

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

MORR-FITZ, INC., an Illinois corporation)
D/B/A FITZGERALD PHARMACY,)
Licensed and Practicing in the State of Illinois)
as a Pharmacy; L. DOYLE, INC., an Illinois corporation)
D/B/A EGGELSTON PHARMACY,)
Licensed and Practicing in the State of Illinois)
as a Pharmacy; KOSIROG PHARMACY, INC.,)
an Illinois corporation D/B/A KOSIROG REXALL)
PHARMACY, Licensed and Practicing)
in the State of Illinois as a Pharmacy; LUKE)
VANDER BLEEK; and GLENN KOSIROG)

Plaintiffs,)

v.)

ROD R. BLAGOJEVICH, Governor, State)
of Illinois; FERNANDO E. GRILLO, Secretary,)
Illinois Department of Financial and Professional)
Regulation; DANIEL E. BLUTHARDT, Acting)
Director, Division of Professional Regulation; and)
the STATE BOARD OF PHARMACY, in their)
official capacities,)

Defendants.)

Case No. 2005-CH495

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME Plaintiffs, MORR-FITZ, INC., D/B/A FITZGERALD PHARMACY, L. DOYLE, INC., D/B/A EGGELSTON PHARMACY, KOSIROG PHARMACY, INC., D/B/A KOSIROG REXALL PHARMACY, LUKE VANDER BLEEK, and GLENN KOSIROG (hereinafter collectively "Plaintiffs") by and through their attorneys, Mailee R. Smith, Americans United for Life, Chicago, Illinois, and Edward R. Martin, Jr., Americans United for Life, St.

Louis, Missouri and for its Verified Complaint for Declaratory and Injunctive Relief against Defendants states and alleges as follows:

VENUE

1. The “Permanent Rule” codified at 68 Ill. Adm. Code § 1330.91(j) that is the subject of this action will be enforced by Defendants Governor Blagojevich, Secretary Grillo, Acting Director Bluthardt, and the State Board of Pharmacy (hereinafter collectively “Government Defendants”) throughout the State of Illinois. The predecessor to the “Permanent Rule”, the “Emergency Rule” codified preliminarily as 68 Ill. Adm. Code § 1330.91(j), was, upon information and belief, enacted and enforced by the Government Defendants throughout the State of Illinois before it expired in late August 2005.
2. Plaintiff Morr-Fitz, Inc., an Illinois corporation D/B/A Fitzgerald Pharmacy does business in Whiteside County, Illinois.
3. Plaintiff L. Doyle, Inc. is an Illinois corporation D/B/A Eggleston Pharmacy in Sycamore, Illinois and Genoa, Illinois.
4. Plaintiff Kosirog Pharmacy, Inc. is an Illinois corporation D/B/A Kosirog Rexall Pharmacy at 1000 N. Western Avenue, Chicago, Illinois 60622.
5. Plaintiff Luke Vander Bleek is a licensed pharmacist who resides at 504 Portland Avenue, Morrison Illinois 61270.
6. Plaintiff Glenn Kosirog is a licensed pharmacist who resides at 280 W. Cole Avenue, Wheaton, IL 60187.
7. Venue is proper in the Circuit Court of the Seventh Judicial Circuit, Sangamon County under pertinent statutes.

PARTIES

8. **Plaintiff Fitzgerald Pharmacy**, an Illinois corporation, operates two Division I Pharmacies licensed and registered by the State of Illinois Division of Professional Regulation. The two pharmacies are in Whiteside County: one in Morrison, Illinois (State License #054-013706) and another in Prophetstown, Illinois (State License #054-014623). Plaintiff employed fifteen (15) or more persons within Illinois during 20 or more calendar weeks of the year preceding the Government Defendants' actions.
9. **Plaintiff L. Doyle, Inc.**, an Illinois corporation, operates two Division I Pharmacies licensed and registered by the State of Illinois Division of Professional Regulation. The two pharmacies do business as Eggleston Pharmacy in Sycamore, Illinois (pharmacy license #054-014017) and Genoa, Illinois (pharmacy license #054-015418).
10. **Plaintiff Kosirog Pharmacy, Inc.**, an Illinois corporation, operates a Division I Pharmacy licensed and registered by the State of Illinois Division of Professional Regulation. The pharmacy does business as Kosirog Rexall Pharmacy in Cook County, Illinois (pharmacy #054000500).
11. **Plaintiff Luke Vander Bleek** is the sole shareholder of Plaintiff Morr-Fitz, Inc. and the majority shareholder of Plaintiff L. Doyle, Inc. Mr. Vander Bleek is also the chief pharmacist at the Morrison pharmacy.
12. **Plaintiff Glenn Kosirog** is the sole shareholder in Plaintiff Kosirog Pharmacy, Inc. Mr. Kosirog is a licensed pharmacist and directs the day to day work of Kosirog Pharmacy, Inc.
13. **Defendant Rod R. Blagojevich**, an elected official of the State of Illinois, is the Governor of the State of Illinois (hereinafter "Governor"). The Governor filed,

