

2022

Bostock and Contact Theory: How Will a Single U.S. Supreme Court Decision Reduce Prejudice Against LGBTQ People?

Mantas Grigorovicius

Maurer School of Law - Indiana University, mgrigor@iu.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Civil Rights and Discrimination Commons](#), [Law and Gender Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Grigorovicius, Mantas (2022) "Bostock and Contact Theory: How Will a Single U.S. Supreme Court Decision Reduce Prejudice Against LGBTQ People?," *Indiana Law Journal*: Vol. 97: Iss. 5, Article 2. Available at: <https://www.repository.law.indiana.edu/ilj/vol97/iss5/2>

This Note is brought to you for free and open access by the Maurer Law Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

***Bostock* and Contact Theory: How Will a Single U.S. Supreme Court Decision Reduce Prejudice Against LGBTQ People?**

MANTAS GRIGOROVICIUS*

ABSTRACT

In 1954, Gordon Allport, one of the nation’s leading social psychologists, laid out a hypothesis explaining how prejudice could be reduced by intergroup contact. Decades later, his hypothesis became a theory with thousands of research hours behind it. Under contact theory, one of the factors that facilitates a reduction in prejudice between two groups is support of authorities or law. This Comment focuses on *Bostock v. Clayton County*, a recent Supreme Court decision holding that Title VII prohibits discrimination based on sexual orientation. Allport suggested that anti-discrimination laws help to “lead and guide the folkways,” and this Comment explores how *Bostock* could do just that in the context of prejudice. *Bostock* will allow for more contact with LGBTQ people and, by sending a message that discrimination is not condoned, *Bostock* can eventually change how society views LGBTQ people. Under contact theory, *Bostock*’s antidiscrimination protections will establish antiprejudicial societal norms and, as a result, religious groups that show animosity toward nontraditional couples may eventually begin to accept them.

INTRODUCTION

When President Trump nominated Neil Gorsuch for a seat on the U.S. Supreme Court, few people could have ever imagined that Gorsuch—a conservative picked by a Republican President—would not only side with the members of the LGBTQ¹ community but would also author a landmark decision protecting their rights. The Court in *Bostock v. Clayton County*—decided in the middle of Pride month on June 15, 2020—held that an employer who fires an individual merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964.² Writing for the majority, Gorsuch emphasized that the decision is limited to Title VII,³ but whether he realized the holding’s implications or not, *Bostock* is a landmark victory that will have far-reaching, positive consequences for the LGBTQ movement and its fight for equality.

This Comment discusses these far-reaching consequences through the lens of social psychology and contact theory, under which intergroup contact has the

* J.D., May 2021, Indiana University Maurer School of Law. Huge thanks to Professor Steve Sanders for his feedback, guidance, and advice.

1. In this Comment, the acronym “LGBTQ” is used as an umbrella term to discuss nonheterosexual and noncisgender people. Furthermore, in this Comment, the words “gay,” “lesbian,” “homosexual,” and “LGBTQ” are sometimes used interchangeably when discussing history, research results, and other material.

2. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020).

3. *Id.* at 1753 (“The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual ‘because of such individual’s sex’. . . . Whether other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these.”).

potential to reduce prejudice between majority and minority group members. First, this Comment explains the psychological nature of prejudice and discrimination and their negative effects on society. Next, this Comment discusses *Bostock* and how the decision effectively creates a universal antidiscrimination agenda that protects LGBTQ people. Then, the Comment discusses the genesis of contact theory and how *Bostock* will reduce prejudice against LGBTQ people. Finally, the Comment discusses whether the free exercise of religion uncertainties created by the Court will hamper the societal reduction of prejudice against LGBTQ people.

I. THE NATURE OF PREJUDICE AND DISCRIMINATION

Everyone has an identity.⁴ When asked, a white, heterosexual, cisgender man might describe his identity as a loving husband and a father of two, while a black, nonbinary person might describe their identity as a reader who likes to delve into the beauty of 17th century British prose. Sometimes, social groups to which people belong help form their individual identities.⁵ And even though there are similarities that people share, whether through politics, faith, or hobbies, it is the differences between people that often separate them.⁶ These differences may be challenging for some people to understand and reconcile, which can lead to prejudice.⁷ Prejudice is a negative feeling or attitude toward someone based on that person's actual or perceived identity.⁸ For example, a Red Sox fan might be prejudiced against all Yankees fans just because they are Yankees fans. If that Red Sox fan acted on these negative feelings toward a Yankees fan (for example, by firing a Yankees fan), this action would be discrimination. Thus, when people act on their prejudices, their actions are discriminatory.⁹ Discrimination can make people feel powerless, especially when they try to access work, education, and other opportunities that people who do not experience discrimination can easily access.¹⁰ Even people who do not experience discrimination are negatively affected by it because discrimination has indirect consequences on the entire society, which cannot reach its full potential.¹¹

So, how can a society reduce prejudice and discrimination that certain social groups face? This Comment will answer this question specifically for LGBTQ people. No experience is the same, and the fight for equality and equal rights has

4. LANGUAGE AND IDENTITY POLITICS: A CROSS-ATLANTIC PERSPECTIVE 2 (Christina Späti ed., 2015).

5. DIANA KENDALL, SOCIOLOGY IN OUR TIMES 155 (2012).

6. JOSEPH KRAUSKOPF, PREJUDICE: ITS GENESIS AND EXODUS 67 (1909).

7. See ROBERT MCNAMARA, SOCIAL GERONTOLOGY 35 (1998) (discussing how “value differences between older and younger people” can lead to prejudice).

8. STEREOTYPES AND PREJUDICE: ESSENTIAL READINGS 1 (Charles Stangor ed., 2000).

9. ROGER J.R. LEVESQUE, ADOLESCENCE, DISCRIMINATION, AND THE LAW: ADDRESSING DRAMATIC SHIFTS IN EQUALITY JURISPRUDENCE 59 (2017).

10. OECD, POVERTY REDUCTION AND PRO-POOR GROWTH: THE ROLE OF EMPOWERMENT 31 (2012).

11. MEASURING RACIAL DISCRIMINATION 223–27 (Constance F. Citro, Marilyn Dabady & Rebecca M. Blank eds., 2004).

been different for every social movement.¹² We now have federal laws that prohibit employment and other types of discrimination based on race, ethnicity, national origin, sex, pregnancy, disability, and age.¹³ But until June 2020, this was not the case for LGBTQ people,¹⁴ and they faced many challenges that slowed down their fight for equality.¹⁵ Before delving into *Bostock*, it is useful to briefly discuss the challenges which eventually led to *Bostock*.

