UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar and Reid Olson; Plaintiffs, v. Essentia Health, Innovis Health, LLC, dba Essentia Health West, HealthPartners, Inc., and HealthPartners Administrators, Inc.; Defendants.	Court File No. 16-cv-00100 (DWF/LIB) **MEMORANDUM IN OPPOSITION TO HEALTHPARTNERS DEFENDANTS' MOTION TO DISMISS OR STAY**

INTRODUCTION

Plaintiff Brittany Tovar was an employee of Defendant Essentia[1], and she participated in the self-insured health care plan offered to all Essentia employees. Defendant HealthPartners[2] was the third-party administrator (TPA) for the plan. HealthPartners and Essentia together designed and implemented the plan. The plan contained a discriminatory categorical coverage exclusion for all health services related to gender transition, and Essentia and HealthPartners denied Plaintiff Reid Olson, Tovar's transgender son, coverage for medically necessary care under the terms of this plan.

[1] Plaintiffs' Amended Complaint names Tovar's employer as Essentia Health and Innovis Health, LLC, dba Essentia Health West. (First Amended Compl., ECF 66.) This brief refers to these defendants collectively as "Essentia."

[2] For ease of reference throughout the brief, Plaintiffs refer to HealthPartners, Inc., and HealthPartners Administrators, Inc., collectively as "HealthPartners." When necessary to refer to these entities separately, Plaintiffs will refer to HealthPartners Administrators, Inc., as "HPAI" and will use the full name for HealthPartners, Inc.

Plaintiffs submit this memorandum in response to the motion to dismiss or stay[3] filed by the HealthPartners defendants.

FACTS FROM THE AMENDED COMPLAINT

After the 8th Circuit remanded Tovar's case for this Court to consider, Tovar filed an amended complaint adding claims for her son, Olson, and adding facts related to HealthPartners' involvement in the exclusion at issue in this lawsuit. They allege that HealthPartners designed the plan. (Amended Compl. at ¶¶ 26-33.) That plan is based on a template of a health an insurance policy that HealthPartners admittedly designed. (Id.) HealthPartners generally presented employers with plans with a standard list of exclusions, including the exclusion at issue and the exclusion was only removed if an employer noticed it and specifically requested that it be removed. (Id.) In plan years 2014 and 2015, Essentia relied on HealthPartners' plan design, which included "standard exclusions" such as the one at issue here. (Id.) To the extent that this Court relies solely on the allegations in the Complaint, these allegations must be credited at this stage of the litigation.

However, HealthPartners has described its motion as a Rule 12(b)1 "factual attack." (HealthPartners Mem. at 10-11.) It has asserted that this Court is free to consider matters outside the complaint such as affidavits in determining whether it has subject-matter jurisdiction, and that assertions in the complaint are insufficient.[4] In its legal arguments, it is

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[3] Because the arguments made by Essentia and HealthPartners asking for a stay are the same, Plaintiffs respond to all of Defendants' arguments for a stay in their memorandum responding to Essentia's motions.

[4] At the same time, HealthPartners argues in favor of a "Catch-22" for Plaintiffs. It first argues that Plaintiffs need to provide evidence outside the complaint to establish that this Court has subject matter jurisdiction. (HealthPartners Mem. at 10-11.) Later, it contradicts

not clear that HealthPartners is relying on any factual disputes between the parties, and this Court need not resolve any factual issues at this point. Instead, it can rely on the conclusions already made by the 8th Circuit, as Plaintiffs argue below. But to the extent this Court considers matter outside the Complaint under the theory HealthPartners advances for a "factual attack" on subject matter jurisdiction, it should review and rely on the documents that Tovar and Olson found and relied on in making the allegations in their amended Complaint. These documents come from the EEOC investigation and Plaintiffs obtained them through a request to the EEOC for its investigation file. (Declaration of Christy L. Hall, February 6, 2018, at ¶ 2) (subsequently Hall Decl.).

