



JB Pritzker, Governor
James L. Bennett, Director

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CONTACT:
[Michael Sobczak](mailto:Michael.Sobczak@idhr.org) 773.590.6890

VICTORY FOR TRANSGENDER ILLINOISANS

State Appellate Court Upholds Human Rights Act Protections for Transgender Individuals, Equal Access to Bathrooms

CHICAGO – On Friday, August 13, 2021, the Second District Appellate Court of Illinois affirmed the expansive protections of the Illinois Human Rights Act (Act) for transgender individuals. In *Hobby Lobby Stores, Inc. v. Sommerville* (2021 IL App (2d) 190362), the Court addressed an issue of first impression, holding that transgender individuals in Illinois have the right to access restrooms corresponding to their gender identity. Meggan Sommerville, a transgender woman, filed a charge with the Illinois Department of Human Rights (IDHR) against her employer Hobby Lobby for not allowing her to use the women’s restroom. The Court agreed that Hobby Lobby violated the Act both as an employer and as a place of public accommodation by discriminating against Ms. Sommerville based on her gender identity.

“I’m pleased to see the court recognize Hobby Lobby’s stance against its employee as what it is: discrimination based on gender-identity,” **said Governor JB Pritzker**. “Ours is a welcoming and inclusive state, and the Illinois Department of Human Rights will go toe to toe with any employer or business that tries to treat individuals differently because of their identity. Just last month, I convened a round table with leaders in the state’s transgender, nonbinary, and gender nonconforming community to connect with those on the ground, fighting these fights every day, on the work still left to do. In our continued efforts to shape a safer Illinois, my administration is on a mission to lift up and empower those who too often have been overlooked or forgotten.”

“The Sommerville decision couldn’t have been better for the transgender community in Illinois,” **said IDHR Director Jim Bennett**. “It means that trans individuals have strong protection from discrimination under the Illinois Human Rights Act. Ms. Sommerville’s experience of discrimination is certainly not unique, as too many of our transgender friends and neighbors continue to face acts of discrimination and hate. With this decision, the IDHR has been given a clear path to enforce the Commission’s orders concerning the rights of trans persons. It is our expectation that Hobby Lobby will comply with the Court’s opinion and allow Ms. Sommerville to exercise her right to use the women’s bathroom.”

At issue in the case was whether prohibiting a transgender woman from accessing the women’s restroom violates the Human Rights Act. Following an investigation by IDHR, a complaint was filed in the Illinois Human Rights Commission (Commission), the judicial forum in Illinois that adjudicates claims of discrimination under the Illinois Human Rights Act. The Commission heard the matter and ruled in Ms. Sommerville’s favor, ordering Hobby Lobby to immediately allow her to

exercise her right to use the women's restroom and awarding her damages for the violation. Hobby Lobby refused to comply, persisted in denying Ms. Sommerville access to the women's restroom, and chose to appeal the matter to the Second District Appellate Court.

Friday's court decision affirmed Ms. Sommerville's right as a transgender woman to use the women's restroom, categorically rejecting her employer's insistence that reproductive organs or structures are the sole determinant of a person's sex. The Court highlighted how the definition of "sex" in the Illinois Human Rights Act is more expansive than the "dictionary definition." Notably, the Act does not treat "sex" as a fixed status, nor does it draw distinctions based on a person's genitalia, birth certificates, or genetic information.

The decision also recognized that a person's gender identity is a valid basis for determining a person's sex under the law. The Court specifically addressed the evolution of Illinois law, noting examples such as a trans person's ability to obtain a birth certificate with a corrected sex marker, or a corrected sex designation on a driver's license. In Ms. Sommerville's case, the State of Illinois recognized her gender identity as female when it changed her vital records. And, Hobby Lobby recognized her female gender identity when it changed her personnel records.

The Court also affirmed a business's authority under the Act to designate separate "male" and "female" restrooms, while at the same time recognizing the right of all persons to access the restroom that matches their gender identity. Prohibiting a person from accessing the restroom that matches their gender identity violates the Illinois Human Rights Act.

The Human Rights Commission awarded substantial damages to Ms. Sommerville, including the highest amount ever assessed for emotional distress. The Court rejected Hobby Lobby's contention that the damages were excessive and returned the case to the Commission for further consideration, acknowledging that she may be entitled to additional damages because of the appeal.

The Illinois Human Rights Act was enacted in 1979. For more than 40 years, Illinois has been a national leader in protecting the civil rights of all its residents. Under the Act, it is illegal to discriminate based on gender identity in employment, real estate transactions (housing), financial credit and public accommodations. The Act is a living piece of legislation. Governor Pritzker recently signed two pieces of legislation passed by the General Assembly to expand the Act's protections to include international workers applying for jobs in Illinois with valid work authorization, as well as protecting individuals from discrimination by third-party loan modification services providers in real estate transactions.

The IDHR stands ready to investigate charges of discrimination. Any Illinoisan who believes they've been a victim of discrimination based on their gender related identity, or any protected class under the Illinois Human Rights Act, should file a charge. Charges may be filed online at www.illinois.gov/DHR or by calling 312.814.6200.

About the Illinois Department of Human Rights (IDHR)

The Illinois Department of Human Rights (IDHR) enforces the [Illinois Human Rights Act](#) ("Act"), a law that prohibits discrimination throughout Illinois in employment, real estate transactions, financial credit, and places of public accommodation on the bases of race, color, religion, sex (including sexual harassment), pregnancy, national origin, ancestry, military status, age (40 and over), order of protection status, marital status, sexual orientation (including gender-related identity), unfavorable military discharge, and physical and mental disability. Additional specific

protections apply in certain settings. In employment, discrimination is further prohibited on the bases of citizenship status, work authorization status, arrest record and conviction record. In real estate transactions, discrimination is further prohibited on the basis of familial status and arrest record. And, in education, sexual harassment of students is prohibited in public and private elementary, secondary, and higher educational institutions. To learn more about rights and responsibilities under the Act, visit [Illinois.gov/DHR](https://www.illinois.gov/DHR) and follow IDHR on [Facebook](#), [Twitter](#), [Instagram](#) & [LinkedIn](#).

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