

# RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

## BHRC Seeks Human Rights Award Nominations

The Bloomington Human Rights Commission (BHRC) has extended the nomination deadline for its 2021 Human Rights Award. The deadline for nominations of individuals or groups who have made specific, significant contributions to improving civil rights, human relations or civility in our community has been extended to 5 p.m. on Friday, May 28, 2021.

The BHRC especially welcomes nominations demonstrating success in ensuring rights to equal access to housing, employment or education, in ensuring equal access to community life for people with disabilities and nominations of people or organizations who have done exemplary work and advocacy in increasing civility in our community.

“In Bloomington, the City’s work to protect and uphold human rights is supported and amplified by the many individuals, businesses, and nonprofits also dedicated to this goal,” said Mayor John Hamilton. “We are proud to recognize these tireless, principled, and passionate residents and organizations, whose daily work does so much to lift up lives and increase equity — even as we acknowledge that there is much work still to be done.”

Ryne Shadday, chair of the BHRC, said that “While Bloomington continues to be a beacon of light in the State of Indiana, we know there is a long road ahead in order to become a more just community. Although we have earned hard fought victories in race relations,

LGBTQ+ issues, women’s rights, and many others, the time we live in is ever more reason to get our hands dirty and continue making Bloomington the best city in the state for everyone. We are proud of those who have long served our community and wish to reward those who have made such an impact in Bloomington, the state, and our nation.”

Past recipients include PRIDE, the Downtown Resources Officers, Bloomington High School North, Bloomington United, New Leaf/New Life, Charlie Dupree and Virginia Hall, Clarence and Frances Gilliam, the Council for Community Accessibility, Congressman Frank McCloskey, WFHB Radio, Doug Bauder, Lillian Casillas, Helen Harrell, Cindy Stone and the Rev. Bill Breeden.

Bloomington’s human rights record has received national recognition. For the last six years, Bloomington has been awarded a perfect score by the Human Rights Campaign on its Municipal Equality Index (MEI), the only city in Indiana to do so. The index evaluates how well a city supports the LGBTQ+ people who live and work there through its laws, policies and services.

The recipient(s) of the BHRC’s Human Rights Award will be honored at a public ceremony. Nomination forms are available online or from the Bloomington Human Rights Commission, at [human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov) or 812 349-3429.

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# Court Rules in Professor's Favor in Pronoun Case

**N**icholas Meriwether is a philosophy professor at Shawnee State University, located in Ohio. He is a devout Christian who believes that God created everyone as either male or female, and that sex is fixed.

In 2016, Shawnee's administration emailed the faculty, telling them that they have to call students by their preferred pronouns, and that failure to do so could lead to discipline. Meriwether had concerns about how this new policy would interact with his religious beliefs. He said he talked to his department chair, Jennifer Pauley, and that she was "derisive and scornful." He said she said that "even the presence of religion in higher education is counterproductive."

Meriwether calls his students "Mr." or "Ms." He said he believes this formal matter of addressing students helps them realize their academic enterprise is a "serious, weighty matter." He called on one student, whom the court called "Doe." He said "no one would have assumed [this student] was female." He called her "Sir." He said after class, Doe demanded that Meriwether refer to her as a woman. When he said he was not sure if he could comply, he said Doe became hostile, circling around him and then said, "I guess this means I can call you a cu\_\_." He said Doe threatened to get him fired if he did not give in to her demands.

Meriwether reported the incident, and was told by the dean the next day that he had to eliminate "all

sex-based references from his expression – no using 'he' or 'she,' 'him' or 'her,' 'Mr.' or 'Ms.' He said that would be next to impossible. Instead, he proposed using pronouns to refer to most of his students, but referring to Doe only as Doe. The dean accepted this. But Doe objected, and the dean later told Meriwether that if he did not address Doe as a woman, he would be violating the school's policy.

Soon after, Meriwether called Doe "Mr." He said this was accidental and that he had immediately corrected himself. Doe complained; again, the school told Meriwether that he had to comply with the policy. Meriwether agreed to use preferred pronouns, but only if he could put a disclaimer in his syllabus saying that he was doing so under compulsion and setting forth his personal and religious beliefs about gender identity. The dean rejected this proposal. For the rest of the semester, Meriwether used only Doe's last name in class, and she did well.

However, Doe had complained again, and the school began a formal investigation. They interviewed Meriwether, Doe and two other transgender students. The dean recommended that the school issue Meriwether a formal warning, and the provost agreed. He filed an internal grievance, lost and then sued the school on first amendment grounds.