promulgated, and/or created the “Emergency Rule” that has become the “Permanent Rule” that is the subject of this action. The Governor is sued in his official capacity.

14. **Defendant Fernando E. Grillo** is the Secretary of the Illinois Department of Financial and Professional Regulation, the agency charged with regulating and licensing Illinois pharmacists and pharmacies and with administering disciplinary action against pharmacists and pharmacies charged with violating the Illinois Pharmacy Practices Act of 1987, 225 ILCS § 85 *et seq.* Defendant Grillo is sued in his official capacity.

15. **Defendant Daniel E. Bluthardt** is the Acting Director of the Division of Professional Regulation, the division of the Illinois Department of Financial and Professional Regulation charged with regulating and licensing Illinois pharmacists and pharmacies and with conducting disciplinary proceedings against pharmacists and pharmacies. Defendant Bluthardt is sued in his official capacity.

16. **Defendant State Board of Pharmacy** is a regulatory agency and advisory board within the Division of Professional Regulation responsible for advising the Director of the Division of Professional Regulation concerning standards of professional conduct and licensing of pharmacists and pharmacies.

FACTUAL ALLEGATIONS

17. Plaintiff Fitzgerald Pharmacy is a “c” corporation with one shareholder, Luke D. Vander Bleek.

18. Plaintiff Fitzgerald Pharmacy operates two pharmacies at 124 East Main Street, Morrison, Illinois 61270 and 316 Washington St., Prophetstown, Illinois 61277.

19. Plaintiff Luke Vander Bleek resides at 504 Portland Avenue, Morrison, Illinois 61270. He was raised in Fulton, Illinois as the 3rd son of 12 children and is a lifelong Catholic.

20. Vander Bleek is a graduate of the University of Illinois (1986) with a bachelor of science degree in pharmacy with a concentration in medical chemistry and drug design.
21. Vander Bleek is also the chief pharmacist at the Morrison pharmacy (Pharmacist license #051-036456).
22. Vander Bleek is a practicing Catholic who, through prayerful reflection and consideration, informed his beliefs and conscience upon which he relies and which holds that life begins at conception and therefore does not allow him to dispense the morning-after pill and/or “Plan B” because of their abortifacient mechanism of action.
23. Vander Bleek has also formed a professional opinion about teratogenic or abortifacient drugs and their destruction of what he considers is human life.
24. Based on Vander Bleek’s conscience and belief and through his control of the corporation, Morr-Fitz, Inc. – through its pharmacies – forbids the sale or dispensing of drugs suspected to have teratogenic or abortifacient qualities such as the morning-after pill and/or “Plan B.” See Exhibit A – Vander Bleek Policy (draft).
25. Vander Bleek does not believe, based on his moral religious beliefs, that Morr-Fitz and its pharmacies can cooperate in the sale or dispensing of drugs like the morning-after pill and “Plan B” and has therefore conscientiously objected on behalf of this corporation.
26. In specific instances over the past few years when presented with prescriptions for drugs as described in the preceding paragraph, Vander Bleek has affirmed the policy of Morr-Fitz and its pharmacies.
27. Plaintiff L. Doyle, Inc., an Illinois corporation, is a subchapter S corporation doing business in Dekalb County, Illinois as Eggleston Pharmacy in Sycamore, Illinois and Genoa, Illinois.

