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SYMPOSIUM

AALS SECTION ON CONTRACTS: NEW FRONTIERS IN PRIVATE ORDERING

In earlier work, Ayres and Brown introduced the "Fair Employment Mark," and its licensing agreement, which gives a licensee's employees and applicants contract rights of action as third-party beneficiaries if the licensee discriminates on the basis of sexual orientation. This Essay takes up some issues earlier work only briefly addressed. First, the Essay discusses the public good that private contracting might produce, including filling in gaps and hastening progress toward statutory protections. Second, this Essay explains why, in addition to public benefits, self-interest might drive employers to adopt the Fair Employment Mark as a way to manage litigation risk. Third, the authors consider the balance of public and private good when the licensing agreement and third-party rights of action become subject to arbitration clauses in employment contracts. Finally, this Essay discusses potential revisions to the licensing agreement.

Racial exploitation is now the powerful, conventional challenge to emerging discourses on alternative methodologies of procuring organs, especially markets. Those committed to providing equitable opportunities to suffering patients must ask whether challenges to organ markets benefit patients, especially racial minorities. Has the altruistic procurement process reduced waitlists or resolved racial disparities in organ allocation? These questions are relevant to any discussion about equity, access, and class in organ procurement and allocation in the United States. The evidence, including growing waitlists and thousands of deaths each year, informs us that altruistic organ procurement remains an ineffective approach to meet the growing demand for organs. This Article interrogates the altruism presumption and its concomitant race card politics and advocates a hybrid system, including both voluntary and privately ordered organ sharing.

NOTES

This Note examines the United States Supreme Court's construction of workplace retaliation under Title VII of the Civil Rights Act of 1964 and advocates for the application of this approach to the scores of other federal statutes containing provisions making it unlawful for employers to discriminate against employees who participate in protected activities. Rejecting earlier circuit courts' approaches—which defined unlawful retaliation as conduct that implicates ultimate employment decisions or that has a close connection to the employment—the Court defined retaliation as *any* conduct tending to deter an employee from reporting unlawful workplace discrimination. This Note contends that the expansion of this approach to all federal anti-retaliation laws is not only consistent with the Supreme Court's historical treatment of retaliation, but it would also prevent specious claims from reaching trial while promoting the enforcement of the underlying substantive law.

ARIZONA CASE NOTES