

A Big Day at the Court, with a Few Small, Unanimous Decisions - SCOTUS Today

Article By:

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Today might ultimately be remembered as among the most consequential days in the history of the Supreme Court and the nation. That will be determined when a decision in *Trump v. Anderson* is issued.

As any reader of this blog likely is aware, the issue in the *Anderson* case is whether the Supreme Court of Colorado correctly applied Section 3 of the 14th Amendment in disqualifying ex-President Donald Trump from the 2024 presidential primary election in that state. While I'll refrain from much comment until we actually have a decision to discuss, I note that I, apparently like many observers, believe it likely that the Court will find an off-ramp and reverse the Colorado judgment. Among the things that the Justices were concerned with was the fact that an exclusion decision from one state might, if affirmed, bind all the other states, thus depriving millions of voters of the ability to vote for the candidate of their choice. Another potential out for the Court concerns the provision of Section 3 that authorizes Congress to remove the exclusion impediment, thus allowing the subject to hold office. Trump, the argument goes, would have to be elected before the issue of his ability to hold office, rather than just run for it, would become material. Additional arguments related to whether Trump was an "officer" of the United States as the Constitution employs the term, and whether Section 3 is self-executing. Given that we are already into the primary season, one would expect that the Court will decide the case in a relatively short time frame.

The decisions issued today might pale in significance to *Trump v. Anderson*, but they are not uninteresting. I'll discuss two of them here.

A unanimous Court, per Justice Gorsuch, gave a big boost to consumer plaintiffs in the case of *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*. There, the Court held that the Fair Credit Reporting Act of 1970 (FCRA), as amended by the Consumer Credit Reporting Reform Act of 1996, allows consumers to sue lenders who willfully or negligently supply false information about them to entities that issue credit reports. The oddity of the case is the fact that the defendant was a government agency, the U.S. Department of Agriculture, which claimed sovereign immunity. That claim was defeated by the text of the law that authorizes suits for damages against "any person" who violates the FCRA, and "person" includes "any" government agency.

In allowing a consumer's suit against a federal agency under FCRA, the Court noted that sovereign

immunity is waivable where Congress has chosen to do so in language that is “unmistakably clear.” The “clear statement rule” applies if two preconditions are satisfied: “The first is when a statute says . . . that it is stripping immunity from a sovereign entity”; the second “is when a statute creates a cause of action” and explicitly “authorizes suit against a government on that claim.” Both of those preconditions are satisfied here.

In *Acheson Hotels, LLC v. Laufer*, the Court considered whether Deborah Laufer has Article III standing to sue hotels whose websites failed to state whether they have accessible rooms for the disabled as required by the Americans with Disabilities Act of 1990 (ADA). Laufer is an internet troll who has filed hundreds of cases against hotels whose advertising did not address accessibility, even though she had no intention of booking rooms or staying at them. In the instant case, Laufer’s lawyer had been sanctioned by the trial court, following which Laufer dismissed her pending suits, also filing a suggestion of mootness. The case was, on its face, moot. However, there is an abiding split among the federal Circuit Courts of Appeal as to whether someone who is a mere “tester” and has suffered no cognizable injury under the ADA has standing to sue under the statute. However, the Court declined the invitation to resolve the split. While the Court has the authority to address jurisdictional issues of mootness and standing in any order it chooses, and while the Court was sensitive to the concern about litigants manipulating this Court’s jurisdiction, “the Court is not convinced that Laufer abandoned her case in an effort to evade the Court’s review.” Thus, all the Justices (two of them concurring) held that the case is moot and should be dismissed.

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