Awareness of homosexuality as the basis for interpersonal relationships in the United States goes back to as early as the 1800s.¹⁶ However, unlike heterosexuals, who were able to live freely, most gays were forced to hide their sexual orientation because homosexual behavior was a crime punishable by jail time.¹⁷ There was no way for society to accept LGBTQ people because people were afraid to come out.¹⁸ The gay rights movement of the 1960s and 70s began the fight for change—the first step was to eliminate the criminalization of homosexual behavior.¹⁹ However, the movement had a major setback in 1986 when the U.S. Supreme Court upheld a Georgia sodomy law.²⁰ Finally, seventeen years after that holding, the LGBTQ rights movement won the battle against criminalization when the Court finally held sodomy laws to be unconstitutional in 2003.²¹ *Lawrence v. Texas* was the first, and arguably the most important, step toward the fight for equality and societal acceptance.²² The

12. See MICHAEL NAVA & ROBERT DAWIDOFF, *CREATED EQUAL: WHY GAY RIGHTS MATTER TO AMERICA* 23 (discussing the differences among black civil rights movement, women’s movement, and gay rights movement).

13. See, e.g., Education Amendments of 1972 § 901, 20 U.S.C. § 1681 (prohibiting discrimination on the basis of sex in educational institutions receiving federal aid); Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794 (prohibiting discrimination on the basis of disability in programs conducted by federal agencies); Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2 (prohibiting discrimination on the basis of race, color, religion, sex, or national origin); Age Discrimination Act of 1975 § 303, 42 U.S.C. § 6102; Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116(a) (prohibiting discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), age, or disability in covered health programs or activities).

14. Nancy J. Knauer, *The Politics of Eradication and the Future of LGBT Rights*, 21 *GEO. J. GENDER & L.* 615, 617 n.11 (2020) (discussing how “there were no anti-discrimination protections [for LGBTQ people] at the federal level until *Bostock*”).

15. See, e.g., *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) (upholding a Georgia sodomy law).

16. See WILLIAM E BENEMANN, *MALE-MALE INTIMACY IN EARLY AMERICA: BEYOND ROMANTIC FRIENDSHIPS* (2014).

17. GILBERT H. HERDT & ANDREW BOXER, *CHILDREN OF HORIZONS: HOW GAY AND LESBIAN TEENS ARE LEADING A NEW WAY OUT OF THE CLOSET* 5 (1996).

18. See KAREN M HARBECK, *COMING OUT OF THE CLASSROOM CLOSET: GAY AND LESBIAN STUDENTS, TEACHERS, AND CURRICULA* 1 (2014) (discussing how homosexuality in early 1900s was “viewed as a sin, a sickness, or a crime”).

19. See RACHEL KRANZ & TIM CUSICK, *GAY RIGHTS* 84 (2005) (discussing how “states began removing their sodomy laws from the books” due to the “gay rights movement”).

20. *Bowers*, 478 U.S. at 196. See also Bradford J. Kelley, *The Rainbow Sea Change: The Impact of Popular Culture on Homosexual Rights*, 16 *SCHOLAR* 283, 314 (2014) (discussing how the “*Bowers* decision was widely seen as a significant setback”).

21. See *Lawrence v. Texas*, 539 U.S. 558, 579 (2003).

22. See Christopher R. Leslie, *The Importance of Lawrence in the Context of the Supreme*

decision sent a clear message that there was nothing evil or criminal about being gay.²³ And in 2015, the Court decided to completely humanize homosexual relationships by imposing nationwide marriage equality.²⁴ However, even though gay couples are now allowed to get married, LGBTQ people still face discrimination.²⁵ And until 2020, there was no federal law protecting LGBTQ people from being fired because of their LGBTQ status.²⁶ But then came *Bostock*.

II. BOSTOCK V. CLAYTON COUNTY

Congress made history when it passed the Civil Rights Act of 1964—a landmark piece of legislation that was intended to fight discrimination in our society.²⁷ Title VII of the Act makes it “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin.”²⁸ Title VII also protects employees beyond firing and hiring: the statute makes it “unlawful” for employers “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment.”²⁹ Compensation discrimination includes wages, insurance, sick and vacation leave, overtime pay, and retirement programs.³⁰ But what does “sex” mean? Does the Act prohibit discrimination based on someone’s sexual orientation? These are the questions the Court answered in *Bostock*.

Court’s Historical Treatment of Gay Litigants, 11 WIDENER L. REV. 189, 219 (2005) (calling *Lawrence* a “historic landmark because it change[d] the entire relationship between gay Americans and their Supreme Court”).

23. See Marybeth Herald, *A Bedroom of One’s Own: Morality and Sexual Privacy After Lawrence v. Texas*, 16 YALE J.L. & FEMINISM 1, 12 (2004) (discussing how *Lawrence* emphasized an emerging recognition and acceptance of homosexuality).

24. *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015). See also M. Alexander Pearl & Kyle Velte, *Indigenizing Equality*, 35 YALE L. & POL’Y REV. 461, 466 n.19 (2017) (discussing how *Obergefell* “has the potential to further impact the normative climate for LGBTQ people by humanizing and legitimizing LGBTQ people generally, as well as same-sex couples and their children in particular”).

25. Sharita Gruberg, Lindsay Mahowald & John Halpin, *The State of the LGBTQ Community in 2020: A National Public Opinion Study*, CTR. AM. PROGRESS (Oct. 6, 2020, 9:00 AM), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/>; *Even With Ruling, Workplace Still Unequal for LGBTQ Workers*, NBC NEWS (June 18, 2020, 10:55 AM), <https://www.nbcnews.com/feature/nbc-out/even-ruling-workplace-still-unequal-lgbtq-workers-n1231419>.

26. Knauer, *supra* note 14, at 617 n.1 (discussing how “there were no anti-discrimination protections [for LGBTQ people] at the federal level until *Bostock*”).

27. RAYMOND F. GREGORY, *THE CIVIL RIGHTS ACT AND THE BATTLE TO END WORKPLACE DISCRIMINATION: A 50 YEAR HISTORY* x (2014).

28. Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2(a)(1).

29. *Id.*

30. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *FACTS ABOUT EQUAL PAY AND COMPENSATION DISCRIMINATION*, <https://www.eeoc.gov/fact-sheet/facts-about-equal-pay-and-compensation-discrimination>.

