

RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

Supreme Court Rules for Catholic Social Services

Philadelphia had contracts with several social service agencies, including Catholic Social Services (CSS), to place children in foster families.

In 2018, the city learned that CSS said it would not place children with same-sex couples, based on its religious beliefs. It also would not place children with unmarried opposite-sex couples.

The city stopped placing children with foster families through CSS, saying that CSS had violated its nondiscrimination policy. CSS sued.

It lost at the trial court and the court of appeals, but in June, it won in a unanimous, if fractured, Supreme Court decision.

Chief Justice John Roberts, who wrote the decision, noted that the city's contract with social service agencies allowed it to make exceptions. He wrote, "The creation of a system of exceptions under the contract undermines the city's contention that its nondiscrimination policies can

brook no departures." He said that the agency "seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else."

Justice Samuel Alito wrote a concurring opinion, arguing that Robert's decision "might as well be written on the dissolving paper sold in magic shops. If the city wants to get around today's decision, it can simply eliminate the never-used exemption power. If it does that, then, *viola*, today's decision will vanish – and the parties will be back where they started." He and two other justices wanted to overrule a 1990 case that said that general laws that do not single out religion could not be challenged on the grounds that they violated the First Amendment's protection of free exercise of religion.

(Article based on "Supreme Court Backs Catholic Agency in Case on Gay Rights and Foster Care," by Adam Liptak, published in the New York Times on June 17, 2021.)

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Court Decides Against Transgender Woman

Valeri Jackson is a transgender woman. She was arrested in 2016 for unlawful possession of a weapon and taken to jail. During booking, she was given a wristband identifying her as a woman. At one point, she was required to expose her bare breasts, which she did. She was then taken to see a nurse.

The nurse asked Jackson medical questions that led Jackson to reveal that she is a transgender woman. She was taken to a waiting area with other female detainees, where an officer asked her in front of others if she had had “sex change or something” and whether she “had everything done even down there.” Jackson said she answered “yes” to avoid further humiliation.

Then, Jackson was taken to an enclosed area and told to pull down her pants and underwear. She asked why. The officer told her, “We need to know if you’ve had a sex change or not. We need to see if you have a penis or vagina. We have to protect you. We can’t put you with men if you have a vagina.”

Jackson said she was not going to pull down her pants, and that she should not have to prove anything if none of the other women had to prove anything. The officer said that “our policy is we have to verify that you’ve had a sex change. If you have a penis, you’re going with the men. If you have a vagina, you’re going with the women.”

Jackson continued to say she did not want to pull her pants down.

An officer told her that if she refused, they would take her to the hospital where she would have to show her genitals, adding hours to her incarceration. An officer told her, “That’s our policy. You can talk to [Sheriff] Lupe Valdez about it when you get out.” Jackson felt she had no choice but to comply with the strip search. After that, she was taken to the male locker room and instructed to strip down and shower. She was given a new wristband that said she was a man.

She was arrested again in 2017 and in 2018, and each time she was classified as a man and forced to shower with men. She sued and lost.

The court said that it could not “conclude that allegations of two incidents of strip searches and four incidents of sex-based classifications of two transgender people in the span of five years supports the reasonable inference that a practice of strip searches and classifications of transgender detainees solely on their biological sex is ‘so persistent and widespread as to practically have the force of law,’” quoting a Supreme Court case. It said the limited number of incidents did not plausibly suggest that the county had a policy or custom of unconstitutional behavior.

A dissent said that Jackson had presented sufficient evidence to be given a chance to prove in court that the county had a policy.



She was told the county had a policy, and that she could complain to the sheriff about it. If the court had not dismissed her case, she might have been able to discover enough incidents to prove that they did indeed have such a policy.

The case is Jackson v. Valdez, 2021 WL 1990788 (5th Cir. 2021).

RIGHTS STUFF’S MISSION

The purpose of Rights Stuff is to provide information about civil rights litigation as a way to encourage adherence to best practices for landlords, providers of public accommodations and employers. We do this by publishing relevant and timely articles from around the country. Please see the reports in this issue to learn more.

Sheriff's Deputy Trainee Loses Job

Brad Sandefur applied for and received a disability parking placard in 2011. He and his doctor, Stephen Behnke, completed the application for the placard. His doctor said that Sandefur "could not walk without the assistance of another person, prosthetic device, wheelchair or other assistive device," and that he was "severely limited in [his] ability to walk due to an arthritic, neurological or orthopedic condition." The application said that Sandefur's condition was "permanent."

In 2015, Sandefur was accepted to the sheriff's police academy. Before he could begin training, he had to complete the Peace Officer Wellness Evaluation Report. Among other things, he had to show he could run 1.5 miles in less than 16 minutes and 21 seconds. Dr. Behnke certified that Sandefur passed the test with no restrictions.

