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A Nationwide Standstill: Extending the Definition of Sex Discrimination to Include Gender Identity

BY TERRENCE J. BRIGGS • NOVEMBER 10, 2017

On December 31, 2016, the Federal District Court for the Northern District of Texas issued a nationwide injunction blocking the implementation or enforcement of Section 1557's provision extending the definition of sex discrimination to gender identity. The Court found that the implementing regulations went beyond the intent of Congress. Today, this injunction remains in effect and is bound up with the raft of litigation involving transgender people. The injunction also halted the part of the rule related to discrimination based on termination of a pregnancy.

The Supreme Court remanded the famous (or infamous) case involving Gavin Grimm, a student in Virginia who was denied the right to use the bathroom of his choice at school, back to the 4th Circuit following announcements by the U.S. Department of Education and the Justice Department issued in February that it was withdrawing guidance supporting gender identification choice issued during the Obama administration.

Given the current administration's stance on civil rights generally and for transgender citizens in particular, we should not expect that Section 1557 will survive as a protection for transgender men and women against discriminatory rules in health insurance plans.