

SECTION 1557: THE ACA AS AN ADVOCACY TOOL

Opportunity Conference

Feb. 27, 2017

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ACA Quick Quiz:

Which of the following is a true statement?

1. "The Affordable Care Act has been declared unconstitutional."
2. "The Affordable Care Act has been repealed and replaced."
3. "The Affordable Care Act has been repealed."
4. "The Affordable Care Act is the law of the land."

The ACA remains the law of the land

Prospects for repeal and/or replacement (as of 9:15am CST today)

"Because of sex" – discrimination prohibited in areas regulated by ACA, including:

- * state and federal exchanges
- * federally-funded health plans (e.g., Medicaid)
- * health facilities receiving federal funds (e.g., Medicare payments)

“Because of sex”

Employment cases (“Title VII”) established broad interpretation:

Price Waterhouse v. Hopkins – US Supreme Court (1989)

Macy v. Holder – US Equal Employment Opportunity Commission (2012)

Education case (“Title IX”) may confirm, or narrow, this interpretation:

G.G. v. Gloucester County School Board – US Supreme Court (2016 -- ?)

ACA regulations (eff. July 2016)

- Facilities may not discriminate against transgender/gender nonconforming people (*Rumble v. Fairview Health Systems*)
- Health insurance plans in exchanges may not exclude coverage for transition care
- Federally-funded health insurance plans may not exclude coverage for transition care (*OutFront Minnesota v. Piper*)
- Gender-specific care must be provided and covered regardless of gender on insurance documents

Future of ACA regs

- Impact of *Franciscan Alliance* injunction (Dec. 31, 2016)
- Prospects for withdrawal of regulations under new administration
 - Compare: Title IX “Dear Colleague” letter re transgender students/restrooms

Lessons from *Rumble*:

- Background
- Initial ruling
- Subsequent action
 - Don't forget state law!

Further implications and issues

Public programs

- example: *OutFront Minnesota v. Piper* (Medicaid)
- consider also: *Glenn v. Brumby* (heightened review)

Employer plans

- self-employed (larger) plans: *Tovar v Essentia Health*
- fully-funded (smaller) plans: state exclusion bans

Questions?

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