28. Plaintiff L. Doyle, Inc. has two shareholders: Luke Vander Bleek, the majority shareholder and Tom O'Shea.
29. Plaintiff L. Doyle, Inc. Fitzgerald Pharmacy operates two pharmacies at Eggleston's Pharmacy 403 East State Street, Sycamore, IL 60178-1564 and 207 W. Main Street, Genoa, IL 60135.
30. As stated above, Vander Bleek is a practicing Catholic who, through prayerful reflection and consideration, informed his beliefs and conscience upon which he relies and which holds that life begins at conception and therefore does not allow him to dispense the morning-after pill and/or "Plan B" because of their abortifacient mechanism of action, i.e., they can cause abortions by preventing an already-fertilized egg from implanting in the womb.
31. Vander Bleek has also formed a professional opinion about teratogenic or abortifacient drugs and their destruction of what he considers is human life.
32. Based on Vander Bleek's conscience and belief and with support of minority shareholder plaintiff O'Shea, L. Doyle, Inc. forbids the sale or dispensing of drugs suspected to have teratogenic or abortifacient qualities such as the morning-after pill and/or "Plan B."
33. Vander Bleek does not believe, based on his moral religious beliefs, that L. Doyle, Inc. can cooperate in the sale or dispensing of drugs like the morning-after pill and "Plan B" and has therefore conscientiously objected on behalf of this corporation.
34. In specific instances over the past few years when presented with prescriptions for drugs as described in the preceding paragraph, Vander Bleek, on behalf of L. Doyle Inc. has affirmed the policy for its pharmacies.
35. Plaintiff Kosirog Pharmacy, Inc. is a subchapter S corporation.

36. Plaintiff Kosirog Pharmacy, Inc. operates a pharmacy, Kosirog Rexall Pharmacy at 1000 N. Western Avenue, Chicago, Illinois 60622.
37. Plaintiff Kosirog Pharmacy Inc. has one shareholder, Glenn Kosirog. Plaintiff Glenn Kosirog is a practicing pharmacist (#051035217) and directs the day to day work of the Kosirog Pharmacy, Inc.
38. Kosirog resides at 280 W. Cole Avenue, Wheaton, IL 60187. He and his wife have five children including one with Down's Syndrome.
39. Kosirog is the son of the founder of Kosirog Pharmacy, Inc. His father was a pharmacist and ran the pharmacy since 1956. Kosirog was raised in Chicago and is a lifelong Christian.
40. Kosirog is a graduate of the University of Wyoming (1982) with a bachelor of science degree in pharmacy. He worked for various commercial pharmacies before joining Kosirog Pharmacy, Inc. full-time in the late 1980's.
41. Kosirog is a practicing Christian who, through prayerful reflection and consideration, informed his beliefs and conscience upon which he relies and which holds that life begins at conception and therefore does not allow him to dispense the morning-after pill and/or "Plan B" because of their abortifacient mechanism of action, i.e., they can cause abortions by preventing an already-fertilized egg from implanting in the womb.
42. Kosirog has formed a professional opinion about teratogenic or abortifacient drugs and their destruction of what he considers is human life.
43. Based on Kosirog's conscience and belief, Kosirog Pharmacy, Inc. forbids the sale or dispensing of drugs suspected to have teratogenic or abortifacient qualities such as the morning-after pill and/or "Plan B."

44. Kosirog does not believe, based on his moral religious beliefs, that Kosirog Pharmacy, Inc. can cooperate in the sale or dispensing of drugs like the morning-after pill and “Plan B” and has therefore conscientiously objected on behalf of this corporation.
45. In specific instances over the past few years when presented with prescriptions for drugs as described in the preceding paragraphs, Kosirog, on behalf of Kosirog Pharmacy, Inc. has affirmed the aforementioned policy for its pharmacy to not dispense such drugs.
46. On or about April 1, 2005, the Governor filed an “Emergency Rule” that reads in pertinent part:

(j) Duty of Division I Pharmacy to Dispense Contraceptives

- 1) Upon receipt of a valid, lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient’s agent without delay. If the contraceptive, or a suitable alternative, is not in stock, the pharmacy must obtain the contraceptive under the pharmacy’s standard procedures for ordering contraceptive drugs not in stock, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. However, if the patient prefers, the prescription must either be transferred to a local pharmacy of the patient’s choice or returned to the patient, as the patient directs.
- 2) For the purposes of this subsection (j), the term “contraceptive” shall refer to all FDA-approved drugs or devices that prevent pregnancy.