These documents reveal that the entity primarily responsible for plan design was HealthPartners, though Essentia also played a role in reviewing and approving the plan design. The EEOC interviewed Essentia employee Kim Carlin, whose title is the Director of Total Rewards. She is responsible for overseeing compensation and benefits for Essentia employees. As part of this role, "[s]he worked with the third party administrator to determine what is covered and what is not" under the health care plan. (Hall Decl., Ex. C.) She explained to the EEOC that "HealthPartners [has] standard procedures on what is cover[ed] and what is not." She explained that every year, HealthPartners presented her with

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itself by arguing that Plaintiffs can't "rely on parole evidence of the contracting process that contradicts the plain terms of the 2015 Plan." (Id. at 18-19.) In other words, HealthPartners wants this Court to only consider the factual evidence it provides, from the Summary Plan Description itself. HealthPartners cites no case law for a parole evidence rule in anti-discrimination law because it does not exist. While parole evidence might present a concern in a contract claim, Tovar and Olson are free to rely on evidence of the reality of how the 2015 Plan was designed for their discrimination claim.

a suggested plan, with suggested exclusions. In reviewing the proposed plan with her, HealthPartners focused on the "total plan, not about individual[] areas of exclusion . . ." Typically, Essentia simply accepted the proposed exclusions "unless a specific issue is brought to their attention from [HealthPartners]." Kim Carlin herself was unaware of any concerns about the standard exclusions "until this issue was brought to her attention by [Tovar]" in March of 2015.

Once Tovar had raised this issue, Essentia and HealthPartners engaged in a dialogue about the exclusion via email. (Hall Decl., Ex. B.) Essentia requested that HealthPartners provide additional information about the exclusion, and HealthPartners responded. In its response, on a document with a "HealthPartners" header, HealthPartners revealed the extent to which it was responsible for the exclusion at issue. (Hall Decl., Ex. A.) It noted that "[f]or self-funded plans, gender reassignment is excluded and only added upon request." HealthPartners had two-hundred and sixty self-insured clients; of those, only 13 had "added coverage for gender reassignment surgery. These companies are large employers who are in the field of healthcare, medical device, retail and banking."

LEGAL ARGUMENT

I. TOVAR AND OLSON HAVE STANDING TO ASSERT SECTION 1557 CLAIMS AGAINST HEALTHPARTNERS

A. The 8th Circuit Has Already Determined That Tovar Has Article III Standing.

In its memorandum, HealthPartners first revisits a question decided by the 8th Circuit: "whether Tovar has suffered a concrete and particularized injury in fact." (8th Circuit Order, May 24, 2017, at 10-11.) (HealthPartners Mem. at 11-12.) In its order, the 8th

circuit concluded that "Tovar has alleged an injury cognizable under Article III because she contends that the defendants' discriminatory conduct denied her the benefits of her insurance policy and forced her to pay out of pocket for some of her son's prescribed medication." *Tovar*, 857 F.3d 771, 778 (8th Cir. 2017). HealthPartners argues now that the fact that Tovar was reimbursed for her out-of-pocket expenses eliminates her injury and therefore her Article III standing. (HealthPartners Mem. at 11-12.)[5]

This argument relies on HealthPartners' over-interpretation of the 8th Circuit's statement that "[t]he record is silent on whether Tovar has been fully reimbursed for these out of pocket payments . . ." *Tovar*, 857 F.3d at 778-79. It does not follow that the 8th Circuit's decision hinged on that reimbursement alone, or that without it, Tovar has no injuries. In fact, the 8th Circuit's decision, as quoted above, points to both out of pocket expenses *and* being denied the benefit of her insurance policy. *Id.*

As Tovar's Complaint alleges, Tovar has several types of injuries. She received as an employment benefit a health insurance plan that she expected would provide medically necessary care to her son, and it did not provide that care because he was transgender. (Amended Compl. at ¶ 34.) She spent hours communicating with HealthPartners and Essentia trying to address this discriminatory exclusion and they told her contradictory and confusing things, as detailed in multiple paragraphs of the Complaint. (Id. at ¶¶ 35-69.) She

[5] HealthPartners does not argue that Olson has no injury and no Article III standing. He clearly does, since his medically necessary health care was denied or delayed. (Amended Compl. at ¶ 42.)

paid for some care out-of-pocket, and even though she was reimbursed later, the timing of payments caused financial harm and stress. (Id. at ¶¶ 70-73.)

