

Chris, I'll Say It Again: You're Wrong

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Abstract

With a vote coming soon on the Employment Non-Discrimination Act, I'd like to revisit something Chris Crain said a while back in his post "A trans activist tees off on ENDA" that was in reference to my post "You Can Still Fire Me". At his blog he said: The EEOC says exactly what I said: [...]

Article

[Figure] xmas gift crain

With a vote coming soon on the Employment Non-Discrimination Act, I'd like to revisit something Chris Crain said a while back in his post "A trans activist tees off on ENDA" that was in reference to my post "You Can Still Fire Me". At his blog he said:

The EEOC says exactly what I said: "existing federal civil rights laws have already been interpreted by SOME JUDGES to protect trans workers."

Is it every judge? No. Would adding "gender identity" to ENDA ensure protection? Absolutely. But my point was that, under current case law, at least SOME judges interpret Title VII to protect transgender people.

But what do the courts say? On September 20, 2007 the United States Court of Appeals - Tenth Circuit ruled on *Etsitty v. Utah Transit Authority*. They said:

"Etsitty may not claim protection under Title VII based upon her transsexuality per se. Rather, Etsitty's claim must rest entirely on the Price Waterhouse theory of protection as a man who fails to conform to sex stereotypes. "

Chris argues that:

"But my point was that, under current case law, at least SOME judges interpret Title VII to protect transgender people."

But the court clearly states this is not so:

*"Although this court has not previously considered whether transsexuals are protected class under Title VII, other circuits to specifically address the issue ave consistently held they are not. See *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 084 (7th Cir. 1984); *Sommers v. Budget Mktg., Inc.*, 667 F.2d 748, 749-50 (8th Cir. 1982); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 662-63 (9th Cir. 1977). In *Ulane*, the Seventh Circuit explained that the definition of sex should be given*

its 'common and traditional interpretation' for purposes of interpreting Title VII. 742 F.2d at 1086. Based on this traditional definition, the court held the statute's prohibition on sex discrimination means only that it is 'unlawful to discriminate against women because they are women and men because they are men.' Id. at 1085. Because the plaintiff in Ulane could show only that she was discriminated against as a transsexual, rather than as a woman or a man, the court concluded Title VII could provide no protection."

If this was simply Chris Crain's feeling alone, I'd let it go. I don't expect him to admit he's wrong. But it's important to point this out because other people share his views about excluding transgender people in ENDA.

Suggested citation

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