The facts of *Bostock* are relatively simple. Three cases were consolidated because they each presented a similar fact pattern: a long-time employee was fired shortly after the employee came out as gay or transgender.³¹ Gerald Bostock worked as a child welfare advocate in Clayton County, Georgia.³² He was an exceptional employee under whose leadership the county won multiple national awards.³³ After ten years of service, he began participating in a gay recreational softball league.³⁴ The county immediately fired him, stating the reason for his termination was “conduct unbecoming of a county employee.”³⁵ The county fired him because he was gay. Donald Zarda worked as a skydiving teacher at Altitude Express, Inc.³⁶ After the company found out that he was gay, it fired him.³⁷ Aimee Stephens, who was born male, worked in a funeral home in Garden City, Michigan.³⁸ When Stephens was hired, Stephens presented as a man.³⁹ However, after two years of service, Stephens informed the funeral home about an intention to “live and work full-time as a woman.”⁴⁰ The funeral home told Stephens “this is not going to work out,” and fired Stephens.⁴¹ All three parties separately sued their employers, arguing that Title VII prohibits unlawful discrimination on the basis of sexual orientation or gender identity.⁴² After navigating through the court system, all three cases reached the U.S. Supreme Court, which consolidated them to decide whether Title VII prohibits discrimination based on sexual orientation or transgender status.⁴³ And six justices agreed that it does.

Justice Gorsuch, writing for the majority, looked at the ordinary public meaning of the words comprising Title VII’s protections and held that employers violate Title VII when they intentionally fire an employee because of that employee’s sexual orientation or transgender status.⁴⁴ Gorsuch explained that discrimination on the basis of homosexuality or transgender status requires the employer to intentionally treat employees differently because of their sex.⁴⁵ Gorsuch conceded that nobody in the 1960s would have expected Title VII to apply to discrimination against LGBTQ people, but he gave no weight to legislative history because the language of Title VII prohibited the practice.⁴⁶ Gorsuch provided a simple, yet clear and direct, explanation

31. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020).

32. Brief for Petitioner at 4, *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (No. 17-1618).

33. *Id.* at 4–5.

34. *Id.* at 5.

35. *Id.* at 6.

36. Brief for Respondents at 3, *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020) (No. 17-1623).

37. *Id.* at 4.

38. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 1737.

43. *Id.* at 1738.

44. *Id.* at 1738, 1754.

45. *Id.* at 1740.

46. *Id.* at 1737.

for why discrimination based on sex is the same as discrimination based on sexual orientation:

[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge.⁴⁷

In response to the thirty-three-page majority opinion, Justice Alito exploded in a vehemently opposing fifty-four-page dissent. Alito criticized the majority for trying to “pass off its decision as the inevitable product of the textualist school of statutory interpretation,” while at the same time rebranding Title VII to “better reflect the current values of society.”⁴⁸ Alito also pointed out the uncertainty of free-exercise-of-religion protections that the decision has created, which is discussed in the last section of this Comment.

Alito bashed Gorsuch for issuing a “radical decision,” for which Gorsuch “should have given some thought to where its decision would lead.”⁴⁹ But Gorsuch was aware of where the decision would lead.⁵⁰ So, what does *Bostock* really mean?

Even though the majority explicitly stated that the decision only applies to Title VII,⁵¹ the central holding of the case—that discrimination based on sex includes discrimination based on sexual orientation or transgender status—will undoubtedly impact other laws, including administrative guidance and regulations.

For example, in May 2016, the Obama administration issued guidance to public school districts across the nation clarifying and explaining that Title IX, a federal law banning sex discrimination in education programs and activities, unequivocally protects transgender students.⁵² The guidance was also supplemented by a twenty-five page document detailing acceptable and good practices that should be used to support transgender individuals in schools across the nation.⁵³ The guidance also served as a necessary and powerful tool for transgender students and their families

47. *Id.* at 1741.

48. *Id.* at 1756 (Alito, J., dissenting).

49. *Id.* at 1778.

50. *See id.* (discussing how submitted briefs in this case “have called to [the Court’s] attention the potential effects that the Court’s reasoning may have” to other federal laws).

51. *Id.* at 1753; *see supra* note 3.

52. U.S. DEPARTMENT OF JUSTICE, DEAR COLLEAGUE LETTER ON TRANSGENDER STUDENTS (2016), <https://www.justice.gov/opa/file/850986/download>.

53. U.S. DEPARTMENT OF EDUCATION, EXAMPLES OF POLICIES AND EMERGING PRACTICES FOR SUPPORTING TRANSGENDER STUDENTS (2016), <https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.

to advocate for themselves and others.⁵⁴ The Obama administration's guidance was an unambiguous statement recognizing and affirming the existence of transgender students who sought a safe environment at their schools.⁵⁵ All of this changed when the Trump administration decided to rescind the Obama administration's guidance.⁵⁶ A recent study found that under the Trump administration, grievances filed by LGBTQ students were nine times less likely to end in corrective action in comparison to the complaints filed under the Obama administration.⁵⁷ Title IX prohibits discrimination "on the basis of sex" in education programs that are federally funded; however, the term is not defined anywhere in the statute.⁵⁸ And allegations of harassment appear more frequently in complaints based on LGBTQ status (72.5%) versus the general population (19.9%).⁵⁹ Thus, since LGBTQ students face such high levels of discrimination, it is of paramount importance that Title IX protects them. On June 16, 2021, Biden reversed the administrative guidance back to protecting transgender students,⁶⁰ and thanks to *Bostock*, these protections will stay in place.⁶¹

Another example of where *Bostock* would potentially play a role is Section 1557 of the Affordable Care Act, which prohibits discrimination based on sex, age, race, national origin, or disability in covered health programs or activities.⁶² However, the actual words do not appear in the statute's text; instead, the section refers to other statutes: Age Discrimination Act of 1975, Title VII of the Civil Rights Act of 1964, Section 794 of Title 29, and Title IX of the Education Amendments Act of 1972. In

54. *What did Obama do for Transgender Students and How Did Trump Take it Away?*, LAMBDA LEGAL (Feb. 25, 2017), https://www.lambdalegal.org/blog/20170225_trans-students-faq.

55. Caitlin Emma, *Obama Administration Releases Directive on Transgender Rights to School Bathrooms*, POLITICO (May 12, 2016, 11:11 PM), <https://www.politico.com/story/2016/05/obama-administration-title-ix-transgender-student-rights-223149>.