She also suffered emotional distress because her health care plan was discriminating against her child. (Id.) As she noted in a letter that she wrote to appeal the exclusion, included as an exhibit to the Complaint, her son was "25 times more likely to attempt suicide than a non-transgender [person] due to his serious medical condition. Can you imagine, as a parent, what that feels like?" (Id., Exh. A at 2.) "As a parent and practitioner, it is my duty to provide him with the best care possible to overcome these terrifying statistics." (Id.) She wasn't a mere bystander, like the plaintiffs in cases cited by HealthPartners rejecting emotional distress claims of a parent. She had obtained a health care plan to provide for her son's care and the Defendants discriminated against her son through that plan, denying the claims she made to obtain his medically necessary care.

These are concrete injuries that have not yet been redressed. Tovar has Article III standing, as the 8th Circuit concluded, for her Section 1557 claim against HealthPartners.

B. Tovar and Olson Have "Statutory Standing" To Bring Section 1557 Claims Against HealthPartners.

HealthPartners argues that Tovar and Olson "do not fall within the class of plaintiffs authorized to sue a third-party administrator under Section 1557." (HealthPartners Mem. at 4.) In its memorandum, HealthPartners frames this as a question of whether third-party administrators can be sued, not a question of whether an insurance policy-holder and a beneficiary may sue under Section 1557. This is misconstrues the "statutory standing" question and simply reframes a question that the 8th Circuit has already decided in this case.

The 8th Circuit discussed whether Tovar had standing against HealthPartners under both Article III standing and statutory standing. It separately addressed whether Tovar had statutory standing to bring a Title VII claim against the Essentia defendants. In the section addressed to Essentia, the 8th Circuit noted that referring to statutory standing as a "standing" question could be confusing. *Tovar*, 857 F.3d at 774 (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386-87 & n.4 (2014)). The question of statutory standing asks whether Congress has authorized a particular class of plaintiffs to bring suit under the law. *Id.* (citing *Lexmark*, 134 S. Ct. at 1387). This is a "straightforward question of statutory interpretation." *Id.*, citing *Lexmark*, 134 S. Ct. at 1388.

Importantly, this is a question about whom Congress has authorized *to sue*, not whom Congress has permitted *to be sued*. The 8th Circuit noted that the question of whether Tovar was authorized by the statute *to sue* was not considered by the original district court decision and declined to reach it. *Id.* at 779. The question of whether a third-party administrator of health insurance could *be sued* under Section 1557 was addressed by the 8th Circuit under its discussion of Article III standing. The 8th Circuit held that Tovar's alleged injury could be "traceable" to HealthPartners or "redressable" by it, despite the fact that "Essentia subsequently adopted the plan and maintained control over its terms." *Id.* at 778.

One key issue, which HealthPartners has repeatedly tried to sidestep by focusing on ERISA and its administration of the plan, is whether the plan itself originated with HealthPartners or whether HealthPartners could have avoided any discrimination by refusing to be a third-party administrator for a plan that was discriminatory on its face. The

8th Circuit held that these types of allegations established that Tovar's injuries could be traceable to or redressable by HealthPartners. *Id.*

HealthPartners ignores the holding of the 8th Circuit to revisit old arguments. HealthPartners' review of ERISA, discussion of case law such as *Gebser*, and citation to the Section 1557 regulations reprises arguments that have been briefed repeatedly by the parties and resolved by the 8th Circuit. Nevertheless, Tovar and Olson will revisit those arguments briefly here.

1. HealthPartners relies on *Gebser* in error.

HealthPartners argues that the correct standard of liability under Section 1557's prohibition of sex discrimination is that the defendant must have notice[6], control, and deliberate indifference, based on the standard set out in leading Title IX cases such as *Gebser*. (HealthPartners Mem. at 14-17.) (citing *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).) It argues that it did not have notice because neither Tovar nor Olson notified the right people at HealthPartners of the discrimination. (HealthPartners Mem. at 14-15.) It argues that it did not have control because Essentia controlled the plan. This argument is wrong, on several levels.

First, it would be incorrect for the Court to treat Section 1557 as if it slices up discrimination and the standards required to prove discrimination based on the protected status at issue in each individual reference statute. (Title VI, the ADA, the Rehabilitation

[6] It separately argues that the government must provide it notice of the content of the law. (HealthPartners Mem. at 21.) This argument is addressed in Plaintiffs' response to Essentia's motion.