The trial court ruled in the school's favor, but the sixth circuit disagreed. The court said that "by forbidding Meriwether from

describing his views on gender identity even in his syllabus, Shawnee State silenced a viewpoint that could have catalyzed a robust and insightful discussion." It said that Meriwether was "speaking on a matter of public concern" and that purportedly neutral non-discrimination policies cannot be used to transform institutions of higher learning into "enclaves of totalitarianism." The court of appeals remanded the case to the trial court for further proceedings.

It's not clear if the court would rule similarly in a case where a professor used "Mr." or "Ms." for white students but called Black students by their first names, based on his religious objections.

*The case is Meriwether v. Hartop, 2021 WL 1149377 (6th Cir. 2021). If you have questions about gender identity discrimination, please contact the BHRC.*

## 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.*

# Accommodating Employees' Religious Beliefs Can Be Difficult

**E**dward Hedican is a Seventh-day Adventist who applied for an assistant manager job with Walmart in 2016. After he was offered the job, he told Walmart that he could not work between sundown Friday and sundown Saturday because of his religion.

Human resources reviewed his request and decided that making the other seven assistant managers work additional Friday night shifts and Saturday shifts would be an undue burden. Instead, the store suggested that Hedican apply for an hourly management position, a position that would pay less but which would not require him to work between sundown Friday and sundown Saturday. He refused and instead filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that Walmart had discriminated against him on the basis of religion. The EEOC sued Walmart on his behalf, and lost.

The EEOC argued to the court that requiring Hedican to apply for a lower-level job when he had already been offered a managerial job was a "gratuitous insult." Walmart said that all they were asking was that he fill out



some papers to assume the hourly management position. The court said that Walmart had made Hedican an offer for a management job which met his religious needs, and that was a reasonable accommodation.

The EEOC also argued that Walmart could have determined if other assistant managers would have been willing to trade shifts with Hedican. But the court said that would have been an accommodation by co-workers, not by the employer. And it was not clear what would happen under the EEOC's proposal if the seven other assistant managers balked at the request.

The EEOC also argued that Walmart could have assigned Hedican permanently to a 4-day, 12-hour shift. But this proposal,

too, would have required other employees to work more weekend shifts.

A dissenting judge said that Walmart should have at least convened the managerial staff to discuss the possibilities of some or all of them working more shifts from sundown Friday to sundown Saturday. The judge wrote, "The duty to reasonably accommodate entails an obligation to look at matters with fresh eyes and to separate what is necessary from what, to date, has been customary."

*The case is EEOC v. Walmart Stores, 2021 WL 1202427 (7th Cir. 2021). If you have questions about fair employment practices, please contact the BHRC.*



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City of Bloomington, IN - Human Rights Commission

# Testers Help Prove Discrimination

If a person of color leaves a message for a landlord about an available apartment, but never gets a call back, it can be hard to prove that the landlord discriminated against the caller on the basis of race. Maybe the apartment was no longer available. Maybe the voice mail message was inaudible. It's hard to know why the person didn't get a call back without additional information. Testers can help provide that missing information.

Project Sentinel is a nonprofit organization in California. Its mission is to "develop and promote fairness and equality of housing for all persons." In 2017, it received a call alleging that Jeanette and Sarah Komar, who are landlords, had engaged in racial discrimination in housing. According to the caller, a friend of hers had called the landlord and asked about an advertised apartment vacancy. The landlord said, "You sound Black. I don't rent to Black people," or words to that effect. The caller also said that the landlord had used the "n" word in public.

Project Sentinel had "a Black woman with a racially-

identifiable voice," using the name "Lakisha Robinson," call. She left a voicemail message, asking about an apartment. She left her name and contact information. No one called her back.

Two days later, Project Sentinel had "a white woman with a racially identifiable voice," using the name "Allison Sullivan," call. She, too, left a voice mail message. The landlord called her back within five minutes and talked to "Allison" about the application process. Thirty minutes later, "Lakisha" again left a voice mail message. Again, no one returned her call.

Project Sentinel repeated this experiment with two more callers. Again, only the white woman received a call back.

Project Sentinel sued the landlord for racial discrimination in housing. As a result of the lawsuit, the landlord will have to do the following:

- End its discriminatory practices.
- Cease misrepresenting the availability of apartments on the basis of a protected class.



- Receive annual training on fair housing.
- Provide all tenants a pamphlet on fair housing.
- Provide alternative ways besides phone calls for prospective tenants to learn about available housing, such as open houses.
- Pay Project Sentinel \$33,812.67 as compensatory damages and \$61,332.16 in attorneys' fees.

*The case is Project Sentinel v. Komar, 2021 WL 1346025 (E.D. CA 2021). If you have*

## UPCOMING BHRC MEETING

**Currently, the BHRC meets via Zoom. That link can be found on the City of Bloomington's online calendar at [bloomington.in.gov](http://bloomington.in.gov).**

**The next BHRC meeting will take place at 5:30 p.m. May 24, 2021.**