

STATE OF ILLINOIS
ILLINOIS HUMAN RIGHTS COMMISSION

QUARTERLY NEWSLETTER
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A Note from the Executive Director Tracey B. Fleming

Dear Friends,

In this newsletter, I'd like to focus on some of the changes that our agency has recently made in our continued efforts to improve and refine practices and procedures at the Commission and expand the public's understanding of the protections afforded by the Illinois Human Rights Act.

Chief Administrative Law Judge Weinthal led our Administrative Law Judges and General Counsel attorneys in a multi-month effort to create a singular instruction guide for litigants on how to proceed after filing a complaint in the Administrative Law Section. Our new [Standing Order for All Cases Before the Administrative Law Section](#) will be a great resource for both attorneys and self-represented litigants practicing in our agency.

Our Office of the General Counsel has updated our [Filing Procedures](#) guide, which can be found on our website. This document reflects the dual purposes of informing the public about the acceptable ways of filing, including electronically, and furthering our mission to provide information in an easier-to-understand format. We have also answered the most commonly asked questions in our updated [Frequently Asked Questions About the Request for Review Process](#), in order to ease the process for litigants seeking appeal of the dismissal of their charges of discrimination by the Department of Human Rights.

All of these new and updated resources are located on our [website](#) and are intended to help litigants navigate what we know can be a challenging process. We hope you will check them out and let us know what you think. You can provide feedback at hrc.news@illinois.gov with the phrase "feedback" in the subject line of your message.

We look forward to hearing from you!

We have also spent the summer engaging with the public and sharing information about the Act and the work of the Commission, including attendance at a training event sponsored by the Commission on Government Forecasting and Accountability on July 31, and our third consecutive appearance at the Illinois State Fair on August 14. More information and pictures from recent activities are included further in this newsletter.

As always, one of the best ways to stay in the know about what is going on at the Commission is to visit our website at <https://hrc.illinois.gov>. You can also follow us on Facebook at <https://www.facebook.com/IllinoisHRC/>.

Cummings v. Keller, the Civil Rights Remedies Restoration Act, and the Illinois Human Rights Act

By Administrative Law Judge Azeema Akram

On April 28, 2022, the Supreme Court of the United States entered a decision in *Cummings v. Keller Premier Rehab P.L.L.C.*, finding that emotional distress damages are not recoverable in a private action to enforce the Rehabilitation Act of 1973 (“Rehab Act”). 142 S. Ct. 1562 (2022). Enacted seventeen years prior to the Americans with Disabilities Act (“ADA”), the Rehab Act was the first federal legislation to protect the rights of people with disabilities, specifically prohibiting federally-funded programs from discriminating on the basis of disability. Cummings, who is deaf and blind, sought physical therapy services from Keller Premier Rehab P.L.L.C (“Keller Rehab”) and requested an American Sign Language (“ASL”) interpreter at her sessions. Keller Rehab refused, instead insisting that the therapist could communicate with Cummings through other means.

Cummings sued Keller Rehab, which receives reimbursement through Medicare and Medicaid, under the Rehab Act and the Affordable Care Act for discrimination on the basis of disability when it failed to provide an ASL interpreter. The Court upheld dismissal of the complaint, holding that “emotional distress damages are not recoverable under the Spending Clause antidiscrimination statutes” considered in its opinion, including Title IX’s prohibition against sex discrimination, age discrimination in the Age Discrimination Act of 1975, and racial discrimination under Title VI of the Civil Rights Act of 1964. While private individuals may sue to enforce the antidiscrimination provisions of these statutes, remedies are limited because there is no express provision authorizing damages for emotional distress. Thus, federal funding recipients have not “consented to be subject to damages for emotional distress, and such damages are accordingly not recoverable.”

To “remedy” this (pun intended), stakeholders in Illinois came together and proposed HB 2248, which led to the passage of the Civil Rights Remedies Restoration Act (“CRRRA”). See 775 ILCS 60/1, *et seq.* The CRRRA “restore[s] in Illinois the full enjoyment of the civil rights” limited by the Supreme Court of the United States in *Cummings*, by providing that certain damages, including for emotional distress, are recoverable in an action brought under the aforementioned list of antidiscrimination statutes. *Id.* at §§ 10, 15, 20.

