

Faculty Work Comprehensive List

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## Supreme Court Decisions in Review (Part 1)

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## Supreme Court Decisions in Review (Part 1)

### Abstract

"As we glance forward toward the upcoming political season, we also want to take the time to look back at some of the cases this term that have caused a stir in the governmental system."

Posting about recent Supreme Court decisions from *In All Things* - an online journal for critical reflection on faith, culture, art, and every ordinary-yet-graced square inch of God's creation.

<https://inallthings.org/supreme-court-decisions-in-review-part-1/>

### Keywords

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### Disciplines

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### Comments

*In All Things* is a publication of the [Andreas Center for Reformed Scholarship and Service](#) at Dordt University.



August 18, 2020

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**Donald Roth**

Many industries and areas of life are marked by a rhythm of surging activity during certain times of the year. Retail stores have Christmas season. Farmers have harvest season. Public accountants have tax season. For legal nerds, it has become increasingly true that the last weeks of June (or, this year, the first few weeks of July) are Supreme Court season. Sure, the Court releases a few opinions throughout the year, but they hold on to almost all of the really big ones until right before the Court leaves on its summer recess. The pattern has become so regular that the eyes of the nation's news media also gather around, with reporters setting up like hunters in their duckblinds along First Street Southeast, waiting eagerly for new decisions to be let fly each few days, captivated by the possibility of feeding something substantive to an insatiable news cycle.

Since 2013, each summer I've also taken this season as a chance to look back over the previous term. I do this to keep myself up-to-date for the sake of my teaching, and I share this in the form of annual presentations to my campus community. I also periodically share these reviews here, albeit less regularly.

This year is both remarkable and consistent with this trend for many reasons. For the Court, the uniqueness of the coronavirus pandemic created historic milestones, including its first virtual (via telephone) oral arguments and a term that saw the fewest signed opinions since the Civil War. For me, the uniqueness of Covid-19 meant that I created a video version of my campus update for the first time ever. Clearly this latter uniqueness is less historic than the former, but it does give me the opportunity to share the video with you as well.

Since you can watch the video, this also gives me this space to add on some notes and further remarks that I had to cut from there due to time limitations. The video includes timestamps that clarify when I address individual cases, so you can navigate that easily enough; however, for any of you who aren't interested in the video, I'll give a quick overview of what cases I cover there.

### **Quick Rundown of Major Cases (for those who want to skip the video)**

***Bostock v. Clayton County***: This was the most significant landmark case of the term. In *Bostock*, the majority held that discrimination based on sexual orientation or gender identity is inextricably connected to "sex," a protected class within Title VII of the Civil Rights Act of 1964. In other words, while these two characteristics are not protected innately, they are entailed by the protection against discrimination "based on sex." As I will address below, this case left a significant number of issues unresolved as to what the exact impact of this ruling will be, especially as related to religious nonprofits.

***Chiafalo v. Washington***: The Court unanimously held that States have significant discretion to pass laws that hold "faithless electors" accountable. The American Constitutional system envisions federal power as the contractual creation of the various States. As a result, the federal government does not function as a direct democracy (where the people directly vote on policy decisions); instead, the States send representatives to Congress to vote for legislation, and they also designate representatives to vote for the President (this voting system is called the electoral college). This decision not only affirms that States may apportion electors to the electoral college as they choose, but the holding allows for various mechanisms that hold electors accountable to vote for the candidate that they were appointed to vote for.

***DHS v. Regents of the University of California***: In this case, the Court held that President Trump did not follow proper procedure in seeking wind down the Deferred Action for Childhood Arrivals (DACA) program. This decision was not about the President's power to end the program (he can) but the procedure he followed. Generally, the Court will defer to regulatory actions taken by the executive branch so long as they conform to the Administrative Procedures Act (APA) and are not "arbitrary or capricious." In this case, the lack of explanation given for why the administration viewed DACA as illegal or individual consideration of the various facets of that program (for instance, differentiating between things like granting social security cards and choosing not to pursue deportation actions) meant that the President's decision did not abide by APA standards and would need to be better explained before the wind-down could be implemented. This just delays the policy change and, as I've argued before, highlights how important a legislative solution to this issue is.

***Espinoza v. Montana Department of Revenue***: This case struck down the application of a provision of Montana’s State Constitution that prohibited any sort of public funds being distributed to any religious institutions. These sorts of “No Aid” provisions are law in most states (although Montana has one of the strictest versions), and most were adopted in the wake of a failed attempt to amend the U.S. Constitution to prohibit any federal money or lands ever coming “under the control of any religious sect.” Given this ruling, the constitutionality of all similar state laws is in serious question.

***Our Lady of Guadalupe School v. Morrissey-Berru***: This case clarified and, in doing so, significantly extended the reach of the “ministerial exception” to employment discrimination laws. The concept behind this exception is that the First Amendment prohibits the government from interfering in the hiring decisions of religious organizations, and this case clarified that “ministers” are not designated by their title, but rather their centrality to the religious mission of the institution. It’s not yet clear how comprehensively this case interacts with *Bostock*, but it’s reasonable to conclude that this case would prevent the holding in *Bostock* from affecting faculty hiring practices at religious schools.

***Trump Financial Records Cases (Mazars, Deutsche Bank, and Vance)***: These cases all involved subpoenas (legally-mandated disclosure) for various financial records, especially tax returns, from President Trump. In all three cases, the Court rejected the President’s arguments that he was entitled to broad immunity from subpoenas. This does not mean that the legal battle over these records is over, though, as the Court’s holding was primarily about the proper standard to apply when determining whether the subpoenas were valid and whether there might be case-specific reasons to block access to these documents. All of these cases return to lower courts to apply these new standards, and we shouldn’t expect this fight to be resolved before the upcoming election.