



## Wednesday Round-up

Edith Roberts

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Amy Howe reports for [this blog](#), in a post that first appeared at [Howe on the Court](#), that last night the court temporarily blocked the execution of Ruben Gutierrez, a Texas inmate who argues that the state's refusal to allow him to have a spiritual advisor of his choosing by his side in the death chamber violates his First Amendment rights and a federal law that protects the religious rights of inmates. For [The Wall Street Journal](#) (subscription required), Jess Bravin reports that "Mr. Gutierrez's case provides the court an opportunity to set a nationwide standard for the religious rights of prisoners about to die."

Mark Sherman explains at [AP](#) why the assignment of Monday's opinion in [Bostock v. Clayton County, Georgia](#), in which the court held that federal employment discrimination law protects gay and transgender employees, to Justice Neil Gorsuch left court-watchers "scratching their heads, ... but not because the appointee of President Donald Trump might have been expected to side with his conservative colleagues in dissent": "Gorsuch's opinion was his second for [the] October [argument session] while three of his colleagues wrote nothing." For [The Washington Post](#) (subscription required), Robert Barnes reports that "those who saw oral arguments in the cases now collectively known as *Bostock v. Clayton County* knew that Gorsuch seemed key": The advocates for the employees "passed up an appeal to fairness or equality in favor of arguing that the broad text of Title VII of the 1964 Civil Rights Act already protected their clients." At [The Employment Law Group](#), R. Scott Oswald writes that the battle of "gay and trans employees ... will continue on two fronts: To consolidate and extend this huge victory, in the workplace and beyond, and to defend it against a growing wave of religious-liberty claims, which will target their rights disproportionately." Melissa Gira Grant at [The New Republic](#) points to "the precedent this decision sets extends beyond employment law, possibly to any law barring discrimination on the basis of sex." In an op-ed at [Newsweek](#), Kristen Waggoner argues that "[i]nstead of embracing its role as the law's *interpreter*, the Court's majority has expanded its role to retroactive author and editor." According to Kevin Williamson at [National Review](#), the court's reasoning is "not jurisprudence," but "magical thinking." At [The Atlantic](#), Garrett Epps observes that "[a]ll three opinions insisted that they were only analyzing the meaning of words, with no reference to the justices' political or moral views on gay rights[, b]ut beneath the verbal jousting, the two sides were expressing dueling views of what sexual orientation and gender mean, and how society should assess them." Kate Anderson warns in an op-ed at [The Washington Times](#) that the decision "could pose numerous dangers for women and girls." Additional commentary comes from David Cortman at the [Daily Caller](#), Michael Bobelian at [Forbes](#), Walter Olson at the Cato Institute's [Cato at Liberty](#) blog, Maureen Collins at [The Christian Post](#) and Ross Runkel in a video at his eponymous [blog](#). [**Disclosure:** Goldstein & Russell, P.C., whose attorneys contribute to this blog in various capacities, is counsel on an amicus brief in support of respondent Stephens in *Harris*.]

At [E&E News](#), Niina Farah reports that Monday's decision in *U.S. Forest Service v. Cowpasture River Preservation Association*, in which the court held that the Forest Service had the authority to grant a right of way for a natural gas pipeline through lands traversed by the Appalachian Trail, "removed one hurdle for developers of the Atlantic Coast pipeline, but the natural gas project remains in legal limbo as a host of other obstacles stand in the way of construction." Ellen Gilmer and Alexandra Yetter report at [Bloomberg Law](#) that "[t]he case focused on a technical legal question about which agency has authority to allow crossings of the Appalachian Trail, but came to symbolize a broader debate over the expansion of oil and gas infrastructure across the country." At [PERC](#), Jonathan Wood suggests that the opinion in *Cowpasture River* "may have set an important precedent for the management of federal lands in other contexts." [Disclosure: Goldstein & Russell, P.C., whose attorneys contribute to this blog in various capacities, is counsel on an amicus brief in support of the respondents in this case.] For [The Washington Post](#), Michelle Ye Hee Lee reports that "[t]he Texas Democratic Party on Tuesday asked the U.S. Supreme Court to expand access of mail-in ballots to all voters in the state, including those afraid of contracting the coronavirus." For [this blog](#), in a post that first appeared at [Howe on the Court](#), Amy Howe reports that "a decision by the Supreme Court to intervene could have repercussions for mail-in voting in other states beyond Texas." Briefly:

- At [The Atlantic](#) (via How Appealing), Adam Winkler suggests that "[o]ne conclusion to draw ... from Monday's denial" of a petitions for review in a number of major gun rights cases "is that Chief Justice Roberts may not be so in favor of broadly expanding the scope of the Second Amendment."
- At [FiveThirtyEight](#), Josh Putnam writes that "the bottom line" in *Chiafalo v. Washington*, a constitutional challenge to a "faithless elector" law that threatens to fine electors who vote contrary to how state law directs, "is that even if the Supreme Court were to strike down state-level laws, chaos is unlikely to erupt[:] The guidelines put in place by parties to ensure most electors are faithful serve as a backstop."
- Pamela King reports at [E&E News](#) that the court's decision Monday not "to consider whether moving — but not adding — rocks, sand and other debris within a regulated waterway is subject to Clean Water Act restrictions ... came as a disappointment for operators that use suction dredge mining, an industrial process similar to panning for gold in a river."
- At the Cato Institute's [Cato at Liberty](#) blog, Jay Schweikert calls the Supreme Court's denial Monday of "all of the major cert petitions raising the question of whether qualified immunity should be reconsidered" "a shocking dereliction of duty."
- In a video available at [CPR Speaks](#), Russ Bleemer and others discuss Monday's cert grant in arbitration case *Henry Schein v. Archer and White Sales Inc.*