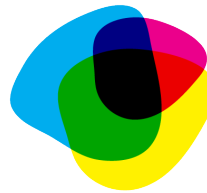


Implications of HHS & SCOTUS Decisions for LGBTQ+ Adolescents and Young Adults



RESILIENCE +
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COLLECTIVE

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Two major federal decisions were made in June 2020 by the U.S. Department of Health & Human Services (HHS) and the Supreme Court of the United States (SCOTUS) that will have an immense impact on the health and well-being of LGBTQ+ adolescents and young adults living in the United States.

What is the HHS final regulation?

- The HHS [final regulation](#) strips LGBTQ+ people of healthcare discrimination protections.¹
- On June 12th, 2020, HHS ruled that “neither the Section 1557 statute [of the Affordable Care Act] nor Title IX includes prohibitions on discrimination on the basis of sexual orientation or gender identity, or define ‘discrimination on the basis of sex’ to include such categories.” This reasoning is in conflict with the Supreme Court’s reasoning in *Bostock v. Clayton County*.
- Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs and activities.

What impact will the HHS regulation have on LGBTQ+ people?

- The HHS decision will disproportionately impact people of trans experience who are already vulnerable to experiences of healthcare discrimination. In the 2015 U.S. Transgender Survey, 1 in 4 transgender people reported experiencing problems with healthcare coverage related to being transgender and 23% reported delaying needed medical care due to fears of being mistreated as a transgender person.²
- The ruling means that HHS will not enforce Section 1557 of the ACA against healthcare entities who discriminate against transgender

What is the *Bostock v. Clayton County* SCOTUS ruling?

- On June 15th, 2020, the Supreme Court ruled that sexual orientation and gender identity discrimination in employment are prohibited under federal law.
- The [Supreme Court](#) specifically states that “an employer who fires 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 [of the Civil Rights Act of 1964] forbids.”⁷

What impact will the SCOTUS decision have on LGBTQ+ people?

- The *Bostock* SCOTUS decision is monumental and will have far-reaching positive effects on the health and well-being of LGBTQ+ people.
- The *Obergefell v. Hodges* Supreme Court decision in 2015 guaranteed same-sex couples the right to marry, however, the *Bostock* ruling is the first national anti-discrimination protection that LGBTQ+ people have been granted. Research from the Williams Institute at UCLA School of Law has shown that landmark legal decisions such as these positively impact the emotional well-being of LGBTQ+ people.⁸

- people. For example, HHS will not take action if a transgender person is refused care for a regular routine checkup, a transgender man is denied treatment for ovarian cancer, or even if healthcare facilities charge more for certain procedures like a hysterectomy when it's related to a gender transition.³ Additionally, the rule has created increased confusion in the community about whether access to gender-affirming medical care (e.g. hormones, top surgery) will continue or be revoked by their healthcare providers and insurers.
- Even if transgender people do not encounter more discrimination in healthcare, there is now increased fear in the community which may lead individuals to avoid seeking healthcare. Indeed, recent research has found that there is a decreased odds of avoiding medical care for fear of mistreatment among transgender people in states that have more transgender-specific protective policies.⁴
 - A [proposed HHS rule change](#) posted in November 2019 also attempts to remove existing enumerated anti-discrimination protections for LGBTQ+ people in HHS-funded health and social services.⁵ This rule has the potential to cause profound harm to LGBTQ+ youth in the foster care system, same-gender parents seeking to adopt, and LGBTQ+ runaway and homeless youth.⁶
 - LGBTQ+ people have historically been excluded as a protected class under U.S. federal law, even as other socially marginalized groups have been granted explicit anti-discrimination protections.⁹
 - This SCOTUS decision in employment is of unique importance as it sends a strong message to LGBTQ+ young people that their lives have the same value as others and that they cannot simply be fired for who they are.
 - Previous research has shown that LGBTQ+ mentors and role models can help cultivate positive LGBTQ+ identity development and serve as significant social support resources for adolescents during critical developmental stages.^{10, 11} The SCOTUS ruling will help to increase LGBTQ+ role model and mentor visibility in a multitude of work environments. For example, LGBTQ+ teachers will no longer have to hide who they are, and be able to serve as positive role models in school settings.
 - As LGBTQ+ people are more visible in various career and work environments, LGBTQ+ adolescents and young adults will see that they too can pursue a wide array of career options that may have previously been seen as inaccessible.

What happens next?

New HHS regulations are set to go into effect 60 days after publication in the Federal Register. However, the *Bostock* decision has made a legal challenge to the HHS final regulation much more likely to succeed. In fact, on August 17th, 2020 a federal judge in New York ruled to place the HHS regulation on hold.¹² The lawsuit was filed by the Human Rights Campaign and Baker & Hostetler LLP on behalf of two transgender women of color: Tanya Asapansa-Johnson Walker and Cecilia Gentili.

What other LGBTQ+ policy implications do these rulings have?

The SCOTUS ruling in *Bostock v. Clayton County* is significant for future LGBTQ+ policy and advocacy because of the textualist interpretation used for the case. Ultimately, what this means is that the same logic can be used to argue for LGBTQ+ anti-discrimination protections as being subsumed under existing federal laws that prohibit sex discrimination in housing, education, and many federally-funded social services. While the *Bostock* ruling is one tool that can be used to further fight for LGBTQ+ equality, there is still work that remains which will require a diverse set of advocacy strategies. Of particular importance is the pending approval of the Equality Act which would amend the Civil Rights Act of 1964 to include explicit non-discrimination protections for LGBTQ+ people in public accommodations and many other key areas of life.¹³ The Equality Act passed the House of Representatives in May 2019 but has not yet been taken up by the U.S. Senate for a vote.

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ABOUT THE RESILIENCE + RESISTANCE COLLECTIVE

The [Resilience + Resistance Collective](#) (R+R) is a team of researchers at the University of Michigan School of Public Health who work together with community partners to conduct community-engaged research, develop and implement interventions, and evaluate programs using participatory approaches. R+R team members have a primary focus on sexual and gender minority health equity research, practice, and policy; including projects focused on various aspects of transgender health, HIV prevention and care continua intervention development, and LGBTQ+ youth mental health.
