

22<sup>nd</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY

STATE OF LOUISIANA

DOCKET NO. 200512411

DIVISION E

TONI S. LEMLY

*VERSUS*

ST. TAMMANY PARISH HOSPITAL DISTRICT NO. 1,  
*d/b/a* ST. TAMMANY PARISH HOSPITAL

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

PETITION FOR DAMAGES

The petition of Toni S. Lemly, through the undersigned counsel, with respect, represents that:

1.

Made defendant herein is St. Tammany Parish Hospital District No. 1, d/b/a St. Tammany Parish Hospital ("STPH"), an entity governed by La. R.S. 46:1051 *et seq.*, whose lawful agent for service of process is:

Patti Elish, RN, MHA  
Director, President/CEO  
1202 S. Tyler Street  
Covington, LA 70433

2.

Venue is proper in St. Tammany Parish as that is the parish in which the violation occurred.

3.

On or about August 11, 2003, Toni S. Lemly began her employment as a licensed practical nurse (LPN) in the Community Wellness Center at STPH's facility in Covington, Louisiana.

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ST TAMMANY PARISH CLERK

4.

Ms. Lemly was a full-time employee of STPH and she typically worked Monday through Friday in the Community Wellness Center for a total of 40 hours per week.

5.

Approximately eight months after Ms. Lemly's employment began, STPH opened a Family Planning Clinic that operated out of the Community Wellness Center on Thursday of each week.

6.

With the opening of the Family Planning Clinic, STPH assigned Ms. Lemly the task of administering the morning after abortion pill which is marketed under the trade name "Plan B" (hereinafter the "morning after pill").

7.

The morning after pill is administered to women within 72 hours of sexual intercourse. The morning after pill prevents a living and fertilized egg, human life in its most basic form, from attaching to the lining of the uterus which, of course, causes the death of that human life.

8.

Administering the morning after pill and taking a human life is contrary to Ms. Lemly's sincerely held religious beliefs.

9.

Ms. Lemly informed STPH that she objected to administering the morning after pill because of her sincerely held religious beliefs, and on May 13, 2004, she submitted her objection in writing to STPH. A true and correct copy of this written objection is attached hereto as Exhibit "A".

10.

In response to Ms. Lemly's objection to administering the morning after pill, STPH presented her with three options: 1) Reducing her to part-time employment at three days a week; 2) Applying to another LPN position at STPH; or, 3) Work three days a week (Monday - Wednesday) at the Community Wellness Center and the remaining two days (Thursday and Friday) in another department of STPH. A true and correct copy of STPH's proposal is attached hereto as Exhibit "B".

11.

The first option, reducing her employment status to part-time and working only three days a week, would cause a substantial reduction in her pay and a substantial increase in the costs to her for participation in the employer provided health insurance plan as well as a loss of other benefits.

12.

Ms. Lemly investigated the second option, applying to another department, and learned that there were no other open full-time positions for which she was qualified and capable of working.

13.

As for the last option, working part-time in the Community Wellness Center and part-time in another department at STPH, there were not any part-time positions available for which she was qualified and capable of working that would accommodate this schedule and she still be considered a full-time employee of STPH. The loss of full-time employee status results in a significant increase in the costs to participate in the employer provided health insurance plan as well as a loss of other benefits.

14.

Therefore STPH failed to offer a reasonable accommodation.

15.

On or about May 21, 2004, Ms. Lemly responded in writing to STPH's proposal and offered a number of solutions that would allow STPH to continue administering the morning after pill and yet would accommodate Ms. Lemly's sincerely held religious beliefs. A true and correct copy of this response is attached hereto as Exhibit "C".

16.

Ms. Lemly's proposed solutions were reasonable and if implemented, would not have been an undue hardship on STPH.

17.

STPH responded to Ms. Lemly's reasonable suggestions by firing her from her full-time position and reducing her to part-time status working only three days a week. Attached hereto as Exhibit "D" is a true and correct copy of STPH's written notice to Ms. Lemly that she was being terminated from full-time employment.

18.

STPH refused to make a reasonable accommodation for Ms. Lemly's sincerely held religious beliefs and she was unlawfully terminated from her full-time position because of those sincerely held religious beliefs.

19.

