

## ***Tovar v. Essentia Health et al***

On Friday, March 23, 2018, the Hon. Donovan W. Frank, Senior U.S. District Court Judge, will hear argument in *Brittany Tovar and Reid Olson v. Essentia Health and HealthPartners*, an important case challenging health care discrimination against transgender patients.

### **Background**

Brittany Tovar worked as a nurse for Essentia Health. One of her benefits as an Essentia employee was a family health care plan. In 2014, her transgender son, Reid Olson, was diagnosed with gender dysphoria, a condition in which a person experiences distress because their gender identity doesn't match the sex assigned to them at birth. When Brittany sought standard medical treatment for Reid's diagnosis, Essentia and the company it hired to administer the employee health plan, HealthPartners, refused to pay, saying that their plan excluded coverage for any health services related to gender transition, such as hormone therapy or gender confirmation surgery. Because of this refusal, Reid did not get all the treatment he needed during puberty.

### **Legal Arguments**

Section 1557 of the Affordable Care Act (ACA) is the first federal law to prohibit sex discrimination in health care. It applies to health care providers, insurance companies, and plan administrators – such as HealthPartners – that receive federal funds. Section 1557 advances the ACA's goals of extending insurance coverage to more people and eliminating disparities in health care access and outcomes—and it bars discrimination based on sex.

With the passage of the ACA, we sought to establish in court that discrimination based on sex under the ACA covers discrimination based on gender identity. In early 2015, we obtained [the first ruling in the country that discrimination because a person is transgender is sex discrimination under the ACA](#). In reaching that conclusion, the court noted that the U.S. Supreme Court had “eviscerated” the narrow view of the term “sex” back in 1989, in a landmark Title VII case, *Price Waterhouse v. Hopkins*, and that courts increasingly interpret the term “sex” in Title VII to include all “individuals who are perceived as not conforming to gender stereotypes and expectations,” including transgender and gender-nonconforming individuals. It applied this case law to the Affordable Care Act.

When Brittany Tovar came to Gender Justice in 2015, we helped her bring a lawsuit in federal court against Essentia and HealthPartners challenging the blanket exclusion of coverage for transition-related medical care for all transgender patients, and her son specifically. After an early adverse ruling, we appealed to the Eighth Circuit Court of Appeals. The appellate court reversed most of the trial court's decision and sent Brittany's case back to the trial court to move forward. By this time, Reid had turned 18 and joined his mother in the lawsuit in his own name.

Once back in the trial court, however, Essentia and Health Partners brought more motions, again asking the court to throw out Brittany and Reid's case before anyone gets to present any evidence. The Hon. Donovan W. Frank, Senior U.S. District Court Judge, will hear argument on this second round of motions on Friday, March 23.

Additional background, including Gender Justice's brief in [Tovar v. Essentia Health](#), is available on our website or by contacting Megan Peterson (651) 789-2090 or [megan.peterson@genderjustice.us](mailto:megan.peterson@genderjustice.us).

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