When Sandefur reported for training, an instructor, Jeffrey Lange, noticed that he had a disability parking placard on his car's rearview mirror and asked about it. Sandefur said that it was his wife's. Lange yelled at Sandefur, saying his use of his wife's placard was illegal. Sandefur then said that he had a disability as well and sometimes used the placard. Lange asked how he could have a disability placard and also be able to perform all of a police officer's job duties. Sandefur said that his condition would not affect his ability to do the job. Lange then said, in front of others, "Can you believe this, now they're sending handicapped m*****f*****s to the Academy."

Lange told Sergeant David Cammack about the placard. Cammack asked Sandefur if the placard was his; he said it was his

wife's. Cammack then told Lieutenant Nathan Camer about the situation and asked if they should consider whether Sandefur had any physical limitations before they started training; Camer checked with human resources and was told Sandefur had been medically cleared to begin training and had not asked for any accommodations.

Cammack and Camer then asked Sandefur if he needed any accommodations. He said he did not. He again said the placard was for his wife, but that he also used it for his own medical condition. He said the placard was for his arthritic knee condition, and that his condition would not affect his ability to serve as a police officer.

The department then began a management inquiry to determine whether Sandefur, with his various explanations, had been truthful when he applied for a placard. Sandefur said that he no longer needed the placard because his condition had improved, and that his doctor should have said he needed the placard for his disk desiccation, not the osteoarthritis in his knees. He said he sometimes parked in accessible parking spaces for "convenience," and said that other employees do the same. He agreed that his doctor had said his condition was permanent when he applied for the placard, but it had improved. He said he didn't understand how his doctor could medically release him to participate in the Academy if he suffered from a serious and permanent disability limiting his ability to walk.

He was dismissed from the Academy because he had knowingly submitted inaccurate information when he applied for a placard, had not attempted to correct the inaccuracy, admitted he

parked in accessible parking spaces for convenience and gave conflicting explanations for his placard to supervisors. He sued, alleging discrimination on the basis of disability, and lost.

The court agreed with the Academy that they did not dismiss Sandefur because he had a disability, or because they regarded him as having a disability. They dismissed him because they believed he lied about his disability. The Academy had a job-related reason to ask about his medical condition, as he needed to be able to perform the essential functions of a patrol officer. The court said that given "Sandefur's conflicting statements, arguments and justifications for his [disability] parking placard, as well as the nature of the work he was seeking and the importance that a police officer be honest and obey the law, it was only natural, and not a violation of the ADA, for the Sheriff's Office to seek further information and clarification."

Sandefur argued that Lange harbored an animus against people with disabilities because of his comment about the people who were being sent to the Academy. But once Lange talked to Cammack, Lange had no further role in the matter, and was not involved in the decision to dismiss Sandefur. The people who were involved had evidence that Sandefur "could not answer legitimate questions honestly and consistently."

The case is Sandefur v. Dart and Cook County, 979 F. 3d 1145 (7th Cir. 2020). If you have questions about your rights and responsibilities under the Americans with Disabilities Act, please contact the BHRC.

Stray Comment Not Enough to Win Housing Discrimination Case

Carol D. Wheatley is a white woman with a disability. She sued her landlady, Lilly Beasley.

In her lawsuit, Wheatley said that Beasley committed a hate crime against her. She said that Beasley told her to take her “white a__ back across the street to [her] apartment or [Beasley] has got something that will care of [Wheatley] with something other than [Beasley’s] hands.”

She had earlier told Housing and Urban Development (HUD), when they investigated her complaint, that Beasley had woken her up by banging on her door, asking her to sign a lease violation notice because her utilities had been shut off. She said that Beasley tried to enter her apartment to search for mold and she told Beasley to come back later.

Later that day, she said she went to Beasley’s office to request her utility allowance. She said that Beasley told her to take her “white a__ back across the street.”

Wheatley also said her lease was not renewed.

The court noted that Wheatley did not allege any facts to establish that Beasley’s discriminatory comment, which consisted of one stray discriminatory remark, led to any



discriminatory conduct. The HUD report established that her lease apparently was not renewed because she didn’t allow maintenance staff and pest control entry into her apartment, which violated the lease.

The court said that “although plaintiff reasonably may have found Beasley’s remark’s offensive, isolated or stray racially-related remarks are not normally treated as evidence of discrimination, especially when they are not tied to management policy or any discriminatory impact.” The court dismissed Wheatley’s lawsuit.

The case is Wheatley v. Beasley, 2021 WL 1667503 (E.D. MO 2021). If you have questions about fair housing laws, please contact the BHRC.



Join the BHRC in the
2021 Independence Day Reverse Parade!
The parade will take place on Saturday, July 3 from 10 a.m. to noon at the Indiana University Memorial Stadium Purple Lot.