STPH's actions, set forth above, are in violation of the law, including the Louisiana Employment Discrimination Law (La. R.S. 23:301 *et seq.*), and Ms. Lemly is entitled to an award of damages including compensatory damages, back pay, benefits, reinstatement, attorney fees, and court costs.

20.

More than thirty days prior to filing this suit, Ms. Lemly gave written notice to STPH of their discriminatory acts and her intent to file suit. A true and correct copy of this written notice is attached hereto as Exhibit "E".

21.

Ms. Lemly made a good faith effort to resolve this matter prior to initiating court action.

22.

The amount in controversy is sufficient for Petitioner to be entitled to a trial by jury and Petitioner does hereby demand a trial by jury of all issues herein.

WHEREFORE, the premises considered, Petitioner prays that:

- (a) defendant be served with a copy of this petition and be cited to appear and make answer thereto,
- (b) after all legal delays and due proceedings had, there be trial by jury of all issues presented herein,
- (c) there be judgment herein compelling STPH to reinstate Petitioner as a full-time employee of the Community Wellness Center,
- (d) there be judgment herein in favor of Petitioner for damages for unlawful religious discrimination with legal interest thereon from the date of demand,
- (e) defendant STPH be cast with all costs of this litigation including Petitioner's attorney fees.

Respectfully submitted,

BRIAN W. ARABIE #27359  
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J. Michael Johnson  
Louisiana Bar No. 26059  
ALLIANCE DEFENSE FUND  
Louisiana Regional Service Center  
P.O. Box 52954  
Shreveport, LA 71135  
Tel. (318) 798-8211  
Fax (318) 798-8213  
Cell (318) 349-4992

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WARREN L. MONTGOMERY #09578  
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321 N. Vermont Street  
Covington, Louisiana 70433  
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Fax: (985) 893-7104

**Toni Lemly**

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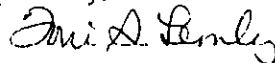
**From:** Toni Lemly  
**Sent:** Thursday, May 13, 2004 9:19 AM  
**To:** Judy Wischkaemper  
**Cc:** Toni Lemly  
**Subject:** Morning After Pill-Plan B

I have an innate, deep seeded belief in Supreme Holy God and I am one of His children. I believe He teaches that life is precious and He is the Creator, Giver and Taker of life. This is not left to man's choice, and I cannot interfere with His plan. Since He is my Lord and Savior for me to give pills to take a life He creates would be for me to go against Him and His plan.

Other Religions that believe in God have similar beliefs as mine and even the United States Federal Government make provisions for those who are conscientious objectors to taking another life.

That being said, I hold to my belief and feel that I cannot participate in the Family Planning Clinic and give out the Plan B 'morning after pill' which prevents a living, united female egg and male sperm which is HUMAN life from attaching itself to the uterus lining.

Respectfully,



Toni S. Lemly, LPN

5/14/2004

In response to your letter on May 13, 2004, which states that you "...cannot participate in the Family Planning Clinic and give out Plan B", I am offering you the following solutions from which to choose:

1. Reduce your workdays to three (3) days a week.
  - a. Three (3) days per week (Monday – Wednesday) in a part-time position (0.6 FTE) at CWC.
2. Apply to another department in the hospital, as a transfer, with an opening for an LPN.
  - a. See the attached job-posting document.
3. Work two (2) in two different cost centers.
  - a. Three (3) days per week (Monday – Wednesday) at CWC and the remaining two (2) days per week in another department of St. Tammany Parish Hospital.

Please submit your decision in writing, no later than Friday, May 21, 2004. If you choose to transfer to another department, you will be given 2 weeks to do so.