Act, and Title IX). Section 1557 provides a unified remedy to all claimants, not four different remedies depending on the protected status. *See Rumble v. Fairview Health Servs.*, No. 14-cv-2037 (SRN/FLN), 2015 U.S. Dist. LEXIS 31591, *30-*32 (D. Minn. March 16, 2015) ("it appears that Congress intended to create a new, health-specific, anti-discrimination cause of action that is subject to a singular [doctrinal] standard.").

Second, the *Gebser* standard of liability only applies to a subset of Title IX claims—specifically, when a school should be held responsible for sexual harassment committed by a school employee and concealed from the school itself. *Gebser*, 524 U.S. at 288-89. HealthPartners is not in the position of a school being asked to detect and correct an employee's discrimination. Rather, Plaintiffs' Section 1557 claims ask the Court to hold HealthPartners liable for its own actions in choosing to design, sell, and administer a facially-discriminatory plan.

And even assuming that "notice and control" is the correct standard, HealthPartners' argument fails. Tovar and Olson have alleged that HealthPartners designed the plan. (Amended Compl. at ¶¶ 24-34) Crediting these allegations, as courts must for a motion to dismiss, it is nonsensical to argue that HealthPartners had no notice or control over a plan it drafted and sold. HealthPartners did not need Tovar or Olson to put it on notice that the plan it designed, it sold, and it administered was discriminatory on its face. Who knew better than HealthPartners that the plan it called Policy No. G008HPC-03 had an exclusion of coverage for "[s]ervices and/or surgery for gender reassignment"? (Amended Compl. at ¶¶ 30, 32, 34.)

2. HealthPartners could comply with both ERISA and Section 1557.

Defendant HealthPartners argues that Plaintiff's claim against HealthPartners should fail because it would "repeal the legal framework of the Employee Retirement Income Security Act of 1974 (ERISA). (HealthPartners Mem. at 2.) But as Plaintiffs have repeatedly argued, HealthPartners' duties under Section 1557 are compatible with its duties under ERISA.

ERISA's preemption provision in § 514(a) indicates that it "supersede[s] any and all *State* laws" that relate to benefit plans. 29 U.S.C. §1144(a) (emphasis added). Separately, ERISA provides that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." 29 U.S.C. §1144(d). In other words, ERISA explicitly does not preempt other federal statutes such as Section 1557.

HealthPartners repeatedly argues that the entity responsible for the discriminatory exclusion in the plan is Essentia, not HealthPartners. (*See, e.g.*, [cite brief].) It argues that it was forced by ERISA and by its contract with Essentia to follow the plan once it was put in place. This type of argument has been made without success in the context of other civil rights laws. Essentially, HealthPartners' position is that it should be able to contract around civil rights law, or use ERISA to evade responsibility for civil rights laws. Once the discriminatory contract is in place, HealthPartners argues that it can't be held responsible for following the discriminatory terms. The Court should reject this argument.

This is a common scenario that arises under other civil rights laws, such as Title VII. Consider the analogous scenario of employers that contract with staffing firms to provide

and sometimes supervise employees. Courts and the Equal Employment Opportunity Commission (EEOC) have long held that staffing firms can be held liable, for acting as an employer's agent and for acting as an agency that itself discriminates, such as by failing to refer employees on the basis of a protected status. *See Williams v. Grimes Aero. Co.*, 988 F. Supp. 925, 934 (D.S.C. 1997) (explaining that employment agencies "may be liable as agencies, as employers, and as agents of employers."); *see also* EEOC Enforcement Guidance from Dec. 3, 1997 (available at https://www.eeoc.gov/policy/docs/conting.html) (last visited Nov. 21, 2016).

The EEOC Enforcement Guidance clarifies that a staffing agency can be liable for discrimination even when it is not a joint employer with the client employer:

> The staffing firm is liable for its discriminatory assignment decisions. Liability can be found on any of the following bases: 1) as an employer of the workers assigned to clients (for discriminatory job assignments); 2) as a third party interferer (for discriminatory interference in the workers' employment opportunities with the firm's client); and/or 3) as an employment agency (for discriminatory job referrals).
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> The fact that a staffing firm's discriminatory assignment practice is based on its client's requirement is no defense. Thus, a staffing firm is liable if it honors a client's discriminatory assignment request or if it knows that its client has rejected workers in a protected class for discriminatory reasons and for that reason refuses to assign individuals in that protected class to that client. Furthermore, the staffing firm is liable if it administers on behalf of its client a test or other selection requirement that has an adverse impact on a protected class and is not job-related for the position in question and consistent with business necessity. 42 U.S.C. § 2000e-2(k).
>
> https://www.eeoc.gov/policy/docs/conting.html (last visited Nov. 21, 2016)

(emphasis added) (footnote omitted).

