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1/24 A thread on yesterday's decision in Bostock. The takeaways: (1) The majority's textualist reasoning was correct and a major win for LGBTQ employees; (2) While important issues for trans employees remain open, those issues are likely to be resolved in trans employees' favor;

2/24 (3) Bostock has substantial implications for many other areas of LGBTQ equality law, including the Trump administration's revocation of trans healthcare protections; (4) The opinion's discussion of but-for causation is critical reading for all anti-discrimination lawyers;

3/24 (5) This is just one step—though an important one—in our country's ongoing equality struggles. For LGBTQ employees, and for everyone else, it is critical to redouble our efforts to ensure that equality law is a lived reality. #blacklivesmatter #BlackTransLivesMatter

4/24 First: The reasoning behind Bostock is straightforward, and compelled by Title VII's text. Title VII prohibits discrimination "because of sex." Every instance of anti-LGBTQ discrimination is "because of sex," meaning it would not have occurred "but for" the employee's sex.

5/24 Thus, Susan, a lesbian, would not have been fired for her attraction to women if she were Mark, a cisgender man.

6/24 John, a transgender man who is fired for claiming a male identity and having a male appearance, would not have been fired if he, like Mark, had been assigned the male sex at birth.

7/24 The majority in Bostock embraces this textualist reasoning, and correctly concludes that anti-LGBTQ discrimination is "because of sex." This is a major victory for LGBTQ employees who continue to lack explicit protections in many states.

8/24 Second: The opinion leaves open a number of issues of major importance to transgender employees, but its adherence to textualism strongly supports the conclusion that those issues will be resolved in transgender employees' favor.

9/24 Thus, while the Bostock opinion leaves open the issue of how sex-specific workplace rules, like dress codes, restrooms, and titles ought to be applied to transgender employees, its methodology effectively requires a pro-transgender result.

10/24 This is because dress codes, restrooms and other sex specific workplace requirements are unquestionably "because of...sex" under Title VII, just as race-differentiated workplace requirements would be "because of...race."

11/24 If such sex-specific workplace requirements are lawful, it is only because, as applied to unobjecting cisgender workers, they do not alter the "terms, conditions, or privileges of employment" (as required for a Title VII claim to be actionable).

12/24 But for transgender employees required to comply with gender-identity inconsistent policies, it is clear that such policies do alter the "terms, conditions, or privileges of employment," and indeed can render a workplace environment profoundly hostile.

13/24 Thus, under a straightforward textualist analysis, the application of sex-specific workplace requirements to transgender employees in a gender-identity inconsistent way should be unlawful.

14/24 Third, the decision in Bostock has major implications for numerous other areas of LGBTQ rights. As the Alito dissent points out, there are many other prohibitions against sex discrimination in US law, and most of them are likely to now be extended to LGBTQ individuals.

15/24 Simply by way of example, ACA Section 1557 prohibits healthcare discrimination by covered entities "on the ground" of sex. Although "on the ground" of is not identical to "because of," the Court has previously treated similar causation language as synonymous. See Burrage.

16/24 So too, many other sex discrimination statutes have causation language ("by reason of" "on the basis of") which the Court has treated as synonymous with "because of." Each and every one of these laws should now be construed to preclude anti-LGBT discrimination.

17/24 Fourth, Bostock offers an important clarification of the requirements of "but-for" causation for all of anti-discrimination law.

18/24 Over the last 10 years, the Supreme Court has moved increasingly toward the embrace of a "but for" standard for anti-discrimination claims. This move has been opposed by many progressives and anti-discrimination advocates.

19/24 But Bostock makes clear that the "but for" standard is not insurmountable. As the Court points out, "but-for" causation *is not* sole causation. Rather it is a "sweeping standard" under which, protected class status need only be one factor, provided it made a difference.

20/24 As the Court put it in the case of Burrage v. US, this means that protected class status need only be "the straw that broke the camel's back." Thus, an employee need only show that similar conduct would not have resulted in similar sanction of a non-minority employee.

21/24 Fifth, it is important to take a moment to celebrate this well-earned victory, and then get back to work. As the ongoing #blacklivesmatter protests demonstrate, equality under the law is not equality on the ground, and there is much work that remains to be done.

22/24 These equality struggles are interconnected, and we should ensure that our rightful celebration of Bostock does not distract from focusing attention on the urgent

ongoing efforts to secure racial equality. #blacklivesmatter

23/24 We should also be thinking about the road ahead for LGBTQ workers, which will not be easy even with protections, as other groups' experiences demonstrate.

24/24 Finally, enormous gratitude to the many who played a role in yesterday's decision and in the many years of advocacy leading up to it including Greg Nevins @chasestrangio Pam Karlan @DavidColeACLU @omargp @chaifeldblum @PDavidLopez @clarkeja Cary Franklin @BRSoucek and more.

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