

The Cross-Migration of Sex Equality Norms

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This presentation would examine the extent to which Title VII and jurisprudence thereunder have influenced other areas of sex equality law, such as Title IX and equal protection, insofar as transgender persons and gender identity and expression are concerned, and vice versa. There are distinctive, positive, mutually reinforcing developments in these areas. For example, in deciding the constitutionality under the Equal Protection Clause of a legislature's decision to deny employment to a transgender woman by firing her from her position as an editor when she determined to transition on the job, the U.S. Court of Appeals in *Glenn v. Brumby* borrowed liberally from Title VII anti-sex stereotyping jurisprudence, and subsequently, the Equal Employment Opportunities Commission in *Macy v. Holder* relied in part on *Glenn's* equal protection holding in ruling that anti-transgender employment discrimination is categorically sex discrimination under Title VII. Nonetheless, my colleague Camille Gear Rich has written of ways in which Eighth Amendment sexual harassment doctrine has inappropriately borrowed from Title VII case law in ways improperly limiting the constitutional constraints that should apply in correctional environments. This presentation would consider whether and what similar potential there might be for inappropriate cross-domain migration of legal norms as far as transgender persons and sex equality are concerned.