Home | Phone Listing | Calendar | Forum | Policies & Procedures

Class Registration | Employee Update

**HEADLINES**

**CARE MATTERS Customer Service training sessions for May**  
 CARE MATTERS The Customer Service program presented by Senior Management for all employees. All

**SEARCH**

Searching for:

Look in:

**JOB LINE**

Allied Health | Clerical | Nursing | Professional Support Services | View All

**Nursing**

- **CERTIFIED NURSING ASSISTANT (ER)**  
 Department: Emergency Care Services  
 Status: Part Time
- **CERTIFIED NURSING ASSISTANT (HOME HEALTH)**  
 Department: Home Health Care Services  
 Status: Per Diem
- **CRNA (ANESTHESIOLOGY)**  
 Department: Anesthesiology/Prof  
 Status: Full Time
- **LPN (IP REHAB)**  
 Department: Physical Therapy - IP  
 Status: Full Time
- **LPN (LAB)**  
 Department: Laboratory  
 Status: Part Time
- **LPN (REHAB UNIT)**  
 Department: Rehab Unit  
 Status: Full Time & Per Diem
- **LPN (STPN, MANDEVILLE OFEC)**  
 Department: STPN-BAIER  
 Status: Full Time
- **LPN (TELEMTRY)**  
 Department: 2 West  
 Status: Full Time & Per Diem
- **LPN (WC/HYPERBARICS)**  
 Department: Wound Therapy  
 Status: Per Diem
- **RN (CCU)**  
 Department: CICU  
 Status: Full Time
- **RN (ER)**  
 Department: Emergency Care Services  
 Status: Full Time
- **RN (HOME HEALTH/HOSPICE)**  
 Department: Home Health Care Services  
 Status: Full Time & Per Diem
- **RN (ICA)**  
 Department: Intermediate Care  
 Status: Full Time & Part Time
- **RN (ICU)**  
 Department: Intensive Care  
 Status: Full Time
- **RN (MEDICAL/SURG)**  
 Department: 2 North  
 Status: Part Time
- **RN (NEW FAMILY CTR)**  
 Department: Labor and Delivery  
 Status: Full Time
- **RN (NICU)**

Please  
 Emp#:  P  
  
 Need an Account? [Click Here](#)  
 Forgot your Password? [Click Here](#)

**Florence Night**  
 I solemnly pledge myself to my fellow citizens and in the presence of my God to pass my life in your profession faithfully. I will do all in my power to elevate the standards of my profession and will hold in confidence all matters committed to me or to my fellow workers committed to my care.

- Department:** NICU  
**Status:** Full Time
- **RN (ORTHOPEDIC/SURG)**  
**Department:** 2 East  
**Status:** Full Time
- **RN (PEDS)**  
**Department:** Pediatric Unit  
**Status:** Part Time
- **RN (PRN Pool)**  
**Department:**  
**Status:** Per Diem
- **RN (SURGERY)**  
**Department:** Surgery  
**Status:** Full Time
- **RN (TELEMETRY)**  
**Department:** 2 West  
**Status:** Full Time
- **RN CLINICAL EDUCATOR**  
**Department:** Education, Development & Trng  
**Status:** Per Diem
- **RN CLINICAL EDUCATOR (COMMUNITY WELLNESS CTR)**  
**Department:** Community Wellness  
**Status:** Full Time & Part Time

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**Toni Lemly**

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**From:** Toni Lemly  
**Sent:** Friday, May 21, 2004 2:45 PM  
**To:** Judy S. Gracia/HR  
**Subject:** Response to Proposal on May 14, 2004 from Judy Wischkaemper

RE: In response to your solutions proposed on May 14, 2004.

In response to your solutions:

My ethical, moral and spiritual decision not to give the Plan B Morning after pill is not an issue concerning my position or hours per week at the Community Wellness Center.

1) My workdays do not need to be cut by two days as Thursday is the only day in question. **Friday** is my immunization day as is Monday, both morning and the afternoon. Also, I am willing to give any Depo-Provera shots that need to be given as well as all vaccines.

2) I have reviewed the positions available at St. Tammany Parish Hospital and I do not qualify for the alternate positions as I have not working in the hospital setting for 21 years and have no experience in Physical Therapy rehab, Oncology, Med Surg Telemetry or Hyperbaric.

I spoke to Judy Gracia in Human Resources who informed me I could not work a part time position **and** a per diem position to maintain my benefits, ie health insurance, life insurance, disability- short term and long term insurance, paid holidays and vacation time. This is very important as I am a single Mom with two young children. Also a department would have to agree to take me only on those two days to maintain my status as a full time employee.

I propose the following solutions as I know St Tammany is committed to maintaining it's employee's long term.