56. Daniel Trotta, *Trump Revokes Obama Guidelines on Transgender Bathrooms*, REUTERS (Feb. 22, 2017, 11:26 AM), <https://www.reuters.com/article/us-usa-trump-lgbt/trump-revokes-obama-guidelines-on-transgender-bathrooms-idUSKBN161243>.

57. Sharita Gruberg, *Beyond Bostock: The Future of LGBTQ Civil Rights*, CTR. AM. PROGRESS (Aug. 26, 2020, 9:01 AM), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/08/26/489772/beyond-bostock-future-lgbtq-civil-rights/>.

58. J. Brad Reich, *A (Not So) Simple Question: Does Title IX Encompass "Gender"?*, 51 J. MARSHALL L. REV. 225, 247 (2018).

59. Shabab Ahmed Mirza & Frank J. Bewkes, *Secretary DeVos Is Failing to Protect the Civil Rights of LGBTQ Students*, CTR. AM. PROGRESS (July 29, 2019, 10:00 AM), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2019/07/29/472636/secretary-devos-failing-protect-civil-rights-lgbtq-students/>.

60. Erin Richards, Alia Wong & Lindsay Schnell, *Transgender Students Protected at School by Title IX, Department of Education Says*, USA TODAY (June 16, 2021, 4:23 PM), <https://www.usatoday.com/story/news/education/2021/06/16/transgender-students-school-title-ix-education-department/7715053002/>.

61. *See, e.g., Walker v. Azar*, 480 F. Supp. 3d 417 (E.D.N.Y. 2020) (holding that gender identity and sexual orientation were covered under Title IX due to *Bostock*).

62. *See* Patient Protection and Affordable Care Act, 42 U.S.C. § 18116(a) (2012). Section 1557 specifically applies Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act, and the Rehabilitation Act.

2016, the Obama administration also issued a rule clarifying that Section 1557 prohibited discrimination based on gender identity and sexual orientation.⁶³ The Trump administration released a rule eliminating all of these protections for LGBTQ people.⁶⁴ The Department of Health and Human Services posted its final rule days after *Bostock*;⁶⁵ however, a federal court issued an injunction finding that the Department's position that gender identity and sexual orientation were not covered under Title IX was rejected by *Bostock*.⁶⁶ Thus, LGBTQ people are still covered under the act, thanks to *Bostock*.

Furthermore, in 2012, the Obama administration also promulgated a rule to cover LGBTQ people under the Fair Housing Act, which prohibits discrimination in the sale, rental, and financing of housing based on race, color, national origin, religion, sex, familial status, and disability.⁶⁷ Courts have treated definitions of sex under the Fair Housing Act in the same way they have treated definitions of sex under Title VII.⁶⁸ The Trump administration also tried to eliminate these protections when it proposed a rule limiting definitions of sex to biological sex.⁶⁹ However, once Biden took office, he immediately rescinded all of Trump's attempts to reduce protections of LGBTQ people.⁷⁰ The past several administrations have shown how unstable protections of LGBTQ people can be and how much chaos changing guidance

63. Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31,375 (proposed May 18, 2016) (to be codified at 45 C.F.R. 92).

64. Dennis Romero, *Trump Administration Issues Rule to Curtail Health Protections for Transgender People*, NBC NEWS (June 12, 2020, 6:34 PM), <https://www.nbcnews.com/feature/nbc-out/trump-administration-issues-rule-curtail-health-protections-transgender-people-n1230921>.

65. Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37, 160 (June 19, 2020) (to be codified at 45 C.F.R. pts. 86, 92, 147, 155, 156).

66. *Walker*, 480 F. Supp. 3d at 430; Margot Sanger-Katz & Noah Weiland, *Judge Blocks Trump Officials' Attempt to End Transgender Health Protections*, N.Y. TIMES (Aug. 17, 2020), <https://www.nytimes.com/2020/08/17/us/politics/trump-court-transgender-rights.html>.

67. Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (Feb. 3, 2012) (to be codified at 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 892, 982).

68. See, e.g., *Smith v. Avanti*, 249 F. Supp. 3d 1194, 1200 (D. Colo. 2017) ("The Tenth Circuit looks to Title VII discrimination cases for guidance in addressing discrimination issues under the FHA."); *Richards v. Bono*, No. 5:04-cv-484-Oc-10GRJ, 2005 U.S. Dist. LEXIS 43585, at *19 (M.D. Fla. Apr. 26, 2005) ("In defining the contours of an action under the Fair Housing Act it is appropriate to look to Title VII standards."); *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 53 n.26 (D. Mass. 2002) ("Title VIII's language in the Fair Housing Act parallels the language of Title VII.").

69. Thee Santos, Lindsay Mahowald & Sharita Gruberg, *The Trump Administration's Latest Attack on Transgender People Facing Homelessness*, CTR. AM. PROGRESS. (Sept. 3, 2020, 9:01 AM), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/09/03/490004/trump-administrations-latest-attack-transgender-people-facing-homelessness/>.

70. Leila Fadel, *Biden Signs Most Far-Reaching Federal Protections for LGBTQ People Yet*, NPR (Jan. 28, 2021, 4:05 PM), <https://www.npr.org/2021/01/28/961722392/biden-signs-most-far-reaching-federal-protections-for-lgbtq-people-yet>.

documents can create. That is why it is important to have judicial guidance, such as *Bostock*, that creates more stability.

Finally, the Fourteenth Amendment to the Constitution prohibits the government from denying people equal protection under the law.⁷¹ When a law is challenged under the Fourteenth Amendment, courts generally apply a rational-basis test, under which the law will be upheld as long as there is a rational reason for the law.⁷² However, courts apply heightened scrutiny when a law targets suspect classes, such as sex.⁷³ In *Craig v. Boren*, the Court created the intermediate scrutiny test and applied it to a statute that discriminated on the basis of sex.⁷⁴ Since then, courts have found that sex is a protected class and any statute that discriminates on the basis of sex must undergo the intermediate scrutiny test.⁷⁵ Under the test, the challenged statutory classification must be substantially related to an important governmental objective.⁷⁶ Because discrimination based on sex and discrimination based on sexual orientation have never been held to be the same by the Court, LGBTQ people were not afforded the same level of protection.⁷⁷ But *Bostock* is already changing that.