68 Ill. Adm. Code § 1330.91(j).

47. This “Emergency Rule” included drugs and devices known as the “morning-after pill” and “Plan B,” which Plaintiffs contend are designed to act with an abortifacient mechanism of action.

48. Prior to promulgating this “Emergency Rule,” neither the Governor nor any of the Government Defendants or their agencies, departments, or divisions held any public hearing on the regulation or provided for any public notice and comment thereon.
49. On information and belief, the State Board of Pharmacy did not review, approve of, or authorize the “Emergency Rule” as required by the Pharmacy Practice Act of 1987. *See* 225 ILCS § 85/11.
50. No “threat to the public interest, safety, or welfare” exists sufficient to permit the Government Defendants to enact the subject “Emergency Rule” without a hearing or opportunity for public notice and comment concerning the weighty issues of freedom of conscience and patient health raised by the subject rule.
51. The “Emergency Rule” was in direct conflict with the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*; the Illinois Administrative Procedures Act, 5 ILCS 100/5-5 *et seq.*; the Illinois Pharmacy Practices Act, 225 ILCS 85/1 *et seq.*; the Illinois Human Rights Act, 775 ILCS 1/1-101 *et seq.*; and the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*
52. On or about August 16, 2005, after hearing and public notice, the Joint Commission on Administrative Rules made permanent the Governor’s emergency rule with slight changes.
53. The “Permanent Rule” reads in pertinent part:
- j) Duty of Division I Pharmacy to Dispense Contraceptives
 - 1) Upon receipt of a valid, lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient’s agent without delay, consistent with the normal timeframe for filling any other prescription. If the contraceptive, or a suitable alternative, is not in stock, the pharmacy must

obtain the contraceptive under the pharmacy's standard procedures for ordering contraceptive drugs not in stock, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. However, if the patient prefers, the prescription must be transferred to a local pharmacy of the patient's choice under the pharmacy's standard procedures for transferring prescriptions for contraceptive drugs, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. Under any circumstances an unfilled prescription for contraceptive drugs must be returned to the patient if the patient so directs.

2) For the purposes of this subsection (j), the term "contraceptive" shall refer to all FDA-approved drugs or devices that prevent pregnancy.

3) Nothing in this subsection (j) shall interfere with a pharmacist's screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), drug-food interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, or clinical abuse or misuse, pursuant to 225 ILCS 85/3(q).

68 Ill. Adm. Code § 1330.91(j).

54. This "Permanent Rule" – just like its predecessor "Emergency Rule" – included drugs and devices known as the "morning-after pill" and "Plan B," which Plaintiffs contends are designed to act with an abortifacient mechanism of action.
55. Although the Joint Committee held hearings on the issues, the basis for the rule was the predecessor "Emergency Rule." As stated above, prior to promulgating this emergency rule, neither the Governor nor any of the Government Defendants or their agencies, departments, or divisions held any public hearing on the regulation or provided for any public notice and comment thereon.
56. No "threat to the public interest, safety, or welfare" exists sufficient to permit the Government Defendants to enact the subject "Permanent Rule."
57. The emergent nature of this matter is underscored by the fact that, upon information and belief, on Monday, April 1, 2005, the Governor issued a warning that Illinois pharmacists

who violate the April 1, 2005 “Emergency Rule” face “significant penalties,” ranging from fines to the loss of professional licenses. Upon information and belief, the Governor’s Senior Policy Advisor, Sheila Nix, has stated in public interviews that pharmacies are under investigation for violation of the “Emergency Rule” and that the “Permanent Rule” will be enforced. There is reason to believe that the permanent rule will now be actively enforced including at least three enforcement action already undertaken.