1. I continue to work my full time position, 40 hour work week at the Community Wellness Center. Maintain Friday as it currently is – giving immunizations both in the Morning and Afternoon.

5/27/2004

2. On Thursday I am willing to remain productive as always by:
  - a) pulling and making charts for immunization appointments on Friday AND Monday. Call to verify the appointments with the patients as I have been doing.
  - b) Call the KIDMED patients and schedule appointments for Drs. Yousef, Allen, and Miles, Keiffer and White. This will increase our revenue for the clinic as well as our Monthly stats.  
We have both heard Robin Birdsong say that she is very busy and overwhelmed By the job of calling and pursuing theses patients on a monthly basis and rarely has time to focus enough attention on it. Two attempts per age bracket visit need to be made to get these patients in for their well child check up. I would like to do this.
  - c) We do not have a volunteer to work the front desk on Thursdays which I am also willing to do as needed.

I tell everyone how much I enjoy this job from administration ie; Kerry Milton and other hospital

Staff and friends.

This is a job that I dearly love. I feel that I was meant to have this job and I can see myself working here long term. I can see no reason for my being unable to give a pill due to my spiritual convictions as a reason to leave. I enjoy teaching and working with the new

mom's. I

feel that I can give them a sense of self worth and encouragement.

and confidence. I enjoy my co-workers who have made me feel at home. I have told Ms.

Milton

that you also are the type Supervisor to be under if you want to learn and advance in nursing.

*Imi Lemley Sr*

May 24, 2004

Ms. Toni Lemly

*Re: Response to your proposal of May 21, 2004*

Dear Ms. Lemly:

I have carefully reviewed your letter of May 21, 2004, regarding your proposed work schedule which arises from your decision not to perform Family Planning duties on Thursday and Friday. There is insufficient work unrelated to Family Planning available to keep you fully occupied on Thursday and Friday each week. It is necessary that there be three nurses working in the Community Wellness Center on Family Planning issues on Thursday and two nurses able and versatile to work both Family Planning and immunizations Friday of each week. The Center does not need a third nurse performing immunizations or other ancillary duties on Friday. Accordingly, your suggestion that you could work Thursdays and Fridays in the Community Wellness Center has been rejected.

The hospital will now begin recruiting a nurse to work on Thursdays and Fridays in the Community Wellness Center performing Family Planning duties. Effective Monday, May 31, you will be reassigned to a part time position working Monday through Wednesday in the Community Wellness Center performing the same duties that you have been performing prior to this date. You are of course free to apply for another part time position within the hospital which would allow you to work 40 hours a week.

Should you have any questions regarding the hospital's position in this matter please feel free to contact me.

Very truly yours,



Judy Wischkaemper, RN  
Director Community Wellness Center

cc: Kerry Milton  
Judy S. Gracia  
Kathy Viator

**BRIAN W. ARABIE  
ATTORNEY AT LAW  
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POST OFFICE BOX 3004 (70602)  
LAKE CHARLES, LOUISIANA**

TEL: (337) 433-3004

FAX: (337) 493-2383

July 1, 2004

***Via Certified Mail # 7000-1670-0010-4967-2295  
Return Receipt Requested***

Ms. Patti Elish, RN, MHA  
President/CEO  
St. Tammany Parish Hospital  
1202 S. Tyler Street  
Covington, LA 70433

RE: Toni Lemly  
Religious Based Employment Discrimination

Dear Ms. Elish:

As an allied attorney with the Alliance Defense Fund, I have been contacted by Ms. Toni Lemly regarding her legal claims arising from St. Tammany Parish Hospital's (STHP) discrimination against her because of her religious beliefs.

By way of introduction, the Alliance Defense Fund (ADF) is a not-for-profit public interest law and educational group. Our organization exists to educate the public and the government about issues concerning free speech, and to engage in the legal defense and advocacy of traditional family values, religious liberty, and the sanctity of human life. In the past, our organization has advised and assisted in numerous cases involving religious based discrimination and in recent months, we have been monitoring developments arising out of the administering of certain emergency contraception medication commonly known as the Morning After Abortion Pill.

In the following pages, the particular facts of this matter are set forth. Following the fact statement is a discussion of relevant law. After reviewing this letter, you should take whatever steps are necessary to ensure that you are in compliance with the law.

