

II. JURISDICTION

2. This court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5, as it is an action brought by an employee whose employer has engaged in an unlawful employment practice by failing to attempt a reasonable accommodation of his religious beliefs without demonstrating any undue hardship; pursuant to 28 U.S.C. § 1331, as it arises under the laws of the United States and presents a federal question; and pursuant to 28 U.S.C. § 1343, as it seeks to secure equitable or other relief under an Act of Congress, specifically Title VII.

3. All conditions precedent to jurisdiction under 42 U.S.C. § 2000e-5 have occurred:

a. On November 8, 2013, which was within 180 days of the commission of the unlawful employment practice, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission alleging that the Defendant's actions constituted a violation of Title VII of the Civil Rights Act, and also a claim that the Defendant wrongfully retaliated against him for contacting the Employee Relations Department of Walgreens to express concern about the company's decision to promote and sell PlanB as an over-the-counter drug.

b. On November 19, 2013, the Equal Employment Opportunity Commission Plaintiff received his Notice of Right To Sue Letter from the EEOC informing him of his rights and remedies under Title VII. (A true

and correct copy of this Notice of Right To Sue Letter is attached hereto as Exhibit A and is incorporated herein by reference).

c. This complaint has been timely filed within 90 days of Plaintiff's receipt of the EEOC's Notice of Right to Sue.

4. Venue is proper within this judicial district and division, pursuant to 28 U.S.C. § 1391(b)-(c), 42 U.S.C. § 2000e-5, and Middle District of Tennessee, because Jamestown, Fentress County, Tennessee, is where the unlawful employment practice giving rise to Plaintiff's claim occurred.

5. This court is authorized to award Plaintiff declaratory relief, and costs, including attorneys' fees, pursuant to 42 U.S.C. § 2000e-5 and other applicable laws.

III. PARTIES

Plaintiff

6. Phillip M. Hall is an adult citizen and resident of Jamestown, Fentress County, Tennessee. all times relevant to this complaint, Dr. Hall has been an "employee" of Walgreen Company within the meaning of 42 U.S.C. § 2000e(f).

Defendant

7. Walgreen Company (hereinafter "Walgreens") is a foreign corporation and has its principal corporate headquarters at 200 Wilmot Road, Deerfield,

Illinois 60015. Its registered agent for service of process is The Prentice-Hall Corporation System, 2908 Poston Avenue, Nashville, Tennessee 37203.

8. At all times relevant to this case, Walgreens was the owner of a Walgreens Drug Store No. 10959, located at 515 E. Central Avenue, Jamestown, Tennessee 38556. Walgreens owns and operates over 8,541 such drug stores across the United States.

9. Defendant is a “person” within the meaning of 42 U.S.C. § 2000e(a).

10. At all times relevant to this complaint, Defendant was an “employer” within the meaning of 42 U.S.C. § 2000e(b).

IV. FACTS

11. Dr. Phillip M. Hall is a pharmacist licensed by the State of Tennessee Board of Pharmacy. He was hired by Walgreens on March 5, 2007, and was eventually placed as a store pharmacist at its drugstore at 515 E. Central Avenue, Jamestown, Tennessee 38556.

12. Throughout the course of his employment with Walgreens, and up to the time of his termination on August 5, 2013, Dr. Hall consistently performed his duties as pharmacist in an exemplary manner.

13. On or about July 1, 2013, the store manager at Walgreens, Jason White met with the store pharmacists, including Dr. Hall and the technicians to advise them that he had just learned from corporate headquarters that soon they would be

expected to stock and sell a new over-the-counter version of a drug known as Levonorgestrel, colloquially known as PlanB or the “morning after pill” (depicted below).



14. Prior to July 1, 2013, PlanB was only available for purchase at Walgreens drug stores behind the pharmacy counter.

15. Dr. Hall had earlier expressed his concerns to his supervisor, Scott Leslie, that he could not sell or dispense this abortifacient from behind the pharmacy counter due to his religious-based objection. Mr. Leslie instructed Dr. Hall that pursuant to Walgreens’ policy, if he could not personally participate in the dispensing of this drug, then he had a duty to refer the customer to another pharmacist in the store. If there was no other pharmacist on duty, then he should refer the customer to a location where they may acquire the drug.

16. Under the Walgreens store policy, as communicated by Scott Leslie, Walgreens had always been able to accommodate Dr. Hall’s religious-based objections to selling or dispensing PlanB from behind the pharmacy counter.

17. During the meeting on July 1, 2013, Dr. Hall reinforced his earlier stated position and again made known to all attending the meeting that he had a problem selling this abortifacient due to his sincere religious objection to taking part in abortion.

