaningless without access. We all must work proactively to elect officials who will create policies to promote access to all kinds of health care and particularly abortion care.

Abortion care has never been so threatened in the United States as it is today, despite this week's SCOTUS win. Particularly in the arena of reproductive rights, Black women organizers continue to lead, as is exemplified by Wula Dawson, the Director of Development and Communications at Feminist Women's Health Center in Atlanta.

"This Supreme Court decision comes in the midst of a national uprising against police violence, a pandemic, and an economic crisis which disproportionately affects Black and Brown communities, our communities," Dawson writes in her response to the Court's ruling. "It may feel like we are all being pulled in a million directions at once, defensively putting out fires. But when we put Black liberation and Reproductive Justice in the center, everything we do is infused with the same vision and values — a vision of freedom and liberation."

AIDS United will continue to advocate in federal avenues for the civil and human rights of all people as the only path toward ending the HIV epidemic in our nation and world. Check back regularly to the Policy Update for the latest on HIV programming, appropriations, and legislation.

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