58. By demanding that Division I Pharmacies fill any prescription for “contraceptives,” including the “morning-after pill” and “Plan B,” the Permanent Rule (and its predecessor Emergency Rule) requires the Plaintiffs to act against the collective conscience of their corporate control group and against the policies of their pharmacies.
59. On information and belief, both the Emergency Rule and the Permanent Rule were enacted for the purpose of compelling religious and conscientious objectors to fill contraceptive prescriptions despite those objections.
60. The “Permanent Rule” is in direct conflict with the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*; the Illinois Administrative Procedures Act, 5 ILCS 100/5-5 *et seq.*; the Illinois Pharmacy Practices Act, 225 ILCS 85/1 *et seq.*; the Illinois Human Rights Act, 775 ILCS 1/1-101 *et seq.*; the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*; the First and Fourteenth Amendments to the United States Constitution; and the Hyde-Weldon Amendment **[insert full cite]**.
61. By promulgating the Emergency Rule and Permanent Rule, the Government Defendants have illegally coerced Plaintiffs and have imposed a substantial burden on their religious liberties.

62. All acts of the Government Defendants, their agents, employees, and assigns herein alleged were performed in their official capacities.
63. Absent injunctive relief from this Court, the Government Defendants will continue to violate Plaintiffs' rights under state and federal law and Plaintiffs could be commanded by any patient to fill a prescription that violates its religious and moral conscience or otherwise jeopardize its Division I Pharmacy license. In addition, Plaintiffs could be commanded to violate the rights of their employees. This would be intolerable to Plaintiffs.
64. The promulgation by the Government Defendants of the referenced "Permanent Rule" (and the predecessor "Emergency Rule") has caused and will continue to cause irreparable harm to the Plaintiffs, for which it has no adequate remedy at law.

COUNT I

Violation of the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 et seq.

65. Plaintiffs incorporate by reference herein all preceding paragraphs.
66. The Health Care Right of Conscience Act states the following:

It is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive, or accept, or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of health care services and medical care.

745 ILCS 70/2 (emphasis added).

67. Under the Act, "health care" is defined as "any phase of patient care, including but not limited to, ... instructions; family planning, counseling, referrals, or any other advice in

connection with the use or procurement of contraceptives and sterilization or abortion procedures; [or] medication....” 745 ILCS 70/3.

68. In addition, “health care professional” is defined as “any nurse, nurse’s aide, medical school student, professional, paraprofessional or any other person who furnishes, or assists in the furnishing of, health care services.” *Id.*

69. “Conscience” is defined as “a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths.” *Id.*

70. Section 5 of the Act states the following:

It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person’s conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILCS 70/5.

71. Section 7 of the Act states that it is unlawful for any public or private employer, entity, or agency to “... orally question about, to impose any burdens in terms or conditions of employment on, or otherwise discriminate against any applicant, in terms of employment” or to “discriminate in relation thereto, in any other manner” on account of the applicant’s refusal to “perform, counsel, suggest, recommend, refer, assist, or participate in any way in any forms of health care services contrary to his or her conscience.” 745 ILCS 70/7.

72. Section 9 of the Act states the following:

No person, association, or corporation, which owns, operates, supervises, or manages a health care facility shall be civilly or criminally liable to any person,

estate, or public or private entity by reason of refusal of the health care facility to permit or provide any particular form of health care service which violates the facility's conscience as documented in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/9. See Exhibit A – Vander Bleek Policy (draft).

73. Section 12 of the Act provides that “[a]ny person ... injured by any public or private person, association, agency, entity, or corporation by reason of any action prohibited by this Act may commence a suit therefore....” 745 ILCS 70/12.

74. Section 14 of the Act states, “This Act shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act.” 745 ILCS 70/14.

75. By requiring Plaintiffs to fill prescriptions for post-coital contraceptives like “Plan B,” despite its or its employees religious or conscientious objectives, and by requiring Plaintiffs to either demand that its employees fill such prescriptions or hire on the basis of the willingness to fill such prescriptions, the “Permanent Rule,” on its face and as applied, is in direct and clear conflict with the Health Care Right of Conscience Act and is thus null, void, and unenforceable.

COUNT II

Violation of the Illinois Administrative Procedures Act, 5 ILCS 100/5-5 *et seq.*

76. Plaintiffs incorporate by reference herein all preceding paragraphs.

77. Section 5.45(b) of the Illinois Administrative Procedures Act permits an agency, upon finding that an emergency exists, to adopt an emergency rule without prior notice or hearing. 5 ILCS 100/5-35(b). An “emergency means the existence of any situation that

any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.”