18. Following the meeting with his store manager, Dr. Hall placed a call to Walgreens' corporate offices in Deerfield, Illinois and spoke with a staff person in Employee Relations. He communicated to her his concerns about taking part in the sale of the new over-the-counter version of Levonorgestrel. Specifically, Dr. Hall expressed concern that based on his sincerely held religious belief the sale of this drug was tantamount to facilitating an abortion.

19. The drug Levonorgestrel operates as an abortifacient by causing an irritation of the lining of the uterus which, in turn, causes a fertilized egg or zygote to detach from the uterine wall and become flushed out as part of the menstrual cycle. Dr. Hall holds to the scriptural view that a once an egg is fertilized it constitutes a human life, and that to chemically induce the termination of a pregnancy is abortion and is contrary to nature and the law of nature's God.

20. In mid-July of 2013, approximately two weeks following his meeting with Walgreens store manager, Jason White, Dr. Hall observed that six boxes of PlanB had arrived at the store and were delivered to the pharmacy for sale over-the-counter.

21. Dr. Hall also noticed that the boxes were mislabeled and still bore the label of the older behind the counter version of the drug.

22. Rather than place the inaccurately labeled PlanB on the shelf for sale, Dr. Hall decided to purchase the entire lot of the drugs himself.

23. On or about July 19, 2013, after having earlier removed one of the bar code labels from the package, Dr. Hall asked a technician to ring up all six boxes of the PlanB. He then handed the technician a check for \$328.43 representing the full retail amount of the purchase.

24. Plaintiff later informed the store manager, Mr. White, that he had purchased the entire lot of PlanB and disposed of all six boxes of the pills. Mr. White informed Dr. Hall that he would have to replace the pills and promptly alerted Walgreens' Loss Prevention Manager, Doug Teague, of what had occurred.

25. On August 5, 2013, Loss Prevention Manager Doug Teague and Store Manager Jason White both confronted Dr. Hall and interrogated him about his actions in disposing of the PlanB pills. Mr. Teague initially accused Dr. Hall of stealing the pills, until he was shown a copy of the receipt where the Plaintiff had paid for them. He then asked Dr. Hall what he would do if a customer came into the store and approached him to purchase PlanB. Dr. Hall responded that he would follow the Walgreens policy as communicated to him by Scott Leslie, and refer the customer to someone else in the store to conduct the transaction. Mr. Teague then instructed Mr. White: "*Tell him.*" Whereupon, Mr. White turned to Dr. Hall and said: "*You're fired.*"

26. The day following his termination, Dr. Hall placed a telephone call to Walgreens Supervisor Scott Leslie to inquire why he was being terminated for offering to follow store policy and protocol, particularly since this policy had served to accommodate his religious objection to the sale of PlanB while it was sold behind the counter. Mr. Leslie informed Dr. Hall that it was a part of his job duties to sell PlanB. Plaintiff understood from his conversation with Mr. Leslie that Walgreens would no longer be willing to offer him the same accommodation of his religious beliefs regarding the sale of PlanB as an over-the-counter drug.

**V.
Causes of Action**

**FIRST CAUSE OF ACTION—FAILURE TO ACCOMMODATE
IN VIOLATION OF TITLE VII**

27. All allegations set forth in paragraphs 1-26 are incorporated herein by reference as though fully set out.

28. By virtue of Defendant's actions and inactions as set forth above, Defendant has violated Title VII with regard to Plaintiff by failing to accommodate his sincerely-held religious beliefs.

29. Wherefore, Plaintiff requests the relief set forth below in his prayer for relief.

SECOND CAUSE OF ACTION--RETALIATION
IN VIOLATION OF TITLE VII

30. All allegations set forth in paragraphs 1-29 are incorporated herein by reference as though fully set out.

31. By virtue of Defendant's actions as set forth above, Defendant has violated Title VII with regard to Plaintiff by terminating his employment after he expressed his concerns to corporate management regarding the Defendant's decision to sell PlanB over-the-counter.

32. This action by Defendant constitutes retaliatory discrimination against Dr. Hall solely because he raised concerns about the Defendant's willingness to continue to accommodate his religious beliefs under Title VII.

33. Wherefore, Plaintiff requests the relief set forth below in his prayer for relief.

THIRD CAUSE OF ACTION--APPLICATION OF POLICY
IN VIOLATION OF TITLE VII

34. All allegations set forth in paragraphs 1-33 are incorporated herein by reference as though fully set out.

35. By virtue of Defendant's actions as set forth above, Defendant has violated Title VII by adopting and implementing a policy that requires all of its employees to sell and dispense PlanB regardless of their religious objection to this drug as an abortifacient.

36. Pursuant to this policy, Defendant refuses to reasonably accommodate the sincerely-held religious beliefs of its employees, including Plaintiff.

37. Defendant has not demonstrated that application of such a policy is justified by any undue hardship that Walgreens would otherwise suffer.