Thirty-two days after *Bostock* was decided, a federal district court, citing *Bostock*, held that an Idaho law discriminating against transgender people had to overcome intermediate scrutiny because “it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex.”⁷⁸ Similarly, a Minnesota state court also used the reasoning of *Bostock* to hold “that requiring a transgender student to use a different locker-room facility because of his sexual orientation is discrimination” under a Minnesota state statute.⁷⁹ Justice Alito was correct in that “[o]ver 100 federal statutes prohibit discrimination because of sex.”⁸⁰ And states are also likely to adopt the reasoning of *Bostock* and protect LGBTQ people at the state level.⁸¹ But how will *Bostock* reduce prejudice against LGBTQ people? How will *Bostock* lead to more societal acceptance of LGBTQ people? The answers to these questions come from social psychology and contact theory.

71. U.S. CONST. amend. XIV, § 1.

72. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439–40 (1985).

73. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 160 (1994).

74. 429 U.S. 190, 218 (1976).

75. *See, e.g., Dragovich v. United States Dep’t of the Treasury*, 872 F. Supp. 2d 944, 954 (N.D. Cal. 2012) (“Courts apply an intermediate level of scrutiny to certain quasi-suspect classifications, such as those based upon sex, which ‘have traditionally been the touchstone for pervasive and often subtle discrimination.’”); *Glenn v. Brumby*, 724 F. Supp. 2d 1284, 1302–03 (N.D. Ga. 2010) (“Sex is a suspect class entitled to intermediate scrutiny review.”).

76. *Craig*, 429 U.S. at 197 (“To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”).

77. Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 154 (2016).

78. *Hecox v. Little*, 479 F. Supp. 3d 930, 974 (D. Idaho 2020) (applying heightened scrutiny to a law that discriminated based on transgender status).

79. *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 562 (Minn. Ct. App. 2020).

80. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1778 (2020) (Alito, J., dissenting).

81. Leonore F. Carpenter, *Bostock v. Clayton County, Georgia, and its Effect on Pennsylvania's LGBTQ Community*, 91 PA. B.A. Q. 103, 120 (2020).

III. WHAT IS CONTACT THEORY?

Intergroup contact theory is one of the most extensively researched theories in social psychology.⁸² The theory has been studied for decades and has a central prediction—contact between members of diverse groups, under certain conditions, reduces prejudice.⁸³ The first examples of this theory can be traced back to white and black seamen during World War II. Ira N. Brophy showed that the more trips white seamen took with black seamen, the more positive their racial attitudes became.⁸⁴ Similarly, in 1951, sociologists looked at how living in desegregated and segregated areas was related to prejudice, and they found that in places like New York, where housing was desegregated, white participants of the study reported much lower prejudice than their white counterparts in Newark where housing was segregated.⁸⁵ Several other researchers noticed similar results from other types of contact, but the birth of the theory as we know it today is credited to Gordon Allport and his famous book *The Nature of Prejudice*, published in 1954.⁸⁶

Allport's book is one of the most influential books in social psychology, and many of its ideas and propositions on prejudice are still used today in modern research.⁸⁷ The most-cited part of the book is Allport's explanation of how prejudice can be reduced by intergroup contact:

Prejudice . . . may be reduced by equal status contact between majority and minority groups in the pursuit of common goals. The effect is greatly enhanced if this contact is sanctioned by institutional supports (i.e., by law, custom or local atmosphere), and provided it is of a sort that leads to the perception of common interests and common humanity between members of the two groups.⁸⁸

This entire paragraph boils down to four positive factors that facilitate a reduction in prejudice between diverse groups: “(a) equal status within the contact situation, (b) intergroup cooperation, (c) common goals, and (d) the support of authorities, law, or custom.”⁸⁹ Equal status means that both groups must engage equally in the interaction, and both groups should have similar qualities, backgrounds, and social status.⁹⁰ Common goals means that effective contact should involve an active effort toward a united goal. For example, every member of an athletic team composed of

82. Tamar Saguy, *The Irony of Harmony*, in INTERGROUP CONTACT THEORY: RECENT DEVELOPMENTS AND FUTURE DIRECTIONS 53 (Loris Vezzali & Sofia Stathi eds. 2017).

83. SOCIAL PSYCHOLOGY IN ACTION: EVIDENCE-BASED INTERVENTIONS FROM THEORY TO PRACTICE 145–46 (Kai Sassenberg & Michael L. W. Vliek eds., 2019).

84. Ira N. Brophy, *The Luxury of Anti-Negro Prejudice*, 9 PUB. OP. Q. 456, 465 (1945).

85. MORTON DEUTSCH & MARY EVANS COLLINS, INTERRACIAL HOUSING: A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT 46–49 (1951).

86. ON THE NATURE OF PREJUDICE: FIFTY YEARS AFTER ALLPORT 1 (John F. Dovidio, Peter Glick & Laurie A. Rudman eds., 2005).

87. *Id.* at xi.

88. GORDON W. ALLPORT, THE NATURE OF PREJUDICE 281 (1954).

89. THE SAGE ENCYCLOPEDIA OF THEORY IN PSYCHOLOGY 472 (Harold L. Miller, Jr. ed., 2016).

90. ON THE NATURE OF PREJUDICE, *supra* note 86, at 254–65.

different people has the same goal: to win.⁹¹ The next factor, intergroup cooperation, means that the people in that interaction need to work together to achieve that goal.⁹² Finally, the contact will receive even more benefit when there are laws that establish norms of acceptance and guidelines for how members of different groups should and should not treat others.⁹³

Under contact theory, prejudice is reduced for several reasons. First, contact fights prejudice because it reduces feelings of anxiety.⁹⁴ Second, contact increases empathy and helps others see and analyze things from a different perspective.⁹⁵ Third, contact changes how people categorize others.⁹⁶ Finally, contact helps build relationships and friendships.⁹⁷ The reduction in prejudice can also lead to formation of allyships: the majority group members can work to fight oppression and systemic injustice.⁹⁸

Many scholars have built on Allport's work. In 2006, a group of researchers conducted a meta-analysis by reviewing hundreds of previous studies including over 250,000 research subjects.⁹⁹ The researchers found major support for the theory, and they also found that the results were not affected by self-selection¹⁰⁰ as the contact had a positive effect even when the subjects had not chosen whether to have contact with people from other groups.¹⁰¹ The researchers also found that the theory is not limited to racial prejudice—it applies to all marginalized groups.¹⁰² In 1988, Gregory M. Herek found that people who report interacting with someone who is gay generally report more positive attitudes toward other gay people.¹⁰³ Many other

91. *Id.* at 265.

