

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740
HON. ROBERT C. CHAMBERS

**JOINT MOTION TO DISMISS AFFORDABLE CARE ACT CLAIM
AGAINST DEFENDANT TED CHEATHAM**

Pursuant to Federal Rule of Civil Procedure 21, Plaintiffs Brian McNemar and Zachary Martell, and Defendant Ted Cheatham, jointly move this Court to dismiss Mr. McNemar and Mr. Martell's claim against Defendant Cheatham under Section 1557 of the Affordable Care Act.

As relevant to this motion, on November 12, 2020, Mr. McNemar and Mr. Martell filed a complaint challenging the exclusion of gender-confirming care (the "Exclusion") in West Virginia's state employee health plan. ECF No. 1. The complaint includes two claims by Mr. McNemar and Mr. Martell against Defendant Ted Cheatham, including (i) in Count I, a claim under the Equal Protection Clause of the Fourteenth Amendment, pursuant to 42 U.S.C. § 1983; and (ii) in Count II, a claim under Section 1557 of the Patient Protection and Affordable Care Act, pursuant to 42 U.S.C. § 18116 ("Section 1557").

In the interest of streamlining the issues in this case, the parties jointly move the Court to dismiss Mr. McNemar and Mr. Martell's claim in Count II against Defendant Cheatham under

Section 1557 with prejudice. The parties agree that each side will bear its costs and fees as to that claim, and that this motion does not affect any other claim in the case.

Wherefore, the parties jointly request that the Court grant this motion by entering the concurrently submitted proposed order.

Dated: February 15, 2021

Respectfully submitted,

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**ORDER DISMISSING AFFORDABLE CARE ACT CLAIM
AGAINST DEFENDANT TED CHEATHAM**

This matter comes before the Court on the joint motion by Plaintiffs Brian McNemar and Zachary Martell, and Defendant Ted Cheatham, to dismiss Mr. McNemar and Mr. Martell's claim in Count II of the complaint against Defendant Cheatham under Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 with prejudice.

IT IS HEREBY ORDERED THAT:

1. The claim by Plaintiffs Brian McNemar and Zachary Martell against Defendant Ted Cheatham in Count II of the complaint, under Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, is dismissed with prejudice. This order does not affect any other claim in the case.

2. Each side will bear its costs and fees as to this claim.

IT IS SO ORDERED.

Dated: _____

Honorable Robert C. Chambers
U.S. District Court Judge