The *Cummings* decision and the CRRRA have no effect on any enforcement authority available under the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, which provides for damages, including for emotional distress, in an action brought against an employer, a party to a real estate transaction, educational institution, or a place of public accommodation.

Lunch and Learn Series in Review

On September 27, 2023, the Commission hosted a Lunch and Learn CLE presentation, “Privacy in Employment in Illinois.” Vera Iwankiw, a managing associate at Sidley Austin LLP, led the discussion on the Illinois Biometric Information Privacy Act (BIPA).

Case Note: *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022)

Elizabeth Lerum, Coles Fellow

In *Williams v. Kincaid*, the Fourth Circuit became the first federal appellate court to hold that gender dysphoria is a disability covered under the Americans with Disabilities Act (“ADA”).

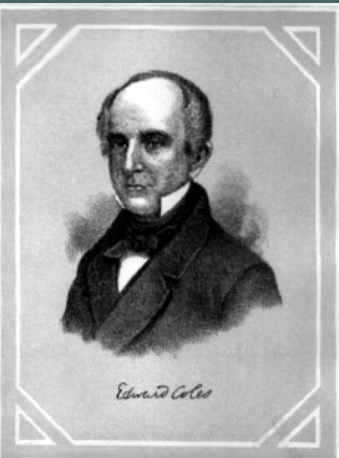
The ADA, enacted in 1990, is a federal law that protects people with disabilities from discrimination, guaranteeing them access to employment opportunities, businesses open to the public, public transit, government services, and telecommunication services. However, the ADA excludes some conditions from coverage, including “gender identity disorders not resulting from physical impairments.” 42 U.S.C. § 12211(b). In *Williams*, the Fourth Circuit reversed the district court, disagreeing with its holding that gender dysphoria is a “gender identity disorder,” which would exclude it from the ADA’s coverage. The Fourth Circuit differentiated gender dysphoria from “gender identity disorder,” stating that being transgender itself is not a disability. Instead, gender dysphoria is “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.” Since gender dysphoria is a “clinically significant distress” felt by some, but not all transgender people, it is a disability protected by the ADA.

The plaintiff in this case, Kesha Williams, is a transgender woman who was incarcerated for six months at the Fairfax County Adult Detention Center in Fairfax, Virginia. Williams suffered from gender dysphoria. For fifteen years prior to her incarceration, Williams received medical treatment for her gender dysphoria in the form of hormone therapy. The state of Maryland recognized Williams’s gender as female and issued her a driver’s license with that designation.

At the start of Williams’s incarceration, deputies assigned Williams to the women’s side of the prison. However, after Williams informed a prison nurse that she was transgender and had not undergone transfeminine bottom surgery, the prison labeled Williams as “male” in her prison records and transferred her to the men’s side. Following her transfer, prison deputies and male inmates repeatedly harassed Williams and misgendered her, calling her “mister,” “sir,” and “he.” Deputies ignored Williams’s requests for accommodations, such as showering privately. As a result, Williams feared for her safety. Additionally, the prison delayed approval of Williams’s hormone medication, which led to Williams experiencing significant emotional distress.

Following Williams’s release from the detention center, she filed a lawsuit against the Sheriff of Fairfax County, a prison deputy, and a prison nurse, alleging violation of the ADA, among other claims. Defendants moved to dismiss, arguing that Williams failed to state a claim because gender dysphoria falls within the ADA’s exceptions. The district court agreed with the defendants and dismissed Williams’s claims. Williams appealed.

Edward Coles Fellowship



The Commission recognizes our Summer Coles Fellows, Clea Braendel, Elizabeth Lerum, and Celeste Shen, for their exceptional work this summer and wishes them well as they return to the classroom.