5 ILCS 100/5-45(a).

78. Upon information and belief, the facts as known by the Defendants did not rise to the level of an “emergency.”

79. Because the “Emergency Rule” was filed by the Governor rather than the Department of Financial and Professional Regulation or the Division of Professional Regulation, it violated 5 ILCS 100/5-35. In addition, the promulgation of the “Emergency Rule” was arbitrary, capricious, and unreasonable.

80. The “Permanent Rule” is similarly flawed and is arbitrary, capricious, and unreasonable.

COUNT III

Violation of the Illinois Pharmacy Practice Act of 1987, 225 ILCS 85/1 *et seq.*

81. Plaintiffs incorporate by reference herein all preceding paragraphs.

82. The Pharmacy Practice Act of 1987 states the following in pertinent part:

[T]he following powers and duties shall be exercised only upon action and report in writing of a majority of the Board of Pharmacy to take such action:

(a) Formulate such rules, not inconsistent with law and subject to the Illinois Administrative Procedures Act, as may be necessary to carry out the purposes and enforce the provisions of this Act.”

225 ILCS 85/11.

83. By filing and enforcing the “Emergency Rule” without first obtaining a report in writing of a majority of the Board of Pharmacy authorizing such action, the Government

Defendants have acted *ultra vires* and in violation of the Pharmacy Practice Act of 1987.

84. The “Permanent Rule” is similarly flawed and violates the Pharmacy Practice Act of 1987.

COUNT IV

Violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.

85. Plaintiffs incorporate by reference herein all preceding paragraphs.
86. The Illinois Human Rights Act prohibits discrimination against applicants and employees based upon their religious beliefs. 775 ILCS 5/1-102. It also requires employers to make reasonable accommodations of an employee's religious beliefs and practices. *Id.*
87. In addition, the Act states the following:
- It is a civil rights violation:
- (A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.
- 775 ILCS 5/2-102.
88. It is also a civil rights violation for a person to conspire to compel or coerce a person to commit any violation of this Act. 775 ILCS 5/6-101.
89. Plaintiff Morr-Fitz, Inc. is an "employer" under the Act because it employed 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year preceding the Government Defendants' actions. Upon information and belief, other plaintiffs may be employers under the pertinent definition.
90. By imposing upon all Division I Pharmacies the obligation to dispense all FDA-approved drugs or devices that prevent pregnancy without allowing for reasonable accommodation of an individual employee's right to request a religious accommodation, the "Emergency Rule" is in direct conflict with the Illinois Human Rights Act. In addition, the rule compels and coerces Plaintiffs to commit a violation of the Illinois Human Rights Act. For these reasons, the "Emergency Rule" is null, void, and unenforceable.

COUNT V

Violation of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*

91. Plaintiffs incorporate by reference herein all preceding paragraphs.
92. The “Permanent Rule” requires that the Plaintiffs violate their sincerely held religious beliefs as a condition of maintaining their licenses to practice pharmacy in the State of Illinois.
93. The Illinois Religious Freedom Restoration Act prohibits the government from substantially burdening a person’s constitutional and fundamental right to the free exercise of religion unless it demonstrates that the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 775 ILCS 35/1 *et seq.*
94. While “person” is not defined under the Act, “person” includes an individual or an organization under the Illinois Commercial Code. 810 ILCS 5/1-201(30).
95. Under the Illinois Commercial Code, “organization” includes a corporation, partnership or association, or “any other legal or commercial entity.” 810 ILCS 5/1-201(28).
96. Plaintiffs are businesses incorporated in the State of Illinois and therefore qualify for protection under the Religious Freedom Restoration Act.
97. The “Permanent Rule” (and its predecessor “Emergency Rule”) substantially burdens Plaintiffs’ exercise of religion, does not further a compelling governmental interest, and is not the least restrictive means to further any such purported interest.
98. The “Emergency Rule” thus violates the Illinois Religious Freedom Restoration Act, the Illinois Constitution, and is null, void, and unenforceable on its face and as applied to Plaintiffs

COUNT VI

Violation of Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e(j)

99. Plaintiffs incorporate by reference herein all preceding paragraphs.

100. The Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, states:

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

101. The Civil Rights Act of 1964, 42 U.S.C. § 2000e(j), states:

The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

102. Plaintiff Morr-Fitz, Inc. is an "employer" within the definition of 42 U.S.C. § 2000e(b) since Plaintiff employed fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. Upon information and belief, other plaintiffs may be employers under the pertinent definition.