38. Wherefore, Plaintiff requests the relief set forth below in his prayer for relief.

FOURTH CAUSE OF ACTION—VIOLATION OF
Article I, Section III Tennessee Constitution

39. Plaintiff incorporates herein the allegations set forth in paragraphs 1-38 and does further allege as follows:

40. Article I, Section III of the Tennessee Constitution contains the freedom of conscience clause and provides as follows:

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

41. The Plaintiff is entitled to declaratory relief in the form of a declaratory judgment declaring Defendant's termination of the Plaintiff to be a violation of his state constitutional right to freedom of conscience as protected under Article I, Section III of the Tennessee Constitution.

FIFTH CAUSE OF ACTION—VIOLATION OF
Tenn. Code Ann. § 39-15-204

42. Plaintiff incorporates herein the allegations set forth in paragraphs 1-41 and does further allege as follows.

43. Tennessee has adopted a “Right To Refuse” statute that excuses physicians from having to participate in an abortion.

44. Tenn. Code Ann. § 39-15-204 provides as follows:

39-15-204. Right to refuse to perform abortions.

No physician shall be required to perform an abortion and no person shall be required to participate in the performance of an abortion. No hospital shall be required to permit abortions to be performed therein.

45. The effect of the Defendant’s store policy requiring all of its pharmacists to sell and dispense PlanB is to deny to the Plaintiff his statutory right under this statute to refuse to take part in an abortion.

46. The Defendant’s decision to terminate the Plaintiff’s employment based on his refusal to sell or dispense PlanB is a violation of the Plaintiff’s statutory right under Tenn. Code Ann. § 39-15-204.

47. Wherefore, Plaintiff requests the relief set forth below in his prayer for relief.

PRAYER FOR RELIEF

All allegations set forth in the above-stated paragraphs are incorporated herein by reference as though fully set out, and Plaintiff respectfully asks that this court grant him the following relief and enter final judgment against Defendant WALGREEN COMPANY:

- a. Declare that Defendant's failure to reasonably accommodate Plaintiff's sincerely-held religious beliefs constitutes a violation of Title VII;
- b. Declare that Defendant's action of changing its policy of not granting reasonable accommodation to employees who have sincere, religious objections to the sale of PlanB constitutes a violation of Title VII;
- c. Declare that Defendant's policy requiring all Walgreens employees to sell and dispense PlanB constitutes a violation of Title VII;
- d. Declare that Defendant's actions constitute a violation of Article I, Section III of the Tennessee Constitution;
- e. Award compensatory damages for Defendant's violations of Title VII and Tenn. Code Ann. § 39-15-204;
- f. Award punitive damages for Defendant's intentional acts of discrimination;
- g. Award appropriate equitable relief;

- h. Award reasonable attorneys' fees and costs;
- i. Award any further relief deemed just.

Respectfully submitted,



Larry L. Crain
Tenn. Supr. Ct. No. 9040
CRAIN, SCHUETTE & ASSOCIATES
5214 Maryland Way
Suite 402
Brentwood, TN 37027
Tel. (615) 376-2600
Fax. (615) 345-6009
Larry@CSAFirm.com

s/Peter Breen
Peter Breen
Pro Hac Vice Pending
Thomas More Society
19 S LaSalle Street, Suite 603
Chicago, IL 60603
Tel: 312.782.1680
Fax: 312.782.1887
PBreen@ThomasMoreSociety.org

s/Joycelyn Floyd
Jocelyn Floyd
Pro Hac Vice Pending
Thomas More Society
19 S LaSalle Street, Suite 603
Chicago, IL 60603
Tel: 312.782.1680
Fax: 312.782.1887
JFloyd@ThomasMoreSociety.org

s/Joshua Hershberger
Joshua Hershberger
Pro Hac Vice Pending
Hershberger Law Office
201 E. Main Street
Madison, IN 47250
Tel: 812-274-0441
Fax: 812-273-2329
Josh@HershbergerLegal.com

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Philip Hall
2166 Tinchtown Road
Jamestown, TN 38556

From: Nashville Area Office
220 Athens Way
Suite 350
Nashville, TN 37228

Empty box for identification

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(e))

EEOC Charge No.

EEOC Representative

Telephone No.

494-2014-00139

David J. Smith,
Investigator

(615) 736-5928

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- Checkboxes for reasons: facts fail to state claim, disability not involved, employee count, charge timing, EEOC determination (checked), state findings, other.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment.

Signature of Sarah L. Smith, Area Office Director

NOV 19 2013

(Date Mailed)

Enclosures(s)

cc. Deidra Byrd
Human Resources
WALGREENS
104 Willmot Road
Mail Stop # 1416
Deerfield, IL 60016