For more information on our Coles Fellowship program, please visit:

<https://hrc.illinois.gov/about/coles.html>

Case Note: *Williams, cont.*

The primary issue before the Fourth Circuit was whether the ADA’s exclusion of “gender identity disorders not resulting from physical impairments” applies to gender dysphoria, and, in turn, whether the exclusion bars Williams’s ADA claim. The Fourth Circuit ultimately agreed with Plaintiff’s arguments that: 1) gender dysphoria is not a “gender identity disorder,” and is covered under the ADA; and 2) even if gender dysphoria is a “gender identity disorder,” it resulted from a physical impairment, which places it outside the scope of the ADA’s exclusions.

The Court examined the plain meaning of the ADA’s exclusions and concluded that at the time of the ADA’s enactment, Congress’s use of “gender identity disorder” did not include gender dysphoria. This is due to a shift in the medical understanding of gender dysphoria. In 1990, a diagnosis of “gender identity disorder” “marked being transgender as a mental illness,” or rather, a pathology. But, in 2013, the American Psychiatric Association (“APA”) removed “gender identity disorder” from the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”) and added the diagnosis of “gender dysphoria.” Unlike gender identity disorder, being transgender alone does not sustain a diagnosis of gender dysphoria. The DSM-5 defines “gender dysphoria” as “clinically significant distress” felt by some transgender people that can lead to anxiety, depression, and suicide. The Court also concluded that Williams plausibly pled a reasonable inference that her gender dysphoria resulted from physical impairments, placing her disability outside the ADA’s exclusions. Williams’s gender dysphoria required physical treatments, such as hormone therapy, which prevented her from experiencing emotional and physical distress. According to the Court, Williams did not need to state that her condition “resulted from a physical impairment,” or to provide scientific analysis explaining the “biomechanical processes by which her condition arose.”

Lastly, the Court invoked the canon of constitutional avoidance, concluding that if the ADA excluded both gender dysphoria and “gender identity disorder,” the ADA would discriminate against transgender people as a class in violation of the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause prohibits government bodies from denying people equal protection of its governing laws. The Court concluded that both the plain meaning of the ADA’s exclusions and its legislative history presented evidence of discriminatory animus toward transgender people. First, the ADA lists “gender identity disorders” alongside pedophilia, exhibitionism, and voyeurism, suggesting that being transgender is equivalent to committing a crime. Second, comments from legislators at the time of the ADA’s enactment suggest that they saw the conditions and behaviors in the ADA’s exclusions as “immoral, improper, or illegal.” The Court could not determine a legitimate government interest in excluding coverage of transgender people suffering from gender dysphoria.

Illinois Human Rights Act <https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64>

IHRC Rules and Regulations <https://www.ilga.gov/commission/jcar/admincode/056/05605300sections.html>

IHRC website <https://hrc.illinois.gov/>

IHRC events (including Lunch and Learn) <https://hrc.illinois.gov/about/events.html>

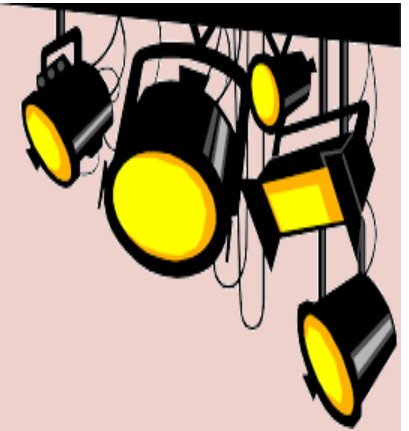
Helpful Links

Case Note: *Williams, cont.*

In his dissent, Circuit Judge Quattlebaum disagreed with the majority’s analysis of the meaning of “gender identity disorder.” Judge Quattlebaum argued that Williams’s definition of gender dysphoria fit within the DSM -III-R’s (published in 1987) description and diagnostic criteria of “gender identity disorder.” Judge Quattlebaum was not convinced that changes in the medical field’s terminology warranted modifying the ADA’s plain meaning. Additionally, Judge Quattlebaum disagreed with the majority’s use of the constitutional avoidance canon, arguing that the Court must only invoke the canon if it finds that the text is ambiguous. Judge Quattlebaum maintained that the meaning of “gender identity disorder” is not ambiguous.