103. Plaintiffs could reasonably accommodate their employees' religious beliefs without undue hardship on the conduct of their businesses.

104. Therefore, by 42 U.S.C. § 2000e-2, Plaintiff employers are required to accommodate their employees' religious and conscientious objections to filling prescriptions for "Plan B".

105. 68 Ill. Adm. Code 1330.92(j), however, requires Plaintiff employers to make filling prescriptions for “Plan B” a term or condition of employment, and to deprive individuals of employment opportunities, in contravention of 42 U.S.C. § 2000e-2.

106. The Civil Rights Act of 1964, 42 U.S.C. § 2000e-7, states:

Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

107. The Illinois “Permanent Rule” requires Plaintiff employers to violate the employment standards set out in Title VII.

108. According to the Supremacy Clause of the United States Constitution, when a state statute conflicts with federal law, the state statute is pre-empted.

109. The Illinois Permanent Rule is therefore null, void, and unenforceable.

COUNT VII

Violation of United States Constitution, First Amendment

110. Plaintiffs incorporate by reference all preceding paragraphs.

111. The Illinois “Permanent Rule” substantially burdens Plaintiffs’ free exercise of religion.

112. The Illinois “Permanent Rule” is not narrowly tailored to serve a compelling government interest.

113. The Illinois “Permanent Rule” is not the least restrictive means of serving any alleged government interest.

114. On information and belief, the Illinois “Permanent Rule” is designed to coerce religious and conscientious objectors to provide contraceptives in violation of those objections.
115. The Illinois “Permanent Rule” also requires Plaintiffs to engage in forced speech in violation of the First Amendment, in that they are professionally obligated to counsel patients about the drugs they dispense.
116. The Illinois “Permanent Rule” violates the Free Exercise and Free Speech clauses of the First Amendment to the United States Constitution.
117. Plaintiffs have been and will continue to be damaged by the Illinois Permanent Rule.
118. The Illinois “Permanent Rule” is thereby unconstitutional on its face and as-applied to Plaintiffs, and is null, void, and unenforceable.

COUNT VIII

Violation of United States Constitution, Fourteenth Amendment

119. Plaintiffs incorporate by reference all preceding paragraphs.
120. The Illinois “Permanent Rule” forces Plaintiffs to dispense contraceptives and participate in abortions to which they are religiously and conscientiously opposed.
121. The Supreme Court has recognized that matters relating to contraception and abortion:

“ . . . are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”

Planned Parenthood of Southeastern Pennsylvania v. Casey 505 U.S. 833, 851 (1992).

122. The Illinois Permanent Rule violates the liberty protected by the Fourteenth Amendment by forcing the Plaintiffs, against their will, to dispense contraceptives and participate in abortions to which they are religiously and morally opposed.
123. The Illinois “Permanent Rule” is not narrowly tailored to serve a compelling government interest.
124. The Illinois “Permanent Rule” is not the least restrictive means of serving any alleged government interest.
125. Plaintiffs have been and will continue to be damaged by the Illinois Permanent Rule.
126. The Illinois “Permanent Rule” is thereby unconstitutional on its face and as-applied to Plaintiffs, and is null, void, and unenforceable.

COUNT IX

Violation of Hyde-Weldon Amendment, Consolidated Appropriations Act, 2005, Pub.

L. No. 108-447, Section 508(d).

127. Plaintiffs incorporate by reference all preceding paragraphs.
128. The Hyde-Weldon Amendment prohibits state and local governments from discriminating against any institutional or individual health care provider on the basis of their unwillingness to provide, pay for, provide coverage of, or refer for abortions. Consolidated Appropriations Act, 2005, Division F, sec. 508(d), P.L. 104-447 (H.R. 4818) at 355.
129. The State of Illinois received funding under the Consolidated Appropriations Act, 2005.