Just as an employer may be held liable for carrying out the discriminatory preferences of a customer, a staffing agency may be held liable for carrying out the discriminatory

preferences of its employer-customer. The fact that both parties agree in advance to carry out a discriminatory scheme and one drafts a contract to memorialize this agreement doesn't shield either party from anti-discrimination law. The context of an employer providing health insurance by contracting with a third-party administrator is no different. HealthPartners ignores its own action in designing and agreeing to administer a facially discriminatory plan in the first place.

3. The Section 1557 regulations hold third party administrators liable.

On May 12, 2016, the Department of Health and Human Services (HHS) made available to the public its Rule on Section 1557. The document published with the Rule, titled "Nondiscrimination in Health Programs and Activities" was officially published on May 18, 2016. 81 FR 31375, available online at https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities. This published document includes both the final Rule and a section titled "Supplementary Information" including a sub-heading for "Background" with commentary on HHS's Office for Civil Rights' (OCR) deliberations and public comments about the Rule. The Rule itself is codified in the Federal Regulations at 45 CFR Part 92.

These regulations for Section 1557 are perfectly clear about the liability of third-party administrators:

> (b) *Discriminatory actions prohibited.* A covered entity shall not, in providing or administering health-related insurance or other health-related coverage:
>
> (4) Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition …

45 CFR § 92.207 (emphasis added). Tovar alleges in her Complaint that HealthPartners, in administering health-related insurance, had and implemented a categorical coverage exclusion for all health services related to gender transition. (Amended Compl. at ¶¶ 30, 32, 34.) This is exactly what is barred in the regulations. 45 CFR § 92.207.

Turning to OCR's commentary on its regulations, OCR explains how the regulation applies to a third-party administrator of an employer's self-insured health care plan. Unequivocally, OCR "[is] not excluding third party administrator services from the final rule …" 81 FR 31432.

OCR goes on to note:

> Third party administrator services are undeniably a health program or activity, as they involve the administration of health services. … [T]here is no principled basis on which to exclude the law's application to the third party administrator services or to treat them differently from other entities and services covered by the rule. . . . Moreover, the fact that third party administrators are governed by other Federal laws such as ERISA is not a reason to exempt them from Section 1557. ERISA itself explicitly preserves the independent operation of civil rights laws.

Id., *see also Shaw v. Delta Air Lines*, 463 U.S. 85, 97 (1983).

OCR makes clear that the law holds third party administrators responsible even when they have not designed the plan they are administering. "Thus, if a plan has a discriminatory benefit design under Section 1557, a third party administrator could be held responsible for plan features over which it has no control." *Id.* HealthPartners argued to the 8th Circuit that this statement was taken out of context, but the context is that OCR takes this potential unfairness into account when using its enforcement authority in determining whether to investigate a matter itself or refer it to the EEOC, depending on whether the employer or third party administrator is most responsible. *Id.* However, OCR's interpretation of the

statute and its own regulations are clear that even a third party administrator with no responsibility for plan design is violating the law when it agrees to administer a discriminatory plan. *Id.*

HealthPartners interprets this section differently, arguing that the inclusion of TPAs in the regulations solely applies to discriminatory administration of a non-discriminatory plan. (HealthPartners Mem. at 8.) It quotes OCR's commentary on the regulations that "third party administrators are *generally* not responsible for the benefit design of the self-insured plans they administer . . ." (Id.) (emphasis added) (citing 81 Fed. Reg. 31432). But this at a minimum creates a fact issue about whether in fact the third-party administrator was responsible for the benefit design of the plan at issue.

This Court does not need to decide which of these two interpretations of the regulations and accompanying commentary is correct, because either way Plaintiffs' claim against HealthPartners should proceed. Plaintiffs have alleged, and provided evidence with this memorandum, that HealthPartners actually designed the Plan at issue and offered it to its clients such as Essentia. (Hall Decl.) Under any interpretation of the OCR's commentary this is illegal.