For now, the Fourth Circuit’s holding that gender dysphoria is a disability under the ADA remains unchallenged. Other circuit courts have not yet weighed in on this issue. But district courts in the Ninth Circuit and Tenth Circuit have cited to *Williams* as persuasive authority. See *Gibson v. Cmty. Dev. Partners*, No. 3:22-cv-454-SI, 2022 U.S. Dist. LEXIS 189828 (D. Or. Oct. 18, 2022); *Griffith v. El Paso Cnty.*, No. 21-cv-00387-CMA-NRN, 2023 U.S. Dist. LEXIS 32186 (D. Colo. Feb. 27, 2023). Additionally, the Supreme Court denied certiorari, leaving the potential for an unresolved split in the circuits. *Kincaid v. Williams*, No. 22-633, 2023 U.S. LEXIS 2825 (U.S. June 30, 2023).

HRC Spotlight on Civil Rights History



July 2, 1964: President Lyndon Johnson signed into law the Civil Rights Act of 1964, outlawing discrimination based on race, color, religion, sex, and national origin in public places, providing for the integration of schools and other public facilities, and making employment discrimination illegal. Title VII of the Act created the Equal Employment Opportunity Commission to enforce laws prohibiting employment discrimination.

July 26, 1948: President Truman signed an executive order desegregating the Armed Forces and ordering full integration of all branches. The executive order stated that “there shall be equality of treatment and opportunity for all persons in the armed forces without regard to race, color, religion, or national origin.” By the end of the Korean War in 1953, the military was largely integrated.

July 26, 1990: President George H. W. Bush signed the Americans with Disabilities Act into law, prohibiting discrimination against people with disabilities in several areas of life, such as employment, housing, public accommodations, and access to federal and state programs.

July 28, 1961: Illinois became the first U.S. state to repeal its sodomy laws criminalizing homosexuality.

August 6, 1965: President Lyndon Johnson signed the Voting Rights Act of 1965 into law. The Act sought to overcome the bureaucratic and violent obstacles placed on Black Americans exercising their right to vote, particularly in southern states. The landmark legislation was passed 95 years after the ratification of the Fifteenth Amendment.

August 28, 1963: The March on Washington took place in Washington, D.C., 100 years after the Emancipation Proclamation. Nearly 250,000 people marched to advocate for the civil and economic rights of African Americans, making the march one of the largest political rallies in American history. The march ended with Dr. Martin Luther King Jr. delivering his momentous “I Have a Dream” speech.

August 29, 1989: Ileana Ros-Lehtinen became the first Latinx woman to be elected to the U.S. House of Representatives. She arrived to the U.S. as a Cuban refugee, and eventually became the first woman to chair the Foreign Affairs Committee. Ros-Lehtinen advocated for LGBTQIA+ rights and marriage equality; as a parent of a transgender child, she also made public appeals for parents to support their transgender children.



HRC Spotlight on Civil Rights History

September 20, 2011: The military’s ban on allowing openly LGBTQ+ people to serve, known as “Don’t Ask Don’t Tell,” was formally repealed. Servicemembers who were discharged as a result of “Don’t Ask Don’t Tell” were now allowed to re-enlist.

September 22, 1961: The Interstate Commerce Commission ruled that interstate bus carriers could no longer mandate segregated seating on buses and in bus terminals. This ruling was a major victory for the Freedom Riders, who had vigorously protested segregated transit during the six months leading up to the ruling.

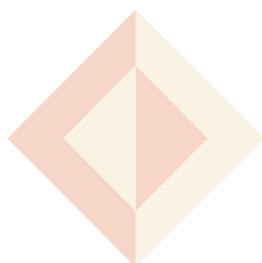
September 24, 2016: The Smithsonian Institution opened the National Museum of African American History and Culture to the public for the first time. The museum was established by Congress in 2003 to highlight the contributions of African Americans to American history. At the time of opening, the museum housed more than 36,000 artifacts and had nearly 100,000 charter members.