July 1, 2004

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## **I. Statement of Relevant Facts**

Ms. Lemly is a licensed practical nurse working in the Community Wellness Center at STHP in Covington. She worked in this position full time for approximately 10 months before being asked to administer the Morning After Abortion Pill on Thursdays of each week. Ms. Lemly believes that taking a human life through abortion is morally reprehensible and to assist in this procedure would violate her religious convictions. Ms. Lemly has informed her supervisors of her sincerely held religious beliefs and is deeply convicted in this area.

Unfortunately, Ms. Lemly has been denied the opportunity to work full time because of her religious convictions. Through her immediate supervisor, Ms. Lemly attempted to work out an agreement with STHP, proposing multiple alternatives whereby she could maintain her 40 hour work week and at the same time, avoid administering the Morning After Abortion Pill. Ms. Lemly was unsuccessful at persuading STHP to offer her a reasonable accommodation, and she was involuntarily reduced to part-time status. As a part-time employee, Ms. Lemly has suffered a significant reduction in income and must pay significantly more for employer provided health insurance. As a single mother with two young children, the extra income and the health insurance are sorely needed. Additionally, as a part time employee, Ms. Lemly does not qualify for numerous other programs and benefits.

## **II. Statement of Relevant Law**

### **A. FEDERAL LAW**

#### **1. Title VII Prohibits Employers from Discriminating Against Religious Employees.**

An employer has violated Title VII of the Civil Rights Act of 1964 when his employee: (1) Holds a sincere religious belief that conflicts with an employment requirement; (2) The employer knows about the conflict; and (3) The employee was discharged, disciplined, or subjected to discriminatory treatment for failing to comply with the conflicting employment requirement. *Smith v. Pyro Mining Co.*, 827 F.2d 1081 (6th Cir. 1987).

#### **"Sincerely Held Religious Belief" is a Very Broad Category**

Under Title VII sincerely held religious belief "includes all aspects of religious observance and practice, as well as belief..." 42 U.S.C. 2000e(j). The courts and the Equal Employment Opportunity Commission (EEOC) have generally interpreted this provision very liberally. Donald T. Kramer, *Validity, Construction, and Application of Provisions of Title VII of the Civil Rights Act of 1964 and Implementing Regulations, Making Religious Discrimination in Employment Unlawful*, 22 A.L.R. Fed. 580, 601 (1975). The EEOC does not require that the employee's religious beliefs coincide with the tenets of his church. *Guidelines on Discrimination Because of Religion*, 29 C.F.R.

July 1, 2004

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§ 1605.1.

Under this liberal standard, Ms. Lemly's belief that she cannot participate in abortions is protected by Title VII. *Haring v. Blumenthal*, 471 F. Supp. 1172 (D.D.C. 1979), *cert. den.*, 452 U.S. 939 (1981); *Rodriguez v. Chicago*, 1996 WL 22964 (N.D. Ill. 1996). Therefore, an employer violates the provisions of Title VII if it fires, reprimands, or fails to promote an employee because of their religious convictions regarding abortion. *Brown v. Polk County*, 61 F.3d 650 (8th Cir. 1995).

**Employers Need Only Be Aware of  
Employee's Religious Belief to Be Held Liable Under Title VII**

An employer that knows enough about the employee's "religious needs to permit the employer to understand the existence of a conflict between employee's religious practices and the employer's job requirements," has sufficient notice of an employee's religious belief. *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1439 (9th Cir. 1993). The employee does not have to specifically ask for the employer to refrain from discriminating against him. *Brown*, 61 F.3d at 654. In this case, Ms. Lemly notified STHP in writing of her sincerely held religious belief about abortion and the need for an accommodation. STHP is aware of Ms. Lemly's sincerely held religious beliefs, and need for an accommodation. If it is contended otherwise, please consider this letter notice.