92. ADVANCES IN INTERGROUP CONTACT 6 (Gordon Hodson & Miles Hewstone eds., 2013).

93. ON THE NATURE OF PREJUDICE, *supra* note 86, at 265.

94. DOUGLAS T. KENRICK, STEVEN L. NEUBERG & ROBERT B. CIALDINI, SOCIAL PSYCHOLOGY: UNRAVELING THE MYSTERY 423 (1999).

95. Thomas F. Pettigrew, Linda R. Tropp, Ulrich Wagner & Oliver Christ, *Recent Advances in Intergroup Contact Theory*, 35 INT'L J. INTERCULTURAL RELS. 271, 277 (2011).

96. KARIN PETERS, LIVING TOGETHER IN MULTI-ETHNIC NEIGHBORHOODS: THE MEANING OF PUBLIC SPACES FOR ISSUES OF SOCIAL INTEGRATION 65 (2011).

97. BUILDING COMMUNITIES AND MAKING CONNECTIONS 225 (Susana Rivera-Mills & Juan Antonio Trujillo eds., 2010).

98. See THE OXFORD HANDBOOK OF WORKPLACE DISCRIMINATION 374 (Adrienne Colella & Eden B. King eds., 2018) (discussing why and how “allies are important to reducing prejudices”).

99. See Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCH. 751 (2006).

100. Self-selection happens when “people who [are] less prejudiced choos[e] to have contact with other groups, and people who [are] more prejudiced choos[e] to avoid contact.” Elizabeth Hopper, *What Is the Contact Hypothesis in Psychology?*, THOUGHTCo (Oct. 26, 2019), <https://www.thoughtco.com/contact-hypothesis-4772161>.

101. See Jim A. C. Everett, *Intergroup Contact Theory: Past, Present, and Future*, THE INQUISITIVE MIND (2003), <https://www.in-mind.org/article/intergroup-contact-theory-past-present-and-future>.

102. DOMINIC ABRAMS, JULIE CHRISTIAN & DAVID GORDON, MULTIDISCIPLINARY HANDBOOK OF SOCIAL EXCLUSION RESEARCH 44 (2007) (discussing how the contact hypothesis applies to all marginalized groups, including gays, the elderly, the mentally ill, people with AIDS, and homeless people).

103. Gregory M. Herek, *Heterosexuals' Attitudes toward Lesbians and Gay Men*:

similar studies have been conducted, and in 2009, a meta-analysis, which used eighty-three effect sizes from forty-one articles, drew the same conclusion “that having contact with lesbians and gay men is associated with reduced sexual prejudice towards homosexuals by heterosexuals.”¹⁰⁴

Moreover, researchers have found that, while all four of Allport’s conditions do not have to be met, prejudice will be reduced exponentially with every condition that is met.¹⁰⁵ But the fourth condition—support by authorities—seems to be the most useful and necessary.¹⁰⁶ In his book, Allport describes antidiscrimination laws “as one of the major methods of reducing, not only public discrimination, but private prejudice as well.”¹⁰⁷ And the reason behind the importance of these laws is that they establish antiprejudicial norms, which change the perception of what behavior is acceptable and what is not.¹⁰⁸

And that is why *Bostock* is so important: It sends the much-needed signal that discrimination against LGBTQ people is wrong. The establishment of legal norms through antidiscrimination laws cultivates a public conscience and expected standards for behavior that check for overt signs of prejudice.¹⁰⁹ Thus, antidiscrimination laws help to “lead and guide the folkways.”¹¹⁰ These laws do not directly control prejudices (because thoughts cannot be controlled), but they control the discriminatory actions.¹¹¹ And once these actions are controlled, thoughts too are likely to change because “outward action, psychology knows, has an eventual effect upon inner habits of thought and feeling.”¹¹²

Finally, *Bostock* will allow for more contact with LGBTQ people to occur. Before June 2020, there were no federal laws protecting LGBTQ people from discrimination in employment, housing, insurance, military, and other areas.¹¹³ All that is changing due to *Bostock*. The decision will create something that our society has never had before: an equal ground on which people can interact and get to know members of the LGBTQ community. Whether it is a child welfare advocate, a skydiving instructor, or a funeral home employee, *Bostock* will allow society to meet more LGBTQ people. And that is all it takes—making a difference one person at a time.

Correlates and Gender Differences, 25 J. SEX RSCH. 451, 470 (1988).

104. Sara J. Smith, Amber M. Axelton & Donald A. Saucier, *The Effects of Contact on Sexual Prejudice: A Meta-Analysis*, 61 SEX ROLES 178, 187 (2009).

105. Pettigrew & Tropp, *supra* note 99, at 766.

106. REFUGEE EDUCATION: INTEGRATION AND ACCEPTANCE OF REFUGEES IN MAINSTREAM SOCIETY 5–6 (Enakshi Sengupta & Patrick Blessinger eds., 2018) (discussing how the authority “not only provides structure, but also has the power vested in it to promote greater contact”).

107. ALLPORT, *supra* note 88, at 477.

108. DAGMAR GREFE, ENCOUNTERS FOR CHANGE: INTERRELIGIOUS COOPERATION IN THE CARE OF INDIVIDUALS AND COMMUNITIES 64 (2011).

109. ALLPORT, *supra* note 88, at 470.

110. *Id.* at 472.

111. *Id.* at 470.

112. *Id.* at 477.

113. Knauer, *supra* note 14, at 617 n.1 (discussing how “there were no anti-discrimination protections [for LGBTQ people] at the federal level until *Bostock*”).

The final part of this Comment will address concerns relating to religion, which Justice Gorsuch voiced in his *Bostock* opinion, and how religion interacts with the societal goal of reducing prejudice of LGBTQ people.

IV. WHAT ABOUT RELIGION?

Justice Gorsuch acknowledged the difficult dichotomy between religious views and the central holding of *Bostock*: “[T]he First Amendment can bar the application of employment discrimination laws to claims concerning the employment relationship between a religious institution and its ministers.”¹¹⁴ Furthermore, Gorsuch acknowledged the problems presented by the Religious Freedom Restoration Act of 1993 (RFRA): “Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII’s commands in appropriate cases.”¹¹⁵ But Gorsuch did not explain how RFRA would interact with the central holding of *Bostock*.