While the regulation includes an effective date subsequent to the Rule's publication and to the events of this lawsuit, the "Background" section also notes that "Section 1557 has been in effect since its passage as part of the ACA in March 2010, and covered entities have been subject to its requirements since that time." 81 FR 31430.

4. Tovar and Olson are proper plaintiffs with statutory standing under Section 1557.

Turning to the question that the 8th Circuit left undecided, the question of whether Tovar (and now Olson) has statutory standing, principles of statutory interpretation reveal that they do. In *Lexmark*, the Supreme Court described statutory standing as a statutory interpretation inquiry into "the scope of the private remedy created by Congress." *Lexmark*, 134 S. Ct. at 1386 (omitting quotations). At issue in the *Lexmark* case was the interpretation of the Lanham Act. The Supreme Court derived its understanding of the scope of the private remedy by reviewing the "unusual, and extraordinarily helpful, detailed statement of the statute's purposes." *Id.* at 1389 (omitting quotations).

For Section 1557, this statutory interpretation question is complicated by the statute's reliance on other civil rights statutes. Section 1557 relies on four other civil rights statutes for its private right of action: Title VI, which prohibits discrimination on the basis of race, color, and national origin; Title IX, which prohibits discrimination on the basis of sex; the Age Discrimination Act, which prohibits discrimination on the basis of age; and section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability. 42 U.S.C. § 18116. It points to these statutes for both the "grounds prohibited" for discrimination and the "enforcement mechanisms" for Section 1557. *Id.*

Reviewing the reference statutes that Section 1557 relies on reveals that Congress intended these anti-discrimination provisions to be interpreted broadly to accomplish the aim of ending discrimination. Each statute is phrased in commanding terms: "No person in the United States shall, on the ground of race . . . be subjected to discrimination . . ." 42 U.S.C. § 2000d; *cf.* 20 U.S.C. § 1681 (sex discrimination); 42 U.S.C. § 6102 (age

discrimination). "The remedies, procedures, and rights . . . shall be available to *any person aggrieved* by any act or failure to act . . ." 29 U.S.C. § 794a (emphasis added).

The Supreme Court has repeatedly referred to the expansive aims of these anti-discrimination laws to read in private causes of action, retaliation claims, and various remedies. *See, e.g., Gomez-Perez v. Potter*, 553 U.S. 474, 479-81 (2008) (interpreting the ADEA broadly to reach retaliation for opposing age discrimination); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005) (chastising the Court of Appeals for "ignor[ing] the import of our repeated holdings construing 'discrimination' under Title IX broadly.").

Section 1557 is written in the same, broad manner as the civil rights statutes it relies on. Explicitly, Section 1557 forbids that anyone, "on the ground [of sex] . . . be denied the benefits of . . . any health program or activity . . ." 42 U.S.C. § 18116. Unlike Title VII, it does not limit its forbidden discrimination to anyone on the ground of *their own* sex. *See Tovar*, 857 F.3d at 775 (quoting 42 U.S.C. § 2000e-2(a), which prohibits discrimination against an individual because of "*such individual's* race, color, religion, sex, or national origin."). The 8th Circuit relied on this specific statutory language in Title VII to reject Tovar's claim to statutory standing under Title VII. *Id.* That language does not exist in Section 1557, clearly suggesting that Section 1557's remedies are more broadly available to both Tovar and Olson. Tovar is an individual who, on the grounds of sex, was denied the benefits of her health insurance policy for her beneficiary son. Olson is an individual who, on the grounds of sex, was denied access or received delayed access to medically necessary care.

CONCLUSION

The 8th Circuit has already resolved many of the arguments that HealthPartners raises in its memorandum. It left open the question of whether Tovar (and now Olson) have statutory standing. The application of standard statutory interpretation techniques shows that they do. This Court should deny HealthPartners motion.

Dated: February 6, 2018

Respectfully submitted,

GENDER JUSTICE

By: *s/Christy L. Hall*

Lisa C. Stratton (MN No. 236858)
Christy L. Hall (MN No. 392627)
550 Rice Street
St. Paul, MN 55103
Phone: 651-789-2090
Fax: 651-789-2093
lisa.stratton@genderjustice.us
christy.hall@genderjustice.us
ATTORNEYS FOR PLAINTIFF