130. The Illinois “Permanent Rule” discriminates against Plaintiffs on the basis of their unwillingness to provide, pay for, provide coverage of, or refer for abortions.
131. The Plaintiffs have been and will continue to be damaged by the Illinois Permanent Rule.
132. The Illinois “Permanent Rule” is thereby null, void, and unenforceable.

WHEREFORE, the Plaintiffs respectfully requests that:

A) This Court render a Declaratory Judgment, adjudging and declaring that:

- 1) the August 16, 2005 “Permanent Rule,” codified at 68 Ill. Adm. Code § 1330.91(j), violates the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*, and is therefore null and void and without legal effect;
- 2) the August 16, 2005 “Permanent Rule,” codified at 68 Ill. Adm. Code § 1330.91(j), violates the Illinois Administrative Procedures Act, 5 ILCS 100/5-5 *et seq.*, and is therefore null and void and without legal effect;
- 3) the August 16, 2005 “Permanent Rule,” codified at 68 Ill. Adm. Code § 1330.91(j), violates the Illinois Pharmacy Practice Act of 1987, 225 ILCS 85/1 *et seq.*, and is therefore null and void and without legal effect;
- 4) the August 16, 2005 “Permanent Rule,” codified at 68 Ill. Adm. Code § 1330.91(j), violates the Illinois Human Rights Act, 775 ILCS 5/101 *et seq.*, and is therefore null and void and without legal effect; and
- 5) the August 16, 2005 “Permanent Rule,” codified at 68 Ill. Adm. Code § 1330.91(j), violates the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*, and is therefore null and void and without legal effect; and

6) the August 16, 2005 "Permanent Rule," codified at 68 Ill. Adm. Code § 1330.91(j), violates Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) and is therefore preempted by federal law.

7) the August 16, 2005 "Permanent Rule," codified at 68 Ill. Adm. Code § 1330.91(j), violates the First Amendment to the United States Constitution, and is therefore null and void and without legal effect;

8) the August 16, 2005 "Permanent Rule," codified at 68 Ill. Adm. Code § 1330.91(j), violates the Fourteenth Amendment to the United States Constitution, and is therefore null and void and without legal effect;

9) the August 16, 2005 "Permanent Rule," codified at 68 Ill. Adm. Code § 1330.91(j), violates the Hyde-Weldon Amendment, and is therefore null and void and without legal effect;

B) This Court issue a preliminary and permanent injunction prohibiting the Government Defendants from enforcing the August 16, 2005 "Permanent Rule," codified at 68 Ill. Adm. Code § 1330.91(j).

C) This Court award plaintiffs the costs of this action and the attorney fees and costs against the Government Defendants pursuant to Section 12 of the Illinois Right of Conscience Act and Section 20 of the Illinois Religious Freedom Restoration Act.

D) This Court award such other and further relief as it deems equitable and just.

Respectfully submitted this 28th day of October, 2005.

By: _____
Mailee R. Smith (IL Bar No. 6280167)
AMERICANS UNITED FOR LIFE
310 S. Peoria St., Suite 300
Chicago, Illinois 60607
Tel: (312) 492-7234

Fax: (312) 492-7235

Edward R. Martin (MO Bar No. 50282)

AMERICANS UNITED FOR LIFE

6427 Devonshire Avenue

St. Louis, MO 63109

Tel: (314) 914-1455

Email: ed@aul.org

CERTIFICATE OF SERVICE

I, _____, certify under Code of Civil Procedure sec. 1-109 that I served a copy of this notice and the attachments upon each of the persons on the service list by overnight mail and/or fax on 9/14/2005.

SERVICE LIST

Morr-Fitz, Inc. v. Rod R. Blagojevich *et al.*

Rod R. Blagojevich, Governor, State of Illinois, in his official capacity
Office of the Governor
207 State House
Springfield, IL 62706
Fax: (217) 524-4049

Fernando E. Grillo, Secretary, Illinois Department of Financial and Professional Regulation, in his official capacity
320 W. Washington Street
Springfield, IL 62786
Fax: (217) 782-7645

Daniel E. Bluthardt, Acting Director, Division of Professional Regulation, in his official capacity
320 W. Washington Street
Springfield, IL 62786
Fax: (217) 782-7645

Members of the Illinois State Board of Pharmacy
320 W. Washington Street
Springfield, IL 62786
Fax: (217) 782-7645