RFRA was enacted to strengthen free exercise protections.¹¹⁶ RFRA prohibits the government from substantially burdening an individual’s exercise of religion, unless the government establishes that burdening the exercise of religion is the least restrictive means of promoting a compelling government interest.¹¹⁷ The Sixth Circuit in *Harris Funeral Homes* (one of the three cases consolidated by the Court in *Bostock*) held that the Equal Employment Opportunity Commission protecting a transgender employee’s Title VII rights did not substantially burden sincere religious exercise because “tolerating [an employee’s] understanding of her sex and gender identity is not tantamount to supporting it.”¹¹⁸ And that was not the same as endorsing the employee’s transgender status.¹¹⁹ Similarly, the presumed customer biases could not have constituted a substantial burden.¹²⁰ The Sixth Circuit ultimately held that enforcing Title VII was the least restrictive means of achieving the compelling goal of eliminating workplace discrimination.¹²¹

Because the employer in *Harris Funeral Homes* abandoned its defense based on RFRA, the Sixth Circuit’s opinion will continue to apply in Michigan, Kentucky, Tennessee, and Ohio.¹²² This decision suggests that RFRA may not always shield

114. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020) (internal quotation marks omitted).

115. *Id.*

116. *United States v. Kelly*, No. 2:18-cr-22, 2019 U.S. Dist. LEXIS 177628, at *22 (S.D. Ga. Oct. 11, 2019) (“Indeed, the only reason RFRA was enacted was to restore and strengthen the test by which to test governmental burdens on sincerely held religious beliefs (i.e., the compelling interest test), and to ensure religious liberty received even stronger protections than what was constitutionally required.”) (citing *Holt v. Hobbs*, 574 U.S. 352 (2015)).

117. 42 U.S.C. §§2000bb(a)(4)–(5).

118. *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 588 (6th Cir. 2018).

119. *Id.*

120. *Id.* at 586.

121. *Id.* at 600.

122. Jason N. W. Plowman & Meghan H. Hanson, *Bostock Breakdown: Unanswered Questions in Light of Supreme Court’s Title VII Ruling*, NAT’L L. REV. (June 30, 2020), <https://www.natlawreview.com/article/bostock-breakdown-unanswered-questions-light-supreme-court-s-title-vii-ruling>.

employers from liability for claims of discrimination based on LGBTQ status in suits brought by the federal government.¹²³ Because there is only one circuit that has addressed this issue, it is unlikely that the issue will be presented to the Supreme Court soon, unless other circuits reach a different result, creating a circuit split.¹²⁴ However, circuits are split over whether RFRA may be asserted as a defense by a private party.¹²⁵

Furthermore, the religious organization exemption provision of Title VII allows religious organizations and schools to deny employment to people of different religions.¹²⁶ Courts have also extended this exception to allow termination of employees who are no longer in good standing with the church.¹²⁷ However, because certain religious people claim to have “sincerely held religious beliefs” on sexual orientation and gender identity, eventually courts will be forced to decide how to reconcile religion and Title VII, which now protects sexual orientation and gender identity.¹²⁸ But RFRA and other laws protecting religion might turn out to be less of a problem than the majority and dissent thought they would be.

People who do not support LGBTQ rights tend to cite religion as their reason for doing so.¹²⁹ Homosexuality has been denounced by most Christian denominations for centuries, and so naturally people of Christian faith often express animosity toward LGBTQ people.¹³⁰ The reasoning behind this view is beyond the scope of this Comment. However, over the last few decades, Christianity and many of its denominations have been experiencing a decrease in numbers of people of faith.¹³¹

123. Xavier D. Lightfoot & Devon D. Williams, *For Employers: Understanding the Supreme Court's Title VII Ruling*, NAT'L L. REV. (Aug. 12, 2020), <https://www.natlawreview.com/article/employers-understanding-supreme-court-s-title-vii-ruling>.

124. Meghan Hanson & Jason Plowman, *Unanswered Questions in Light of Supreme Court's Title VII Ruling*, JD SUPRA (July 4, 2020), <https://www.jdsupra.com/legalnews/unanswered-questions-in-light-of-39542/>.

125. *Goodman v. Archbishop Curley High Sch., Inc.*, 149 F. Supp. 3d 577, 588 (D. Md. 2016) (“In fact, the United States Courts of Appeals have split on the question of whether RFRA applies in a suit between two private parties.”).

126. *Questions and Answers: Religious Discrimination in the Workplace*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, <https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace>.

127. Hanson & Plowman, *supra* note 124.

128. See Nancy J. Knauer, *The LGBTQ Equality Gap and Federalism*, 70 Am. U.L. Rev. 1, 57–61 (2020) (discussing the uncertainty of RFRA claims after *Bostock*).

129. *Section 2: Knowing Gays and Lesbians, Religious Conflicts, Beliefs about Homosexuality*, PEW RSCH. CTR. (June 8, 2015), <https://www.pewresearch.org/politics/2015/06/08/section-2-knowing-gays-and-lesbians-religious-conflicts-beliefs-about-homosexuality/>.

130. See Achim Hildebrandt, *Christianity, Islam and Modernity: Explaining Prohibitions on Homosexuality in UN Member States*, 63 POLITICAL STUD. 852 (2015) (explaining why religious communities express more resistance to supporting LGBTQ people).

131. Harriet Sherwood, *Americans Becoming Less Christian as Over a Quarter Follow No Religion*, THE GUARDIAN (Oct. 17, 2019, 11:48 PM), <https://www.theguardian.com/world/2019/oct/17/americans-less-christian-religion-survey-pew>.

One of the reasons is that religion often operates under strict conservative principles.¹³² However, the popularity of these denominations has been steadily decreasing as more people refuse to attend and support religious organizations that expressly condemn their friends and family members just because they identify as LGBTQ.¹³³ The increasing unpopularity of conservative denominations has led to an increase of LGBTQ-friendly Christian denominations for people who want to follow their Christian path and also be able to have friends who identify as LGBTQ.¹³⁴ Even the most conservative denominations have been slowly moving toward accepting LGBTQ people.¹³⁵ On October 21, 2020, Pope Francis made history by departing from the Roman Catholic Church's 2000-year stance on same-sex relationships.¹³⁶ This groundbreaking departure is now considered to be one of the biggest shifts in the Catholic Church.¹³⁷ In a recent documentary, Pope Francis said: "Homosexual people have a right to a family. What we have to create is a civil union law. That way they are legally covered."¹³⁸ Those were the words of Pope Francis, who is now calling for unity and inclusivity as the leader of one of the world's largest religions.¹³⁹ Many commentators see the Pope's words as a first official step toward more

132. See David Masci, *Q&A: Why Millennials Are Less Religious Than Older Americans*, PEW RSCH. CTR. (Jan. 8, 2016), <https://www.pewresearch.org/fact-tank/2016/01/08/qa-why-millennials-are-less-religious-than-older-americans/> (explaining how there "is a gap emerging between politically liberal and moderate young people and leadership among conservative churches who are taking political positions on abortion, gay marriage, and other social issues").