**"Discrimination" is Not Limited to Firing the Employee**

If an employee has a religious belief, practice, or observance of which the employer is aware, Title VII protects the employee from religious discrimination. Discrimination may manifest itself in several ways, including demotion, layoff, transfer, failure to promote, discharge, harassment or intimidation. Gregory G. Sarno, *Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 P.O.F. 2d 209, 222 (1983). "[T]he threat of discharge (or of other adverse employment practices) is a sufficient penalty" to establish the third element of the prima facie case. *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 614 n.2 (9th Cir. 1988), *cert. den.*, 489 U.S. 1077 (1989). The reduction of Ms. Lemly's status to part time employee and the resulting reduction in pay and benefits because of her religious conviction certainly qualifies as "discrimination" under Federal Law.

**2. Title VII Requires Employers to Accommodate the Religious Beliefs of their Employees.**

In addition to refraining from discrimination, once an employer knows an employee's sincerely held religious belief conflicts with the terms of his employment, the employer is required to reasonably accommodate the employee's religious beliefs unless such accommodation would result in undue hardship to the employer. *Trans World Airlines v. Hardison*, 432 U.S. 63, 74 (1977). In other words, the employer is required to accommodate an employee's adherence to the principles of his religion unless such accommodation will actually interfere with the operations of the employer. *Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1381, 1490 (10th Cir. 1989), *cert. den.*, 495 U.S.

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948 (1990); *United States v. Board of Education*, 911 F.2d 882, 887 (3d Cir. 1990). For instance, employers must accommodate employee religions requiring them to dress or groom in a certain manner, unless the prohibiting rule is justified by a business necessity. EEOC Dec. ¶ 6180 (1970).

An employer was required to accommodate a religious worker's objections to abortion in *Haring v. Blumenthal*, 471 F. Supp. 1172 (D.D.C. 1979). In that case, the I.R.S. would not consider an employee for another position because he refused to handle applications for tax exempt status submitted by any organization which violates the Ten Commandments or God's natural law, including the performance of abortions. *Id.* at 1174 n.4. The court ruled that accommodating the employee would not result in undue hardship to the employer because the number of applications the employee might refuse to handle would be relatively insignificant as compared to his total workload. *Id.* at 1180.

A similar case in Illinois was brought by a police officer who had a sincerely held religious belief not to participate in duty which required being stationed at and protecting an abortion clinic. *Rodriguez v. Chicago*, 1996 WL 22964 (N.D. Ill. 1996). The federal district court held in that case that the police officer stated a cause of action under Title VII. Thus, employers must accommodate an employee's sincerely held religious conviction not to participate in a particular work activity. *McGinnis v. United States Postal Service*, 512 F. Supp. 517 (N.D. Ca. 1980) (Post office was required to accommodate a postal worker's religious belief not to participate in handling draft registration materials).

Employers are also required to accommodate an employee's belief that he must share his faith with others. In *Brown v. Polk County*, 61 F.3d 650 (8th Cir. 1995), the plaintiff, Isaiah Brown, was the director of the data processing department for Polk County, Iowa. He reported directly to the county administrator and supervised approximately 50 employees. Among other things, Mr. Brown allowed employees to say prayers in his office in department meetings held during the day, and when addressing coworkers, Brown affirmed his Christianity and referred to Bible passages related to slothfulness and "work ethics." In 1990, the county administrator reprimanded Mr. Brown for a "lack of judgment pertaining to his personal participation in and/or his knowledge of employees participating in activities that could be construed as the direct support of or the promotion of a religious organization or religious activities utilizing the resources of Polk County Government." The reprimand directed Mr. Brown "immediately [to] cease any activities that could be considered to be religious proselytizing, witnessing, or counseling and ... insure a work environment that is free of the types of activities ... described." *Id.* at 653. The county administrator also directed Mr. Brown to remove from his office all items with a religious connotation, including a Bible in his desk. In late 1990, the county administrator fired Mr. Brown. *Id.* at 652-653. The full 11-member U.S. Court of Appeals for the Eighth Circuit held that the county defendants were liable under Title VII for reprimanding and firing Mr. Brown for his spontaneous prayers and references to his Christian belief.