On July 31, 2023, Administrative Law Judge Michael Robinson represented the Commission at the Commission on Government Forecasting and Accountability seminar.



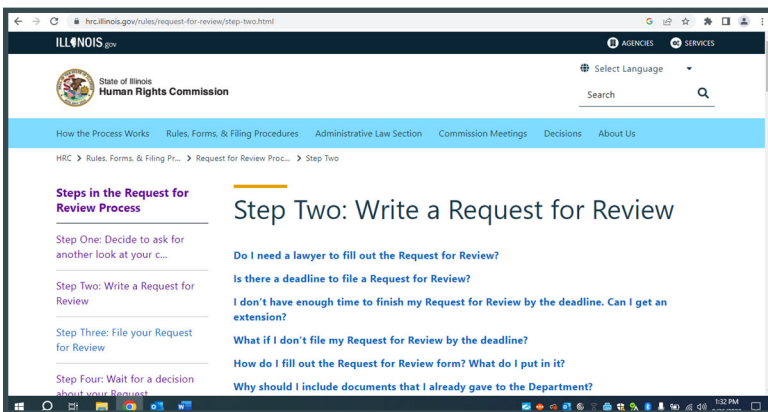
At a ceremony on September 14, 2023, Administrative Law Judge William Borah was awarded the 2022-2023 Elmer Gertz Human & Civil Rights Award by the Illinois State Bar Association’s Human and Civil Rights Section Council.



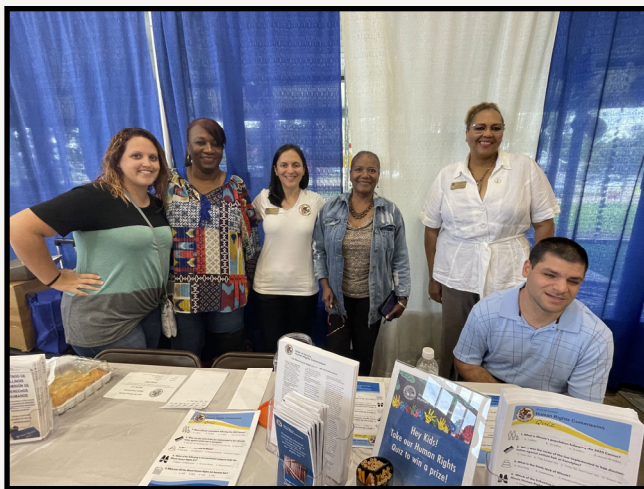
The Commission has recently updated our “Frequently Asked Questions About the Request for Review Process” in order to clarify the process for litigants.

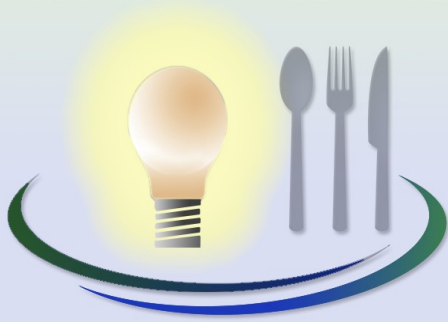


For answers to these questions and more, visit our website!



On August 14, 2023, the Commission offered information to the public on the agency and the rights protected by the Act at the Illinois State Fair.





LUNCH —AND— LEARN CLE

CLE Credit:
One hour of general CLE
credit for Illinois attorneys
12:00 PM—1:00 PM

Lunch and Learn via Webex

<https://hrc.illinois.gov/about/events.html>

To receive information about future Lunch and Learn Webinars and other events, scan the QR code to join our mailing list.



Upcoming Lunch and Learn CLEs

Date	Topic	Presenter
October 26, 2023	Pregnant Workers Fairness Act and the PUMP Act	Katherine Greenberg Director of Strategic Litigation A Better Balance
November 29, 2023	Deferred Action for Immigrant Workers	Lisa Palumbo Legal Aid Chicago

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