133. Aaron Blake, *The Rapid Decline of White Evangelical America?*, WASH. POST (July 8, 2021, 2:17 PM), <https://www.washingtonpost.com/politics/2021/07/08/rapid-decline-white-evangelical-america/>; *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RSCH. CTR. (Oct. 17, 2019), <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

134. See Danae King, *United Methodists Could Split Over LGBT Debate, as Have Other Denominations*, THISWEEK COMMUNITY NEWS (Apr. 22, 2019, 5:00 AM), <https://www.thisweeknews.com/news/20190422/united-methodists-could-split-over-lgbt-debate-as-have-other-denominations> (discussing how churches are becoming more LGBTQ friendly and how other denominations are reconsidering the question "of whether to marry and ordain people who are lesbian, gay, or bisexual").

135. See, e.g., SEVENTH-GAY ADVENTISTS (Watchfire Films 2012).

136. See FRANCESCO (Afineevsky - Tolmor Production 2020).

137. See Anna North, *Pope Francis Endorses Same-Sex Civil Unions*, VOX (Oct. 22, 2020, 1:30 PM), <https://www.vox.com/2020/10/21/21526987/pope-francis-same-sex-civil-unions-francesco> ("[H]is remarks were . . . groundbreaking, especially coming from a popular religious leader."); Kayla Kibbe, *Pope Francis Endorses Civil Unions for Same-Sex Couples*, INSIDEHOOK (Oct. 21, 2020, 4:14 PM), https://www.insidehook.com/daily_brief/news-opinion/pope-francis-endorses-civil-unions-for-same-sex-couples ("The historic stance represents a departure from traditional Catholic views."); Maria Verza & Christopher Sherman, *Pope's Civil Union Words Spark Reactions Around the Globe*, AP NEWS (Oct. 22, 2020), <https://apnews.com/article/international-news-9191edad019d8163e8d5b9d5b0fff3c7> ("Across the globe, Pope Francis' comments endorsing same-sex civil unions were received by some as encouragement for an advancing struggle and condemned by others as an earth-shaking departure from church doctrine.").

138. FRANCESCO (Afineevsky - Tolmor Production 2020).

139. See *id.*

acceptance of LGBTQ people by the Catholic Church.¹⁴⁰ But this move should not come as a surprise. For the past several years, Pope Francis had been spending time with LGBTQ people because he wanted to get to know them and their struggles.¹⁴¹ How his attitude has changed toward LGBTQ people is a prime example of what contact theory can do.

Justice Gorsuch acknowledged that religion is another consideration in the *Bostock* decision.¹⁴² And it is unclear how the courts will treat religious exceptions after *Bostock*.¹⁴³ Eliminating these exceptions would allow for more contact with LGBTQ people, but even with the exceptions, *Bostock* will still prompt more contact. People of faith work, and when firing employees for being gay is unlawful, these people will have more opportunities to get to know members of the LGBTQ community. And with more contact leading to more Christian denominations accepting LGBTQ people,¹⁴⁴ the RFRA concerns identified in *Bostock* may eventually become obsolete.

CONCLUSION

Bostock is undoubtedly a milestone in the LGBTQ rights movement. The decision aligns federal employment discrimination law with public opinion data that show strong support for LGBTQ equality in the workplace. Even though the majority in *Bostock* was explicit that the decision only applies to Title VII, the reasoning of *Bostock* is already being adopted in other federal and state courts. Because of *Bostock*, LGBTQ people will finally receive necessary antidiscrimination protections that have been long overdue. These protections, in return, will establish

140. See, e.g., Niall O’Dowd, *Brave Pope Francis Supports Civil Unions for Same-Sex Couples, but Will a Schism Happen?*, IRISH CENT. (Oct. 21, 2020), <https://www.irishcentral.com/opinion/niallodowd/pope-francis-civil-unions> (“The pope’s support of civil unions places the Catholic Church in the modern era and, hopefully, holds out the promise of acceptance of same-sex marriage soon.”); Ebuka Onyeji, *Pope Francis Backs Same-Sex Marriage*, PREMIUM TIMES (Oct. 22, 2020), <https://www.premiumtimesng.com/entertainment/naija-fashion/422363-pope-francis-backs-same-sex-marriage.html> (“Pope Francis, . . . in a move that looks to further amplify heated divergences on abnormal unions[,] has given his most clear support to same-sex marriage.”); Eve Tushnet, *What Does Pope Francis Believe About Same-Sex Love?*, WASH. POST (Oct 24, 2020, 2:47 PM), <https://www.washingtonpost.com/opinions/2020/10/24/what-does-pope-francis-believe-about-same-sex-love/> (“The pope’s words on ‘a right to a family’ were widely interpreted as meaning movement toward a right to gay marriage.”).

141. Francis DeBernardo, *The Many Faces of Pope Francis: A Five-Year Timeline of His LGBT Record*, NEW WAYS MINISTRY (Mar. 13, 2018), <https://www.newwaysministry.org/2018/03/13/many-faces-pope-francis-five-year-timeline-lgbt-record/>.

142. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020).

143. See Rena M. Lindevaldsen, *Bostock v. Clayton County: A Pirate Ship Sailing Under a Textualist Flag*, 33 Regent U.L. Rev. 39, 71 (2021) (discussing religious organizations and the “questions left unanswered after *Bostock*”).

144. See Caryle Murphy, *Most U.S. Christian Groups Grow More Accepting of Homosexuality*, PEW RSCH. CTR. (Dec. 18, 2015), <https://www.pewresearch.org/fact-tank/2015/12/18/most-u-s-christian-groups-grow-more-accepting-of-homosexuality/>.

antiprejudicial norms and allow heterosexual cisgender people to have more contact with members of the LGBTQ community. This contact has the potential to reduce prejudice of LGBTQ people.

On February 25, 2021, the U.S. House of Representatives passed the Equality Act—comprehensive legislation that would codify federal civil rights protections for LGBTQ people and prohibit discrimination based on sex, gender identity, and sexual orientation.¹⁴⁵ Having laws on the books cannot overnight change deeply rooted prejudice that some people have against the LGBTQ community. However, the Equality Act would add to *Bostock* by sending a clear message that LGBTQ people are equal members of our society.

145. See Equality Act, H.R. 5, 117th Cong. (2021).