The court ruled against the employers in these cases because there was "no actual imposition on co-workers or disruption of the work routine." *Id.* at 657. "Most courts require the employer to demonstrate attempted accommodation before he can claim undue hardship as a defense." *Redmond*

v. *GAF Corp.*, 574 F.2d 897 (7th Cir. 1978). Evidence of undue hardship must be more than mere speculation. *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1086 (6th Cir. 1987). It must be present hardship, as distinguished from anticipated or multiplied hardship. *Cook v. Chrysler Corp.*, 981 F.2d 336, 339 (8th Cir. 1992), *cert. den.*, 113 S.Ct. 2963 (1993); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1243 (9th Cir. 1981), *cert. den.*, 454 U.S. 1098 (1981). For example, undue hardship requires more than proof that other employees would grumble or be unhappy about a particular accommodation. *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397 (9th Cir. 1978); *Burns v. Southern Pac. Transp. Co.*, 559 F.2d 403, 407 (9th Cir. 1978), *cert. den.*, 439 U.S. 1072 (1972).

The employer in the *Brown* case argued that Mr. Brown's spontaneous prayers, affirmations of Christianity, and references to Bible passages would cause a "polarization" between Christian and non-Christian employees. Further, defendants claimed that Mr. Brown's open religious conduct would create a perception that he "might favor those with similar beliefs" in making personnel decisions. *Id.* at 656. In response, the Court stated:

[T]he defendants' examples of the burden that they would have to bear by tolerating trifling instances such as those complained of are insufficiently real, and too hypothetical, to satisfy the standard required to show undue hardship. The defendants showed no actual imposition on co-workers or disruption of the work routine generated by occasional spontaneous prayers and isolated references to Christian belief.

*Id.* at 657.

## **B. STATE LAW**

### **1. State Law Offers Specific Protections to Employees Who Refuse to Take Part in Abortions.**

The Louisiana Legislature has declared that it is the longstanding policy of this State "that the unborn child is a human being from the time of conception" and that it is "the longstanding policy of this State to protect the right to life of the unborn child." La. R.S. 40:1299.35.0. In furtherance of this view, it is against the law for an employee to be discriminated against, dismissed, demoted, or in any way prejudiced or damaged or pressured for their refusal to take part in an abortion. La. R.S. 40:1299.31. Violations of this law may be punishable by fines and imprisonment. La. R.S. 40:1299.35.18.

STHP is clearly in violation of Louisiana State law which protects employees such as Ms. Lemly who refuse to participate in abortions. STHP should reconsider its action in discriminating against, and demoting, Ms. Lemly for her refusal to participate in the taking of a human life.

## **2. State Law Prohibits Religious Discrimination.**

State Law, like Federal Law, prohibits employers from discriminating against its employees because of their religious beliefs. The Louisiana Employment Discrimination Law makes it illegal for employers to discriminate against employees because of their religious beliefs. La. R.S. 23:301 *et seq.* Section 303 authorizes civil suits on behalf of employees who have suffered discrimination from their employers to recover compensatory damages, back pay, benefits, reinstatement, front pay, attorney fees, and court costs.

This letter is written notice of Ms. Lemly's intent to file suit against STHP under the Louisiana Employment Discrimination Law and she is hereby making a good faith effort to resolve this dispute prior to initiating court action.

### **CONCLUSION**

Employers are prohibited by both State and Federal Law from discriminating against individuals because of their religion and because of their opposition to participating in abortions. Thus, STHP is required to reasonably accommodate Ms. Lemly's religious convictions as long as the accommodation has not resulted in undue hardship.

It is clear that no undue hardship would result if Ms. Lemly were permitted to perform other important tasks on Thursdays - the only day of the week in which the Morning After Abortion Pill is administered. Ms. Lemly has identified for her supervisor numerous other tasks that she could undertake on Thursdays that would further the goals of the Community Wellness Center, but would not require her to take part in the taking of a human life. No undue hardship would result from this simple accommodation. Ms. Lemly remains willing, and hopeful, that we can reach an agreement in which she can remain a full time employee in the Community Wellness Center, and yet not be required to administer the Morning After Abortion Pill.

It is imperative that STHP discontinue its discrimination against Ms. Lemly by refusing to allow her to work full time because of her religious beliefs. As you know the violation of an individual's rights, even for a moment, results in irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976). If we do not hear from you within 15 days of the date of this letter, we will move forward with legal action. Please advise if I can provide you with any further information in order to resolve this important matter.

July 1, 2004  
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Sincerely,



BRIAN W. ARABIE

cc: Ms. Midge Collet  
Ms. Judy Wischkaemper